

LEGAL NOTICE NO. 57 OF 2013.

**INTERPRETATION AND GENERAL CLAUSES ACT**

**CRIMES ACT 2011 (AMENDMENT) REGULATIONS 2013**

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act and for the purpose of transposing, in part, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, the Government has made the following Regulations—

**Title and commencement.**

1. These Regulations may be cited as the Crimes Act 2011 (Amendment) Regulations 2013 and come into operation on the day of publication.

**Amendment of Crimes Act.**

2. The Crimes Act 2011 (“the Act”) is amended in accordance with these Regulations.

**New sections 191A to 191C.**

3. After section 191 of the Act insert the following section—

**“Human Trafficking.**

191A.(1) A person “A” whose conduct amounts to the trafficking of another human being “V” commits an offence.

(2) For the purpose of subsection (1), a person’s conduct amounts to the trafficking of another human being when any of the following is done intentionally—

- (a) the recruitment of V;
- (b) the transportation or transfer of V whether into, within or out of Gibraltar, or any other country or territory;
- (c) the harbouring or reception of V;
- (d) the exchange or transfer of control over V,

by means of–

- (i) the threat or use of force;
- (ii) coercion;
- (iii) abduction;
- (iv) fraud or deception;
- (vi) the abuse of power or of a position of vulnerability;
- (vii) the giving or receiving of payments or benefits to achieve the consent of a person having control over V,

and for the purpose of exploitation.

- (3) For the purposes of subsection (2)(vi) a position of vulnerability means a situation in which V has no real or acceptable alternative but to submit to the abuse involved.
- (4) For the purposes of subsection (2) exploitation includes, but is not limited to–
  - (a) exploitation through the prostitution of V or through any other form of sexual exploitation;
  - (b) forced labour or services, including begging, slavery or practices similar to slavery;
  - (c) servitude;
  - (d) the exploitation of criminal activities;
  - (e) the removal of organs.
- (5) In a case to which this section applies, V shall not be capable of giving consent where any of the means described in subsection (2)(i) to (vii) has been used.

- (6) Where V is a child, the offence shall be made out even where none of the means set forth in subsection (2)(i) to (vii) has been used.
- (7) In this section “child” means any person below 18 years of age.
- (8) 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 a fine, or both.

**Aggravation of offence of human trafficking.**

191B. In considering the seriousness of an offence for the purpose of passing a sentence under section 191A, the court must treat any of the following as aggravating factors (that is to say, a factor that increases the seriousness of the offence)—

- (a) the offence was committed against a victim who was particularly vulnerable, which, in the context of this section, shall include at least child victims;
- (b) the offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime;
- (c) where the life of the victim was endangered, deliberately or by gross negligence;
- (d) the offence was committed by use of serious violence or has caused particularly serious harm to the victim;  
or
- (e) the offence was committed by a public official acting in the performance of his duties.

**Jurisdiction over offence.**

191C.(1) An act constitutes an offence under section 191A if it, wholly or in part, takes place in Gibraltar.

(2) Any act done by a person (“A”) in a place outside Gibraltar which if done in Gibraltar would constitute an offence under section 191A, constitutes an offence under the law of Gibraltar if any of the following conditions are met–

- (a) the first condition is that A is a Gibraltarian or a resident of Gibraltar;
- (b) the second condition is that A’s victim (“V”) is a Gibraltarian or a resident of Gibraltar;
- (c) the third condition is that the offence is committed for the benefit of a body corporate that is situate in Gibraltar.

(3) In subsection (2)–

“Gibraltarian” has the meaning given in the Gibraltarian Status Act; and

“resident of Gibraltar” means a person residing in Gibraltar with a valid permit of residence issued under section 18 or 19 of the Immigration, Asylum and Refugee Act.

**Lack of supervision not a defence.**

191D. Where an officer of a body corporate–

- (a) commits an offence under section 191A; and
- (b) the body corporate stood to benefit from the commission of that offence,

the body corporate may not, in its defence, rely on there having being a lack of supervision or control over the officer.”.

**Substitution of section 280.**

4. For section 280 of the Act substitute the following section–

**“Sex trafficking.**

280. In this Act, a reference to “sex trafficking” means conduct which involves the exploitation of a person for any sexual purposes and which amounts to an offence under section 191A, and “a conviction for sex trafficking” shall be construed accordingly.”.

**Repeal of sections 281 to 283.**

5. Sections 281, 282 and 283 of the Act are repealed.

**Consequential amendments.**

6.(1) In section 284 of the Act–

(a) in subsection (1) for the words “section 280, 281 or 282” substitute the words “section 191A, whether or not the conduct also amounts to a sex trafficking”;

(b) in subsection (5) for the words “sections 280 to 282” substitute the words “section 191A”.

(2) In section 285 of the Act in subsection (1), for the words “sections 280 to 282” substitute the words “section 191A”.

(3) In paragraph 10 of Schedule 4 to the Act, for the words “any of sections 280, 281 or 282” substitute the words “section 191A as read with section 280”.

Dated 4th April, 2013.

G H LICUDI QC,  
for the Government.

**EXPLANATORY MEMORANDUM**

These Regulations partly transpose Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.