

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5006 GIBRALTAR Thursday 27th October 2022

B. 19/22

BILL

FOR

AN ACT to make new provision for on the spot penalties for disorderly behaviour.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Crime (Disorderly Behaviour Penalty Notice) Act 2022 and comes into operation on the day appointed by the Minister by notice in the Gazette.

Interpretation.

2.(1) For the purposes of this Act “penalty offence” means an offence committed under any of the provisions mentioned in the first column of the Table set out in the Schedule to this Act (“the Table”) and described, in general terms, in the second column thereto.

(2) The Minister may, by Order published in the Gazette, amend an entry in the Table or add or remove an entry.

(3) An order under subsection (2) may make such amendment of any provision of this Act as the Minister considers appropriate in consequence of any change in the Table made by the order.

(4) In this Act—

“defaulter” has the meaning given in section 9(5);

“designated officer” means the clerk to the magistrates’ court or such other person as may be designated as such by the Minister by notice in the Gazette;

“Minister” means the Minister with responsibility for justice;

“penalty notice” means a notice offering the opportunity, by paying a penalty in accordance with this Act, to discharge any liability to be convicted of the offence to which the notice relates;

“registrable sum” has the meaning given in section 9(4).

Penalty notices and penalties.

3.(1) A constable who has reason to believe that a person aged 18 or over has committed a penalty offence may give him a penalty notice in respect of the offence.

(2) The Minister may by Order—

(a) amend subsection (1) by substituting for the age for the time being specified in that subsection a different age which is not lower than 10, and

(b) if that different age is lower than 18, make provision as follows—

(i) where a person whose age is lower than 18 is given a penalty notice, for a parent or guardian of that person to be notified of the giving of the notice, and

(ii) for that parent or guardian to be liable to pay the penalty under the notice.

(5) The provision which may be made by virtue of subsection (2)(b) includes provision amending, or applying (with or without modifications), this Act or any other enactment (whenever passed or made).

(6) The reference in subsection (1) to a constable giving a person a penalty notice shall include the penalty notice being served on that person by delivering it to him or by leaving it at his last known address or by sending it to him by registered post.

Amount of penalty and form of penalty notice

4.(1) The penalty payable in respect of a penalty offence is such amount as the Minister may specify by Order.

(2) The Minister may specify different amounts-

(a) for persons of different ages;

(b) for different offences.

(3) The Minister may not specify an amount which is more than a quarter of the amount of the maximum fine for which a person is liable on summary conviction of the offence.

(4) A penalty notice must—

- (a) state the alleged offence;
- (b) give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it;
- (c) specify the suspended enforcement period and explain its effect;
- (d) state the amount of the penalty;
- (e) state the designated officer to whom, and the address at which, the penalty may be paid;
- (f) inform the person to whom it is given of his right to ask to be tried for the alleged offence and explain how that right may be exercised;
- (g) include such other information as required by the Minister.

Effect of penalty notice.

5.(1) This section applies if a penalty notice is given to a person (“A”) under section 3.

(2) If A asks to be tried for the alleged offence, proceedings may be brought against him.

(3) Such a request must be made by a notice given by A—

- (a) in the manner specified in the penalty notice; and
- (b) before the end of the period of suspended enforcement (as to which see section 6).

(4) A request which is made in accordance with subsection (3) is referred to in this Act as a “request to be tried”.

(5) If, by the end of the suspended enforcement period—

- (a) the penalty has not been paid in accordance with this Act, and
- (b) A has not made a request to be tried,

a sum equal to one and a half times the amount of the penalty may be registered under section 9 for enforcement against A as a fine.

General restriction on proceedings.

6.(1) Proceedings for the offence to which a penalty notice relates may not be brought during the period of 21 days beginning with the date on which the notice was given (“the suspended enforcement period”).

(2) If the penalty is paid before the end of the suspended enforcement period, no proceedings may be brought for the offence.

(3) Subsection (1) does not apply if the person to whom the penalty notice was given has made a request to be tried.

Guidance.

7. The Minister may issue guidance—

- (a) about the exercise of the discretion given to constables by this Act;
- (b) about the issuing of penalty notices;
- (c) with a view to encouraging good practice in connection with the operation of provisions of this Act.

Payment of penalty.

8. If a person to whom a penalty notice is given decides to pay the penalty, he must pay it to the designated officer in such manner as may be specified in the notice.

Registration certificates.

9.(1) The Commissioner of Police may, in respect of any registrable sum, issue a certificate (a “registration certificate”) stating that the sum is registrable for enforcement against the defaulter as a fine.

(2) If the Commissioner of Police issues a registration certificate, he must cause it to be sent to the designated officer.

(3) A registration certificate must—

- (a) give particulars of the offence to which the penalty notice relates, and
- (b) state the name and last known address of the defaulter and the amount of the registrable sum.

(4) “Registrable sum” means a sum that may be registered under this section as a result of section 5(5).

(5) “Defaulter” means the person against whom that sum may be registered.

Registration of sums payable in default.

10.(1) If the designated officer receives a registration certificate, he must register the registrable sum for enforcement as a fine by entering it in the register of the magistrates’ court.

(2) The designated officer registering a sum under this section for enforcement as a fine, must give the defaulter notice of the registration.

(3) The notice must—

- (a) specify the amount of the sum registered, and
- (b) give the information with respect to the offence, and the authority for registration, which was included in the registration certificate under section 9.

(4) If a sum is registered in the magistrates' court as a result of this section, any enactment referring (in whatever terms) to a fine imposed, or other sum adjudged to be paid, on conviction by such a court applies as if the registered sum were a fine imposed by that court on the conviction of the defaulter on the date on which the sum was registered.

Enforcement of fines.

11.(1) In this section—

“fine” means a sum which is enforceable as a fine as a result of section 10; and

“proceedings” means proceedings for enforcing a fine.

(2) Subsection (3) applies if, in any proceedings, the defaulter claims that he was not the person to whom the penalty notice concerned was issued.

(3) The court may adjourn the proceedings for a period of not more than 28 days for the purpose of allowing that claim to be investigated.

(4) On the resumption of proceedings that have been adjourned under subsection (3), the court must accept the defaulter's claim unless it is shown, on a balance of probabilities, that he was the recipient of the penalty notice.

(5) The court may set aside a fine in the interests of justice.

(6) If the court does set a fine aside it must—

- (a) give such directions for further consideration of the case as it considers appropriate; or
- (b) direct that no further action is to be taken in respect of the allegation that gave rise to the penalty notice concerned.

Orders and regulations.

12.(1) Any power of the Minister to make an order or regulations under this Act includes—

- (a) power to make different provision for different cases, circumstances or areas, and

- (b) power to make incidental, supplementary, consequential, transitional or transitory provision or savings.

(2) The Minister may by regulation make provision for penalty notices with an education option, being penalty notices that also offer the opportunity to discharge any liability to be convicted of the offence to which the notice relates by completing an approved educational course, and paying the course fee.

(3) Regulations under this section may-

- (a) provide that the fee for completing an approved educational course may not be—
 - (i) less than an amount specified in the regulations, or
 - (ii) more than an amount so specified;
- (b) make provision for and in connection with the disclosure, for the purpose of running an educational course scheme, of relevant personal information between—
 - (i) a person who is involved in the provision of an educational course under the scheme,
 - (ii) the Commissioner of Police, and
 - (iii) any other person specified or described in the regulations;
- (c) make provision about the use of relevant personal information for that purpose;
- (d) place restrictions on the disclosure or use of relevant personal information;
- (e) provide for the effect of failing to apply, attend or complete an approved education course or pay the relevant course fee within a specified time.

SCHEDULE

Offence creating provision

Description of offence

Crimes Act 2011

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| Section 81 of the Crimes Act 2011 | Offensive conduct conducive to breaches of the peace |
| Section 82 of the Crimes Act 2011 | Making disturbances |
| Section 86 of the Crimes Act 2011 | Disorderly conduct in a police station |
| Section 89 of the Crimes Act 2011 | Harassment, alarm or distress (A penalty notice may not be issued where the offence is alleged to have been in domestic circumstances*) (A penalty notice may only be issued to a particular person once in relation to this offence) |
| Section 97 of the Crimes Act 2011 | Improper use of a public telecommunications network |
| Section 175 of the Crimes Act 2011 | Common assault (A penalty notice may not be issued where the offence is alleged to have been in domestic circumstances*) (A penalty notice may only be issued to a particular person once in relation to this offence) |
| Section 354 of the Crimes Act 2011 | Destroying or damaging property (where the damage to the property is valued at or under £300) |
| Section 397 of the Crimes Act 2011 | Theft (where the property is valued at or under £100) (A penalty notice may only be issued to a particular person once in relation to this offence) |
| Section 404 of the Crimes Act 2011 | Handling stolen goods (where the property is valued at or under £100) (A penalty notice may only be issued to a particular person once in relation to this offence) |
| Section 412 of the Crimes Act 2011 | Making off without payment |
| Section 506(1) or (2) of the Crimes Act 2011 | Possession of cannabis / cannabis resin (where the amount is equal to or below 20 grams) (A penalty notice may only be issued to a particular person once in relation to this offence) |
| Section 548 of the Crimes Act 2011 | Noise |
| Section 556(1)(b) of the Crimes Act 2011 | Throwing missiles |
| Section 558 of the Crimes Act 2011 | Intoxication in a public place |
| Section 559 of the Crimes Act 2011 | Disorderly or indecent conduct whilst intoxicated |
| Section 563 of the Crimes Act 2011 | Procuring alcohol for an intoxicated person |

Child and Young Persons (Alcohol, Tobacco and Gaming) 2006

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| Section 3 Child and Young Persons (Alcohol, Tobacco and Gaming) 2006 | Selling alcohol to persons under 18 years |
| Section 3A Child and Young Persons (Alcohol, Tobacco and Gaming) 2006 | Selling alcohol to persons under 18 years who are drunk |
| Section 6A Child and Young Persons (Alcohol, Tobacco and Gaming) 2006 | Breach of the peace in a public place (after consuming alcohol) |
| Section 7 Child and Young Persons (Alcohol, Tobacco and Gaming) 2006 | Buying alcohol for persons under 18 years |
| Section 7A Child and Young Persons (Alcohol, Tobacco and Gaming) 2006 | Buying alcohol for persons under 18 years who are drunk |

Explosives Act 1960

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| Section 9 Explosives Act 1960 | Throwing fireworks in a thoroughfare |
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Public Health Act 1950

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| Section 97 Public Health Act 1950 | Restriction on operation of loudspeakers on highways etc |
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* Domestic circumstances are where the person and the victim of the offence are personally connected in that (a) they are, or have been, married to each other; (b) they are, or have been, civil partners of each other; (c) they are living together, or have lived together, as if married or in a civil partnership; (d) they are, or have been, otherwise in an intimate personal relationship with each other; or (e) they are members of the same family.