

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4194 of 3rd September, 2015

LEGAL NOTICE NO. 140 OF 2015.

INTERPRETATION AND GENERAL CLAUSES ACT

CRIMES ACT 2011 (AMENDMENT) REGULATIONS 2015

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act, and for the purposes of transposing, in part, Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA, the Government has made the following Regulations-

Title.

1. These Regulations may be cited as the Crimes Act (Amendment) Regulations 2015.

Commencement.

2. These Regulations come into operation on 4 September 2015.

Amendment of the Crimes Act 2011.

3.(1) The Crimes Act 2011 (“the Act”) is amended in accordance with this regulation.

(2) In section 361(1) of the Act-

(a) in the definition of “computer system” after the word “data” insert the following-

“, as well as computer data stored, processed, retrieved or transmitted by that device or group of devices for the purposes of its or their operation, use, protection and maintenance”; and

(b) after the definition “internet” insert the following definition-

““person” means an entity having the status of legal person under Gibraltar law, or where applicable, the law of a Member State, but does not include-

- (i) the Government of Gibraltar,
- (ii) a Member State,
- (iii) a public body acting in the exercise of the Government of Gibraltar’s or a Member State’s authority, and
- (iv) a public international organisation;”.

(3) In section 366 of the Act-

- (a) in subsections (1) and (2), in both instances where “section 362, 364 or 365” appears substitute “section 362, 364, 365 or 366A”;
- (b) for subsection (3) substitute the following subsection-
 - “(3) A person commits an offence if he obtains or possesses any article-
 - (a) intending to use it to commit, or assist in the commission of, an offence under section 362, 364, 365 or 366A; or
 - (b) with a view to its being supplied for use to commit, or to assist in the commission of, an offence under section 362, 364, 365 or 366A.”; and
- (c) in subsection (4), after the words “in electronic form” insert “and a computer password, access code or similar data, other than in electronic, by which the whole or any part of a computer system is capable of being accessed”.

(4) Insert the following section after section 366 of the Act-

“Unauthorised acts causing, or creating risk of, serious damage.

- 366A.(1) A person commits an offence if-
- (a) the person does any unauthorised act in relation to a computer;
 - (b) at the time of doing the act the person knows that it is unauthorised;
 - (c) the act causes, or creates significant risk of, serious damage of a material kind; and
 - (d) the person intends by doing the act to cause serious damage of a material kind or is reckless as to whether such damage is caused.
- (2) Damage is of a material kind, as referred to in subsection (1), if it is damage to-
- (a) human welfare in any place;
 - (b) the environment of any place;
 - (c) the economy of Gibraltar or of any country; or
 - (d) the security of Gibraltar or the national security of any country.
- (3) For the purposes of subsection (2)(a) an act causes damage to human welfare only if it causes-
- (a) loss to human life;
 - (b) human illness or injury;
 - (c) disruption of a supply of money, food, water, energy or fuel;
 - (d) disruption of a system of communication;
 - (e) disruption of facilities for transport; or
 - (f) disruption of services relating to health.

- (4) It is immaterial for the purposes of subsection (2) whether or not an act causing damage does so directly or is the only or main cause of the damage.
- (5) In this section-
- (a) a reference to doing an act includes a reference to causing an act to be done;
 - (b) “act” includes a series of acts; and
 - (c) a reference to a country includes a reference to a territory, and to any place in, or part or region of, a country or territory.”.
- (5) In section 367(1)(b) of the Act for “section 362, 364 or 365” substitute “section 362, 364, 365 or 366A”.
- (6) In section 370 of the Act after subsection (1) insert the following subsection-
- “(1A) In relation to an offence under sections 362 to 367, where the defendant was outside Gibraltar at the time of the act constituting the offence, there is a significant link if-
- (a) the defendant was a Gibraltarian; and
 - (b) the act constituted an offence under the law of the country or territory in which it occurred.”.
- (7) In section 370 of the Act after subsection (3) insert the following subsection-
- “(3A) In relation to an offence under section 366A, any of the following is also a significant link with Gibraltar-
- (a) the defendant was in Gibraltar at the time when he did the unauthorised act or caused it to be done;
 - (b) that the unauthorised act was done in relation to a computer in Gibraltar;

- (c) that the unauthorised act caused, or created a significant risk of, serious damage of a material kind, within the meaning of section 366A, in Gibraltar.”.

(8) In section 384 of the Act after subsection (3) insert the following subsections-

“(3A) A person who commits an offence under section 366A, unless subsection (3B) applies, is liable on conviction on indictment, to imprisonment for a term not exceeding 14 years, or to a fine, or to both.

(3B) Where an offence under section 366A is committed as a result of an act causing or creating a significant risk of-

- (a) serious damage to human welfare of the kind mentioned in section 366A(3)(a) or section 366A(3)(b); or
- (b) serious damage to the security of Gibraltar or the national security of a country,

a person guilty of the offence is liable, on conviction on indictment, to imprisonment for life, or to a fine, or to both.”.

(9) In section 385 of the Act, in both instances where “section 362, 363, 364 or 365” appears, substitute “section 362, 363, 364, 365 or 366A”.

Dated 3 September, 2015.

G H LICUDI QC,
Minister with responsibility for Justice,
for the Government

EXPLANATORY MEMORANDUM

These Regulations transpose Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA.

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