

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3957 of 11th October, 2012



I ASSENT,
ADRIAN JOHNS,
GOVERNOR.

11th October, 2012.



GIBRALTAR

No. 13 of 2012

AN ACT to amend the Criminal Procedure and Evidence Act 2011 and the Crimes Act 2011.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Act may be cited as the Criminal Justice (Amendment) Act 2012.

(2) This Act comes into operation on the day appointed by the Government.

(3) Different dates may be appointed under subsection (2) for different provisions.

Amendment of the Criminal Procedure and Evidence Act 2011.

2.(1) The Criminal Procedure and Evidence Act 2011 is amended as follows.

(2) In section 2(1) insert the following definitions—

(a) after the definition of “code of practice”—

““Collector of Customs” has the same meaning as “Collector” as defined in section 2 of the Imports and Exports Act, 1986;”;

(b) after the definition of “custody time limit”—

““customs officer” has the same meaning as in section 2 of the Imports and Exports Act, 1986;”;

(c) after the definition of “excluded material”—

““examination station” has the same meaning as in section 2 of the Imports and Exports Act, 1986;”.

(3) In section 170—

(a) in subsection (3)(a) for “(2)” substitute “(1)”;

(b) subsections (3) and (4) are renumbered as (2) and (3) respectively.

(4) For section 225 substitute—

“225. In any trial or inquiry in the Magistrates’ Court—

- (a) if the proceedings have been instituted by a police officer, any police officer may appear and conduct the prosecution, and
- (b) if the proceedings have been instituted by a customs officer, any customs officer may appear and conduct the prosecution,

whether or not he is the officer who laid the information.”.

- (5) In section 226 after “police” insert “or customs”.
- (6) In Part 12—
 - (a) delete section 241;
 - (b) in section 244(1) delete “241 or”;
 - (c) in section 244(4) delete “241 or”;
 - (d) delete section 245;
 - (e) delete section 246;
 - (f) in section 247(1)(a) delete “241,”;
 - (g) in section 247(4)(a) delete “241 or”;
 - (h) in section 248(5) delete “241,”;
 - (i) in section 249 delete “241,”;
 - (j) in section 251(1) for “3 cases” substitute “case”;
 - (k) in section 251(1) for “subsections (2), (3) and (4)” substitute “subsection (3)”;
 - (l) in section 251(2)—

- (i) for the introductory words substitute “The things referred to in subsection (3)(b) are where the defendant—”
 - (ii) delete paragraphs (a) and (b);
 - (m) in section 251(3) for “The second case is where” substitute “Where”;
 - (n) delete section 251(4);
 - (o) delete section 251(7);
 - (p) delete section 251(9);
 - (q) in section 251(12)-
 - (i) in (a) delete “241 or”;
 - (ii) in the definition of “updated defence statement” for “245” substitute “244”;
 - (iii) delete the definition of “witness notice”;
 - (iv) in (c) after 243(3) insert “and section 266A”;
 - (r) in section 252(1) for 241, 242, 244, 245 or 246” substitute “242 or 244”.
- (7) After section 266 insert—

“Notice of alibi.

266A.(1) On a trial on indictment the defendant shall not without the leave of the court adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi.

(2) Without prejudice to subsection (1), on any such trial the defendant shall not, without the leave of the court, call any other person to give such evidence unless—

- (a) the notice under that subsection includes the name and address of the witness or, if the name or address is not known to the defendant at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness;
- (b) if the name or the address is not included in that notice, the court is satisfied that the defendant, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;
- (c) if the name or the address is not included in that notice, but the defendant subsequently discovers the name or address or receives other information which might be of material assistance in finding the witness, he forthwith gives notice of the name, address or other information, as the case may be; and
- (d) if the defendant is notified by or on behalf of the prosecutor that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information which is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

(3) The court shall not refuse leave under this section if it appears to the court that the defendant was not informed of the requirements of this section in accordance with any rules made under this Act.

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is given in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the defendant by his solicitor shall, unless the contrary is proved, be deemed to be given with the authority of the defendant.

(6) A notice under subsection (1) shall either be given in court during, or at the end of, the proceedings at which he is committed for trial for the offence concerned or is sent to the Supreme Court

for trial under Part 9 or be given in writing to the prosecutor, and a notice under paragraph (c) or (d) of subsection (2) shall be given in writing to the prosecutor.

(7) A notice required by this section to be given to the prosecutor may be given by delivering it to him, or by leaving it at his office, or by sending it in a registered letter or by the recorded delivery service addressed to him at his office.

(8) In this section—

“evidence in support of an alibi” means evidence tending to show that by reason of the presence of the defendant at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission; and

“the prescribed period” means the period of seven days from the end of the proceedings mentioned in subsection (6).

(9) In computing the said period a Sunday, Christmas Day, Good Friday, a day which is a bank or public holiday under section 58 of the Interpretation and General Clauses Act or a day appointed for public thanksgiving or mourning shall be disregarded.

(10) The requirements set out in this section are in addition to those set out in sections 239 to 252.”

(8) Sections 359 to 364 are deleted.

(9) In the definition of “witness anonymity order” in section 427(1) for “section 471” substitute “section 469”.

(10) For section 433(1) substitute—

“(1) For the purposes of this section—

(a) a witness in criminal proceedings is a “child witness” if he is under the age of 18 (whether or not he is an eligible witness by reason of any other provision of section 428 or 429);

- (b) a child witness is “in need of special protection” if the offence (or any of the offences) to which the proceedings relate is a sexual offence or an offence of violence.”.

- (11) In section 434 after subsection (4) insert—

“(5) For the purposes of this section a qualifying witness is “in need of special protection” if the offence (or any of the offences) to which the proceedings relate is a sexual offence or an offence of violence.”.

- (12) In section 695 for subsection (2) substitute—

“(2) The Minister may by order, after consultation with the Minister for Finance, declare modifications to the manner in which provisions of this Act and the Codes of Practice apply to customs officers including in relation to the harmonisation of the provisions with the Imports and Exports Act, 1986.”.

Amendment of the Crimes Act 2011.

- 3.(1) The Crimes Act 2011 is amended as follows.

- (2) In section 113—

- (a) in subsection (1)(a) for the words in parenthesis substitute “(wounding with intent to do grievous bodily harm or malicious wounding)”;

- (b) for subsections (2) and (3) substitute—

“(2) A person who commits an offence under subsection (1)(a) in relation to an offence under section 166 is liable on conviction on indictment to imprisonment for life.

(3) A person who commits an offence under subsection (1)(a) in relation to an offence under section 167 or commits an offence under subsection (1)(b) 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 7 years, or to a fine, or both.
- (4) A person who commits an offence under subsection (1)(c) 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 2 years, or to a fine, or both.”.
- (3) In section 124(1) for “subsection (4)” substitute “subsection (3)”.
- (4) In section 176(a) for “6 months” substitute “12 months”.
- (4A) After section 266 insert the following—

“Pornographic performances involving children

Pornographic performances involving children.

266A.(1) A person (A) commits an offence if—

- (a) he intentionally causes, encourages or assists another person (B) to participate in a pornographic performance, in any part of the world; and
 - (b) either—
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over; or
 - (ii) B is under 13.
- (2) A person (A) commits an offence if—
- (a) he intentionally uses force, threats (whether or not relating to violence) or any other form of coercion to

force another person (B) to participate in a pornographic performance, in any part of the world; or

- (b) he intentionally causes, encourages, assists or coerces another person (B) to participate in a pornographic performance, in any part of the world and he does so for or in the expectation of payment for himself or another person;

and

- (c) either—

- (i) B is under 18, and A does not reasonably believe that B is 18 or over; or

- (ii) B is under 13.

- (3) A person (A) commits an offence if—

- (a) he knowingly attends a pornographic performance in any part of the world involving the participation of another person (B); and

- (b) either—

- (i) B is under 18, and A does not reasonably believe that B is 18 or over; or

- (ii) B is under 13.

- (4) A person who commits an offence under subsection (1), (2) or (3) 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.

- (5) In this section—

“payment” has the same meaning as in section 262(2);

“pornographic performance” means a live exhibition aimed at an audience, including by means of information and communication technology, of:

- (i) a child engaged in real or simulated sexually explicit conduct; or
- (ii) a child and is indecent.”.

(5) In section 306(1)–

- (a) in paragraph (c) delete “or”;
- (b) for the full-stop at the end of paragraph (d) substitute “; or”;
- (c) after paragraph (d) insert–

“(e) released from imprisonment, where the conviction took place before the coming into force of this section and he was serving a sentence of imprisonment in respect of that offence on the date this section comes into effect.”.

(6) In section 307(5)–

- (a) for the full stop at the end of paragraph (c) substitute “;”;
- (b) after paragraph (c) insert–

“(d) in the case of a person within section 306(1)(d) – the date of release from imprisonment.”.

(7) In section 308(1)–

- (a) delete the words in parenthesis;
- (b) for “subsection (5)” substitute “subsection (4)”.

(8) In section 358(1)(a) for “any offence under section 354” substitute “an offence under section 354(1)”.

(9) In section 555(1) for paragraph (b) and the text which follows it substitute—

“(b) to carry or use any weapon constructed or adapted for the purpose of underwater fishing, within any area designated by order of the Minister with responsibility for the environment published in the Gazette and marked by notice boards at or near such area, as an area within which such carrying or use is prohibited.”.

(10) In Schedule 2, Part A, in paragraph 1(c) after the entry for sections 262 to 265 of the Act insert the following entry—

“- section 266A (Pornographic performances involving children)”.

(11) In Schedule 3 after paragraph 30 insert the following paragraph—

“30A. An offence under section 266A (Pornographic performances involving children) if the offender—

(a) was 18 or over; or

(b) is or has been sentenced in respect of the offence to imprisonment for not less than 12 months.”.

Passed by the Gibraltar Parliament on the 28th day of September, 2012.

M L FARRELL,
Clerk to the Parliament.

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