

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4979 GIBRALTAR Thursday 21st July 2022

B. 13/22

BILL

FOR

AN ACT to amend the Crimes Act 2011.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Crimes (Amendment) Act 2022.

Commencement.

2. This Act comes into operation on the day of publication.

Amendment to the Crimes Act 2011.

3. The Crimes Act 2011 is amended by inserting the following sections after section 315F-

“Review of notification requirements: cases where the victim was 16 or over when the offence was committed and the activity was consensual.

315G.(1) A qualifying relevant offender may apply to the Magistrates’ Court for a determination in respect of one or more qualifying offences (“an application for review”).

(2) Upon an application under subsection (1), the Magistrates’ Court must determine that the qualifying relevant offender –

- (a) is no longer subject to the notification requirements;
- (b) shall be subject to the notification requirements for such a reduced period as it stipulates; or
- (c) shall remain subject to the notification requirement for the full period prescribed by section 307(1) (the “full period”),

in respect of the qualifying offence or offences upon which the application is based.

- (3) A determination under subsection (2) only applies in respect of the qualifying offence for which it was made and does not prevent the qualifying relevant offender from being subject to the notification requirements by virtue of any other offence.
- (4) A qualifying offence means an offence under sections 228 to 231.
- (5) For the purposes of sections 315G to 315M, a qualifying relevant offender means a relevant offender who –
 - (a) on the date on which he makes the application for review under section 315G, is not subject to a sexual offences prevention order under section 326(1) or an interim sexual offences prevention order under section 330(3); and
 - (b) committed the qualifying offence against a victim who was 16 or over when it was committed and the Magistrates' Court is satisfied that the victim consented to the activity upon which the conviction was based.
- (6) For the purposes of subsection (5)(b), “consent” has the meaning given to it by sections 301 to 303, but consent shall not be deemed to have been absent by virtue only of the fact that the qualifying relevant offender was in a position of trust in relation to the victim.

Review of notification requirements: application for review.

315H.(1) An application for review under section 315G must be made in writing.

- (2) 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.
- (3) Where a responsible body is notified of the application for review under subsection (2)(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.
- (4) In this section a “responsible body” means the Probation Officer, the Minister and the Commissioner of Police.

Review of notification requirements: determination of application for review.

315L.(1) The Magistrates' Court must, within 6 weeks of the latest date on which anybody to which a notification has been given under section 315H(2)(b) may give information under section 315H(3)–

- (a) determine the application for review under section 315G; and
- (b) give notice of the determination to the qualifying relevant offender.

(2) The Magistrates' Court must not make a determination –

- (a) under section 315G(2)(a), unless satisfied 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 notification requirements in respect of the qualifying offence upon which the application is based;
- (b) under section 315G(2)(b), unless satisfied 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 notification requirements for the full period in respect of the qualifying offence upon which the application is based.

(3) If the Magistrates' Court makes a determination under section 315G(2)(a), the qualifying relevant offender ceases to be subject to the notification requirements in respect of the qualifying offence upon which the application is based on the date of receipt of the notice of determination.

(4) If the Magistrates' Court makes a determination under section 315G(2)(b), the qualifying relevant offender shall be subject to the notification requirements for the period so determined in respect of the qualifying offence upon which the application is based.

(5) If the Magistrates' Court makes a determination under section 315G(2)(c), 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 315K.

Review of notification requirements: factors applying to determinations under section 315G.

315J. In determining an application for review under section 315G, 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 the continuation of the notification requirements on the offender; and
- (c) take into account the matters set out in section 315D(2) (a), (b), (c), (g), (h), (l), (m) and (n).

Review of notification requirements: appeals.

315K(1) A qualifying relevant offender may appeal against a determination of the Magistrates' Court under section 315G.

- (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 notification requirements, the qualifying relevant offender ceases to be subject to the notification requirements in respect of the offence for which it was made on the date of the order.
- (4) If the Supreme Court makes an order that a qualifying relevant offender should not remain subject to the notification requirements for the full period, the qualifying relevant offender shall be subject to the notification requirements for the period so determined in respect of the offence for which it was made.
- (5) An order by the Supreme Court only applies in respect of the qualifying offence for which it was made and does not prevent the qualifying relevant offender from being subject to the notification requirements by virtue of any other offence.

Review of indefinite notification requirements: guidance.

315L.(1) The Minister may issue guidance to the Magistrates' Court in relation to the determination by them of applications made under section 315G.

- (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.

Review of notification requirements: successive applications under section 315G.

315M. An application under section 315G may not be made—

- (a) earlier than 12 months from the date of the last application made by the qualifying relevant offender in respect of the qualifying relevant offence to which it relates; and
- (b) notwithstanding that 12 months from the date of the last application made by the qualifying relevant offender in respect of the qualifying relevant offence to which it relates may have elapsed, if there has not been a material change in the relevant circumstances of the qualifying relevant offender since the date of the last application.”.

EXPLANATORY MEMORANDUM

This Bill amends the Crimes Act 2011 in order to allow an offender to apply to the Magistrates’ Court to cease to be subject to the notification requirements set out in Part 13 or to have the notification requirements reduced from the period fixed by section 307.

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