

Cybercrime legislation – country profile

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

This profile has been prepared within the framework of the Council of Europe’s capacity building projects on cybercrime in view of sharing information and assessing the current state of implementation of the Convention on Cybercrime under domestic legislation. It does not necessarily reflect official positions of the country covered or of the Council of Europe.

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Country:	United Kingdom of Great Britain and Northern Ireland
Signature of Convention:	23/11/2001
Ratification/accession:	20/05/2011
Provisions of the Convention	Corresponding provisions/solutions in national legislation <i>(pls quote or summarise briefly; pls attach relevant extracts as an appendix)</i>
Chapter I – Use of terms	
Article 1 – “Computer system”, “computer data”, “service provider”, “traffic data”: For the purposes of this Convention: a “computer system” means any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;	Art. 17 of the Computer Misuse Act 1990 (1)The following provisions of this section apply for the interpretation of this Act. (2)A person secures access to any program or data held in a computer if by causing a computer to perform any function he— (a)alters or erases the program or data;

<p>b "computer data" means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;</p> <p>c "service provider" means:</p> <p>i any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and</p> <p>ii any other entity that processes or stores computer data on behalf of such communication service or users of such service;</p> <p>d "traffic data" means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration, or type of underlying service</p>	<p>(b)copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;</p> <p>(c)uses it; or</p> <p>(d)has it output from the computer in which it is held (whether by having it displayed or in any other manner); and references to access to a program or data (and to an intent to secure such access or to enable such access to be secured) shall be read accordingly.</p> <p>(3)For the purposes of subsection (2)(c) above a person uses a program if the function he causes the computer to perform—</p> <p>(a)causes the program to be executed; or</p> <p>(b)is itself a function of the program.</p> <p>(4)For the purposes of subsection (2)(d) above—</p> <p>(a)a program is output if the instructions of which it consists are output; and</p> <p>(b)the form in which any such instructions or any other data is output (and in particular whether or not it represents a form in which, in the case of instructions, they are capable of being executed or, in the case of data, it is capable of being processed by a computer) is immaterial.</p> <p>(5)Access of any kind by any person to any program or data held in a computer is unauthorised if—</p> <p>(a)he is not himself entitled to control access of the kind in question to the program or data; and</p> <p>(b)he does not have consent to access by him of the kind in question to the program or data from any person who is so entitled but this subsection is subject to section 10.</p> <p>(6)References to any program or data held in a computer include references to any program or data held in any removable storage medium which is for the time being in the computer; and a computer is to be regarded as containing any program or data held in any such medium.</p> <p>(7) - (repealed)</p> <p>(8)An act done in relation to a computer is unauthorised if the person doing the act (or causing it to be done)—</p> <p>(a)is not himself a person who has responsibility for the computer and is entitled to determine whether the act may be done; and</p> <p>(b)does not have consent to the act from any such person.</p> <p>In this subsection "act" includes a series of acts.</p> <p>(9)References to the home country concerned shall be read in accordance with section 4(6) above.</p>
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	(10)References to a program include references to part of a program.
<p>Chapter II – Measures to be taken at the national level Section 1 – Substantive criminal law</p>	
<p><i>Title 1 – Offences against the confidentiality, integrity and availability of computer data and systems</i></p>	
<p>Article 2 – Illegal access Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	<p>Art. 1 (b) of the Computer Misuse Act 1990. (hereafter CMA 1990). and Art. 2 of CMA 1990.</p> <p>1 Unauthorised access to computer material (1) A person is guilty of an offence if— (b) the access he intends to secure or to enable to be secured is unauthorised; and</p> <p>2 Unauthorised access with intent to commit or facilitate commission of further offences (1) A person is guilty of an offence under this section if he commits an offence under section 1 above (“the unauthorised access offence”) with intent— (a) to commit an offence to which this section applies; or (b) to facilitate the commission of such an offence (whether by himself or by any other person); and the offence he intends to commit or facilitate is referred to below in this section as the further offence. (2) This section applies to offences— (a) for which the sentence is fixed by law; or (b) for which a person of twenty-one years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years (or, in England and Wales, might be so sentenced but for the restrictions imposed by section 33 of the [1980 c. 43.] Magistrates' Courts Act 1980). (b)for which a person who has attained the age of twenty-one years (eighteen in relation to England and Wales) and has no previous convictions may be sentenced to imprisonment for a term of five years (or, in England and Wales, might be so sentenced but for the restrictions imposed by section 33 of the Magistrates’ Courts Act 1980). (3) It is immaterial for the purposes of this section whether the further offence</p>

	<p>is to be committed on the same occasion as the unauthorised access offence or on any future occasion.</p> <p>(4) A person may be guilty of an offence under this section even though the facts are such that the commission of the further offence is impossible.</p> <p>(5) A person guilty of an offence under this section shall be liable—</p> <p>(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;</p> <p>(b) on summary conviction in Scotland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;</p> <p>(c) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.</p>
<p>Article 3 – Illegal interception</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	
<p>Article 4 – Data interference</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>	<p>Art.3 (1, 6) of CMA 1990 and also Art. 3(2/b-c) of CMA 1990</p> <p>Art.3 (1, 6) of CMA 1990 :acts with intent to impair, or with recklessness as to impairing, operation of computer, etc</p> <p>.</p> <p>(1)A person is guilty of an offence if—</p> <p>(a)he does any unauthorised act in relation to a computer;</p> <p>(b)at the time when he does the act he knows that it is unauthorised; and</p> <p>(c)either subsection (2) or subsection (3) below applies.</p> <p>.</p> <p>(6)A person guilty of an offence under this section shall be liable—</p> <p>(a)on summary conviction in England and Wales, to imprisonment for a term not</p>

	<p>exceeding 12 months or to a fine not exceeding the statutory maximum or to both;</p> <p>(b)on summary conviction in Scotland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;</p> <p>(c)on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine or to both</p> <p>Art. 3(2/b-c) of CMA 1990 Unauthorised modification of computer material</p> <p>(2)This subsection applies if the person intends by doing the act—</p> <p>(a)to impair the operation of any computer;</p> <p>(b)to prevent or hinder access to any program or data held in any computer;</p> <p>(c)to impair the operation of any such program or the reliability of any such data; or</p> <p>(d)to enable any of the things mentioned in paragraphs (a) to (c) above to be done</p>
<p>Article 5 – System interference</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data</p>	<p>Art. 3(2/a, 6) of CMA 1990.</p> <p>Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer,</p> <p>2)This subsection applies if the person intends by doing the act—</p> <p>(a)to impair the operation of any computer;</p> <p>6)A person guilty of an offence under this section shall be liable—</p> <p>(a)on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;</p> <p>(b)on summary conviction in Scotland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;</p> <p>(c)on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine or to both</p>
<p>Article 6 – Misuse of devices</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when</p>	

committed intentionally and without right:
a the production, sale, procurement for use, import, distribution or otherwise making available of:

i a device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences established in accordance with the above Articles 2 through 5;

ii a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5; and

b the possession of an item referred to in paragraphs a.i or ii above, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5. A Party may require by law that a number of such items be possessed before criminal liability attaches.

2 This article shall not be interpreted as imposing criminal liability where the production, sale, procurement for use, import, distribution or otherwise making available or possession referred to in paragraph 1 of this article is not for the purpose of committing an offence established in accordance with Articles 2 through 5 of this Convention, such as for the authorised testing or protection of a computer system.

3 Each Party may reserve the right not to apply paragraph 1 of this article, provided that the reservation does not concern the sale, distribution or otherwise making available of the items referred to in paragraph 1 a.ii of this article.

Title 2 – Computer-related offences

Article 7 – Computer-related forgery

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic,

Forgery Act 1913, Art. 1

1.—(1) For the purposes of this Act, forgery is the making Definition of a false document in order that it may be used as genuine, forgery. and in the case of the seals and dies mentioned in this Act the counterfeiting of a seal or die, and forgery with intent to defraud or deceive,

<p>regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.</p>	<p>as the case may be, is punishable as in this Act provided.</p> <p>(2) A document is false within the meaning of this Act if the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it nor authorise its making; or if, though made by or on behalf or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is stated therein; and in particular a document is false :—</p> <p>(a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein;</p> <p>(b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person;</p> <p>(c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorised it.</p> <p>3) For the purposes of this Act—</p> <p>(a) it is immaterial in what language a document is expressed or in what place within or without the King's dominions it is expressed to take effect;</p> <p>(b) Forgery of a document may be complete even if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding or sufficient in law;</p> <p>(c) The crossing on any chequp, draft on a banker, postoffice money order, postal order, coupon, or other document the crossing of which is authorised or recognised by law, shall be a material part of such cheque, draft, order, coupon, or document.</p>
<p>Article 8 – Computer-related fraud</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <p style="padding-left: 40px;">a any input, alteration, deletion or suppression of computer data;</p> <p style="padding-left: 40px;">b any interference with the functioning of a computer system,</p> <p>with fraudulent or dishonest intent of procuring, without right, an economic</p>	<p>Fraud Act 2006, Art. 1-8</p> <p>1 Fraud</p> <p>(1) A person is guilty of fraud if he is in breach of any of the sections listed in subsection (2) (which provide for different ways of committing the offence).</p> <p>(2) The sections are—</p> <p>(a) section 2 (fraud by false representation),</p> <p>(b) section 3 (fraud by failing to disclose information), and</p> <p>(c) section 4 (fraud by abuse of position).</p>

benefit for oneself or for another person.

(3) A person who is guilty of fraud is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

(4) Subsection (3)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

2 Fraud by false representation

(1) A person is in breach of this section if he—

(a) dishonestly makes a false representation, and

(b) intends, by making the representation—

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss.

(2) A representation is false if—

(a) it is untrue or misleading, and

(b) the person making it knows that it is, or might be, untrue or misleading.

(3) "Representation" means any representation as to fact or law, including a representation as to the state of mind of—

(a) the person making the representation, or

(b) any other person.

(4) A representation may be express or implied.

(5) For the purposes of this section a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

3 Fraud by failing to disclose information

A person is in breach of this section if he—

(a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and

(b) intends, by failing to disclose the information—

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss.

4-Fraud by abuse of position

- (1) A person is in breach of this section if he—
- (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
 - (b) dishonestly abuses that position, and
 - (c) intends, by means of the abuse of that position—
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

5 "Gain" and "loss"

- (1) The references to gain and loss in sections 2 to 4 are to be read in accordance with this section.
- (2) "Gain" and "loss"—
- (a) extend only to gain or loss in money or other property;
 - (b) include any such gain or loss whether temporary or permanent; and "property" means any property whether real or personal (including things in action and other intangible property).
- (3) "Gain" includes a gain by keeping what one has, as well as a gain by getting what one does not have.
- (4) "Loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has.

6 Possession etc. of articles for use in frauds

- (1) A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or to both).
- (3) Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

	<p>7 Making or supplying articles for use in frauds</p> <p>(1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article—</p> <p>(a) knowing that it is designed or adapted for use in the course of or in connection with fraud, or</p> <p>(b) intending it to be used to commit, or assist in the commission of, fraud.</p> <p>(2) A person guilty of an offence under this section is liable—</p> <p>(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);</p> <p>(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).</p> <p>(3) Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.</p> <p>8 "Article"</p> <p>(1) For the purposes of—</p> <p>(a) sections 6 and 7, and</p> <p>(b) the provisions listed in subsection (2), so far as they relate to articles for use in the course of or in connection with fraud,</p> <p>"article" includes any program or data held in electronic form.</p> <p>(2) The provisions are—</p> <p>(a) section 1(7)(b) of the Police and Criminal Evidence Act 1984 (c. 60),</p> <p>(b) section 2(8)(b) of the Armed Forces Act <u>2001 (c. 19)</u>, and</p> <p>(c) Article 3(7)(b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. <u>1989/1341</u> (N.I. 12));</p> <p>(meaning of "prohibited articles" for the purposes of stop and search powers).</p>
<i>Title 3 – Content-related offences</i>	
<p>Article 9 – Offences related to child pornography</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:</p> <p style="padding-left: 20px;">a producing child pornography for the purpose of its distribution</p>	<p>Art. 1(1) of the Protection of Children Act 1978</p> <p>1 Indecent photographs of children.</p> <p>(1) It is an offence for a person—</p>

<p>through a computer system;</p> <p>b offering or making available child pornography through a computer system;</p> <p>c distributing or transmitting child pornography through a computer system;</p> <p>d procuring child pornography through a computer system for oneself or for another person;</p> <p>e possessing child pornography in a computer system or on a computer-data storage medium.</p> <p>2 For the purpose of paragraph 1 above, the term "child pornography" shall include pornographic material that visually depicts:</p> <p>a a minor engaged in sexually explicit conduct;</p> <p>b a person appearing to be a minor engaged in sexually explicit conduct;</p> <p>c realistic images representing a minor engaged in sexually explicit conduct</p> <p>3 For the purpose of paragraph 2 above, the term "minor" shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.</p> <p>4 Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.</p>	<p>(a)to take, or permit to be taken or to make, any indecent photograph or pseudo-photograph of a child. . . ; or</p> <p>(b)to distribute or show such indecent photographs or pseudo-photographs; or</p> <p>(c)to have in his possession such indecent photographs or pseudo-photographs, with a view to their being distributed or shown by himself or others; or</p> <p>(d)to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so.</p> <p>2 Evidence.</p> <p>(1) et (2) aborted</p> <p>(3)In proceedings under this Act relating to indecent photographs of children a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that he was then under the age of 16.</p>
<p><i>Title 4 – Offences related to infringements of copyright and related rights</i></p>	
<p>Article 10 – Offences related to infringements of copyright and related rights</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p>	<p>Copyright, Designs and Patents Act 1988, Art. 1-8, Art. 56 and Art. 262.</p> <p>1 Copyright and copyright works</p> <p>(1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work—</p> <p>(a) original literary, dramatic, musical or artistic works,</p> <p>(b) sound recordings, films, broadcasts or cable programmes, and</p> <p>(c) the typographical arrangement of published editions.</p> <p>(2) In this Part "copyright work" means a work of any of those descriptions in which copyright subsists.</p> <p>(3) Copyright does not subsist in a work unless the requirements of this Part</p>

2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.

3 A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from the Party's international obligations set forth in the international instruments referred to in paragraphs 1 and 2 of this article.

with respect to qualification for copyright protection are met (see section 153 and the provisions referred to there).

2 Rights subsisting in copyright works

(1) The owner of the copyright in a work of any description has the exclusive right to do the acts specified in Chapter II as the acts restricted by the copyright in a work of that description.

(2) In relation to certain descriptions of copyright work the following rights conferred by Chapter IV (moral rights) subsist in favour of the author, director or commissioner of the work, whether or not he is the owner of the copyright—

- (a) section 77 (right to be identified as author or director),
- (b) section 80 (right to object to derogatory treatment of work), and
- (c) section 85 (right to privacy of certain photographs and films).

Descriptions of work and related provisions

3 Literary, dramatic and musical works

(1) In this Part—

“literary work” means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes—

- (a) a table or compilation, and
- (b) a computer program;

“dramatic work” includes a work of dance or mime; and

“musical work” means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

(2) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise; and references in this Part to the time at which such a work is made are to the time at which it is so recorded.

(3) It is immaterial for the purposes of subsection (2) whether the work is recorded by or with the permission of the author; and where it is not recorded by the author, nothing in that subsection affects the question whether copyright subsists in the record as distinct from the work recorded.

4 Artistic works

(1) In this Part “artistic work” means—

- (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,

(b) a work of architecture being a building or a model for a building, or
(c) a work of artistic craftsmanship.
(2) In this Part—
“building” includes any fixed structure, and a part of a building or fixed structure;
“graphic work” includes—
(a) any painting, drawing, diagram, map, chart or plan, and
(b) any engraving, etching, lithograph, woodcut or similar work;
“photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;
“sculpture” includes a cast or model made for purposes of sculpture.

5 Sound recordings and films

(1) In this Part—
“sound recording” means—
(a) a recording of sounds, from which the sounds may be reproduced, or
(b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced, regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced; and
“film” means a recording on any medium from which a moving image may by any means be produced.
(2) Copyright does not subsist in a sound recording or film which is, or to the extent that it is, a copy taken from a previous sound recording or film.

6 Broadcasts

(1) In this Part a “broadcast” means a transmission by wireless telegraphy of visual images, sounds or other information which—
(a) is capable of being lawfully received by members of the public, or
(b) is transmitted for presentation to members of the public;
and references to broadcasting shall be construed accordingly.
(2) An encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.

(3) References in this Part to the person making a broadcast, broadcasting a work, or including a work in a broadcast are—

(a) to the person transmitting the programme, if he has responsibility to any extent for its contents, and

(b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission;

and references in this Part to a programme, in the context of broadcasting, are to any item included in a broadcast.

(4) For the purposes of this Part the place from which a broadcast is made is, in the case of a satellite transmission, the place from which the signals carrying the broadcast are transmitted to the satellite.

(5) References in this Part to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunications system.

(6) Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast or in a cable programme.

7 Cable programmes

(1) In this Part—

“cable programme” means any item included in a cable programme service; and
“cable programme service” means a service which consists wholly or mainly in sending visual images, sounds or other information by means of a telecommunications system, otherwise than by wireless telegraphy, for reception—

(a) at two or more places (whether for simultaneous reception or at different times in response to requests by different users), or

(b) for presentation to members of the public,

and which is not, or so far as it is not, excepted by or under the following provisions of this section.

(2) The following are excepted from the definition of “cable programme service”—

(a) a service or part of a service of which it is an essential feature that while visual images, sounds or other information are being conveyed by the person providing the service there will or may be sent from each place of reception, by means of the same system or (as the case may be) the same part of it, information (other than signals sent for the operation or control of the service)

for reception by the person providing the service or other persons receiving it;

(b) a service run for the purposes of a business where—

(i) no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system,

(ii) the visual images, sounds or other information are conveyed by the system solely for purposes internal to the running of the business and not by way of rendering a service or providing amenities for others, and

(iii) the system is not connected to any other telecommunications system;

(c) a service run by a single individual where—

(i) all the apparatus comprised in the system is under his control,

(ii) the visual images, sounds or other information conveyed by the system are conveyed solely for domestic purposes of his, and

(iii) the system is not connected to any other telecommunications system;

(d) services where—

(i) all the apparatus comprised in the system is situated in, or connects, premises which are in single occupation, and

(ii) the system is not connected to any other telecommunications system, other than services operated as part of the amenities provided for residents or inmates of premises run as a business;

(e) services which are, or to the extent that they are, run for persons providing broadcasting or cable programme services or providing programmes for such services.

(3) The Secretary of State may by order amend subsection (2) so as to add or remove exceptions, subject to such transitional provision as appears to him to be appropriate.

(4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

(5) References in this Part to the inclusion of a cable programme or work in a cable programme service are to its transmission as part of the service; and references to the person including it are to the person providing the service.

(6) Copyright does not subsist in a cable programme—

(a) if it is included in a cable programme service by reception and immediate re-transmission of a broadcast, or

(b) if it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

8 Published editions

(1) In this Part “published edition”, in the context of copyright in the typographical arrangement of a published edition, means a published edition of the whole or any part of one or more literary, dramatic or musical works.

(2) Copyright does not subsist in the typographical arrangement of a published edition if, or to the extent that, it reproduces the typographical arrangement of a previous edition

56 Transfers of copies of works in electronic form

(1) This section applies where a copy of a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work, or to adapt it or make copies of an adaptation, in connection with his use of it.

(2) If there are no express terms—

(a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer, or

(b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done without infringement of copyright by a transferee; but any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall be treated as an infringing copy for all purposes after the transfer.

(3) The same applies where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

(4) The above provisions also apply on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.

262 Adaptation of expressions in relation to Scotland

In the application of this Part to Scotland—

“account of profits” means accounting and payment of profits;

“accounts” means count, reckoning and payment;

“assignment” means assignation;

	<p>"costs" means expenses; "defendant" means defender; "delivery up" means delivery; "injunction" means interdict; "interlocutory relief" means interim remedy; and "plaintiff" means pursuer.</p>
<i>Title 5 – Ancillary liability and sanctions</i>	
<p>Article 11 – Attempt and aiding or abetting 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 2 through 10 of the present Convention with intent that such offence be committed. 2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, an attempt to commit any of the offences established in accordance with Articles 3 through 5, 7, 8, and 9.1.a and c. of this Convention. 3 Each Party may reserve the right not to apply, in whole or in part, paragraph 2 of this article.</p>	<p>Art. 11(2), art.6(2) and Art. 9(2/c) of CMA 1990</p> <p>11 Proceedings for offences under section 1 (2) Subject to subsection (3) below, proceedings for an offence under section 1 above may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.</p> <p>6 Territorial scope of inchoate offences related to offences under this Act (2) On a charge of attempting to commit an offence under section 3 above the following questions are immaterial to the accused’s guilt— (a) the question where the attempt was made; and (b) the question whether it had an effect in the home country concerned.</p> <p>9 British citizenship immaterial (2) This section applies to the following offences— (c) any attempt to commit an offence under section 3 above; and</p>

<p>Article 12 – Corporate liability</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for a criminal offence established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it, based on:</p> <ul style="list-style-type: none"> a a power of representation of the legal person; b an authority to take decisions on behalf of the legal person; c an authority to exercise control within the legal person. <p>2 In addition to the cases already provided for in paragraph 1 of this article, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.</p> <p>3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.</p> <p>4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.</p>	
<p>Article 13 – Sanctions and measures</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.</p> <p>2 Each Party shall ensure that legal persons held liable in accordance with Article 12 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.</p>	
<p>Section 2 – Procedural law</p>	
<p>Article 14 – Scope of procedural provisions</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures provided for in this section for the purpose of specific criminal investigations or proceedings.</p> <p>2 Except as specifically provided otherwise in Article 21, each Party shall apply the powers and procedures referred to in paragraph 1 of this article to:</p>	

<ul style="list-style-type: none"> a the criminal offences established in accordance with Articles 2 through 11 of this Convention; b other criminal offences committed by means of a computer system; and c the collection of evidence in electronic form of a criminal offence. <p>3 a Each Party may reserve the right to apply the measures referred to in Article 20 only to offences or categories of offences specified in the reservation, provided that the range of such offences or categories of offences is not more restricted than the range of offences to which it applies the measures referred to in Article 21. Each Party shall consider restricting such a reservation to enable the broadest application of the measure referred to in Article 20.</p> <p>b Where a Party, due to limitations in its legislation in force at the time of the adoption of the present Convention, is not able to apply the measures referred to in Articles 20 and 21 to communications being transmitted within a computer system of a service provider, which system:</p> <ul style="list-style-type: none"> i is being operated for the benefit of a closed group of users, and ii does not employ public communications networks and is not connected with another computer system, whether public or private, <p>that Party may reserve the right not to apply these measures to such communications. Each Party shall consider restricting such a reservation to enable the broadest application of the measures referred to in Articles 20 and 21</p>	
<p>Article 15 – Conditions and safeguards</p> <p>1 Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Section are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments, and which shall incorporate the principle of proportionality.</p>	

<p>2 Such conditions and safeguards shall, as appropriate in view of the nature of the procedure or power concerned, <i>inter alia</i>, include judicial or other independent supervision, grounds justifying application, and limitation of the scope and the duration of such power or procedure.</p> <p>3 To the extent that it is consistent with the public interest, in particular the sound administration of justice, each Party shall consider the impact of the powers and procedures in this section upon the rights, responsibilities and legitimate interests of third parties.</p>	
<p>Article 16 – Expedited preservation of stored computer data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to order or similarly obtain the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, in particular where there are grounds to believe that the computer data is particularly vulnerable to loss or modification.</p> <p>2 Where a Party gives effect to paragraph 1 above by means of an order to a person to preserve specified stored computer data in the person’s possession or control, the Party shall adopt such legislative and other measures as may be necessary to oblige that person to preserve and maintain the integrity of that computer data for a period of time as long as necessary, up to a maximum of ninety days, to enable the competent authorities to seek its disclosure. A Party may provide for such an order to be subsequently renewed.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige the custodian or other person who is to preserve the computer data to keep confidential the undertaking of such procedures for the period of time provided for by its domestic law.</p> <p>4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	
<p>Article 17 – Expedited preservation and partial disclosure of traffic data</p> <p>1 Each Party shall adopt, in respect of traffic data that is to be preserved</p>	

under Article 16, such legislative and other measures as may be necessary to:

a ensure that such expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication; and

b ensure the expeditious disclosure to the Party's competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the Party to identify the service providers and the path through which the communication was transmitted.

2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

Article 18 – Production order

1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:

a a person in its territory to submit specified computer data in that person's possession or control, which is stored in a computer system or a computer-data storage medium; and

b a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service provider's possession or control.

2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

3 For the purpose of this article, the term "subscriber information" means any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which can be established:

a the type of communication service used, the technical provisions taken thereto and the period of service;

b the subscriber's identity, postal or geographic address, telephone and other access number, billing and payment information, available on the basis of the service agreement or arrangement;

c any other information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement.

Article 19 – Search and seizure of stored computer data

1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to search or similarly access:

a a computer system or part of it and computer data stored therein; and

b a computer-data storage medium in which computer data may be stored in its territory.

2 Each Party shall adopt such legislative and other measures as may be necessary to ensure that where its authorities search or similarly access a specific computer system or part of it, pursuant to paragraph 1.a, and have grounds to believe that the data sought is stored in another computer system or part of it in its territory, and such data is lawfully accessible from or available to the initial system, the authorities shall be able to expeditiously extend the search or similar accessing to the other system.

3 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize or similarly secure computer data accessed according to paragraphs 1 or 2. These measures shall include the power to:

a seize or similarly secure a computer system or part of it or a computer-data storage medium;

b make and retain a copy of those computer data;

c maintain the integrity of the relevant stored computer data;

d render inaccessible or remove those computer data in the accessed computer system.

4 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order any person who has knowledge about the functioning of the computer system or measures applied to protect the computer data therein to provide, as is reasonable, the necessary information, to enable the undertaking of the measures referred to in paragraphs 1 and 2.

5 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

Art. 10 and Art. 14 of CMA 1990

10 Saving for certain law enforcement powers

Section 1(1) above has effect without prejudice to the operation—

(a) in England and Wales of any enactment relating to powers of inspection, search or seizure; and

(b) in Scotland of any enactment or rule of law relating to powers of examination, search or seizure.

and nothing designed to indicate a withholding of consent to access to any program or data from persons as enforcement officers shall have effect to make access unauthorised for the purposes of the said section 1(1).

- In this section “enforcement officer” means a constable or other person charged with the duty of investigating offences; and withholding consent from a person “as” an enforcement officer of any description includes the operation, by the person entitled to control access, of rules whereby enforcement officers of that description are, as such, disqualified from membership of a class of persons who are authorised to have access.

14. Search warrants for offences under section 1.- England and Wales extent

(1) Where a circuit judge or a District Judge (Magistrates' Courts) is satisfied by information on oath given by a constable that there are reasonable grounds for believing—

(a) that an offence under section 1 above has been or is about to be committed in any premises; and

(b) that evidence that such an offence has been or is about to be committed is in those premises;

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

(2) The power conferred by subsection (1) above does not extend to authorising a search for material of the kinds mentioned in section 9(2) of the Police and Criminal Evidence Act 1984 (privileged, excluded and special procedure material).

(3) A warrant under this section—

(a) may authorise persons to accompany any constable executing the warrant; and

(b)remains in force for three months from the date of its issue.
(4)In executing a warrant issued under this section a constable may seize an article if he reasonably believes that it is evidence that an offence under section 1 above has been or is about to be committed.
(5)In this section "premises" includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft.
(6)This section does not extend to Scotland.

14 Search warrants for offences under section 1.Nprthern Ireland Extent

(1)Where a circuit judge or a District Judge (Magistrates' Courts) is satisfied by information on oath given by a constable that there are reasonable grounds for believing—

(a)that an offence under section 1 above has been or is about to be committed in any premises; and

(b)that evidence that such an offence has been or is about to be committed is in those premises;

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

(2)The power conferred by subsection (1) above does not extend to authorising a search for material of the kinds mentioned in section 9(2) of the Police and Criminal Evidence Act 1984 (privileged, excluded and special procedure material).

(3)A warrant under this section—

(a)may authorise persons to accompany any constable executing the warrant; and

(b)remains in force for twenty-eight days from the date of its issue.

(4)In executing a warrant issued under this section a constable may seize an article if he reasonably believes that it is evidence that an offence under section 1 above has been or is about to be committed.

(5)In this section "premises" includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft.

(6)This section does not extend to Scotland.

Art. 16-19 (Art. 16 for Art.19(1) of the Convention and Art.19 for Art.19(3) of the Convention) of the Crime (International Co-operation) Act 2003

16 Application to Northern Ireland

(1)The following provisions of this section have effect for applying this Act in relation to Northern Ireland with the modifications there mentioned.

(2)In section 2(2)(b)—

(a)the reference to England and Wales shall be read as a reference to Northern Ireland; and

(b)the reference to section 33 of the Magistrates' Courts Act 1980 shall be read as a reference to Article 46(4) of the Magistrates' Courts (Northern Ireland) Order 1981.

(3)The reference in section 3(6) to the Criminal Damage Act 1971 shall be read as a reference to the Criminal Damage (Northern Ireland) Order 1977.

(4) Subsection (7) below shall apply in substitution for subsection (3) of section 7; and any reference in subsection (4) of that section to England and Wales shall be read as a reference to Northern Ireland.

(5). Repealed

(6). .Repealed

(7)The following paragraphs shall be inserted after Article 3(1) of that Order—

“(1A)Subject to section 8 of the Computer Misuse Act 1990 (relevance of external law), if this paragraph applies to an act, what the person doing it had in view shall be treated as an offence to which this Article applies.

(1B)Paragraph (1A) above applies to an act if—

(a)it is done in Northern Ireland; and

(b)it would fall within paragraph (1) as more than merely preparatory to the commission of an offence under section 3 of the Computer Misuse Act 1990 but for the fact that the offence, if completed, would not be an offence triable in Northern Ireland.”.

(8)In section 8—

(a). Repealed

(b)the reference in subsection (3) to section 1(1A) of the Criminal Attempts Act 1981 shall be read as a reference to Article 3(1A) of that Order.

(9)The references in sections 9(1) and 10 to England and Wales shall be read as references to Northern Ireland.

(10)In section 11, before subsection (2) there shall be inserted

“(1)A magistrates' court for a county division in Northern Ireland may hear and determine a complaint charging an offence under section 1 above or conduct a

preliminary investigation or preliminary inquiry into an offence under that section if—

(a) the accused was in that division at the time when he did the act which caused the computer to perform the function; or

(b) any computer containing any program or data to which the accused secured or intended to secure unauthorised access by doing that act was in that division at that time.”;

Repealed

(11) The reference in section 12(3) to section 6(3) of the Criminal Law Act 1967 shall be read as a reference to section 6(2) of the Criminal Law Act (Northern Ireland) 1967.

(12) In section 14—

(a) the reference in subsection (1) to a circuit judge shall be read as a reference to a county court judge; and

(b) the reference in subsection (2) to section 9(2) of the Police and Criminal Evidence Act 1984 shall be read as a reference to Article 11(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989.

16.1 Northern Ireland: search warrants for offences under section 1

(1) Where a county court judge is satisfied by information on oath given by a constable that there are reasonable grounds for believing—

(a) that an offence under section 1 above has been or is about to be committed in any premises, and

(b) that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

(2) The power conferred by subsection (1) above does not extend to authorising a search for material of the kinds mentioned in Article 11(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (privileged, excluded and special procedure material).

(3) A warrant under this section—

(a) may authorise persons to accompany any constable executing the warrant; and

(b) remains in force for twenty-eight days from the date of its issue.

(4) In exercising a warrant issued under this section a constable may seize an

	<p>article if he reasonably believes that it is evidence that an offence under section 1 above has been or is about to be committed.</p> <p>(5) In this section “premises” includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft.</p> <p>(6) This section extends only to Northern Ireland.</p> <p>19 Seized evidence</p> <p>(1) Any evidence seized by a constable under or by virtue of section 16, 17 or 18 is to be sent to the court or authority which made the request for assistance or to the territorial authority for forwarding to that court or authority.</p> <p>(2) So far as may be necessary in order to comply with the request for assistance—</p> <p>(a) where the evidence consists of a document, the original or a copy is to be sent, and</p> <p>(b) where the evidence consists of any other article, the article itself or a description, photograph or other representation of it is to be sent.</p> <p>(3) This section does not apply to evidence seized under or by virtue of section 16(2)(b) or (4)(b) or 18(2)(b).</p> <p>Art. 24(1) of the Crime (International Co-operation) Act 2003 for Art. 19(3/c) of the Convention.</p> <p>24 Evidence seized under the order</p> <p>(1) Any evidence seized by or produced to the constable under section 22 is to be retained by him until he is given a notice under subsection (2) or authorised to release it under section 25.</p>
<p>Article 20 – Real-time collection of traffic data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to:</p> <p>a collect or record through the application of technical means on the territory of that Party, and</p> <p>b compel a service provider, within its existing technical capability:</p> <p>i to collect or record through the application of technical means on the territory of that Party; or</p>	

<p>ii to co-operate and assist the competent authorities in the collection or recording of, traffic data, in real-time, associated with specified communications in its territory transmitted by means of a computer system.</p> <p>2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of traffic data associated with specified communications transmitted in its territory, through the application of technical means on that territory.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.</p> <p>4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	
<p>Article 21 – Interception of content data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary, in relation to a range of serious offences to be determined by domestic law, to empower its competent authorities to:</p> <p>a collect or record through the application of technical means on the territory of that Party, and</p> <p>b compel a service provider, within its existing technical capability:</p> <p> i to collect or record through the application of technical means on the territory of that Party, or</p> <p> ii to co-operate and assist the competent authorities in the collection or recording of, content data, in real-time, of specified communications in its territory transmitted by means of a computer system.</p> <p>2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of content data on specified communications in its territory through the application of technical means on that territory.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the</p>	

execution of any power provided for in this article and any information relating to it.
 4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

Section 3 – Jurisdiction

Article 22 – Jurisdiction

1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with Articles 2 through 11 of this Convention, when the offence is committed:

- a in its territory; or
- b on board a ship flying the flag of that Party; or
- c on board an aircraft registered under the laws of that Party; or
- d by one of its nationals, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.

2 Each Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1.b through 1.d of this article or any part thereof.

3 Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in Article 24, paragraph 1, of this Convention, in cases where an alleged offender is present in its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality, after a request for extradition.

4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.

When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

Art. 4-5 of CMA 1990

Art. 4 - Territorial scope of offences under sections 1 to 3

(1) Except as provided below in this section, it is immaterial for the purposes of any offence under section 1 or 3 above—

- (a) whether any act or other event proof of which is required for conviction of the offence occurred in the home country concerned; or
- (b) whether the accused was in the home country concerned at the time of any such act or event.

(2) Subject to subsection (3) below, in the case of such an offence at least one significant link with domestic jurisdiction must exist in the circumstances of the case for the offence to be committed.

(3) There is no need for any such link to exist for the commission of an offence under section 1 above to be established in proof of an allegation to that effect in proceedings for an offence under section 2 above.

(4) Subject to section 8 below, where—
 (a) any such link does in fact exist in the case of an offence under section 1 above; and

(b) commission of that offence is alleged in proceedings for an offence under section 2 above;

section 2 above shall apply as if anything the accused intended to do or facilitate in any place outside the home country concerned which would be an offence to which section 2 applies if it took place in the home country concerned were the offence in question.

(5) This section is without prejudice to any jurisdiction exercisable by a court in Scotland apart from this section.

(6) References in this Act to the home country concerned are references—

- (a) in the application of this Act to England and Wales, to England and Wales;
- (b) in the application of this Act to Scotland, to Scotland; and
- (c) in the application of this Act to Northern Ireland, to Northern Ireland.

5 Significant links with domestic jurisdiction.

(1)The following provisions of this section apply for the interpretation of section 4 above.

(2)In relation to an offence under section 1, either of the following is a significant link with domestic jurisdiction—

(a)that the accused was in the home country concerned at the time when he did the act which caused the computer to perform the function; or

(b)that any computer containing any program or data to which the accused by doing that act secured or intended to secure unauthorised access, or enabled or intended to enable unauthorised access to be secured, was in the home country concerned at that time.

(3)In relation to an offence under section 3, either of the following is a significant link with domestic jurisdiction—

(a)that the accused was in the home country concerned at the time when he did the unauthorised act (or caused it to be done) ; or

(b)that the unauthorised act was done in relation to a computer in the home country concerned.

Art. 7 and Art.9, Art. 13 and Art. 16 of CMA 1990

7 Territorial scope of inchoate offences related to offences under external law corresponding to offences under this Act.

(1). Repealed

(2).Repealed

(3)The following subsections shall be inserted after section 1(1) of the Criminal Attempts Act 1981—

“(1A)Subject to section 8 of the Computer Misuse Act 1990 (relevance of external law), if this subsection applies to an act, what the person doing it had in view shall be treated as an offence to which this section applies.

(1B)Subsection (1A) above applies to an act if—

(a)it is done in England and Wales; and

(b)it would fall within subsection (1) above as more than merely preparatory to the commission of an offence under section 3 of the Computer Misuse Act 1990 but for the fact that the offence, if completed, would not be an offence triable in England and Wales.”.

(4) Subject to section 8 below, if any act done by a person in England and Wales would amount to the offence of incitement to commit an offence under this Act but for the fact that what he had in view would not be an offence triable in England and Wales—

- (a) what he had in view shall be treated as an offence under this Act for the purposes of any charge of incitement brought in respect of that act; and
- (b) any such charge shall accordingly be triable in England and Wales.

9 British citizenship immaterial.

(1) In any proceedings brought in England and Wales in respect of any offence to which this section applies it is immaterial to guilt whether or not the accused was a British citizen at the time of any act, omission or other event proof of which is required for conviction of the offence.

(2) This section applies to the following offences—

- (a) any offence under this Act;
- (b). Repealed
- (c) any attempt to commit an offence under section 3 above; and
- (d) incitement to commit an offence under this Act.

13 Proceedings in Scotland.

(1) A sheriff shall have jurisdiction in respect of an offence under section 1 or 2 above if—

- (a) the accused was in the sheriffdom at the time when he did the act which caused the computer to perform the function; or
- (b) any computer containing any program or data to which the accused by doing that act secured or intended to secure unauthorised access, or enabled or intended to enable unauthorised access to be secured, was in the sheriffdom at that time.

(2) A sheriff shall have jurisdiction in respect of an offence under section 3 above if—

- (a) the accused was in the sheriffdom at the time when he did the unauthorised act (or caused it to be done) ; or
- (b) the unauthorised act was done in relation to a computer in the sheriffdom.

Repealed (3) to(7)

(8) In proceedings in which a person is charged with an offence under section 2

or 3 above and is found not guilty or is acquitted of that charge, he may be found guilty of an offence under section 1 above if on the facts shown he could have been found guilty of that offence in proceedings for that offence

(9) Subsection (8) above shall apply whether or not an offence under section 1 above has been libelled in the complaint or indictment.

(10) A person found guilty of an offence under section 1 above by virtue of subsection (8) above shall be liable, in respect of that offence, only to the penalties set out in section 1.

(11) This section extends to Scotland only.

16 Application to Northern Ireland

(1) The following provisions of this section have effect for applying this Act in relation to Northern Ireland with the modifications there mentioned.

(2) In section 2(2)(b)—

(a) the reference to England and Wales shall be read as a reference to Northern Ireland; and

(b) the reference to section 33 of the Magistrates' Courts Act 1980 shall be read as a reference to Article 46(4) of the Magistrates' Courts (Northern Ireland) Order 1981.

(3) The reference in section 3(6) to the Criminal Damage Act 1971 shall be read as a reference to the Criminal Damage (Northern Ireland) Order 1977.

(4) Subsection (7) below shall apply in substitution for subsection (3) of section 7; and any reference in subsection (4) of that section to England and Wales shall be read as a reference to Northern Ireland.

(5). Repealed

(6). .Repealed

(7) The following paragraphs shall be inserted after Article 3(1) of that Order—

“(1A) Subject to section 8 of the Computer Misuse Act 1990 (relevance of external law), if this paragraph applies to an act, what the person doing it had in view shall be treated as an offence to which this Article applies.

(1B) Paragraph (1A) above applies to an act if—

(a) it is done in Northern Ireland; and

(b) it would fall within paragraph (1) as more than merely preparatory to the commission of an offence under section 3 of the Computer Misuse Act 1990 but for the fact that the offence, if completed, would not be an offence triable in Northern Ireland.”.

	<p>(8)In section 8— (a). Repealed (b)the reference in subsection (3) to section 1(1A) of the Criminal Attempts Act 1981 shall be read as a reference to Article 3(1A) of that Order. (9)The references in sections 9(1) and 10 to England and Wales shall be read as references to Northern Ireland. (10)In section 11, before subsection (2) there shall be inserted “(1)A magistrates’ court for a county division in Northern Ireland may hear and determine a complaint charging an offence under section 1 above or conduct a preliminary investigation or preliminary inquiry into an offence under that section if— (a)the accused was in that division at the time when he did the act which caused the computer to perform the function; or (b)any computer containing any program or data to which the accused secured or intended to secure unauthorised access by doing that act was in that division at that time.”; Repealed (11)The reference in section 12(3) to section 6(3) of the Criminal Law Act 1967 shall be read as a reference to section 6(2) of the Criminal Law Act (Northern Ireland) 1967. (12)In section 14— (a)the reference in subsection (1) to a circuit judge shall be read as a reference to a county court judge; and (b)the reference in subsection (2) to section 9(2) of the Police and Criminal Evidence Act 1984 shall be read as a reference to Article 11(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989.</p>
Chapter III – International co-operation	
<p>Article 24 – Extradition 1 a This article applies to extradition between Parties for the criminal offences established in accordance with Articles 2 through 11 of this Convention, provided that they are punishable under the laws of both Parties concerned by deprivation of liberty for a maximum period of at least one year, or by a more severe penalty. b Where a different minimum penalty is to be applied under an</p>	<p>Art. 15 of CMA 1990 repealed Extradition Act 2003, especially Art.1 for Art. 24(1/a) of the Convention, Art. 2 , art 69 et 70. Art.1 1- Extradition to category 1 territories</p>

arrangement agreed on the basis of uniform or reciprocal legislation or an extradition treaty, including the European Convention on Extradition (ETS No. 24), applicable between two or more parties, the minimum penalty provided for under such arrangement or treaty shall apply.

2 The criminal offences described in paragraph 1 of this article shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.

3 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence referred to in paragraph 1 of this article.

4 Parties that do not make extradition conditional on the existence of a treaty shall recognise the criminal offences referred to in paragraph 1 of this article as extraditable offences between themselves.

5 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.

6 If extradition for a criminal offence referred to in paragraph 1 of this article is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case at the request of the requesting Party to its competent authorities for the purpose of prosecution and shall report the final outcome to the requesting Party in due course. Those authorities shall take their decision and conduct their investigations and proceedings in the same manner as for any other offence of a comparable nature under the law of that Party.

7 a Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of each authority responsible for making or receiving requests for extradition or provisional arrest in the absence of a treaty.

b The Secretary General of the Council of Europe shall set up and keep updated a register of authorities so designated by the Parties. Each Party

(1) This Part deals with extradition from the United Kingdom to the territories designated for the purposes of this Part by order made by the Secretary of State.

(2) In this Act references to category 1 territories are to the territories designated for the purposes of this Part.

(3) A territory may not be designated for the purposes of this Part if a person found guilty in the territory of a criminal offence may be sentenced to death for the offence under the general criminal law of the territory

2. Part 1 warrant and certificate

(1) This section applies if the designated authority receives a Part 1 warrant in respect of a person.

(2) A Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains—

(a) the statement referred to in subsection (3) and the information referred to in subsection (4), or

(b) the statement referred to in subsection (5) and the information referred to in subsection (6).

(3) The statement is one that—

(a) the person in respect of whom the Part 1 warrant is issued is accused in the category 1 territory of the commission of an offence specified in the warrant, and

(b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being prosecuted for the offence.

(4) The information is—

(a) particulars of the person's identity;

(b) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;

(c) particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which he is alleged to have committed the offence and any provision of the law of the category 1 territory under which the conduct is alleged to constitute an offence;

(d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence if the person is convicted of it.

(5) The statement is one that—

shall ensure

(a)the person in respect of whom the Part 1 warrant is issued is alleged to be unlawfully at large after conviction of an offence specified in the warrant by a court in the category 1 territory, and

(b)the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(6)The information is—

(a)particulars of the person's identity;

(b)particulars of the conviction;

(c)particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;

(d)particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence, if the person has not been sentenced for the offence;

(e)particulars of the sentence which has been imposed under the law of the category 1 territory in respect of the offence, if the person has been sentenced for the offence.

(7)The designated authority may issue a certificate under this section if it believes that the authority which issued the Part 1 warrant has the function of issuing arrest warrants in the category 1 territory.

(8)A certificate under this section must certify that the authority which issued the Part 1 warrant has the function of issuing arrest warrants in the category 1 territory.

(9)The designated authority is the authority designated for the purposes of this Part by order made by the Secretary of State.

(10)An order made under subsection (9) may—

(a)designate more than one authority;

(b)designate different authorities for different parts of the United Kingdom.

69- Extradition to category 2 territories

(1)This Part deals with extradition from the United Kingdom to the territories designated for the purposes of this Part by order made by the Secretary of State.

(2)In this Act references to category 2 territories are to the territories designated for the purposes of this Part.

70- Extradition request and certificate

(1)The Secretary of State must issue a certificate under this section if he receives a valid request for the extradition to a category 2 territory of a person who is in the United Kingdom.

(2)But subsection (1) does not apply if the Secretary of State decides under section 126 that the request is not to be proceeded with.

(3)A request for a person's extradition is valid if—

(a)it contains the statement referred to in subsection (4), and

(b)it is made in the approved way.

(4)The statement is one that the person—

(a)is accused in the category 2 territory of the commission of an offence specified in the request, or

(b)is alleged to be unlawfully at large after conviction by a court in the category 2 territory of an offence specified in the request.

(5)A request for extradition to a category 2 territory which is a British overseas territory is made in the approved way if it is made by or on behalf of the person administering the territory.

(6)A request for extradition to a category 2 territory which is the Hong Kong Special Administrative Region of the People's Republic of China is made in the approved way if it is made by or on behalf of the government of the Region.

(7)A request for extradition to any other category 2 territory is made in the approved way if it is made—

(a)by an authority of the territory which the Secretary of State believes has the function of making requests for extradition in that territory, or

(b)by a person recognised by the Secretary of State as a diplomatic or consular representative of the territory.

(8)A certificate under this section must certify that the request is made in the approved way.

(9)If a certificate is issued under this section the Secretary of State must send these documents to the appropriate judge—

(a)the request;

(b)the certificate;

(c)a copy of any relevant Order in Council.

Art. 86 of the Crime (International Co-operation) Act 2003

	<p>Schengen-building provisions of the 1996 Extradition Convention</p> <p>(1) This section applies where a state is a party to the 1996 Extradition Convention, but only in respect of particular provisions (“the relevant provisions”).</p> <p>(2) The 1996 Extradition Convention is the Convention drawn up on the basis of Article K.3 of the Treaty on European Union relating to Extradition between the Member States of the European Union and opened for signature on 27th September 1996.</p> <p>(3) Her Majesty may by Order in Council provide that the Extradition Act <u>1989 (c. 33)</u> is to apply, subject to specified modifications, between—</p> <p>(a) the United Kingdom, and</p> <p>(b) the state,</p> <p>as if the relevant provisions were general extradition arrangements (within the meaning of that Act) made between the United Kingdom and the state.</p> <p>(4) “Specified” means specified in the Order in Council.</p> <p>(5) A statutory instrument containing the Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament.</p> <p>(6) The Order in Council may include supplementary, incidental, saving or transitional provisions.</p>
<p>Article 25 – General principles relating to mutual assistance</p> <p>1 The Parties shall afford one another mutual assistance to the widest extent possible for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.</p> <p>2 Each Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in Articles 27 through 35.</p> <p>3 Each Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested Party. The requested Party shall accept and respond to the request by any such expedited means of communication.</p>	<p>For Art. 25(1) of the Convention Art. 7-8 of the Crime (International Co-operation) Act 2003.</p> <p>7 Requests for assistance in obtaining evidence abroad</p> <p>(1) If it appears to a judicial authority in the United Kingdom on an application made by a person mentioned in subsection (3)—</p> <p>(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and</p> <p>(b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,</p> <p>the judicial authority may request assistance under this section.</p> <p>(2) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom any evidence specified in the request for</p>

4 Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the law of the requested Party or by applicable mutual assistance treaties, including the grounds on which the requested Party may refuse co-operation. The requested Party shall not exercise the right to refuse mutual assistance in relation to the offences referred to in Articles 2 through 11 solely on the ground that the request concerns an offence which it considers a fiscal offence.

5 Where, in accordance with the provisions of this chapter, the requested Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.

use in the proceedings or investigation.

(3) The application may be made—

(a) in relation to England and Wales and Northern Ireland, by a prosecuting authority,

(b) in relation to Scotland, by the Lord Advocate or a procurator fiscal,

(c) where proceedings have been instituted, by the person charged in those proceedings.

(4) The judicial authorities are—

(a) in relation to England and Wales, any judge or justice of the peace,

(b) in relation to Scotland, any judge of the High Court or sheriff,

(c) in relation to Northern Ireland, any judge or resident magistrate.

(5) In relation to England and Wales or Northern Ireland, a designated prosecuting authority may itself request assistance under this section if—

(a) it appears to the authority that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and

(b) the authority has instituted proceedings in respect of the offence in question or it is being investigated.

- “Designated” means designated by an order made by the Secretary of State.

(6) In relation to Scotland, the Lord Advocate or a procurator fiscal may himself request assistance under this section if it appears to him—

(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and

(b) that proceedings in respect of the offence have been instituted or that the offence is being investigated.

(7) If a request for assistance under this section is made in reliance on Article 2 of the 2001 Protocol (requests for information on banking transactions) in connection with the investigation of an offence, the request must state the grounds on which the person making the request considers the evidence specified in it to be relevant for the purposes of the investigation.

8 Sending requests for assistance

(1) A request for assistance under section 7 may be sent—

(a) to a court exercising jurisdiction in the place where the evidence is situated, or

(b) to any authority recognised by the government of the country in question as the appropriate authority for receiving requests of that kind.

(2) Alternatively, if it is a request by a judicial authority or a designated prosecuting authority it may be sent to the Secretary of State (in Scotland, the Lord Advocate) for forwarding to a court or authority mentioned in subsection (1).

(3) In cases of urgency, a request for assistance may be sent to—

(a) the International Criminal Police Organisation, or

(b) any body or person competent to receive it under any provisions adopted under the Treaty on European Union,

for forwarding to any court or authority mentioned in subsection (1).

For Art. 25(2), Art. 13 (1) of the Crime (International Co-operation) Act 2003.

Requests for assistance from overseas authorities

(1) Where a request for assistance in obtaining evidence in a part of the United Kingdom is received by the territorial authority for that part, the authority may—

(a) if the conditions in section 14 are met, arrange for the evidence to be obtained under section 15, or

(b) direct that a search warrant be applied for under or by virtue of section 16 or 17 or, in relation to evidence in Scotland, 18.

For Art. 25(3), Art. 8(3) of the Crime (International Co-operation) Act 2003.

8 Sending requests for assistance

(3) In cases of urgency, a request for assistance may be sent to—

- (a) the International Criminal Police Organisation, or
 - (b) any body or person competent to receive it under any provisions adopted under the Treaty on European Union,
- for forwarding to any court or authority mentioned in subsection (1).

Art. 14 of the Crime (International Co-operation) Act 2003

Powers to arrange for evidence to be obtained

(1) The territorial authority may arrange for evidence to be obtained under section 15 if the request for assistance in obtaining the evidence is made in connection with—

- (a) criminal proceedings or a criminal investigation, being carried on outside the United Kingdom,
- (b) administrative proceedings, or an investigation into an act punishable in such proceedings, being carried on there,
- (c) clemency proceedings, or proceedings on an appeal before a court against a decision in administrative proceedings, being carried on, or intended to be carried on, there.

(2) In a case within subsection (1)(a) or (b), the authority may arrange for the evidence to be so obtained only if the authority is satisfied—

- (a) that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and
- (b) that proceedings in respect of the offence have been instituted in that country or that an investigation into the offence is being carried on there.

An offence includes an act punishable in administrative proceedings.

(3) The territorial authority is to regard as conclusive a certificate as to the matters mentioned in subsection (2)(a) and (b) issued by any authority in the country in question which appears to him to be the appropriate authority to do so.

(4) If it appears to the territorial authority that the request for assistance relates to a fiscal offence in respect of which proceedings have not yet been instituted, the authority may not arrange for the evidence to be so obtained unless—

- (a) the request is from a country which is a member of the Commonwealth or is

	<p>made pursuant to a treaty to which the United Kingdom is a party, or (b) the authority is satisfied that if the conduct constituting the offence were to occur in a part of the United Kingdom, it would constitute an offence in that part.</p>
<p>Article 26 – Spontaneous information 1 A Party may, within the limits of its domestic law and without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter. 2 Prior to providing such information, the providing Party may request that it be kept confidential or only used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.</p>	
<p>Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements 1 Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties, the provisions of paragraphs 2 through 9 of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof. 2 a Each Party shall designate a central authority or authorities responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution. b The central authorities shall communicate directly with each other; c Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this paragraph;</p>	<p>For Art. 27(2/a) Art. 8 and Art. 13(2-3) of the Crime (International Co-operation) Act 2003. 13 Requests for assistance from overseas authorities (2) The request for assistance may be made only by— (a) a court exercising criminal jurisdiction, or a prosecuting authority, in a country outside the United Kingdom, (b) any other authority in such a country which appears to the territorial authority to have the function of making such requests for assistance, (c) any international authority mentioned in subsection (3). (3) The international authorities are— (a) the International Criminal Police Organisation, (b) any other body or person competent to make a request of the kind to which this section applies under any provisions adopted under the Treaty on European Union.</p>

d The Secretary General of the Council of Europe shall set up and keep updated a register of central authorities designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.

3 Mutual assistance requests under this article shall be executed in accordance with the procedures specified by the requesting Party, except where incompatible with the law of the requested Party.

4 The requested Party may, in addition to the grounds for refusal established in Article 25, paragraph 4, refuse assistance if:

a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or

b it considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

5 The requested Party may postpone action on a request if such action would prejudice criminal investigations or proceedings conducted by its authorities.

6 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

7 The requested Party shall promptly inform the requesting Party of the outcome of the execution of a request for assistance. Reasons shall be given for any refusal or postponement of the request. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

8 The requesting Party may request that the requested Party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the requested Party cannot comply with the request for confidentiality, it shall promptly inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

9 a In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by judicial authorities of the requesting Party to such authorities of the requested Party. In any such cases, a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.

b Any request or communication under this paragraph may be made

8 Sending requests for assistance

(1) A request for assistance under section 7 may be sent—

(a) to a court exercising jurisdiction in the place where the evidence is situated, or

(b) to any authority recognised by the government of the country in question as the appropriate authority for receiving requests of that kind.

(2) Alternatively, if it is a request by a judicial authority or a designated prosecuting authority it may be sent to the Secretary of State (in Scotland, the Lord Advocate) for forwarding to a court or authority mentioned in subsection (1).

(3) In cases of urgency, a request for assistance may be sent to—

(a) the International Criminal Police Organisation, or

(b) any body or person competent to receive it under any provisions adopted under the Treaty on European Union,

for forwarding to any court or authority mentioned in subsection (1).

For Art. 27(3) Art. 14 (1/a) of the Crime (International Co-operation) Act 2003

Powers to arrange for evidence to be obtained

(1) The territorial authority may arrange for evidence to be obtained under section 15 if the request for assistance in obtaining the evidence is made in connection with—

(a) criminal proceedings or a criminal investigation, being carried on outside the United Kingdom,

Art. 7 of the Crime (International Co-operation) Act 2003 Requests for assistance in obtaining evidence abroad

(1) If it appears to a judicial authority in the United Kingdom on an application made by a person mentioned in subsection (3)—

(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and

(b) that proceedings in respect of the offence have been instituted or that the

through the International Criminal Police Organisation (Interpol).

c Where a request is made pursuant to sub-paragraph a. of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

d Requests or communications made under this paragraph that do not involve coercive action may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

e Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this paragraph are to be addressed to its central authority.

offence is being investigated,

the judicial authority may request assistance under this section.

(2) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom any evidence specified in the request for use in the proceedings or investigation.

(3) The application may be made—

(a) in relation to England and Wales and Northern Ireland, by a prosecuting authority,

(b) in relation to Scotland, by the Lord Advocate or a procurator fiscal,

(c) where proceedings have been instituted, by the person charged in those proceedings.

(4) The judicial authorities are—

(a) in relation to England and Wales, any judge or justice of the peace,

(b) in relation to Scotland, any judge of the High Court or sheriff,

(c) in relation to Northern Ireland, any judge or resident magistrate.

(5) In relation to England and Wales or Northern Ireland, a designated prosecuting authority may itself request assistance under this section if—

(a) it appears to the authority that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and

(b) the authority has instituted proceedings in respect of the offence in question or it is being investigated.

- “Designated” means designated by an order made by the Secretary of State.

(6) In relation to Scotland, the Lord Advocate or a procurator fiscal may himself request assistance under this section if it appears to him—

(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and

(b) that proceedings in respect of the offence have been instituted or that the offence is being investigated.

(7) If a request for assistance under this section is made in reliance on Article 2 of the 2001 Protocol (requests for information on banking transactions) in

	<p>connection with the investigation of an offence, the request must state the grounds on which the person making the request considers the evidence specified in it to be relevant for the purposes of the investigation.</p>
<p>Article 28 – Confidentiality and limitation on use</p> <p>1 When there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and the requested Parties, the provisions of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.</p> <p>2 The requested Party may make the supply of information or material in response to a request dependent on the condition that it is:</p> <p>a kept confidential where the request for mutual legal assistance could not be complied with in the absence of such condition, or</p> <p>b not used for investigations or proceedings other than those stated in the request.</p> <p>3 If the requesting Party cannot comply with a condition referred to in paragraph 2, it shall promptly inform the other Party, which shall then determine whether the information should nevertheless be provided. When the requesting Party accepts the condition, it shall be bound by it.</p> <p>4 Any Party that supplies information or material subject to a condition referred to in paragraph 2 may require the other Party to explain, in relation to that condition, the use made of such information or material.</p>	<p>Art. 9 of the Crime (International Co-operation) Act 2003, Use of evidence obtained</p> <p>(1) This section applies to evidence obtained pursuant to a request for assistance under section 7.</p> <p>(2) The evidence may not without the consent of the appropriate overseas authority be used for any purpose other than that specified in the request.</p> <p>(3) When the evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it must be returned to the appropriate overseas authority, unless that authority indicates that it need not be returned.</p> <p>(4) In exercising the discretion conferred by section 25 of the Criminal Justice Act 1988 (c. 33) or Article 5 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/ 1847 (N.I. 17)) (exclusion of evidence otherwise admissible) in relation to a statement contained in the evidence, the court must have regard—</p> <p>(a) to whether it was possible to challenge the statement by questioning the person who made it, and</p> <p>(b) if proceedings have been instituted, to whether the local law allowed the parties to the proceedings to be legally represented when the evidence was being obtained.</p> <p>(5) In Scotland, the evidence may be received in evidence without being sworn to by witnesses, so far as that may be done without unfairness to either party.</p> <p>(6) In this section, the appropriate overseas authority means the authority recognised by the government of the country in question as the appropriate authority for receiving requests of the kind in question.</p> <p>For Art. 28(2/b), Art. 9(2) of the Crime (International Co-operation) Act 2003</p> <p>(2) The evidence may not without the consent of the appropriate overseas authority be used for any purpose other than that specified in the request.</p>

<p>Article 29 – Expedited preservation of stored computer data</p> <p>1 A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of that other Party and in respect of which the requesting Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data.</p> <p>2 A request for preservation made under paragraph 1 shall specify:</p> <ul style="list-style-type: none">a the authority seeking the preservation;b the offence that is the subject of a criminal investigation or proceedings and a brief summary of the related facts;c the stored computer data to be preserved and its relationship to the offence;d any available information identifying the custodian of the stored computer data or the location of the computer system;e the necessity of the preservation; andf that the Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data. <p>3 Upon receiving the request from another Party, the requested Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to providing such preservation.</p> <p>4 A Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of stored data may, in respect of offences other than those established in accordance with Articles 2 through 11 of this Convention, reserve the right to refuse the request for preservation under this article in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.</p> <p>5 In addition, a request for preservation may only be refused if:</p> <ul style="list-style-type: none">a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, orb the requested Party considers that execution of the request is	
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<p>likely to prejudice its sovereignty, security, <i>ordre public</i> or other essential interests.</p> <p>6 Where the requested Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting Party's investigation, it shall promptly so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.</p> <p>4 Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.</p>	
<p>Article 30 – Expedited disclosure of preserved traffic data</p> <p>1 Where, in the course of the execution of a request made pursuant to Article 29 to preserve traffic data concerning a specific communication, the requested Party discovers that a service provider in another State was involved in the transmission of the communication, the requested Party shall expeditiously disclose to the requesting Party a sufficient amount of traffic data to identify that service provider and the path through which the communication was transmitted.</p> <p>2 Disclosure of traffic data under paragraph 1 may only be withheld if:</p> <p>a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or</p> <p>b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, <i>ordre public</i> or other essential interests.</p>	
<p>Article 31 – Mutual assistance regarding accessing of stored computer data</p> <p>1 A Party may request another Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the requested Party, including data that has been preserved pursuant to Article 29.</p> <p>2 The requested Party shall respond to the request through the application of international instruments, arrangements and laws referred to in Article 23, and in accordance with other relevant provisions of this chapter.</p>	<p>For Art. 31(1) Art. 14 and Art. 24 of the Crime (International Co-operation) Act 2003.</p> <p>14 Powers to arrange for evidence to be obtained</p> <p>(1) The territorial authority may arrange for evidence to be obtained under section 15 if the request for assistance in obtaining the evidence is made in connection with—</p> <p>(a) criminal proceedings or a criminal investigation, being carried on outside the United Kingdom,</p>

<p>3 The request shall be responded to on an expedited basis where:</p> <p>a there are grounds to believe that relevant data is particularly vulnerable to loss or modification; or</p> <p>b the instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited co-operation.</p>	<p>(b) administrative proceedings, or an investigation into an act punishable in such proceedings, being carried on there,</p> <p>(c) clemency proceedings, or proceedings on an appeal before a court against a decision in administrative proceedings, being carried on, or intended to be carried on, there.</p> <p>(2) In a case within subsection (1)(a) or (b), the authority may arrange for the evidence to be so obtained only if the authority is satisfied—</p> <p>(a) that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and</p> <p>(b) that proceedings in respect of the offence have been instituted in that country or that an investigation into the offence is being carried on there.</p> <p>An offence includes an act punishable in administrative proceedings.</p> <p>(3) The territorial authority is to regard as conclusive a certificate as to the matters mentioned in subsection (2)(a) and (b) issued by any authority in the country in question which appears to him to be the appropriate authority to do so.</p> <p>(4) If it appears to the territorial authority that the request for assistance relates to a fiscal offence in respect of which proceedings have not yet been instituted, the authority may not arrange for the evidence to be so obtained unless—</p> <p>(a) the request is from a country which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party, or</p> <p>(b) the authority is satisfied that if the conduct constituting the offence were to occur in a part of the United Kingdom, it would constitute an offence in that part.</p> <p>24 Evidence seized under the order</p> <p>(1) Any evidence seized by or produced to the constable under section 22 is to be retained by him until he is given a notice under subsection (2) or authorised to release it under section 25.</p> <p>(2) If—</p> <p>(a) the overseas freezing order was accompanied by a request for the evidence to be sent to a court or authority mentioned in section 13(2), or</p> <p>(b) the territorial authority subsequently receives such a request,</p> <p>the territorial authority may by notice require the constable to send the evidence</p>
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to the court or authority that made the request.

For 31(1-2) Art.19 and art. 25 of the Crime (International Co-operation) Act 2003.

19 Seized evidence

(1) Any evidence seized by a constable under or by virtue of section 16, 17 or 18 is to be sent to the court or authority which made the request for assistance or to the territorial authority for forwarding to that court or authority.

(2) So far as may be necessary in order to comply with the request for assistance—

(a) where the evidence consists of a document, the original or a copy is to be sent, and

(b) where the evidence consists of any other article, the article itself or a description, photograph or other representation of it is to be sent.

(3) This section does not apply to evidence seized under or by virtue of section 16(2)(b) or (4)(b) or 18(2)(b).

25 Release of evidence held under the order

(1) On an application made by a person mentioned below, the nominated court may authorise the release of any evidence retained by a constable under section 24 if, in its opinion—

(a) the condition in section 21(6) or (7) is met, or

(b) the overseas freezing order has ceased to have effect in the participating country.

(2) In relation to England and Wales and Northern Ireland, the persons are—

(a) the chief officer of police to whom a copy of the order was sent,

(b) the constable,

(c) any other person affected by the order.

(3) In relation to Scotland, the persons are—

(a) the procurator fiscal to whom a copy of the order was sent,

(b) any other person affected by the order.

(4) If the territorial authority decides not to give a notice under section 24(2) in respect of any evidence retained by a constable under that section, the authority must give the constable a notice authorising him to release the evidence.

<p>Article 32 – Trans-border access to stored computer data with consent or where publicly available</p> <p>A Party may, without the authorisation of another Party:</p> <p>a access publicly available (open source) stored computer data, regardless of where the data is located geographically; or</p> <p>b access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.</p>	
<p>Article 33 – Mutual assistance in the real-time collection of traffic data</p> <p>1 The Parties shall provide mutual assistance to each other in the real-time collection of traffic data associated with specified communications in their territory transmitted by means of a computer system. Subject to the provisions of paragraph 2, this assistance shall be governed by the conditions and procedures provided for under domestic law.</p> <p>2 Each Party shall provide such assistance at least with respect to criminal offences for which real-time collection of traffic data would be available in a similar domestic case.</p>	<p>Art. 14 of the Crime (International Co-operation) Act 2003</p> <p>Powers to arrange for evidence to be obtained</p> <p>(1) The territorial authority may arrange for evidence to be obtained under section 15 if the request for assistance in obtaining the evidence is made in connection with—</p> <p>(a) criminal proceedings or a criminal investigation, being carried on outside the United Kingdom,</p> <p>(b) administrative proceedings, or an investigation into an act punishable in such proceedings, being carried on there,</p> <p>(c) clemency proceedings, or proceedings on an appeal before a court against a decision in administrative proceedings, being carried on, or intended to be carried on, there.</p> <p>(2) In a case within subsection (1)(a) or (b), the authority may arrange for the evidence to be so obtained only if the authority is satisfied—</p> <p>(a) that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and</p> <p>(b) that proceedings in respect of the offence have been instituted in that country or that an investigation into the offence is being carried on there.</p> <p>An offence includes an act punishable in administrative proceedings.</p> <p>(3) The territorial authority is to regard as conclusive a certificate as to the matters mentioned in subsection (2)(a) and (b) issued by any authority in the country in question which appears to him to be the appropriate authority to do so.</p> <p>(4) If it appears to the territorial authority that the request for assistance relates</p>

	<p>to a fiscal offence in respect of which proceedings have not yet been instituted, the authority may not arrange for the evidence to be so obtained unless—</p> <p>(a) the request is from a country which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party, or</p> <p>(b) the authority is satisfied that if the conduct constituting the offence were to occur in a part of the United Kingdom, it would constitute an offence in that part.</p>
<p>Article 34 – Mutual assistance regarding the interception of content data</p> <p>The Parties shall provide mutual assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under their applicable treaties and domestic laws.</p>	
<p>Article 35 – 24/7 Network</p> <p>1 Each Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:</p> <p>a the provision of technical advice;</p> <p>b the preservation of data pursuant to Articles 29 and 30;</p> <p>c the collection of evidence, the provision of legal information, and locating of suspects.</p> <p>2 a A Party’s point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.</p> <p>b If the point of contact designated by a Party is not part of that Party’s authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis.</p> <p>3 Each Party shall ensure that trained and equipped personnel are available,</p>	

in order to facilitate the operation of the network.	
Article 42 – Reservations By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in Article 4, paragraph 2, Article 6, paragraph 3, Article 9, paragraph 4, Article 10, paragraph 3, Article 11, paragraph 3, Article 14, paragraph 3, Article 22, paragraph 2, Article 29, paragraph 4, and Article 41, paragraph 1. No other reservation may be made.	