

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 2: Computer Misuse

Commentary on Sections

Section 42: Obtaining articles for purposes relating to computer misuse

134. Article 7 of the Directive requires Member States to criminalise certain activities in relation to the commission of the substantive offences at Articles 3 to 6 of the Directive (those Articles relate to illegal access to information systems, illegal system interference, illegal data interference and illegal interception). It provides as follows:

“Tools used for committing offences

Member States shall take the necessary measures to ensure that the intentional production, sale, procurement for use, import, distribution or otherwise making available, of one of the following tools, without right and with the intention that it be used to commit any of the offences referred to in Articles 3 to 6, is punishable as a criminal offence, at least for cases which are not minor:

- (a) a computer programme, designed or adapted primarily for the purpose of committing any of the offences referred to in Articles 3 to 6;
- (b) a computer password, access code, or similar data by which the whole or any part of an information system is capable of being accessed.”

135. Section 3A of the 1990 Act, in conjunction with sections 1 to 3 of that Act, meets the requirements of Article 7 save in one respect, namely the “procurement for use” of tools used for committing the Article 3 to 6 offences. Under the existing offence, the prosecution is required to show that the individual obtained the tool with a view to its being *supplied* for use to commit, or assist in the commission of an offence under section 1 or 3 of the Act. This section extends subsection (3) of section 3A of the 1990 Act to include an offence of obtaining a tool for use to commit a Computer Misuse Act offence (including one under the new section 3ZA inserted by section 41) *regardless of an intention to supply* that tool. As amended, that subsection would provide that (additions shown in italics):

“A person is guilty of an offence if he obtains any article with a view to *article –*

- (a) *intending to use it to commit, or assist in the commission of, an offence under section 1, 3 or 3ZA, or*
- (b) *with a view to its being supplied for use to commit, or assist in the commission of, an offence under section 1 or 3.”*