

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4358 of 6th April, 2017



I ASSENT,
E DAVIS,
GOVERNOR.

6th April, 2017.



GIBRALTAR

No. 5 of 2017

AN ACT to amend the Crimes Act 2011.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Crimes (Amendment) Act 2017 and comes into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for different provisions and for different purposes.

Amendment of the Crimes Act (“disclosing private sexual photographs etc.”).

2. After section 97A of the Crimes Act 2011 (in Part 6 of that Act) insert the following sections-

“Disclosing private sexual photographs etc.

Disclosing private sexual photographs and films with intent to cause distress.

97B.(1) It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made-

- (a) without the consent of an individual who appears in the photograph or film, and
- (b) with the intention of causing that individual distress.

(2) But it is not an offence under this section for the person to disclose the photograph or film to the individual mentioned in subsection (1)(a) and (b).

(3) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.

(4) It is a defence for a person charged with an offence under this section to show that-

- (a) the disclosure was made in the course of, or with a view to, the publication of journalistic material,

- (b) he or she reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest; and,
 - (c) the disclosure was made to or by a person employed to regularly engage in gathering, processing, and disseminating news and information in the public interest.
- (5) It is a defence for a person charged with an offence under this section to show that-
 - (a) he or she reasonably believed that the photograph or film had previously been disclosed for reward, whether by the individual mentioned in subsection (1)(a) and (b) or another person, and
 - (b) he or she had no reason to believe that the previous disclosure for reward was made without the consent of the individual mentioned in subsection (1)(a) and (b).
- (6) A person is taken to have shown the matters mentioned in subsection (4) or (5) if-
 - (a) sufficient evidence of the matters is adduced to raise an issue with respect to it, and
 - (b) the contrary is not proved beyond reasonable doubt.
- (7) For the purposes of subsections (1) to (5)-
 - (a) “consent” to a disclosure includes general consent covering the disclosure, as well as consent to the particular disclosure, and
 - (b) “publication” of journalistic material means disclosure to the public at large or to a section of the public.

- (8) A person charged with an offence under this section is not to be taken to have disclosed a photograph or film with the intention of causing distress merely because that was a natural and probable consequence of the disclosure.
- (9) A person guilty of an offence under this section is liable-
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both), and
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine at level 5 on the standard scale (or both).
- (10) Section 97E makes special provision in connection with the operation of this section in relation to persons providing information society services.

Meaning of “disclose” and “photograph or film”.

97C.(1) The following apply for the purposes of section 97B, this section and section 97D.

- (2) A person “discloses” something to a person if, by any means, he or she gives or shows it to the person or makes it available to the person.
- (3) Something that is given, shown or made available to a person is disclosed-
 - (a) whether or not it is given, shown or made available for reward, and
 - (b) whether or not it has previously been given, shown or made available to the person.
- (4) “Photograph or film” means a still or moving image in any form that-

- (a) appears to consist of or include one or more photographed or filmed images, and
 - (b) in fact consists of or includes one or more photographed or filmed images.
- (5) The reference in subsection (4)(b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.
- (6) “Photographed or filmed image” means a still or moving image that-
 - (a) was originally captured by photography or filming, or
 - (b) is part of an image originally captured by photography or filming.
- (7) “Filming” means making a recording, on any medium, from which a moving image may be produced by any means.
- (8) References to a photograph or film include-
 - (a) a negative version of an image described in subsection (4), and
 - (b) data stored by any means which is capable of conversion into an image described in subsection (4).

Meaning of “private” and “sexual”.

97D.(1) The following apply for the purposes of section 97B.

- (2) A photograph or film is “private” if it shows something that is not of a kind ordinarily seen in public.
- (3) A photograph or film is “sexual” if-
 - (a) it shows all or part of an individual’s exposed genitals or pubic area,

- (b) it shows something that a reasonable person would consider to be sexual because of its nature, or
 - (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.
- (4) Subsection (5) applies in the case of-
- (a) a photograph or film that consists of or includes a photographed or filmed image that has been altered in any way,
 - (b) a photograph or film that combines two or more photographed or filmed images, and
 - (c) a photograph or film that combines a photographed or filmed image with something else.
- (5) The photograph or film is not private and sexual if-
- (a) it does not consist of or include a photographed or filmed image that is itself private and sexual,
 - (b) it is only private or sexual by virtue of the alteration or combination mentioned in subsection (4), or
 - (c) it is only by virtue of the alteration or combination mentioned in subsection (4) that the person mentioned in section 97B(1)(a) and (b) is shown as part of, or with, whatever makes the photograph or film private and sexual.

Gibraltar service providers: extension of liability.

97E.(1) This section applies where a service provider is established in Gibraltar (a “Gibraltar service provider”).

- (2) Section 97B applies to a Gibraltar service provider who-
- (a) discloses a photograph or film in an EEA state outside Gibraltar, and

- (b) does so in the course of providing information society services,
- as well as to a person who discloses a photograph or film in Gibraltar.
- (3) In the case of an offence under section 97B, as it applies to a Gibraltar service provider by virtue of sub-section (2)-
 - (a) proceedings for the offence may be taken in Gibraltar, and
 - (b) the offence may for all incidental purposes be treated as having been committed in Gibraltar.
 - (4) In this section and section 97B(10) “service provider” and “information society services” have the same meanings as in the Electronic Commerce Act 2001.”.

Amendment of the Crimes Act (meeting a child following sexual grooming etc.).

3.(1) In section 227(1)(a) of the Crimes Act 2011 (meeting a child following sexual grooming etc.), for “on at least 2 occasions” substitute “on one or more occasions”.

(2) In a case in which person A met or communicated with person B only once before the event mentioned in section 227(1)(a)(i) to (iii) of the Crimes Act 2011, an offence under that section is committed only if the meeting or communication took place after this section comes into force.

Amendment of the Crimes Act (“sexual communication with a child”)

4. After section 227 of the Crimes Act 2011 insert the following section-

“Sexual communication with a child

227A.(1) A person aged 18 or over (A) commits an offence if-

- (a) for the purpose of obtaining sexual gratification, A intentionally communicates with another person (B),
- (b) the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that is sexual, and
- (c) B is under 16 and A does not reasonably believe that B is 16 or over.

(2) For the purposes of this section, a communication is sexual if-

- (a) any part of it relates to sexual activity, or
- (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual;

and in paragraph (a) "sexual activity" means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.

(3) A person guilty of an offence under this section is liable-

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years."

Amendment of Schedule 3 to the Crimes Act ("sexual offences for purposes of Part 13")

5. In Schedule 3 to the Crimes Act 2011 after entry 19 insert-

"19A. An offence under section 227A (Sexual communication with a child)."

Passed by the Gibraltar Parliament on the 30th day of March, 2017.

P E MARTINEZ,
Clerk to the Parliament.