

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,018 of 1st August, 2013

B. 16/13

BILL

FOR

AN ACT to amend the Crimes Act 2011 and the Criminal Procedure and Evidence Act 2011.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Act may be cited as the Criminal Justice (Amendment) Act 2013.

(2) This Act comes into operation on the day appointed by the Government by notice in the Gazette.

(3) Different dates may be appointed under subsection (2) for different provisions.

Amendment of the Crimes Act 2011.

2.(1) Part 6 of the Crimes Act 2011 is amended in accordance with the provisions of this section.

(2) In section 87 for subsection (3) substitute—

“(3) A “course of conduct” must involve—

- (a) in the case of conduct in relation to a single person (see section 91(1)), conduct on at least 2 occasions in relation to that person; or

- (b) in the case of conduct in relation to two or more persons (see section 91(1A)), conduct on at least one occasion in relation to each of those persons.”.

(3) After section 87(6) insert the following–

“(7) References to a person, in the context of the harassment of a person, are references to a person who is an individual.”.

(4) After section 91(1) insert the following–

“(1A) A person must not pursue a course of conduct–

- (a) which involves harassment of two or more persons; and
- (b) which he knows or ought to know involves harassment of those persons; and
- (c) by which he intends to persuade any person (whether or not one of those mentioned above)–
 - (i) not to do something that he is entitled or required to do, or
 - (ii) to do something that he is not under any obligation to do.”.

(5) In section 91(2)–

- (a) after “this section” insert “or section 92A(2)(c)”;
- (b) after “amounts to” insert “or involves”;
- (c) after “amounted to” insert “or involved”.

(6) In section 91(3) after “Subsection (1)” insert “or (1A)”.

(7) In section 92(1) after “section 91” insert “(1) or (1A)”.

(8) After section 92 insert–

“Stalking.

92A(1) A person is guilty of an offence if–

- (a) the person pursues a course of conduct in breach of section 91; and
- (b) the course of conduct amounts to stalking.

(2) For the purposes of subsection (1)(b) and section 94A(1)(a) a person's course of conduct amounts to stalking of another person if–

- (a) it amounts to harassment of that person;
- (b) the acts or omissions involved are ones associated with stalking; and
- (c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person.

(3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking–

- (a) following a person;
- (b) contacting, or attempting to contact, a person by any means;
- (c) publishing any statement or other material–
 - (i) relating or purporting to relate to a person, or
 - (ii) purporting to originate from a person,
- (d) monitoring the use by a person of the internet, email or any other form of electronic communication;
- (e) loitering in any place (whether public or private);
- (f) interfering with any property in the possession of a person;
- (g) watching or spying on a person.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for 12 months, or the statutory maximum fine, or both.

(5) This section is without prejudice to the generality of section 92.

Power of entry in relation to offence of stalking.

92B.(1) A magistrate may, on an application by a police officer, issue a warrant authorising a police officer to enter and search premises if the magistrate is satisfied that there are reasonable grounds for believing that—

- (a) an offence under section 92A has been, or is being, committed;
- (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;
- (c) the material—
 - (i) is likely to be admissible in evidence at a trial for the offence, and
 - (ii) does not consist of, or include, items subject to legal privilege, excluded material or special procedure material (within the meanings given by sections 14, 15 and 18 Criminal Procedure and Evidence Act 2011); and
- (d) either—
 - (i) entry to the premises will not be granted unless a warrant is produced, or
 - (ii) the purpose of the search may be frustrated or seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.

- (2) A police officer may seize and retain anything for which a search has been authorised under subsection (1).
 - (3) A police officer may use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.
 - (4) In this section “premises” has the same meaning as in section 2(1) Criminal Procedure and Evidence Act 2011.”
- (9) In section 93(1) after “section 91” insert “(1)”.
- (10) After section 93 insert–
- “Injunctions to protect persons from harassment within section 91(1A).**
- 93A(1) This section applies where there is an actual or apprehended breach of section 91(1A) by any person (“the relevant person”).
- (2) In such a case–
 - (a) any person who is or may be a victim of the course of conduct in question; or
 - (b) any person who is or may be a person falling within section 91(1A)(c),may apply to the Supreme Court for an injunction restraining the relevant person from pursuing any conduct which amounts to harassment in relation to any person or persons mentioned or described in the injunction.
 - (3) Section 93(3) to (8) apply in relation to an injunction granted under subsection (2) above as they apply in relation to an injunction granted as mentioned in section 93(3)(a).”.
- (11) In section 94(5) after “section 92” insert “or 92A”.
- (12) In section 94(6) after “section 92” insert “or 92A”.
- (13) After section 94 insert–

“Stalking involving fear of violence or serious alarm or distress.

94A.(1) A person (“A”) whose course of conduct–

- (a) amounts to stalking; and
- (b) either–

is guilty of an offence if A knows or ought to know that A’s course of conduct will cause B so to fear on each of those occasions or (as the case may be) will cause such alarm or distress.

- (2) For the purposes of this section A ought to know that A’s course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.
- (3) For the purposes of this section A ought to know that A’s course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress.
- (4) It is a defence for A to show that–
 - (a) A’s course of conduct was pursued for the purpose of preventing or detecting crime;
 - (b) A’s course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or
 - (c) the pursuit of A’s course of conduct was reasonable for the protection of A or another or for the protection of A’s or another’s property.
- (5) A person guilty of an offence under this section is liable–

- (a) on summary conviction, to imprisonment for 12 months, or the statutory maximum fine, or both; or
 - (b) on conviction on indictment, to imprisonment for 5 years, or a fine, or both.
- (6) If on the trial on indictment of a person charged with an offence under this section the jury find the person not guilty of the offence charged, they may find the person guilty of an offence under section 92 or 92A.
- (7) The Supreme Court has the same powers and duties in relation to a person who is by virtue of subsection (6) convicted before it of an offence under section 92 or 92A as a Magistrates' Court would have on convicting the person of the offence.
- (8) This section is without prejudice to the generality of section 94.”.
- (14) In section 95(1)–
- (a) after “section 92” insert “, 92A,”;
 - (b) after the newly inserted “92A,” delete “or”;
 - (c) after “94” insert “or 94A”.
- (15) After section 95(8) insert–
- “(9) A court dealing with a person for an offence under this section may vary or discharge the order in question by a further order.”.
- (16) After section 95 insert–
- “Restraining orders on acquittal.**
- 95A(1) A court before which a person (“the defendant”) is acquitted of an offence may, if it considers necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.

- (2) Subsections (3) to (7) of section 95 apply to an order under this section as they apply to an order under that one.
- (3) Where the Court of Appeal allows an appeal against conviction it may remit the case to the Supreme Court to consider whether to proceed under this section.
- (4) Where—
 - (a) the Supreme Court allows an appeal against conviction; or
 - (b) a case remitted to the Supreme Court under subsection (3),

the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.

- (5) A person made subject to an order under this section has the same right of appeal against the order as if—
 - (a) he had been convicted of the offence in question before the court which made the order; and
 - (b) the order had been made under section 95.”.

(17) After section 97 insert—

“Harassment of a person in his home

Offence of harassment etc. of a person in his home.

97A(1) A person commits an offence if—

- (a) that person is present outside or in the vicinity of any premises that are used by any individual (“the resident”) as his dwelling;
- (b) that person is present there for the purpose (by his presence or otherwise) of representing to the resident or another individual (whether or not one who uses the premises as his dwelling), or of persuading the resident or such other individual—

- (i) that he should not do something that he is entitled or required to do, or
 - (ii) that he should do something that he is not under any obligation to do;
 - (c) that person—
 - (i) intends his presence to amount to the harassment of, or to cause alarm or distress to, the resident, or
 - (ii) knows or ought to know that his presence is likely to result in the harassment of, or to cause alarm or distress to, the resident; and
 - (d) the presence of that person—
 - (i) amounts to the harassment of, or causes alarm or distress to, any person falling within subsection (2), or
 - (ii) is likely to result in the harassment of, or to cause alarm or distress to, any such person.
- (2) A person falls within this subsection if he is—
- (a) the resident;
 - (b) a person in the resident's dwelling; or
 - (c) a person in another dwelling in the vicinity of the resident's dwelling.
- (3) The references in subsection (1)(c) and (d) to a person's presence are references to his presence either alone or together with that of any other persons who are also present.
- (4) For the purposes of this section a person (A) ought to know that his presence is likely to result in the harassment of, or to cause alarm or distress to, a resident if a reasonable person in possession of the same information would think that A's presence was likely to have that effect.

(5) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 4 on the standard scale, or to both.

(6) In this section “dwelling” has the same meaning as section 54.”.

3.(1) Part 7 of the Crimes Act 2011 is amended in accordance with the provisions of this section.

(2) For the heading to Part 7 substitute–

“HATRED OFFENCES AND INCREASE IN SENTENCES”

(3) In section 98(1) insert the following definitions–

(a) before the definition of “distribute”–

““age” means persons defined by reference to age, whether by reference to a particular age or range of ages;

“disability” means any physical and mental impairment;”;

(b) after the definition of “distribute”–

““hatred on the grounds of sexual orientation” means hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both);”.

(4) For the heading which appears after section 98(2) substitute–

“Racial hatred, religious hatred or hatred on the grounds of sexual orientation – Offences”

(5) In section 99(1) for paragraphs (a) and (b) substitute–

“(a) that person intends thereby to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation; or

- (b) having regard to all the circumstances racial hatred, religious hatred or hatred on the grounds of sexual orientation is likely to be stirred up thereby.”.
- (6) In section 99(3) after “racial hatred” insert–
 - “, religious hatred or hatred on the grounds of sexual orientation”.
- (7) In section 100(1) for paragraphs (a) and (b) substitute–
 - “(a) that person intends thereby to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation; or
 - (b) having regard to all the circumstances racial hatred, religious hatred or hatred on the grounds of sexual orientation is likely to be stirred up thereby.”.
- (8) In section 100(2) after “racial hatred” insert–
 - “, religious hatred or hatred on the grounds of sexual orientation”.
- (9) In section 101(1) for paragraphs (a) and (b) substitute–
 - “(a) that person intends thereby to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation; or
 - (b) having regard to all the circumstances, and taking the performance as a whole, racial hatred, religious hatred or hatred on the grounds of sexual orientation is likely to be stirred up thereby.”.
- (10) In section 101(2) after the words “not shown to have intended to stir up racial hatred,” insert–
 - “religious hatred or hatred on the grounds of sexual orientation.”.
- (11) In section 101(2)(c) after “racial hatred” insert–
 - “, religious hatred or hatred on the grounds of sexual orientation”.
- (12) In section 102(1) for paragraphs (a) and (b) substitute–

“(a) that person intends thereby to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation; or

(b) having regard to all the circumstances racial hatred, religious hatred or hatred on the grounds of sexual orientation is likely to be stirred up thereby.”.

(13) In section 102(2) after “racial hatred” insert–

“, religious hatred or hatred on the grounds of sexual orientation”.

(14) In section 103(1) for paragraphs (a) and (b) substitute–

“(a) that person intends thereby to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation; or

(b) having regard to all the circumstances racial hatred, religious hatred or hatred on the grounds of sexual orientation is likely to be stirred up thereby.”.

(15) In section 103(3) after “racial hatred,” insert–

“, religious hatred or hatred on the grounds of sexual orientation,”.

(16) In section 103(4) after the words “not shown to have intended to stir up racial hatred” insert–

“, religious hatred or hatred on the grounds of sexual orientation”.

(17) In section 103(4)(b) after “racial hatred” insert–

“, religious hatred or hatred on the grounds of sexual orientation”.

(18) In section 103(5) after the words “not shown to have intended to stir up racial hatred” insert–

“, religious hatred or hatred on the grounds of sexual orientation”.

(19) In section 103(5)(b) after “racial hatred” insert–

“, religious hatred or hatred on the grounds of sexual orientation”.

(20) In section 103(6) after “racial hatred” insert–

“, religious hatred or hatred on the grounds of sexual orientation”.

(21) In section 104(1) for paragraphs (a) and (b) substitute–

“(a) that person intends thereby to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation; or

(b) having regard to all the circumstances racial hatred, religious hatred or hatred on the grounds of sexual orientation is likely to be stirred up thereby.”.

(22) For section 104(3) substitute–

“(3) In proceedings for an offence under subsection (1) it is a defence for a person who is not shown to have intended to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation to prove that he was not aware of the content of the written material or recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.”.

(23) For the heading which appears after section 104(3) substitute–

“Racial hatred, religious hatred or hatred on the grounds of sexual orientation – Supplementary”.

(24) For the heading to section 111 substitute–

“Freedom of expression (religious).”.

(25) In section 111(2) insert “or” after the semicolon in paragraph (b).

(26) After section 111 insert–

“Freedom of expression (sexual orientation).

111A. Nothing in this Part is to be read or given effect in a way which prohibits–

- (a) discussion or criticism of sexual conduct or practices; or
- (b) urging persons to refrain from such conduct or practices,

and such discussion, criticism or urging shall not be taken of itself to be threatening, abusive or insulting or intended to stir up hatred.”.

(27) For the heading which appears after the newly inserted section 111A substitute–

“Aggravated offences”.

(28) In section 112(2)(b)(i) after “religious group” insert “, disability group, sexually orientated group or age group”.

(29) After section 112 insert–

“Meaning of “religiously aggravated”.

112A.(1) An offence is religiously aggravated for the purposes of this Part if–

- (a) at the time of committing the basic offence, or immediately before or afterwards, the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a religious group; or
- (b) the offence is motivated (wholly or partly) by hostility towards members of a religious group based on their membership of that group.

(2) For purposes of subsection (1)–

(a)–

“basic offence” means an offence mentioned in any of sections 113A(1), 114A(1), 115A(1) and 116A(1);

“membership”, in relation to a religious group, includes association with members of that group;

“presumed” means presumed by the offender;

“religious group” means a group of persons defined by reference to religious belief or lack of religious belief;

- (b) it is immaterial whether or not the offender’s hostility is also based, to any extent, on—
 - (i) the fact or presumption that any person or group of persons belongs to any racial group, disability group, sexually orientated group or age group, or
 - (ii) any other factor not mentioned in that paragraph.

Meaning of “disability aggravated”.

112B.(1) An offence is disability aggravated for the purposes of this Part if—

- (a) at the time of committing the basic offence, or immediately before or afterwards, the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a disability group; or
- (b) the offence is motivated (wholly or partly) by hostility towards members of a disability group based on their membership of that group.

(2) For purposes of subsection (1)—

(a)—

“basic offence” means an offence mentioned in any of sections 113B(1), 114B(1), 115B(1) and 116B(1);

“membership”, in relation to a disability group, includes association with members of that group;

“presumed” means presumed by the offender;

“disability group” means a group of persons defined by reference to any physical or mental impairment;

- (b) it is immaterial whether or not the offender’s hostility is also based, to any extent, on—
 - (i) the fact or presumption that any person or group of persons belongs to any racial group, religious group, sexually orientated group or age group, or
 - (ii) any other factor not mentioned in that paragraph.

Meaning of “aggravated by reason of sexual orientation”.

112C.(1) An offence is aggravated by reason of sexual orientation for the purposes of this Part if—

- (a) at the time of committing the basic offence, or immediately before or afterwards, the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a sexually orientated group; or
- (b) the offence is motivated (wholly or partly) by hostility towards members of a sexually orientated group based on their membership of that group.

(2) For purposes of subsection (1)—

(a)—

“basic offence” means an offence mentioned in any of sections 113C(1), 114C(1), 115C(1) and 116C(1);

“membership”, in relation to a sexually orientated group, includes association with members of that group;

“presumed” means presumed by the offender;

“sexually orientated group” means a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both) ;

- (b) it is immaterial whether or not the offender’s hostility is also based, to any extent, on–
 - (i) the fact or presumption that any person or group of persons belongs to any racial group, religious group, disability group or age group, or
 - (ii) any other factor not mentioned in that paragraph.

Meaning of “age aggravated”.

112D.(1) An offence is age aggravated for the purposes of this Part if–

- (a) at the time of committing the basic offence, or immediately before or afterwards, the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of an age group; or
- (b) the offence is motivated (wholly or partly) by hostility towards members of an age group based on their membership of that group.

(2) For purposes of subsection (1)–

(a)–

“basic offence” means an offence mentioned in any of sections 113D(1), 114D(1), 115D(1) and 116D(1);

“membership”, in relation to an age group, includes association with members of that group;

“presumed” means presumed by the offender;

“age group” means a group of persons defined by reference to age, whether by reference to a particular age or a range of ages and the reference to the age of a person (“A”) includes the apparent age of A.

- (b) it is immaterial whether or not the offender’s hostility is also based, to any extent, on—
 - (i) the fact or presumption that any person or group of persons belongs to any racial group, religious group, sexually orientated group or disability group, or
 - (ii) any other factor not mentioned in that paragraph.”.

(30) After section 113 insert—

“Religiously-aggravated assaults.

113A.(1) A person commits an offence under this section if that person commits—

- (a) an offence under section 166 or 167 (wounding with intent to do grievous bodily harm or malicious wounding);
- (b) an offence under section 176 (actual bodily harm); or
- (c) an offence under section 175 (common assault),

which is religiously aggravated for the purposes of this Part.

- (2) A person who commits an offence under subsection (1)(a) in relation to an offence under section 166 is liable on conviction on indictment to imprisonment for life.
- (3) A person who commits an offence under subsection (1)(a) in relation to an offence under section 167 or commits an offence under subsection (1)(b) is liable—

- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years, or to a fine, or both.
- (4) A person who commits an offence under subsection (1)(c) is liable—
- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years or to a fine, or both.

Disability-aggravated assaults.

113B.(1) A person commits an offence under this section if that person commits—

- (a) an offence under section 166 or 167 (wounding with intent to do grievous bodily harm or malicious wounding);
- (b) an offence under section 176 (actual bodily harm); or
- (c) an offence under section 175 (common assault),

which is disability aggravated for the purposes of this Part.

- (2) A person who commits an offence under subsection (1)(a) in relation to an offence under section 166 is liable on conviction on indictment to imprisonment for life.
- (3) A person who commits an offence under subsection (1)(a) in relation to an offence under section 167 or commits an offence under subsection (1)(b) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;

- (b) on conviction on indictment to imprisonment for 7 years, or to a fine, or both.
- (4) A person who commits an offence under subsection (1)(c) is liable–
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years or to a fine, or both.

Aggravated assaults by reason of sexual orientation.

- 113C.(1) A person commits an offence under this section if that person commits–
- (a) an offence under section 166 or 167 (wounding with intent to do grievous bodily harm or malicious wounding);
 - (b) an offence under section 176 (actual bodily harm); or
 - (c) an offence under section 175 (common assault),
which is aggravated by reason of sexual orientation for the purposes of this Part.
- (2) A person who commits an offence under subsection (1)(a) in relation to an offence under section 166 is liable on conviction on indictment to imprisonment for life.
 - (3) A person who commits an offence under subsection (1)(a) in relation to an offence under section 167 or commits an offence under subsection (1)(b) is liable–
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years, or to a fine, or both.

- (4) A person who commits an offence under subsection (1)(c) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years or to a fine, or both.

Age-aggravated assaults.

113D.(1) A person commits an offence under this section if that person commits—

- (a) an offence under section 166 or 167 (wounding with intent to do grievous bodily harm or malicious wounding);
- (b) an offence under section 176 (actual bodily harm); or
- (c) an offence under section 175 (common assault),

which is age aggravated for the purposes of this Part.

- (2) A person who commits an offence under subsection (1)(a) in relation to an offence under section 166 is liable on conviction on indictment to imprisonment for life.
- (3) A person who commits an offence under subsection (1)(a) in relation to an offence under section 167 or commits an offence under subsection (1)(b) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years, or to a fine, or both.
- (4) A person who commits an offence under subsection (1)(c) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;

- (b) on conviction on indictment to imprisonment for 2 years or to a fine, or both.”.

(31) After section 114 insert—

“Religiously-aggravated criminal damage.

114A.(1) A person commits an offence under this section if that person commits an offence under section 354 (Destroying or damaging property) which is religiously aggravated for the purposes of this Part.

(2) A person who commits an offence under this section is liable—

- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
- (b) on conviction on indictment to imprisonment for 14 years, or to a fine, or both.

(3) For the purposes of subsection (1), section 112A(1)(a) has effect as if the person to whom the property belongs (or is treated as belonging under section 353) were the victim of the offence.

Disability-aggravated criminal damage.

114B.(1) A person commits an offence under this section if that person commits an offence under section 354 (Destroying or damaging property) which is disability aggravated for the purposes of this Part.

(2) A person who commits an offence under this section is liable—

- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
- (b) on conviction on indictment to imprisonment for 14 years, or to a fine, or both.

(3) For the purposes of subsection (1), section 112B(1)(a) has effect as if the person to whom the property belongs (or is

treated as belonging under section 353) were the victim of the offence.

Aggravated criminal damage by reason of sexual orientation.

- 114C.(1) A person commits an offence under this section if that person commits an offence under section 354 (Destroying or damaging property) which is aggravated by reason of sexual orientation for the purposes of this Part.
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 14 years, or to a fine, or both.
- (3) For the purposes of subsection (1), section 112C(1)(a) has effect as if the person to whom the property belongs (or is treated as belonging under section 353) were the victim of the offence.

Age-aggravated criminal damage.

- 114D.(1) A person commits an offence under this section if that person commits an offence under section 354 (Destroying or damaging property) which is age aggravated for the purposes of this Part.
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 14 years, or to a fine, or both.
- (3) For the purposes of subsection (1), section 112D(1)(a) has effect as if the person to whom the property belongs (or is treated as belonging under section 353) were the victim of the offence.”.

(32) After section 115 insert–

“Religiously-aggravated public order offences.

115A.(1) A person commits an offence under this section if that person commits an offence under section 58 (Fear or provocation of violence) which is religiously aggravated for the purposes of this Part.

(2) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;

(b) on conviction on indictment to imprisonment for 2 years, or to a fine, or both.

Disability-aggravated public order offences.

115B.(1) A person commits an offence under this section if that person commits an offence under section 58 (Fear or provocation of violence) which is disability aggravated for the purposes of this Part.

(2) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;

(b) on conviction on indictment to imprisonment for 2 years, or to a fine, or both.

Aggravated public order offences by reason of sexual orientation.

115C.(1) A person commits an offence under this section if that person commits an offence under section 58 (Fear or provocation of violence) which is aggravated by reason of sexual orientation for the purposes of this Part.

- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years, or to a fine, or both.

Age-aggravated public order offences.

115D.(1) A person commits an offence under this section if that person commits an offence under section 58 (Fear or provocation of violence) which is age aggravated for the purposes of this Part.

- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years, or to a fine, or both.”.

(33) In section 116-

- (a) In subsection (1)—
 - (i) after paragraph (c) delete “or”;
 - (ii) after paragraph (c) insert—
 - “(ca) an offence under section 92A (Stalking);”
 - (iii) in paragraph (d) for the “,” appearing after “(Putting people in fear of violence)” substitute “,”;
 - (iv) after paragraph (d) insert—
 - “(e) an offence under section 94A (Stalking involving fear of violence or serious alarm or distress); or

- (f) an offence under section 97A (Harassment of a person in his home),”.
- (b) After subsection (5) insert–
 - “(5A) A person who commits an offence under subsection (1)(ca) is liable–
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.”.
 - (c) After subsection (6) insert–
 - “(6A) A person who commits an offence under subsection (1)(e) is liable–
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years.
 - (6B) A person who commits an offence under subsection (1)(f) is liable–
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.”.
 - (d) In subsection (8) for “91” substitute “92”.

(34) After section 116 insert–

“Religiously-aggravated harassment etc.

116A.(1) A person commits an offence under this section if that person commits–

- (a) an offence under section 88 (Intentional harassment, alarm or distress);
 - (b) an offence under section 89 (Harassment, alarm or distress);
 - (c) an offence under section 92 (Harassing conduct);
 - (ca) an offence under section 92A (Stalking);
 - (d) an offence under section 94 (Putting people in fear of violence);
 - (e) an offence under section 94A (Stalking involving fear of violence or serious alarm or distress); or
 - (f) an offence under section 97A (Harassment of a person in his home),

which is religiously aggravated for the purposes of this Part.
- (2) A police officer may arrest a person without warrant if–
- (a) the person engages in conduct which the officer reasonably suspects to constitute an offence falling within subsection (1);
 - (b) the officer warns the person to stop; and
 - (c) the person engages in further such, or similar, conduct immediately or shortly after the warning.
- (3) A person who commits an offence under subsection (1)(a) is liable–
- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years.

- (4) A person who commits an offence under subsection (1)(b) is liable on summary conviction to a fine at level 4 on the standard scale.
- (5) A person who commits an offence under subsection (1)(c) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.
- (5A) A person who commits an offence under subsection (1)(ca) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.
- (6) A person who commits an offence under subsection (1)(d) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years.
- (6A) A person who commits an offence under subsection (1)(e) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years.
- (6B) A person who commits an offence under subsection (1)(f) is liable—

- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.
- (7) For the purpose of subsection (1)(a) and (b), section 112A(1)(a) has effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.
- (8) Section 95 (Restraining orders on conviction) has effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 92 or 94 included a reference to the religiously aggravated offence under this section.

Disability-aggravated harassment etc.

116B.(1) A person commits an offence under this section if that person commits—

- (a) an offence under section 88 (Intentional harassment, alarm or distress);
- (b) an offence under section 89 (Harassment, alarm or distress);
- (c) an offence under section 92 (Harassing conduct);
- (ca) an offence under section 92A (Stalking);
- (d) an offence under section 94 (Putting people in fear of violence);
- (e) an offence under section 94A (Stalking involving fear of violence or serious alarm or distress); or
- (f) an offence under section 97A (Harassment of a person in his home),

which is disability aggravated for the purposes of this Part.

- (2) A police officer may arrest a person without warrant if—
 - (a) the person engages in conduct which the officer reasonably suspects to constitute an offence falling within subsection (1);
 - (b) the officer warns the person to stop; and
 - (c) the person engages in further such, or similar, conduct immediately or shortly after the warning.
- (3) A person who commits an offence under subsection (1)(a) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years.
- (4) A person who commits an offence under subsection (1)(b) is liable on summary conviction to a fine at level 4 on the standard scale.
- (5) A person who commits an offence under subsection (1)(c) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.
- (5A) A person who commits an offence under subsection (1)(ca) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.

- (6) A person who commits an offence under subsection (1)(d) is liable—
- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years.
- (6A) A person who commits an offence under subsection (1)(e) is liable—
- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years.
- (6B) A person who commits an offence under subsection (1)(f) is liable—
- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.
- (7) For the purpose of subsection (1)(a) and (b), section 112B(1)(a) has effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.
- (8) Section 95 (Restraining orders on conviction) has effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 92 or 94 included a reference to the disability aggravated offence under this section.

Aggravated harassment etc. by reason of sexual orientation.

- 116C.(1) A person commits an offence under this section if that person commits—

- (a) an offence under section 88 (Intentional harassment, alarm or distress);
- (b) an offence under section 89 (Harassment, alarm or distress);
- (c) an offence under section 92 (Harassing conduct);
- (ca) an offence under section 92A (Stalking);
- (d) an offence under section 94 (Putting people in fear of violence);
- (e) an offence under section 94A (Stalking involving fear of violence or serious alarm or distress); or
- (f) an offence under section 97A (Harassment of a person in his home),

which is aggravated by reason of sexual orientation for the purposes of this Part.

- (2) A police officer may arrest a person without warrant if–
 - (a) the person engages in conduct which the officer reasonably suspects to constitute an offence falling within subsection (1);
 - (b) the officer warns the person to stop; and
 - (c) the person engages in further such, or similar, conduct immediately or shortly after the warning.
- (3) A person who commits an offence under subsection (1)(a) is liable–
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years.

- (4) A person who commits an offence under subsection (1)(b) is liable on summary conviction to a fine at level 4 on the standard scale.
- (5) A person who commits an offence under subsection (1)(c) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.
- (5A) A person who commits an offence under subsection (1)(ca) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.
- (6) A person who commits an offence under subsection (1)(d) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years.
- (6A) A person who commits an offence under subsection (1)(e) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years.
- (6B) A person who commits an offence under subsection (1)(f) is liable—

- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.
- (7) For the purpose of subsection (1)(a) and (b), section 112C(1)(a) has effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.
- (8) Section 95 (Restraining orders on conviction) has effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 92 or 94 included a reference to the aggravated offence by reason of sexual orientation under this section.

Age-aggravated harassment etc.

116D.(1) A person commits an offence under this section if that person commits—

- (a) an offence under section 88 (Intentional harassment, alarm or distress);
- (b) an offence under section 89 (Harassment, alarm or distress);
- (c) an offence under section 92 (Harassing conduct);
- (ca) an offence under section 92A (Stalking);
- (d) an offence under section 94 (Putting people in fear of violence);
- (e) an offence under section 94A (Stalking involving fear of violence or serious alarm or distress); or
- (f) an offence under section 97A (Harassment of a person in his home),

which is age aggravated for the purposes of this Part.

(2) A police officer may arrest a person without warrant if—

- (a) the person engages in conduct which the officer reasonably suspects to constitute an offence falling within subsection (1);
- (b) the officer warns the person to stop; and
- (c) the person engages in further such, or similar, conduct immediately or shortly after the warning.

(3) A person who commits an offence under subsection (1)(a) is liable—

- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;

- (b) on conviction on indictment to imprisonment for 7 years.
- (4) A person who commits an offence under subsection (1)(b) is liable on summary conviction to a fine at level 4 on the standard scale.
- (5) A person who commits an offence under subsection (1)(c) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.
- (5A) A person who commits an offence under subsection (1)(ca) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.
- (6) A person who commits an offence under subsection (1)(d) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years.
- (6A) A person who commits an offence under subsection (1)(e) is liable—
 - (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 7 years.

- (6B) A person who commits an offence under subsection (1)(f) is liable—
- (a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
 - (b) on conviction on indictment to imprisonment for 2 years.
- (7) For the purpose of subsection (1)(a) and (b), section 112D(1)(a) has effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.
- (8) Section 95 (Restraining orders on conviction) has effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 92 or 94 included a reference to the age aggravated offence under this section.”.
- (35) In section 117(1) for “116” substitute “116D”.
- (36) In section 117(2)—
- (a) after “116(1)(d)” insert “, 116A(1)(d), 116B(1)(d), 116C(1)(d) or 116D(1)(d) respectively”;
 - (b) after “116(1)(c)” insert “, 116A(1)(c), 116B(1)(c), 116C(1)(c) or 116D(1)(c) respectively”.
- (37) After section 117 insert—

“Increase in sentences

Increase in sentences for racial, religious, disability or age aggravation or aggravation related to sexual orientation.

117A(1). This section applies where the court is considering the seriousness of an offence other than one under sections 113 to 116D of this Act.

- (2) If the offence was racially, religiously, disability or age aggravated or aggravated by reason of sexual orientation, the court—
 - (a) must treat that fact as an aggravating factor; and
 - (b) must state in open court that the offence was so aggravated.”.

4.(1) Part 13 of the Crimes Act 2011 is amended in accordance with the provisions of this section.

- (2) In section 305(1) after the definition of “qualifying offender” insert—

“qualifying relevant offender” has the meaning given by section 315A;”

- (3) In section 307(5)(d) for “306(1)(d)” substitute “306(1)(e)”.

- (4) After section 315 insert—

“Review of indefinite notification requirements: qualifying relevant offender

315A.(1) A qualifying relevant offender may apply to the Magistrates’ Court for a determination that the qualifying relevant offender is no longer subject to the indefinite notification requirements (“an application for review”).

- (2) A qualifying relevant offender means a relevant offender who, on the date on which he makes the application for review, is—
 - (a) subject to the indefinite notification requirements; and

- (b) not subject to a sexual offences prevention order under section 326(1) or an interim sexual offences prevention order under section 330(3).
- (3) The “indefinite notification requirements” means the notification requirements of this Part for an indefinite period by virtue of–
 - (a) section 306(1); or
 - (b) a notification order made under section 321(4).

Review of indefinite notification requirements: application for review and qualifying dates

- 315B.(1) An application for review must be in writing and may be made on or after the qualifying date or, as the case may be, the further qualifying date.
- (2) The qualifying date is–
 - (a) where the qualifying relevant offender was 18 or over on the relevant date, the day after the end of the 15 year period beginning with the day on which the qualifying relevant offender gives the relevant notification; or
 - (b) where the qualifying relevant offender was under 18 on the relevant date, the day after the end of the 8 year period beginning with the day on which the qualifying relevant offender gives the relevant notification.
 - (3) Subject to subsections (4) and (6), the further qualifying date is the day after the end of the 8 year period beginning with the day on which the Magistrates’ Court makes a determination under section 315C to require a qualifying relevant offender to remain subject to the indefinite notification requirements.
 - (4) Subsection (5) applies if the Magistrates’ Court, when making a determination under section 315C to require a qualifying relevant offender to remain subject to the indefinite notification requirements, considers that the risk of sexual

harm posed by a qualifying relevant offender is sufficient to justify a continuation of those requirements after the end of the 8 year period beginning with the day on which the determination is made.

- (5) If this subsection applies, the Magistrates' Court may make a determination to require a qualifying relevant offender to remain subject to the indefinite notification requirements for a period which may be no longer than the 15 year period beginning with the day on which the determination is made.
- (6) If subsection (5) applies, the further qualifying date is the day after the end of the period determined under that subsection.
- (7) The Magistrates' Court within 14 days of receipt of an application for review—
 - (a) must give an acknowledgement of receipt of the application to the qualifying relevant offender, and
 - (b) must notify a responsible body that the application has been made.
- (8) Where a responsible body is notified of the application for review under subsection 7(b) and holds information which it considers to be relevant to the application, the responsible body must give such information to the Magistrates' Court within 28 days of the notification.
- (9) In this section “the relevant notification” means the first notification which the relevant offender gives under section 308, 309 or 310 when he is first released after—
 - (a) being remanded in or committed to custody by an order of a court in relation to the conviction for the offence giving rise to the indefinite notification requirements;
 - (b) serving a sentence of imprisonment or a term of service detention in relation to that conviction;
 - (c) being detained in hospital in relation to that conviction.

- (10) For the purpose of this Part–
- (a) “responsible body” means the Probation Officer, the Minister and the Commissioner of Police;
 - (b) “risk of sexual harm” means a risk of physical or psychological harm to the public in Gibraltar or any particular members of the public caused by the qualifying relevant offender committing one or more of the offences lists in Schedule 3.

Review of indefinite notification requirements: determination of application for review

315C.(1) The Magistrates’ Court must, within 6 weeks of the latest date on which anybody to which a notification has been given under section 315B(7)(b) may give information under section 315B(8)–

- (a) determine the application for review; and
 - (b) give notice of the determination to the qualifying relevant offender.
- (2) For the purposes of the determination of an application for review under this section, a qualifying relevant offender must satisfy the Magistrates’ Court that it is not necessary for the purpose of protecting the public or any particular members of the public from sexual harm for the qualifying relevant offender to remain subject to the indefinite notification requirements.
- (3) If the Magistrates’ Court determines under this section that the qualifying relevant offender should remain subject to the indefinite notification requirements, the notice of determination must–
- (a) contain a statement of reasons for the determination; and

- (b) inform the qualifying relevant offender that he may appeal the determination in accordance with section 315E.
- (4) If the Magistrates' Court determines under this section that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of receipt of the notice of determination.
- (5) The Minister may by order amend the period in subsection (1).

Review of indefinite notification requirements: factors applying to determination under section 315C

315D.(1) In determining an application for review under section 315C, the Magistrates' Court must—

- (a) have regard to information (if any) received from a responsible body;
 - (b) consider the risk of sexual harm posed by the qualifying relevant offender and the effect of a continuation of the indefinite notification requirements on the offender; and
 - (c) take into account the matters listed in subsection (2).
- (2) The matters are—
- (a) the seriousness of the offence in relation to which the qualifying relevant offender became subject to the indefinite notification requirements;
 - (b) the period of time which has elapsed since the qualifying relevant offender committed the offence (or other offences);
 - (c) whether the qualifying relevant offender has committed any offence under section 315;

- (d) the age of the qualifying relevant offender at the qualifying date or further qualifying date;
- (e) the age of the qualifying relevant offender at the time the offence referred to in paragraph (a) was committed;
- (f) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the qualifying relevant offender at the time the offence was committed;
- (g) any assessment of the risk posed by the qualifying relevant offender which has been made by a responsible body;
- (h) any submission or evidence from a victim of the offence giving rise to the indefinite notification requirements;
- (i) any convictions or findings made by a court in countries outside Gibraltar in respect of the qualifying relevant offender for any offence listed in Schedule 3 other than the one referred to in paragraph (a);
- (j) any caution which the qualifying relevant offender has received for an offence in countries outside Gibraltar which is listed in Schedule 3;
- (k) any convictions or findings made by a court in countries outside Gibraltar in respect of the qualifying relevant offender for any offence listed in Schedule 4 where the behaviour of the qualifying relevant offender since the date of such conviction or finding indicates a risk of sexual harm;
- (l) any other submission or evidence of the risk of sexual harm posed by the qualifying relevant offender;
- (m) any evidence presented by or on behalf of the qualifying relevant offender which demonstrates that the qualifying relevant offender does not pose a risk of sexual harm; and

- (n) any other matter which the Magistrates' Court considers to be appropriate.
- (3) In this section, a reference to a conviction, finding or caution for an offence committed in a country outside Gibraltar means a conviction, finding or caution for an act which—
 - (a) constituted an offence under the law in force in the country concerned; and
 - (b) would have constituted an offence listed in Schedule 3 or Schedule 4 if it had been done in any part of Gibraltar.

Review of indefinite notification requirements: appeals.

- 315E.(1) A qualifying relevant offender may appeal against a determination of the Magistrates' Court under section 315C.
- (2) An appeal under this section may be made by complaint to the Supreme Court within the period of 21 days beginning with the day of receipt of the notice of determination.
 - (3) If the Supreme Court makes an order that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of the order.

Review of indefinite notification requirements: guidance.

- 315F.(1) The Minister may issue guidance to Magistrates' Court in relation to the determination by them of applications made under 315B.
- (2) The Minister may, from time to time, revise the guidance issued under subsection (1).
 - (3) The Minister must arrange for any guidance issued or revised under this section to be published in such manner as the Minister considers appropriate.”.

Amendment of the Criminal Procedure and Evidence Act 2011.

5.(1) The Criminal Procedure and Evidence Act 2011 is amended in accordance with this section.

(2) In section 12(1)(a) after “indictable offence” insert “or a Schedule 14 offence”.

(3) After section 12(4) insert—

“(5) In this section a Schedule 14 offence means an offence listed in Schedule 14.”.

(4) In section 690—

(a) delete subsection 690(5);

(b) delete “,or revised,” in subsection 690(6).

(5) After section 690 insert—

“Amendment or revision of codes of practice.

690A.(1) The Minister may at any time by order amend or revise the whole or any part of a code of practice.

(2) Where the Minister has made an order under subsection (1) the order containing the amendment or revision—

(a) must be published in the Gazette;

(b) must be laid before the Parliament at the next sitting following the date of the publication in the Gazette; and

(c) shall come into operation on such date as the Minister appoints therein.

(3) An order containing an amendment or revision under this section may include transitional or saving provisions.

- (4) If the Parliament within 30 days of the commencement of the next sitting, resolves to pass a motion disapproving of the amendment or revision—
- (a) any action undertaken in pursuance of the amendment or revision shall be deemed valid if undertaken prior to the resolution of the Parliament;
 - (b) the Minister shall as soon as practicable thereafter—
 - (i) revoke the amended or revised code of practice; and
 - (ii) (notwithstanding the provisions of subsections (1) and (2) of section 690) issue a code of practice in such terms as contained in the relevant code of practice prior to the relevant amendment or revision; and
 - (c) a code of practice issued under subsection (4)(b)(ii) shall be deemed to have come into operation on the date of the resolution of the Parliament.
- (5) Notwithstanding the generality of subsection (1), a code may be amended or revised so as to—
- (a) apply only in relation to one or more specified localities in Gibraltar;
 - (b) have effect only for a specified period;
 - (c) apply only in relation to specified offences or descriptions of offender.”.
- (6) After Schedule 13 insert—

“SCHEDULE 14

(Section 12)

**SUMMARY OFFENCES IN RESPECT OF WHICH AN
APPLICATION UNDER SECTION 12 MAY BE MADE**

1. An offence under section 49(3) of the Crimes Act 2011 (Wasteful employment of the Police)
2. An offence under section 58 of the Crimes Act 2011 (Fear or provocation of violence)
3. An offence under section 88 of the Crimes Act 2011 (Intentional harassment, alarm or distress)
4. An offence under section 89 of the Crimes Act 2011 (Harassment, alarm or distress)
5. An offence under section 92 of the Crimes Act 2011 (Harassing conduct)
6. An offence under section 96 of the Crimes Act 2011 (Offence of sending letters etc. with intent to cause distress or anxiety)
7. An offence under section 97 of the Crimes Act 2011 (Offence of improper use of public electronic communications network)
8. An offence under section 97A of the Crimes Act 2011 (Offence of harassment etc. of a person in his home)
9. An offence under section 132 of the Crimes Act 2011 (Dealing in offensive weapons)
10. An offence under section 62 of the Traffic Act 2005 (Driving, or being in charge, when under influence of drink or drugs)
11. An offence under section 63 of the Traffic Act 2005 (Driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit.”.

EXPLANATORY MEMORANDUM

This Bill amends Part 6, Part 7 and Part 13 of the Crimes Act 2011 and amends the Criminal Procedure and Evidence Act 2011 as follows–

Crimes Act 2011

This Bill amends Part 6 of the Crimes Act 2011 to introduce two new offences of stalking and stalking involving fear of violence or serious alarm or distress, under sections 92A and 94A. The amendments also set out new police powers to enter and search premises (on provision of a warrant – section 92B) in relation to the 92A offence. The new provisions are designed to address specific stalking behaviour as opposed to harassment more generally.

The Bill also amends other sections within Part 6 and introduces new sections on injunctions to protect persons from harassment, restraining orders on acquittal and a new offence of harassment of a person in his home (new sections 93A, 95A and 97A respectively). These amendments bring Gibraltar legislation on harassment on par with that in the United Kingdom.

This Bill amends Part 7 of the Crimes Act 2011 to extend the offences in sections 99 to 104 to include hatred on the grounds of sexual orientation and makes a new provision under section 117A to provide for increase in sentences for racial aggravation and aggravation related to religious belief, sexual orientation, disability and age. The Bill further amends the offence of racially aggravated harassment to include the new offences of stalking, stalking involving fear of violence or serious alarm or distress and of harassment of a person in his home. It also extends racially aggravated offences under sections 113 to 116 to include offences aggravated by reason of religion, disability, sexual orientation and age.

This Bill amends Part 13 of the Crimes Act to remedy an incompatibility with a Convention right in relation to the indefinite notification requirements contained in section 307(1) of the Crimes Act 2011.

Criminal Procedure and Evidence Act 2011

Section 12 of the Criminal Procedure and Evidence Act 2011 limits the making of an application for a search warrant to investigations into indictable offences. This Bill amends that requirement so as to allow for such warrants to also be sought in relation to a list of summary offences which are included in a new Schedule 14 to the Criminal Procedure and Evidence Act 2011.

This Bill amends section 690 and introduces a new section 690A which changes the procedure that needs to be followed with respect to amendments or revisions to be made to the codes of practice.

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