

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,710 of 30th April, 2009

Private Member's Bill 01/09

BILL

FOR

AN ACT to amend the Criminal Offences Act.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Criminal Offences (Amendment) Act 2009 and comes into operation on the day of publication.

2.(1) The Criminal Offences Act (in this Act referred to as the “principal Act”) is amended in accordance with the provisions of this section.

(2) In section 99(1) of the principal Act for the words “(whether natural or unnatural)” substitute the words “(including buggery)”.

(3) After section 99 of the principal Act insert—

“Meaning of “sexual activity”.

99A. In this Part, “sexual activity” means any sexual activity other than sexual intercourse, and includes touching—

- (a) with any part of the body;
- (b) with anything else;
- (c) through anything,

and, when performed by a woman, includes touching amounting to penetration.”.

(4) In section 103 of the principal Act–

- (a) in subsection (1) for the words “who rapes a woman” substitute the words “who rapes a person”; and
- (b) in subsection (2) for the words “to rape a woman” substitute the words “to rape a person”.

(5) After section 103 of the principal Act insert–

“Unlawful sexual activity.

103A.(1) A person who engages in sexual activity with another person without his or her consent is guilty of an offence and is liable on conviction to imprisonment for seven years.

- (2) A person who attempts to engage in sexual activity with another person without his or her consent is guilty of an offence and is liable on conviction to imprisonment for two years.”.

(6) In section 104(1) of the principal Act–

- (a) for the words “who procures a woman” substitute the words “who procures another person”; and
- (b) after the words “to have sexual intercourse” insert the words “or to engage in sexual activity”.

(7) In section 105(1) of the principal Act–

- (a) for the words “who procures a woman” substitute the words “who procures another person”; and
- (b) after the words “to have sexual intercourse” insert the words “or to engage in sexual activity”.

(8) For section 106(1) of the principal Act substitute–

“(1) A person (‘A’) who applies or administers to, or causes to be taken by, any other person (‘B’) any drug, matter or thing with intent to stupefy or overpower ‘B’ so as thereby to enable a third person to have sexual intercourse or to engage in sexual activity with ‘B’ is guilty of an offence and is liable on conviction to imprisonment for two years.”.

(9) In the sub-part heading for the words “with Young Girls.” substitute the words “and sexual activity with children and young persons”.

(10) In section 107 of the principal Act–

- (a) in the section heading for the words “Intercourse with girl” substitute “Intercourse, etc. with person”;
- (b) in subsection (1) for the words “A man who has unlawful sexual intercourse with a girl” substitute the words “A person who has unlawful sexual intercourse or engages in unlawful sexual activity with a person”; and
- (c) in subsection (2) for the words “A man who attempts to have unlawful sexual intercourse with a girl” substitute the words “A person who attempts to have unlawful sexual intercourse or to engage in unlawful sexual activity with a person”.

(11) In section 108 of the principal Act–

- (a) in the section heading, for the words “Intercourse with girl” substitute the words “Intercourse, etc. with person”;
- (b) in subsection (1) for the words “a man who has unlawful sexual intercourse with a girl not under the age of thirteen but” substitute the words “a person (‘A’) who has unlawful sexual intercourse or engages in unlawful sexual activity with a person (‘B’) who is not under the age of thirteen but is”; and
- (c) for subsections (3) and (4) substitute–

“(3) ‘A’ is not guilty of an offence under this section because he or she has unlawful sexual intercourse or engages in unlawful sexual activity with a person (‘B’) who is under the age of sixteen if, at the date of

the alleged offence, 'A' is under the age of twenty-four and he believes 'B' to be over the age of sixteen and has reasonable cause for that belief.

- (4) For the purpose of this section it shall not be unlawful for 'A' to have sexual intercourse or to engage in sexual activity with 'B' if 'B' is the spouse of 'A', and it shall be a defence to a charge under this section to prove that at the time when the offence is alleged to have been committed 'A' had reasonable cause to believe that 'B' was his or her spouse.”.

(12) In section 109 of the principal Act—

- (a) in subsection (1) for the words “A man who has unlawful sexual intercourse with a woman whom he” substitute the words “A person ('A') who has unlawful sexual intercourse or engages in unlawful sexual activity with another person ('B') whom 'A'”; and
- (b) in subsection (2)—
- (i) for the words “under this section” substitute the words “under subsection (1)”; and
- (ii) for the words “the man had reasonable cause to believe that the woman was his wife.” substitute the words “‘A’ had reasonable cause to believe that ‘B’ was the spouse of ‘A’.”.

(13) In section 110 of the principal Act—

- (a) in subsection (1) for the words “Subject to the exception mentioned in this section, a man who has unlawful sexual intercourse with a woman” substitute “Subject to the exemption mentioned in this section a person ('A') who has unlawful sexual intercourse or engages in unlawful sexual activity with another person ('B')”; and
- (b) for subsection (2) substitute—

“(2) ‘A’ is not guilty of an offence against this section because he or she has unlawful sexual intercourse or engages in unlawful sexual activity with ‘B’ if ‘A’ does not know and has no reason to suspect ‘B’ to be a defective.”.

(14) In section 111 of the principal Act—

(a) for the words “Subject to the exception mentioned in this section, a person who procures a woman who is a defective to have unlawful sexual intercourse” substitute the words “Subject to the exception mentioned in this section, a person (‘A’) who procures another person (‘B’) who is a defective to have unlawful sexual intercourse or to engage in unlawful sexual activity”; and

(b) for subsection (2) substitute—

“(2) ‘A’ is not guilty of an offence against this section because he or she procures a defective to have unlawful sexual intercourse or to engage in unlawful sexual activity, if ‘A’ does not know and has no reason to suspect ‘B’ to be a defective.”.

(15) In section 115—

(a) for the section heading substitute “**Bestiality.**”;

(b) in subsection (1) for the words “with another person or” substitute the words “or engages in sexual activity”; and

(c) in subsection (2) for the words “with another person or” substitute the words “or engages in sexual activity”.

(16) For section 116 substitute—

“**Gross indecency.**

116. A person who commits an act of gross indecency with another person in public, or is a party to the commission by a person of an act of gross indecency with another person in public, or procures the commission by a person of an act of gross

indecently with another person in public, is guilty of an offence and is liable on conviction to imprisonment for two years.”.

(17) Section 116A of the principal Act is repealed.

(18) In section 117–

- (a) in the section heading delete the words “on a woman”;
- (b) in subsection (1) for the words “a person who makes an indecent assault upon a woman” substitute the words “a person (‘A’) who makes an indecent assault upon another person (‘B’)”;
- (c) in paragraph (a) of subsection (1) for the words “a girl” substitute the words “a person”;
- (d) in subsection (2) for the words “A girl” substitute the words “A person”;
- (e) in the proviso to subsection (2)–
 - (i) for the words “a girl” substitute the words “a person”;
 - (ii) for the words “believes her” substitute the words “believes the person”;
- (f) in subsection (3) for the words “(the wife being a girl under the age of fourteen) the invalidity does not make the husband guilty of an offence against this section by reason of her incapacity to consent while under the age of sixteen if he believes her to be his wife” substitute “(one spouse (‘S1’) being under the age of sixteen) the invalidity does not make the other spouse (‘S2’) guilty of an offence against this section by reason of ‘S1’s’ incapacity to consent while under the age of sixteen if ‘S2’ believes ‘S1’ to be the spouse of ‘S2’”;
- (g) in subsection (4)–

- (i) for the words “A woman” substitute the words “A person (‘B’)”;
 - (ii) after the words “, but a person” insert “(‘A’)”;
 - (iii) for the words “if that person knew or had reason to suspect her” substitute the words “if ‘A’ knew or had reason to suspect ‘B’”; and
- (h) in subsection (5)–
- (i) after the words “the person charged” insert “(‘A’)”;
 - (ii) for the words “the woman” substitute the words “the person”;
 - (iii) for the words “was his wife” substitute the words “was the spouse of (‘A’)”.
- (19) Section 118 of the principal Act is repealed.
- (20) In section 119 of the principal Act–
- (a) in the section heading for the word “child” substitute the word “person”.
 - (b) in subsection (1) for the words “A person who commits an act of gross indecency with or towards a child under the age of fourteen, or who incites a child under that age to such an act with him” substitute the words “A person (‘A’) who commits an act of gross indecency with or towards a person under the age of sixteen, or who incites a child under that age to such an act with ‘A’”.
- (21) Section 120 of the principal Act is repealed.
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