

Title: Serious Crime Bill: Amendments to Computer Misuse Act 1990 IA No: Lead department or agency: Home Office Other departments or agencies: Ministry of Justice	Impact Assessment (IA)		
	Date: 03/03/2014		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Shabana Fazal			
Summary: Intervention and Options			RPC Opinion: N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
Negligible	N/A	N/A	No	N/A

What is the problem under consideration? Why is government intervention necessary?

The EU adopted the Directive on attacks against information systems (2013/40/EU) in August 2013. The UK is compliant with the Directive save for two points:

- tools used for committing offences and
- jurisdiction

The relevant legislation in the UK is the Computer Misuse Act (1990). The Computer Misuse Act does not prevent individuals from obtaining tools such as malware with the intention to personally commit a cyber crime. It also does not enable UK law enforcement agencies to take action against UK citizens committing cyber crime offences whilst physically outside the UK on the basis of their nationality alone, as required by the EU Directive.

What are the policy objectives and the intended effects?

1. Implement the EU Directive on Attacks against Information Systems as referenced in objective one of the UK Cyber Security Strategy;
2. Contribute to the Home Secretary's commitment in the Serious and Organised Crime Strategy to relentlessly disrupt organised crime; and
3. Reduce the threat and impact of cyber crime by ensuring our legislation is up to date and so bring offenders to justice and deter individuals from committing cyber offences in the first instance.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1. Do nothing. Continue current arrangements under existing law;
 Option 2. Legislate.
 The preferred option is option 2, legislate:

We propose to:

- Extend section 3A (making, supplying, or obtaining articles for use in offences under sections 1 or 3) of the Act to include an offence of 'obtain for use' to cover the event of tools being obtained for personal use to commit offences under sections 1 (unauthorised access to computer material) or 3 (unauthorised acts with intent to impair, or with recklessness as to impairing operation of a computer etc); and
- Extend the existing Extra Territorial Jurisdiction provisions (section 4) of the Act by nationality to provide a legal basis to prosecute a UK national who commits any Computer Misuse Act offence whilst physically outside the UK, where the offence has no link to the UK other than the offender's nationality, provided the offence was also an offence in the country where it took place.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 09/2020						
Does implementation go beyond minimum EU requirements?			No			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: Kam Bradley Date: 3/6/14

Summary: Analysis & Evidence

Policy Option 2

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: Negligible

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			Negligible

Description and scale of key monetised costs by 'main affected groups'

N/A

Other key non-monetised costs by 'main affected groups'

Any increase in prosecutions under the extended offence or by extending jurisdiction for the existing Computer Misuse Act offences would incur costs to police, Her Majesty's Courts and Tribunals Services, the Crown Prosecution Service, the Legal Aid agency and HM prison and probation services. The total cost to the Criminal Justice System is uncertain, but the additional number of prosecutions following the change in legislation is expected to be negligible.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			NK

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

- The amendment to include the 'obtain for use' offence will allow police to intervene in an attack before it has taken place, when the offender has procured the malware to use themselves.
- The extension of extra territorial jurisdiction by nationality will cover all offences in the Computer Misuse Act and therefore provide some extra territorial jurisdiction cover to section 3A for the first time.
- The pan-EU approach means that offenders who may have previously escaped justice due to a gap in legislation or lack of clear legal procedure could be dealt with under clear EU and UK legislation.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

There is no evidence available to estimate how many further prosecutions would occur as a result of the change in legislation. Section 3A of the Computer Misuse Act has only had two prosecutions in England and Wales over the past three years and the extra territorial jurisdiction provisions have not been exercised against any Computer Misuse Act offenders.

There is a risk that as the threat of cyber crime develops, and the materials used to commit cyber crime offences becomes more accessible, there could be an increase in offences under section 3A. This has been highlighted in a sensitivity analysis.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net: N/A	NO	N/A

Evidence Base (for summary sheets)

Background

The legislation available in the UK which covers the offences defined in the EU Directive is the Computer Misuse Act (1990). The offences under the Act are covered under sections 1-3A. Section 3A was added in 2006 and deals with making, supplying or obtaining articles for use in offences under sections 1 (unauthorised access to computer material) or 3 (unauthorised acts with intent to impair, or with recklessness as to impairing, operation of a computer etc).

Section 4 covers the territorial scope of offences under sections 1 and 3 and establishes that for offences under sections 1 or 3 it is immaterial whether any act or other event occurred in the home country concerned or whether the accused was in the home country concerned at the time of any such act or event. This section also establishes that at least one significant link with domestic jurisdiction must exist in the circumstances of the case for the offence to be committed.

Section 5 sets out the criteria for establishing a significant link with domestic jurisdiction – either the accused was in the home country at the time of the offence or the affected/intended affected computer was in the home country at the time of the offence. The existing extra territorial jurisdiction provisions (i.e. the legal ability for the government to exercise authority beyond its normal boundaries) do not include section 3A.

The EU Directive on Attacks Against Information Systems¹ was adopted in August 2013 and Member States have two years to implement.

Problem under consideration

In order to implement the EU Directive and assist in addressing constant advances in technology, we need to extend the coverage of the existing offences in the Computer Misuse Act.

The UK is compliant with the EU Directive save for two points:

- **Article 7** of the EU Directive covers the tools used to commit computer offences (e.g. malware). This section states that Member States should have offences in their legislation to criminalise the intentional 'production, sale, procurement for use, import, distribution, or otherwise making available' of tools with the intention that it is used to commit any of the further offences in the Directive.

As the legislation stands, section 3A of the Computer Misuse Act meets all of the provisions under Article 7 with the exception of the offence of 'procuring for use' of such tools.

Individuals can increasingly obtain tools such as malware and the knowledge on how to commit a cyber offence, to commit the offence personally and are less likely to need a third party to commit the offence. There is a risk that a person acting in isolation and obtaining a tool for personal use to commit a Computer Misuse Act offence is not caught by the existing offence as the prosecution would need to show that the tool was being obtained with a view to its being supplied to commit a Computer Misuse Act offence.

¹ (2013/40/EU), which replaces Council Framework decision 2005/222/JHA,

- **Article 12** of the EU Directive covers jurisdiction and requires Member states to establish their jurisdiction with regards to a cyber offence being committed by one of their nationals. Currently, extra territorial jurisdiction provisions within the Computer Misuse Act cover offences under sections 1 and 3 and require the prosecution to show a significant link to the UK. This means that if an individual commits a Computer Misuse Act section 1 or 3 offence, in order to exercise extra territorial jurisdiction and pursue a Computer Misuse Act prosecution in the UK, either the individual or the affected/intended affected computer needs to be present in the UK at the time of the offence. The offender cannot be extradited on the basis of their nationality alone.

In addition, section 3A which was added in 2006, is not currently included in extra territorial provisions. This means that an individual committing a section 3A offence whilst physically outside the UK cannot be easily extradited under the existing Computer Misuse Act provisions to face justice in the UK.

In the absence of an amendment, the UK (from individuals up to big business) is exposed, and law enforcement agencies will not have the necessary powers to intervene early enough in order to prevent potential criminal damage.

Rationale

Cyber crime is a risk to our national security and causes significant harm to our society. Government has a role in protecting its citizens and ensuring law enforcement agencies have the necessary powers and offences to tackle it.

Objectives

1. Implement the EU Directive on Attacks against Information Systems as referenced in objective one of the UK Cyber Security Strategy;
2. Contribute to the Home Secretary's commitment in the Serious and Organised Crime Strategy to relentlessly disrupt organised crime; and
3. Reduce the threat and impact of cyber crime by ensuring our legislation is up to date and so bring offenders to justice and deter individuals from committing cyber offences in the first instance.

Options

There are two options that have been considered:

1) **Do not amend UK legislation and continue current arrangements under existing law.**

If we do not extend section 4 to include extra territorial jurisdiction by nationality and extend the offence under section 3A to include obtain for use, the identified gaps in legislation would remain.

In addition, the UK could face infraction proceedings as we would not be transposing the EU Directive fully into UK law. It could therefore eventually be referred to the European Court of Justice. If the Court rules that the UK has failed to comply with its obligations under EU law, it could face a minimum lump sum fine of £7.9 million. The UK could also face daily fines until it is seen to be compliant.

2) **Amend domestic legislation to fill identified legislative gaps and bring the UK legislation in line with the Directive.**

This option would involve the following amendments to the Computer Misuse Act 1990:

- a) Amend section 3A of the Computer Misuse Act to include reference to 'obtain for use'.
- b) Extend sections 4 and 5 of the Computer Misuse Act to include extra territorial jurisdiction by nationality so all Computer Misuse Act offences are covered, including section 3A.

Appraisal (Costs and Benefits)

Option 1: Do nothing

Potential infraction costs with a minimum lump sum fine of £7.9 million. There are no identified benefits.

Option 2: Amend existing legislation

Groups affected

Apart from the individuals who would be prosecuted under the new offence or extended jurisdiction for all offences, the main groups affected by the policy would be:

- **The Police:** we predict there could be a small increase in the number of investigations and arrests.
- **Ministry of Justice:** any increase in arrests could mean an increase in the number of cases that enter the justice system.
- **HM Courts and Tribunals Service:** any increase in cases entering the justice system is likely to increase the administrative burden on the courts.
- **Crown Prosecution Service:** any increase in cases entering the justice system means a likely increase in the number of cases being presented to the courts.
- **Legal aid:** there will be an impact on legal aid with the increase in the number of offenders arrested and proceeded against.
- **HM Prison Service:** any guilty verdicts resulting in a custodial sentence will impact on prison places.
- **Probation service:** there will be an impact from offenders sentenced to probation.
- **Extradition bodies:** agencies and officials dealing with extradition may see a small increase in workload.

Monetised costs:

There are no expected costs to business from this option.

It is important to note that the below costs should be viewed as **opportunity costs**. The additional costs created by this option to the Criminal Justice system may be absorbed within existing resources.

Training costs

All police will need to familiarise themselves with the new regulations. The College of Policing ensure that all new legislation is incorporated into the National Policing Curriculum as matter of course, and falls within existing budgets. The additional cost of training for this policy is therefore expected to be **negligible**.

Ongoing costs

Amending section 3A of the Computer Misuse Act to include 'obtain for use'

This is a future proofing policy and we expect very few additional prosecutions to come from it.

Between 2006, when section 3A came into force, and 2012 there have only been two prosecutions under section 3A and only one found guilty.² Following consultation with the Police and the Crown Prosecution Service, we have not found any evidence to suggest that there would be a significant increase in cases due to the new offence.

As we do not expect many cases we have not given a monetised benefit, however we have demonstrated what the costs would be. It would be disproportionate to analyse the costs in more detail than this.

The Ministry of Justice have provided estimates of the weighted cost to the Criminal Justice System per proceeding under the amendment of 'obtain for use'.

² Further breakdown of Criminal Justice Statistics publication, MoJ

Table 1: Weighted estimated Criminal Justice System cost per case for new offence³:

Criminal Justice System Agency⁴	Lower bound costs (all cases tried in a Magistrates Court)	Upper bound costs (all cases tried in a Crown Court)
Her Majesty's Courts and Tribunals Service	£600	£1,100
Crown Prosecution Service	£200	£2,600
Legal Aid	£200	£7,700
Prison	£7,000	£30,600
Probation ⁵	£0	£0
Weighted cost per case	£8,000	£42,000

There is insufficient data on similar Computer Misuse Act offences to give a robust estimate of proceedings, convictions and disposals. A lower and upper bound estimate of the Criminal Justice System costs has been calculated. As the offence is triable either way, it is assumed that cases could progress through the Magistrates' Court (lower bound) or through the Crown Court (upper bound). The estimated Criminal Justice System cost per case for the new offence is **£8k-£42k**.

'Worst case' estimates are derived for both scenarios by assuming that all proceedings lead to a custodial sentence and that an offender is given the maximum custodial sentence available; that is 6 months if tried in the Magistrates Court and 2 years if in the Crown Court. The costs may be lower if the average custodial sentence length given is less than the maximum.

(See *Annex A* for further details, including sensitivities of assumptions).

Sensitivity analysis

Limited evidence has been found to suggest there would be a significant increase in prosecutions from the 1-2 which we have experienced in the 6 years the current legislation has been in place. As an illustration, if, due to the changing nature of the threat, there was an increase of 10 offences each year, this could cost the Criminal Justice System up to **£0.42m per year⁶**. As we expect so few prosecutions, it would be disproportionate to go in to further detail on the costs.

Extending extra territorial jurisdiction by nationality

The UK has never brought extradition proceedings under the Computer Misuse Act and so we expect minimal new cases to arise. Under the proposals section 3A would include extra territorial jurisdiction provisions for the first time, however we do not expect a significant increase in cases brought under this section.

It is expected that the UK is only likely to use this provision where a UK National commits a serious offence in another country that does not impact on the UK (as this is already covered through 'significant link to UK' provisions in section 4), and where the offence was also an offence in the country where it took place. In practice, use would be considered on a case by case basis and there would be no obligation on the UK to exercise these provisions in any given case. We would either need cooperation from the other state to extradite the individual or else arrest on return to the UK. The UK may also receive requests from other EU states to aid in the extradition of foreign nationals. The courts would determine compliance on a case by case basis.

The Ministry of Justice have provided the following estimated units costs to illustrate the potential cost of extending territorial jurisdiction to existing Computer Misuse Act offences.

Table 2: Weighted cost per case for extra territorial jurisdiction⁷

³ MoJ internal analysis 2014

⁴ All costs are in 2012/13 prices and are rounded to the nearest 100.

⁵ As we assume that all proceedings result in immediate custody, there would be no probationary sentences (including community orders and suspended sentence orders).

⁶ Based on estimate of £42,000 for Criminal Justice System costs multiplied by 10 new prosecutions.

⁷ MoJ internal analysis 2014

Criminal Justice System Agency⁸	Lower cost estimate (using average Computer Misuse Act offence as a proxy⁹)	Upper cost estimate (all cases tried in a Crown Court)¹⁰
Her Majesty's Courts and Tribunals Service	£1,000	£1,200
Crown Prosecution Service	£150,000	£150,000
Legal Aid	£4,600	£7,700
Prison	£6,300	£76,500
Probation	£1,300	£0
Weighted cost per case	£163,000	£235,300

Lower bound for extra territorial jurisdiction = £163k per case

For the lower bound estimate, data from 2012 for all offences contained within the Computer Misuse Act was used to estimate a weighted cost per case. Given that all Computer Misuse Act offences are triable either way, data about the numbers tried in each court for all Computer Misuse Act offences was used to estimate the proportion of people tried Magistrates and Crown Court. Data from 2012 shows that approximately 41% of Computer Misuse Act cases were tried in the Magistrates Court and 59% in the Crown Court. Data also shows that across all Computer Misuse Act offences approximately 30% of offenders are sentenced to immediate custody and 50% to community orders and suspended sentence orders. It is assumed that this will be the same for any future Computer Misuse Act offences committed outside the UK but prosecuted in the UK by extending jurisdiction.

Upper bound for extra territorial jurisdiction = £235k per case

For the upper bound estimate we assume that all cases progress through the Crown Court. We assume that all proceedings result in a custodial sentence. To estimate the custodial sentence length we use data from 2012 to indicate the maximum custodial sentence awarded across all Computer Misuse Act offences. From 2002-2012 the longest custodial sentence awarded for a Computer Misuse Act offence was 60 months.¹¹ It is assumed that any cases prosecuted in the UK through extending jurisdiction will have the same custodial sentence length.

Note that the UK is likely to extend jurisdiction only in cases where the offence committed is deemed serious or if prosecution in the UK is in the public interest. If the cases tried by extra territorial jurisdiction are more complicated or longer than domestic Computer Misuse Act offence trials, there is a risk that even the upper cost estimate underestimates the cost per case. For example, in highly complicated cases the Legal Aid costs alone could be up to £1m¹². See the risks and assumptions in *Annex A* for a full outline of all the caveats.

There are other costs to the Criminal Justice System associated with extra territorial jurisdiction cases that are additional to usual cases where the offence is committed and tried domestically. These have not been monetised in this impact assessment but are outlined in Table 3 below.

Table 3: Additional costs for cases involving extra territorial jurisdiction

Costs of extra territorial jurisdiction	Description
Police	Transportation and evidence. A previous Home Office Impact Assessment on Human Trafficking estimated that these additional costs of gathering and transporting evidence/witnesses from overseas in extra territorial jurisdiction cases could be around £20,000 per case.
Crown Prosecution Service	Liaising with other authorities, familiarising themselves with processes and procedures relating to another country as well as, in a small number of cases, paying for UK prosecutors to

⁸ All costs are in 2012/13 prices and are rounded to the nearest 100.

⁹ Numbers may not add due to rounding

¹⁰ Ibid.

¹¹ For the offence of unauthorised access with intent to commit or facilitate commission of further offences (CMA S.2)

¹² MoJ internal analysis 2014

	travel overseas to assist with the case or to facilitate the execution of a request for mutual legal assistance
Court costs	Cases may take longer than normal e.g. time taken to gather evidence.
Judicial review	There may be a very small number of cases in which a decision not to prosecute when the UK has extra territorial jurisdiction over the offence is challenged by way of a judicial review. Such cases will incur costs for the Crown Prosecution Service and the Courts but (as of June 2012) there have been no instance where the argument has been successfully made that where domestic prosecution is an option it should be the preferred one.
Fine enforcement costs	If the fines are not paid, there may be additional enforcement costs associated with them.

Monetised benefits:

N/A

Non-monetised costs:

N/A

Non-monetised benefits:

As the UK becomes more reliant on technology, and thus more vulnerable to cyber crime, the benefits of this policy will become more significant over time.

Police will be able to intervene when a person obtains an article such as a trojan (malware) to use themselves with the intention of committing a CMA offence, before the actual cyber attack takes place. Therefore the benefit will be fewer cyber attacks occurring.

For example, a person may obtain malware to gain access to another persons computer to directly enable theft of financial information directly as opposed to with the intention of supplying that malware to a third party. Under the new legislation, police can arrest that person for obtaining that malware for personal use to commit a CMA offence, before they gain access to the computer and steal information. By arresting the individual before the information is stolen, a cyber attack is prevented.

The extension of extra territorial jurisdiction by nationality will cover all offences in the Computer Misuse Act and the pan-EU approach means that offenders who may have previously escaped justice due to a gap in legislation or lack of clear legal procedure could be dealt with under clear EU and UK legislation.

Furthermore, with the cross-EU implementation, it will also allow for other EU countries to extradite and prosecute their own nationals committing computer offences in the UK.

Implementing the EU Directive has a number of non-monetised reputational benefits:

- maintains the UK's position as a world leader in the field of combating cyber crime and cyber security;
- reinforces the message that the UK is a pre-eminent safe space for individuals and businesses to operate online;
- the UK will continue to set the precedent for creating strong and robust legislation to prosecute and punish cyber criminals;
- encourages other countries to introduce robust legislation in this area; and
- provides a consistent approach across Europe.

In order for the policy to break-even, the benefits of the change in legislation (the potential prevention of future cyber attacks and also the reputational benefits) will need to outweigh the costs of up to £235k per prosecution.

Risks

- As the threat of cyber crime changes and individuals have greater access to malware, there is a risk that there could be an increase in prosecutions under section 3A.
- The changes to the legislation will only lead to a reduction in the number of cyber attacks if the police are able to arrest the offenders when they obtain the tools but before they carry out the attack.
- There is also a risk that there could be a greater increase than expected in extradition cases particularly in relation to section 3A which is not currently covered by extra territorial jurisdiction provisions. This could incur significant cost to the Criminal Justice System.
- See *Annex A* for assumptions and risks for Criminal Justice costs.

Consultation

Cross-government consultation and parliamentary scrutiny took place during the negotiations related to the Directive. Following adoption, further consultation has taken place in relation to compliance with the Directive.

Within Government:

- Ministry of Justice
- Crown Prosecution Service
- Attorney General's Office
- Cabinet Office
- Security and Intelligence Agencies

Outside Government:

- A selection of police forces in England and Wales
- National Crime Agency

Summary and preferred option with description of implementation plan

In summary, the threat from and impact of cyber crime is growing and the nature of these crimes are changing. We need our legislation to be up to date with emerging technical capabilities and to operate across geographical boundaries, as do many of these crimes. We are also required to implement the EU Directive, which we are compliant with save for two elements. Amending the Computer Misuse Act as outlined will support us in these aims.

Implementation plan

The government plans to implement these changes through the [Serious Crime Bill] (expected to be introduced in parliament in [June] 2014). Dependant on its safe passage, commencement would need to be in September 2015.

Monitoring

We expect to monitor the number of prosecutions under the amendments and the range of sentences handed down. In addition the EU has committed to evaluating the EU Directive within 5 years of entering into force; the UK will contribute to this review.

Annex A: Assumptions and risks/limitations of Criminal Justice costs

Assumption	Risks/Limitations
<p align="center">Progression of a case through the courts (e.g., proportion proceeded against in the Magistrates v. Crown)</p> <p><u>Section 3A offence</u> In the absence of robust proxy data for the new offence of procuring malware for personal use to commit offences under section 1 or 3 of the 1990 Computer Misuse Act, two scenarios were estimated. One where all cases progress through the Magistrates court and the other where all progress through the Crown Court.</p> <p><u>Extension of extra territorial jurisdiction</u> For the lower cost estimate, data from 2012 was used across all four Computer Misuse Act offences to estimate the proportion of cases tried in the Magistrates and Crown Court. For the upper cost estimate it is assumed that all cases progress through the Crown Court. This is to cover the risk that jurisdiction will only be extended for more serious crimes, where proceedings are likely to occur in the Crown Court.</p> <p>Source: MoJ internal analysis, 2013.</p>	<p>It is unlikely in reality that all cases will progress through one court.</p> <p>There is a risk that more/fewer offenders may be tried in the Magistrates' Courts or the Crown Courts</p>
<p align="center">Proportion sentenced to immediate custody and average custodial sentence length</p> <p><u>Section 3A offence</u></p> <ul style="list-style-type: none"> In the absence of robust proxy data for the new offence, 'worst case scenarios' were estimated by assuming that all those proceeded against are sentenced to immediate custody and that the offender receives the maximum sentence possible; that is 6 months if tried in the Magistrates Court and 2 years if in the Crown Court. <p><u>Extension of extra territorial jurisdiction</u></p> <ul style="list-style-type: none"> For the lower cost estimate data from 2012 was used across all Computer Misuse Act offences. Data shows that approximately 30% of all Computer Misuse Act proceedings resulted in a custodial sentence and that the average custodial sentence length given was approximately 18 months across all cases, in all courts. For the upper cost estimate, it is assumed that all those proceeded against are sentenced to immediate custody. To estimate the custodial sentence length we use data from 2012 to indicate the maximum custodial sentence given across all Computer Misuse Act offences. From 2002-2012 the longest custodial sentence given 	<p>There is a risk that fewer defendants will be sentenced to immediate custody.</p> <p>There is a risk that the average custodial sentence length given will be shorter.</p> <p>There is a risk that jurisdiction will only be extended in the most serious cases and that the average custodial sentence length given could be higher.</p>

Assumption	Risks/Limitations
<p>for a Computer Misuse Act offence was 60months (for the offence of 'unauthorised acts with intent to impair or with recklessness as to impairing, operation of computer'). It is assumed that the custodial sentence length for cases where jurisdiction is extended will be the same.</p> <p>Source: MoJ internal analysis, 2013.</p>	
Crown Prosecution Service costs	
<p><u>Section 3A offence</u></p> <ul style="list-style-type: none"> The estimated Crown Prosecution Service costs consist of two broad categories, advocacy costs and Activity Based Costings. The primary purpose of the Activity Based Costings model is resource distribution, and has several limitations (see risks). The costs reflect the different Activity Based Costings and advocacy costs for guilty plea, cracked and effective trials. <p>Source: MoJ internal analysis, 2013</p> <p><u>Extension of extra territorial jurisdiction</u></p> <ul style="list-style-type: none"> The estimated Crown Prosecution Service costs consist of two broad categories, advocacy costs and preparation of case costs; these are based on Crown Prosecution Service experience in prosecuting extra territorial jurisdiction cases. 	<p>The key limitation of the Activity Based Costings model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated. For further information about how Crown Prosecution Service Activity Based Costings costs are calculated please see the following Crown Prosecution Service guidance (Crown Prosecution Service, 2012): http://www.cps.gov.uk/publications/finance/abc_guid_e.pdf.</p> <p>Extra territorial jurisdiction cases are likely to be complex, which impacts on the preparation of the case. Each case will be treated on its merits, and there is a risk that the Crown Prosecution Service costs could be higher or lower.</p>
Her Majesty's Courts and Tribunals Service costs (Magistrates' Courts)	
<p>To generate the costs by offence categories, Her Majesty's Courts and Tribunals Service timings data for each offence group were applied to court costs per sitting day. Magistrates Court costs are £1,200 per sitting day in 2012/13 prices. A sitting day is assumed to be 5 hours.</p> <p>Source: Her Majesty's Courts and Tribunals Service costs are based on average judicial and staff costs, found at Her Majesty's Courts and Tribunals Service Annual Report and Accounts 2012-13. Her Majesty's Courts and Tribunals Service timings data from the Activity based costing model, the Timeliness Analysis Report data set and the costing process.</p>	<p>Timings data for offence categories:</p> <ul style="list-style-type: none"> The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a District Judge (Magistrates Court) sits. Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information is available on admin time, however we have excluded it for simplicity. The timings are collection of data from February 2009. Any difference in these timings could influence costings. The data also excludes any adjournments (although the Activity Based Costings model does), and is based on a case going through either one guilty plea trial (no trial) or one effective trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a

Assumption	Risks/Limitations
	<p>result the costings could ultimately be underestimates.</p> <ul style="list-style-type: none"> Guilty plea proportions at the Initial hearing from Q2 in 2012 are used, based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)). <p>Her Majesty's Courts and Tribunals Service average costs per sitting day:</p> <p>Her Majesty's Courts and Tribunals Service court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</p> <p>In cases where jurisdiction is extended, there is the risk that cases involving other jurisdictions may take longer for several reasons, such as problems/delays in gathering evidence from overseas and the need for interpreters. This would potentially result in higher costs.</p>
<p style="text-align: center;">Her Majesty's Courts and Tribunals Service costs (Crown Courts)</p> <p>Timings data for types of case (e.g., indictable only, triable either way) were applied to Crown Court costs per sitting day. This was added to the cost of the initial hearing in the Magistrates, as all criminal cases start in the Magistrates' Courts. Crown Court cost is £1,600 per sitting day in 2012/13 prices, assuming a sitting day is 5 hours.</p> <p>Source: Her Majesty's Courts and Tribunals Service costs are based on average judicial and staff costs, found at Her Majesty's Courts and Tribunals Service Annual Report and Accounts 2012-13.</p>	<p>Timings data for types of cases:</p> <ul style="list-style-type: none"> The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing. Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate. The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results. Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences. <p>Her Majesty's Courts and Tribunals Service average costs per sitting day:</p> <p>Her Majesty's Courts and Tribunals Service court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</p>

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	<p>In cases where jurisdiction is extended, there is the risk that cases involving other jurisdictions may take longer for several reasons, such as problems/delays in gathering evidence from overseas and the need for interpreters. This would potentially result in higher costs.</p>
<p>Assume an eligibility rate of 50% for cases in the Magistrates' Courts and 100% in the Crown Court. The average legal aid cost in the Magistrates assumed is approximately £400, and £5,000 in the Crown Court (based on Crime Lower Report and Crime Higher Report, Legal Aid Agency).</p> <p>Used an average cost including all offence types from the dataset that includes both standard and non-standard fees to estimate the cost to the Legal Aid Agency.</p>	<p style="text-align: center;">Legal aid costs</p> <p>There is a risk that variance in the Legal Aid eligibility rate assumed for cases in the magistrates' courts would impact the costings.</p> <p>Assuming 100% eligibility for Legal Aid in the Crown Court carries several risks. Firstly, an individual may refuse legal aid. Secondly, an individual may contribute to legal aid costs. Lastly, the size of this contribution can vary. This could mean that the costings provided are a slight overestimate.</p> <p>There is a risk that the cost could be higher for specific new offences where Legal Aid is paid under the more expensive non standard fee scheme.</p> <p>This is particularly true of cases prosecuted in the UK by extending jurisdiction, where the offence may be more serious or complicated to prosecute. As such the Legal Aid costs could be significantly higher in extra territorial jurisdiction cases.</p>
<p>Assume that 50% of a prison sentence over 12 months is served on probation and that there is no element of licence for a sentence under 12 months. The proportions of offenders who are sentenced to probation are determined by the proportion of those who receive an over 12 month sentence. Assume that half the given average custodial sentence length is served.</p> <p>The cost per prison place is £28,000.</p> <p>Source: National Offender Management Service management accounts addendum (2011).</p>	<p style="text-align: center;">Prison costs</p> <p>The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs may be significantly higher as contingency measures will have to be found.</p>
<p>Assume that suspended sentences are broadly similar to community sentences.</p> <p>Costs for probation and community sentences are approximately £2,600 per year in 2012/13 prices. The probation costs are based on national costs for community order/ suspended sentence order, found at National Offender Management Service, Probation Trust Unit Costs, Financial Year 2012-13.</p> <p>Source: MoJ internal analysis, 2013.</p>	<p style="text-align: center;">Probation costs</p> <p>There is a risk that Suspended Sentence Orders could ultimately be more costly than community sentences if an offender breaches conditions of their suspended sentence and receives a custodial sentence.</p> <p>Costs represent the national average fully apportioned cost based on delivery by 35 Probation Trusts in 2012/13.</p> <p>Unit costs are calculated from the total fully apportioned cost of relevant services divided by starts in that year and do not consider which elements of cost are fixed and which will vary based on service volumes. Major changes to the volume,</p>

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	<p>length or content of community sentences or the characteristics of the offender population could affect the unit cost.</p> <p>The costs consist of costs for both (a) managing the sentence and (b) delivering court-ordered requirements. Excludes centrally managed contract costs for Electronic Monitoring and Sentence Order Attendance Centres.</p>