APPENDIX 8

Relevant Provisions from Police and Justice Act, 2006, C-48\textsuperscript{5}

**Preamble:** An Act to establish a National Policing Improvement Agency; to make provision about police forces and police authorities and about police pensions; to make provision about police powers and about the powers and duties of community support officers, weights and measures inspectors and others; to make provision about the supply to the police and others of information contained in registers of death; to make further provision for combatting crime and disorder; to make further provision about certain inspectorates; to amend Part 12 of the Criminal Justice Act 2003; to amend the Computer Misuse Act 1990; to make provision about the forfeiture of indecent images of children; to provide for the conferring of functions on the Independent Police Complaints Commission in relation to the exercise of enforcement functions by officials involved with immigration and asylum; to amend the Extradition Act 2003; to make further provision about the use of live links in criminal proceedings; and for connected purposes.

[8th November 2006]

Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**Part 5**

**Computer Misuse**

**Section 35: Unauthorised Access to Computer Material**

1. In the Computer Misuse Act 1990 (c. 18) (“the 1990 Act”), section 1 (offence of unauthorised access to computer material) is amended as follows.

2. In subsection (1)—
   a. in paragraph (a), after “any computer” there is inserted “, or to enable any such access to be secured”;
   b. in paragraph (b), after “secure” there is inserted “, or to enable to be secured,”.

3. For subsection (3) there is substituted—
   “3. A person guilty of an offence under this section shall be liable—
   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;
   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;
   c. on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”

**Section 36: Unauthorised Acts with Intent to Impair Operation of Computer, Etc**

For section 3 of the 1990 Act (unauthorised modification of computer material) there is substituted—

“3 Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc.”
Appendices

1. A person is guilty of an offence if—
   a. he does any unauthorised act in relation to a computer;
   b. at the time when he does the act he knows that it is unauthorised; and
   c. either subsection (2) or subsection (3) below applies.

2. This subsection applies if the person intends by doing the act—
   a. to impair the operation of any computer;
   b. to prevent or hinder access to any program or data held in any computer;
   c. to impair the operation of any such program or the reliability of any such data; or
   d. to enable any of the things mentioned in paragraphs (a) to (c) above to be done.

3. This subsection applies if the person is reckless as to whether the act will do any of the things mentioned in paragraphs (a) to (d) of subsection (2) above.

4. The intention referred to in subsection (2) above, or the recklessness referred to in subsection 3. above, need not relate to—
   a. any particular computer;
   b. any particular program or data; or
   c. a program or data of any particular kind.

5. In this section—
   a. a reference to doing an act includes a reference to causing an act to be done;
   b. “act” includes a series of acts;
   c. a reference to impairing, preventing or hindering something includes a reference to doing so temporarily.

6. A person guilty of an offence under this section shall be liable—
   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;
   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;
   c. on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine or to both."

Section 37: Making, Supplying or Obtaining Articles
for use in Computer Misuse Offences

After section 3 of the 1990 Act there is inserted—
“3A Making, supplying or obtaining articles for use in offence under section 1 or 3

1. A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article intending it to be used to commit, or to assist in the commission of, an offence under section 1 or 3.

2. A person is guilty of an offence if he supplies or offers to supply any article believing that it is likely to be used to commit, or to assist in the commission of, an offence under section 1 or 3.

3. A person is guilty of an offence if he obtains any article with a view to its being supplied for use to commit, or to assist in the commission of, an offence under section 1 or 3.

4. In this section “article” includes any program or data held in electronic form.

5. A person guilty of an offence under this section shall be liable—
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;
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;
c. on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”

Section 38: Transitional and Saving Provision

1. The amendments made by—
   a. subsection (2) of section 35, and
   b. paragraphs 19(2), 25(2) and 29(2) of Schedule 14, apply only where every act or other event proof of which is required for conviction of an offence under section 1 of the 1990 Act takes place after that subsection comes into force.

2. The amendments made by—
   a. subsection (3) of section 35, and
   b. paragraphs 23, 24, 25(4) and (5), 26, 27(2) and (7) and 28 of Schedule 14, do not apply in relation to an offence committed before that subsection comes into force.

3. An offence is not committed under the new section 3 unless every act or other event proof of which is required for conviction of the offence takes place after section 36 above comes into force.

4. In relation to a case where, by reason of subsection (3), an offence is not committed under the new section 3—
   a. section 3 of the 1990 Act has effect in the form in which it was enacted;
   b. paragraphs 19(3), 25(3) to (5), 27(4) and (5) and 29(3) and (4) of Schedule 14 do not apply.

5. An offence is not committed under the new section 3A unless every act or other event proof of which is required for conviction of the offence takes place after section 37 above comes into force.

6. In the case of an offence committed before section 154(1) of the Criminal Justice Act 2003 (c. 44) comes into force, the following provisions have effect as if for “12 months” there were substituted “six months”—
   a. paragraph (a) of the new section 1(3);
   b. paragraph (a) of the new section 2(5);
   c. subsection (6)(a) of the new section 3;
   d. subsection (5)(a) of the new section 3A.

7. In this section—
   a. “the new section 1(3)” means the subsection (3) substituted in section 1 of the 1990 Act by section 35 above;
   b. “the new section 2(5)” means the subsection (5) substituted in section 2 of the 1990 Act by paragraph 17 of Schedule 14 to this Act;
   c. “the new section 3” means the section 3 substituted in the 1990 Act by section 36 above;
   d. “the new section 3A” means the section 3A inserted in the 1990 Act by section 37 above.
Appendices

Forfeiture of Indecent Photographs of Children

Section 39: Forfeiture of Indecent Photographs of Children: England and Wales

1. The Protection of Children Act 1978 (c. 37) is amended as follows.
2. In section 4 (entry, search and seizure)—
   a. subsection (3) is omitted;
   b. for subsection (4) there is substituted—
      “4. In this section “premises” has the same meaning as in the Police and Criminal Evidence Act 1984 (see section 23 of that Act).”
3. For section 5 (forfeiture) there is substituted—

   “5 Forfeiture
   The Schedule to this Act makes provision about the forfeiture of indecent photographs and pseudo-photographs.”

4. At the end of the Act there is inserted the Schedule set out in Schedule 11 to this Act.
5. The amendment made by paragraph (b) of subsection (2) has effect only in relation to warrants issued under section 4 of the Protection of Children Act 1978 after the commencement of that paragraph.
6. The amendments made by subsections (2)(a), (3) and (4) and Schedule 11 have effect whether the property in question was lawfully seized before or after the coming into force of those provisions.

   This is subject to subsection (7).

7. Those amendments do not have effect in a case where the property has been brought before a justice of the peace under section 4(3) of the Protection of Children Act 1978 before the coming into force of those provisions.

Section 40: Forfeiture of Indecent Photographs of Children: Northern Ireland

2. In Article 4 (entry, search and seizure), for paragraph (2) there is substituted—
   “2. In this Article “premises” has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see Article 25 of that Order).”
3. For Articles 5 and 6 (forfeiture) there is substituted—

   “5 Forfeiture
   The Schedule to this Order makes provision about the forfeiture of indecent photographs and pseudo-photographs.”
4. At the end of the Order there is inserted the Schedule set out in Schedule 12.
5. The amendment made by subsection (2) has effect only in relation to warrants granted under Article 4(1) of the Protection of Children (Northern Ireland) Order 1978 after the commencement of that subsection.
6. The amendments made by subsections (3) and (4) and Schedule 12 have effect whether the property in question was lawfully seized before or after the coming into force of those provisions. This is subject to subsection (7).
7. Those amendments do not have effect in a case where the property has been brought before a resident magistrate under Article 5(1) of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) before the coming into force of those provisions.