

ORDER IN COUNCIL

VIII
1991

ratifying a Projet de Loi

ENTITLED

The Computer Misuse (Bailwick of Guernsey) Law, 1991

(Registered on the Records of the Island of Guernsey
on the 20th August, 1991.)



1990

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 20th day of August, 1991 before Sir Charles Frossard, Kt., Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Lawrence Oscar Ozanne and John Richard Rowe Henry, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 26th June, 1991, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled “The Computer Misuse (Bailiwick of Guernsey) Law, 1991”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ordered:—

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 26th day of June 1991

PRESENT.

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 21st day of May 1991 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth—

‘1. That, in pursuance of their Resolution of the 28th day of November, 1990, the States of Deliberation at a meeting held on the 31st day of January, 1991, approved a Bill or “Projet de Loi” entitled “The Computer Misuse (Bailiwick of Guernsey) Law, 1991”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Computer Misuse (Bailiwick of Guernsey) Law, 1991”, and to order that the same shall have force of law in the Bailiwick of Guernsey.”

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of the Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant-Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney

PROJET DE LOI

ENTITLED

The Computer Misuse (Bailiwick of Guernsey) Law, 1991

ARRANGEMENT OF SECTIONS

Section

1. Unauthorised access to computer material.
2. Unauthorised access with intent to commit further offences.
3. Unauthorised modification of computer material.
4. Territorial scope of offences.
5. Significant links.
6. Territorial scope of inchoate offences.
7. Relevance of external law.
8. British citizenship immaterial.
9. Power to convict of lesser offence.
10. Attempts.
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12. Extradition.
13. Interpretation.
14. Citation.
15. No retrospective offences.

PROJET DE LOI

ENTITLED

The Computer Misuse (Bailiwick of Guernsey) Law, 1991

THE STATES, in pursuance of their Resolution of the 28th day of November, 1990(a), have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Unauthorised access to computer material

1. (1) A person is guilty of an offence under this section if—
 - (a) he causes a computer to perform any function with intent to secure access to any program or data held in any computer;
 - (b) the access he intends to secure is unauthorised; and
 - (c) he knows at the time when he causes the computer to perform the function that that is the case.
- (2) The intent a person has to have to commit an offence under this section need not be directed at—
 - (a) any particular program or data;
 - (b) a program or data of any particular kind; or
 - (c) a program or data held in any particular computer.
- (3) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale or to both.

(a) Article VII of Billet d'Etat No. XXII of 1990.

Unauthorised access with intent to commit further offences

2. (1) A person is guilty of an offence under this section if he commits an offence under section 1 with intent—

(a) to commit a further offence—

(i) for which the sentence is fixed by law: or

(ii) for which a person aged 21 years or more, not previously convicted, may be sentenced to imprisonment for a term of 5 years or more; or

(b) to facilitate the commission of a further such offence (whether by himself or by another person).

(2) It is immaterial for the purposes of this section whether the further offence is to be committed on the same occasion as the offence under section 1 or on a future occasion.

(3) 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.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months, to fine not exceeding level 5 on the uniform scale or to both;

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

Unauthorised modification of computer material

3. (1) A person is guilty of an offence under this section if—

(a) he does any act which causes an unauthorised modification of the contents of any computer; and

(b) at the time when he does the act he has the requisite intent and the requisite knowledge.

(2) For the purposes of subsection (1)(b) the requisite intent is an intent to cause a modification of the contents of any computer and by so doing—

- (a) to impair the operation of any computer;
- (b) to prevent or hinder access to any program or data held in any computer; or
- (c) to impair the operation of any such program or the reliability of any such data.

(3) The intent need not be directed at—

- (a) any particular computer;
- (b) any particular program or data or a program or data of any particular kind; or
- (c) any particular modification or a modification of any particular kind.

(4) For the purposes of subsection (1)(b) the requisite knowledge is knowledge that any modification intended to be caused is unauthorised.

(5) It is immaterial for the purposes of this section whether an unauthorised modification or any intended effect thereof of a kind mentioned in subsection (2) is, or intended to be, permanent or temporary.

(6) For the purposes of the Criminal Damage (Bailiwick of Guernsey) Law, 1983(b) a modification of the contents of a computer shall not be regarded as damaging any computer or computer storage medium unless its effect on that computer or computer storage medium impairs its physical condition.

(7) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years, to a fine or to both.

Territorial scope of offences

4. (1) Subject to the provisions of this section, it is immaterial for the purposes of any offence under section 1 or 3—

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

(2) Subject to subsection (3), an offence under section 1 or 3 is not committed unless at least one significant link with domestic jurisdiction exists in the circumstances of the case.

(3) In proceedings for an offence under section 2 it is not necessary, for the purpose of establishing the commission of the offence under section 1, to show that any such link exists.

(4) Subject to section 7, where—

- (a) any such link does in fact exist in the case of an offence under section 1; and
- (b) commission of that offence is alleged in proceedings for an offence under section 2,

section 2 shall apply as if anything the accused intended to do or facilitate outside the Bailiwick which would be an offence described in section 2(1)(a)(i) or (ii) if it occurred in the Bailiwick were such an offence.

Significant links

5. (1) 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 Bailiwick 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 secured or intended to secure unauthorised access by doing that act was in the Bailiwick at that time.

(2) 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 Bailiwick at the time when he did the act which caused the unauthorised modification; or
- (b) that the unauthorised modification took place in the Bailiwick.

Territorial scope of inchoate offences

6. (1) On a charge of conspiracy to commit an offence under this Law the following questions are immaterial to the accused's guilt—

- (a) the question of where any person became a party to the conspiracy; and

(b) the question of whether any act, omission or other event occurred in the Bailiwick.

(2) On a charge of attempting to commit an offence under section 3 the following questions are immaterial to the accused's guilt—

(a) the question of where the attempt was made; and

(b) the question of whether it had an effect in the Bailiwick.

(3) On a charge of incitement to commit an offence under this Law the following questions are immaterial to the accused's guilt—

(a) the question of where the incitement took place; and

(b) subject to section 7, the question of whether what he had in view is an offence triable in the Bailiwick.

Relevance of external law

7. (1) A person is guilty of an offence triable by virtue of section 4(4) or 6(3)(b) only if what he intended to do or facilitate or had in view (as the case may be) would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(2) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section however it is described in that law.

British citizenship immaterial

8. (1) In proceedings brought in the Bailiwick in respect of a relevant offence, 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) In subsection (1) “relevant offence” means—

- (a) an offence under this Law;
- (b) conspiracy to commit an offence under this Law;
- (c) an attempt to commit an offence under section 3;
- (d) incitement to commit an offence under this Law.

Power to convict of lesser offence

9. If on the trial on indictment of a person charged with—

- (a) an offence under section 2; or
- (b) an offence under section 3 or an attempt to commit such an offence;

the Royal Court finds him not guilty of the offence charged, it may convict him of an offence under section 1 if on the facts shown he could be convicted of that offence; and in that case he shall be punishable by the Royal Court as if convicted summarily.

Attempts

10. A person who attempts to commit an offence under this Law is guilty of the full offence and may be proceeded against and punished accordingly.

Search warrants

11 (1) Where the judicial officer is satisfied by information on oath given by an officer of police that there are reasonable grounds for believing—

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

(b) that evidence thereof is on the premises;

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

(2) A warrant under this section —

(a) may authorise named persons to accompany an officer of police executing the warrant; and

(b) remains in force for 28 days from the date of its issue.

(3) In executing a warrant under this section an officer of police may seize an article if he reasonably believes that it is evidence that an offence under section 1 has been or is about to be committed.

(4) In this section “premises” includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft.

Extradition

12. The offences to which an Order in Council under section 2 of the Extradition Act 1870 can apply shall include—

(a) an offence under section 2 or 3;

(b) conspiracy to commit such an offence; and

(c) an attempt to commit an offence under section 3.

Intepretation

13. (1) The following provisions of this section apply for the interpretation of this Law.

(2) “Significant link with domestic jurisdiction” has the meaning given by section 5.

(3) “Judicial officer” means—

- (a) in relation to the Bailiwick, the Bailiff;
- (b) in relation to Alderney, the Chairman of the Court of Alderney;
- (c) in relation to Sark, the Seneschal.

(4) “Officer of police” means—

- (a) in relation to Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey;
- (b) in relation to Alderney, a member of the said police force and a member of any police force which may be established by the States of Alderney;
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the salaried police force of the Island of Guernsey.

(5) 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;
- (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;
- (c) uses it; or
- (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) shall be read accordingly.

(6) For the purposes of subsection (5)(c) a person uses a program if the function he causes the computer to perform—

- (a) causes the program to be executed; or
- (b) is itself a function of the program.

(7) For the purposes of subsection (5)(d)—

- (a) a program is output if the instructions of which it consists are output; and
- (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.

(8) Access of any kind by any person to any program or data held in a computer is unauthorised if—

- (a) he is not himself entitled to control access of the kind in question to the program or data; and
- (b) he does not have consent to such access by him from any person who is so entitled.

(9) 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.

(10) A modification of the contents of any computer takes place if, by the operation of any function of the computer concerned or any other computer—

(a) any program or data held in the computer concerned is altered or erased; or

(b) any program or data is added to its contents;

and any act which contributes towards causing such a modification shall be regarded as causing it.

(11) Such a modification is unauthorised if—

(a) the person whose act causes it is not himself entitled to determine whether the modification should be made; and

(b) he does not have consent to the modification from any person who is so entitled.

(12) References to a program include references to part of a program.

Citation

14. This Law may be cited as the Computer Misuse (Bailiwick of Guernsey) Law, 1991.

No retrospective offences

15. No offence is committed under this Law unless every act or other event proof of which is required for conviction takes place after this Law comes into force.