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From: Science & Environment Section
House of Commons Library

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Amendments to *Computer Misuse Act 1990*

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You saw an article in the *Guardian*—“[Intelligence officers given immunity from hacking laws, tribunal told](#)”¹—which stated that “The unnoticed rewriting of a key clause of the Computer Misuse Act has exempted law enforcement officials from the prohibition on breaking into other people’s laptops, databases, mobile phones or digital systems”, which Home Office officials have denied.

Accordingly, you wanted to know what amendments have been made to the *Computer Misuse Act 1990* by the *Serious Crime Act 2015*, and what effect they have had. You also wanted information on the Committee stage reading of the Serious Crime Bill (now Act), specifically concerning the amendments discussed in the news article.

Summary

- The *Computer Misuse Act 1990* was amended by the *Serious Crime Act 2015* which was given royal assent on 3 March 2015.
- The Commons Library published briefings for both the [second reading of the Serious Crime Bill](#) (5 January 2015) and the [Committee Stage](#) of the Bill (13 and 22 January 2015).
- At [Committee Stage of the Bill](#), clause 44 “Savings” (the relevant section of the Bill to which the Guardian article refers to) was read, alongside clauses 43 and 44, without any debate or suggested amendment, and ordered to stand as part of the Bill.
- In order to understand the effects of the amendments to the *Computer Misuse Act*, it will be necessary to wait for the Tribunal’s decision as we do not know what legal arguments are being deployed. For example, the [statement from Privacy International](#) doesn’t explain why they believe the amendment “grants UK law enforcement new leeway to potentially conduct cyber attacks within the UK”. Without this information the Library is unable to provide any further informed analysis.

¹ Owen Bowcott, “[Intelligence officers given immunity from hacking laws, tribunal told](#)”, *Guardian*, 15 May 2015.

Passage of the Serious Crime Bill [HL] 2014/15

Second Reading

The Serious Crime Bill [HL] 2014-15 had its second reading in the Commons on 5 January 2015. The Commons Library published a [background briefing paper for second reading of the Serious Crime Bill on 18 December 2014](#):

Part 2 of the Serious Crime Bill amends the *Computer Misuse Act 1990*. The Bill updates existing offences to ensure sentences for attacks on computer systems deemed to have damaged national security, human welfare, the economy or the environment reflect the damage they cause. It has been introduced following a review designed to ensure existing legislation, such as the *Computer Misuse Act 1990*, remains relevant and effective and transposes the EU Directive on attacks against information systems into UK law.

Committee Stage

Committee stage in the Commons took place between 13 and 22 January 2015. The commons Library published a [briefing which set out the debate at Committee stage](#).

An examination of the relevant sections of the debate for the [Committee stage reading of the Bill](#) identified that several new clauses were proposed in connection with Clauses 40, 41 and 42 of the Bill, but these were all either withdrawn or defeated in a vote.²

Clauses 43 to 45 were read and simply nodded through without any debate or suggested amendment, and ordered to stand as part of the Bill. Clause 44 “Savings” was the section of the Bill to which the Guardian article refers to.

Amendments to the Computer Misuse Act 1990

Reproduced, below is the section of the *Computer Misuse Act 1990* (as amended by the *Serious Crime Act 2015*) highlighted in the *Guardian* article mentioned above. The changes introduced by the *Serious Crime Act 2015* are highlighted in italicised [square brackets]:

10. [Savings]³.

[Sections 1 to 3A have]⁴ effect without prejudice to the operation—

- (a) in England and Wales of any enactment relating to powers of inspection, search or seizure [or of any other enactment by virtue of which the conduct in question is authorised or required]⁵; and
- (b) in Scotland of any enactment or rule of law relating to powers of examination, search or seizure [or of any other enactment or rule of law by virtue of which the conduct in question is authorised or required]⁶.

² [PBC Deb 13 January 2015](#)

³ Heading substituted by Serious Crime Act 2015 c. 9 Pt 2 s.44(2)(a) (May 3, 2015)

³ Words inserted by Serious Crime Act 2015 c. 9 Pt 2 s.44(2)(b) (May 3, 2015)

³ Words inserted by Serious Crime Act 2015 c. 9 Pt 2 s.44(2)(c) (May 3, 2015)

³ Words substituted by Serious Crime Act 2015 c. 9 Sch.4 para.12 (May 3, 2015)

⁴ Words substituted by Serious Crime Act 2015 c. 9 Pt 2 s.44(2)(a) (May 3, 2015)

⁵ Words inserted by Serious Crime Act 2015 c. 9 Pt 2 s.44(2)(b) (May 3, 2015)

⁶ Words inserted by Serious Crime Act 2015 c. 9 Pt 2 s.44(2)(c) (May 3, 2015)

[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 [any of those sections]⁷.

[In this section—

“enactment” means any enactment, whenever passed or made, contained in—

(a) an Act of Parliament;

(b) an Act of the Scottish Parliament;

(c) a Measure or Act of the National Assembly for Wales;

(d) an instrument made under any such Act or Measure;

(e) any other subordinate legislation (within the meaning of the Interpretation Act 1978);

“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.]⁸

The effect of these changes

According to the article in the *Guardian*, the key changes in wording to the Act concern the insertions in lines (a) and (b): “[or of any other enactment by virtue of which the conduct in question is authorised or required”. However, in order to understand the effects of the change it will be necessary to wait for the Tribunal’s decision. This is because we do not know what legal arguments are being deployed on both sides:

- The [statement from Privacy International](#) doesn’t explain **why** they believe the amendment “grants UK law enforcement new leeway to potentially conduct cyber attacks within the UK”;
- nor do the [Explanatory Notes to the 2015 Act](#) provide a clear set of answer to the questions raised by the *Guardian* article.

For more information on the passage of the Serious Crime Act, see this [list of documents relating to the bill as it progressed through Parliament](#), published by the previous Government:

- [Fact sheet: Serious Crime Bill overview](#)
- [Overarching impact assessment](#)
- [European Convention on Human Rights memorandum](#)
- [Delegated Powers memorandum](#)

⁷ Words substituted by Serious Crime Act 2015 c. 9 Pt 2 s.44(2)(d) (May 3, 2015)

⁸ Words substituted by Serious Crime Act 2015 c. 9 Pt 2 s.44(2)(e) (May 3, 2015)