Crimes Act 2011

Principal Act

Act. No. 2011-23	*Commencement (LN.2012/185)*	23.11.2012
	Assent	15.8.2011

Amending enactments	Relevant current provisions	Commencement date
Act. 2012-13	ss. 113(1), (a), (2)-(4), 124(1), 176(a), 266A, 306(1)(c)-(e), 307(5)(c)-(d), 308(1), (a), 555(1), (b), Schs. 2-3	23.11.2012[1]
LN. 2013/049	Sch. 3	14.3.2013
2013/057	ss. 191A-191D, 280-285 & Sch. 4	4.4.2013
Act. 2013-21	ss. 87(3), (7), 91(1)(a), 91(2)-(3), 92(1), 92A-92B, 93(1), 93A, 94(5)-(6), 95(1), (8), 95A, 97A, 98, 99(1)(a)-(b), (3), 100(1)(a)-(b), (2)(c), 101(1)(a)-(b), (2), (c), 102(1)(a)-(b), (2), 103(1)(a)-(b), (3)-(6), 104(1)(a)-(b), (3), 111(2), 111A, 112(2)(b)(ii), 112A-112D, 113A-113D, 114A-114D, 115A-115D, 116,(1), (5A), (6A)-(6B), (8), 116A-116D, 117(1)-(2), 117A, 305(1), 307(5)(d), 315A-315F	10.10.2013[2]
2013-26	ss. 94A	28.11.2013
LN. 2013/189	ss. 228(5)(b), 229(5)(b), 230(5)(b), 231(5)(b), 251(3)(b), 252(3)(b)	18.12.2013
Act. 2014-03	s. 547	27.2.2014
LN. 2014/217	s. 385(1A), (2)	1.12.2014
Act. 2014-33	s. 555(1)(b)	1.1.2015
LN. 2015/140	ss. 361(1), 366(1)-(4), 366A, 367(1)(b), 370(1A), 370(3A), 384(3A)-(3B), 385	4.9.2015
Act. 2017-05	ss. 97B-97E, 227(1)(a), 227A, Sch. 3	18.5.2017[3]
LN. 2017/118	Sch. 4	26.6.2017
Act. 2016-18	ss. 194(2)(c), 212(1), 305(1), 475(1)(b), Schs. 3-4	23.4.2018
2017-10	s. 19(5)(c)(i)	13.6.2018
LN. 2018/148	Sch. 10	28.6.2018
Act. 2018-24	ss. 293A, 294(3), Sch. 3	30.11.2018[4]
2018-23	s. 594	10.12.2018
2019-05	s. 22(2)(a), (c)	21.3.2019
2021-09	ss. 290(3)-(4), 291(3)-(4)	9.2.2021
2019-19	ss. 163A-163E	15.7.2021[5]

[1] *Commencement notice see LN. 2012/186*
[2] *Commencement notice see LN. 2013/136*
[3] *Commencement notice see LN. 2017/097*
[4] *Commencement notice see LN. 2018/271*
[5] *Commencement notice see LN. 2021/328*

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2022-11	ss. 315G-315M	27.10.2022
2023-03	s. 174	26.1.2023
2023-14	ss. 34(A1), 35(1), 298	23.3.2023
2023-06	s. 95(1), 97B(1)-(2), (2A), (4)(a), (5)(a)-(b), (8), 97D(5)(c), 167A	6.7.2023
LN. 2023/184	Sch. 3	6.7.2023
Act. 2023-30	ss. 96A-96E, 292A, 499A-499F, Schs. 3, 4A	27.7.2023
2023-32	s. 577A	27.7.2023
2023-04	ss. 185(5)(b), 232(1)(b), 290(3), 291(3)	18.4.2024
2025-09	ss. 179, 179A-179B	11.7.2025

Transposing:
Directive 2011/92/EU

EU Legislation/International Agreements involved:
Council Framework Decision 2004/68/JHA
Council Framework Decision 2005/222/JHA

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AN ACT TO AMEND AND FURTHER CONSOLIDATE THE LAW RELATING TO CERTAIN CRIMINAL OFFENCES; AND FOR CONNECTED PURPOSES.

PART 1
PRELIMINARY

Title and commencement.

1.(1) This Act may be cited as the Crimes Act 2011.

(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 and for different purposes.

Interpretation.

2.(1) In this Act, unless the context otherwise requires–

"adult" means a person aged 18 years or more;

"arrestable offence" means an offence for which a person may be arrested without warrant, pursuant to the powers conferred by Part 4 of the Criminal Procedure and Evidence Act 2011;

"broadcast"–

(a) as a verb - means to communicate with the general public by means of radio, television, website or other electronic medium;

(b) as a noun - means a programme or item that is so broadcast and includes a cable programme service;

"broadcast programme" means any item that is included in a broadcast;

"Care Agency" means the agency established by section 3 of the Care Agency Act 2009;

"cautioned", in relation to a person accused of an offence, means cautioned by a police officer after the person concerned has admitted the offence, and "caution" is to be interpreted accordingly;

"child" means a person under the age of 14 years;

"Criminal Offences Act" means the Criminal Offences Act repealed by this Act;

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"Crown" means the Crown in right of Her Majesty's Government in the United Kingdom and in right of Her Government of Gibraltar;

"dwelling house" does not include a building although within the same curtilage with any dwelling house and occupied therewith unless there is a communication between such building and dwelling house either immediately or by means of a covered and enclosed passage leading from one to another;

"Gibraltarian" means–

(a) a person who is a Gibraltarian within the meaning of the Gibraltarian Status Act; or

(b) a British overseas territories citizen by virtue of a connection with Gibraltar in accordance with section 2(2) of the Immigration, Asylum and Refugee Act;

"Group A offence" and "Group B offence" have the meanings assigned to them by section 7;

"indictable offence" means an offence which if committed by an adult is triable on indictment, whether or not it is also triable by the Magistrates' Court;

"judicial proceedings" includes proceedings before any court, tribunal, or person having by law power to hear, receive and examine evidence on oath;

"jury" includes lay assessors, if any;

"Minister" means the Minister with responsibility for justice, or with responsibility for the administration of the relevant Part, if different;

"money" includes bank notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

"offensive weapon" has the meaning given it by Part 8;

"person" and "owner" and other like terms when used with reference to property include corporations of all kinds and any other association of persons capable of owning property, and also when so used include Her Majesty;

"play" means–

(a) any dramatic piece, whether involving improvisation or not, which is given wholly or in part by one or more persons actually present and performing and in which the

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whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role; and

(b) any ballet or other form of dance given wholly or in part by one or more persons actually present and performing, whether or not it falls within paragraph (a) of this definition;

"Police Force" means the Police Force constituted under the Police Act 2006;

"police officer" has the meaning given to it in section 2 of the Police Act 2006;

"premises" includes–

(a) any vehicle, vessel, aircraft or hovercraft;

(b) any stall, tent or moveable structure (including an offshore installation);

(c) any other place whatever, whether or not occupied as land;

"programme service" means any service which consists in the sending, by means of a telecommunication system, of sounds or visual images or both, either–

(a) for reception at 2 or more places in Gibraltar (whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service); or

(b) for reception at a place in Gibraltar for the purpose of being presented there to members of the public or to any group of persons,

and includes a television, sound or digital broadcasting service;

"property" includes–

(a) any description of real or personal property, money, debts, and legacies;

(b) all deeds and instruments relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods;

(c) not only such property as has been originally in the possession of or under the control of any person but also any property into or for which the same has been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise;

"public place" includes any place to which the public have access, whether on payment or otherwise;

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"publication" includes a publication in electronic form and, in the case of a publication which is, or may be, produced from electronic data, any medium on which the data are stored;

"spouse" means a husband or wife;

"standard scale" means the scale of fines set out in Schedule 9 to the Criminal Procedure and Evidence Act 2011;

"statutory maximum fine" means a fine at the highest level on the standard scale;

"triable either way" in relation to an offence means that the offence may be tried either summarily or on indictment, as indicated by the maximum penalty prescribed for the offence, in accordance with the provisions of the Criminal Procedure and Evidence Act 2011;

"vehicle" includes any vessel, aircraft or hovercraft;

"written material" includes any sign or other visible representation, and includes visual representation of electronic data;

"young person" means a person who has attained the age of 14 years and is under the age of 18 years.

(2) References to any Government department, in relation to any functions performed by that department, include reference to any other Government department by which the same functions are or were previously performed.

PART 2
GENERAL PROVISIONS

Criminal liability

Age of criminal responsibility.

3. There is a conclusive presumption that no child under the age of 10 years can be guilty of any offence.

Inferences as to intent.

4. A court or jury, in determining whether a person has committed an offence–

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(a) is not bound in law to infer that the person intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions; but

(b) must decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.

Use of force in making arrest, etc.

5.(1) Subject to section 2 of the Constitution, a person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

(2) Subsection (1) replaces the rules of the common law on the question when force used for a purpose mentioned in the subsection is justified by that purpose.

Offences committed outside Gibraltar

Offences committed partly outside Gibraltar.

6.(1) An offence begun outside Gibraltar and completed in Gibraltar may be treated as having been committed in Gibraltar.

(2) If–

(a) a person dies in Gibraltar in consequence of any act or omission outside Gibraltar; and

(b) the person committing that act or making that omission would, if the act or omission had been in Gibraltar, be guilty of the murder or manslaughter of the person who dies,

the offence may be treated as having been committed in Gibraltar.

(3) If a person–

(a) dies outside Gibraltar in consequence of any act or omission in Gibraltar; and

(b) the person committing the act or making the omission would, if the death had occurred in Gibraltar, be guilty of the murder or manslaughter of the person who dies,

the offence may be treated as having been committed in Gibraltar.

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Offences to which sections 8 to 13 apply.

7.(1) Sections 8 to 13 apply to Group A offences and Group B offences.

(2) The Group A offences are–

(a) an offence under any of the following provisions of Part 16–

397 Theft
404 Handling stolen goods
414 Blackmail
415 Offence of fraud
416 Fraud by false representation
417 Fraud by failing to disclose information
418 Fraud by abuse of position
421 Participating in fraudulent business carried on by sole trader etc.
422 Obtaining services dishonestly
425 False accounting
426 False statements by company directors, etc.
427 Suppression, etc of documents
428 Dishonestly retaining a wrongful credit;

(b) an offence under any of the following provisions of Part 17–

436 The offence of forgery
437 The offence of copying a false instrument
438 The offence of using a false instrument
439 The offence of using a copy of a false instrument
440 Offences relating to money orders, share certificates, passports, etc.
447 The offence of reproducing currency notes
448 Offences of making, etc. imitation protected coins
455 Offences concerning Euro currency notes and coins;

(c) the common law offence of cheating in relation to the public revenue.

(3) The Group B offences are–

(a) conspiracy to commit an offence listed in subsection (2)(a) or (b);

(b) attempting to commit an offence listed in subsection (2)(a) or (b);

(c) encouraging or assisting the commission of an offence listed in subsection (2)(a) or (b);

(d) conspiracy to defraud, contrary to section 34.

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(4) The Minister may by order amend subsection (2) or (3) by adding or removing any offence.

Jurisdiction in respect of Group A offences.

8.(1) A person may be convicted of a Group A offence if any of the events which are relevant events in relation to the offence occurred in Gibraltar.

(2) For the purposes of subsection (1), "relevant event" means any act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.

(3) In relation to an offence under section 415 (Fraud), "relevant event" includes–

(a) if the fraud involved an intention to make a gain and the gain occurred – that occurrence;

(b) if the fraud involved an intention to cause a loss or expose another to a risk of loss and the loss occurred – that occurrence.

(4) For the purpose of determining whether or not a particular event is a relevant event in relation to a Group A offence, any question as to where it occurred is to be disregarded.

Questions immaterial to jurisdiction in the case of certain offences.

9.(1) A person may be convicted of a Group A or Group B offence whether or not he was a Gibraltarian at any material time.

(2) On a charge of conspiracy to commit a Group A offence, or on a charge of conspiracy to defraud in Gibraltar, the defendant may be convicted of the offence whether or not–

(a) he became a party to the conspiracy in Gibraltar;

(b) any act or omission or other event in relation to the conspiracy occurred in Gibraltar.

(3) On a charge of attempting to commit a Group A offence, the defendant may be convicted of the offence whether or not–

(a) the attempt was made in Gibraltar;

(b) it had an effect in Gibraltar.

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(4) Subsection (1) does not apply in relation to an offence if a different rule about national status of the defendant is included in the provision which creates the offence.

(5) Subsection (2) does not apply in relation to a charge of conspiracy brought by virtue of section 28 (Conspiracy to commit offences outside Gibraltar).

(6) Subsection (3) does not apply in relation to a charge of attempt brought by virtue of section 12 (Extended jurisdiction in relation to certain attempts).

Rules relating to the location of events.

10. In relation to a Group A or Group B offence–

(a) there is an obtaining of property in Gibraltar if the property is either despatched from or received in Gibraltar; and

(b) there is a communication in Gibraltar of any information, instruction, request, demand or other matter if it is sent by any means–

(i) from Gibraltar to a place elsewhere; or

(ii) from a place elsewhere to Gibraltar.

Conspiracy and encouraging or assisting.

11.(1) A person may be convicted of conspiracy to defraud if–

(a) a party to the agreement constituting the conspiracy, or a party's agent, did anything in Gibraltar in relation to the agreement before its formation; or

(b) a party to it became a party in Gibraltar (by joining it either in person or through an agent); or

(c) a party to it, or a party's agent, did or omitted anything in Gibraltar in pursuance of it,

and the conspiracy would be triable in Gibraltar but for the fraud which the parties to it had in view not being intended to take place in Gibraltar.

(2) A person may be convicted of encouraging or assisting the commission of a Group A offence if the encouragement or assistance–

(a) takes place in Gibraltar; and

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(b) would be triable in Gibraltar but for what the person charged had in view not being an offence triable in Gibraltar.

(3) Subsections (1) and (2) are subject to section 13.

Extended jurisdiction in relation to certain attempts.

12.(1) If this section applies to an act, what the person doing the act had in view is to be treated as an offence to which section 22 (Attempting to commit an offence) applies.

(2) This section applies to an act if–

(a) it is done in Gibraltar; and

(b) it would fall within section 22(1) as more than merely preparatory to the commission of a Group A offence but for the fact that that offence, if completed, would not be an offence triable in Gibraltar.

(3) Subsection (1) is subject to section 13.

(4) If a person does any act to which this section applies, the offence which he commits is to be treated for all purposes as the offence of attempting to commit the relevant Group A offence.

Relevance of external law.

13.(1) A person commits an offence triable by virtue of section 11(1) only if the pursuit of the agreed course of conduct would at some stage involve–

(a) an act or omission by one or more of the parties; or

(b) the happening of some other event,

constituting an offence under the law in force where the act, omission or other event was intended to take place.

(2) A person commits an offence triable by virtue of section 11(2) or 12(4) only if what he had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(3) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(4) Subject to subsection (6), a condition specified in subsection (1) or (2) is to be taken as satisfied unless, not later than 28 days after the defendant is charged with the offence, the defence serve on the prosecution a notice–

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(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(5) In subsection (4) "the relevant conduct" means–

(a) if the condition in subsection (1) is in question - the agreed course of conduct; and

(b) if the condition in subsection (2) is in question - what the defendant had in view.

(6) The court may, if it thinks fit, permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).

(7) In the Supreme Court, the question whether the condition is satisfied is to be decided by the judge alone.

Alternative verdicts

Conviction of offence other than that charged.

14.(1) When a person is arraigned on an indictment he may plead not guilty of the offence specifically charged in the indictment but guilty of another offence of which he might be found guilty on that indictment.

(2) If, pursuant to subsection (1), a person arraigned on an indictment pleads not guilty of an offence charged in the indictment but guilty of some other offence of which he might be found guilty on that charge, and he is convicted on that plea of guilty without trial for the offence of which he has pleaded not guilty, then (whether or not the 2 offences are separately charged in distinct counts) his conviction of the one offence is an acquittal of the other.

(3) If, on a person's trial on indictment for any offence except treason or murder, the jury find him not guilty of the offence specifically charged in the indictment, but the allegations in the indictment amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the Supreme Court, the jury may find him guilty of that other offence or of an offence of which he could be found guilty on an indictment specifically charging that other offence.

(4) For purposes of subsection (3)–

(a) an allegation of an offence is to be taken as including an allegation of attempting to commit that offence;

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(b) if a person is charged on an indictment with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the completed offence, then (subject to the discretion of the court to discharge the jury with a view to the preferment of an indictment for the completed offence) he may be convicted of the offence charged even if he is shown to be guilty of the completed offence.

(5) Subsections (1) and (3) apply to an indictment containing more than one count as if each count were a separate indictment.

(6) On an indictment for murder a person found not guilty of murder may be found guilty–

(a) of manslaughter, or of causing grievous bodily harm with intent to do so; or

(b) of any offence of which he may be found guilty under an enactment specifically so providing, or under section 15; or

(c) of an attempt to commit murder, or of an attempt to commit any other offence of which he might be found guilty;

but may not be found guilty of any offence not included above.

(7) Nothing in this section excludes the application of any law which–

(a) relates to the summary trial of young offenders for indictable offences;

(b) restricts the power of a court to imprison;

(c) authorises an offender to be dealt with in a way not authorised by the enactment specially relating to the offence; or

(d) authorises a person to be found guilty of an offence other than that with which he is charged.

Person tried for offence may be convicted as accessory.

15. If on the trial of an indictment for an arrestable offence the jury–

(a) are satisfied that the offence charged (or some other offence of which the defendant might on that charge be convicted) was committed; but

(b) find the defendant not guilty of that offence, the jury may convict him of an offence under section 48(1) (Assisting offenders) if they are satisfied that he committed such an offence in relation to the offence charged (or that other offence).

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Miscellaneous

Proceedings by and against spouses.

16.(1) This Act applies in relation to the parties to a marriage, and to property belonging to either of them, whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.

(2) A person has the same right to bring proceedings against that person's spouse for any offence (whether under this Act or otherwise) as if they were not married, and a person bringing any such proceedings is competent to give evidence for the prosecution at every stage of the proceedings.

(3) Subject to subsection (4), proceedings may not be commenced against a person for any offence of stealing or doing unlawful damage to property which at the time of the offence belongs to that person's spouse, or for any attempt or conspiracy to commit such an offence, or for encouraging or assisting such an offence, except by, or with the consent of, the Attorney-General.

(4) Subsection (3), which restricts the right to bring proceedings against a person for certain offences–

(a) does not apply to proceedings against another person charged with committing the offence jointly with the person;

(b) does not apply if by virtue of any judicial decree or order (wherever made) the person and the spouse are at the time of the offence under no obligation to cohabit;

(c) does not prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence, or the remand in custody or on bail of a person charged with an offence, if the arrest (if without a warrant) is made, or the warrant of arrest issues on an information laid, by someone other than the spouse of the person.

Offences - effect on civil proceedings.

17.(1) A person is not to be excused from–

(a) answering any question put to that person in proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property; or

(b) complying with any order made in any such proceedings,

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on the ground that to do so may incriminate that person or the spouse of that person of an offence under this Act.

(2) No statement or admission made by a person in answering a question put or complying with an order made pursuant to subsection (1) is, in proceedings for an offence under this Act, admissible in evidence against that person or (unless they married after the making of the statement or admission) against the spouse of that person.

(3) Despite any enactment to the contrary, if property has been stolen or obtained by fraud or other wrongful means, the title to that or any other property is not affected by reason only of the conviction of the offender.

Offences by corporate bodies.

18.(1) If an offence under this Act is committed by a corporate body and it is proved–

(a) to have been committed with the consent or connivance of an officer; or

(b) to be attributable to any neglect on the part of an officer,

the officer as well as the corporate body commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1) "officer", in relation to a corporate body, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a corporate body are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

Abrogation of requirement for corroboration.

19.(1) Any requirement whereby at a trial on indictment it is obligatory for the court to give the jury a warning about convicting the defendant on the uncorroborated evidence of a person merely because that person is–

(a) an alleged accomplice of the defendant; or

(b) if the offence charged is a sexual offence – the person in respect of whom it is alleged to have been committed,

is abrogated.

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(2) Any requirement whereby at a trial on indictment it is obligatory for the court to give the jury a warning about convicting the defendant on the uncorroborated evidence of a child is abrogated.

(3) Any requirement that–

(a) is applicable at the summary trial of an offence; and

(b) corresponds to the requirement mentioned in subsection (1) or (2),

is abrogated.

(4) Unsworn evidence admitted by virtue of section 342 of the Criminal Procedure and Evidence Act 2011 may corroborate evidence (sworn or unsworn) given by any other person.

(5) This section does not affect–

(a) any requirement for a warning to the tribunal of fact about convicting a defendant on uncorroborated evidence imposed by this or any other Act;

(b) any rule of law that requires the tribunal of fact to be warned to exercise caution or to look for supporting material before acting on the unsupported evidence of a certain type of witness;

(c) any rule of law relating to–

(i) confessions by mentally disabled persons;

(ii) identification evidence;

(iii) evidence relating to sudden unexplained infant deaths; or

(iv) unconvincing hearsay evidence.

Abolition of sedition and common law libel offences.

20. The following offences under the common law are abolished–

(a) the offences of sedition and seditious libel;

(b) the offence of defamatory libel;

(c) the offence of obscene libel.

Service of documents.

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21.(1) Any notice or other document required or authorised by or under this Act to be served on any person may be served on him either by delivering it to him, by leaving it at his proper address or by sending it by post.

(2) Any notice or other document so required or authorised to be served on a corporate body is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of this section, and of section 8 of the Interpretation and General Clauses Act in its application to this section, the proper address of any person is, in the case of the secretary or clerk of a body corporate, that of the registered or principal office of that body, and in any other case is the last address of the person to be served which is known to the Government.

PART 3
INCHOATE OFFENCES

Attempts

Attempting to commit an offence.

22.(l) A person who, with intent to commit an offence to which this section applies, does an act which is more than merely preparatory to the commission of the offence, commits the offence of attempting to commit that offence.

(2) This section applies to any offence which, if it were completed, would be triable in Gibraltar as an indictable offence, other than–

(a) conspiracy (at common law or under section 27 or any other enactment, (but excepting an offence under any of sections 35 to 39 of the Terrorism Act 2018));

(b) an offence under section 36 (Encouraging or assisting an offence);

(c) aiding, abetting, counselling, procuring or suborning the commission of an offence at common law or under section 47, (but excepting an offence under any of sections 35 to 39 of the Terrorism Act 2018);

(d) an offence under section 48(1) (Assisting offenders) or 49(1) (Concealing offences and false information).

(3) In relation to offences under section 364 (Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer etc.), if an act–

(a) is done in Gibraltar; and

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(b) would fall within subsection (1) as more than merely preparatory to the commission of an offence but for the fact that the offence, if completed, would not be an offence triable in Gibraltar,

what the person doing it had in view is to be treated as an offence to which this section applies, but subject to section 372 (Relevance of external law).

(4) A person may be convicted of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.

(5) In any case where–

(a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence; but

(b) if the facts of the case had been as he believed them to be, his intention would be so regarded,

then, for the purposes of subsection (1), the person is to be regarded as having had an intention to commit that offence.

Application of procedural and other provisions to offences under section 22.

23.(1) A provision to which this section applies has effect with respect to an offence under section 22 (Attempting to commit an offence) as it has effect with respect to the offence attempted.

(2) This section applies to the following provisions of any enactment, whenever passed–

(a) provisions whereby proceedings may not be instituted or carried on otherwise than by, or on behalf or with the consent of, any person (including any provisions which also make exceptions to the prohibition);

(b) provisions conferring power to institute proceedings;

(c) provisions as to the venue of proceedings;

(d) provisions whereby proceedings may not be instituted after the expiration of a time limit;

(e) provisions conferring a power of arrest or search;

(f) provisions conferring a power of seizure and detention of property;

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(g) provisions whereby a person may not be convicted or committed for trial on the uncorroborated evidence of one witness (including any provision requiring the evidence of not less than 2 credible witnesses);

(h) provisions conferring a power of forfeiture, including any power to deal with anything liable to be forfeited;

(i) provisions whereby, if an offence committed by a corporate body is proved to have been committed with the consent or connivance of another person, that person also commits the offence.

Offences of attempt under other enactments.

24.(1) Subsections (2) to (5) have effect, subject to subsection (6) and to any inconsistent provision in any other enactment, for the purpose of determining whether a person has committed an attempt under a special statutory provision.

(2) For the purposes of this section an "attempt under a special statutory provision" is an offence which–

(a) is created by an enactment other than section 22, including an enactment passed after this Act; and

(b) is expressed as an offence of attempting to commit another offence (in this section referred to as "the relevant full offence").

(3) A person commits an attempt under a special statutory provision if, with intent to commit the relevant full offence, he does an act which is more than merely preparatory to the commission of that offence.

(4) A person may be guilty of an attempt under a special statutory provision even though the facts are such that the commission of the relevant full offence is impossible.

(5) In a case in which–

(a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit the relevant full offence; but

(b) if the facts of the case had been as he believed them to be, his intention would be so regarded,

then, for the purposes of subsection (3), the person is to be regarded as having had an intention to commit that offence.

(6) Subsections (2) to (5) do not apply to an act done before the commencement of this Part.

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Trial and penalties.

25.(1) A person who commits the offence of attempt by virtue of section 22 is liable–

(a) if the offence attempted is murder or any other offence the sentence for which is fixed by law - on conviction on indictment to imprisonment for life;

(b) if the offence attempted is indictable but does not fall within paragraph (a) - on conviction on indictment to any penalty to which he would have been liable on conviction on indictment of that offence;

(c) if the offence attempted is triable either way - on summary conviction to any penalty to which he would have been liable on summary conviction of that offence.

(2) In any case in which a court may proceed to summary trial of an information charging a person with an offence and an information charging him with an offence under section 22 of attempting to commit it or an attempt under a special statutory provision, the court may, without his consent, try the informations together.

(3) If, in proceedings against a person for an offence under section 22, there is evidence sufficient in law to support a finding that he did an act falling within subsection (l) of that section, the question whether or not his act fell within that subsection is a question of fact.

(4) If, in proceedings against a person for an attempt under a special statutory provision, there is evidence sufficient in law to support a finding that he did an act falling within subsection (3) of section 24, the question whether or not his act fell within that subsection is a question of fact.

Effect of sections 22 to 25 on common law.

26.(1) The offence of attempt at common law and any offence at common law of procuring materials for crime are abolished for all purposes not relating to acts done before the commencement of this Part.

(2) Except as regards offences committed before the commencement of this Part, references in any enactment passed before the commencement of this Part which fall to be construed as references to the offence of attempt at common law are to be construed as references to the offence under section 22.

Conspiracy

Conspiracy.

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27.(l) Subject to the following provisions of this Part, a person who agrees with any other person or persons that a course of conduct is to be pursued which, if the agreement is carried out in accordance with their intentions, either–

(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement; or

(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

commits the offence of conspiracy to commit the offence or offences in question.

(2) Even if liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person does not commit conspiracy to commit that offence by virtue of subsection (1) unless he and at least one other party to the agreement intend or know that that fact or circumstance will exist at the time when the conduct constituting the offence is to take place.

(3) In this Part "offence"–

(a) means an offence triable in Gibraltar; and

(b) includes murder even if the murder in question would not be triable in Gibraltar, if it was committed in accordance with the intentions of the parties to the agreement.

Conspiracy to commit offences outside Gibraltar.

28.(1) If each of the following conditions is satisfied in the case of an agreement, this Part has effect in relation to the agreement as it has effect in relation to an agreement falling within section 27(1).

(2) The first condition is that the pursuit of the agreed course of conduct would at some stage involve–

(a) an act by one or more of the parties; or

(b) the happening of some other event,

intended to take place in a place outside Gibraltar.

(3) The second condition is that that act or other event constitutes an offence under the law in force in that place.

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(4) The third condition is that the agreement would fall within section 27(1) as an agreement relating to the commission of an offence but for the fact that the offence would not be an offence triable in Gibraltar if committed in accordance with the parties' intentions.

(5) The fourth condition is that–

(a) a party to the agreement, or a party's agent, did anything in Gibraltar in relation to the agreement before its formation; or

(b) a party to the agreement became a party in Gibraltar (by joining it either in person or through an agent); or

(c) a party to the agreement, or a party's agent, did or omitted anything in Gibraltar in pursuance of the agreement.

(6) In the application of this Part to an agreement in the case of which each of the above conditions is satisfied, a reference to an offence is to be read as a reference to what would be the offence in question but for the fact that it is not an offence triable in Gibraltar.

(7) Conduct punishable under the law in force in any country or territory is an offence under that law for the purposes of this section, however it is described in that law.

(8) Subject to subsection (9), the second condition is to be taken to be satisfied unless, not later than 28 days or such other date as rules of court provide, the defence serve on the prosecution a notice–

(a) stating that, on the facts as alleged with respect to the agreed course of conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(9) The court may permit the defence to require the prosecution to show that the second condition is satisfied without the prior service of a notice under subsection (8).

(10) In the Supreme Court, the question whether the second condition is satisfied is to be decided by the judge alone, and treated as a question of law.

(11) Any act done by means of a message (however communicated) is to be treated for the purposes of the fourth condition as done in Gibraltar if the message is sent or received in Gibraltar.

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(12) In any proceedings in respect of an offence triable by virtue of this section, it is immaterial whether or not the defendant was a Gibraltarian at the time of any act or other event proof of which is required for conviction of the offence.

(13) References in any enactment, instrument or document (except those in this Part) to an offence of conspiracy to commit an offence include an offence triable in Gibraltar as such a conspiracy by virtue of this section (without affecting subsection (6)).

Exemptions from liability.

29.(1) A person does not by virtue of section 27 commit conspiracy to commit any offence if he is an intended victim of that offence.

(2) A person does not by virtue of section 27 commit conspiracy to commit any offence or offences if the only other person or persons with whom he agrees are (both initially and at all times during the currency of the agreement)–

(a) his spouse;

(b) a person under the age of criminal responsibility; or

(c) an intended victim of that offence or of each of those offences.

Penalties.

30.(1) A person who by virtue of section 27 commits conspiracy to commit any offence or offences is liable on conviction on indictment–

(a) in a case falling within subsection (3) or (4) of this section - to imprisonment for a term related in accordance with that subsection to the gravity of the offence or offences in question (referred to in this section as the relevant offence or offences); and

(b) in any other case- to a fine.

(2) Subsection (l)(a) does not affect the application of section 507 of the Criminal Procedure and Evidence Act 2011 (Suspended sentences) in a case falling within subsection (3) or (4).

(3) If the relevant offence or any of the relevant offences is–

(a) an offence of murder, or any other offence the sentence for which is fixed by law;

(b) an offence for which a sentence extending to imprisonment for life is provided; or

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(c) an indictable offence punishable with imprisonment for which no maximum term of imprisonment is provided,

the person convicted is liable to imprisonment for life.

(4) If, in a case other than one to which subsection (3) applies, the relevant offence or any of the relevant offences is punishable with imprisonment - the person convicted is liable to imprisonment for a term not exceeding the maximum term provided for that offence or (if more than one such offence is in question) for anyone of those offences (taking the longer or the longest term as the limit for the purposes of this section where the terms provided differ).

(5) In the case of an offence triable either summarily or on indictment the references in this subsection to the maximum term provided for that offence are references to the maximum term so provided on conviction on indictment.

Restrictions on the institution of proceedings.

31.(1) Proceedings under section 27 for conspiracy to commit any offence or offences may not be commenced against any person except by, or with the consent of, the Attorney-General.

(2) If–

(a) an offence has been committed in pursuance of any agreement; and

(b) proceedings may not be instituted for that offence because any time limit applicable to the institution of any such proceedings has expired,

proceedings under section 27 for conspiracy to commit that offence may not be commenced against any person on the basis of that agreement.

Conspiracy under other enactments.

32. The provisions of sections 27 and 29 apply for determining whether a person commits an offence of conspiracy under any enactment other than section 27, but conduct which is an offence under any such other enactment is not also an offence under section 27.

Effect of acquittal of other defendant.

33.(1) The fact that the person or persons who, so far as appears from the indictment on which any person has been convicted of conspiracy, were the only other parties to the agreement on which his conviction was based have been acquitted of conspiracy by reference to that agreement (whether after being tried with the person convicted or separately) is not a ground for quashing his conviction unless under all the circumstances of the case his conviction is inconsistent with the acquittal of the other person or persons in question.

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(2) Any rule of law or practice inconsistent with subsection (1) is abolished.

Offence of conspiracy to defraud.

34.(A1) The common law offence of conspiracy to defraud continues to have effect (in accordance with and subject to section 3(1) and (2) of the Crimes and Miscellaneous Provisions (Amendment) Act 2023).

(1) If–

(a) a person agrees with any other person or persons that a course of conduct is to be pursued; and

(b) that course of conduct will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement if the agreement is carried out in accordance with their intentions,

the fact that it will do so does not preclude a charge of conspiracy to defraud being brought against any of them in respect of the agreement.

(2) A person who commits conspiracy to defraud is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine or both.

(3) The provisions of sections 28, 29, 31 and 33 apply to the offence of conspiracy to defraud as they apply to other offences of conspiracy, to the extent applicable.

Abolitions, savings, transitional provisions.

35.(1) Subject to the following provisions and to section 34(A1), the offence of conspiracy at common law is abolished.

(2) Subsection (1) does not affect the offence of conspiracy at common law if and in so far as it may be committed by entering into an agreement to engage in conduct which–

(a) tends to corrupt public morals or outrages public decency; but

(b) would not amount to or involve the commission of an offence if carried out by a single person otherwise than in pursuance of an agreement.

(3) Subsection (1) does not affect–

(a) any proceedings commenced before the time when this Part comes into force;

(b) any proceedings commenced after that time against a person charged with the same conspiracy as that charged in any proceedings commenced before that time; or

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(c) subject to subsection (5), any proceedings commenced after that time in respect of a trespass committed before that time.

(4) A person convicted of conspiracy to trespass in any proceedings brought by virtue of subsection (3)(c) is not in respect of that conviction liable to imprisonment for a term exceeding 6 months.

(5) Encouraging or assisting the commission of the offence of conspiracy (whether the conspiracy encouraged or assisted would be an offence at common law or under this Part or any other enactment) ceases to be an offence.

Encouraging or assisting offences

Encouraging or assisting an offence.

36.(1) A person commits an offence if–

(a) he does an act capable of encouraging or assisting the commission of an offence; and

(b) he intends to encourage or assist its commission.

(2) A person is not to be taken to have intended to encourage or assist the commission of an offence under subsection (1) merely because such encouragement or assistance was a foreseeable consequence of his act.

(3) A person commits an offence if–

(a) he does an act capable of encouraging or assisting the commission of an offence; and

(b) he believes–

(i) that the offence will be committed; and

(ii) that his act will encourage or assist its commission.

(4) A person commits an offence if–

(a) he does an act capable of encouraging or assisting the commission of one or more of a number of offences; and

(b) he believes–

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(i) that one or more of those offences will be committed; and

(ii) that his act will encourage or assist the commission of one or more of them.

(5) It is immaterial for the purposes of subsection (4)(b) whether the person has any belief as to which offence will be encouraged or assisted.

(6) If a person is charged with an offence under subsection (4) the indictment–

(a) must specify the offences alleged to be the "number of offences" mentioned in subsection (4)(a); but

(b) need not specify all the offences potentially comprised in that number.

(7) In relation to an offence under subsection (4), any reference in this Part to the offences specified in the indictment is to the offences specified by virtue of subsection (6)(a).

Proving an offence under section 36.

37.(1) Section 36 is to be read in accordance with this section.

(2) If it is alleged under section 36(l)(b) that a person (D) intended to encourage or assist the commission of an offence, it is sufficient to prove that he intended to encourage or assist the doing of an act which would amount to the commission of that offence.

(3) If it is alleged under section 36(3)(b) that a person (D) believed that an offence would be committed and that his act would encourage or assist its commission, it is sufficient to prove that he believed–

(a) that an act would be done which would amount to the commission of that offence; and

(b) that his act would encourage or assist the doing of that act.

(4) If it is alleged under section 36(4)(b) that a person (D) believed that one or more of a number of offences would be committed and that his act would encourage or assist the commission of one or more of them, it is sufficient to prove that he believed–

(a) that one or more of a number of acts would be done which would amount to the commission of one or more of those offences; and

(b) that his act would encourage or assist the doing of one or more of those acts.

(5) In proving for the purposes of this section whether an act is one which, if done, would amount to the commission of an offence–

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(a) if the offence is one requiring proof of fault, it must be proved that–

(i) D believed that, were the act to be done, it would be done with that fault;

(ii) D was reckless as to whether or not it would be done with that fault; or

(iii) D's state of mind was such that, were he to do it, it would be done with that fault; and

(b) if the offence is one requiring proof of particular circumstances or consequences (or both), it must be proved that–

(i) D believed that, were the act to be done, it would be done in those circumstances or with those consequences; or

(ii) D was reckless as to whether or not it would be done in those circumstances or with those consequences.

(6) For the purposes of subsection (5)(a)(iii), D is to be assumed to be able to do the act in question.

(7) In the case of an offence under section 36(1)–

(a) subsection (5)(b)(i) is to be read as if the reference to "D believed" were a reference to "D intended or believed"; but

(b) D is not to be taken to have intended that an act would be done in particular circumstances or with particular consequences merely because its being done in those circumstances or with those consequences was a foreseeable consequence of his act of encouragement or assistance.

(8) A reference in this section to the doing of an act includes a reference to–

(a) a failure to act;

(b) the continuation of an act that has already begun;

(c) an attempt to do an act (except an act amounting to the commission of the offence of attempting to commit another offence).

(9) In this Part (unless otherwise provided) a reference to the anticipated offence is–

(a) in relation to an offence under section 36(1) - a reference to the offence mentioned in subsection (2) above; and

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(b) in relation to an offence under section 36(3) - a reference to the offence mentioned in subsection (3) above.

(10) In relation to an offence under section 36(4)–

(a) it is sufficient to prove the matters mentioned in subsection (5) above by reference to one offence only; but

(b) the offence or offences by reference to which those matters are proved must be one of the offences specified in the indictment.

(11) Subsection (10) does not affect any enactment or rule of law under which a person charged with one offence may be convicted of another and is subject to section 44 (Alternative verdicts and guilty pleas).

Supplemental provisions.

38.(1) A person may be convicted of an offence under section 36 whether or not any offence capable of being encouraged or assisted by his act is committed.

(2) If a person's act is capable of encouraging or assisting the commission of a number of offences–

(a) section 36(1) applies separately in relation to each offence that he intends to encourage or assist to be committed; and

(b) section 36(2) applies separately in relation to each offence that he believes will be encouraged or assisted to be committed.

(3) A person may, in relation to the same act, commit an offence under more than one provision of section 36.

(4) In reckoning whether–

(a) for the purposes of section 36(2), an act is capable of encouraging or assisting the commission of an offence; or

(b) for the purposes of section 36(3), an act is capable of encouraging or assisting the commission of one or more of a number of offences,

an offence under section 36 and any other offence of encouraging or assisting, soliciting, inducing or conspiring with another person to commit an offence (whether any of those words is used in the description of that other offence or not) is to be disregarded.

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(5) For the purposes of section 36(3)(b)(i) and 36(4)(b)(i) it is sufficient for the person concerned to believe that the offence (or one or more of the offences) will be committed if certain conditions are met.

Defences.

39.(1) A person is not guilty of an offence under section 36 if he proves–

(a) that he knew certain circumstances existed; and

(b) that it was reasonable for him to act as he did in those circumstances.

(2) A person is not guilty of an offence under section 36 if he proves–

(a) that he believed certain circumstances to exist;

(b) that his belief was reasonable; and

(c) that it was reasonable for him to act as he did in the circumstances as he believed them to be.

(3) Factors to be considered in determining whether it was reasonable for the purposes of subsections (1) and (2) for a person to act as he did include–

(a) the seriousness of the anticipated offence or, in the case of an offence under section 36(4), the offences specified in the indictment;

(b) any purpose for which he claims to have been acting;

(c) any authority by which he claims to have been acting.

(4) A person is not guilty of an offence under section 36 by reference to a protective offence if–

(a) he falls within the protected category; and

(b) he is the person in respect of whom the protective offence was committed or would have been if it had been committed.

(5) In subsection (4) "protective offence" means an offence that exists (wholly or in part) for the protection of a particular category of persons ("the protected category").

Jurisdiction.

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40.(1) If a person (D) knew or believed that what he anticipated might take place wholly or partly in Gibraltar, he can be convicted of an offence under section 36 no matter where he was at any relevant time.

(2) If it is not proved that D knew or believed that what he anticipated might take place wholly or partly in Gibraltar, he cannot be convicted of an offence under section 36 unless subsection (1), (3) or (8) of section 41 applies.

(3) A reference in this section (and in any of those subsections) to what D anticipated–

(a) in relation to an offence under section 36(1) or (3) - is to the act which would amount to the commission of the anticipated offence;

(b) in relation to an offence under section 36(4) - is to an act which would amount to the commission of any of the offences specified in the indictment.

(4) Nothing in this section or section 41 restricts the operation of any enactment by virtue of which an act constituting an offence under section 36 is triable under the law of Gibraltar.

Extended jurisdiction in certain cases.

41.(1) This subsection applies if–

(a) any relevant behaviour of D's takes place wholly or partly in Gibraltar;

(b) D knows or believes that what he anticipates might take place wholly or partly in a place outside Gibraltar; and

(c) either–

(i) the anticipated offence is one that would be triable under the law of Gibraltar if it were committed there; or

(ii) if there are relevant conditions, it would be so triable if it were committed there by a person who satisfies the conditions.

(2) In subsection (1) "relevant condition" means a condition that–

(a) determines (wholly or in part) whether an offence committed outside Gibraltar is nonetheless triable under the law of Gibraltar; and

(b) relates to the citizenship, nationality or residence of the person who commits it.

(3) This subsection applies if–

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(a) subsection (1) does not apply;

(b) any relevant behaviour of D's takes place wholly or partly in Gibraltar;

(c) D knows or believes that what he anticipates might take place wholly or partly in a place outside Gibraltar; and

(d) what D anticipates would amount to an offence under the law in force in that place.

(4) The condition in subsection (3)(d) is to be taken to be satisfied unless, not later than 28 days after the defendant is charged with offence, the defence serve on the prosecution a notice–

(a) stating that on the facts as alleged the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(5) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without prior service of a notice under subsection (4).

(6) In the Supreme Court, the question whether the condition is satisfied is to be decided by the judge alone.

(7) An act punishable under the law in force in any place outside Gibraltar constitutes an offence under that law for the purposes of subsection (3), however it is described in that law.

(8) This subsection applies if–

(a) any relevant behaviour of D's takes place wholly outside Gibraltar;

(b) D knows or believes that what he anticipates might take place wholly or partly in a place outside Gibraltar; and

(c) D could be tried under the law of Gibraltar if he committed the anticipated offence in that place.

(9) For the purposes of subsection (8)(c), D is to be assumed to be able to commit the anticipated offence.

(10) In relation to an offence under section 36(4), a reference in this section to the anticipated offence is a reference to any of the offences specified in the indictment.

Institution of proceedings, etc. for an offence under section 36.

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42.(1) Any provision to which this section applies has effect with respect to an offence under section 36 as it has effect with respect to the anticipated offence.

(2) This section applies to any provision in or under an enactment (whenever coming into operation) that–

(a) provides that proceedings may not be instituted or carried on except by, or with the consent of, the Attorney-General;

(b) confers power to institute proceedings;

(c) confers power to seize and detain property;

(d) confers a power of forfeiture, including a power to deal with anything liable to be forfeited.

(3) In relation to an offence under section 36(4)–

(a) the reference in subsection (1) to the anticipated offence is a reference to any offence specified in the indictment; and

(b) each of the offences specified in the indictment must be an offence in respect of which the prosecutor has power to institute proceedings.

(4) An offence–

(a) under section 36(1) or (3) - is triable in the same way as the anticipated offence;

(b) under section 36(4) - is triable on indictment.

(5) No proceedings for an offence triable by reason only of a provision of section 41 may be instituted except by, or with the consent of, the Attorney-General.

(6) No proceedings for an offence under section 36 may be instituted against a person providing information society services who is established in a place outside Gibraltar that is an EEA State unless the derogation condition is satisfied.

(7) The derogation condition is satisfied if the institution of proceedings–

(a) is necessary to pursue the public interest objective, namely public policy;

(b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to it; and

(c) is proportionate to that objective.

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(8) For the purposes of this section–

(a) a service provider is established in a particular EEA state if he effectively pursues an economic activity using a fixed establishment in that EEA state for an indefinite period and he is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union;

(b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;

(c) if it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment where the service provider has the centre of his activities relating to the service; and references to a person being established in an EEA state are to be read accordingly.

(9) In this section–

"information society services"–

(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations); and

(b) is summarised in recital 17 of the E-Commerce Directive as covering "any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service";

"the E-Commerce Directive" means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

Persons who may be convicted.

43.(1) In proceedings for an offence under section 36 a person can be convicted if–

(a) it is proved that he must have committed that offence or the anticipated offence; but

(b) it is not proved which of those offences he committed.

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(2) For the purposes of this section, a person is not to be treated as having committed the anticipated offence merely because he aided, abetted, counselled or procured its commission.

(3) In relation to an offence under section 36(4), a reference in this section to the anticipated offence is a reference to an offence specified in the indictment.

Alternative verdicts and guilty pleas.

44.(1) If in proceedings on indictment for an offence under section 36(1) or (3) a person is not found guilty of that offence by reference to the specified offence, he may be found guilty of that offence by reference to an alternative offence.

(2) If in proceedings for an offence under section 36(4) a person is not found guilty of that offence by reference to any specified offence, he may be found guilty of that offence by reference to one or more alternative offences.

(3) If in proceedings for an offence under section 36(4) a person is found guilty of the offence by reference to one or more specified offences, he may also be found guilty of it by reference to one or more other alternative offences.

(4) For the purposes of this section, an offence is an alternative offence if–

(a) it is an offence of which, on a trial on indictment for the specified offence, a defendant may be found guilty; or

(b) it is an indictable offence, or one to which section 175(2) applies (power to include count for common assault etc. in indictment), and the condition in subsection (5) is satisfied.

(5) The condition referred to in subsection (4)(b) is that the allegations in the indictment charging the person with the offence under section 36 amount to or include (expressly or by implication) an allegation of that offence by reference to it.

(6) Subsection (4)(b) does not apply if the specified offence, or any of the specified offences, is murder or treason.

(7) In the application of subsection (5) to proceedings for an offence under section 36(1), the allegations in the indictment are to be taken to include an allegation of that offence by reference to the offence of attempting to commit the specified offence.

(8) Section 38(4) applies to an offence which is an alternative offence in relation to a specified offence as it applies to that specified offence.

(9) In this section–

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(a) in relation to a person charged with an offence under section 36(1) or (3), "the specified offence" means the offence specified in the indictment as the one alleged to be the anticipated offence;

(b) in relation to a person charged with an offence under section 36(4), "specified offence" means an offence specified in the indictment (within the meaning of subsection (4) of that section), and related expressions are to be read accordingly.

(10) A person arraigned on an indictment for an offence under section 36 may plead guilty to an offence of which he could be found guilty under this section on that indictment.

(11) This section applies to an indictment containing more than one count as if each count were a separate indictment.

(12) This section does not affect section 14 (Conviction of offence other than that charged).

Penalties.

45.(1) Subsections (2) and (3) apply if–

(a) a person is convicted of an offence under section 36(1) or (3); or

(b) a person is convicted of an offence under section 36(4) by reference to only one offence ("the reference offence").

(2) If the anticipated or reference offence is murder, the person is liable to imprisonment for life.

(3) In any other case the person is liable to any penalty for which he would be liable on conviction of the anticipated or reference offence.

(4) Subsections (5) to (7) apply if a person is convicted of an offence under section 36(4) by reference to more than one offence ("the reference offences").

(5) If one of the reference offences is murder, the person is liable to imprisonment for life.

(6) If none of the reference offences is murder, but one or more of them is punishable with imprisonment, the person is liable–

(a) to imprisonment for a term not exceeding the maximum term prescribed for any one of those offences (taking the longer or the longest term as the limit for the purposes of this paragraph if the terms prescribed differ); or

(b) to a fine.

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(7) In any other case the person is liable to a fine.

(8) Subsections (3), (6) and (7) are subject to any contrary provision made by or under an enactment.

(9) In the case of an offence triable either way, the reference in subsection (6) to the maximum term prescribed for that offence is a reference to the maximum term so prescribed on conviction on indictment.

Abolition of common law offence of incitement.

46. The common law offence of inciting the commission of another offence is abolished.

Accessories

Aiding and abetting.

47.(l) A person who aids, abets, counsels, procures, suborns or commands the commission of an indictable offence is liable to be dealt with, indicted, tried and punished as a principal offender.

(2) A person who aids, abets, counsels or procures the commission by another person of a summary offence is guilty of the like offence and may be tried (whether or not he is charged as a principal) either by a court having jurisdiction to try that other person or by a court having by virtue of his own offence jurisdiction to try him.

(3) Any offence consisting in aiding, abetting, counselling or procuring the commission of an offence triable either way is by virtue of this subsection triable either way.

Assisting offenders.

48.(1) If a person has committed an arrestable offence, any other person who, knowing or believing him to be guilty of the offence or of some other arrestable offence, does without lawful authority or reasonable excuse any act with intent to impede the person's arrest or prosecution, commits an offence.

(2) A person who commits an offence under subsection (1) with intent to impede another person's arrest or prosecution is liable on conviction on indictment to imprisonment according to the gravity of the other person's offence, as follows–

(a) if that offence is murder - for life;

(b) if that offence is any other offence for which the sentence is fixed by law - for 10 years;

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(c) if that offence is one for which a person (not previously convicted) may be sentenced to imprisonment for 14 years - for 7 years;

(d) if that offence is not one included above but is one for which a person (not previously convicted) may be sentenced to imprisonment for 10 years - for 5 years;

(e) in any other case - for 3 years.

(3) No proceedings may be commenced for an offence under subsection (1) except by, or with the consent of, the Attorney-General.

(4) Subsection (3) does not prevent the arrest, or the issue of a warrant for the arrest, of a person for an offence under subsection (1), or the remand in custody or on bail of a person charged with such an offence.

Concealing offences and false information.

49.(1) If a person has committed an arrestable offence, any other person who, knowing or believing that–

(a) the offence or some other arrestable offence has been committed; and

(b) he has information which might be of material assistance in securing the prosecution or conviction of an offender for it,

accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, commits an offence.

(2) A person who is convicted of an offence under subsection (1) is liable–

(a) on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both;

(b) on conviction on indictment to imprisonment for 2 years.

(3) A person who causes any wasteful employment of the police by knowingly making to any person a false report tending–

(a) to show that an offence has been committed, or to give rise to fear for the safety of any persons or property; or

(b) to show that he has information material to any police inquiry,

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commits an offence and is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

(4) No proceedings may be commenced for an offence under this section except by, or with the consent of, the Attorney-General.

(5) The compounding of an offence other than treason is not an offence otherwise than under this section.

PART 4
TREASON OFFENCES

Treason.

50.(1) A person commits treason if, owing allegiance to Her Majesty, he–

(a) kills, wounds or causes bodily harm to Her Majesty;

(b) imprisons or restrains Her;

(c) forms an intention to do (a) or (b) and manifests such intention by an overt act;

(d) levies war against Her Majesty–

(i) with the intent to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions;

(ii) in order by force or constraint to compel Her Majesty to change Her measures or counsels; or

(iii) in order to put any force or constraint upon, or to intimidate or overawe, Parliament, the United Kingdom Parliament, or the legislature of any other British territory;

(e) instigates any foreigner with force to invade the United Kingdom or Gibraltar or any other British territory;

(f) assists by any means whatever any public enemy at war with Her Majesty; or

(g) conspires with any other person to do anything mentioned in paragraph (a), (b) or (d).

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(2) A person who commits the offence of treason is liable on conviction to imprisonment for life.

Treasonable offences.

51.(1) A person who forms an intention to effect any of the following purposes, that is to say–

(a) to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Dominions;

(b) to levy war against Her Majesty within the United Kingdom or Gibraltar or any other British territory in order–

(i) by force or constraint to compel Her Majesty to change Her measures or counsels; or

(ii) to put any force or constraint upon, or to intimidate or overawe, Parliament or the United Kingdom Parliament or the legislature of any other British territory; or

(c) to instigate any foreigner with force to invade the United Kingdom or Gibraltar or any other British territory,

and manifests such intention by an overt act or by publishing any printing or writing, commits an offence and is liable on conviction to imprisonment for life.

(2) It is no defence to a charge under this section that any act proved against the person charged amounts to treason under section 50; but no person convicted or acquitted of an offence under this section may afterwards be prosecuted for treason under section 50 upon the same facts.

Limitation and procedure.

52.(1) A person may not be prosecuted for any offence under section 50 or 51 unless the prosecution is commenced within 3 years after the offence is committed.

(2) This section does not apply to cases in which the overt act alleged is the killing of Her Majesty, or a direct attempt to endanger the life of Her Majesty.

(3) The procedure on a trial for treason or any treasonable offence is the same as the procedure on a trial for murder.

Assaults on the Queen.

53.(1) A person who wilfully–

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(a) produces or has near Her Majesty any arms or destructive or dangerous thing with intent to use the same to injure Her Majesty;

(b) with intent to alarm or to injure Her Majesty, or to provoke a breach of the peace or whereby a breach of the peace is likely to be caused–

(i) discharges, or points, aims or presents any arms at or near Her Majesty;

(ii) causes any explosive substance to explode near Her Majesty;

(iii) assaults Her Majesty; or

(iv) throws anything at or upon Her Majesty,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction to imprisonment for 6 months or the statutory maximum fine, or both;

(b) on conviction on indictment to imprisonment for 7 years.

(3) In this section, "arms" includes imitation and toy arms.

PART 5
PUBLIC ORDER

Interpretation of Part.

54.(1) In this Part, unless the context otherwise requires–

"assembly" means an assembly of 20 or more persons;

"camping" includes–

(a) erecting a tent or temporary structure of any kind;

(b) bringing a caravan onto any land;

(c) occupying any derelict or unused building or structure;

(d) occupying any cave; and

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(e) sleeping in the open, whether in a sleeping-bag or otherwise;

"caravan" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

"Crown land" means all land other than private land, and includes–

(a) cliffs, beaches and foreshore;

(b) streets, roads, paths, lay-bys and areas set aside for parking; and

(c) recreation and pleasure grounds and public gardens;

"damage", in relation to land, includes the deposit of any substance capable of polluting the land;

"distribute" means distribute to the public or a section of the public;

"dwelling" means any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied;

"exempt person", in relation to land (or any gathering on land), means the occupier, any member of his family and any employee or agent of his and any person whose dwelling is situated on the land;

"land" means land in the open air and includes a place partly open to the air;

"meeting" means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters;

"music" includes sounds wholly or predominantly characterised by the emission of a succession of repetitive beats;

"night" means the interval between 9.00 p.m. and 6.00 a.m. on the next succeeding day;

"occupier" in relation to land means the person entitled to possession of the land by virtue of an estate or interest that he holds, and in relation to assemblies on land includes the person reasonably believed by the person applying for or making the order to be the occupier;

"owner", in relation to land, means the person in whom the freehold estate is vested or who holds the land under a lease from the Crown for a term of years or from year to year;

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"premises" means any place and includes any vehicle, vessel, aircraft or hovercraft;

"private land" means freehold land or land held under a lease from the Crown for a term of years or from year to year;

"public" includes a section of the public;

"public assembly" means an assembly of 20 or more persons in a public place which is wholly or partly open to the air;

"public meeting" includes any meeting in a public place and any meeting which the public or any section of it are permitted to attend, whether on payment or otherwise;

"public place" means–

(a) any highway; and

(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

"public procession" means a procession in a public place;

"publication" includes a publication in electronic form and, in the case of a publication which is, or may be, produced from electronic data, any medium on which the data are stored;

"sound equipment" means equipment designed or adapted for amplifying music and any equipment suitable for use in connection with such equipment.

"structure" includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

"trespass", in relation to land, means trespass as against the occupier of the land;

"vehicle" includes any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle, and a caravan;

"violence" means any violent conduct, so that–

(a) except in the context of affray - it includes violent conduct towards property as well as violent conduct towards persons; and

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(b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct;

"violent behaviour" means an unlawful act inflicting injury on a person or causing a person to fear injury.

(2) For the purposes of this Part a person may be regarded as residing on any land even if he has a home elsewhere.

Riot, etc.

Riot.

55.(1) If 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using unlawful violence for the common purpose commits the offence of riot.

(2) It is immaterial whether or not the 12 or more use or threaten unlawful violence simultaneously.

(3) The common purpose may be inferred from conduct.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Riot may be committed in private as well as in public places.

(6) A person who commits riot 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 10 years.

Violent disorder.

56.(1) If 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using or threatening unlawful violence commits the offence of violent disorder.

(2) It is immaterial whether or not the 3 or more use or threaten unlawful violence simultaneously.

(3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

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(4) Violent disorder may be committed in private as well as in public places.

(5) A person who commits violent disorder 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 5 years.

Affray.

57.(1) A person commits affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.

(2) If 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

(3) For the purposes of this section a threat cannot be made by the use of words alone.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Affray may be committed in private as well as in public places.

(6) A person who commits affray 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 3 years.

Fear or provocation of violence.

58.(1) A person commits an offence if he–

(a) uses towards another person threatening, abusive or insulting words or behaviour; or

(b) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting,

with intent–

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(c) to cause that person to believe that immediate unlawful violence will be used against him or another by any person; or

(d) to provoke the immediate use of unlawful violence by that person or another,

or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) A person who commits an offence under this section is liable on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both.

Riot, etc.: Mental element.

59.(1) A person commits riot only if he intends to use violence or is aware that his conduct may be violent.

(2) A person commits violent disorder or affray only if he intends to use or threaten violence or is aware that his conduct may be violent or threaten violence.

(3) A person commits an offence under section 58 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting.

(4) For the purposes of this section a person whose awareness is impaired by intoxication is to be taken to be aware of that of which he would be aware if not intoxicated, unless he shows either that his intoxication was not self-induced or that it was caused solely by the taking or administration of a substance in the course of medical treatment.

(5) In subsection (4) "intoxication" means any intoxication, whether caused by drink, drugs or other means, or by a combination of means.

(6) Subsections (1) and (2) do not affect the determination for the purposes of riot or violent disorder of the number of persons who use or threaten violence.

Riot, etc.: Procedure.

60.(1) No prosecution for an offence of riot or the encouragement or assistance to riot may be commenced except by, or with the consent of, the Attorney-General.

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(2) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 55 to 58 creates one offence.

(3) If on the trial on indictment of a person charged with violent disorder or affray the jury find him not guilty of the offence charged, they may convict him of an offence under section 58.

(4) The Supreme Court has the same powers and duties in relation to a person who is by virtue of subsection (3) convicted before it of an offence under section 58 as the Magistrates' Court would have on convicting him of the offence.

Common law offences of riot etc. abolished.

61.(1) The common law offences of riot, rout, unlawful assembly and affray are abolished.

(2) In any enactment coming into force or instrument taking effect after the coming into force of this Part, a reference to "riot", "rout", "unlawful assembly" or "affray", or their cognate expressions, is to be construed as a reference to the offences created by sections 55 to 57.

(3) Subject to subsection (2), and unless a different intention appears, nothing in this Part affects the meaning of "riot" or of any cognate expression in any enactment in force, or instrument taking effect, before the coming into force of this Part.

Processions and assemblies

Public processions: Advance notice.

62.(1) Written notice must be given in accordance with this section of any proposal to hold a public procession intended–

(a) to demonstrate support for or opposition to the views or actions of any person or body of persons;

(b) to publicise a cause or campaign; or

(c) to mark or commemorate an event,

unless it is not reasonably practicable to give any advance notice of the procession.

(2) Subsection (1) does not apply if the procession is one commonly or customarily held in Gibraltar or is a funeral procession organised by a funeral director acting in the normal course of business.

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(3) The notice under subsection (1) must specify the date when it is intended to hold the procession, the time when it is intended to start it, its proposed route, and the name and address of the person (or of one of the persons) proposing to organise it.

(4) Notice must be delivered to a police station by hand not less than 6 clear days before the date when the procession is intended to be held, or, if that is not reasonably practicable, as soon as delivery is reasonably practicable.

(5) When a public procession is held, each of the persons organising it commits an offence if–

(a) the requirements of this section as to notice have not been satisfied; or

(b) the date when it is held, the time when it starts, or its route, differs from the date, time or route specified in the notice.

(6) It is a defence for a person to prove that he did not know of, and neither suspected nor had reason to suspect, the failure to satisfy the requirements or (as the case may be) the difference of date, time or route.

(7) To the extent that an alleged offence turns on a difference of date, time or route, it is a defence for the person to prove that the difference arose from circumstances beyond his control or from something done with the agreement of a police officer or by his direction.

(8) A person who commits an offence under subsection (5) is liable on summary conviction to a fine at level 3 on the standard scale.

Public processions: Conditions.

63.(1) If the Commissioner of Police, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that–

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community; or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

he may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions.

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(2) Directions given by the Commissioner of Police under subsection (1) must be given in writing.

(3) A person who organises a public procession and knowingly fails to comply with directions given under this section commits an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(4) A person who takes part in a public procession and knowingly fails to comply with directions given under this section commits an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(5) A person who encourages or assists another to commit an offence under subsection (4) commits an offence.

(6) A person who commits an offence under subsection (3) is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

(7) A person who commits an offence under subsection (4) is liable on summary conviction to a fine at level 3 on the standard scale.

(8) A person who commits an offence under subsection (5) is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

Public processions: Prohibition.

64.(1) If at any time the Commissioner of Police reasonably believes that, because of particular circumstances existing in Gibraltar, or any part of it, the powers under section 63 will not be sufficient to prevent the holding of public processions in Gibraltar or that part from resulting in serious public disorder, he may apply to the Chief Minister for an order prohibiting for a period not exceeding 3 months specified in the application the holding of all public processions (or of any class of public procession so specified) in the whole of Gibraltar or that part of it.

(2) On receiving an application under subsection (1), the Chief Minister may make an order either in the terms of the application or with such modifications as the Chief Minister considers necessary.

(3) An order made under this section may be revoked or varied by a subsequent order made in the same way.

(4) Any order under this section must, if not made in writing, be recorded in writing as soon as practicable after being made.

(5) A person who organises a public procession the holding of which he knows is prohibited by an order under this section commits an offence and is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both. .

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(6) A person who takes part in a public procession the holding of which he knows is prohibited by an order under this section commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(7) A person who encourages or assists another to commit an offence under subsection (6) commits an offence and is liable on summary conviction to imprisonment for 3 months or a fine at level 3 on the standard scale, or both.

Public assemblies: Conditions.

65.(1) If the Commissioner of Police, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that–

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community; or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

he may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

(2) Directions given by the Commissioner of Police under subsection (1) must be given in writing.

(3) A person who organises a public assembly and knowingly fails to comply with a direction given under this section commits an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(4) A person who takes part in a public assembly and knowingly fails to comply with a condition imposed under this section commits an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(5) A person who encourages or assists another to commit an offence under subsection (4) commits an offence.

(6) A person who commits an offence under subsection (3) is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

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(7) A person who commits an offence under subsection (4) is liable on summary conviction to a fine at level 3 on the standard scale.

(8) A person who commits an offence under subsection (5) is liable on summary conviction to imprisonment for 9 months or a fine at level 3 on the standard scale, or both.

Trespassory assemblies: Prohibition.

66.(1) If at any time the Commissioner of Police reasonably believes that an assembly is intended to be held in any place on land in Gibraltar to which the public has no right of access or only a limited right of access and that the assembly–

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access; and

(b) may result–

(i) in serious disruption to the life of the community; or

(ii) if the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance - in significant damage to the land, building or monument,

he may apply to the Chief Minister for an order prohibiting for a specified period the holding of all trespassory assemblies in that place, as specified.

(2) On receiving an application under subsection (1), the Chief Minister may make an order either in the terms of the application or with such modifications as the Chief Minister considers necessary.

(3) An order under subsection (2) operates to prohibit any assembly which–

(a) is held on land to which the public has no right of access or only a limited right of access; and

(b) takes place without the permission of the occupier of the land or so as to exceed the limits of any permission of his or the limits of the public's right of access.

(4) An order under this section–

(a) may not prohibit the holding of assemblies for more than 4 days;

(b) may be revoked or varied by a subsequent order made in the same way;

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(c) must, if not made in writing, be recorded in writing as soon as practicable after being made.

Trespassory assemblies: Offences.

67.(1) A person who organises an assembly the holding of which he knows is prohibited by an order under section 66 commits an offence and is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

(2) A person who takes part in an assembly which he knows is prohibited by an order under section 66 commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(3) A person who encourages or assists another to commit an offence under subsection (2) commits an offence and is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

Trespassory assemblies: Directions not to attend.

68.(1) If a police officer in uniform reasonably believes that a person is on his way to an assembly at a place in respect of which an order under section 66 has been made, and which the officer reasonably believes is likely to be an assembly which is prohibited by that order, he may stop the person and direct him not to proceed towards or attend the assembly.

(2) A person who fails to comply with a direction under subsection (1) which he knows has been given to him commits an offence.

(3) A person who commits an offence under subsection (2) is liable on summary conviction to a fine at level 3 on the standard scale.

Raves

Power to remove persons attending or preparing for a rave.

69.(1) This section applies to a gathering on land in the open air of 20 or more persons (whether or not trespassers) at which amplified music is played during the night (with or without intermissions) and is such as, by reason of its loudness and duration and the time at which it is played, is likely to cause serious distress to the inhabitants of the locality.

(2) For the purpose of subsection (1) a gathering continues during intermissions in the music and, if the gathering extends over several days, throughout the period during which amplified music is played at night (with or without intermissions).

(3) If, as respects any land in the open air, a police officer of the rank of Chief Inspector or above reasonably believes that–

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(a) 2 or more persons are making preparations for the holding there of a gathering to which this section applies;

(b) 10 or more persons are attending such a gathering which is in progress, or

(c) 10 or more persons are waiting within 100 metres for such a gathering to begin there,

the officer may give a direction that those persons and any other persons who come to prepare or wait for or to attend the gathering must leave the land and remove any vehicles or other property which they have with them on the land.

(4) A direction under subsection (3), if not communicated to the persons referred to in that subsection by the police officer giving the direction, may be communicated to them by any police officer at the scene.

(5) Persons are to be treated as having had a direction under subsection (3) communicated to them if reasonable steps have been taken to bring it to their attention.

(6) A direction under subsection (3) does not apply to an exempt person.

(7) If a person knowing that a direction has been given which applies to him–

(a) fails to leave the land as soon as reasonably practicable, or

(b) having left again enters the land within the period of 7 days beginning with the day on which the direction was given,

the person commits an offence and is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

(8) In proceedings for an offence under this section it is a defence for the defendant to show that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land.

(9) This section does not apply to a gathering of persons which is authorised by a permit or licence issued in accordance with the provisions of another enactment.

Powers of entry and seizure.

70.(1) If a police officer of the rank of Chief Inspector or above reasonably believes that circumstances exist in relation to any land which would justify the giving of a direction under

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section 69 in relation to a gathering to which that section applies, he may authorise any police officer to enter the land–

(a) to ascertain whether such circumstances exist; and

(b) to exercise any power conferred on a police officer by section 69 or subsection (4).

(2) A police officer who is authorised under subsection (1) to enter land for any purpose may enter the land without a warrant.

(3) If a direction has been given under section 69 and a police officer reasonably suspects that any person to whom the direction applies has, without reasonable excuse–

(a) failed to remove any vehicle or sound equipment on the land which appears to the officer to belong to the person or to be in his possession or under his control; or

(b) entered the land as a trespasser with a vehicle or sound equipment within 7 days after the direction was given,

the officer may seize and remove the vehicle or sound equipment.

(4) Subsection (3) does not authorise the seizure of any vehicle or sound equipment of an exempt person.

Power to stop persons from proceeding.

71.(1) If a police officer in uniform reasonably believes that a person is on his way to a gathering to which section 69 applies and in relation to which a direction under section 69(3) is in force, he may, subject to subsections (2) and (3) stop the person and direct him not to proceed in the direction of the gathering.

(2) The power conferred by subsection (1) may only be exercised at a place within 100 metres of the boundary of the site of the gathering.

(3) No direction may be given under subsection (1) to an exempt person.

(4) A person who fails to comply with a direction under subsection (1) which he knows has been given to him commits an offence.

(5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine at level 3 on the standard scale.

Forfeiture of sound equipment.

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72.(1) If a person is convicted of an offence under section 69 in relation to a gathering to which that section applies and the court is satisfied that any sound equipment which has been seized from him under section 70(3), or which was in his possession or under his control at the relevant time, has been used at the gathering, the court may make an order for forfeiture under this subsection in respect of that property.

(2) The court may make an order under subsection (1) whether or not it also deals with the offender in respect of the offence in any other way and without regard to any restrictions on forfeiture in any enactment.

(3) In considering whether to make an order under subsection (1) in respect of any property a court must have regard to–

(a) the value of the property; and

(b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(4) An order under subsection (1) operates to deprive the offender of his rights, if any, in the property to which it relates, and the property (if not already in police possession) is to be taken into the possession of the police.

(5) Subject to subsection (6), if any property has been forfeited under subsection (1), the Magistrates' Court may, on application by a claimant of the property, other than the offender from whom it was forfeited, make an order for delivery of the property to the applicant if it appears to the court that he is the owner of the property.

(6) An application under subsection (5) by a claimant of the property must be made within 6 months after the date on which an order under subsection (1) was made in respect of the property.

(7) An application under subsection (5) will not succeed unless the claimant satisfies the court either that he had not consented to the offender having possession of the property or that he did not know, and had no reason to suspect, that the property was likely to be used at a gathering to which section 69 applies.

(8) An order under subsection (5) does not affect the right of any person to take, within 6 months after the making of the order, proceedings for the recovery of the property from the person who is in possession of it in pursuant to the order, but on the expiration of 6 months the right ceases.

(9) The Minister may make regulations for the disposal of property, and for the application of the proceeds of sale of property, forfeited by an order under subsection (1) if no application by a claimant of the property under subsection (5) has been made within 6 months after the making of the order, or no such application has succeeded.

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(10) Regulations under subsection (9) may also provide for the investment of money and for the audit of accounts.

(11) In subsection (1), "relevant time", in relation to a person convicted of an offence under section 69 means the time of his arrest for the offence or of the issue of a summons in respect of it.

Retention of and charges for seized property.

73.(1) A vehicle which has been seized and removed by a police officer under section 70(3) may be retained in accordance with regulations made by the Minister under subsection (3).

(2) Any sound equipment which has been seized and removed by a police officer under section 70(3) may be retained until the conclusion of proceedings against the person from whom it was seized.

(3) The Minister may make regulations–

(a) regulating the retention and safe keeping and the disposal and the destruction in prescribed circumstances of vehicles; and

(b) prescribing charges in respect of the removal, retention, disposal and destruction of vehicles,

and the regulations may make different provisions for different classes of vehicles or for different circumstances.

(4) The Commissioner of Police is entitled to recover from a person from whom a vehicle has been seized the charges prescribed in respect of the removal, retention, disposal and destruction of the vehicle by the Commissioner of Police.

(5) Charges payable under subsection (4) in respect of a vehicle are recoverable as a simple contract debt and the Commissioner of Police is entitled to retain custody of the vehicle until any such charges are paid, subject to regulations made under subsection (3).

(6) In subsection (2) "conclusion of proceedings" against a person means–

(a) his being sentenced or otherwise dealt with for the offence or his acquittal;

(b) the discontinuance of the proceedings; or

(c) a decision not to prosecute him,

whichever is the earlier.

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Disguises

Authorisation relating to disguises.

74.(1) If a police officer of or above the rank of Chief Inspector reasonably believes–

(a) that activities may take place in any locality in Gibraltar that are likely (if they take place) to involve the commission of offences; and

(b) that it is expedient, in order to prevent or control the activities, to give an authorisation under this subsection,

he may authorise the power conferred by section 75 to be exercised in that locality for a specified period not exceeding 24 hours.

(2) If it appears to an officer of or above the rank of Chief Inspector that it is expedient to do so, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any incident or activity in the locality, he may extend the authorisation for a further period not exceeding 24 hours.

(3) An authorisation or extension under this section must be in writing signed by the police officer who gives it, and must specify–

(a) the locality in which and the period during which the powers conferred by section 75 are exercisable;

(b) the grounds for the authorisation or extension.

(4) The police officer who gives an authorisation under subsection (1) or an extension under subsection (2) must as soon as practicable inform the Commissioner of Police.

Power to require removal of disguise.

75.(1) An authorisation under section 74 confers on any police officer in uniform power in the locality and during the period specified in the authorisation–

(a) to require any person to remove any item which the officer reasonably believes the person is wearing wholly or mainly for the purpose of concealing his identity;

(b) to seize any item which the officer reasonably believes any person intends to wear wholly or mainly for that purpose.

(2) A person who fails to remove an item worn by him when required to do so by a police officer in the exercise of the powers under this section commits an offence and is liable on

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summary conviction to imprisonment for one month or a fine at level 3 on the standard scale, or both.

(3) Any thing seized by a police officer under subsection (1)(b) may be retained in accordance with regulations made by the Minister under this section.

(4) The Minister may make regulations regulating the retention and safe keeping, and the disposal and destruction in prescribed circumstances, of things seized under subsection (1)(b), and the regulations may make different provisions for different classes of things or for different circumstances.

Causing public alarm or anxiety

Contamination of or interference with goods with intention of causing public alarm or anxiety, etc.

76.(1) It is an offence for a person, with the intention of causing–

(a) public alarm or anxiety;

(b) injury to members of the public consuming or using the goods;

(c) economic loss to any person by reason of the goods being shunned by members of the public; or

(d) economic loss to any person by reason of steps taken to avoid any such alarm or anxiety, injury or loss,

to do any of the following–

(e) contaminate or interfere with goods;

(f) make it appear that goods have been contaminated or interfered with;

(g) place goods which have been contaminated or interfered with, or which appear to have been contaminated or interfered with, in a place where goods of that description are consumed, used, sold or otherwise supplied.

(2) It is an offence for a person, with any such intention as is mentioned in paragraph (a), (c) *or* (d) of subsection (1), to threaten that he or another will do, or to claim that he or another has done, any of the acts mentioned in paragraph (e), (f) or (g) of that subsection.

(3) It is an offence for a person to be in possession of any of the following articles with a view to the commission of an offence under subsection (1)–

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(a) materials to be used for contaminating or interfering with goods or making it appear that goods have been contaminated or interfered with;

(b) goods which have been contaminated or interfered with, or which appear to have been contaminated or interfered with.

(4) 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 10 years or a fine or both.

(5) In this section "goods" includes substances whether natural or manufactured and whether or not incorporated in or mixed with other goods.

(6) The reference in subsection (2) to a person claiming that certain acts have been committed does not include a person who in good faith reports or warns that such acts have been, or appear to have been, committed.

Bomb hoaxes.

77.(1) A person who–

(a) places any article or substance in any place whatever; or

(b) dispatches any article or substance by post or any other means whatever of sending things from one place to another,

with the intention (in either case) of inducing in some other person a belief that it is likely to explode or ignite and thereby cause personal injury or damage to property, commits an offence.

(2) A person who communicates any information which he knows or believes to be false to another person with the intention of inducing in that or any other person a false belief that a bomb or other thing liable to explode or ignite is present in any place or location whatever commits an offence.

(3) For a person to commit an offence against subsection (1) or (2) it is not necessary for him to have any particular person in mind as the person in whom he intends to induce the belief mentioned in that subsection.

(4) A person who commits an offence against this section is liable–

(a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;

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(b) on conviction on indictment to imprisonment for 7 years.

Quasi-military organisations, uniforms etc.

Quasi-military organisations.

78.(1) If the members or adherents of any association of persons, whether incorporated or not, are–

(a) organised, trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or of the armed forces of the Crown; or

(b) organised and trained or organised and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object, or in such manner as to arouse reasonable apprehension that they are organised and either trained or equipped for that purpose,

any person who takes part in the control or management of the association, or in organizing or training any members or adherents of it as described above, commits an offence and is liable–

(i) on summary conviction to imprisonment for 3 months or a fine at level 3 on the standard scale, or both;

(ii) on conviction on indictment, to imprisonment for 2 years or a fine, or both.

(2) In any proceedings against a person under subsection (1) it is a defence for the person to show that he did not consent to or connive at the organisation, training, or equipment of members or adherents of the association in contravention of subsection (1).

(3) No prosecution for an offence against this section may be commenced except by, or with the consent of, the Attorney-General.

(4) If upon application by the Attorney-General it appears to the court that any association is an association of which members or adherents are organised, trained, or equipped in contravention of subsection (1), the court may–

(a) make an order to prevent any disposition without the leave of the court of property held by or for the association;

(b) direct an inquiry and report to be made as to any such property and as to the affairs of the association;

(c) make such further orders as appear to the court to be just and equitable for the application of such property in or towards–

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(i) the discharge of the liabilities of the association lawfully incurred before the date of the application, or since that date with the approval of the court;

(ii) the repayment of moneys to persons who became subscribers or contributors to the association in good faith and without knowledge of the contravention;

(iii) any costs incurred in connection with any inquiry and report directed under paragraph (b) or in winding-up or dissolving the association,

(d) order that any property which is not directed by the court to be so applied is forfeited to the Crown.

(5) In any criminal or civil proceedings under this section proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the control or management of an association or in organizing, training or equipping members or adherents of it is admissible as evidence of the purposes for which, or the manner in which, the members or adherents (whether those persons or others) were organised, trained or equipped.

(6) If the Chief Justice is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this section has been committed, and that evidence of the commission of it is to be found at any premises or place specified in the information, he may, on application by a police officer of a rank not lower than inspector, grant a search warrant authorising the officer, or another officer named in the warrant, together with any other persons named in the warrant and any other police officers to–

(a) enter the premises or place at any time within one month from the date of the warrant, if necessary by force;

(b) search the premises or place and every person found therein; and

(c) seize anything found on the premises or place or on any such person which the officer has reasonable ground for suspecting to be evidence of the commission of the offence.

(7) A woman must not, in pursuance of a warrant under subsection (6), be searched except by a woman.

(8) Nothing in this section prohibits–

(a) the employment of a reasonable number of persons as stewards to assist in the preservation of order at any public meeting held upon private premises;

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(b) making of arrangements for that purpose;

(c) instructing persons to be employed in their lawful duties as stewards; or

(d) providing them with suitable badges or other appropriate distinguishing signs.

Prohibition of uniforms in connection with political objects.

79.(1) Subject to subsection (2), a person who in any public place or at any public meeting wears a uniform signifying his association with any political organisation or with the promotion of any political object commits an offence and is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

(2) If the Commissioner of Police is satisfied that the wearing of the uniform on any ceremonial, anniversary or other special occasion is not likely to involve risk of public disorder, he may, with the written consent of the Minister, issue a permit for the wearing of such uniform on that occasion either absolutely or subject to conditions specified in the permit.

(3) If a person is charged before a court with an offence against this section, no further proceedings in respect of it may be taken against him without the consent of the Attorney-General, except that the court may remand the person in custody or on bail to secure the due appearance of the person.

Breaches of the peace

Attempts to break up public meetings.

80.(1) A person who at any public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called commits an offence and is liable on summary conviction to imprisonment for 6 months or a fine at level 3 on the standard scale, or both.

(2) A person who encourages or assists others to commit an offence against subsection (1) commits the same offence.

(3) If a police officer reasonably suspects any person of committing an offence under subsection (1) or (2) he may, if so requested by the chairman of the meeting, require the person to declare to him immediately his name and address.

(4) If a person refuses or fails to declare his name and address to a police officer when required under subsection (3), or gives a false name and address–

(a) the police officer may arrest him without a warrant;

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(b) the person commits an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

(5) If a police officer reasonably suspects a person of giving a false name and address when required under subsection (3), the police officer may without warrant arrest him.

Offensive conduct conducive to breaches of the peace.

81. A person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, commits an offence and is liable on summary conviction to imprisonment for 9 months or to a fine at level 4 on the standard scale, or both.

Making disturbances, etc.

82. A person who in or near any public place, in any patio, yard, way, staircase or other means of access to any occupied premises, or in the port of Gibraltar–

(a) makes or causes to be made any disturbance; or

(b) uses any threatening, abusive or insulting words or riotous, violent or indecent behaviour,

with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits an offence and is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

Riotous behaviour in places of worship.

83.(1) A person who in any cathedral, church, chapel or other place of worship of any religious denomination or in any churchyard or burial ground commits riotous, violent or indecent behaviour commits an offence.

(2) A person who wilfully disquiets or disturbs any meeting, assembly or congregation of persons assembled in any cathedral, church, chapel, or other place of worship, during the celebration of divine service or at any other time, commits an offence.

(3) A person who molests, disturbs, vexes or troubles or by any other unlawful means disquiets or misuses any duly authorised preacher or any clergyman of any denomination lawfully ministering or celebrating any sacrament or any divine service, rite or office in any place of worship or in any churchyard or burial ground, commits an offence.

(4) A person who commits an offence under this section–

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(a) is liable on summary conviction to imprisonment for 4 months or a fine at level 2 on the standard scale, or both;

(b) may be apprehended by any police officer or by any person present at the commission of the offence and taken to a police station to be brought before the Magistrates' Court as soon as possible to be dealt with according to law.

Printing abusive matter, etc.

84.(1) A person who prints, publishes, offers for sale, distributes or disperses, or who assists in the printing, publishing, offering for sale, distributing or dispersing any newspaper or other publication whatsoever containing threatening, abusive or insulting matter calculated to excite enmity, tumult or disorder, or to provoke a breach of the peace commits an offence and is liable on summary conviction to imprisonment for 6 months or to a fine at level 3 on the standard scale, or both.

(2) When a person is convicted of an offence under subsection (1) the court may order–

(a) the person to give security for good behaviour;

(b) all newspapers or other publications that are the subject of the offence to be seized by a police officer and dealt with as the court directs.

Setting on dogs.

85.(1) A person who sets on or urges any dog or other animal to attack, worry or put in fear any person or animal commits an offence and is liable on summary conviction to imprisonment for 6 months or to a fine at level 3 on the standard scale, or both.

(2) Subsection (1) does not apply to a police officer or a member of the armed forces of the Crown acting in the course of duty.

Disorderly conduct in police station.

86. A person who in any police station, police post or building occupied for police purposes behaves in a riotous, indecent, disorderly or insulting manner commits an offence and is liable on summary conviction to imprisonment for 2 months or a fine at level 2 on the standard scale, or both.

PART 6
PROTECTION FROM HARASSMENT

Interpretation of Part.

87.(1) This section applies for the interpretation of this Part.

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(2) References to harassing a person include alarming the person or causing the person distress.

(3) A "course of conduct" must involve–

(a) in the case of conduct in relation to a single person (see section 91(1)), conduct on at least 2 occasions in relation to that person; or

(b) in the case of conduct in relation to two or more persons (see section 91(1A)), conduct on at least one occasion in relation to each of those persons.

(4) A person's conduct on any occasion, if aided, abetted, counselled or procured by another, is to be taken to be–

(a) conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and

(b) conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

(5) "Conduct" includes speech.

(6) The term "electronic communications network" has the meaning given to it by section 2(1) of the Communications Act 2006.

(7) References to a person, in the context of the harassment of a person, are references to a person who is an individual.

Threatening, abusive or insulting conduct

Intentional harassment, alarm or distress.

88.(1) A person commits an offence if, with intent to cause a person harassment, alarm or distress, he–

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

and thereby causes that or another person harassment, alarm or distress.

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(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

(3) It is a defence for the defendant to prove–

(a) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling; or

(b) that his conduct was reasonable.

(4) A person who commits an offence under this section is liable on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both.

Harassment, alarm or distress.

89.(1) A person commits an offence if he–

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) It is a defence for the defendant to prove that–

(a) he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress;

(b) he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling; or

(c) his conduct was reasonable.

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(4) A person who commits an offence under this section is liable on summary conviction to a fine at level 3 on the standard scale.

Mental element.

90.(1) A person commits an offence under section 89 only if he–

(a) intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting; or

(b) is aware that they might be threatening, abusive or insulting; or

(c) (if the offence is constituted by behaviour) he intends his behaviour to be or is aware that it might be disorderly.

(2) For the purposes of this section a person whose awareness is impaired by intoxication is to be taken to be aware of that of which he would be aware if not intoxicated, unless he shows either that his intoxication was not self-induced or that it was caused solely by the taking or administration of a substance in the course of medical treatment.

(3) In subsection (2) "intoxication" means any intoxication, whether caused by drink, drugs or other means, or by a combination of means.

Course of conduct

Prohibition of harassment.

91.(1) A person must not pursue a course of conduct which–

(a) amounts to harassment of another; and

(b) he knows or ought to know amounts to harassment of the other.

(1A) A person must not pursue a course of conduct–

(a) which involves harassment of two or more persons; and

(b) which he knows or ought to know involves harassment of those persons; and

(c) by which he intends to persuade any person (whether or not one of those mentioned above)–

(i) not to do something that he is entitled or required to do, or

(ii) to do something that he is not under any obligation to do.

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(2) For the purposes of this section or section 92A(2)(c), the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other.

(3) Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it shows–

(a) that it was pursued for the purpose of preventing or detecting crime;

(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

Harassing conduct.

92.(1) A person who pursues a course of conduct in breach of section 91(1) or (1A) commits an offence.

(2) A person who commits an offence under this section is liable on summary conviction to imprisonment for 12 months, or the statutory maximum fine, or both.

Stalking.

92A.(1) A person is guilty of an offence if–

(a) the person pursues a course of conduct in breach of section 91; and

(b) the course of conduct amounts to stalking.

(2) For the purposes of subsection (1)(b) and section 94A(1)(a) a person's course of conduct amounts to stalking of another person if–

(a) it amounts to harassment of that person;

(b) the acts or omissions involved are ones associated with stalking; and

(c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person.

(3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking–

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(a) following a person;

(b) contacting, or attempting to contact, a person by any means;

(c) publishing any statement or other material−

(i) relating or purporting to relate to a person, or

(ii) purporting to originate from a person,

(d) monitoring the use by a person of the internet, email or any other form of electronic communication;

(e) loitering in any place (whether public or private);

(f) interfering with any property in the possession of a person;

(g) watching or spying on a person.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for 12 months, or the statutory maximum fine, or both.

(5) This section is without prejudice to the generality of section 92.

Power of entry in relation to offence of stalking.

92B.(1) A magistrate may, on an application by a police officer, issue a warrant authorising a police officer to enter and search premises if the magistrate is satisfied that there are reasonable grounds for believing that−

(a) an offence under section 92A has been, or is being, committed;

(b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;

(c) the material−

(i) is likely to be admissible in evidence at a trial for the offence, and

(ii) does not consist of, or include, items subject to legal privilege, excluded material or special procedure material (within the meanings given by sections 14, 15 and 18 Criminal Procedure and Evidence Act 2011); and

(d) either−

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(i) entry to the premises will not be granted unless a warrant is produced, or

(ii) the purpose of the search may be frustrated or seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.

(2) A police officer may seize and retain anything for which a search has been authorised under subsection (1).

(3) A police officer may use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.

(4) In this section "premises" has the same meaning as in section 2(1) Criminal Procedure and Evidence Act 2011.

Civil remedy.

93.(1) An actual or apprehended breach of section 91(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

(3) If–

(a) in such proceedings the Supreme Court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment; and

(b) the claimant considers that the defendant has done anything which he is prohibited from doing by the injunction,

the claimant may apply for the issue of a warrant for the arrest of the defendant.

(4) The court on an application under subsection (3) may only issue a warrant if–

(a) the application is substantiated on oath; and

(b) the court has reasonable grounds for believing that the defendant has done anything which he is prohibited from doing by the injunction.

(5) If–

(a) the court grants an injunction for the purpose mentioned in subsection (3)(a); and

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(b) without reasonable excuse the defendant does anything which he is prohibited from doing by the injunction,

the defendant commits an offence.

(6) If a person is convicted of an offence under subsection (5) in respect of any conduct, that conduct is not punishable as a contempt of court.

(7) A person cannot be convicted of an offence under subsection (5) in respect of any conduct which has been punished as a contempt of court.

(8) A person who commits an offence under subsection (5) 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 5 years, or a fine, or both.

Injunctions to protect persons from harassment within section 91(1A).

93A. (1) This section applies where there is an actual or apprehended breach of section 91(1A) by any person ("the relevant person").

(2) In such a case–

(a) any person who is or may be a victim of the course of conduct in question; or

(b) any person who is or may be a person falling within section 91(1A)(c),

may apply to the Supreme Court for an injunction restraining the relevant person from pursuing any conduct which amounts to harassment in relation to any person or persons mentioned or described in the injunction.

(3) Section 93(3) to (8) apply in relation to an injunction granted under subsection (2) above as they apply in relation to an injunction granted as mentioned in section 93(3)(a).

Putting people in fear of violence.

94.(1) A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him, commits an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion

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if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.

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

(a) his course of conduct was pursued for the purpose of preventing or detecting crime,

(b) his course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(c) the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property.

(4) 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 5 years or a fine, or both.

(5) If on the trial on indictment of a person charged with an offence under this section the jury find him not guilty of the offence charged, they may find him guilty of an offence under section 92 or 92A.

(6) If by virtue of subsection (5) a person is convicted by the Supreme Court of an offence under section 92 or 92A, the court has the same powers and duties in relation to him as the Magistrates' Court would have on convicting him of that offence.

Stalking involving fear of violence or serious alarm or distress.

94A.(1) A person ("A") whose course of conduct–

(a) amounts to stalking; and

(b) either–

(i) causes another ("B") to fear, on at least two occasions, that violence will be used against B, or

(ii) causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities,

is guilty of an offence if A knows or ought to know that A's course of conduct will cause B so to fear on each of those occasions or (as the case may be) will cause such alarm or distress.

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(2) For the purposes of this section A ought to know that A's course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.

(3) For the purposes of this section A ought to know that A's course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress.

(4) It is a defence for A to show that−

(a) A's course of conduct was pursued for the purpose of preventing or detecting crime;

(b) A's course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(c) the pursuit of A's course of conduct was reasonable for the protection of A or another or for the protection of A's or another's property.

(5) A person guilty of an offence under this section is liable−

(a) on summary conviction, to imprisonment for 12 months, or the statutory maximum fine, or both; or

(b) on conviction on indictment, to imprisonment for 5 years, or a fine, or both.

(6) If on the trial on indictment of a person charged with an offence under this section the jury find the person not guilty of the offence charged, they may find the person guilty of an offence under section 92 or 92A.

(7) The Supreme Court has the same powers and duties in relation to a person who is by virtue of subsection (6) convicted before it of an offence under section 92 or 92A as a Magistrates' Court would have on convicting the person of the offence.

(8) This section is without prejudice to the generality of section 94.

Restraining orders on conviction.

95.(1) A court sentencing or otherwise dealing with a person ("the defendant") convicted of an offence may (as well as sentencing him or dealing with him in any other way) make an order under this section.

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(2) For the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from further conduct which–

(a) amounts to harassment; or

(b) will cause a fear of violence,

the court may prohibit the defendant from doing anything described in the order.

(3) The order may have effect for a specified period or until further order.

(4) In proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 93.

(5) The prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

(6) A defendant who without reasonable excuse does anything which he is prohibited from doing by an order under this section commits an offence.

(7) Any person mentioned in the order is entitled to be heard on the hearing of an application under section 93.

(8) A person who commits an offence under this section is liable–

(a) on summary conviction, to imprisonment for 6 months, or the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for 5 years, or a fine, or both.

(9) A court dealing with a person for an offence under this section may vary or discharge the order in question by a further order.

Restraining orders on acquittal.

95A.(1) A court before which a person ("the defendant") is acquitted of an offence may, if it considers necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.

(2) Subsections (3) to (7) of section 95 apply to an order under this section as they apply to an order under that one.

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(3) Where the Court of Appeal allows an appeal against conviction it may remit the case to the Supreme Court to consider whether to proceed under this section.

(4) Where–

(a) the Supreme Court allows an appeal against conviction; or

(b) a case remitted to the Supreme Court under subsection (3),

the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.

(5) A person made subject to an order under this section has the same right of appeal against the order as if-

(a) he had been convicted of the offence in question before the court which made the order; and

(b) the order had been made under section 95.

Sending letters, etc. with intent to cause distress

Offence of sending letters etc. with intent to cause distress or anxiety.

96.(1) A person who sends to another person–

(a) a letter, communication or article of any description which conveys–

(i) a message which is indecent or grossly offensive;

(ii) a threat; or

(iii) information which is false and known or believed to be false by the sender; or

(b) any article or communication which is, in whole or part, of an indecent or grossly offensive nature,

commits an offence if his purpose, or one of his purposes, in sending it is that it should, so far as falling within paragraph (a) or (b) above, cause distress or anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated.

(2) A person does not commit an offence under subsection (1)(a)(ii) if he shows–

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(a) that the threat was used to reinforce a demand made by him on reasonable grounds; and

(b) that he believed, and had reasonable grounds for believing, that the use of the threat was a proper means of reinforcing the demand.

(3) In this section references to sending include references to delivering or transmitting and to causing to be sent, delivered or transmitted, and "sender" is to be construed accordingly.

(4) A person who commits an offence under this section is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both.

Offences of sending or showing flashing images electronically.

96A.(1) A person (A) commits an offence if-

(a) A sends a communication by electronic means which consists of or includes flashing images (see subsection (13));

(b) either condition 1 or condition 2 is met; and

(c) A has no reasonable excuse for sending the communication.

(2) Condition 1 is that-

(a) at the time the communication is sent, it is reasonably foreseeable that an individual with epilepsy would be among the individuals who would view it; and

(b) A sends the communication with the intention that such an individual will suffer harm as a result of viewing the flashing images.

(3) Condition 2 is that, when sending the communication-

(a) A believes that an individual (B)-

(i) whom A knows to be an individual with epilepsy; or

(ii) whom A suspects to be an individual with epilepsy;

will, or might, view it, and

(b) A intends that B will suffer harm as a result of viewing the flashing images.

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(4) In subsections (2)(a) and (3)(a), references to viewing the communication are to be read as including references to viewing a subsequent communication forwarding or sharing the content of the communication.

(5) The exemptions contained in section 96B apply to an offence under subsection (1).

(6) For the purposes of subsection (1), a provider of an internet service by means of which a communication is send is not to be regarded as a person who sends a communication.

(7) In the application of subsection (1) to a communication consisting of or including a hyperlink to other content, references to the communication are to be read as including references to content accessed directly via the hyperlink.

(8) A person (A) commits an offence if –

(a) A shows an individual (B) flashing images by means of an electronic communications device;

(b) when showing the images –

(i) A knows that B is an individual with epilepsy; or

(ii) A suspects that B is an individual with epilepsy;

(c) when showing the images, A intends that B will suffer harm as a result of viewing them; and

(d) A has no reasonable excuse for showing the images.

(9) An offence under subsection (1) or (8) cannot be committed by a healthcare professional acting in that capacity.

(10) A person who commits an offence under subsection (1) or (8) is liable –

(a) on summary conviction to imprisonment for a term not exceeding 12 months' imprisonment or a fine or both;

(b) on conviction on indictment to imprisonment for a term not exceeding five years or a fine or both.

(11) It does not matter for the purpose of this section whether flashing images may be viewed at once (for example, a GIF that plays automatically) or only after some action is performed (for example, pressing play).

(12) In this section-

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(a) references to sending a communication include references to causing a communication to be sent;

(b) references to showing flashing images include references to causing flashing images to be shown.

(13) In this section –

"electronic communications device" means equipment or a device that is capable of transmitting images by electronic means;

"flashing images" means images which carry a risk that an individual with photosensitive epilepsy who viewed them would suffer a seizure as a result;

"harm" means –

(a) a seizure; or

(b) alarm or distress;

"individual with epilepsy" includes, but is not limited to, an individual with photosensitive epilepsy;

"send" includes transmit and publish (and related expressions are to be read accordingly).

Exemptions from offence under section 96A.

96B.(1) A recognised news publisher cannot commit an offence under section 96A.

(2) An offence under section 96A cannot be committed by the holder of a licence under the Broadcasting Act 2012 in connection with anything done under the authority of the licence.

(3) An offence under section 96A cannot be committed in connection with the showing of a film made for cinema to members of the public.

(4) "Recognised news publisher" has the meaning given in section 96C.

Recognised news publisher.

96C.(1) "Recognised news publisher" means any of the following entities –

(a) the Gibraltar Broadcasting Corporation;

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(b) the holder of a licence under the Broadcasting Act 2012 who publishes news-related material in connection with the broadcasting activities authorised under the licence; and

(c) any other entity which –

(i) meets all of the conditions in subsection (2), and

(ii) is not an excluded entity (see subsection (3)).

(2) The conditions referred to in subsection (1)(c)(i) are that the entity –

(a) has as its principal purpose the publication of news-related material, and such material –

(i) is created by different persons; and

(ii) is subject to editorial control;

(b) publishes such material in the course of a business (whether or not with a view to profit);

(c) is subject to a standards code;

(d) has policies and procedures for resolving complaints;

(e) has a registered office or other business address in Gibraltar;

(f) is the person with legal responsibility for material published by it in Gibraltar; and

(g) publishes –

(i) the entity's name and the address mentioned in paragraph (e); and

(ii) the name and address of any person who controls the entity (including, where such person is an entity, the person's registered or principal office).

(3) An "excluded entity" is an entity –

(a) which is a proscribed organisation under the Terrorism Act 2018 (see section 7 of that Act); or

(b) the purpose of which is to support a proscribed organisation under that Act.

(4) For the purposes of subsection (2) -

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(a) news-related material is "subject to editorial control" if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for the material, including responsibility for how it is presented and the decision to publish it;

(b) "control"-

(i) in relation to a body corporate, shall be construed in accordance with sub-paragraph (iii), and

(ii) in relation to any body other than a body corporate, means the power of a person to secure, by whatever means and whether directly or indirectly, that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person;

(iii) in relation to this section, a person controls a body corporate if—

(A) he holds, or is beneficially entitled to, more than 50 per cent. of the equity share capital in the body, or possesses more than 50 per cent. of the voting power in it; or

(B) although he does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that he would (if he chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the body are conducted in accordance with his wishes; or

(C) he holds, or is beneficially entitled to, 50 per cent. of the equity share capital in that body, or possesses 50 per cent. of the voting power in it, and an arrangement exists between him and any other participant in the body as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.

(5) In this section-

"news-related material" means material consisting of –

(a) news or information about current affairs;

(b) opinion about matters relating to the news or current affairs; or

(c) gossip about celebrities, other public figures or other persons in the news;

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"publish" means publish by any means (including by broadcasting), and references to a publisher and publication are to be construed accordingly;

"standards code" means –

(a) a code of standards that regulates the conduct of publishers, that is published by an independent regulator; or

(b) a code of standards that regulates the conduct of the entity in question, that is published by the entity itself.

Liability of corporate officers.

96D.(1) If an offence under section 96A is committed by a body corporate and it is proved that the offence –

(a) has been committed with the consent or connivance of an officer of the body corporate; or

(b) is attributable to any neglect on the part of an officer of the body corporate,

the officer (as well as the body corporate) commits the offence and is liable to be proceeded against and punished accordingly.

(2) "Officer", in relation to a body corporate, means –

(a) a director, manager, associate, secretary or other similar officer, or;

(b) a person purporting to act in such capacity.

Extra-territorial application and jurisdiction.

96E.(1) Section 96A applies to an act done outside Gibraltar, but only if the act is done by a person within subsection (2).

(2) A person is within this subsection if the person is –

(a) an individual who is habitually resident in Gibraltar; or

(b) a body incorporated or constituted under the law of Gibraltar.

Improper use of public electronic communications network

Offence of improper use of public electronic communications network.

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97.(1) A person who–

(a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

(b) causes any such message or matter to be so sent,

commits an offence.

(2) A person who, for the purpose of causing annoyance, inconvenience or needless anxiety to another–

(a) sends by means of a public electronic communications network a message that he knows to be false;

(b) causes such a message to be sent; or

(c) persistently makes use of a public electronic communications network,

commits an offence.

(3) A person who commits an offence under this section is liable on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both.

(4) Subsections (1) and (2) do not apply to anything done in the course of providing a programme service.

(5) In this section, "electronic communications network" means –

(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals–

(i) apparatus comprised in the system;

(ii) apparatus used for the switching or routing of the signals; and

(iii) software and stored data.

Harassment of a person in his home

Offence of harassment etc. of a person in his home.

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97A.(1) A person commits an offence if−

(a) that person is present outside or in the vicinity of any premises that are used by any individual ("the resident") as his dwelling;

(b) that person is present there for the purpose (by his presence or otherwise) of representing to the resident or another individual (whether or not one who uses the premises as his dwelling), or of persuading the resident or such other individual−

(i) that he should not do something that he is entitled or required to do, or

(ii) that he should do something that he is not under any obligation to do;

(c) that person−

(i) intends his presence to amount to the harassment of, or to cause alarm or distress to, the resident, or

(ii) knows or ought to know that his presence is likely to result in the harassment of, or to cause alarm or distress to, the resident; and

(d) the presence of that person−

(i) amounts to the harassment of, or causes alarm or distress to, any person falling within subsection (2), or

(ii) is likely to result in the harassment of, or to cause alarm or distress to, any such person.

(2) A person falls within this subsection if he is−

(a) the resident;

(b) a person in the resident's dwelling; or

(c) a person in another dwelling in the vicinity of the resident's dwelling.

(3) The references in subsection (1)(c) and (d) to a person's presence are references to his presence either alone or together with that of any other persons who are also present.

(4) For the purposes of this section a person (A) ought to know that his presence is likely to result in the harassment of, or to cause alarm or distress to, a resident if a reasonable person in possession of the same information would think that A's presence was likely to have that effect.

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(5) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 4 on the standard scale, or to both.

(6) In this section "dwelling" has the same meaning as section 54.

Disclosing, or threatening to disclose, *private sexual photographs etc.*

Disclosing, or threatening to disclose, private sexual photographs and films with intent to cause distress.

97B.(1) A person commits an offence if-

(a) the person discloses, or threatens to disclose, a private sexual photograph or film in which another individual ("the relevant individual") appears;

(b) by so doing, the person intends to cause distress to that individual; and

(c) the disclosure is, or would be, made without the consent of that individual.

(2) But it is not an offence under this section for the person to disclose, or threaten to disclose, the photograph or film to the relevant individual.

(2A) Where a person is charged with an offence under this section of threatening to disclose a private sexual photograph or film, it is not necessary for the prosecution to prove-

(a) that the photograph or film referred to in the threat exists; or

(b) if it does exist, that it is in fact a private sexual photograph or film.

(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, or threat to disclose, 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,

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(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 relevant individual 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 relevant individual.

(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 intended to cause distress by disclosing, or threatening to disclose, a photograph or film merely because that was a natural and probable consequence of the disclosure or threat.

(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.

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(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,

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(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 relevant individual (within the meaning of section 97B) 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)-

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(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.

PART 7
HATRED OFFENCES AND INCREASE IN SENTENCES

Interpretation of Part.

98.(1) In this Part, unless the context otherwise requires–

"age" means persons defined by reference to age, whether by reference to a particular age or range of ages;

"disability" means any physical and mental impairment;

"distribute" means distribute to the public or a section of the public;

"hatred on the grounds of sexual orientation" means hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both);

"racial hatred" means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins;

"recording" means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing of a recording to the public or a section of the public;

"religious hatred" means hatred against a group of persons defined by reference to religious belief or lack of religious belief.

(2) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

Racial hatred, religious hatred or hatred on the grounds of sexual orientation – Offences

Use of words or behaviour or display of written material.

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99.(1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, commits an offence if–

(a) that person intends thereby to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation; or

(b) having regard to all the circumstances racial hatred, religious hatred or hatred on the grounds of sexual orientation is likely to be stirred up thereby.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that dwelling.

(3) A person who is not shown to have intended to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation does not commit an offence under subsection (1) if he did not intend his words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.

(4) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme.

Publishing or distributing written material.

100.(1) A person who publishes or distributes written material which is threatening, abusive or insulting commits an offence if–

(a) that person intends thereby to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation; or

(b) having regard to all the circumstances racial hatred, religious hatred or hatred on the grounds of sexual orientation is likely to be stirred up thereby.

(2) In proceedings for an offence under subsection (1) it is a defence for a person who is not shown to have intended to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation to prove that he was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

Public performance of a play.

101.(1) If a public performance of a play is given which involves the use of threatening, abusive or insulting words or behaviour, any person who presents or directs the performance commits an offence if–

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(a) that person intends thereby to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation; or

(b) having regard to all the circumstances, and taking the performance as a whole, racial hatred, religious hatred or hatred on the grounds of sexual orientation is likely to be stirred up thereby.

(2) If a person presenting or directing the performance is not shown to have intended to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation, it is a defence for him to prove that–

(a) he did not know and had no reason to suspect that the performance would involve the use of the offending words or behaviour;

(b) he did not know and had no reason to suspect that the offending words or behaviour were threatening, abusive or insulting; or

(c) he did not know and had no reason to suspect that the circumstances in which the performance would be given would be such that racial hatred, religious hatred or hatred on the grounds of sexual orientation would be likely to be stirred up.

(3) Subject to subsection (4), this section does not apply to a performance given solely or primarily for one or more of the following purposes–

(a) rehearsal;

(b) making a recording of the performance; or

(c) enabling the performance to be included in a radio or television broadcast.

(4) If it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in subsection (3), the performance is, unless the contrary is shown, to be taken not to have been given solely or primarily for the purposes mentioned in that subsection.

(5) For the purposes of this section a person–

(a) is not to be treated as presenting a performance of a play by reason only of taking part in it as a performer;

(b) if taking part as a performer in a performance directed by another person, is to be treated as directing the performance if without reasonable excuse he performs otherwise than in accordance with that other person's direction;

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(c) is to be taken as directing a performance of a play given under his direction even if he is not present during the performance;

(d) is not to be treated as aiding or abetting the commission of an offence under this section by reason only of taking part in a performance as a performer.

Distributing, showing or playing a recording.

102.(1) A person who, distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting commits an offence if–

(a) that person intends thereby to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation; or

(b) having regard to all the circumstances racial hatred, religious hatred or hatred on the grounds of sexual orientation is likely to be stirred up thereby.

(2) In proceedings for an offence under this section it is a defence for a defendant who is not shown to have intended to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation to prove that he was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

(3) This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be broadcast.

Broadcasting threatening, abusive or insulting material.

103.(1) If a programme involving threatening, abusive or insulting visual images or sounds is broadcast, each of the persons mentioned in subsection (2) commits an offence if–

(a) that person intends thereby to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation; or

(b) having regard to all the circumstances racial hatred, religious hatred or hatred on the grounds of sexual orientation is likely to be stirred up thereby.

(2) The persons referred to in subsection (1) are–

(a) the person providing the programme;

(b) any person by whom the programme is produced or directed; and

(c) any person by whom offending words or behaviour are used.

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(3) If the person providing the programme, or a person by whom the programme was produced or directed, is not shown to have intended to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation, it is a defence for him to prove that–

(a) he did not know and had no reason to suspect that the programme would involve the offending material; and

(b) having regard to the circumstances in which the programme was broadcast it was not reasonably practicable for him to secure the removal of the material.

(4) It is a defence for a person by whom the programme was produced or directed who is not shown to have intended to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation to prove that he did not know and had no reason to suspect that–

(a) the programme would be broadcast; or

(b) the circumstances in which the programme would be broadcast would be such that racial hatred, religious hatred or hatred on the grounds of sexual orientation would be likely to be stirred up.

(5) It is a defence for a person by whom offending words or behaviour were used and who is not shown to have intended to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation to prove that he did not know and had no reason to suspect that–

(a) a programme involving the use of the offending material would be broadcast; or

(b) the circumstances in which a programme involving the use of the offending material would be broadcast, or in which a programme would involve the use of the offending material, would be such that racial hatred, religious hatred or hatred on the grounds of sexual orientation would be likely to be stirred up.

(6) A person who is not shown to have intended to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation does not commit an offence under this section if he did not know, and had no reason to suspect, that the offending material was threatening, abusive or insulting.

Possession of inflammatory material.

104.(1) A person who has in his possession written material which is threatening, abusive or insulting, or a recording of visual images or sounds which are threatening, abusive or insulting, with a view to its being displayed, shown, played, published, distributed or broadcast, whether by himself or another, commits an offence if–

(a) that person intends thereby to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation; or

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(b) having regard to all the circumstances racial hatred, religious hatred or hatred on the grounds of sexual orientation is likely to be stirred up thereby.

(2) For the purpose of subsection (1), regard must be had to such display, showing, playing, publication, distribution or broadcast as the person has, or might reasonably be inferred to have, in view.

(3) In proceedings for an offence under subsection (1) it is a defence for a person who is not shown to have intended to stir up racial hatred, religious hatred or hatred on the grounds of sexual orientation to prove that he was not aware of the content of the written material or recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

Racial hatred, religious hatred or hatred on the grounds of sexual orientation – Supplementary

Powers of entry and search.

105.(1) If a magistrate is satisfied by information on oath that there are reasonable grounds for suspecting, as regards any premises specified in the information that a performance of a play is to be given at those premises, and that an offence under section 101 is likely to be committed in respect of that performance, the magistrate may issue a warrant under his hand empowering any police officer at any time within 7 days from the date of the warrant to enter the premises and to attend any performance of a play which may be given there.

(2) If a magistrate is satisfied by information on oath laid by a police officer that there are reasonable grounds for suspecting that a person has possession of written material or a recording in contravention of section 104, the magistrate may issue a warrant under his hand authorising any police officer to enter and search the premises where it is suspected the material or recording is situated.

(3) A police officer entering or searching premises in pursuance of a warrant issued under this section may use reasonable force if necessary.

Script as evidence of what was performed.

106.(1) If a performance of a play was based on a script, then, in any proceedings for an offence under section 101 alleged to have been committed in respect of that performance–

(a) an actual script on which that performance was based is admissible as evidence of what was performed and of the manner in which the performance or any part of it was given; and

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(b) if such a script is given in evidence on behalf of any party to the proceedings then, except in so far as the contrary is shown, whether by evidence given on behalf of the same or any other party, the performance is to be taken to have been given in accordance with that script.

(2) In this section "script", in relation to a performance of a play, means the text of the play (whether expressed in words or in musical or other notation) together with any stage or other directions for its performance, whether contained in a single document or not.

Power to make copies of scripts.

107.(1) If a police officer of or above the rank of Chief Inspector has reasonable grounds for suspecting–

(a) that an offence under section 101 has been committed by any person in respect of a performance of a play; or

(b) that a performance of a play is to be given and that an offence under that section is likely to be committed by any person in respect of that performance,

he may require the person suspected of committing the offence to produce a copy of any actual script on which the performance was or, as the case may be, will be based.

(2) A person who without reasonable excuse fails to comply with a requirement under subsection (1) commits an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

(3) If, in the case of a performance of a play based on a script, a copy of an actual script on which that performance was based has been provided to a police officer, section 106 applies in relation to that copy as it applies in relation to an actual script on which the performance was based.

Power to order forfeiture.

108.(1) A court by or before which a person is convicted of an offence–

(a) under section 99 relating to the display of written material; or

(b) under section 100, 102 or 104,

must order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates.

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(2) An order made under this section does not take effect until the expiry of the ordinary time within which an appeal may be instituted or, if an appeal is duly instituted, until it is finally decided or abandoned.

(3) For the purposes of subsection (2)–

(a) an application for a case stated or for leave to appeal is to be treated as the institution of an appeal; and

(b) if a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, if a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

Savings for reports of parliamentary or judicial proceedings.

109.(1) Nothing in sections 99 to 104 applies to a fair and accurate report of proceedings in Parliament.

(2) Nothing in sections 99 to 104 applies to a fair and accurate report of proceedings publicly heard before a court or tribunal exercising judicial authority, if the report is published contemporaneously with the proceedings or, if it is not reasonably practicable or would be unlawful to publish a report of them contemporaneously, as soon as publication is reasonably practicable and lawful.

Procedure and penalties.

110.(1) No proceedings for an offence under any of sections 99 to 104 may be commenced except by, or with the consent of, the Attorney-General.

(2) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 99 to 104 creates separate offences.

(3) A person who commits an offence under any of sections 99 to 104 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.

Freedom of expression (religious).

111.(1) Nothing in this Part is to be read or given effect in a way which prohibits or restricts freedom of religious expression.

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(2) Without limiting subsection (1), nothing in this Part is to be read or given effect in a way which prohibits or restricts–

(a) discussion or criticism of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents; or

(b) urging adherents of a different religion or belief system to cease practising their religion or belief system; or

(c) the distribution of religious material based on material which has hitherto been commonly or customarily produced or distributed in Gibraltar,

to the extent reasonably justifiable in a democratic society.

Freedom of expression (sexual orientation).

111A. Nothing in this Part is to be read or given effect in a way which prohibits−

(a) discussion or criticism of sexual conduct or practices; or

(b) urging persons to refrain from such conduct or practices,

and such discussion, criticism or urging shall not be taken of itself to be threatening, abusive or insulting or intended to stir up hatred.

Aggravated offences

Meaning of "racially aggravated".

112.(1) An offence is racially aggravated for the purposes of this Part if–

(a) at the time of committing the basic offence, or immediately before or afterwards, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial group; or

(b) the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.

(2) For purposes of subsection (1)–

(a) –

"basic offence" means an offence mentioned in any of sections 113(1), 114(1), 115(1) and 116(1);

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"membership", in relation to a racial group, includes association with members of that group;

"presumed" means presumed by the offender;

"racial group" means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins;

(b) it is immaterial whether or not the offender's hostility is also based, to any extent, on–

(i) the fact or presumption that any person or group of persons belongs to any religious group, disability group, sexually orientated group or age group; or

(ii) any other factor not mentioned in that paragraph.

Meaning of "religiously aggravated".

112A.(1) An offence is religiously aggravated for the purposes of this Part if–

(a) at the time of committing the basic offence, or immediately before or afterwards, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a religious group; or

(b) the offence is motivated (wholly or partly) by hostility towards members of a religious group based on their membership of that group.

(2) For purposes of subsection (1)–

(a)–

"basic offence" means an offence mentioned in any of sections 113A(1), 114A(1), 115A(1) and 116A(1);

"membership", in relation to a religious group, includes association with members of that group;

"presumed" means presumed by the offender;

"religious group" means a group of persons defined by reference to religious belief or lack of religious belief;

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(b) it is immaterial whether or not the offender's hostility is also based, to any extent, on–

(i) the fact or presumption that any person or group of persons belongs to any racial group, disability group, sexually orientated group or age group, or

(ii) any other factor not mentioned in that paragraph.

Meaning of "disability aggravated".

112B.(1) An offence is disability aggravated for the purposes of this Part if–

(a) at the time of committing the basic offence, or immediately before or afterwards, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a disability group; or

(b) the offence is motivated (wholly or partly) by hostility towards members of a disability group based on their membership of that group.

(2) For purposes of subsection (1)–

(a)–

"basic offence" means an offence mentioned in any of sections 113B(1), 114B(1), 115B(1) and 116B(1);

"membership", in relation to a disability group, includes association with members of that group;

"presumed" means presumed by the offender;

"disability group" means a group of persons defined by reference to any physical or mental impairment;

(b) it is immaterial whether or not the offender's hostility is also based, to any extent, on–

(i) the fact or presumption that any person or group of persons belongs to any racial group, religious group, sexually orientated group or age group, or

(ii) any other factor not mentioned in that paragraph.

Meaning of "aggravated by reason of sexual orientation".

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112C.(1) An offence is aggravated by reason of sexual orientation for the purposes of this Part if–

(a) at the time of committing the basic offence, or immediately before or afterwards, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a sexually orientated group; or

(b) the offence is motivated (wholly or partly) by hostility towards members of a sexually orientated group based on their membership of that group.

(2) For purposes of subsection (1)–

(a)–

"basic offence" means an offence mentioned in any of sections 113C(1), 114C(1), 115C(1) and 116C(1);

"membership", in relation to a sexually orientated group, includes association with members of that group;

"presumed" means presumed by the offender;

"sexually orientated group" means a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both) ;

(b) it is immaterial whether or not the offender's hostility is also based, to any extent, on–

(i) the fact or presumption that any person or group of persons belongs to any racial group, religious group, disability group or age group, or

(ii) any other factor not mentioned in that paragraph.

Meaning of "age aggravated".

112D.(1) An offence is age aggravated for the purposes of this Part if–

(a) at the time of committing the basic offence, or immediately before or afterwards, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of an age group; or

(b) the offence is motivated (wholly or partly) by hostility towards members of an age group based on their membership of that group.

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(2) For purposes of subsection (1)–

(a)–

"basic offence" means an offence mentioned in any of sections 113D(1), 114D(1), 115D(1) and 116D(1);

"membership", in relation to an age group, includes association with members of that group;

"presumed" means presumed by the offender;

"age group" means a group of persons defined by reference to age, whether by reference to a particular age or a range of ages and the reference to the age of a person ("A") includes the apparent age of A.

(b) it is immaterial whether or not the offender's hostility is also based, to any extent, on–

(i) the fact or presumption that any person or group of persons belongs to any racial group, religious group, sexually orientated group or disability group, or

(ii) any other factor not mentioned in that paragraph.

Racially-aggravated assaults.

113.(1) A person commits an offence under this section if he commits–

(a) an offence under section 166 or 167 (wounding with intent to do grievous bodily harm or malicious wounding);

(b) an offence under section 176 (actual bodily harm); or

(c) an offence under section 175 (common assault),

which is racially aggravated for the purposes of this Part.

(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;

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(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.

Religiously-aggravated assaults.

113A.(1) A person commits an offence under this section if that person commits–

(a) an offence under section 166 or 167 (wounding with intent to do grievous bodily harm or malicious wounding);

(b) an offence under section 176 (actual bodily harm); or

(c) an offence under section 175 (common assault),

which is religiously aggravated for the purposes of this Part.

(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.

Disability-aggravated assaults.

113B.(1) A person commits an offence under this section if that person commits–

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(a) an offence under section 166 or 167 (wounding with intent to do grievous bodily harm or malicious wounding);

(b) an offence under section 176 (actual bodily harm); or

(c) an offence under section 175 (common assault),

which is disability aggravated for the purposes of this Part.

(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.

Aggravated assaults by reason of sexual orientation.

113C.(1) A person commits an offence under this section if that person commits–

(a) an offence under section 166 or 167 (wounding with intent to do grievous bodily harm or malicious wounding);

(b) an offence under section 176 (actual bodily harm); or

(c) an offence under section 175 (common assault),

which is aggravated by reason of sexual orientation for the purposes of this Part.

(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−

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(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.

Age-aggravated assaults.

113D.(1) A person commits an offence under this section if that person commits–

(a) an offence under section 166 or 167 (wounding with intent to do grievous bodily harm or malicious wounding);

(b) an offence under section 176 (actual bodily harm); or

(c) an offence under section 175 (common assault),

which is age aggravated for the purposes of this Part.

(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.

Racially-aggravated criminal damage.

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114.(1) A person commits an offence under this section if he commits an offence under section 354 (Destroying or damaging property) which is racially aggravated for the purposes of this Part.

(2) 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 to a fine, or both.

(3) For the purposes of subsection (1), section 112(1)(a) has effect as if the person to whom the property belongs (or is treated as belonging under section 353) were the victim of the offence.

Religiously-aggravated criminal damage.

114A.(1) A person commits an offence under this section if that person commits an offence under section 354 (Destroying or damaging property) which is religiously aggravated for the purposes of this Part.

(2) 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 to a fine, or both.

(3) For the purposes of subsection (1), section 112A(1)(a) has effect as if the person to whom the property belongs (or is treated as belonging under section 353) were the victim of the offence.

Disability-aggravated criminal damage.

114B.(1) A person commits an offence under this section if that person commits an offence under section 354 (Destroying or damaging property) which is disability aggravated for the purposes of this Part.

(2) 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 to a fine, or both.

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(3) For the purposes of subsection (1), section 112B(1)(a) has effect as if the person to whom the property belongs (or is treated as belonging under section 353) were the victim of the offence.

Aggravated criminal damage by reason of sexual orientation.

114C.(1) A person commits an offence under this section if that person commits an offence under section 354 (Destroying or damaging property) which is aggravated by reason of sexual orientation for the purposes of this Part.

(2) 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 to a fine, or both.

(3) For the purposes of subsection (1), section 112C(1)(a) has effect as if the person to whom the property belongs (or is treated as belonging under section 353) were the victim of the offence.

Age-aggravated criminal damage.

114D.(1) A person commits an offence under this section if that person commits an offence under section 354 (Destroying or damaging property) which is age aggravated for the purposes of this Part.

(2) 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 to a fine, or both.

(3) For the purposes of subsection (1), section 112D(1)(a) has effect as if the person to whom the property belongs (or is treated as belonging under section 353) were the victim of the offence.

Racially-aggravated public order offences.

115.(1) A person commits an offence under this section if he commits an offence under section 58 (Fear or provocation of violence) which is racially aggravated for the purposes of this Part.

(2) A person who commits an offence under subsection (1) is liable–

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(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.

Religiously-aggravated public order offences.

115A.(1) A person commits an offence under this section if that person commits an offence under section 58 (Fear or provocation of violence) which is religiously aggravated for the purposes of this Part.

(2) A person who commits an offence under subsection (1) 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.

Disability-aggravated public order offences.

115B.(1) A person commits an offence under this section if that person commits an offence under section 58 (Fear or provocation of violence) which is disability aggravated for the purposes of this Part.

(2) A person who commits an offence under subsection (1) 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.

Aggravated public order offences by reason of sexual orientation.

115C.(1) A person commits an offence under this section if that person commits an offence under section 58 (Fear or provocation of violence) which is aggravated by reason of sexual orientation for the purposes of this Part.

(2) A person who commits an offence under subsection (1) 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.

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Age-aggravated public order offences.

115D.(1) A person commits an offence under this section if that person commits an offence under section 58 (Fear or provocation of violence) which is age aggravated for the purposes of this Part.

(2) A person who commits an offence under subsection (1) 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.

Racially-aggravated harassment etc.

116.(1) A person commits an offence under this section if he commits–

(a) an offence under section 88 (Intentional harassment, alarm or distress);

(b) an offence under section 89 (Harassment, alarm or distress);

(c) an offence under section 92 (Harassing conduct);

(ca) an offence under section 92A (Stalking);

(d) an offence under section 94 (Putting people in fear of violence);

(e) an offence under section 94A (Stalking involving fear of violence or serious alarm or distress); or

(f) an offence under section 97A (Harassment of a person in his home),

which is racially aggravated for the purposes of this Part.

(2) A police officer may arrest a person without warrant if–

(a) the person engages in conduct which the officer reasonably suspects to constitute an offence falling within subsection (1);

(b) the officer warns the person to stop; and

(c) the person engages in further such, or similar, conduct immediately or shortly after the warning.

(3) A person who commits an offence under subsection (1)(a) is liable–

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(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.

(4) A person who commits an offence under subsection (1)(b) is liable on summary conviction to a fine at level 4 on the standard scale.

(5) 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.

(5A) A person who commits an offence under subsection (1)(ca) 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.

(6) A person who commits an offence under subsection (1)(d) 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.

(6A) A person who commits an offence under subsection (1)(e) 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.

(6B) A person who commits an offence under subsection (1)(f) 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.

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(7) For the purpose of subsection (1)(a) and (b), section 112(1)(a) has effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.

(8) Section 95 (Restraining orders on conviction) has effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 92 or 94 included a reference to the racially aggravated offence under this section.

Religiously-aggravated harassment etc.

116A.(1) A person commits an offence under this section if that person commits–

(a) an offence under section 88 (Intentional harassment, alarm or distress);

(b) an offence under section 89 (Harassment, alarm or distress);

(c) an offence under section 92 (Harassing conduct);

(ca) an offence under section 92A (Stalking);

(d) an offence under section 94 (Putting people in fear of violence);

(e) an offence under section 94A (Stalking involving fear of violence or serious alarm or distress); or

(f) an offence under section 97A (Harassment of a person in his home),

which is religiously aggravated for the purposes of this Part.

(2) A police officer may arrest a person without warrant if–

(a) the person engages in conduct which the officer reasonably suspects to constitute an offence falling within subsection (1);

(b) the officer warns the person to stop; and

(c) the person engages in further such, or similar, conduct immediately or shortly after the warning.

(3) A person who commits an offence under subsection (1)(a) 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.

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(4) A person who commits an offence under subsection (1)(b) is liable on summary conviction to a fine at level 4 on the standard scale.

(5) 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.

(5A) A person who commits an offence under subsection (1)(ca) 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.

(6) A person who commits an offence under subsection (1)(d) 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.

(6A) A person who commits an offence under subsection (1)(e) 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.

(6B) A person who commits an offence under subsection (1)(f) 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.

(7) For the purpose of subsection (1)(a) and (b), section 112A(1)(a) has effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.

(8) Section 95 (Restraining orders on conviction) has effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section

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to an offence under section 92 or 94 included a reference to the religiously aggravated offence under this section.

Disability-aggravated harassment etc.

116B.(1) A person commits an offence under this section if that person commits–

(a) an offence under section 88 (Intentional harassment, alarm or distress);

(b) an offence under section 89 (Harassment, alarm or distress);

(c) an offence under section 92 (Harassing conduct);

(ca) an offence under section 92A (Stalking);

(d) an offence under section 94 (Putting people in fear of violence);

(e) an offence under section 94A (Stalking involving fear of violence or serious alarm or distress); or

(f) an offence under section 97A (Harassment of a person in his home),

which is disability aggravated for the purposes of this Part.

(2) A police officer may arrest a person without warrant if–

(a) the person engages in conduct which the officer reasonably suspects to constitute an offence falling within subsection (1);

(b) the officer warns the person to stop; and

(c) the person engages in further such, or similar, conduct immediately or shortly after the warning.

(3) A person who commits an offence under subsection (1)(a) 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.

(4) A person who commits an offence under subsection (1)(b) is liable on summary conviction to a fine at level 4 on the standard scale.

(5) A person who commits an offence under subsection (1)(c) is liable–

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(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.

(5A) A person who commits an offence under subsection (1)(ca) 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.

(6) A person who commits an offence under subsection (1)(d) 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.

(6A) A person who commits an offence under subsection (1)(e) 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.

(6B) A person who commits an offence under subsection (1)(f) 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.

(7) For the purpose of subsection (1)(a) and (b), section 112B(1)(a) has effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.

(8) Section 95 (Restraining orders on conviction) has effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 92 or 94 included a reference to the disability aggravated offence under this section.

Aggravated harassment etc. by reason of sexual orientation.

116C.(1) A person commits an offence under this section if that person commits–

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(a an offence under section 88 (Intentional harassment, alarm or distress);

(b) an offence under section 89 (Harassment, alarm or distress);

(c) an offence under section 92 (Harassing conduct);

(ca) an offence under section 92A (Stalking);

(d) an offence under section 94 (Putting people in fear of violence);

(e) an offence under section 94A (Stalking involving fear of violence or serious alarm or distress); or

(f) an offence under section 97A (Harassment of a person in his home),

which is aggravated by reason of sexual orientation for the purposes of this Part.

(2) A police officer may arrest a person without warrant if–

(a) the person engages in conduct which the officer reasonably suspects to constitute an offence falling within subsection (1);

(b) the officer warns the person to stop; and

(c) the person engages in further such, or similar, conduct immediately or shortly after the warning.

(3) A person who commits an offence under subsection (1)(a) 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.

(4) A person who commits an offence under subsection (1)(b) is liable on summary conviction to a fine at level 4 on the standard scale.

(5) 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.

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(5A) A person who commits an offence under subsection (1)(ca) 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.

(6) A person who commits an offence under subsection (1)(d) 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.

(6A) A person who commits an offence under subsection (1)(e) 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.

(6B) A person who commits an offence under subsection (1)(f) 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.

(7) For the purpose of subsection (1)(a) and (b), section 112C(1)(a) has effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.

(8) Section 95 (Restraining orders on conviction) has effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 92 or 94 included a reference to the aggravated offence by reason of sexual orientation under this section.

Age-aggravated harassment etc.

116D.(1) A person commits an offence under this section if that person commits–

(a) an offence under section 88 (Intentional harassment, alarm or distress);

(b) an offence under section 89 (Harassment, alarm or distress);

(c) an offence under section 92 (Harassing conduct);

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(ca) an offence under section 92A (Stalking);

(d) an offence under section 94 (Putting people in fear of violence);

(e) an offence under section 94A (Stalking involving fear of violence or serious alarm or distress); or

(f) an offence under section 97A (Harassment of a person in his home),

which is age aggravated for the purposes of this Part.

(2) A police officer may arrest a person without warrant if–

(a) the person engages in conduct which the officer reasonably suspects to constitute an offence falling within subsection (1);

(b) the officer warns the person to stop; and

(c) the person engages in further such, or similar, conduct immediately or shortly after the warning.

(3) A person who commits an offence under subsection (1)(a) 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.

(4) A person who commits an offence under subsection (1)(b) is liable on summary conviction to a fine at level 4 on the standard scale.

(5) 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.

(5A) A person who commits an offence under subsection (1)(ca) 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.

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(6) A person who commits an offence under subsection (1)(d) 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.

(6A) A person who commits an offence under subsection (1)(e) 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.

(6B) A person who commits an offence under subsection (1)(f) 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.

(7) For the purpose of subsection (1)(a) and (b), section 112D(1)(a) has effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.

(8) Section 95 (Restraining orders on conviction) has effect in relation to a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 92 or 94 included a reference to the age aggravated offence under this section.

Alternative verdicts.

117.(1) If, on the trial on indictment of a person charged with an offence under a provision of subsection (1) of any of sections 113 to 116D, the jury or court, as the case may be, finds him not guilty of the offence charged, the jury or court respectively may find him guilty of the basic offence to which the charge relates.

(2) If, on the trial of a person charged with an offence under section 116(1)(d), 116A(1)(d), 116B(1)(d), 116C(1)(d) or 116D(1)(d) respectively the jury or court, as the case may be, finds him not guilty of the offence charged, the jury or court respectively may find him guilty of an offence under section 116(1)(c), 116A(1)(c), 116B(1)(c), 116C(1)(c) or 116D(1)(c) respectively.

Increase in sentences

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Increase in sentences for racial, religious, disability or age aggravation or aggravation related to sexual orientation.

117A.(1) This section applies where the court is considering the seriousness of an offence other than one under sections 113 to 116D of this Act.

(2) If the offence was racially, religiously, disability or age aggravated or aggravated by reason of sexual orientation, the court−

(a) must treat that fact as an aggravating factor; and

(b) must state in open court that the offence was so aggravated.

PART 8
OFFENSIVE WEAPONS

Interpretation of Part.

118.(1) In this Part, unless the context otherwise requires–

"caravan" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

"firearm" means any firearm or other weapon of any description from which any shot, bullet or other missile can be discharged;

"implement" means a flick knife, razor blade, axe or other article of the kind described in section 123(1) or 124(2);

"knife" means an instrument which has a blade or is sharply pointed;

"offensive weapon" means any article–

(a) made or adapted for use for causing injury to persons; or

(b) intended by the person having it with him for such use by him or by some other person;

"public place" means–

(a) any highway; and

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(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

"publication" includes publication in electronic form and, in the case of a publication which is, or may be, produced from electronic data, any medium on which the data are stored;

"school" has the meaning given by the Education and Training Act;

"school premises" means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school;

"suitable for combat" means suitable for use as a weapon for inflicting injury on a person or causing a person to fear injury;

"vehicle" includes any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle, and a caravan;

"violent behaviour" means an unlawful act inflicting injury on a person or causing a person to fear injury.

Knives

Unlawful marketing of knives.

119.(1) It is an offence for a person to market a knife in a way which–

(a) indicates, or suggests, that it is suitable for combat; or

(b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(2) For the purposes of this Part, an indication or suggestion that a knife is suitable for combat may, in particular, be given or made by a name or description–

(a) applied to the knife;

(b) on the knife or on any packaging in which it is contained; or

(c) included in any advertisement which, expressly or by implication, relates to the knife.

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(3) For the purposes of this Part, a person markets a knife if–

(a) he sells or hires it;

(b) he offers, or exposes, it for sale or hire; or

(c) he has it in his possession for the purpose of sale or hire.

(4) A person who commits an offence under this section is liable–

(a) on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both;

(b) on conviction on indictment to imprisonment for 2 years, or to a fine, or both.

Publications.

120.(1) It is an offence for a person to publish any written, pictorial or other material in connection with the marketing of any knife which–

(a) indicates, or suggests, that the knife is suitable for combat; or

(b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(2) 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 2 years, or to a fine, or both.

Exempt trades.

121.(1) It is a defence for a person charged with an offence under section 119 to prove that–

(a) the knife was marketed–

(i) for use by the armed forces of any country;

(ii) as an antique or curio; or

(iii) as falling within some other prescribed category;

(b) it was reasonable for the knife to be marketed in that way; and

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(c) there were no reasonable grounds for suspecting that a person into whose possession the knife might come in consequence of the way in which it was marketed would use it for an unlawful purpose.

(2) The Minister may by order prescribe the categories for the purposes of subsection (1)(a)(iii) by reference to the type of knife or the circumstances of the marketing.

(3) It is a defence for a person charged with an offence under section 120 to prove that–

(a) the material was published in connection with marketing a knife–

(i) for use by the armed forces of any country;

(ii) as an antique or curio; or

(iii) as falling within some other prescribed category;

(b) it was reasonable for the knife to be marketed in that way; and

(c) there were no reasonable grounds for suspecting that a person into whose possession the knife might come in consequence of the publishing of the material would use it for an unlawful purpose.

Other defences.

122.(1) It is a defence for a person charged with an offence under section 119 to prove that he did not know or suspect, and had no reasonable grounds for suspecting, that the way in which the knife was marketed–

(a) amounted to an indication or suggestion that the knife was suitable for combat; or

(b) was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(2) It is a defence for a person charged with an offence under section 120 to prove that he did not know or suspect, and had no reasonable grounds for suspecting, that the material–

(a) amounted to an indication or suggestion that the knife was suitable for combat; or

(b) was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

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(3) It is a defence for a person charged with an offence under section 119 or 120 to prove that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Manufacture and sale of flick knives, etc.

123.(1) A person who manufactures, sells or hires or offers for sale or hire, or exposes for sale or hire or has in his possession for the purpose of sale or hire, or lends or gives to any other person–

(a) a knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a "flick knife" or "flick gun"; or

(b) a knife which has a blade which is released from the handle or sheath by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device, sometimes known as a "gravity knife",

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction–

(a) for a first offence - to imprisonment for 6 months or a fine at level 3 on the standard scale, or both;

(b) for a second or subsequent offence - to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

Sale of knives and certain articles with a blade or point to persons under 18.

124.(1) Subject to subsection (3) a person who sells to a person under the age of 18 an article to which this section applies commits an offence and is
liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both.

(2) This section applies to–

(a) any knife, knife blade or razor blade;

(b) any axe;

(c) any sword; and

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(d) any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Entry, seizure and retention.

125.(1) If, on an application made by a police officer, a magistrate is satisfied that there are reasonable grounds for suspecting that–

(a) a person ("the suspect") has committed an offence under section 119, 123 or 124 in relation to knives or other implements of a particular description; and

(b) knives or implements of that description and in the suspect's possession or under his control are to be found on particular premises,

the magistrate may issue a warrant authorising a police officer to enter those premises, search for the knives or implements and seize and remove any that he finds.

(2) If, on an application made by a police officer, a magistrate is satisfied that there are reasonable grounds for suspecting–

(a) that a person ("the suspect") has committed an offence under section 120 in relation to particular material; and

(b) that publications consisting of or containing that material and in the suspect's possession or under his control are to be found on particular premises,

the magistrate may issue a warrant authorising a police officer to enter those premises, search for the publications and seize and remove any that he finds.

(3) A police officer, in the exercise of his powers under a warrant issued under this section, may if necessary use reasonable force.

(4) Any knives, implements or publications which have been seized and removed by a police officer under a warrant issued under this section may be retained until the conclusion of proceedings against the suspect.

(5) For the purposes of this section, proceedings in relation to a suspect are concluded if–

(a) he is convicted and sentenced or otherwise dealt with for the offence;

(b) he is acquitted;

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(c) proceedings for the offence are discontinued; or

(d) it is decided not to prosecute him.

Forfeiture of knives and publications.

126.(1) If a person is convicted of an offence under section 119, 123 or 124 in relation to a knife or other implement of a particular description, the court may make an order for forfeiture in respect of any knives or implements of that description–

(a) seized under a warrant issued under section 125; or

(b) in the offender's possession or under his control at the relevant time.

(2) If a person is convicted of an offence under section 120 in relation to particular material, the court may make an order for forfeiture in respect of any publications consisting of or containing that material which–

(a) have been seized under a warrant issued under section 125; or

(b) were in the offender's possession or under his control at the relevant time.

(3) The court may make an order under subsection (1) or (2)–

(a) whether or not it also deals with the offender in respect of the offence in any other way; and

(b) without regard to any restrictions on forfeiture in any enactment.

(4) In considering whether to make an order, the court must have regard–

(a) to the value of the property; and

(b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(5) In this section "relevant time" in relation to an offence under section 119 or 120 means the time of the arrest for the offence or of the issue of a summons in respect of it.

Effect of a forfeiture order.

127.(1) An order under section 126 (a "forfeiture order") operates to deprive the offender of his rights, if any, in the property to which it relates.

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(2) The property to which a forfeiture order relates must be taken into the possession of the police (if it is not already in their possession).

(3) The court may, on an application made by a person who–

(a) claims property to which a forfeiture order applies, but

(b) is not the offender from whom it was forfeited,

make an order (a "recovery order") for delivery of the property to the applicant if it appears to the court that he owns it.

(4) No application for a recovery order may be made later than 6 months after the date on which the forfeiture order was made.

(5) No application for a recovery order may succeed unless the claimant satisfies the court that he–

(a) did not consent to the offender having possession of the property; or

(b) did not know, and had no reason to suspect, that the offence was likely to be committed.

(6) Any right to recover property which is in the possession of another in pursuance of a recovery order–

(a) is not affected by the making of the recovery order for up to 6 months from the date on which the order was made; but

(b) is lost at the end of that period.

Having an article with blade or point in a public place.

128.(1) Subject to subsections (4) and (5), any person who has an article to which this section applies with him in a public place commits an offence.

(2) Subject to subsection (3), this section applies to any article which has a blade or is sharply pointed except a folding pocket knife.

(3) This section applies to a folding pocket knife if the cutting edge of its blade exceeds 3 inches.

(4) It is a defence for a person charged with an offence under this section to prove that he had good reason or lawful authority for having the article with him in a public place.

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(5) Without limiting subsection (4), it is a defence for a person charged with an offence under this section to prove that he had the article with him–

(a) for use at work; or

(b) for religious reasons.

(6) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction to imprisonment for 12 months, or to the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for 4 years, or to a fine, or both

Offensive weapons generally

Having a knife or other offensive weapon on school premises.

129.(1) A person who has an article to which section 128 applies with him on school premises commits an offence.

(2) A person who has with him on school premises an offensive weapon as defined in section 118 commits an offence.

(3) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that he had good reason or lawful authority for having the article or weapon with him on the school premises.

(4) Without limiting subsection (3), it is a defence for a person charged with an offence under subsection (1) or (2) to prove that he had the article or weapon in question with him–

(a) for use at work;

(b) for educational purposes; or

(c) for religious reasons.

(5) A person who commits an offence–

(a) under subsection (1), is liable–

(i) on summary conviction to imprisonment for 12 months, or the statutory maximum fine, or both;

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(ii) on conviction on indictment, to imprisonment for 4 years, or to a fine, or both.

(b) under subsection (2), is liable–

(i) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;

(ii) on conviction on indictment to imprisonment for 4 years, or to a fine or both.

Entry and search of school premises for knives and offensive weapons.

130.(1) A police officer may enter school premises and search those premises and any person on those premises for–

(a) any article to which section 128 applies; or

(b) any offensive weapon as defined in section 118,

if he has reasonable grounds for believing that an offence under section 129 is being, or has been, committed.

(2) If in the course of a search under this section a police officer discovers an article or weapon which he has reasonable grounds for suspecting to be an article or weapon of a kind described in subsection (1), he may seize and retain it.

(3) The police officer may use reasonable force, if necessary, in the exercise of the power of entry conferred by this section.

Carrying offensive weapon.

131.(1) A person who, without lawful authority or reasonable excuse, which he must prove, has with him in any public place any offensive weapon commits an offence and 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 4 years or to a fine, or both.

(2) When a person is convicted of an offence under subsection (1), the court may make an order for the forfeiture or disposal of the weapon in respect of which the offence was committed.

Dealing in offensive weapons.

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132.(1) A person who–

(a) manufactures, sells or hires or offers for sale or hire;

(b) exposes or has in his possession for the purpose of sale or hire;

(c) lends or gives to any other person; or

(d) imports,

an offensive weapon to which this section applies commits an offence and is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both.

(2) The Minister may by order declare the offensive weapons to which this section applies.

(3) It is a defence for any person charged with an offence under this section to prove that his conduct was only for the purpose of–

(a) performing functions on behalf of the Crown or a visiting force; or

(b) making the weapon available to a museum or gallery in Gibraltar or elsewhere.

(4) If a person acting on behalf of a museum or gallery is charged with hiring or lending a weapon to which this section applies, it is a defence for him to prove that he had reasonable grounds for believing that the person to whom he lent or hired it would use it only for cultural, artistic or educational purposes.

(5) In this section "museum or gallery"–

(a) includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it; but

(b) does not include an institution that distributes profits.

Authorisation in anticipation of violence in an area.

133.(1) If the Commissioner of Police reasonably believes–

(a) that–

(i) incidents involving serious violence may occur in any area of Gibraltar; and

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(ii) it is expedient to do so to prevent their occurrence; or

(b) that persons are carrying knives or offensive weapons in any area of Gibraltar without good reason,

he may authorise the powers to stop and search persons and vehicles conferred by section 134 to be exercised in that area for a specified period not exceeding 24 hours.

(2) The authorisation referred to in subsection (1) may be given by an officer of the rank of Chief Inspector or above if he reasonably believes that incidents involving serious violence or use of knives or offensive weapons in the area are imminent and the Commissioner of Police is not available.

(3) If it appears to the Commissioner of Police or to the officer who gave the authorisation that it is expedient to do so, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any incident or activity in the area, he may extend the authorisation for a further period not exceeding 24 hours.

(4) An authorisation or extension under this section must be in writing signed by the Commissioner of Police or the police officer who gives it, and must specify–

(a) the area in which and the period during which the powers conferred by section 134 are exercisable;

(b) the grounds for the authorisation or extension.

(5) If an officer other than the Commissioner of Police gives an authorisation under subsection (1) or an extension under subsection (3) he must as soon as practicable inform the Commissioner of Police.

Powers to search for and seize offensive weapons in an area.

134.(1) An authorisation under section 133 confers on any police officer in uniform power in the area and during the period specified in the authorisation–

(a) to stop any pedestrian and search him or anything carried by him for knives or offensive weapons;

(b) to stop any vehicle and search the vehicle, its driver and any passenger for knives or offensive weapons.

(2) A police officer may, in the exercise of the power in subsection (1), stop any person or vehicle in the area and make any search he thinks fit, whether or not he has any grounds for suspecting that the person or vehicle is carrying knives or offensive weapons.

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(3) If in the course of a search under this section a police officer discovers a knife or an article which he has reasonable grounds for suspecting to be an offensive weapon, he may seize it.

(4) This section applies (with the necessary modifications) to ships, aircraft and hovercraft as it applies to vehicles.

(5) A person who fails to stop or (as the case may be) to stop a vehicle when required to do so by a police officer in the exercise of his powers under this section commits an offence and is liable on summary conviction to imprisonment for a term of 1 month or to a fine at level 3 on the standard scale, or both.

(6) If–

(a) a vehicle is stopped by a police officer under this section; and

(b) the driver applies in writing within 12 months from the day on which the vehicle was stopped,

the Commissioner of Police must give the driver a written statement that the vehicle was stopped under the powers conferred by this section.

(7) If–

(a) a pedestrian is stopped and searched by a police officer under this section; and

(b) the pedestrian applies in writing within 12 months from the day on which he was stopped and searched,

the Commissioner of Police must give the pedestrian a written statement that he was stopped under the powers conferred by this section.

(8) Anything seized by a police officer under subsection (3) may be retained in accordance with regulations made by the Minister under this section.

(9) The Minister may make regulations regulating the retention and safe keeping, and the disposal and destruction in prescribed circumstances, of things seized under subsection (3), and the regulations may make different provisions for different classes of things or for different circumstances.

(10) For the purposes of this section, a person carries a knife or an offensive weapon if he has it in his possession.

(11) The powers conferred by this section are in addition to and do not limit any power of stopping, search and seizure otherwise conferred by any law.

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PART 9
EXPLOSIVE SUBSTANCES

Interpretation of Part.

135.(1) In this Part, unless the context otherwise requires–

"explosive substance" includes–

(a) explosives and ingredients for making explosives;

(b) any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance;

(c) any part of any such apparatus, machine, or implement;

"manufacture" is to be construed in the same manner as in section 2(2) of the Explosives Act.

(2) The definition of "explosive" in section 2 of the Explosives Act, and the power to extend that definition under section 3 of that Act, apply for the purpose of the definition of "explosive substance" in subsection (1).

Explosive substances offences

Causing grievous harm by explosion.

136. A person who unlawfully and maliciously, by the explosion of any explosive substance, burns, maims, disfigures, disables or does any grievous bodily harm to any person, commits an offence and is liable on conviction to imprisonment for life.

Causing explosion, etc. with intent.

137.(1) A person who unlawfully and maliciously–

(a) causes any explosive substance to explode;

(b) sends or delivers to or causes to be taken or received by any person any explosive substance or any other dangerous or noxious thing; or

(c) puts or lays at any place, or casts or throws at or upon or otherwise applies to any person, any corrosive fluid or any destructive or explosive substance,

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with intent to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person, commits an offence and is liable on conviction to imprisonment for life.

(2) It is immaterial for the purposes of subsection (1) whether any bodily injury is caused or not.

Placing explosives with intent.

138.(1) A person who unlawfully and maliciously places or throws in, into, upon, against or near any building, ship, or aircraft any explosive substance, with intent to do any bodily injury to any person, commits an offence and is liable on conviction to imprisonment for 14 years.

(2) It is immaterial for the purposes of subsection (1) whether–

(a) any explosion takes place or not;

(b) any bodily injury is caused or not.

Possession of explosives, etc. with intent.

139.(1) A person who has in his possession, or makes or manufactures–

(a) any explosive substance;

(b) any dangerous or noxious thing; or

(c) any machine, engine, instrument or thing,

with intent by means thereof to commit, or for the purpose of enabling any other person to commit, any offence under this Act, commits an offence.

(2) A person who commits an offence under subsection (1) 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.

Causing explosion likely to endanger life or property.

140.(1) A person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to–

(a) endanger life; or

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(b) cause serious injury to property,

commits an offence and is liable on conviction to imprisonment for life.

(2) It is immaterial for the purposes of subsection (1) whether any injury to person or property is caused or not.

Acting or conspiring to cause explosion, or making or keeping explosives with intent.

141.(1) A person who unlawfully and maliciously–

(a) does any act with intent to cause; or

(b) conspires to cause,

by an explosive substance an explosion of a nature likely to endanger life or cause serious injury to property, commits an offence.

(2) A person who unlawfully and maliciously makes or has in his possession or under his control an explosive substance with intent by means of it–

(a) to endanger life;

(b) to cause serious injury to property; or

(c) to enable any other person to endanger life or cause serious injury to property,

commits an offence.

(3) It is immaterial for the purposes of subsection (1) or (2) whether–

(a) any explosion does or does not take place;

(b) any injury to person or property is caused or not.

(4) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for life.

Making or possessing explosives under suspicious circumstances.

142.(1) A person who makes or knowingly has in his possession or under his control any explosive substance in circumstances that give rise to a reasonable suspicion that he made it, or is making it, or has it in his possession or under his control for an unlawful object, commits an offence.

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(2) An offence is not committed under subsection (1) if the person can show that he made the explosive substance or had it in his possession for a lawful object.

(3) 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.

Ancillary offences.

143.(1) A person who, by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any other manner procures, counsels, aids, abets, or is accessory to, the commission of an offence under this Part commits that offence and is liable to be tried and punished for it as if he had been a principal.

(2) A person who–

(a) knows that another person has an explosive substance in his possession or under his control;

(b) knows facts giving rise to a reasonable suspicion that that person did not have the substance in his possession or under his control for a lawful object; and

(c) was present actively encouraging or in some way helping that person in the commission of the offence,

commits the offence of aiding and abetting an offence under section 142.

Miscellaneous provisions

Inquiry ordered by the Minister.

144.(1) If the Minister has reasonable ground to believe that an offence under any of section 140, 141 or 142 has been committed, he may order an inquiry under this section.

(2) If an inquiry is ordered under subsection (1) in respect of an offence, the magistrate designated to conduct the inquiry may, even if no person is charged before him with the commission of the offence–

(a) examine on oath concerning the offence any witness appearing before him;

(b) take the deposition of the witness;

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(c) bind the witness by recognizance to appear and give evidence when called upon.

(3) The law relating to–

(a) the compelling of the attendance of a witness before a magistrate; and

(b) a witness attending before a magistrate and required to give evidence concerning the matter of an information or complaint,

applies to compelling the attendance of a witness for examination and to a witness attending under this section.

(4) A witness examined under this section is not excused from answering any question on the ground that the answer to it may incriminate, or tend to incriminate, the witness or his or her spouse, but any statement made by a person in answer to a question put on an examination under this section is not, except in the case of a proceeding for perjury, admissible in evidence against that person or his or her spouse in any civil or criminal proceeding.

(5) A magistrate who conducts an examination under this section of a person concerning any offence must not take part in a committal for trial of the person for that offence.

(6) If a person is bound by recognizance to give evidence before a magistrate or any criminal court in respect of an offence under any of sections 140, 141 or 142, any magistrate, upon information being made in writing and on oath that the person is about to abscond, or has absconded, may issue a warrant for the arrest of the person, and if the person is arrested, any magistrate, if satisfied that the ends of justice would otherwise be defeated, may commit the person to prison until the time at which he is bound by the recognizance to give evidence, unless in the meantime he produces sufficient sureties.

(7) A person arrested under subsection (6) is entitled on demand to receive a copy of the information upon which the warrant for the arrest was issued.

Procedure and saving.

145.(1) Proceedings for an offence under this Part may not be commenced except by or with the consent of the Attorney-General.

(2) This Part does not exempt any person from any proceeding for an offence punishable at common law, under the Explosives Act, or under any other written law other than this Act, but no person may be punished twice for the same criminal act.

Explosives found on vessels.

146. If the master or owner of any vessel has reasonable cause to suspect that any explosive substance or other goods of a dangerous nature which, if found, he would be entitled to throw

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overboard pursuant to Part IV (Safety at Sea) of the Merchant Shipping Act are concealed on board his vessel–

(a) he may search any part of the vessel for such goods, and for the purpose of such search may, if necessary, break open any box, package, parcel, or receptacle on board the vessel;

(b) if he finds any such goods he may deal with them in the manner provided by the Merchant Shipping Act; and

(c) if he does not find any such goods, he is not subject to any liability, civil or criminal, if it appears to a tribunal before which the question of his liability is raised that he had reasonable cause to suspect that such goods were so concealed.

Seizure and detention of explosives liable to forfeiture.

147.(1) If any police officer has reasonable cause to believe that any explosive substance found by him is liable to be forfeited under this Act or the Criminal Procedure and Evidence Act 2011, he may seize and detain it until the Magistrates' Court has decided whether it is or is not liable to be forfeited.

(2) An officer who seizes an explosive substance pursuant to subsection (1) may–

(a) require the occupier of the place in which it was seized (whether a building or other place, including a vehicle, vessel or aircraft) to detain it in that place or in any place under the control of the occupier; or

(b) remove it in a manner and to a place that will in the officer's opinion least endanger the public safety, and there detain it and, if it appears necessary for the public safety, and on the written authority of a magistrate or a police officer of or above the rank of Superintendent, cause it to be destroyed or otherwise rendered harmless.

(3) Before destroying or rendering harmless the explosive substance, the officer must–

(a) take and keep a sample of it; and

(b) if requested, give a portion of the sample to the person who owns the explosive substance, or has it under his control at the time of the seizure.

(4) An occupier of premises or a vehicle, vessel or aircraft who–

(a) by himself or by others, fails to keep the explosive substance when required pursuant to subsection (2)(a) to detain it; or

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(b) except with the authority of the officer who seized it, or in case of emergency for the purpose of preventing explosion or fire, removes, alters, or in any way tampers or deals with it while it is so detained,

commits an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

(5) A person convicted of an offence under subsection (4) is liable to forfeit all explosive substances which are at the time of the offence in his possession or under his control at the place to which the offence relates.

(6) Proceedings before the Magistrates' Court to decide whether an explosive substance is liable to forfeiture must be commenced as soon as practicable after the seizure.

(7) A receptacle containing any explosive substance may be seized, detained, and removed in the same way as the contents of it.

(8) A police officer who seizes any explosive substance under this section–

(a) may use for the purposes of the removal and detention of it any vehicle, vessel or aircraft in which it was seized, and any equipment belonging to the vehicle, vessel or aircraft; and

(b) must pay to the owner reasonable compensation for such use, to be determined, in case of dispute, by the Magistrates' Court and recovered as a civil debt of the Government.

(9) The explosive substance must, as far as practicable, be kept and conveyed in accordance with the Explosives Act and regulations made under it, and with all due care to prevent accidents, and a person who seizes, removes, detains, keeps or conveys the substance is not liable to any penalty or forfeiture under this or any other Act, or to any damages, for keeping or conveying it, if he does so using all due care as mentioned.

(10) A person who seizes an explosive substance, or deals with it pursuant to this section, is not liable for damage caused by the seizure or dealing, or any act incidental to or consequential on it, unless it is proved that he acted without reasonable cause, or that he caused the damage by some wilful neglect or default.

Forfeiture of subject-matter of offence.

148.(1) If a person is convicted of an offence against this Part, the court may order that the explosive substance in respect of which the offence was committed or any part of that substance be forfeited to the Crown.

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(2) Any explosive substance forfeited pursuant to this Part may be sold, destroyed, or otherwise disposed of in the manner the court declaring the forfeiture directs, and the proceeds of any such sale or disposal must be paid, applied, and accounted for in the same way as penalties under this Act.

(3) A receptacle containing any explosive substance may be forfeited, sold, destroyed, or otherwise disposed of, in the same way as the contents of it.

(4) If a court before whom a person is convicted of an offence against this Part has power to forfeit any explosive substance owned by or found in the possession or under the control of the person, the court may, if it think it just and expedient, instead of forfeiting the explosive, impose upon the person, in addition to any other penalty, a penalty not exceeding a sum that appears to the court to be the value of the explosive substance that is liable to be forfeited.

(5) If any explosive substance is alleged to be liable under this Act to be forfeited–

(a) an information may be laid against the owner of the substance, for the purpose of enforcing the forfeiture;

(b) if the owner is unknown, or cannot be found, the court may cause a notice to be advertised, stating that unless cause is shown to the contrary at the time and place named in the notice, the explosive substance will be forfeited; and

(c) at that time and place the court after hearing the owner or any person on his behalf (who may be present), may order all or any part of such explosive substance to be forfeited.

(6) The provisions of section 147 with respect to an explosive substance seized pursuant to this Part, and to the officer seizing, removing, detaining, keeping, conveying, or otherwise dealing with it, apply to any explosive substance declared by any court to be forfeited, and to a person lawfully removing, detaining, keeping, conveying, selling, destroying, or otherwise disposing of it.

(7) The court declaring the forfeiture or directing the sale or other disposal of any forfeited explosive substance, or any receptacle, may require the owner of the explosive substance to permit for the purpose of the sale or disposal the use of any vehicle, vessel or aircraft containing the explosive substance, on payment of compensation.

(8) The compensation payable under subsection (7) is to be fixed by the court that makes the order for sale or disposal, or in the event of a dispute, by a judge of the Supreme Court

(9) If the explosive substance is directed to be destroyed, the owner, the person in possession of it, and the owner and master of the vehicle, vessel or aircraft containing it, or any one of them, must destroy the substance accordingly, and if the court so orders, the vehicle, vessel or aircraft may be detained until the substance is so destroyed.

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(10) If the Minister is satisfied–

(a) that default has been made in complying with any such direction by a court;

(b) that the detention of the vehicle, vessel or aircraft will not secure the safety of the public; and

(c) that it is impracticable, having regard to the safety of the public or of the persons employed in the destruction, to effect destruction without using the vehicle, vessel or aircraft, or otherwise dealing with it as if it were a receptacle for an explosive substance forfeited under this Part,

the Minister may direct that the vehicle, vessel or aircraft be so used or dealt with.

PART 10
OFFENCES AGAINST THE PERSON

Causing and threatening death

Murder.

149.(1) A person who with intent to kill or to cause grievous bodily harm to any person causes the death of another person by an unlawful act or omission commits the offence of murder.

(2) Subject to subsection (3), the penalty on conviction for murder is imprisonment for life.

(3) When sentencing any person convicted of murder to imprisonment for life the court may declare the period which it recommends to the Minister as the minimum period which in its view should elapse before the Minister orders the release of that person on licence under section 54 of the Prison Act, 2011.

(4) In relation to murder and other fatal offences there is no requirement that the death should occur within a year and a day after the infliction of injury, but no prosecution for murder or any other fatal offence may be brought except by or with the consent of the Attorney-General if–

(a) the injury alleged to have caused the death was sustained more than 3 years before the death occurred; or

(b) the defendant has previously been convicted of an offence alleged to be connected with the death.

(5) In subsection (4) "fatal offence" means–

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(a) murder, manslaughter, infanticide or any other offence of which one of the elements is causing a person's death; or

(b) the offence of aiding, abetting, counselling or procuring a person's suicide.

No constructive malice.

150.(1) If a person kills another in the course or furtherance of some other offence, the killing does not amount to murder unless done with the same intention as is required for a killing to amount to murder when not done in the course or furtherance of another offence.

(2) For the purposes of subsection (1), a killing done in the course or for the purpose of resisting an officer of justice, or of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody, is to be treated as a killing in the course or furtherance of an offence.

Diminished responsibility.

151.(1) A person ('D') who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which–

(a) arose from a recognised medical condition;

(b) substantially impaired D's ability to do one or more of the things mentioned in subsection (2); and

(c) provides an explanation for D's acts and omissions in doing or being a party to the killing.

(2) The things referred to in subsection (1)(b) are–

(a) to understand the nature of D's conduct;

(b) to form a rational judgment;

(c) to exercise self-control.

(3) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D's conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct.

(4) On a charge of murder, it is for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

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(5) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder is liable instead to be convicted of manslaughter.

(6) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

Partial defence to murder: Loss of control.

152.(1) If a person ('D') kills or is a party to the killing of another ('V'), D is not to be convicted of murder if–

(a) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control;

(b) the loss of self-control had a qualifying trigger; and

(c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.

(2) For the purposes of subsection (1)(a), it is irrelevant whether or not the loss of control was sudden.

(3) In subsection (1)(c) the reference to "the circumstances of D" is a reference to all of D's circumstances other than those whose only relevance to D's conduct is that they bear on D's general capacity for tolerance or self-restraint.

(4) Subsection (1) does not apply if, in doing or being a party to the killing, D acted in a considered desire for revenge.

(5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(6) For the purposes of subsection (5), sufficient evidence is adduced to raise an issue with respect to the defence if evidence is adduced on which, in the opinion of the trial judge, a jury, properly directed, could reasonably conclude that the defence might apply.

(7) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.

(8) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

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(9) A loss of self-control had a qualifying trigger if–

(a) D's loss of self-control was attributable to D's fear of serious violence from V against D or another identified person;

(b) D's loss of self-control was attributable to a thing or things done or said (or both) which –

(i) constituted circumstances of an extremely grave character; and

(ii) caused D to have a justifiable sense of being seriously wronged;

(c) D's loss of self-control was attributable to a combination of the matters mentioned in paragraphs (a) and (b).

(10) In determining whether a loss of self-control had a qualifying trigger–

(a) D's fear of serious violence is to be disregarded to the extent that it was caused by a thing which D encouraged or assisted to be done or said for the purpose of providing an excuse to use violence;

(b) a sense of being seriously wronged by a thing done or said is not justifiable if D encouraged or assisted the thing to be done or said for the purpose of providing an excuse to use violence;

(c) the fact that a thing done or said constituted sexual infidelity is to be disregarded.

(11) The common law defence of provocation is abolished.

Manslaughter.

153.(1) A person who kills another by an unlawful act likely to cause bodily harm commits the offence of manslaughter.

(2) A person who kills another by gross negligence commits the offence of manslaughter.

(3) The maximum penalty on conviction for manslaughter, whether the conviction is under subsection (1) or (2) of this section, or under section 151(5), 152(7) or 158(1), is imprisonment for life.

Murder or manslaughter outside Gibraltar.

154.(1) An offence of murder or manslaughter committed on land anywhere outside Gibraltar by a Gibraltarian may be dealt with, inquired of, tried, determined, and punished in Gibraltar.

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(2) This section does not prevent any person from being tried in any place outside Gibraltar for any murder or manslaughter committed outside Gibraltar.

Excusable homicide.

155. A person who kills another by misfortune or in his own defence does not commit an offence.

Soliciting to commit murder.

156. A person who solicits, encourages, persuades or endeavours to persuade or proposes to any person, to murder any other person in Gibraltar or elsewhere, commits an offence and is liable on conviction to imprisonment for life.

Threats to kill.

157. A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out, to kill that other or a third person, commits an offence and 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 10 years.

Suicide pacts.

158.(1) A person who, in pursuance of a suicide pact between him and another person–

(a) kills that person; or

(b) is party to the killing of that person by a third person,

commits the offence of manslaughter and not murder.

(2) If it is shown that a person charged with the murder of another killed the other or was a party to his being killed, it is for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.

(3) For the purposes of this section, "suicide pact" means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact is to be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

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Complicity in suicide.

159.(1) A person ('D') commits an offence if–

(a) D does an act capable of encouraging or assisting the suicide or attempted suicide of another person; and

(b) D's act was intended to encourage or assist suicide or an attempt at suicide.

(2) The person referred to in subsection (1)(a) need not be a specific person (or class of persons) known to, or identified by, D.

(3) D may commit an offence under this section whether or not a suicide, or an attempt at suicide, occurs.

(4) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for 14 years.

(5) If on the trial of an indictment for murder or manslaughter of a person it is proved that the deceased person committed suicide, and the defendant committed an offence under subsection (1) in relation to that suicide, the jury may find the defendant guilty of the offence under subsection (1).

(6) If D arranges for a person ('D2') to do an act that is capable of encouraging or assisting the suicide or attempted suicide of another person and D2 does that act, D is to be treated for the purposes of this Part as having done it.

(7) If the facts are such that an act is not capable of encouraging or assisting suicide or attempted suicide, for the purposes of this section it is to be treated as so capable if the act would have been so capable had the facts been as D believed them to be at the time of the act; or had subsequent events happened in the manner D believed they would happen, or both.

(8) A reference in this section to a person doing an act that is capable of encouraging the suicide or attempted suicide of another person includes a reference to his doing so by threatening another person or otherwise putting pressure on another person to commit or attempt suicide.

(9) A reference in this section to an act includes a reference to a course of conduct, and a reference to doing an act is to be read accordingly.

(10) No prosecution for an offence against this section may be commenced except by, or with the consent of, the Attorney-General.

Infanticide.

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160. If a woman by any wilful act or omission causes the death of her child, being a child under the age of 12 months, but at the time of the act or omission the balance of her mind was disturbed by reason of–

(a) her not having fully recovered from the effect of giving birth to a child; or

(b) the effect of lactation consequent upon the birth of the child,

then, if the circumstances were such that but for this section the offence would have amounted to murder or manslaughter, she commits the offence of infanticide, and may for the offence be dealt with and punished as if she had committed the offence of manslaughter of the child.

Child destruction.

161.(1) Subject to this section, a person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, commits the offence of child destruction and is liable on conviction to imprisonment for life.

(2) A person is not to be found guilty of an offence against this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

(3) For the purposes of this section, evidence that a woman had at any material time been pregnant for a period of 28 weeks or more is *prima facie* proof that she was at that time pregnant of a child capable of being born alive.

Attempts to procure abortion

Administering drugs or using instruments.

162.(1) A pregnant woman who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any other means with that intent, commits an offence and is liable on conviction to imprisonment for life.

(2) A person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means with that intent, commits an offence and is liable on conviction to imprisonment for life.

Procuring drugs, etc.

163. A person who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing, knowing that it is intended to be unlawfully used or employed with intent

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to procure the miscarriage of a woman, whether she is or is not with child, commits an offence and 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 5 years.

Medical termination of pregnancy.

163A.(1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion and child destruction in sections 161 to 163 hereof when a pregnancy is terminated by a registered medical practitioner employed by the Gibraltar Health Authority if two registered medical practitioners employed by the Gibraltar Health Authority are of the opinion, formed in good faith–

(a) that the pregnancy has not exceeded its twelfth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman; or

(b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or

(c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or

(d) that there is a substantial risk that the foetus is suffering from a fatal foetal abnormality.

(2) In determining whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in paragraph (a) or (b) of subsection (1) of this section, account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(3) Except as provided by subsection (5) of this section, any treatment for the termination of pregnancy must be carried out in a hospital approved for such purposes by the Minister for Health.

(4) The power under subsection (3) of this section to approve a place includes power, in relation to treatment consisting primarily in the use of such medicines as may be specified in the approval and carried out in such manner as may be so specified, to approve a class of places.

(5) Subsection (3) of this section, and so much of subsection (1) as relates to the opinion of two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that

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the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

Notification.

163B.(1) The Minister of Health shall have power to make regulations to provide-

(a) for requiring any such opinion as is referred to in section 163A to be certified by the practitioners or practitioner concerned in such form and at such time as may be prescribed by the regulations, and for requiring the preservation and disposal of certificates made for the purposes of the regulations;

(b) for requiring any registered medical practitioner who terminates a pregnancy to give notice of the termination and such other information relating to the termination as may be so prescribed;

(c) for prohibiting the disclosure, except to such persons or for such purposes as may be so prescribed, of notices given or information furnished pursuant to the regulations.

(2) The information furnished in pursuance of regulations made by virtue of paragraph (b) of subsection (1) of this section shall be notified solely to the Director of Public Health.

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of regulations under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Conscientious objection to participation in treatment.

163C.(1) Subject to subsection (2) of this section, no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by section 163A to which he has a conscientious objection:

Provided that in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

(2) Nothing in subsection (1) of this section shall affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

Supplementary provisions.

163D. For the purposes of the law relating to abortion, anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorised by section 163A and, in the

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case of a woman carrying more than one foetus, anything done with intent to procure her miscarriage of any foetus is authorised by that section if–

(a) the ground for termination of the pregnancy specified in subsection (1)(d) of that section applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus; or

(b) any of the other grounds for termination of the pregnancy specified in that section applies.

Interpretation.

163E. In this Act, the following expressions shall have the meaning hereby assigned to it-

"the law relating to abortion" means sections 161 to 163 of this Act and any rule of law relating to the procurement of abortion;

"Gibraltar Health Authority" means the Gibraltar Health Authority established by section 3 of the Medical (Gibraltar Health Authority) Act, 1987.

Concealing the birth of a child

Concealing the birth of a child.

164. If a woman gives birth to a child, any person who, by any secret disposition of the dead body of the child, whether the child died before, at, or after its birth, endeavours to conceal the birth of it, commits an offence and is liable–

(a) on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both;

(b) on conviction on indictment to imprisonment for 2 years.

Endangering life

Impeding rescue from shipwreck.

165. A person who unlawfully and maliciously prevents or impedes any person who is on board of or has quitted any ship or vessel that is in distress, wrecked, stranded or cast on shore, in–

(a) endeavouring to save his life; or

(b) endeavouring to save the life of any other person in such peril,

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commits an offence and is liable on conviction to imprisonment for life.

Wounding with intent to do grievous bodily harm.

166. A person who unlawfully and maliciously by any means–

(a) wounds or causes any grievous bodily harm to a person;

(b) shoots at a person; or

(c) attempts to discharge any kind of loaded arms at a person,

with intent to–

(i) maim, disfigure or disable that or any other person;

(ii) do some other grievous bodily harm to that or any other person; or

(iii) resist or prevent the lawful apprehension or detention of that or any other person,

commits an offence and is liable on conviction to imprisonment for life.

Wounding.

167. A person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, commits an offence and 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.

Strangulation or suffocation.

167A.(1) A person ("A") commits an offence if –

(a) A intentionally strangles another person ("B"), or

(b) A does any other act to B that-

(i) affects B's ability to breathe, and

(ii) constitutes battery of B.

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(2) It is a defence to an offence under this section for A to show that B consented to the strangulation or other act.

(3) But subsection (2) does not apply if-

(a) B suffers serious harm as a result of the strangulation or other act, and

(b) A either-

(i) intended to cause B serious harm, or

(ii) was reckless as to whether B would suffer serious harm.

(4) A is to be taken to have shown the fact mentioned in subsection (2) if-

(a) sufficient evidence of the fact is adduced to raise an issue with respect to it; and

(b) the contrary is not proved beyond reasonable doubt.

(5) 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 to a fine, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or both.

(6) In this section "serious harm" means –

(a) grievous bodily harm, within the meaning of section 166 of the Crimes Act 2011;

(b) wounding, within the meaning of that section; or

(c) actual bodily harm, within the meaning of section 176 of the Crimes Act 2011.

Attempting to choke, etc. with intent to facilitate indictable offence.

168. A person who, by any means–

(a) attempts to choke, suffocate or strangle another person; or

(b) by any means calculated to choke, suffocate or strangle, attempts to render another person insensible, unconscious or incapable of resistance,

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with intent to enable himself or any other person to commit, or to assist any other person in committing, an indictable offence, commits an offence and is liable on conviction to imprisonment for life.

Using drugs to facilitate offence.

169. A person who–

(a) unlawfully applies or administers to any person;

(b) causes to be taken by, or attempts to apply or administer to any person; or

(c) attempts to cause to be administered to or taken by, any person,

any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent to enable himself or any other person to commit, or to assist in committing, an indictable offence, commits an offence and is liable on conviction to imprisonment for life.

Administering poison.

170.(1) A person who unlawfully and maliciously administers to or causes to be administered to or taken by any other person any poison or other destructive or noxious thing commits an offence.

(2) A person who commits an offence under subsection (1) which endangers the life of the other person or causes him any grievous bodily harm 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 10 years.

(3) A person who commits an offence under subsection (1) with intent to injure, aggrieve or annoy the other person is liable–

(a) on summary conviction to imprisonment for 9 months, a fine at level 4 on the standard scale, or both;

(b) on conviction on indictment to imprisonment for 5 years.

Abandoning children or young persons.

171. A person who unlawfully abandons or exposes any child or young person, with the result that–

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(a) the life of the child is endangered; or

(b) the health of the child is or is likely to be permanently injured,

commits an offence and is liable–

(i) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;

(ii) on conviction on indictment to imprisonment for 5 years.

Cruelty to young persons.

172.(1) A person of or over the age of 16 years who has the custody, charge or care of any child or young person under that age and who wilfully–

(a) assaults, ill-treats, neglects, abandons or exposes the child or young person; or

(b) causes or procures the child or young person to be assaulted, ill-treated, neglected, abandoned or exposed,

in a manner likely to cause the child or young person unnecessary suffering or injury to health (including injury to or loss of sight or hearing or limb or organ of the body, and any mental derangement), commits an offence and is liable–

(i) on summary conviction to imprisonment for 12 months, or the statutory maximum fine, or both;

(ii) on conviction on indictment to imprisonment for 10 years.

(2) For the purposes of this section–

(a) a parent or person who is legally liable to maintain a child or young person is deemed to have neglected him in a manner likely to cause injury to his health if–

(i) the parent or person has failed to provide adequate food, clothing, medical aid or lodging for him; or

(ii) having been unable otherwise to provide such food, clothing, medical aid or lodging, has failed to take steps to procure it from the relevant statutory bodies responsible for such matters;

(b) if it is proved that the death of a child under the age of 3 years was caused by suffocation while the child was in bed with some other person who has attained the age of 16 years (not being suffocation caused by disease or the presence of any

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foreign body in the throat or air passages of the infant), that other person is, if he was, when he went to bed, under the influence of drink, deemed to have neglected the child in a manner likely to cause injury to its health.

(3) A person may be convicted of an offence under this section–

(a) even if actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person;

(b) even if the child or young person has died.

(4) If it is proved that a person convicted under this section was directly or indirectly interested in any sum of money accruing or payable in the event of the death of the child or young person, and had knowledge that that sum of money was accruing or becoming payable, then–

(a) on summary conviction, the court in determining the sentence must take into consideration the fact that the person was so interested and had such knowledge;

(b) on conviction on indictment, the maximum penalty is increased to imprisonment for life.

(5) For the purposes of subsection (4)–

(a) a person is deemed to be directly or indirectly interested in a sum of money if he has any share in or benefit from the payment of the money, even if he is not a person to whom it is legally payable; and

(b) a copy of a policy of insurance, certified to be a true copy by an officer or agent of the insurance company issuing it, is evidence that the child or young person stated to be insured has in fact been so insured and that the person in whose favour the policy has been granted is the person to whom the money thereby insured is legally payable.

(6) Nothing in this section affects the right of any parent, teacher or other person having the lawful control or charge of a child or young person to administer punishment to him.

Causing or intending bodily injury

Setting spring guns, etc.

173.(1) A person who sets or places, or causes to be set or placed, any spring gun, man trap or other device calculated to destroy human life or inflict grievous harm, with the intent that it should or whereby it might destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact with it, commits an offence and is liable–

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(a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;

(b) on conviction on indictment to imprisonment for 5 years.

(2) A person who knowingly and wilfully permits any such spring gun, man trap or other device which has been set or placed by another person in a place that subsequently comes into his possession or occupation to continue so set or placed, is deemed to have set and placed it with the intention mentioned in subsection (1).

(3) Nothing in this section makes it illegal–

(a) to set or place any gin or trap such as is usually set or placed to destroy vermin;

(b) to set or place or cause to be set or placed, or to be continued set or placed, from sunset to sunrise, any spring gun, man trap or other device in a dwelling house in order to protect it.

Causing harm by furious driving.

174. A person who, having charge of any carriage or vehicle, by wanton or furious driving, racing, riding or operation, or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person, commits an offence and is liable–

(a) on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both;

(b) on conviction on indictment to imprisonment for 5 years.

Assaults

Common assault.

175.(1) A person who unlawfully assaults or beats any other person is liable–

(a) on summary conviction to imprisonment for 9 months or to a fine at level 4 on the standard scale, or both; and

(b) on conviction on indictment to imprisonment for one year.

(2) A count charging a person with common assault may be included in an indictment if the charge–

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(a) is founded on the same facts or evidence as a count charging an indictable offence; or

(b) is part of a series of offences of the same or similar character as an indictable offence which is also charged.

(3) In addition to imposing any penalty the court may order the offender to enter into a recognizance, with or without sureties, to keep the peace or to be of good behaviour for a period not exceeding 12 months.

Assault occasioning actual bodily harm.

176. A person who commits an assault occasioning actual bodily harm commits an offence and 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 5 years.

Assaulting police officer.

177.(1) A person who assaults–

(a) a police officer in the execution of his duty; or

(b) a person assisting a police officer in the execution of his duty,

commits an offence.

(2) A person who resists or wilfully obstructs–

(a) a police officer in the execution of his duty; or

(b) a person assisting a police officer in the execution of his duty;

commits an offence.

(3) A person who aids or encourages or assists any other person to assault, obstruct or resist–

(a) any police officer in the execution of his duty; or

(b) any person aiding or assisting a police officer in the performance of his duty,

commits an offence.

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(4) A person who commits an offence under this section is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both.

Assault to prevent arrest.

178. A person who assaults any person with intent to resist or prevent the lawful arrest or detention of himself or of any other person for any offence, commits an offence and is liable–

(a) on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both;

(b) on conviction on indictment to imprisonment for 2 years.

Assault on emergency worker.

179.(1) A person commits an offence under this section if that person commits an offence under section 175 against an emergency worker acting in the exercise of functions as such a worker.

(2) A person who commits an offence under this section is liable-

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine at level 5, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(3) For the purposes of subsection (1), the circumstances in which an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker.

Assault on emergency worker: aggravating factor.

179A.(1) This section applies where-

(a) the court is considering for the purposes of sentencing the seriousness of an offence listed in subsection (3); and

(b) the offence was committed against an emergency worker acting in the exercise of functions as such a worker.

(2) The court must-

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(a) treat the fact mentioned in subsection (1)(b) as an aggravating factor (that is to say, a factor that increases the seriousness of the offence); and

(b) must state in open court that the offence is so aggravated.

(3) The offences referred to in subsection (1)(a) are an offence under any of the following provisions-

(a) section 136 (causing grievous harm by explosion);

(b) section 137 (causing explosion, etc. with intent);

(c) section 153 (manslaughter);

(d) section 157 (threats to kill);

(e) section 166 (wounding with intent to do grievous bodily harm);

(f) section 167 (wounding);

(g) section 167A (strangulation or suffocation);

(h) section 170 (administering poison);

(i) section 176 (assault occasioning actual bodily harm);

(j) section 189 (kidnapping and false imprisonment);

(k) section 215 (sexual assault);

(l) an inchoate offence in relation to any of the preceding offences.

(4) For the purposes of subsection (1)(b) the circumstances in which an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker.

(5) In this section, "inchoate offence", in relation to an offence, means an offence under Part 3.

(6) Nothing in this section prevents a court from treating the fact that an offence was committed against an emergency worker acting in the exercise of functions as such as an aggravating factor in relation to offences not listed in subsection (3).

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Meaning of "emergency worker".

179B.(1) In sections 179 and 179A, "emergency worker" means-

(a) a police officer;

(b) a person (other than a police officer) who has the powers of a police officer or is otherwise employed for police purposes or is engaged to provide services for police purposes;

(c) a prison officer;

(d) a BCA officer;

(e) a customs officer;

(f) a person employed for the purposes of providing, or engaged to provide, fire services or fire and rescue services;

(g) a person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both);

(h) a person employed for the purposes of providing, or engaged to provide-

(i) GHA health services; or

(ii) services in the support of the provision of GHA health services,

and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public;

(i) a person employed for the purposes of providing, or engaged to provide-

(i) social work services; or

(ii) services in the support of the provision of social work services,

and whose general activities in doing so involve face to face interaction with individuals receiving the services or with members of the public;

(j) a Wildlife Warden appointed under section 21 of the Nature Protection Act 1991.

(2) It is immaterial for the purposes of subsection (1) whether the employment or engagement is paid or unpaid.

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(3) In this section-

"BCA officer" means an officer of the Borders and Coastguard Agency established under section 3 of the Borders and Coastguard Agency Act 2011;

"customs officer" has the meaning given by section 2 of the Imports and Exports Act, 1986;

"GHA health services" means any kind of health services provided by the GHA in pursuance of its duty under sections 6(2)(a) and 6(2)(aa) of the Medical (Gibraltar Health Authority) Act, 1987;

"prison officer" has the meaning given by section 2 of the Prison Act 2011;

"social work services" means any kind of social care services provided by the Care Agency pursuant to section 6(2)(a) and (b) of the Care Agency Act 2009.

Obstructing or assaulting clergyman.

180.(1) A person who by threats or force–

(a) obstructs or prevents; or

(b) endeavours to obstruct or prevent,

any clergyman or other minister of religion in or from celebrating divine service or otherwise officiating in any church, chapel, meeting house or other place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any burial place, commits an offence.

(2) A person who–

(a) strikes or offers any violence to; or

(b) upon any civil process, or under the pretence of executing any civil process, arrests,

any clergyman or other minister of religion who is engaged in any rites or duties, or who to the knowledge of the offender is about to engage in, is going to perform or is returning from the performance of, any rites or duties, commits an offence.

(3) A person who commits an offence under this section is liable–

(a) on summary conviction to imprisonment for 6 months or the statutory maximum fine, or both;

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(b) on conviction on indictment to imprisonment for 2 years.

Certificate of dismissal.

181. If the Magistrates' Court, upon hearing on its merits any case of an offence under section 175 in which the complaint was preferred by or on behalf of the party aggrieved, finds the offence not proved, or the act to have been justified, or so trifling as not to merit any punishment, and accordingly dismisses the complaint, the court must forthwith issue a certificate stating the fact of such dismissal to the party against whom the complaint was preferred.

Effect of dismissal, etc.

182. If a person, against whom a complaint for an offence under section 175 has been preferred by or on behalf of the party aggrieved, has–

(a) obtained a certificate under section 181; or

(b) having been convicted and sentenced to imprisonment or a fine, or both, has served the term of imprisonment or paid the fine, or both,

no further or other proceedings, civil or criminal, may be brought against the person for the same cause.

Causing or allowing the death of a child or vulnerable adult.

Causing or allowing the death of a child or vulnerable adult.

183.(1) A person ('D') commits an offence if–

(a) a child or vulnerable adult ('V') dies as a result of the unlawful act of a person who–

(i) was a member of the same household as V; and

(ii) had frequent contact with V;

(b) D was such a person at the time of the act;

(c) at that time there was a significant risk of serious physical harm being caused to V by the unlawful act of such a person; and

(d) either D was the person who caused V's death, or–

(i) D was, or ought to have been, aware of the risk mentioned in paragraph (c);

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(ii) D failed to take such steps as he could reasonably have been expected to take to protect V from the risk; and

(iii) the act occurred in circumstances of the kind that D foresaw or ought to have foreseen.

(2) The prosecution does not have to prove whether it is the first alternative in subsection (1)(d) or the second (subparagraphs (i) to (iii)) that applies.

(3) If D was not the mother or father of V–

(a) D cannot be charged with an offence if he or she was under the age of 16 at the time of the act that caused V's death;

(b) for the purposes of subsection (1)(d)(ii), D could not have been expected to take any such step as is there referred to before attaining that age.

(4) For the purposes of this section–

(a) a person is to be regarded as a member of a particular household, even if he does not live in it, if he visits it so often and for such periods of time that it is reasonable to regard him as a member of it;

(b) if V lived in different households at different times, "the same household as V" in subsection (1)(a)(i) means the household in which V was living at the time of the act that caused V's death.

(5) For the purposes of this section, an unlawful act is one that–

(a) constitutes an offence; or

(b) would constitute an offence but for being the act of a person other than D who is–

(i) under the age of 10; or

(ii) entitled to rely on a defence of mental disorder.

(6) In this section–

"act" includes a course of conduct and an omission;

"child" means a person under the age of 16;

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"serious harm" means harm that amounts to grievous bodily harm for the purpose of section 166;

"vulnerable adult" means a person aged over 16 whose ability to protect himself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age, or otherwise.

(7) A person who commits an offence under this section is liable on conviction to imprisonment for life.

Child abduction

Offence of abduction of child by parent, etc.

184.(1) Subject to subsections (5) and (8), a person connected with a child under the age of 18 commits an offence if he takes or sends the child out of Gibraltar without the appropriate consent.

(2) A person is connected with a child for the purposes of this section if–

(a) the person is a parent of the child;

(b) in the case of a child whose parents were not married to each other at the time of his birth - there are reasonable grounds for believing that the person is the father of the child;

(c) the person is a guardian of the child;

(d) the person is a person in whose favour a residence order is in force with respect to the child; or

(e) the person has custody of the child.

(3) In this section, "the appropriate consent" in relation to a child means–

(a) the consent of each of the following–

(i) the child's mother;

(ii) the child's father, if the father has parental responsibility for the child;

(iii) any guardian of the child;

(iv) any person in whose favour a residence order is in force with respect to the child;

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(v) any person who has custody of the child;

(b) the leave of the court granted under or by virtue of any provision of the Children Act 2009, or

(c) if any person has custody of the child - the leave of the court which awarded custody to him.

(4) A person does not commit an offence under this section by taking or sending a child out of Gibraltar without obtaining the appropriate consent if–

(a) he is a person in whose favour there is a residence order in force with respect to the child; and

(b) he takes or sends him out of Gibraltar for a period of less than one month.

(5) Subsection (4) does not apply if the person taking or sending the child out of Gibraltar does so in breach of an order under the Children Act 2009.

(6) A person does not commit an offence under this section by doing anything without the consent of another person whose consent is required under the foregoing provisions if he–

(a) does it in the belief that the other person–

(i) has consented; or

(ii) would consent if he was aware of all the relevant circumstances; or

(b) has taken all reasonable steps to communicate with the other person but has been unable to communicate with him; or

(c) the other person has unreasonably refused to consent.

(7) Subsection (6)(c) does not apply if–

(a) the person who refused to consent is a person–

(i) in whose favour there is a residence order in force with respect to the child; or

(ii) who has custody of the child; or

(b) the person taking or sending the child out of Gibraltar is, by so acting, in breach of an order made by a court in Gibraltar.

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(8) If, in proceedings for an offence under this section, there is sufficient evidence to raise an issue as to the application of subsection (6), it is for the prosecution to prove that that subsection does not apply.

Section 184: Supplementary.

185.(1) In section 184–

"guardian of a child" means a person appointed as a guardian under section 15 of the Children Act 2009;

"parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property;

"residence order" means an order settling the arrangements to be made as to the person with whom a child is to live.

(2) For the purposes of section 184, a person is to be treated as having custody of a child if there is in force an order of a court in Gibraltar awarding him (whether solely or jointly with another person) custody, legal custody or care and control of the child.

(3) In the case of a child who is in the care of the Care Agency pursuant to the Children Act 2009, section 184 has effect as if–

(a) the reference in subsection (1) to the appropriate consent were a reference to the consent of the Care Agency; and

(b) subsection (3) were omitted.

(4) In the case of a child who is–

(a) detained in a place of safety under the Criminal Procedure and Evidence Act 2011; or

(b) remanded to secure accommodation under the provision of any Act,

section 184 has effect as if–

(i) the reference in subsection (1) to the appropriate consent were a reference to the leave of the court that makes the order; and

(ii) subsection (3) were omitted.

(5) In the case of a child who is the subject of–

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(a) a pending application for an adoption order; or

(b) an order under section 78 the Adoption Act 2022 relating to adoption abroad, or of a pending application for such an order;

section 184 has effect as if–

(i) the reference in subsection (1) to the appropriate consent were a reference–

(aa) in a case within paragraph (5)(a) above - to the leave of the court to which the application was made; and

(bb) in a case within paragraph (5)(b) above - to the leave of the court which made the order or, as the case may be, to which the application was made; and

(ii) subsection (3) were omitted.

Offence of abduction of child by other persons.

186.(1) Subject to subsection (3), a person, other than one mentioned in subsection (2), commits an offence if, without lawful authority or reasonable excuse, he takes or detains a child under the age of 16–

(a) so as to remove the child from the lawful control of any person having lawful control of the child; or

(b) so as to keep the child out of the lawful control of any person entitled to lawful control of the child.

(2) The persons referred to in subsection (1)(b) are–

(a) if the father and mother of the child in question were married to each other at the time of his birth - the child's father and mother;

(b) if the father and mother of the child in question were not married to each other at the time of his birth - the child's mother; and

(c) any other person mentioned in section 184(2)(c) to (e).

(3) In proceedings against any person for an offence under this section, it is a defence for the person to prove–

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(a) if the father and mother of the child in question were not married to each other at the time of his birth–

(i) that he is the child's father; or

(ii) that, at the time of the alleged offence, he believed, on reasonable grounds, that he was the child's father; or

(b) that, at the time of the alleged offence, he believed that the child had attained the age of 16.

Construction of references to taking, sending or detaining.

187. For the purposes of sections 184 and 186–

(a) a person takes a child if he causes or induces the child to accompany him or any other person or causes the child to be so taken;

(b) a person sends a child if he causes the child to be sent;

(c) a person detains a child if he causes the child to be detained or induces the child to remain with him or any other person;

(d) references to a child's parents and to a child whose parents were (or were not) married to each other at the time of his birth are to be construed in accordance with any law of Gibraltar that extends their meaning.

Penalties and prosecutions for child abduction.

188.(1) A person who commits an offence under either section 184 or section 186 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.

(2) No prosecution for an offence against either section 184 or section 1856 may be commenced except by, or with the consent of, the Attorney-General.

Miscellaneous offences

Kidnapping and false imprisonment.

189.(1) A person who, by force or fraud, takes or carries away a person–

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(a) without the consent of that person; and

(b) without lawful excuse,

commits an offence.

(2) A person who imprisons another person or restrains another person from freely moving from any place–

(a) without the consent of that person; and

(b) without lawful excuse,

commits an offence.

(3) A person who commits an offence under this section is liable on conviction to imprisonment for 14 years.

Torture.

190.(1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in Gibraltar or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.

(2) A person not falling within subsection (1) above commits the offence of torture, whatever his nationality, if–

(a) in Gibraltar or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence–

(i) of a public official; or

(ii) of a person acting in an official capacity; and

(b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.

(3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.

(4) It is a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.

(5) For the purposes of this section "lawful authority, justification or excuse" means–

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(a) in relation to pain or suffering inflicted in Gibraltar - lawful authority, justification or excuse under the law of Gibraltar;

(b) in relation to pain or suffering inflicted outside Gibraltar–

(i) if it was inflicted by a Gibraltar official acting under Gibraltar law or by a person acting in an official capacity under that law - lawful authority, justification or excuse under that law;

(ii) in any other case - lawful authority, justification or excuse under the law of the place where it was inflicted.

(6) A person who commits the offence of torture is liable on conviction to imprisonment for life.

(7) No prosecution for an offence under this section may be commenced except by, or with the consent of, the Attorney-General.

Slavery, servitude and forced or compulsory labour.

191.(1) A person (D) commits an offence if–

(a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held; or

(b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with section 4 of the Constitution.

(3) 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.

Human Trafficking.

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

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(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;

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(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.

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(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.

PART 11
CORPORATE MANSLAUGHTER

Preliminary

Interpretation of Part.

192.(1) In this Part–

"corporation" does not include a corporation sole but includes any corporate body wherever incorporated;

"employee" means an individual who works under a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing), and related expressions are to be construed accordingly;

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"employers' association" means an organisation which consists wholly or mainly of employers and whose principal purposes include the regulation of relations between employers and workers or trade unions; or any constituent or affiliated organisation having the same purposes;

"enforcement authority" means an authority responsible for the enforcement of any health and safety legislation;

"exempt department" means a department of the Government of Gibraltar that is exempted from the application of this Part under subsection (2), or of a provision of this Part specified in the order;

"health and safety legislation" means any statutory provision dealing with health and safety matters, not limited to provisions of the Factories Act;

"partnership" means–

(a) a partnership within the Partnership Act;

(b) a limited partnership registered under the Limited Partnerships Act; or

(c) a limited liability partnership registered under the Limited Liability Partnerships Act 2009,

or a firm or entity of a similar character formed under the law of a country or territory outside Gibraltar;

"public authority" includes any person any of whose functions are functions of a public nature, but does not include–

(a) any court or tribunal;

(b) the Parliament or a person exercising functions in connection with proceedings in the Parliament;

"publicity order" means an order under section 205(1);

"remedial order" means an order under section 204(1);

"trade union" has the meaning given by the Trade Union and Trade Disputes Act.

(2) The Minister may by order exempt any department of the Government of Gibraltar from the operation of this Part, or from a provision of this Part specified in the order.

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Corporate manslaughter.

193.(1) An organisation to which this section applies commits the offence of corporate manslaughter if the way in which its activities are managed or organised–

(a) causes a person's death; and

(b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

(2) The organisations to which this section applies are–

(a) a corporation;

(b) a department of the Government of Gibraltar (other than an exempt department);

(c) the police force;

(d) a partnership, or a trade union or employers' association that is an employer.

(3) An organisation commits an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).

(4) For the purposes of this Part–

(a) "relevant duty of care" has the meaning given by section 194, read with sections 195 to 199;

(b) a breach of a duty of care by an organisation is a "gross" breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances;

(c) "senior management", in relation to an organisation, means the persons who play significant roles in –

(i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised; or

(ii) the actual managing or organising of the whole or a substantial part of those activities.

(5) An organisation that commits corporate manslaughter is liable on conviction on indictment to a fine.

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Relevant duty of care

Meaning of "relevant duty of care".

194.(1) A "relevant duty of care", in relation to an organisation, means any of the following duties owed by it under the law of negligence–

(a) a duty owed to its employees or to other persons working for the organisation or performing services for it;

(b) a duty owed as occupier of premises;

(c) a duty owed in connection with–

(i) the supply by the organisation of goods or services (whether for consideration or not);

(ii) the carrying on by the organisation of any construction or maintenance operations;

(iii) the carrying on by the organisation of any other activity on a commercial basis; or

(iv) the use or keeping by the organisation of any plant, vehicle or other thing;

(d) a duty owed to a person who, by reason of being a person within subsection (2), is someone for whose safety the organisation is responsible.

(2) A person is within this subsection if–

(a) he is detained at a prison or in a custody area at a court or police station;

(b) he is being transported in a vehicle, or being held in any premises, in pursuance of prison escort arrangements or immigration escort arrangements; or

(c) he is detained under the Mental Health Act 2016.

(3) Subsection (1) is subject to sections 195 to 199.

(4) A reference in subsection (1) to a duty owed under the law of negligence includes a reference to a duty that would be owed under the law of negligence but for any statutory provision under which liability is imposed in place of liability under that law.

(5) For the purposes of this Part–

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(a) whether a particular organisation owes a duty of care to a particular individual is a question of law; and

(b) the judge must make any findings of fact necessary to decide that question.

(6) For the purposes of this Part there is to be disregarded–

(a) any rule of the common law that has the effect of preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct;

(b) any such rule that has the effect of preventing a duty of care from being owed to a person by reason of his acceptance of a risk of harm.

(7) In this section–

"construction or maintenance operations" means operations of any of the following descriptions–

(a) construction, installation, alteration, extension, improvement, repair, maintenance, decoration, cleaning, demolition or dismantling of–

(i) any building or structure;

(ii) anything else that forms, or is to form, part of the land; or

(iii) any plant, vehicle or other thing;

(b) operations that form an integral part of, or are preparatory to, or are for rendering complete, any operations within paragraph (a);

"the law of negligence" includes the Contract and Tort Act.

Public policy decisions, exclusively public functions and statutory inspections.

195.(1) Any duty of care owed by a public authority in respect of a decision as to matters of public policy (including the allocation of public resources or the weighing of competing public interests) is not a "relevant duty of care".

(2) Any duty of care owed in respect of things done in the exercise of an exclusively public function is not a "relevant duty of care" unless it falls within section 194(1)(a), (b) or (d).

(3) Any duty of care owed by a public authority in respect of inspections carried out in the exercise of a statutory function is not a "relevant duty of care" unless it falls within section 194(1)(a) or (b).

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(4) In this section–

"exclusively public function" means a function that falls within the prerogative of the Crown or is, by its nature, exercisable only with authority conferred–

(a) by the exercise of that prerogative; or

(b) by or under a statutory provision;

"statutory function" means a function conferred by or under a statutory provision.

Military activities.

196.(1) Any duty of care owed by the Crown in respect of–

(a) operations within subsection (2);

(b) activities carried on in preparation for, or directly in support of, such operations; or

(c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of the armed forces with respect to such operations,

is not a "relevant duty of care".

(2) The operations within this subsection are operations, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of the armed forces come under attack or face the threat of attack or violent resistance.

(3) For the purposes of this Part, a person who is a member of the armed forces is to be treated as employed by the Crown.

Policing and law enforcement.

197.(1) Any duty of care owed by a public authority in respect of–

(a) operations within subsection (2);

(b) activities carried on in preparation for, or directly in support of, such operations; or

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(c) training of a hazardous nature, or training carried out in a hazardous way, which it is considered needs to be carried out, or carried out in that way, in order to improve or maintain the effectiveness of officers or employees of the public authority with respect to such operations,

is not a "relevant duty of care".

(2) Operations are within this subsection if–

(a) they are operations for dealing with terrorism, civil unrest or serious disorder;

(b) they involve the carrying on of policing or law-enforcement activities; and

(c) officers or employees of the public authority in question come under attack, or face the threat of attack or violent resistance, in the course of the operations.

(3) Any duty of care owed by a public authority in respect of other policing or law-enforcement activities is not a "relevant duty of care" unless it falls within section 194(1)(a), (b) or (d).

(4) In this section "policing or law-enforcement activities" includes–

(a) activities carried on in the exercise of functions that are–

(i) functions of the police force; or

(ii) functions of the same or a similar nature exercisable by public authorities other than the police force;

(b) activities carried on in the exercise of functions of police officers employed by a public authority;

(c) activities carried on in the exercise of functions exercisable under section 12 of the Transnational Organised Crime Act 2006 (protection of witnesses and other persons);

(d) activities carried on to enforce any provision contained in or made under the Immigration, Asylum and Refugee Act.

Emergencies.

198.(1) Any duty of care owed by an organisation within subsection (2) in respect of the way in which it responds to emergency circumstances is not a "relevant duty of care" unless it falls within section 194(1)(a) or (b).

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(2) The organisations within this subsection are–

(a) a fire and rescue authority;

(b) any other organisation providing a service of responding to emergency circumstances either –

(i) pursuant to an arrangement made with the Government; or

(ii) (if not pursuant to such an arrangement) otherwise than on a commercial basis;

(c) a public hospital;

(d) an organisation providing ambulance services pursuant to an arrangement made with the Government; or

(e) an organisation providing services for the transport of organs, blood, equipment or personnel pursuant to an arrangement with the Government.

(3) For the purposes of subsection (1), the way in which an organisation responds to emergency circumstances does not include the way in which–

(a) medical treatment is carried out; or

(b) decisions within subsection (4) are made.

(4) The decisions within this subsection are decisions as to the carrying out of medical treatment, other than decisions as to the order in which persons are to be given such treatment.

(5) Any duty of care owed in respect of the carrying out, or attempted carrying out, of a rescue operation at sea in emergency circumstances is not a "relevant duty of care" unless it falls within section 194(1)(a) or (b).

(6) Any duty of care owed in respect of action taken in order to comply with a safety direction under the Merchant Shipping Acts, or with action in lieu of direction, is not a "relevant duty of care" unless it falls within section 194(1)(a) or (b).

(7) In this section–

"emergency circumstances" means circumstances that are present or imminent and–

(a) are causing, or are likely to cause, serious harm or a worsening of such harm; or

(b) are likely to cause the death of a person;

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"medical treatment" includes any treatment or procedure of a medical or similar nature;

"Merchant Shipping Acts" means the Merchant Shipping Act and any regulations made under it, and any other merchant shipping legislation that applies in Gibraltar;

"serious harm" means–

(a) serious injury to or the serious illness (including mental illness) of a person;

(b) serious harm to the environment (including the life and health of plants and animals);

(c) serious harm to any building or other property.

(8) A reference in this section to emergency circumstances includes a reference to circumstances that are believed to be emergency circumstances.

Child-protection and probation functions.

199.(1) A duty of care to which this section applies is not a "relevant duty of care" unless it falls within section 194(1)(a), (b) or (d).

(2) This section applies to any duty of care towards children or young persons that the Care Agency owes in respect of the exercise by it of functions conferred by or under the Children Act 2009.

(3) This section also applies to any duty of care that a public authority owes in respect of the exercise by it of functions in relation to youth rehabilitation orders or similar functions conferred by or under the Criminal Procedure and Evidence Act 2011.

Gross breach–factors.

200.(1) This section applies where–

(a) it is established that an organisation owed a relevant duty of care to a person; and

(b) it falls to the court or jury to decide whether there was a gross breach of that duty.

(2) The jury must consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach, and if so–

(a) how serious that failure was;

(b) how much of a risk of death it posed.

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(3) The jury may also–

(a) consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure as is mentioned in subsection (2), or to have produced tolerance of it;

(b) have regard to any health and safety guidance that relates to the alleged breach.

(4) This section does not prevent the jury from having regard to any other matters they consider relevant.

(5) In this section "health and safety guidance" means any code, guidance, manual or similar publication that is concerned with health and safety matters and is made or issued (under a statutory provision or otherwise) by an authority responsible for the enforcement of any health and safety legislation.

Application to particular categories of organisation

Application to Government bodies.

201.(1) An organisation that is a servant or agent of the Crown is not by virtue of its status immune from prosecution under this Part.

(2) For the purposes of this Part–

(a) every department of the Government of Gibraltar (other than an exempt department); and

(b) every corporation that is a servant or agent of the Crown,

is to be treated as owing whatever duties of care it would owe if it were a corporation that was not a department of the Government of Gibraltar or servant or agent of the Crown.

(3) For the purposes of section 194–

(a) a person who is–

(i) employed by or under the Crown for the purposes of a department of the Government of Gibraltar; or

(ii) employed by a person whose staff constitute such a department,

is to be treated as employed by that department.

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(b) any premises occupied for the purposes of–

(i) a department of the Government of Gibraltar; or

(ii) a person whose staff constitute such a department,

are to be treated as occupied by that department.

(4) For the purposes of sections 194 to 199, anything purporting to be done by a department or body of the Government of Gibraltar, although in law done by the Crown or by the holder of a particular office, is to be treated as done by the department or body itself.

Application to police force.

202.(1) For the purposes of this Part the police force is to be treated as owing whatever duties of care it would owe if it were a body corporate.

(2) For the purposes of section 194–

(a) a member of the police force is to be treated as employed by the force;

(b) a special constable is to be treated as employed by the police force;

(c) a police cadet undergoing training with a view to becoming a member of the police force is to be treated as employed by the force.

(3) For the purposes of section 194 any premises occupied for the purposes of the police force are to be treated as occupied by the force.

(4) For the purposes of sections 194 to 199, anything that would be regarded as done by the police force if the force were a body corporate is to be so regarded.

(5) If–

(a) by virtue of subsection (2) a person is treated for the purposes of section 194 as employed by the police force; and

(b) by virtue of any other statutory provision (whenever made) the person is, or is treated as, employed by another organisation,

the person is to be treated for those purposes as employed by both the force and the other organisation.

Application to partnerships.

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203.(1) For the purposes of this Part a partnership is to be treated as owing whatever duties of care it would owe if it were a body corporate.

(2) Proceedings for an offence under this Part alleged to have been committed by a partnership are to be brought in the name of the partnership (and not in that of any of its members).

(3) A fine imposed on a partnership on its conviction of an offence under this Part is to be paid out of the funds of the partnership.

(4) This section does not apply to a partnership that is a legal person under the law by which it is governed.

Enforcement and procedure

Power to order breach, etc. to be remedied.

204.(1) A court before which an organisation is convicted of corporate manslaughter may make an order (a "remedial order") requiring the organisation to take specified steps to remedy–

(a) the breach mentioned in section 193(1) ("the relevant breach");

(b) any matter that appears to the court to have resulted from the relevant breach and to have been a cause of the death;

(c) any deficiency, as regards health and safety matters, in the organisation's policies, systems or practices of which the relevant breach appears to the court to be an indication.

(2) A remedial order–

(a) may be made only on an application by the prosecution specifying the terms of the proposed order;

(b) must be on terms (whether those proposed or others) that the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to the matter by the prosecution or on behalf of the organisation.

(3) Before making an application for a remedial order the prosecution must consult any enforcement authority or authorities that it considers appropriate having regard to the nature of the relevant breach.

(4) A remedial order–

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(a) must specify a period within which the steps referred to in subsection (1) are to be taken;

(b) may require the organisation to supply to an enforcement authority consulted under subsection (3), within a specified period, evidence that those steps have been taken.

(5) A period specified under subsection (4) may be extended or further extended by order of the court on an application made before the end of that period or extended period.

(6) An organisation that fails to comply with a remedial order commits an offence, and is liable on conviction on indictment to a fine.

Power to order conviction, etc. to be publicised.

205.(1) A court before which an organisation is convicted of corporate manslaughter may make an order (a "publicity order") requiring the organisation to publicise in a specified manner–

(a) the fact that it has been convicted of the offence;

(b) specified particulars of the offence;

(c) the amount of any fine imposed;

(d) the terms of any remedial order made.

(2) In deciding on the terms of a publicity order that it is proposing to make, the court must–

(a) ascertain the views of any enforcement authority or authorities it considers appropriate; and

(b) have regard to any representations made by the prosecution or on behalf of the organisation.

(3) A publicity order–

(a) must specify a period within which the requirements referred to in subsection (1) are to be complied with;

(b) may require the organisation to supply to any enforcement authority whose views have been ascertained under subsection (2), within a specified period, evidence that those requirements have been complied with.

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(4) An organisation that fails to comply with a publicity order commits an offence, and is liable on conviction on indictment to a fine.

Procedure, evidence and sentencing.

206.(1) Any statutory provision (whenever made) about criminal proceedings applies, subject to any prescribed adaptations or modifications, in relation to proceedings under this Part against–

(a) a department of the Government of Gibraltar;

(b) the police force;

(c) a partnership;

(d) a trade union; or

(e) an employers' association that is not a corporation,

as it applies in relation to proceedings against a corporation.

(2) An individual cannot be guilty of aiding, abetting, counselling or procuring the commission of an offence of corporate manslaughter.

(3) Proceedings for an offence of corporate manslaughter may not be instituted except by, or with the consent of, the Attorney-General.

(4) In this section–

"prescribed" means prescribed by an order made by the Minister;

"provision about criminal proceedings" includes-

(a) provision about procedure in or in connection with criminal proceedings;

(b) provision about evidence in such proceedings;

(c) provision about sentencing, or otherwise dealing with, persons convicted of offences.

Convictions under this Part and under health and safety legislation.

207.(1) If in the same proceedings there is–

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(a) a charge of corporate manslaughter arising out of a particular set of circumstances; and

(b) a charge against the same defendant of a health and safety offence arising out of some or all of those circumstances,

the jury may, if the interests of justice so require, be invited to return a verdict on each charge.

(2) An organisation that has been convicted of corporate manslaughter arising out of a particular set of circumstances may, if the interests of justice so require, be charged with a health and safety offence arising out of some or all of those circumstances.

(3) In this section "health and safety offence" means an offence under any health and safety legislation.

Miscellaneous

Transfer of functions.

208.(1) This section applies if–

(a) a person's death has occurred, or is alleged to have occurred, in connection with the carrying out of functions by a relevant public organisation; and

(b) subsequently there is a transfer of those functions, with the result that they are still carried out but no longer by that organisation.

(2) In this section "relevant public organisation" means–

(a) a department of the Government of Gibraltar (other than an exempt department);

(b) a corporation that is a servant or agent of the Crown;

(c) the police force.

(3) Subject to subsection (4), any proceedings instituted against a relevant public organisation after the transfer for an offence under this Part in respect of the person's death must be instituted against –

(a) the relevant public organisation, if any, by which the functions mentioned in subsection (1) are currently carried out;

(b) if no such organisation currently carries out the functions - the relevant public organisation by which the functions were last carried out.

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(4) If an order made by the Minister so provides in relation to a particular transfer of functions, the proceedings referred to in subsection (3) may be instituted, or (if they have already been instituted) may be continued, against–

(a) the organisation mentioned in subsection (1); or

(b) any relevant public organisation (other than the one mentioned in subsection (1) or subsection (3)(a) or (b)) specified in the order.

(5) Subject to subsection (6), if the transfer occurs while proceedings for an offence under this Part in respect of the person's death are in progress against a relevant public organisation, the proceedings are to be continued against–

(a) the relevant public organisation, if any, by which the functions mentioned in subsection (1) are carried out as a result of the transfer;

(b) if as a result of the transfer no such organisation carries out the functions - the same organisation as before.

(6) If an order made by the Minister so provides in relation to a particular transfer of functions, the proceedings referred to in subsection (5) may be continued against–

(a) the organisation mentioned in subsection (1); or

(b) any relevant public organisation (other than the one mentioned in subsection (1) or subsection (5)(a) or (b)) specified in the order.

Abolition of liability of corporations for manslaughter at common law.

209. The common law offence of manslaughter by gross negligence is abolished in its application to corporations, and in any application it has to other organisations to which section 193 applies.

Power to extend section 193 to other organisations.

210.(1) The Minister may by order amend section 193 so as to extend the categories of organisation to which that section applies.

(2) An order under this section may make any amendment to this Part that is incidental or supplemental to, or consequential on, an amendment made by virtue of subsection (1).

Power to extend section 194(2).

211.(1) The Minister may by order amend section 194(2) to make it include any category of person (not already included) who is–

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(a) required by virtue of a statutory provision to remain or reside on particular premises; or

(b) otherwise subject to a restriction of his liberty.

(2) An order under this section may make any amendment to this Part that is incidental or supplemental to, or consequential on, an amendment made by virtue of subsection (1).

PART 12
SEXUAL OFFENCES

Interpretation of Part.

212.(1) In this Part, unless the context otherwise requires–

"care worker" has the meaning given to it by sections 253;

"consent" has the meaning given to it by sections 301 to 303;

"image" means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image;

"mental disorder" has the meaning given by section 1(3) of the Mental Health Act 2016;

"penetration" is a continuing act from entry to withdrawal;

"touching" includes touching–

(a) with any part of the body;

(b) with anything else;

(c) through anything,

and includes touching amounting to penetration;

"vagina" includes vulva.

(2) For the purposes of this Part–

(a) references to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery);

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(b) references to an image of a person include references to an image of an imaginary person;.

(c) references to observation (however expressed) are to observation whether direct or by looking at an image;.

(d) in relation to an animal, references to the vagina or anus include references to any similar part.

(3) For the purposes of this Part (except section 297), penetration, touching or any other activity is sexual if a reasonable person
would consider that–

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual; or

(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

Rape and related offences

Rape.

213.(1) A person (A) commits an offence if–

(a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis;

(b) B does not consent to the penetration; and

(c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 301 to 303 apply to an offence under this section.

(4) A person who commits an offence under this section is liable on conviction to imprisonment for life.

Assault by penetration.

214.(1) A person (A) commits an offence if–

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(a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else;

(b) the penetration is sexual;

(c) B does not consent to the penetration; and

(d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 301 to 303 apply to an offence under this section.

(4) A person who commits an offence under this section is liable on conviction to imprisonment for life.

Sexual assault.

215.(1) A person (A) commits an offence if–

(a) he intentionally touches another person (B);

(b) the touching is sexual;

(c) B does not consent to the touching; and

(d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 301 to 303 apply to an offence under this section.

(4) 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 10 years.

Causing a person to engage in sexual activity without consent.

216.(1) A person (A) commits an offence if–

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(a) he intentionally causes another person (B) to engage in an activity;

(b) the activity is sexual;

(c) B does not consent to engaging in the activity; and

(d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 301 to 303 apply to an offence under this section.

(4) A person who commits an offence under this section, if the activity caused involved−

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is liable on conviction to imprisonment for life.

(5) Unless subsection (4) applies, 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 10 years.

Rape, etc. against children under 13

Rape of a child under 13.

217.(1) A person commits an offence if−

(a) he intentionally penetrates the vagina, anus or mouth of another person with his penis; and

(b) the other person is under 13.

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(2) A person who commits an offence under this section is liable on conviction to imprisonment for life.

Assault of a child under 13 by penetration.

218.(1) A person commits an offence if−

(a) he intentionally penetrates the vagina or anus of another person with a part of his body or anything else;

(b) the penetration is sexual; and

(c) the other person is under 13.

(2) A person who commits an offence under this section is liable on conviction to imprisonment for life.

Sexual assault of a child under 13.

219.(1) A person commits an offence if−

(a) he intentionally touches another person;

(b) the touching is sexual; and

(c) the other person is under 13.

(2) 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.

Causing or encouraging or assisting a child under 13 to engage in sexual activity.

220.(1) A person commits an offence if–

(a) he intentionally causes or encourages or assists another person (B) to engage in an activity;

(b) the activity is sexual; and

(c) B is under 13.

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(2) A person who commits an offence under this section, if the activity caused or encouraged or assisted involved–

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is liable on conviction to imprisonment for life.

(3) Unless subsection (2) applies, 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.

Child sex offences

Sexual activity with a child.

221.(1) A person aged 18 or over (A) commits an offence if–

(a) he intentionally touches another person (B);

(b) the touching is sexual; and

(c) either–

(i) B is under 16 and A does not reasonably believe that B is 16 or over; or

(ii) B is under 13.

(2) A person who commits an offence under this section, if the touching involved–

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

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(d) penetration of A's mouth with B's penis,

is liable on conviction on indictment, to imprisonment for 14 years.

(3) Unless subsection (2) applies, 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.

Causing or encouraging or assisting a child to engage in sexual activity.

222.(1) A person aged 18 or over (A) commits an offence if–

(a) he intentionally causes or encourages or assists another person (B) to engage in an activity;

(b) the activity is sexual; and

(c) either–

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

(2) A person who commits an offence under this section, if the activity caused or encouraged or assisted involved–

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis,

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for 14 years.

(3) Unless subsection (2) applies, a person who commits an offence under this section is liable–

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(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.

Engaging in sexual activity in the presence of a child.

223.(1) A person aged 18 or over (A) commits an offence if–

(a) he intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, he engages in it–

(i) when another person (B) is present or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it; and

(d) either–

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

(2) 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 10 years.

Causing a child to watch a sexual act.

224.(1) A person aged 18 or over (A) commits an offence if–

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual; and

(c) either–

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(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

(2) 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;

(a) on conviction on indictment, to imprisonment for 10 years.

Child sex offences committed by children or young persons.

225.(1) A person under 18 who does anything which would be an offence under any of sections 221 to 224 if he were aged 18 or over commits an offence.

(2) Subject to subsection (3), a person who commits an offence under this section is liable–

(a) on summary conviction, to imprisonment for 6 months, or the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for 5 years.

(3) If–

(a) the offender was aged under 16 at the time of the offence; -

(b) the victim of the offence was aged 13, 14 or 15 at the time of the offence and consented to the acts which constitute the offence; and

(c) the offence is a first offence by that offender under this Part,

the court must make an order for conditional discharge on the offender.

(4) For the purposes of subsection (3) it is not relevant whether the victim could give consent in law if he or she gave consent in fact.

Arranging or facilitating commission of a child sex offence.

226.(1) A person commits an offence if–

(a) he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world, and

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(b) doing it will involve the commission of an offence under any of sections 221 to 225.

(2) A person does not commit an offence under this section if–

(a) he arranges or facilitates something that he believes another person will do, but that he does not intend to do or intend another person to do; and

(b) any offence within subsection (1)(b) would be an offence against a child for whose protection he acts.

(3) For the purposes of subsection (2), a person acts for the protection of a child if he acts for the purpose of–

(a) protecting the child from sexually transmitted infection;

(b) protecting the physical safety of the child;

(c) preventing the child from becoming pregnant; or

(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1)(b) or the child's participation in it.

(4) A person who commits an offence under this section is liable–

(a) on summary conviction, to imprisonment for 12 months, or a fine at the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for 10 years.

Meeting a child following sexual grooming etc.

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

(a) having met or communicated with another person (B) on one or more occasions, he–

(i) intentionally meets B; or

(ii) travels with the intention of meeting B in any part of the world;

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(b) at the time, he intends to do anything to or in respect of B, during or after the meeting and in any part of the world, which if done will involve the commission by A of a relevant offence;

(c) B is under 16; and

(d) A does not reasonably believe that B is 16 or over,

(i) B is under 16; and

(ii) A does not reasonably believe that B is 16 or over.

(2) In subsection (1)–

(a) the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world;

(b) "relevant offence" means–

(i) an offence under this Part;

(ii) anything done in a place outside Gibraltar which is not an offence in that place but would be an offence under this Part if done in Gibraltar.

(3) 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 10 years.

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-

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(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.

Abuse of position of trust

Abuse of position of trust: Sexual activity with a child.

228.(1) A person aged 18 or over (A) commits an offence if–

(a) he intentionally touches another person (B);

(b) the touching is sexual;

(c) A is in a position of trust in relation to B;

(d) if subsection (2) applies - A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B; and

(e) 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) This subsection applies if A–

(a) is in a position of trust in relation to B by virtue of circumstances within section 232(1)(c), (d), (e) or (f); and

(b) is not in such a position of trust by virtue of other circumstances.

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(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) If in proceedings for an offence under this section–

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 232(1)(c), (d), (e) or (f); and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) 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 8 years.

Abuse of position of trust: Causing or encouraging or assisting a child to engage in sexual activity.

229.(1) A person aged 18 or over (A) commits an offence if–

(a) he intentionally causes or encourages or assists another person (B) to engage in an activity;

(b) the activity is sexual;

(c) A is in a position of trust in relation to B;

(d) if subsection (2) applies - A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B; and

(e) either–

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

(ii) B is under 13.

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(2) This subsection applies if A–

(a) is in a position of trust in relation to B by virtue of circumstances within section 232(1)(c), (d), (e) or (f); and

(b) is not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) If in proceedings for an offence under this section–

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 232(1)(c), (d), (e) or (f); and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) 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 8 years.

Abuse of position of trust: Sexual activity in the presence of a child.

230.(1) A person aged 18 or over (A) commits an offence if–

(a) he intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, he engages in it–

(i) when another person (B) is present or is in a place from which A can be observed; and

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(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it;

(d) A is in a position of trust in relation to B;

(e) if subsection (2) applies - A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B; and

(f) 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) This subsection applies if A–

(a) is in a position of trust in relation to B by virtue of circumstances within section 232(1)(c), (d), (e) or (f); and

(b) is not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) If in proceedings for an offence under this section–

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 232(1)(c), (d), (e) or (f); and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust, unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) 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;

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(b) on conviction on indictment, to imprisonment for 8 years.

Abuse of position of trust: Causing a child to watch a sexual act.

231.(1) A person aged 18 or over (A) commits an offence if–

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) A is in a position of trust in relation to B;

(d) if subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B; and

(e) 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) This subsection applies if A–

(a) is in a position of trust in relation to B by virtue of circumstances within section 232(1)(c), (d), (e) or (f); and

(b) is not in such a position of trust by virtue of other circumstances.

(3) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) If in proceedings for an offence under this section–

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 232(1)(c), (d), (e) or (f); and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust, unless sufficient

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evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) 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 8 years.

Positions of trust.

232.(1) For the purposes of sections 228 to 231 a person (A) is in a position of trust in relation to another person (B) if any of the following applies–

(a) is a probation officer appointed to supervise B under the Criminal Procedure and Evidence Act 2011 and in that capacity has regular unsupervised access to the child as a requirement of a court order made in criminal proceedings;

(b) A is a guardian *ad litem* for the child, appointed under the Adoption Act 2023 or any other enactment;

(c) A looks after persons under 18 who are detained in an institution by virtue of a court order, or under an enactment, and B is so detained in that institution;

(d) A looks after persons under 18 who are resident in a home or other place in which accommodation and maintenance are provided by the Agency, or by some other authority or voluntary organisation or any similar enactment, and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place;

(e) A looks after persons under 18 who are accommodated and cared for in a hospital, a nursing home, an independent clinic, a residential care home or a private hospital, and B is accommodated and cared for in that institution;

(f) A works in a community home provided under section 107 of the Children Act 2009 and B is resident in that home;

(g) A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution;

(h) A is engaged in the provision of services under, or pursuant to anything done under the Education and Training Act and, in that capacity, looks after B on an individual basis;

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(i) A regularly has unsupervised contact with B (whether face to face or by any other means) in the exercise of functions of the Agency;

(j) A, as a person who is to report to the court under Children Act 2009 or on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means);

(k) A is a supervisor appointed for B under the Children Act 2009, and, in that capacity, looks after B on an individual basis;

(l) B is subject to a care order, a supervision order or an education supervision order and A looks after B on an individual basis in the exercise of functions conferred by the order on an authorised person or the authority designated by the order.

(2) The Minister may by order prescribe other conditions which, if met, mean that for the purposes of sections 228 to 231 a person (A) is in a position of trust in relation to another person (B).

Positions of trust: Interpretation.

233.(1) The following provisions apply for the purposes of section 232.

(2) Subject to subsection (3), a person looks after persons under 18 if he is regularly involved in caring for, training, supervising or being in sole charge of such persons.

(3) A person (A) looks after another person (B) on an individual basis if–

(a) A is regularly involved in caring for, training or supervising B; and

(b) in the course of his involvement, A regularly has unsupervised contact with B (whether face to face or by any other means).

(4) A person receives education at an educational institution if–

(a) he is registered or otherwise enrolled as a pupil or student at the institution; or

(b) he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.

(5) In section 232−

"Agency" means the Care Agency established by the Care Agency Act 2009;

"educational institution" means a school within the meaning of section 2 of the Education and Training Act and any similar institution;

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"hospital" and "nursing home" have the meaning given by section 58 of the Medical and Health Act 1997;

Sections 228 to 231: Exception for spouses.

234.(1) Conduct by a person (A) which would otherwise be an offence under any of sections 228 to 231 against another person (B) is not an offence under that section if at the time–

(a) B is 16 or over; and

(b) A and B are lawfully married.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married.

Sections 228 to 231: Sexual relationships which pre-date position of trust.

235.(1) Conduct by a person (A) which would otherwise be an offence under any of sections 228 to 231 against another person (B) is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 228 to 231 it is for the defendant to prove that such a relationship existed at that time.

Familial child sex offences

Sexual activity with a child family member.

236.(1) A person (A) commits an offence if–

(a) he intentionally touches another person (B);

(b) the touching is sexual;

(c) the relation of A to B is within section 238;

(d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section; and

(e) either–

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

(ii) B is under 13.

(2) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(3) If in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a description falling within section 238, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description, unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

(4) A person who commits an offence under this section, if aged 18 or over at the time of the offence, is liable–

(a) if subsection (6) applies - on conviction on indictment, to imprisonment for 14 years;

(b) in any other case–

(i) on summary conviction, to imprisonment for 12 months or the statutory maximum fine, or both;

(ii) on conviction on indictment, to imprisonment for 14 years.

(5) Unless subsection (4) applies, 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 5 years.

(6) This subsection applies if the touching involved–

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis.

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Encouraging or assisting a child family member to engage in sexual activity.

237.(1) A person (A) commits an offence if–

(a) he intentionally encourages or assists another person (B) to touch, or allow himself to be touched by, A;

(b) the touching is sexual;

(c) the relation of A to B is within section 238;

(d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section; and

(e) 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) If in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over, unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(3) If in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a description falling within section 238, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description, unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

(4) A person who commits an offence under this section, if he was aged 18 or over at the time of the offence, is liable–

(a) if subsection (6) applies - on conviction on indictment to imprisonment for 14 years;

(b) in any other case–

(i) on summary conviction, to imprisonment for 12 months or the statutory maximum fine, or both;

(ii) on conviction on indictment, to imprisonment for 14 years.

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(5) Unless subsection (4) applies, 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 5 years.

(6) This subsection applies if the touching to which the encouragement or assistance related involved–

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis.

Family relationships.

238.(1) The relation of one person (A) to another (B) is within this section if it is within any of subsections (2) to (4).

(2) The relation of A to B is within this subsection if–

(a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle; or

(b) A is or has been B's foster carer or guardian.

(3) The relation of A to B is within this subsection if A and B live or have lived in the same household, or A is or has been regularly involved in caring for, training, supervising or being in sole charge of B, and–

(a) one of them is or has been the other's step-parent;

(b) A and B are cousins;

(c) one of them is or has been the other's stepbrother or stepsister; or

(d) the parent or present or former foster carer or guardian of one of them is or has been the other's foster carer or guardian.

(4) The relation of A to B is within this subsection if–

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(a) A and B live in the same household; and

(b) A is regularly involved in caring for, training, supervising or being in sole charge of B.

(5) For the purposes of this section–

(a) "aunt" means the sister or half-sister of a person's parent, and "uncle" has a corresponding meaning;

(b) "cousin" means the child of an aunt or uncle;

(c) a person is a child's foster carer if he–

(i) is a person with whom the child has been placed under section 123 of the Children Act 2009; or

(ii) fosters the child privately, within the meaning of section 125 of that Act;

(d) a person is a child's guardian if he has been appointed guardian or special guardian of the child under Part IV of the Children Act 2009;

(e) a person is another's partner (whether they are of different sexes or the same sex) if they live together as partners in an enduring family relationship;

(f) "step-parent" includes a parent's partner and "stepbrother" and "stepsister" includes the child of a parent's partner.

Sections 236 and 237: Exception for spouses.

239.(1) Conduct by a person (A) which would otherwise be an offence under section 236 or 237 against another person (B) is not an offence under that section if at the time–

(a) B is 16 or over; and

(b) A and B are lawfully married.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married.

Sections 236 and 237: Sexual relationships which pre-date family relationships.

240.(1) Conduct by a person (A) which would otherwise be an offence under section 236 or 237 against another person (B) is not an offence under that section if–

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(a) the relation of A to B is not within subsection (2) of section 238; or

(b) immediately before the relation of A to B first became such as to fall within section 238, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at the time referred to in subsection (1)(b) sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under section 236 or 237 it is for the defendant to prove the matters mentioned in subsection (1)(a) to (b).

Offences against persons with a mental disorder impeding choice

Sexual activity with a person with a mental disorder impeding choice.

241.(1) A person (A) commits an offence if–

(a) he intentionally touches another person (B);

(b) the touching is sexual;

(c) B is unable to refuse because of or for a reason related to a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if–

(a) he lacks the capacity to choose whether to agree to the touching (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason); or

(b) he is unable to communicate such a choice to A.

(3) A person who commits an offence under this section, if the touching involved–

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis,

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is liable, on conviction on indictment, to imprisonment for life.

(4) Unless subsection (3) applies, 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.

Causing or encouraging or assisting a person with a mental disorder impeding choice to engage in sexual activity.

242.(1) A person (A) commits an offence if–

(a) he intentionally causes or encourages or assists another person (B) to engage in an activity;

(b) the activity is sexual;

(c) B is unable to refuse because of or for a reason related to a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if–

(a) he lacks the capacity to choose whether to agree to engaging in the activity caused or encouraged or assisted (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of the activity, or for any other reason); or

(b) he is unable to communicate such a choice to A.

(3) A person who commits an offence under this section, if the activity caused or encouraged or assisted involved–

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

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is liable, on conviction on indictment, to imprisonment for life.

(4) Unless subsection (3) applies, 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.

Engaging in sexual activity in the presence of a person with a mental disorder impeding choice.

243.(1) A person (A) commits an offence if–

(a) he intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, he engages in it–

(i) when another person (B) is present or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it;

(d) B is unable to refuse because of or for a reason related to a mental disorder; and

(e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if–

(a) he lacks the capacity to choose whether to agree to being present (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason); or

(b) he is unable to communicate such a choice to A.

(3) 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;

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(b) on conviction on indictment, to imprisonment for 10 years.

Causing a person with a mental disorder impeding choice to watch a sexual act.

244.(1) A person (A) commits an offence if–

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) B is unable to refuse because of or for a reason related to a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if–

(a) he lacks the capacity to choose whether to agree to watching or looking (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason); or

(b) he is unable to communicate such a choice to A.

(3) 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 10 years.

Inducements etc. to persons with a mental disorder

Inducement etc. to procure sexual activity with a person with a mental disorder.

245.(1) A person (A) commits an offence if–

(a) with the agreement of another person (B) he intentionally touches that person;

(b) the touching is sexual;

(c) A obtains B's agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose;

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(d) B has a mental disorder; and

(e) A knows or could reasonably be expected to know that B has a mental disorder.

(2) A person who commits an offence under this section, if the touching involved–

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(3) Unless subsection (2) applies, 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.

Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement etc.

246.(1) A person (A) commits an offence if–

(a) by means of an inducement offered or given, a threat made or a deception practiced by him for this purpose, he intentionally causes another person (B) to engage in, or to agree to engage in, an activity;

(b) the activity is sexual;

(c) B has a mental disorder; and

(d) A knows or could reasonably be expected to know that B has a mental disorder.

(2) A person who commits an offence under this section, if the activity caused or agreed to involved–

(a) penetration of B's anus or vagina;

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(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(3) Unless subsection (2) applies, 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.

Engaging in sexual activity in the presence, procured by inducement etc., of a person with a mental disorder.

247.(1) A person (A) commits an offence if–

(a) he intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, he engages in it–

(i) when another person (B) is present or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it;

(d) B agrees to be present or in the place referred to in paragraph (c)(i) because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;

(e) B has a mental disorder; and

(f) A knows or could reasonably be expected to know that B has a mental disorder.

(2) A person who commits an offence under this section is liable–

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(a) on summary conviction, to imprisonment for 12 months or the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for 10 years.

Causing a person with a mental disorder to watch a sexual act by inducement, etc.

248.(1) A person (A) commits an offence if–

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) B agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;

(d) B has a mental disorder; and

(e) A knows or could reasonably be expected to know that B has a mental disorder.

(2) 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 10 years.

Care workers for persons with a mental disorder

Care workers: Sexual activity with a person with a mental disorder.

249.(1) A person (A) commits an offence if–

(a) he intentionally touches another person (B);

(b) the touching is sexual;

(c) B has a mental disorder;

(d) A knows or could reasonably be expected to know that B has a mental disorder; and

(e) A is involved in B's care in a way that falls within section 253.

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(2) If in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person who commits an offence under this section, if the touching involved–

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body; or

(d) penetration of A's mouth with B's penis,

.

is liable, on conviction on indictment, to imprisonment for 14 years.

(4) Unless subsection (3) applies, 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 10 years.

Care workers: Causing or encouraging or assisting sexual activity.

250.(1) A person (A) commits an offence if–

(a) he intentionally causes or encourages or assists another person (B) to engage in an activity;

(b) the activity is sexual;

(c) B has a mental disorder;

(d) A knows or could reasonably be expected to know that B has a mental disorder; and

(e) A is involved in B's care in a way that falls within section 253.

(2) If in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been

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expected to know that that person had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person who commits an offence under this section, if the activity caused or encouraged or assisted involved–

(a) penetration of B's anus or vagina;

(b) penetration of B's mouth with a person's penis;

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for 14 years.

(4) Unless subsection (3) applies, 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 10 years.

Care workers: Sexual activity in the presence of a person with a mental disorder.

251.(1) A person (A) commits an offence if–

(a) he intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, he engages in it–

(i) when another person (B) is present or is in a place from which A can be observed; and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it;

(d) B has a mental disorder;

(e) A knows or could reasonably be expected to know that B has a mental disorder; and

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(f) A is involved in B's care in a way that falls within section 253.

(2) If in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) 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 8 years.

Care workers: Causing a person with a mental disorder to watch a sexual act.

252.(1) A person (A) commits an offence if–

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) B has a mental disorder;

(d) A knows or could reasonably be expected to know that B has a mental disorder; and

(e) A is involved in B's care in a way that falls within section 253.

(2) If in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder, unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) 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 8 years.

Care workers: Interpretation.

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253.(1) For the purposes of sections 249 to 252, a person (A) is involved in the care of another person (B) in a way that falls within this section if any of subsections (2) to (4) applies.

(2) This subsection applies if–

(a) B is accommodated and cared for in a community home, family centre or other accommodation under the Children Act 2009; and

(b) A has functions to perform in the home or centre in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(3) This subsection applies if B is a patient for whom services are provided in a hospital or nursing home, and A has functions to perform in the hospital or nursing home in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(4) This subsection applies if A–

(a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B's mental disorder; and

(b) as such, has had or is likely to have regular face to face contact with B.

(5) In this section–

"community home" and "family centre" have the meanings respectively given to those terms by sections 114 and 115 of the Children Act 2009;

"employment" means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract;

"hospital" and "nursing home" have the meaning given to those terms by section 58 of the Medical and Health Act, 1997.

Sections 249 to 252: Exception for spouses.

254.(1) Conduct by a person (A) which would otherwise be an offence under any of sections 249 to 252 against another person (B) is not an offence under that section if at the time–

(a) B is 16 or over; and

(b) A and B are lawfully married.

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(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married.

Sections 249 to 252: Sexual relationships which pre-date care relationships.

255.(1) Conduct by a person (A) which would otherwise be an offence under any of sections 249 to 252 against another person (B) is not an offence under that section if, immediately before A became involved in B's care in a way that falls within section 253, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 249 to 252 it is for the defendant to prove that such a relationship existed at that time.

Indecent photographs of children

256.(1) Subject to section 258, it is an offence for a person to have any indecent photograph or pseudo-photograph of a child in his possession or to procure or attempt to procure any indecent photograph or pseudo-photograph for himself.

(2) If a person is charged with an offence under subsection (1), it is a defence for him to prove that–

(a) he had a legitimate reason for having the photograph or pseudo-photograph in his possession;

(b) he had not himself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent; or

(c) the photograph or pseudo-photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

(3) A person who commits an offence under this section is liable–

(a) on summary conviction, to imprisonment for 6 months or the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for 5 years.

Taking and publishing indecent photographs of children.

257.(1) Subject to section 258, it is an offence for a person–

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(a) to produce, to take or permit to be taken, or to make, any indecent photograph or pseudo-photograph of a child or to offer to produce, take or permit to be taken, or to make, any indecent photograph or pseudo-photograph of a child;

(b) to distribute or show such indecent photographs or pseudo-photographs;

(c) to have in his possession such indecent photographs or pseudo-photographs, with a view to their being distributed or shown by himself or others, to procure or to attempt to procure such photograph or pseudo photograph for those purposes;

(d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so; or

(e) copies or moves any indecent photograph or pseudo-photograph to any storage medium other than that in which it is held or to a different location in the storage medium in which it was held.

(2) For the purpose of subsection (1)(b), a person is to be regarded as distributing an indecent photograph or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3) If a person is charged with an offence under subsection (1)(b), (c) or (e), it is a defence for him to prove that–

(a) he had a legitimate reason for distributing, showing, copying or moving the photographs or pseudo-photographs or (as the case may be) having them in his possession; or

(b) he had not himself seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent.

(4) 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 10 years.

Marriage or similar relationship.

258.(1) This section applies if, in proceedings for an offence under section 256(1) for possession of an indecent photograph or pseudo-photograph of a child, the defendant proves

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that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and the defendant–

(a) were married; or

(b) lived together as partners in an enduring family relationship.

(2) This section also applies if, in proceedings for an offence under section 257(1)(a), (b), (c) or (e) the defendant proves that the photograph or pseudo-photograph was of the child aged 16 or over, and that at the time of the offence charged the child and the defendant–

(a) were married; or

(b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph shows the child alone or with the defendant, but not if it shows any other person.

(4) In the case of an offence under section 257(1)(a) - if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being taken, made, copied or moved, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.

(5) In the case of an offence under section 257(1)(b) - the defendant is not guilty of the offence unless it is proved that the distributing or showing was to a person other than the child.

(6) In the case of an offence under section 257(1)(c) - if sufficient evidence is adduced to raise an issue both as to whether–

(a) the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented; and

(b) the defendant had the photograph in his possession with a view to its being distributed or shown to anyone other than the child,

the defendant is not guilty of the offence unless it is proved either–

(c) that the child did not so consent and that the defendant did not reasonably believe that the child so consented; or

(d) that the defendant had the photograph in his possession with a view to its being distributed or shown to a person other than the child.

Exception for criminal proceedings, investigations etc.

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259.(1) In proceedings for an offence under section 257(1)(a) or (e) the defendant is not guilty of the offence if he proves that it was necessary for him to make, use, copy or move the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world.

(2) Proceedings for an offence under section 256 or 257 may not be instituted except by or with the consent of the Attorney-General.

Entry, search and seizure.

260.(1) The following subsections apply if a magistrate is satisfied by information on oath, laid by or on behalf of the Attorney-General or by a police officer, that there is reasonable ground for suspecting that, in any premises, there is an indecent photograph or pseudo-photograph of a child.

(2) The magistrate may issue a warrant under his hand authorising any police officer to enter (if need be by force) and search the premises, and to seize and remove any articles which he believes (with reasonable cause) to be or include indecent photographs or pseudo-photographs of children.

(3) Articles seized under the authority of the warrant, and not returned to the occupier of the premises, must be disposed of in accordance with Schedule 1.

(4) In this section and in Schedule 1, "premises" includes–

(a) any vehicle, vessel, aircraft or hovercraft;

(b) any stall, tent or moveable structure (including an offshore installation);

(c) any other place whatever, whether or not occupied as land.

(5) References in this section and in Schedule 1 to premises must, if the context so requires, be modified so that a reference to occupation is construed as a reference to the use of such premises.

Indecent photographs: Interpretation.

261.(1) The following subsections apply for the interpretation of sections 256 and 257 and Schedule 1.

(2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.

(3) Photographs (including those comprised in a film), if they show–

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(a) a child engaging in sexually explicit or sexually suggestive conduct;

(b) a person appearing to be a child engaged in sexually explicit or sexually suggestive conduct;

(c) realistic images representing a child engaged in sexually explicit or sexually suggestive conduct; or

(d) children and are indecent,

they are to be treated for all purposes of this Act as indecent photographs of children and similarly in respect of pseudo-photographs.

(4) References to a photograph include–

(a) the negative as well as the positive version; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.

(5) "Film" includes any form of video-recording.

(6) "Child", subject to subsection (8), means a person under the age of 18, and a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that he was then under the age of 18.

(7) "Pseudo-photograph" means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.

(8) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph is to be treated for all purposes of this Act as showing a child and a pseudo-photograph is to be similarly treated if the predominant impression conveyed is that the person shown is a child even if some of the physical characteristics shown are those of an adult.

(9) References to an indecent pseudo-photograph include–

(a) a copy of an indecent pseudo-photograph; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.

(10) "Storage medium" includes any medium that allows for storage of any photograph or pseudo-photograph.

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Abuse of children through prostitution and pornography

Paying for sexual services of a child.

262.(1) A person (A) commits an offence if–

(a) he intentionally obtains for himself the sexual services of another person (B);

(b) before obtaining those services, he has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment; 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.

(2) In this section, "payment" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

(3) A person who commits an offence under this section against a person under 13 is liable on conviction–

(a) if subsection (6) applies - to imprisonment for life;

(b) in any other case - to imprisonment for 14 years.

(4) A person who commits an offence under this section against a person under 16, but not under 13, is liable–

(a) if subsection (6) applies - on conviction on indictment, to imprisonment for 14 years;

(b) in any other case–

(i) on summary conviction, to imprisonment for 12 months or the statutory maximum fine, or both;

(ii) on conviction on indictment, to imprisonment for 10 years.

(5) A person who commits an offence under this section against a person under 18, but not under 16, is liable–

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(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.

(6) This subsection applies if the offence involved–

(a) penetration of B's anus or vagina with a part of A's body or anything else;

(b) penetration of B's mouth with A's penis;

(c) penetration of A's anus or vagina with a part of B's body or by B with anything else; or

(d) penetration of A's mouth with B's penis.

Causing or encouraging or assisting child prostitution or pornography.

263.(1) A person (A) commits an offence if–

(a) he intentionally causes or encourages or assists another person (B) to become a prostitute, or to be involved in pornography, 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 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.

Controlling a child prostitute or a child involved in pornography.

264.(1) A person (A) commits an offence if–

(a) he intentionally controls any of the activities of another person (B) relating to B's prostitution or involvement in pornography in any part of the world, and

(b) either–

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(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 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.

Arranging or facilitating child prostitution or pornography.

265.(1) A person (A) commits an offence if–

(a) he intentionally arranges or facilitates the prostitution or involvement in pornography in any part of the world 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.

(2) 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.

Sections 263 to 265: Interpretation.

266.(1) For the purposes of sections 263 to 265, a person is involved in pornography if an indecent image of that person is recorded; and "pornography" and similar expressions are to be interpreted accordingly.

(2) In those sections "prostitute" means a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and "prostitution" is to be interpreted accordingly.

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(3) In subsection (2), "payment" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

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

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(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.

Exploitation of prostitution

Causing or encouraging or assisting prostitution for gain.

267.(1) A person commits an offence if he–

(a) intentionally causes or encourages or assists another person to become a prostitute in any part of the world; and

(b) does so for or in the expectation of gain for himself or a third person.

(2) 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 7 years.

Controlling prostitution for gain.

268.(1) A person commits an offence if he–

(a) intentionally controls any of the activities of another person relating to that person's prostitution in any part of the world; and

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(b) does so for or in the expectation of gain for himself or a third person.

(2) 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 7 years.

Paying for sexual services of a prostitute subjected to force, etc.

269.(1) A person ('A') commits an offence if–

(a) A makes or promises payment for the sexual services of a prostitute ('B');

(b) a third person ('C') has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment; and

(c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).

(2) In relation to an offence under subsection (1), the following are irrelevant–

(a) where in the world the sexual services are to be provided;

(b) whether those services are provided; and

(c) whether A is, or ought to be, aware that C has engaged in exploitative conduct.

(3) C engages in exploitative conduct if–

(a) C uses force, threats (whether or not relating to violence) or any other form of coercion; or

(b) C practises any form of deception.

(4) A person who commits an offence under this section is liable on summary conviction to a fine at level 3 on the standard scale.

Sections 267 to 269: Interpretation.

270.(1) In sections 267 to 269, "gain" means–

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(a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or

(b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.

(2) In those sections, "prostitute" and "prostitution" have the meaning given by section 266(2).

Loitering or soliciting for purposes of prostitution.

271.(1) It is an offence for a person (whether male or female) persistently to loiter or solicit in a street or public place for the purpose of prostitution.

(2) For the purpose of subsection (1)–

(a) conduct is persistent if it takes place on 2 or more occasions in any period of 3 months;

(b) a reference to a person loitering or soliciting for the purposes of prostitution is a reference to a person loitering or soliciting for the purposes of offering services as a prostitute.

(3) A person who commits an offence under this section is liable on summary conviction to–

(a) a fine at level 2 on the standard scale; or

(b) for an offence committed after a previous conviction for a similar offence - a fine at level 3 on the standard scale.

Soliciting prostitution.

272.(1) It is an offence for a person in a street or public place to solicit another ('B') for the purpose of obtaining B's sexual services as a prostitute.

(2) The reference to a person in a street or public place includes a person in a motor vehicle in a street or public place.

(3) A person who commits an offence under this section is liable on summary conviction to a fine at level 3 on the standard scale.

Prostitution: Interpretation.

273. For the purposes of sections 271 and 272–

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(a) "street" includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and

(b) the doorways and entrances of premises abutting on a street (as defined), and any ground adjoining and open to a street, are to be treated as forming part of the street;

(c) "motor vehicle" has the meaning given by section 2 of the Traffic Act 2005 .

Offence of prostitution.

274.(1) A person ('A') who, without compulsion, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person commits an offence.

(2) No offence is committed under subsection (1) if A and the other person are married to each other or live together as partners in an enduring family relationship.

(3) In subsection (1), "payment" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services gratuitously or at a discount.

(4) A person who commits an offence under this section is liable on summary conviction to a fine at level 3 on the standard scale.

Brothel-keeping

Keeping a brothel.

275.(1) It is an offence for a person to keep, or to manage, or to act or assist in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).

(2) In this section "prostitution" has the meaning given by section 266(2).

(3) Unless subsection (4) applies, a person who commits an offence under this section is liable on summary conviction to imprisonment for 6 months or a fine at level 3 on the standard scale, or both.

(4) A person who commits an offence under this section and who has previously been convicted of an offence under–

(a) this section;

(b) section 276, 277 or 278; or

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(c) section 134, 135, 136 or 137 of the Criminal Offences Act,

is liable–

(i) on summary conviction, to imprisonment for 12 months or the statutory maximum fine, or both,

(ii) on conviction on indictment, to imprisonment for 7 years.

Landlord letting premises for use as brothel.

276.(1) It is an offence for the lessor or landlord of any premises or his agent–

(a) to let the whole or part of the premises with the knowledge that it is to be used, in whole or in part, as a brothel; or

(b) if the whole or part of the premises is used as a brothel - to be wilfully a party to that use continuing.

(2) A person who commits an offence under this section is liable on summary conviction–

(a) to imprisonment for 6 months or a fine at level 3 on the standard scale, or both; or

(b) to imprisonment for 9 months or a fine at level 4 on the standard scale, or both, if the person has previously been convicted of an offence under–

(i) this section;

(ii) section 275, 277 or 278; or

(iii) section 134, 135, 136 or 137 of the Criminal Offences Act.

Tenant permitting premises to be used as a brothel.

277.(1) It is an offence for the tenant or occupier, or person in charge, of any premises knowingly to permit the whole or part of the premises to be used as a brothel.

(2) If the tenant or occupier of any premises is convicted (whether under this section or, for an offence committed before the commencement of this Act, under section 136 of the Criminal Offences Act) of knowingly permitting the whole or part of the premises to be used as a brothel, the rights of the lessor or landlord with respect to the assignment or determination of the lease or other contract under which the premises are held by the person convicted are varied as set out in subsection (3), but subject to the Landlord and Tenant Act and the Housing Act 2007.

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(3) The variations referred to in subsection (2) are–

(a) the lessor or landlord may require the tenant to assign the lease or other contract under which the premises are held by him to some person approved by the lessor or landlord;

(b) if the tenant fails to do so within 3 months, the lessor or landlord may determine the lease or contract (but without prejudice to the rights or remedies of any party thereto accrued before the date of the determination);

(c) if the lease or contract is determined under this subsection, the court by which the tenant was convicted may make a summary order for delivery of possession of the premises to the lessor or landlord;

(d) the approval of the lessor or landlord for the purposes of paragraph (a) must not be unreasonably withheld.

(4) If the tenant or occupier of any premises is so convicted, or was so convicted under section 136 of the Criminal Offences Act before the commencement of this Act, and either–

(a) the lessor or landlord, after having the conviction brought to his notice, fails or failed to exercise his statutory rights in relation to the lease or contract under which the premises are or were held by the person convicted; or

(b) the lessor or landlord, after exercising his statutory rights so as to determine that lease or contract, grants or granted a new lease or enters or entered into a new contract of tenancy of the premises to, with or for the benefit of the same person, without having all reasonable provisions to prevent the recurrence of the offence inserted in the new lease or contract,

then, if subsequently an offence under this section is committed in respect of the premises during the subsistence of the lease or contract referred to in paragraph (a) or (if paragraph (b) applies) during the subsistence of the new lease or contract, the lessor or landlord is deemed to be a party to that offence unless he shows that he took all reasonable steps to prevent the recurrence of the offence.

(5) References in subsection (4) to the statutory rights of a lessor or landlord refer to his rights under subsection (3).

(6) A person who commits an offence under this section is liable on summary conviction–

(a) to imprisonment for 6 months or a fine at level 3 on the standard scale, or both; or

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(b) to imprisonment for 9 months or a fine at level 4 on the standard scale, or both, if the person has previously been convicted of an offence under–

(i) this section;

(ii) section 275, 276 or 278; or

(iii) section 134, 135, 136 or 137 of the Criminal Offences Act.

Tenant permitting premises to be used for prostitution.

278.(1) It is an offence for the tenant or occupier of any premises knowingly to permit the whole or part of the premises to be used for the purposes of habitual prostitution whether any prostitute involved is male or female.

(2) A person who commits an offence under this section is liable on summary conviction–

(a) to imprisonment for 6 months or a fine at level 3 on the standard scale, or both; or

(b) to imprisonment for 9 months or a fine at level 4 on the standard scale, or both, if the person has previously been convicted of an offence under–

(i) this section;

(ii) section 275, 276 or 277; or

(iii) section 134, 135, 136 or 137 of the Criminal Offences Act.

Allowing persons under 16 to be in a brothel.

279.(1) It is an offence for a person who has responsibility for a child or young person who has attained the age of 4 years and is under the age of 16 years to allow that child or young person to reside in or to frequent a brothel.

(2) A person who commits an offence under this section is liable on summary conviction to imprisonment for 6 months or a fine at level 3 on the standard scale, or both.

Sex trafficking

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.

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281. *Repealed*
282. *Repealed*
283. *Repealed*

Forfeiture of land vehicle, ship or aircraft.

284.(1) This section applies if a person is convicted on indictment of an offence under section 191A, whether or not the conduct also amounts to a sex trafficking.

(2) The court may order the forfeiture of a land vehicle used or intended to be used in connection with the offence if the convicted person–

(a) owned the vehicle at the time the offence was committed;

(b) was at that time a director, secretary or manager of a company which owned the vehicle;

(c) was at that time in possession of the vehicle under a hire-purchase agreement;

(d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement; or

(e) was driving the vehicle in the course of the commission of the offence.

(3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person–

(a) owned the ship or aircraft at the time the offence was committed;

(b) was at that time a director, secretary or manager of a company which owned the ship or aircraft;

(c) was at that time in possession of the ship or aircraft under a hire-purchase agreement;

(d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement;

(e) was at that time a charterer of the ship or aircraft; or

(f) committed the offence while acting as captain of the ship or aircraft.

(4) In a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only–

(a) in the case of a ship - if subsection (5) or (6) applies;

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(b) in the case of an aircraft - if subsection (5) or (7) applies.

(5) This subsection applies if a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 191A.

(6) This subsection applies if a ship's gross tonnage is less than 500 tons.

(7) This subsection applies if the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilograms.

(8) If a person who claims to have an interest in a land vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the vehicle, ship or aircraft unless the person has been given an opportunity to make representations.

Detention of land vehicle, ship or aircraft.

285.(1) If a person has been arrested for an offence under section 191A, a police officer or immigration officer appointed under section 4 of the Immigration, Asylum and Refugee Act may detain a relevant vehicle, ship or aircraft–

(a) until a decision is taken as to whether or not to charge the arrested person with that offence;

(b) if the arrested person has been charged, until he is acquitted - the charge is dismissed or the proceedings are discontinued; or

(c) if the person has been charged and convicted - until the court decides whether or not to order forfeiture of the vehicle, ship or aircraft.

(2) A vehicle, ship or aircraft is a relevant vehicle, ship or aircraft, in relation to an arrested person if it is a land vehicle, ship or aircraft which the police or immigration officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture under section 284.

(3) A person (other than the arrested person) may apply to the court for the release of a land vehicle, ship or aircraft on the grounds that the applicant–

(a) owns the vehicle, ship or aircraft;

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(b) was, immediately before the detention of the vehicle, ship or aircraft, in possession of it under a hire-purchase agreement; or

(c) is a charterer of the ship or aircraft.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the vehicle, ship or aircraft on condition that it is made available to the court if–

(a) the arrested person is convicted; and

(b) an order for its forfeiture is made under section 284.

(5) In this section, "court" means–

(a) if the arrested person has not been charged, or he has been charged but proceedings for the offence have not begun to be heard - the Magistrates' Court;

(b) if he has been charged and proceedings for the offence are being heard - the court hearing the proceedings.

Sections 284 and 285: Interpretation.

286.(1) In this section and sections 284 and 285, unless the contrary intention appears–

"aircraft" includes hovercraft;

"captain" means master (of a ship) or commander (of an aircraft);

"land vehicle" means any vehicle other than a ship or aircraft;

"ship" includes every description of vessel used in navigation.

(2) In sections 284 and 285, a reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.

Preparatory offences

Administering a substance with intent.

287.(1) A person (A) commits an offence if A intentionally administers a substance to, or causes a substance to be taken by, another person (B)–

(a) knowing that B does not consent; and

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(b) intending to stupefy or overpower B, so as to enable another person (including A) to engage in a sexual activity that involves B.

(2) 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 10 years.

Committing an offence with intent to commit a sexual offence.

288.(1) A person who commits an offence with the intention of committing a relevant sexual offence commits an offence under this section.

(2) In this section, "relevant sexual offence" means any offence under this Part (including an offence of aiding, abetting, counselling or procuring such an offence).

(3) A person who commits an offence under this section, if the offence is committed by kidnapping or false imprisonment, is liable on conviction on indictment to imprisonment for life.

(4) Unless subsection (3) applies, 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 10 years.

Trespass with intent to commit a sexual offence.

289.(1) A person commits an offence if the person–

(a) is a trespasser on any premises;

(b) intends to commit a relevant sexual offence on the premises; and

(c) knows that, or is reckless as to whether, he is a trespasser.

(2) In this section–

"premises" includes a structure or part of a structure;

"relevant sexual offence" has the same meaning as in section 288;

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"structure" includes a tent, vehicle or vessel or other temporary or movable structure.

(3) 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 10 years.

Sex with an adult relative

Sex with an adult relative: Penetration.

290.(1) A person (A) aged 16 or over (subject to subsection (4)), commits an offence if–

(a) A intentionally penetrates the vagina or anus of another person (B) with a part of A's body or anything else, or (being a male) penetrates B's mouth with his penis;

(b) the penetration is sexual;

(c) B is aged 18 or over;

(d) A and B are related in a way mentioned in subsection (2); and

(e) A knows or could reasonably be expected to know of the relationship.

(2) The relationship referred to in subsection (1) is that of parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2)–

"child" includes a person adopted pursuant to the Adoption Act 2023 or a person treated as a child by virtue of a parental order under the Surrogacy Act 2021;

"nephew" means the child of a person's brother or sister, and "niece" has a corresponding meaning;

"parent" includes an adoptive parent or a parent by virtue of a parental order;

"uncle" means the brother of a person's parent, and "aunt" has a corresponding meaning.

(4) If subsection (1) applies in a case where A is related to B as B's child through adoption or by parental order A does not commit an offence unless A is 18 or over.

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(5) If in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of the ways mentioned in subsection (2), it is to be taken that the defendant knew or could reasonably have been expected to know of the relationship, unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know of it.

(6) 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 2 years.

Sex with an adult relative: Consenting to penetration.

291.(1) A person (A) aged 16 or over (subject to subsection (4)), commits an offence if–

(a) another person (B) penetrates A's vagina or anus with a part of B's body or anything else, or penetrates A's mouth with B's penis;

(b) A consents to the penetration;

(c) the penetration is sexual;

(d) B is aged 18 or over;

(e) A is related to B in a way mentioned in subsection (2); and

(f) A knows or could reasonably be expected to know of the relationship.

(2) The relationship referred to in subsection (1) is that of parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2)–

"child" includes a person adopted pursuant to the Adoption Act 2023 or a person treated as a child by virtue of a parental order under the Surrogacy Act 2021;

"nephew" means the child of a person's brother or sister, and "niece" has a corresponding meaning;

"parent" includes an adoptive parent or a parent by virtue of a parental order;

"uncle" means the brother of a person's parent, and "aunt" has a corresponding meaning.

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(4) If subsection (1) applies in a case where A is related to B as B's child through adoption or by parental order A does not commit an offence unless A is 18 or over.

(5) If in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of the ways mentioned in subsection (2), it is to be taken that the defendant knew or could reasonably have been expected to know of the relationship, unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know of it.

(6) 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 2 years.

Other offences

Genital exposure.

292.(1) A person commits an offence if the person–

(a) intentionally exposes his or her genitals; and

(b) intends that someone will see them and be caused alarm or distress.

(2) 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 2 years.

Sending etc. photograph or film of genitals.

292A.(1) A person (A) who intentionally sends or gives a photograph or film of any person's genitals to another person (B) commits an offence if-

(a) A intends that B will see the genitals and be caused alarm, distress or humiliation; or

(b) A sends or gives such a photograph or film for the purpose of obtaining sexual gratification and is reckless as to whether B will be caused alarm, distress or humiliation.

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(2) References to sending or giving such a photograph or film to another person include, in particular –

(a) sending it to another person by any means, electronically or otherwise;

(b) showing it to another person; and

(c) placing it for a particular person to find.

(3) "Photograph" includes the negative as well as the positive version.

(4) "Film" means a moving image.

(5) References to a photograph or film also include-

(a) an image, whether made by computer graphics or in any other way, which appears to be a photograph or film;

(b) a copy of a photograph, film or image within paragraph (a); and

(c) data stored by any means which is capable of conversion into a photograph, film or image within paragraph (a).

(6) A person who commits 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 two years.".

Voyeurism.

293.(1) A person (A) commits an offence if A–

(a) for the purpose of obtaining sexual gratification, observes another person (B) doing a private act; and

(b) knows that B does not consent to being observed for A's sexual gratification.

(2) A person (A) commits an offence if A–

(a) operates equipment with the intention of enabling another person (B) to observe, for the purpose of obtaining sexual gratification, a third person (C) doing a private act; and

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(b) knows that C does not consent to A's operating equipment with that intention.

(3) A person (A) commits an offence if A–

(a) records another person (B) doing a private act;

(b) does so with the intention that A or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act; and

(c) knows that B does not consent to A's recording the act with that intention.

(4) A person commits an offence if he installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling himself or another person to commit an offence under subsection (1).

(5) 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 2 years.

Voyeurism: additional offences.

293A.(1) A person (A) commits an offence if A—

(a) without another person (B) consenting; and

(b) without any reasonable belief that B consents,

operates equipment beneath B's clothing with the intention of enabling A or another person (C), for a purpose mentioned in subsection (3), to observe B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible.

(2) A person (A) commits an offence if A—

(a) without another person (B) consenting; and

(b) without any reasonable belief that B consents,

records an image beneath B's clothing of B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where

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the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person (C), for a purpose mentioned in subsection (3), will look at the image.

(3) The purposes referred to in subsections (1) and (2) are—

(a) obtaining sexual gratification (whether for A or C); or

(b) humiliating, distressing or alarming B.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for 12 months, or to the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for 2 years.

Voyeurism: Interpretation.

294.(1) For the purposes of section 293, a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and–

(a) the person's genitals, buttocks or breasts are exposed or covered only with underwear;

(b) the person is using a lavatory; or

(c) the person is doing a sexual act that is not of a kind ordinarily done in public.

(2) In section 293, "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

(3) For the purposes of section 293A(1), operating equipment includes enabling or securing its activation by another person without that person's knowledge.

Intercourse with an animal.

295.(1) A person commits an offence if–

(a) he intentionally performs an act of penetration with his penis;

(b) what is penetrated is the vagina or anus of a living animal; and

(c) he knows that, or is reckless as to whether, that is what is penetrated.

(2) A person (A) commits an offence if–

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(a) A intentionally causes, or allows, A's vagina or anus to be penetrated;

(b) the penetration is by the penis of a living animal; and

(c) A knows that, or is reckless as to whether, that is what A is being penetrated by.

(3) 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 2 years.

Sexual penetration of a corpse.

296.(1) A person commits an offence if–

(a) he intentionally performs an act of penetration with a part of his body or anything else;

(b) what is penetrated is a part of the body of a dead person;

(c) he knows that, or is reckless as to whether, that is what is penetrated; and

(d) the penetration is sexual.

(2) 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 2 years.

Sexual activity in a public lavatory.

297.(1) A person commits an offence if the person–

(a) is in a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise;

(b) the person intentionally engages in an activity; and

(c) the activity is sexual.

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(2) For the purposes of this section, an activity is sexual if a reasonable person would, in all the circumstances, but regardless of any person's purpose, consider it to be sexual.

(3) A person who commits an offence under this section is liable on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both.

Miscellaneous provisions

Offences outside Gibraltar.

298.(1) If –

(a) a Gibraltarian does an act in a country outside Gibraltar; and

(b) the act, if done in Gibraltar, would constitute a sexual offence to which this subsection applies,

the Gibraltarian is guilty in Gibraltar of that sexual offence.

(2) If-

(a) a Gibraltar resident does an act in a country outside Gibraltar,

(b) the act constitutes an offence under the law in force in that country, and

(c) the act, if done in Gibraltar, would constitute a sexual offence to which this subsection applies,

the Gibraltar resident is guilty in Gibraltar of that sexual offence.

(3) If-

(a) a person does an act in a country outside Gibraltar at a time when the person was not a Gibraltarian or a Gibraltar resident;

(b) the act constituted an offence under the law in force in that country;

(c) the act, if done in Gibraltar, would have constituted a sexual offence to which this subsection applies, and

(d) the person meets the residence or nationality condition at the relevant time,

proceedings may be brought against the person in Gibraltar for that sexual offence as if the person had done the act there.

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(4) The person meets the residence or nationality condition at the relevant time if the person is a Gibraltarian or a Gibraltar resident at the time when the proceedings are brought.

(5) An act punishable under the law in force in any country constitutes an offence under that law for the purposes of subsections (2) and (3) however it is described in that law.

(6) The condition in subsection (2)(b) or (3)(b) is to be taken to be met unless, not later than rules of court may provide, the defendant serves on the prosecution a notice –

(a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the defendant's opinion met;

(b) showing the grounds for that opinion; and

(c) requiring the prosecution to prove that it is met.

(7) But the court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (6).

(8) In the Supreme Court the question whether the condition is met is to be decided by the judge alone.

(9) In this section-

"country" includes "territory";

"Gibraltar resident" means an individual who is ordinarily resident in Gibraltar.

(10) Part A of Schedule 2 lists the sexual offences to which subsections (1) to (3) apply.

Encouraging or assisting in the commission of certain sexual acts outside Gibraltar.

299.(1) This section applies if–

(a) any act done by a person in Gibraltar would amount to the offence of encouraging or assisting in the commission of an offence listed in Part B of Schedule 2 but for the fact that what he had in view would not be an offence triable in Gibraltar;

(b) the whole or part of what he had in view was intended to take place in a place outside Gibraltar; and

(c) what he had in view would involve the commission of an offence under the law in force in that country or territory.

(2) If this section applies–

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(a) what the person had in view is to be treated as that listed sexual offence for the purposes of any charge of encouraging or assisting brought in respect of that act; and

(b) any such charge is accordingly triable in Gibraltar.

(3) Any act of encouragement or assistance by means of a message (howsoever communicated) is to be treated as done in Gibraltar if the message is sent or received in Gibraltar.

(4) Conduct punishable under the law in force in any country or territory is an offence under that law for the purposes of subsections (1) and (2), however it is described in that law.

(5) Subject to subsection (6), a condition in subsection (1) is to be taken as satisfied unless, not later than 28 days after the defendant is charged with the offence, the defence serve on the prosecution a notice–

(a) stating that, on the facts as alleged with respect to what the defendant had in view, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(6) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (5).

(7) In the Supreme Court the question whether the condition is satisfied is to be decided by the judge alone.

(8) In any proceedings in respect of an offence triable by virtue of this section, it is immaterial to guilt whether or not the defendant was a Gibraltarian at the time of any act or other event proof of which is required for conviction of the offence.

Exceptions to aiding, abetting and counselling.

300.(1) A person is not guilty of aiding, abetting or counselling the commission against a child of an offence to which this section applies if the person acts for the purpose of–

(a) protecting the child from sexually transmitted infection;

(b) protecting the physical safety of the child;

(c) preventing the child from becoming pregnant; or

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(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.

(2) This section applies to–

(a) an offence under any of sections 217 to 220 (offences against children under 13);

(b) an offence under section 221 (sexual activity with a child);

(c) an offence under section 225 which would be an offence under section 221 if the offender were aged 18;

(d) an offence under any of sections 228, 236, 241, 245 and 249.

(3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting or counselling an offence under this Part.

Meaning of "consent".

301.(1) For the purposes of this Part, a person consents if the person agrees by choice, and has the freedom and capacity to make that choice.

(2) If in proceedings for an offence to which this section applies it is proved that–

(a) the defendant did the relevant act;

(b) any of the circumstances specified in subsection (3) existed; and

(c) the defendant knew that those circumstances existed,

then–

(d) the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented; and

(e) the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(3) This section applies if–

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(a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him;

(b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;

(c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;

(d) the complainant was asleep or otherwise unconscious at the time of the relevant act;

(e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;

(f) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

(4) In subsection (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

Conclusive presumptions about consent.

302.(1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed–

(a) that the complainant did not consent to the relevant act; and

(b) that the defendant did not believe that the complainant consented to the relevant act.

(2) This section applies if–

(a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;

(b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

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Sections 301 and 302: Relevant acts.

303. In relation to an offence to which sections 301 and 302 apply, references in those sections to the relevant act and to the complainant are to be read as follows–

Offence	*Relevant act*
An offence under section 213 (rape).	The defendant intentionally penetrating, with his penis, the vagina, anus or mouth of another person ("the complainant").
An offence under section 214 (assault by penetration).	The defendant intentionally penetrating, with a part of his body or anything else, the vagina or anus of another person ("the complainant"), if the penetration is sexual.
An offence under section 215 (sexual assault).	The defendant intentionally touching another person ("the complainant"), if the touching is sexual.
An offence under section 216 (causing a person to engage in sexual activity without consent).	The defendant intentionally causing another person ("the complainant") to engage in an activity, if the activity is sexual.

304. *Not used.*

PART 13
SEX OFFENDERS (NOTIFICATION AND ORDERS)

Interpretation of Part.

305.(1) In this Part, unless the context otherwise requires–

"absolute discharge" means an absolute discharge granted under section 517(1)(a) of the Criminal Procedure and Evidence Act 2011;

"admitted to a hospital" means admitted for observation or treatment to a hospital under Part II of the Mental Health Act 2016;

"community order" means an order under section 521 of the Criminal Procedure and Evidence Act 2011;

"conditional discharge" means a conditional discharge granted under section 517(1)(b) of the Criminal Procedure and Evidence Act 2011;

"detained in a hospital" means detained for treatment in a hospital under Part II of the Mental Health Act 2016;

"entry prohibition order" means an order made under section 340;

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"foreign travel order" means an order made under section 333;

"home address" means, in relation to any person–

(a) the address of his sole or main residence in Gibraltar, or

(b) if he has no such residence - the address or location of a place in Gibraltar where he can regularly be found and, if there is more than one such place, such one of those places as the person selects;

"hospital" has the meaning given by section 1(3) of the Mental Health Act 2016;

"interim notification order" has the meaning given by section 324;

"interim RSHO" has the meaning given by section 344;

"interim SOPO" has the meaning given by section 330;

"juvenile court" has the meaning given by section 625 of the Criminal Procedure and Evidence Act 2011;

"notification order" means an order made under section 321

"notification period" has the meaning given by section 307;

"parental responsibility" has the same meaning as in Part III of the Children Act 2009;

"passport" means–

(a) a passport within the meaning of the Immigration, Asylum and Refugee Act issued by or on behalf of the authorities of a country or territory, or by or on behalf of an international organisation;

(b) a document that can be used (in some or all circumstances) instead of a passport;

"qualifying offender" has the meaning given by section 327;

"qualifying relevant offender" has the meaning given by section 315A;

"relevant offender" has the meaning given by section 306;

"restriction order" means an order for compulsory admission to a hospital for treatment under Part II of the Mental Health Act 2016;

"risk of sexual harm order" means an order made under section 341;

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"RSHO" means a risk of sexual harm order;

"sexual offences prevention order" means an order made under section 326.

"SOPO" means a sexual offences prevention order.

(2) The time-limits for the making of complaints under the Magistrates' Courts Act do not apply to an application for an order on a complaint made under this Part.

Notification requirements

Persons subject to notification requirements.

306.(1) A person is subject to the notification requirements of this Part for the period set out in section 307 ("the notification period") if, in respect of an offence listed in Schedule 3, the person is–

(a) convicted of the offence;

(b) found not guilty of the offence by reason of mental disorder;

(c) found to be under a disability and to have done the act charged against him in respect of the offence;

(d) cautioned in respect of the offence;

(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.

(2) For purposes of this section, an absolute discharge in respect of an offence does not count as a conviction.

(3) A person for the time being subject to the notification requirements of this Part is referred to in this Part as a "relevant offender".

The notification period.

307.(1) The notification period for a person within section 306(1) is the period in the second column of the following Table opposite the description that applies to the person.

TABLE	
Description of relevant offender	*Notification period*

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A person who, in respect of the offence, is or has been sentenced to imprisonment for life, or to imprisonment for 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	7 years beginning with that date
A person who, in respect of the offence, is cautioned	2 years beginning with that date
A person in whose case an order for conditional discharge is made in respect of the offence	The period of conditional discharge
A person of any other description	5 years beginning with the relevant date

(2) If a person is under 18 on the relevant date, subsection (1) has effect as if for any reference to a period of years specified in subsection (1) there were substituted a reference to one-half of that period.

(3) If a relevant offender is or has been sentenced in respect of 2 or more offences listed in Schedule 3–

(a) to consecutive terms of imprisonment; or

(b) to terms of imprisonment which are partly concurrent,

the notification period is calculated as if the relevant offender was or had been sentenced, in respect of each of the offences, to a term of imprisonment which–

(i) in the case of consecutive terms - is equal to the aggregate of those terms;

(ii) in the case of partly concurrent terms (X and Y, which overlap for a period Z) - is equal to X plus Y minus Z.

(4) If a relevant offender who is the subject of a finding within section 306(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.

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(5) In this section, "relevant date" means–

(a) in the case of a person within section 306(1)(a) - the date of the conviction;

(b) in the case of a person within section 306(1)(b) or (c) - the date of the finding;

(c) in the case of a person within section 306(1)(d) - the date of the caution;

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

Notification requirements: Initial notification.

308.(1) A relevant offender must, within 3 days after the relevant date, notify to the police the information set out in subsection (4).

(2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 306(1) if–

(a) immediately before the conviction, finding or caution, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court ("the earlier event");

(b) at that time, he had made a notification under subsection (1) in respect of the earlier event; and

(c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.

(3) If a notification order is made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if–

(a) immediately before the order was made, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court ("the earlier event");

(b) at that time, he had made a notification under subsection (1) in respect of the earlier event; and

(c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.

(4) The information is–

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(a) the relevant offender's date of birth;

(b) his social insurance number;

(c) his name on the relevant date and, if he used one or more other names on that date, each of those names;

(d) his home address on the relevant date;

(e) his name on the date on which notification is given and, if he uses one or more other names on that date, each of those names;

(f) his home address on the date on which notification is given;

(g) the address of any other premises in Gibraltar at which, at the time the notification is given, he regularly resides or stays;

(h) whether he has any passports and, in relation to each passport he has, the details set out in subsection (5).

(5) The details are–

(a) the issuing authority;

(b) the number;

(c) the dates of issue and expiry;

(d) the name and date of birth given as being those of the passport holder.

(6) When determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is–

(a) remanded in or committed to custody by an order of a court;

(b) serving a sentence of imprisonment;

(c) detained in a hospital; or

(d) outside Gibraltar.

Notification requirements: Changes.

309.(1) A relevant offender must, within 3 days after–

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(a) using a name which has not been notified to the police under section 308(1);

(b) any change of his home address;

(c) having resided or stayed, for a qualifying period, at any premises in Gibraltar the address of which has not been notified to the police under section 308(1);

(d) his release from custody pursuant to an order of a court or from imprisonment or detention in a hospital;

(e) losing or ceasing to have a passport notified to the police under section 308(1) and (4); or

(f) receiving a passport which has not been notified to the police under section 308(1) and (4),

notify to the police that name, the new home address, the address of those premises or (as the case may be) the fact that he has been released, the fact that he has lost or ceased to have the passport, the details set out in section 308(5) in relation to the passport and other information set out in section 308.

(2) A notification under subsection (1) may be given before the name is used, the change of home address occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.

(3) If a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).

(4) If a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified–

(a) the notification does not affect the duty imposed by subsection (1); and

(b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.

(5) Section 308(6) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 308(1).

(6) In this section, "qualifying period" means–

(a) a period of 7 days, or

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(b) 2 or more periods, in any period of 12 months, which taken together amount to 7 days.

Notification requirements: Periodic notification.

310.(1) A relevant offender must, within one year after each event within subsection (2), notify to the police the information set out in section 308(4), unless within that period he has given a notification under section 309(1).

(2) The events are–

(a) the commencement of this Part (but only in the case of a person who is a relevant offender from that commencement);

(b) any notification given by the relevant offender under section 308(1) or 309(1); and

(c) any notification given by him under subsection (1).

(3) If the period referred to in subsection (1) would (apart from this subsection) end while subsection (4) applies to the relevant offender, that period is to be treated as continuing until the end of the period of 3 days beginning when subsection (4) first ceases to apply to him.

(4) This subsection applies to the relevant offender if he is–

(a) remanded in or committed to custody by an order of a court;

(b) serving a sentence of imprisonment;

(c) detained in a hospital; or

(d) outside Gibraltar.

Notification requirements: Travel outside Gibraltar.

311.(1) The Minister may by regulations make provision requiring relevant offenders who leave Gibraltar, or any description of such offenders–

(a) to give in accordance with the regulations, before they leave, a notification under subsection (2);

(b) if they subsequently return to Gibraltar - to give in accordance with the regulations a notification under subsection (3).

(2) A notification under this subsection must disclose–

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(a) the date on which the offender will leave Gibraltar;

(b) the place (or, if there is more than one, the first place) to which he will travel and his point of arrival (determined in accordance with the regulations) in that place;

(c) any other information prescribed by the regulations which the offender holds about his departure from or return to Gibraltar or his movements while outside Gibraltar.

(3) A notification under this subsection must disclose any information prescribed by the regulations about the offender's return to Gibraltar.

(4) Regulations under subsection (1) may make different provision for different categories of person.

Method of notification and related matters.

312.(1) A person gives a notification under section 308(1), 309(1) or 310(1) by–

(a) attending at any police station; and

(b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.

(2) A notification under this section must be acknowledged in writing in any form the Minister approves.

(3) If a notification is given under section 308(1), 309(1) or 310(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), allow the officer or person to–

(a) take his fingerprints;

(b) photograph any part of him; or

(c) do both those things.

(4) In this section, "photograph" includes any process by means of which an image may be produced.

(5) The power in subsection (3) is exercisable only for the purpose of verifying the identity of the relevant offender.

Young offenders: Parental directions.

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313.(1) If a person within the first column of the following Table ("the young offender") is under 18 when he is before the court referred to in the second column of the Table, that court may direct that subsection (2) applies in respect of an individual ("the parent") having parental responsibility for the young offender.

TABLE	
Description of person	*Court which may make the direction*
A relevant offender within section 306(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A relevant offender within section 347(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, SOPO or interim SOPO	The court which makes the order
A relevant offender who is the defendant to an application under subsection (4)	The court which hears the application

(2) If this subsection applies–

(a) the obligations that would (apart from this subsection) be imposed by or under sections 308 to 311 on the young offender are to be treated instead as obligations on the parent, and

(b) the parent must ensure that the young offender attends at the police station with him, when a notification is being given.

(3) A direction under subsection (1) takes immediate effect and applies–

(a) until the young offender attains the age of 18; or

(b) for any shorter period that the court declares when giving the direction.

(4) Upon the direction of the Minister the Attorney-General must, by complaint to the Magistrates' Court, apply for a direction under subsection (1) in respect of a relevant offender ("the defendant") who–

(a) resides in Gibraltar or whom the Minister believes is intending to come to Gibraltar, and

(b) is under 18.

Parental directions: Variation, renewal and discharge.

314.(1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a direction under section 313(1).

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(2) The persons are–

(a) the young offender;

(b) the parent;

(c) the Attorney-General.

(3) An application under subsection (1) may be made–

(a) if the appropriate court is the Supreme Court - in accordance with the practice of that court;

(b) in any other case - by complaint.

(4) On an application under this section, the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate.

(5) In this section, the "appropriate court" means–

(a) if the Court of Appeal made the order - the Supreme Court;

(b) in any other case - the court that made the direction under section 313(1).

Offences relating to notification.

315.(1) A person commits an offence if he–

(a) fails, without reasonable excuse, to comply with section 308(1), 309(1), 309(4)(b), 310(1), 312(3) or 313(2)(b) or any requirement imposed by regulations made under section 311(1); or

(b) notifies to the police, in purported compliance with section 308(1), 309(1) or 310(1) or any requirement imposed by regulations made under section 311(1), any information which he knows to be false.

(2) 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 5 years.

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(3) Subject to subsection (4), a person commits an offence under subsection (1)(a) on the day on which he first fails, without reasonable excuse, to comply with section 308(1), 309(1) or 310(1) or a requirement imposed by regulations made under section 311(1), and continues to commit it throughout any period during which the failure continues.

(4) A person must not be prosecuted under subsection (1) more than once in respect of the same failure.

Review of indefinite notification requirements: qualifying relevant offender.

315A.(1) A qualifying relevant offender may apply to the Magistrates' Court for a determination that the qualifying relevant offender is no longer subject to the indefinite notification requirements ("an application for review").

(2) A qualifying relevant offender means a relevant offender who, on the date on which he makes the application for review, is−

(a) subject to the indefinite notification requirements; and

(b) not subject to a sexual offences prevention order under section 326(1) or an interim sexual offences prevention order under section 330(3).

(3) The "indefinite notification requirements" means the notification requirements of this Part for an indefinite period by virtue of−

(a) section 306(1); or

(b) a notification order made under section 321(4).

Review of indefinite notification requirements: application for review and qualifying dates.

315B.(1) An application for review must be in writing and may be made on or after the qualifying date or, as the case may be, the further qualifying date.

(2) The qualifying date is−

(a) where the qualifying relevant offender was 18 or over on the relevant date, the day after the end of the 15 year period beginning with the day on which the qualifying relevant offender gives the relevant notification; or

(b) where the qualifying relevant offender was under 18 on the relevant date, the day after the end of the 8 year period beginning with the day on which the qualifying relevant offender gives the relevant notification.

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(3) Subject to subsections (4) and (6), the further qualifying date is the day after the end of the 8 year period beginning with the day on which the Magistrates' Court makes a determination under section 315C to require a qualifying relevant offender to remain subject to the indefinite notification requirements.

(4) Subsection (5) applies if the Magistrates' Court, when making a determination under section 315C to require a qualifying relevant offender to remain subject to the indefinite notification requirements, considers that the risk of sexual harm posed by a qualifying relevant offender is sufficient to justify a continuation of those requirements after the end of the 8 year period beginning with the day on which the determination is made.

(5) If this subsection applies, the Magistrates' Court may make a determination to require a qualifying relevant offender to remain subject to the indefinite notification requirements for a period which may be no longer than the 15 year period beginning with the day on which the determination is made.

(6) If subsection (5) applies, the further qualifying date is the day after the end of the period determined under that subsection.

(7) The Magistrates' Court within 14 days of receipt of an application for review−

(a) must give an acknowledgement of receipt of the application to the qualifying relevant offender, and

(b) must notify a responsible body that the application has been made.

(8) Where a responsible body is notified of the application for review under subsection 7(b) and holds information which it considers to be relevant to the application, the responsible body must give such information to the Magistrates' Court within 28 days of the notification.

(9) In this section "the relevant notification" means the first notification which the relevant offender gives under section 308, 309 or 310 when he is first released after−

(a) being remanded in or committed to custody by an order of a court in relation to the conviction for the offence giving rise to the indefinite notification requirements;

(b) serving a sentence of imprisonment or a term of service detention in relation to that conviction;

(c) being detained in hospital in relation to that conviction.

(10) For the purpose of this Part−

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(a) "responsible body" means the Probation Officer, the Minister and the Commissioner of Police;

(b) "risk of sexual harm" means a risk of physical or psychological harm to the public in Gibraltar or any particular members of the public caused by the qualifying relevant offender committing one or more of the offences listed in Schedule 3.

Review of indefinite notification requirements: determination of application for review.

315C.(1) The Magistrates' Court must, within 6 weeks of the latest date on which anybody to which a notification has been given under section 315B(7)(b) may give information under section 315B(8)−

(a) determine the application for review; and

(b) give notice of the determination to the qualifying relevant offender.

(2) For the purposes of the determination of an application for review under this section, a qualifying relevant offender must satisfy the Magistrates' Court that it is not necessary for the purpose of protecting the public or any particular members of the public from sexual harm for the qualifying relevant offender to remain subject to the indefinite notification requirements.

(3) If the Magistrates' Court determines under this section that the qualifying relevant offender should remain subject to the indefinite notification requirements, the notice of determination must−

(a) contain a statement of reasons for the determination; and

(b) inform the qualifying relevant offender that he may appeal the determination in accordance with section 315E.

(4) If the Magistrates' Court determines under this section that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of receipt of the notice of determination.

(5) The Minister may by order amend the period in subsection (1).

Review of indefinite notification requirements: factors applying to determination under section 315C.

315D.(1) In determining an application for review under section 315C, the Magistrates' Court must−

(a) have regard to information (if any) received from a responsible body;

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(b) consider the risk of sexual harm posed by the qualifying relevant offender and the effect of a continuation of the indefinite notification requirements on the offender; and

(c) take into account the matters listed in subsection (2).

(2) The matters are–

(a) the seriousness of the offence in relation to which the qualifying relevant offender became subject to the indefinite notification requirements;

(b) the period of time which has elapsed since the qualifying relevant offender committed the offence (or other offences);

(c) whether the qualifying relevant offender has committed any offence under section 315;

(d) the age of the qualifying relevant offender at the qualifying date or further qualifying date;

(e) the age of the qualifying relevant offender at the time the offence referred to in paragraph (a) was committed;

(f) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the qualifying relevant offender at the time the offence was committed;

(g) any assessment of the risk posed by the qualifying relevant offender which has been made by a responsible body;

(h) any submission or evidence from a victim of the offence giving rise to the indefinite notification requirements;

(i) any convictions or findings made by a court in countries outside Gibraltar in respect of the qualifying relevant offender for any offence listed in Schedule 3 other than the one referred to in paragraph (a);

(j) any caution which the qualifying relevant offender has received for an offence in countries outside Gibraltar which is listed in Schedule 3;

(k) any convictions or findings made by a court in countries outside Gibraltar in respect of the qualifying relevant offender for any offence listed in Schedule 4 where the behaviour of the qualifying relevant offender since the date of such conviction or finding indicates a risk of sexual harm;

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(l) any other submission or evidence of the risk of sexual harm posed by the qualifying relevant offender;

(m) any evidence presented by or on behalf of the qualifying relevant offender which demonstrates that the qualifying relevant offender does not pose a risk of sexual harm; and

(n) any other matter which the Magistrates' Court considers to be appropriate.

(3) In this section, a reference to a conviction, finding or caution for an offence committed in a country outside Gibraltar means a conviction, finding or caution for an act which−

(a) constituted an offence under the law in force in the country concerned; and

(b) would have constituted an offence listed in Schedule 3 or Schedule 4 if it had been done in any part of Gibraltar.

Review of indefinite notification requirements: appeals.

315E.(1) A qualifying relevant offender may appeal against a determination of the Magistrates' Court under section 315C.

(2) An appeal under this section may be made by complaint to the Supreme Court within the period of 21 days beginning with the day of receipt of the notice of determination.

(3) If the Supreme Court makes an order that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of the order.

Review of indefinite notification requirements: guidance.

315F.(1) The Minister may issue guidance to Magistrates' Court in relation to the determination by them of applications made under 315B.

(2) The Minister may, from time to time, revise the guidance issued under subsection (1).

(3) The Minister must arrange for any guidance issued or revised under this section to be published in such manner as the Minister considers appropriate.

Review of notification requirements: cases where the victim was 16 or over when the offence was committed and the activity was consensual.

315G.(1) A qualifying relevant offender may apply to the Magistrates' Court for a determination in respect of one or more qualifying offences ("an application for review").

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(2) Upon an application under subsection (1), the Magistrates' Court must determine that the qualifying relevant offender –

(a) is no longer subject to the notification requirements;

(b) shall be subject to the notification requirements for such a reduced period as it stipulates; or

(c) shall remain subject to the notification requirement for the full period prescribed by section 307(1) (the "full period"),

in respect of the qualifying offence or offences upon which the application is based.

(3) A determination under subsection (2) only applies in respect of the qualifying offence for which it was made and does not prevent the qualifying relevant offender from being subject to the notification requirements by virtue of any other offence.

(4) A qualifying offence means an offence under sections 228 to 231.

(5) For the purposes of sections 315G to 315M, a qualifying relevant offender means a relevant offender who –

(a) on the date on which he makes the application for review under section 315G, is not subject to a sexual offences prevention order under section 326(1) or an interim sexual offences prevention order under section 330(3); and

(b) committed the qualifying offence against a victim who was 16 or over when it was committed and the Magistrates' Court is satisfied that the victim consented to the activity upon which the conviction was based.

(6) For the purposes of subsection (5)(b), "consent" has the meaning given to it by sections 301 to 303, but consent shall not be deemed to have been absent by virtue only of the fact that the qualifying relevant offender was in a position of trust in relation to the victim.

Review of notification requirements: application for review.

315H.(1) An application for review under section 315G must be made in writing.

(2) The Magistrates' Court within 14 days of receipt of an application for review –

(a) must give an acknowledgement of receipt of the application to the qualifying relevant offender, and

(b) must notify a responsible body that the application has been made.

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(3) Where a responsible body is notified of the application for review under subsection (2)(b) and holds information which it considers to be relevant to the application, the responsible body must give such information to the Magistrates' Court within 28 days of the notification.

(4) In this section a "responsible body" means the Probation Officer, the Minister and the Commissioner of Police.

Review of notification requirements: determination of application for review.

315I.(1) The Magistrates' Court must, within 6 weeks of the latest date on which anybody to which a notification has been given under section 315H(2)(b) may give information under section 315H(3)−

(a) determine the application for review under section 315G; and

(b) give notice of the determination to the qualifying relevant offender.

(2) The Magistrates' Court must not make a determination –

(a) under section 315G(2)(a), unless satisfied that it is not necessary for the purpose of protecting the public or any particular members of the public from sexual harm for the qualifying relevant offender to remain subject to the notification requirements in respect of the qualifying offence upon which the application is based;

(b) under section 315G(2)(b), unless satisfied that it is not necessary for the purpose of protecting the public or any particular members of the public from sexual harm for the qualifying relevant offender to remain subject to the notification requirements for the full period in respect of the qualifying offence upon which the application is based.

(3) If the Magistrates' Court makes a determination under section 315G(2)(a), the qualifying relevant offender ceases to be subject to the notification requirements in respect of the qualifying offence upon which the application is based on the date of receipt of the notice of determination.

(4) If the Magistrates' Court makes a determination under section 315G(2)(b), the qualifying relevant offender shall be subject to the notification requirements for the period so determined in respect of the qualifying offence upon which the application is based.

(5) If the Magistrates' Court makes a determination under section 315G(2)(c), the notice of determination must –

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(a) contain a statement of reasons for the determination; and

(b) inform the qualifying relevant offender that he may appeal the determination in accordance with section 315K.

Review of notification requirements: factors applying to determinations under section 315G.

315J. In determining an application for review under section 315G, the Magistrates Court must –

(a) have regard to information (if any) received from a responsible body;

(b) consider the risk of sexual harm posed by the qualifying relevant offender and the effect of the continuation of the notification requirements on the offender; and

(c) take into account the matters set out in section 315D(2) (a), (b), (c), (g), (h), (l), (m) and (n).

Review of notification requirements: appeals.

315K(1) A qualifying relevant offender may appeal against a determination of the Magistrates' Court under section 315G.

(2) An appeal under this section may be made by complaint to the Supreme Court within the period of 21 days beginning with the day of receipt of the notice of determination.

(3) If the Supreme Court makes an order that a qualifying relevant offender should not remain subject to the notification requirements, the qualifying relevant offender ceases to be subject to the notification requirements in respect of the offence for which it was made on the date of the order.

(4) If the Supreme Court makes an order that a qualifying relevant offender should not remain subject to the notification requirements for the full period, the qualifying relevant offender shall be subject to the notification requirements for the period so determined in respect of the offence for which it was made.

(5) An order by the Supreme Court only applies in respect of the qualifying offence for which it was made and does not prevent the qualifying relevant offender from being subject to the notification requirements by virtue of any other offence.

Review of indefinite notification requirements: guidance.

315L.(1) The Minister may issue guidance to the Magistrates' Court in relation to the determination by them of applications made under section 315G.

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(2) The Minister may, from time to time, revise the guidance issued under subsection (1).

(3) The Minister must arrange for any guidance issued or revised under this section to be published in such manner as the Minister considers appropriate.

Review of notification requirements: successive applications under section 315G.

315M. An application under section 315G may not be made–

(a) earlier than 12 months from the date of the last application made by the qualifying relevant offender in respect of the qualifying relevant offence to which it relates; and

(b) notwithstanding that 12 months from the date of the last application made by the qualifying relevant offender in respect of the qualifying relevant offence to which it relates may have elapsed, if there has not been a material change in the relevant circumstances of the qualifying relevant offender since the date of the last application.

Certificates for purposes of Part.

316.(1) Subsection (2) applies when on any date a person is–

(a) convicted of an offence listed in Schedule 3;

(b) found not guilty of such an offence by reason of mental disorder; or

(c) found to be under a disability and to have done the act charged against him in respect of such an offence.

(2) If the court by or before which the person is so convicted or found–

(a) states in open court–

(i) that on that date he has been convicted, found not guilty by reason of mental disorder or found to be under a disability and to have done the act charged against him; and

(ii) that the offence in question is an offence listed in Schedule 3, and

(b) certifies those facts, whether at the time or subsequently,

the certificate is, for the purposes of this Part, evidence of those facts.

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(3) Subsection (4) applies when on any date a person is cautioned in respect of an offence listed in Schedule 3.

(4) If the police officer who gives the caution–

(a) informs the person that he has been cautioned on that date and that the offence in question is an offence listed in Schedule 3; and

(b) certifies those facts, whether at the time or subsequently, in writing in any form the Minister approves,

the certificate is, for the purposes of this Part, evidence of those facts.

Information relating to notification

Part 13: Supply of information to Minister etc. for verification.

317.(1) This section applies to information notified to the police under section 306 or 308.

(2) The Commissioner of Police may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to–

(a) the Minister; or

(b) a person providing services to the Minister in connection with a relevant function,

for use for the purpose of verifying the information.

(3) In relation to information supplied under subsection (2) to any person, the reference to verifying the information is a reference to–

(a) checking its accuracy by comparing it with information held–

(i) if the person is the Minister - by the Ministry in connection with the exercise of a relevant function;

(ii) if the person is within subsection (2)(b) - by that person in connection with the provision of the services; and

(b) compiling a report of that comparison.

(4) Subject to subsection (5), the supply of information under this section does not breach any restriction on the disclosure of information (however arising or imposed).

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(5) This section does not authorise the doing of anything that contravenes the Data Protection Act 2004.

(6) This section does not affect any power existing apart from this section to supply information.

(7) In this section, "relevant function" means–

(a) a function relating to social security, child support, employment or training;

(b) a function relating to passports;

(c) a function relating to the licensing of vehicles.

Part 13: Supply of information by Minister, etc.

318.(1) A report compiled under section 317 may be supplied to the Commissioner of Police by–

(a) the Minister; or

(b) a person within section 317(2)(b).

(2) Such a report may contain any information held–

(a) by the Minister in connection with the exercise of a relevant function; or

(b) by a person within section 317(2)(b) in connection with the provision of services referred to there.

(3) If a report compiled under section 317 contains information within subsection (2), the Commissioner of Police may–

(a) retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under this Part; and

(b) use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.

(4) Subsections (4) to (7) of section 317 apply in relation to this section as they apply in relation to that section.

Information about release or transfer.

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319.(1) This section applies to a relevant offender who is serving a sentence of imprisonment, or is detained in a hospital.

(2) The Minister may by regulations require notice to be given, by the person who is responsible for that offender to persons prescribed by the regulations, of any occasion when the offender is released or a different person becomes responsible for him.

(3) The regulations may require the person who is responsible for an offender, in giving notice under the regulations, to provide–

(a) any information about the offender; or

(b) a photograph of any part of the offender.

(4) In this section, "photograph" includes any process by means of which an image may be produced.

(5) The regulations may make provision for determining who is to be treated for the purposes of this section as responsible for an offender.

(6) The regulations may make different provision for different purposes.

Power of entry and search for offender's home address.

320.(1) If on an application made by the Commissioner of Police, a magistrate is satisfied that the requirements in subsection (2) are met in relation to any premises, the magistrate may issue a warrant authorising a police officer–

(a) to enter the premises for the purpose of assessing the risks posed by the relevant offender to which the warrant relates; and

(b) to search the premises for that purpose.

(2) The requirements are that–

(a) the address of each set of premises specified in the application is an address falling within subsection (3);

(b) the relevant offender is not one to whom subsection (4) applies;

(c) it is necessary for a police officer to enter and search the premises for the purpose mentioned in subsection (1)(a); and

(d) on at least 2 occasions a police officer has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.

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(3) An address falls within this subsection if–

(a) it is the address which was last notified in accordance with this Part by a relevant offender to the police as his home address; or

(b) there are reasonable grounds to believe that a relevant offender resides there or may regularly be found there.

(4) This subsection applies to a relevant offender if he is–

(a) remanded in or committed to custody by order of a court;

(b) serving a sentence of imprisonment;

(c) detained in a hospital; or

(d) outside Gibraltar.

(5) A warrant issued under this section–

(a) must specify each of the premises to which it relates;

(b) may authorise the police officer executing it to use reasonable force if necessary to enter and search the premises;

(c) may authorise entry to and search of premises on more than one occasion if, on the application, the magistrate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in subsection (1)(a).

(6) If a warrant issued under this section authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.

(7) In this section a reference to the relevant offender to whom the warrant relates is a reference to the relevant offender–

(a) who has in accordance with this Part notified the police that the premises specified in the warrant are his home address; or

(b) in respect of whom there are reasonable grounds to believe that he resides there or may regularly be found there.

Notification orders

Notification orders: Applications and grounds.

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321.(1) Upon the direction of the Minister the Attorney-General must, by complaint to the Magistrates' Court, apply for an order under this section (a "notification order") in respect of a person ("the defendant") if–

(a) it appears to him that the following conditions are met with respect to the defendant; and

(b) the defendant resides in Gibraltar or the Minister believes that the defendant is in, or is intending to come to, Gibraltar.

(2) The first condition is that under the law in force in a place outside Gibraltar–

(a) the defendant has been convicted of a relevant offence (whether or not he has been punished for it);

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of mental disorder;

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence; or

(d) he has been cautioned in respect of a relevant offence.

(3) The second condition is that the period set out in section 307 (as modified by subsections (2) and (3) of section 322) in respect of the relevant offence) has not expired.

(4) If on the application it is proved that the conditions in subsections (2) and (3) are met, the court must make a notification order.

(5) In this section and section 322, "relevant offence" has the meaning given by section 323.

Notification orders: Effect.

322.(1) If a notification order is made–

(a) the application of this Part to the defendant in respect of the conviction, finding or caution to which the order relates is subject to the modifications set out below; and

(b) subject to those modifications, the defendant becomes or (as the case may be) remains subject to the notification requirements of this Part for the notification period set out in section 307.

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(2) The "relevant date" means–

(a) in the case of a person within section 321(2)(a) - the date of the conviction;

(b) in the case of a person within section 321(2)(b) or (c) - the date of the finding;

(c) in the case of a person within section 321(2)(d) - the date of the caution.

(3) In section 306 the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences.

(4) In sections 308 and 310, references to the commencement of this Part are to be read as references to the date of service of the notification order.

Sections 321 and 322: Relevant offences.

323.(1) "Relevant offence" in sections 321 and 322 means an act which–

(a) constituted an offence under the law in force in the place concerned; and

(b) would have constituted an offence listed in Schedule 3 if it had been done in Gibraltar.

(2) An act punishable under the law in force in a place outside Gibraltar constitutes an offence under that law for the purposes of subsection (1) however it is described in that law.

(3) Subject to subsection (4), on an application for a notification order the condition in subsection (1)(b) is to be taken as met unless, not later than 28 days after receiving notice of the application, the defendant serves on the applicant a notice–

(a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met;

(b) showing his grounds for that opinion; and

(c) requiring the applicant to prove that the condition is met.

(4) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (3).

Interim notification orders.

324.(1) This section applies when an application for a notification order ("the main application") has not been determined.

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(2) An application for an order under this section ("an interim notification order")–

(a) may be made in the complaint containing the main application, or

(b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim notification order.

(4) An interim notification order–

(a) has effect only for a fixed period, specified in the order;

(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) While such an order has effect–

(a) the defendant is subject to the notification requirements of this Part;

(b) this Part applies to the defendant, subject to the modification set out in subsection (6).

(6) For purposes of this section, "relevant date" means the date of service of the order.

(7) The applicant or the defendant may by complaint apply to the court that made the interim notification order for the order to be varied, renewed or discharged.

Notification orders: appeals.

325. A defendant may appeal to the Supreme Court against the making of a notification order or interim notification order.

Sexual offences prevention orders (SOPOs)

Sexual offences prevention orders (SOPOs): Application and grounds.

326.(1) A court may make an order under this section (a "sexual offences prevention order") in respect of a person if any of subsections (2) to (4) applies and–

(a) if subsection (2) or (3) applies – the court is satisfied that it is necessary to make such an order for the purpose of protecting the public or any particular members of the public from serious sexual harm from the person;

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(b) if subsection (4) applies – the court is satisfied that the person's behaviour since the appropriate date makes it necessary to make such an order for the purpose of protecting the public or any particular members of the public from serious sexual harm from the person.

(2) This subsection applies when the court convicts a person of an offence listed in Schedule 3 or 4.

(3) This subsection applies when the court deals with a person who is charged with an offence listed in Schedule 3 or 4 by finding–

(a) that he is not guilty of the offence by reason of mental disorder; or

(b) that he is under a disability and has done the act charged against him in respect of such an offence.

(4) This subsection applies when–

(a) an application under subsection (5) has been made to the court in respect of a person; and

(b) on the application, it is proved that he is a qualifying offender.

(5) Upon the direction of the Minister the Attorney-General must by complaint to the Magistrates' Court apply for an order under this section in respect of a person who resides in Gibraltar or whom the Minister believes is in, or is intending to come to, Gibraltar if it appears to the Minister that the person–

(a) is a qualifying offender; and

(b) has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

Section 326: Supplemental.

327.(1) For the purposes of section 326–

(a) acts, behaviour, convictions and findings include those occurring before the commencement of this Part;

(b) "appropriate date", in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (2) or (3);

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(c) "protecting the public or any particular members of the public from serious sexual harm from the defendant" means protecting the public in Gibraltar or any particular members of it from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 3;

(d) "qualifying offender" means a person within subsection (2) or (3);

(e) "relevant offence" means an act which–

(i) constituted an offence under the law in force in the place concerned; and

(ii) would have constituted an offence listed in Schedule 3 or 4 if it had been done in Gibraltar.

(2) A person is within this subsection if, before or after the commencement of this Part, he has been–

(a) convicted of an offence listed in Schedule 3 or 4;

(b) found not guilty of such an offence by reason of mental disorder;

(c) found to be under a disability and to have done the act charged against him in respect of such an offence; or

(d) cautioned in respect of such an offence.

(3) A person is within this subsection if, before or after the commencement of this Part, under the law in force in a place outside Gibraltar–

(a) he has been convicted of a relevant offence (whether or not he has been punished for it);

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of mental disorder;

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence; or

(d) he has been cautioned in respect of a relevant offence.

(4) An act punishable under the law in force in a place outside Gibraltar constitutes an offence under that law for the purposes of subsection (3), however it is described in that law.

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(5) On an application under section 326(5)–

(a) the condition in paragraph (b) of the definition of "relevant offence" in subsection (1) (if relevant) is to be taken as met unless, not later than 28 days after receiving the notice of the application, the defendant serves on the applicant a notice–

(i) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met;

(ii) showing his grounds for that opinion; and

(iii) requiring the applicant to prove that the condition is met;

(b) the court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under paragraph (a).

SOPOs: Effect.

328.(1) A SOPO–

(a) prohibits the defendant from doing anything described in the order; and

(b) has effect for a fixed period (not less than 5 years) specified in the order or until further order.

(2) The only prohibitions that may be included in the order are those necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.

(3) If–

(a) an order is made in respect of a defendant who was a relevant offender immediately before the making of the order; and

(b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect,

the defendant remains subject to the notification requirements.

(4) If an order is made in respect of a defendant who was not a relevant offender immediately before the making of the order–

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(a) the order causes the defendant to become subject to the notification requirements of this Part from the making of the order until the order (as renewed from time to time) ceases to have effect; and

(b) this Part applies to the defendant, subject to the modification set out in subsection (5).

(5) For purposes of this section, the "relevant date" is the date of service of the order.

(6) If a court makes a SOPO in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

(7) Section 327(1)(c) applies for the purposes of this section and section 329.

SOPOs: Variation, renewal and discharge.

329.(1) The defendant or the Attorney-General, upon the direction of the Minister, may apply to the appropriate court for an order varying, renewing or discharging a SOPO.

(2) An application under subsection (1) may be made–

(a) if the appropriate court is the Supreme Court - in accordance with the practice of that court;

(b) in any other case - by complaint.

(3) Subject to subsections (4) and (5), on an application under subsection (1) the court, after hearing the person making the application and the other person mentioned in subsection (1) (if he wishes to be heard), may make any order, varying, renewing or discharging the SOPO, that the court considers appropriate.

(4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).

(5) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and the Minister.

(6) In this section "the appropriate court" means–

(a) if the Supreme Court or the Court of Appeal made the SOPO - the Supreme Court;

(b) if the Magistrates' Court made the order - that court;

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(c) if a juvenile court made the order - that court.

Interim SOPOs.

330.(1) This section applies when an application under section 326(5) ("the main application") has not been decided.

(2) An application for an order under this section ("an interim SOPO")–

(a) may be made by the complaint by which the main application is made; or

(b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

(3) The court may, if it considers it just to do so, make an interim SOPO, prohibiting the defendant from doing anything described in the order.

(4) An interim SOPO–

(a) has effect only for the period specified in the order;

(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) Section 328(3) to (5) apply to an interim SOPO as if references to an order were references to such an order, and with the omission of "as renewed from time to time" in both places.

(6) The applicant or the defendant may by complaint apply to the Magistrates' Court for the order to be varied, renewed or discharged.

SOPOs: Appeals.

331.(1) A defendant may appeal against the making of a SOPO–

(a) if section 326(2) applied - as if the order were a sentence passed on him for the offence by the convicting court;

(b) if section 326(3) applied - as if he had been convicted of the offence by the court and the order were a sentence passed on him for that offence by that court;

(c) if the order was made on an application under section 326(5) - to the Supreme Court.

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(2) A defendant may appeal to the Supreme Court against the making of an interim SOPO.

(3) A defendant may appeal against the making of an order under section 329, or a refusal to make such an order–

(a) if the application for the order was made to the Supreme Court - to the Court of Appeal;

(b) in any other case - to the Supreme Court.

(4) On an appeal under subsection (1), (2) or (3)(b), the Supreme Court may make such orders as are necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

(5) Any order made by the Supreme Court on an appeal under subsection (1) or (2) (other than an order directing that an application be re-heard by the Magistrates' Court) is for the purpose of sections 329(1) and 330(6) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Supreme Court).

Breach of a SOPO.

332.(1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a SOPO or an interim SOPO.

(2) 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 5 years.

(3) If a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge.

Foreign travel orders

Foreign travel orders: Application and grounds.

333.(1) Upon the direction of the Minister the Attorney-General must by complaint to the Magistrates' Court apply for an order under this section (a "foreign travel order") in respect of a person ("the defendant") who resides in Gibraltar or whom the Minister believes is in or is intending to come to Gibraltar, if it appears to the Minister that–

(a) the defendant is a qualifying offender; and

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(b) the defendant has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

(2) On an application under subsection (1), the court may make a foreign travel order if it is satisfied that–

(a) the defendant is a qualifying offender; and

(b) the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside Gibraltar.

Section 333: Interpretation.

334. For the purposes of section 333–

(a) acts, behaviour, convictions and findings include those occurring before the commencement of this Part;

(b) "appropriate date", in relation to a qualifying offender, means the date or (as the case may be) the first date on which he was convicted, found or cautioned as mentioned in subsection (1) or (3) of section 335;

"protecting children generally or any child from serious sexual harm from the defendant outside Gibraltar" means protecting persons under 18 generally or any particular person under 18 from serious physical or psychological harm caused by the defendant doing, outside Gibraltar, anything which would constitute an offence listed in Schedule 3 if done in Gibraltar;

"qualifying offender" has the meaning given in section 335.

Section 333: Qualifying offenders.

335.(1) A person is a qualifying offender for the purposes of section 333 if, before or after the commencement of this Part, he has been–

(a) convicted of an offence listed in Schedule 3;

(b) found not guilty of such an offence by reason of mental disorder;

(c) found to be under a disability and to have done the act charged against him in respect of such an offence; or

(d) cautioned in Gibraltar in respect of such an offence.

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(2) A person is also a qualifying offender for the purposes of section 333 if, before or after the commencement of this Part, under the law in force in a place outside Gibraltar–

(a) he has been convicted of a relevant offence (whether or not he has been punished for it);

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he is not guilty by reason of mental disorder;

(c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence; or

(d) he has been cautioned in respect of a relevant offence.

(3) In subsection (2), "relevant offence" means an act which–

(a) constituted an offence under the law in force in the place concerned; and

(b) would have constituted an offence listed in Schedule 3 if it had been done in Gibraltar.

(4) An act punishable under the law in force in a place outside Gibraltar constitutes an offence under that law for the purposes of subsection (3), however it is described in that law.

(5) On an application under section 333–

(a) the condition in subsection (3)(b) above (if relevant) is to be taken as met unless, not later than 28 days after receiving notice of the application, the defendant serves on the applicant a notice–

(i) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met;

(ii) showing his grounds for that opinion; and

(iii) requiring the applicant to prove that the condition is met;

(b) the court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under paragraph (a).

Foreign travel orders: Effect.

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336.(1) A foreign travel order has effect for a fixed period of not more than 5 years, specified in the order.

(2) The order prohibits the defendant from doing whichever of the following is specified in the order–

(a) travelling to any place outside Gibraltar named or described in the order,

(b) travelling to any place outside Gibraltar other than a place named or described in the order; or

(c) travelling to any place outside Gibraltar.

(3) The only prohibitions that may be included in the order are those necessary for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside Gibraltar.

(4) If a court makes a foreign travel order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

(5) A foreign travel order which contains a prohibition under subsection (2)(c) must require the defendant to surrender all his passports, at a police station–

(a) on or before the date when the prohibition takes effect; or

(b) within a period specified in the order.

(6) Any passport surrendered pursuant to subsection (5) must be returned as soon as reasonably practicable after the person ceases to be subject to the foreign travel order.

(7) Section 334 applies for the purposes of this section and section 337.

Foreign travel orders: Variation, renewal and discharge.

337.(1) The defendant or upon the direction of the Minister, the Attorney-General may by complaint to the Magistrates' Court apply for an order varying, renewing or discharging a foreign travel order.

(2) Subject to subsection (3), on the application the court, after hearing the person making the application and the other person mentioned in subsection (1) (if he wishes to be heard), may make any order, varying, renewing or discharging the foreign travel order, that the court considers appropriate.

(3) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or

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any child from serious sexual harm from the defendant outside Gibraltar (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).

Foreign travel orders: Appeals.

338.(1) A defendant may appeal to the Supreme Court–

(a) against the making of a foreign travel order;

(b) against the making of an order under section 337, or the refusal to make such an order.

(2) On any such appeal, the Supreme Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

(3) Any order made by the Supreme Court on an appeal under subsection (1)(a) (other than an order directing that an application be re-heard by the Magistrates' Court) is for the purpose of section 337(1) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Supreme Court).

Breach of a foreign travel order.

339.(1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a foreign travel order.

(2) A person commits an offence if, without reasonable excuse, he fails to comply with a requirement under section 336(5).

(3) 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 5 years.

(4) If a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge.

Entry prohibition orders.

340.(1) Upon the direction of the Minister the Attorney-General must by complaint to the Magistrates' Court apply for an order under this section (an "entry prohibition order") in

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respect of a person ("the defendant") who is not a Gibraltarian and whom the Minister believes is intending to come to Gibraltar, if it appears to the Minister that–

(a) the defendant is a qualifying offender; and

(b) the defendant has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

(2) On an application under subsection (1), the court may make an entry prohibition order if it is satisfied that–

(a) the defendant is a qualifying offender; and

(b) the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting children generally or any child from serious sexual harm from the defendant in Gibraltar.

(3) The order prohibits the defendant from entering Gibraltar and has the effect of declaring the person to be a prohibited immigrant for the purposes of the Immigration, Asylum and Refugee Act.

(4) An entry prohibition order has effect for a fixed period of not more than 5 years, specified in the order.

(5) An application under subsection (1) may be made without notice to the defendant, but notice of an order under this section must be given to the defendant and any person whom he appoints to represent him in Gibraltar.

(6) Sections 334, 335, 337 and 338 apply for the purposes of this section, with appropriate modifications.

Risk of sexual harm orders (RSHOs)

Risk of sexual harm orders (RSHOs): Application, grounds and effect.

341.(1) Upon the direction of the Minister the Attorney-General must by complaint to the Magistrates' Court apply for an order under this section (a "risk of sexual harm order") in respect of a person aged 18 or over ("the defendant") who resides in Gibraltar or who the Minister believes is in, or is intending to come to, Gibraltar if it appears to the Minister that–

(a) the defendant has on at least 2 occasions, whether before or after the commencement of this Part, done an act within subsection (2); and

(b) as a result of those acts, there is reasonable cause to believe that it is necessary for such an order to be made.

(2) The acts are–

(a) engaging in sexual activity involving a child or in the presence of a child;

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(b) causing or encouraging or assisting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;

(c) giving a child anything that relates to sexual activity or contains a reference to such activity;

(d) communicating with a child, if any part of the communication is sexual.

(3) On the application, the court may make a RSHO if it is satisfied that–

(a) the defendant has on at least 2 occasions, whether before or after the commencement of this section, done an act within subsection (2); and

(b) it is necessary to make such an order, for the purpose of protecting children generally or any child from harm from the defendant.

(4) An order under subsection (3)–

(a) prohibits the defendant from doing anything described in the order;

(b) has effect for a fixed period (not less than 2 years) specified in the order or until further order.

(5) The only prohibitions that may be imposed are those necessary for the purpose of protecting children generally or any child from harm from the defendant.

(6) If a court makes a RSHO in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

Section 341: Interpretation.

342. For the purposes of section 341–

(a) "protecting children generally or any child from harm from the defendant" means protecting children generally or any child from physical or psychological harm, caused by the defendant doing acts within section 341(2);

"child" means a person under 18;

"image" means an image produced by any means, whether of a real or imaginary subject;

"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.

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(b) a communication is sexual if–

(i) any part of it relates to sexual activity; or

(ii) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the communication is sexual;

(c) an image is sexual if–

(i) any part of it relates to sexual activity; or

(ii) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the image is sexual.

RSHOs: Variation, renewal and discharge.

343.(1) The defendant or upon the direction of the Minister, the Attorney-General may by complaint to the Magistrates' Court apply for an order varying, renewing or discharging a RSHO.

(2) Subject to subsections (3) and (4), on the application the court, after hearing the person making the application and the other person mentioned in subsection (1) (if he wishes to be heard) may make any order, varying, renewing or discharging the RSHO, that the court considers appropriate.

(3) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of protecting children generally or any child from harm from the defendant (and any renewed or varied order may contain only such prohibitions as are necessary for this purpose).

(4) The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant and the Minister.

(5) Section 342 applies for the purposes of this section.

Interim RSHOs.

344.(1) This section applies if an application for a RSHO ("the main application") has not been decided.

(2) An application for an order under this section ("an interim RSHO") may be made–

(a) in the complaint by which the main application is made; or

(b) if the main application has been made - by the person who has made that application, by complaint to the Magistrates' Court.

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(3) The court may, if it considers it just to do so, make an interim RSHO, prohibiting the defendant from doing anything described in the order.

(4) An interim RSHO–

(a) has effect only for a fixed period, specified in the order;

(b) ceases to have effect, if it has not already done so, on the determination of the main application.

(5) The applicant or the defendant may by complaint apply to the Magistrates' Court for an interim RSHO to be varied, renewed or discharged.

RSHOs: Appeals.

345.(1) A defendant may appeal to the Supreme Court–

(a) against the making of a RSHO;

(b) against the making of an interim RSHO; or

(c) against the making of an order under section 343, or the refusal to make such an order.

(2) On an appeal under subsection (1), the Supreme Court may make any orders necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

(3) Any order made by the Supreme Court on an appeal under subsection (1)(a) or (b) (other than an order directing that an application be re-heard by the Magistrates' Court) is for the purpose of section 343(1) and 344(5) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Supreme Court).

Breach of a RSHO.

346.(1) A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by–

(a) a RSHO; or

(b) an interim RSHO.

(2) A person who commits an offence under this section is liable–

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(a) on summary conviction, to imprisonment for 12 months or the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for 5 years.

(3) If a person is convicted of an offence under this section, it is not open to the court by or before which he is convicted to make, in respect of the offence, an order for conditional discharge.

Effect of conviction etc. of an offence under section 346.

347.(1) This section applies to a person ("the defendant") who–

(a) is convicted of an offence under section 346;

(b) is found not guilty of such an offence by reason of mental disorder;

(c) is found to be under a disability and to have done the act charged against him in respect of such an offence; or

(d) is cautioned in respect of such an offence.

(2) If–

(a) a defendant was a relevant offender immediately before this section applied to him; and

(b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the relevant order (as renewed from time to time) has effect,

the defendant remains subject to the notification requirements.

(3) If the defendant was not a relevant offender immediately before this section applied to him–

(a) this section causes the defendant to become subject to the notification requirements of this Part from the time the section first applies to him until the relevant order (as renewed from time to time) ceases to have effect, and

(b) this Part applies to the defendant, subject to the modification set out in subsection (4).

(4) For purposes of this section–

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(a) the "relevant date" is the date on which this section first applies to the defendant;

(b) "relevant order" means–

(i) if the conviction, finding or caution within subsection (1) is in respect of a breach of a RSHO - that order;

(ii) if the conviction, finding or caution within subsection (1) is in respect of a breach of an interim RSHO - any RSHO made on the hearing of the application to which the interim RSHO relates or, if no such order is made, the interim RSHO.

Miscellaneous provisions

Power to amend Schedules 3 and 4.

348.(1) The Minister may by order amend Schedule 3 or 4.

(2) Subject to subsection (3), an amendment within subsection (4) does not apply to convictions, findings and cautions before the amendment takes effect.

(3) For the purposes of sections 327 and 335, an amendment within subsection (4) applies to convictions, findings and cautions before as well as after the amendment takes effect.

(4) An amendment is within this subsection if it–

(a) adds an offence;

(b) removes a threshold relating to an offence; or

(c) changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within a Schedule when it would not otherwise be.

Schedules 3 and 4: Interpretation.

349.(1) A reference in Schedule 3 or 4 to an offence includes–

(a) a reference to an attempt, conspiracy or encouraging or assisting to commit that offence; and

(b) a reference to aiding, abetting, counselling or procuring the commission of that offence.

(2) A reference in either Schedule to a person's age is–

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(a) a reference to his age at the time of the offence;

(b) in the case of an indecent photograph - a reference to the person's age when the photograph was taken;

(c) in any other case - a reference to his age at the time of the offence.

(3) For the purposes of either Schedule, a person is to be taken to have been under 18 at any time if it appears from the evidence as a whole that he was under that age at that time.

Offences with thresholds.

350.(1) This section applies to an offence which in Schedule 3 or 4 is listed subject to a condition relating to the way in which the defendant is dealt with in respect of the offence or (if a relevant finding has been made in respect of him) in respect of the finding (a "sentencing condition").

(2) If an offence is listed subject to a sentencing condition or a condition of another description, this section applies only to the offence as listed subject to that condition.

(3) For the purposes of this Part (including in particular section 307(5))–

(a) a person is to be regarded as convicted of an offence to which this section applies; or

(b) (as the case may be) a relevant finding in relation to such an offence is to be regarded as made,

at the time when the sentencing condition is met.

(4) In the following subsections, references to a foreign offence are references to an act which–

(a) constituted an offence under the law in force in a place outside Gibraltar ("the relevant foreign law"); and

(b) would have constituted an offence to which this section applies if it had been done in Gibraltar.

(5) In relation to a foreign offence, references to the corresponding Gibraltar offence are references to the offence (or any offence) to which subsection (4)(b) applies in the case of that foreign offence.

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(6) For the purposes of this Part, a person is to be regarded as convicted under the relevant foreign law of a foreign offence at the time when he is, in respect of the offence, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding Gibraltar offence.

(7) If in the case of any person a court exercising jurisdiction under the relevant foreign law makes in respect of a foreign offence a finding equivalent to a relevant finding, the court's finding is, for the purposes of this Part, to be regarded as made at the time when the person is, in respect of the finding, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding Gibraltar offence.

(8) In this section, "relevant finding", in relation to an offence, means–

(a) a finding that a person is not guilty of the offence by reason of mental disorder; or

(b) a finding that a person is under a disability and did the act charged against him in respect of the offence.

Mentally disordered offenders.

351.(1) In this Part, a reference to a conviction includes a reference to a finding of a court in summary proceedings, if the court makes an order under section 660 of the Criminal Procedure and Evidence Act 2011 that the defendant did the act charged; and similar references are to be interpreted accordingly.

(2) In this Part, a reference to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence includes a reference to his being or having been found–

(a) unfit to be tried for the offence;

(b) to be mentally disordered so that his trial for the offence cannot or could not proceed; or

(c) unfit to be tried and to have done the act charged against him in respect of the offence.

Application to detention.

352.(1) This Part applies to a sentence of detention for a specified period imposed on a person under 18 under section 630 of the Criminal Procedure and Evidence Act 2011 as it applies to an equivalent sentence of imprisonment; and references in this Part to prison or imprisonment are to be interpreted accordingly.

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(2) This Part applies to an order for detention during Her Majesty's pleasure imposed on a person under 18 under section 629 of the Criminal Procedure and Evidence Act 2011 as it applies to a sentence of life imprisonment, and references in this Part to prison or imprisonment are to be interpreted accordingly.

PART 14
CRIMINAL DAMAGE

Meaning of 'property'.

353.(1) For purposes of this Part, "property" means property of a tangible nature, whether real or personal, including money and–

(a) includes wild creatures that have been tamed or are normally kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but

(b) does not include mushrooms growing wild on any land, or flowers, fruit or foliage or plants growing wild on any land.

(2) In subsection (1), "mushroom" includes any fungus and "plant" includes any shrub or tree.

(3) Property is to be treated for the purposes of this Part as belonging to any person who–

(a) has the custody or control of it;

(b) has in it any proprietary right or interest (other than an equitable interest arising only from an agreement to transfer or grant an interest); or

(c) has a charge on it.

(4) If property is subject to a trust, the persons to whom it belongs are to be treated as including any person who has a right to enforce the trust.

(5) Property of a corporation sole is to be treated as belonging to the corporation even if there is a vacancy in the corporation.

Destroying or damaging property.

354.(1) A person who without lawful excuse destroys or damages any property belonging to another, intending to destroy or damage the property or being reckless as to whether the property would be destroyed or damaged, commits an offence and is liable–

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(a) on summary conviction, to imprisonment for 12 months or the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for 10 years.

(2) A person who without lawful excuse destroys or damages any property, whether belonging to himself or another–

(a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and

(b) intending by the destruction or damage to endanger the life of another, or being reckless as to whether the life of another would be thereby endangered, commits an offence and is liable on conviction to imprisonment for life.

Arson.

355.(1) An offence under section 354(1) or (2) committed by destroying or damaging property by fire is to be charged as arson.

(2) A person who commits the offence of arson is liable on conviction to imprisonment for life.

Threats to destroy or damage property.

356.(1) A person who without lawful excuse makes to another a threat, intending that the other would fear it would be carried out–

(a) to destroy or damage any property belonging to the other or a third person; or

(b) to destroy or damage his own property in a way which he knows is likely to endanger the life of the other or a third person, commits an offence.

(2) A person who commits an offence under subsection (1) 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 10 years.

Possessing anything with intent to destroy or damage property.

357.(1) A person ('A') who has anything in his custody or under his control, intending without lawful excuse to use it or cause or permit another person ('B') to use it–

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(a) to destroy or damage any property belonging to some other person ('C'); or

(b) to destroy or damage his own or B's property in a way which he knows is likely to endanger the life of some other person,

commits an offence.

(2) A person who commits an offence under subsection (1) 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 10 years.

Lawful excuse.

358.(1) This section applies to–

(a) an offence under section 354(1); and

(b) any offence under section 356 or 357 except one involving–

(i) a threat by the person charged to destroy or damage property in a way that he knows is likely to endanger the life of another; or

(ii) an intent by the person charged to use or cause or permit the use of something in his custody or under his control so to destroy or damage property.

(2) A person charged with an offence to which this section applies is, whether or not he would be treated for the purposes of this Part as having a lawful excuse apart from this subsection, to be treated for those purposes as having a lawful excuse–

(a) if at the time of the act or acts alleged to constitute the offence he believed that the person or persons whom he believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented if he or they had known of the destruction or damage and its circumstances; or

(b) if he destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 357, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging to himself or another, or a right or interest in property

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which was or which he believed to be vested in himself or another, and at the time of the act or acts alleged to constitute the offence he believed–

(i) that the property, right or interest was in immediate need of protection; and

(ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of subsection (2) a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

(5) This section is not to be construed as casting doubt on any defence recognised by law as a defence to criminal charges.

Damaging public gardens.

359.(1) A person who, without lawful authority–

(a) wilfully breaks, destroys or damages any tree, plant, shrub, or seat in any public walk or garden;

(b) wilfully breaks or plucks any flower, fruit or other produce growing on any tree, plant or shrub in any public walk or garden; or

(c) damages, cuts down, pulls up or removes any tree, plant or shrub growing on any land in Gibraltar belonging to the Crown,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to–

(a) a fine at level 4 on the standard scale; or

(b) a fine of twice the sum which appears to the court to be the value of the thing so broken, destroyed, damaged, plucked, cut down, pulled up or removed,

whichever is the greater amount.

Saving.

360. No rule of law ousting the jurisdiction of the Magistrates' Court to try

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offences when a dispute of title to property is involved precludes the court from trying offences under this Part or any other offences of destroying or damaging property.

PART 15
COMPUTER MISUSE

Interpretation.

361.(1) In this Part, unless the context otherwise requires–

"computer data" means a representation of facts, information or concepts in a form suitable for processing in a computer system, including a programme suitable to cause a computer system to perform a function;

"computer system" means a device or a group of interconnected or related devices, one or more of which, pursuant to a programme, performs automatic processing of data, 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;

"internet" includes a privately maintained computer network that can only be accessed by authorised persons (commonly referred to as an 'intranet');

"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;

"service provider" means–

(a) any public or private entity that provides to users of its service the ability to communicate by means of a computer system; and

(b) any other entity that processes or stores computer data on behalf of such communication service or users of such a service;

"traffic data" means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of

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communication, indicating the communication's origin, destination, route, time, date, size, duration, or type of underlying service.

(2) For the purposes of this Part, a person secures access to any programme or data held in a computer if by causing a computer to perform any function he–

(a) alters or erases the programme or data;

(b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;

(c) uses it; or

(d) has it output from the computer in which it is held (whether by having it displayed or in any other manner),

and references to access to a programme or data (and to an intent to secure such access or to enable such access to be secured) are to be read accordingly.

(3) For the purposes of subsection (2)(c) a person uses a programme if the function he causes the computer to perform–

(a) causes the programme to be executed; or

(b) is itself a function of the programme.

(4) For the purposes of subsection (2)(d)–

(a) a programme is output if the instructions of which it consists are output; and

(b) the form in which any such instructions or any other data is output (and in particular whether or not it represents a form in which, in the case of instructions, they are capable of being executed or, in the case of data, it is capable of being processed by a computer) is immaterial.

(5) For purposes of this Part, access of any kind by any person to any programme or data held in a computer is unauthorised if–

(a) he is not himself entitled to control access of the kind in question to the programme or data; and

(b) he does not have consent to access by him of the kind in question to the programme or data from any person who is so entitled.

(6) In this Part–

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(a) references to any programme or data held in a computer include references to any programme or data held in any removable storage medium which is for the time being in the computer; and a computer is to be regarded as containing any programme or data held in any such medium;

(b) an act done in relation to a computer is unauthorised if the person doing the act (or causing it to be done)–

(i) is not himself a person who has responsibility for the computer and who is entitled to determine whether the act may be done; and

(ii) does not have consent to the act from any such person;

(c) "act" includes a series of acts;

(d) a reference to doing an act includes a reference to causing an act to be done;

(e) references to a programme include references to part of a programme.

Computer misuse offences

Unauthorised access to computer material.

362.(1) A person commits an offence if–

(a) he causes a computer to perform any function with intent to secure access to any programme or data held in any computer or to enable any such access to be secured;

(b) the access he intends to secure or to enable to be secured is unauthorised; and

(c) he knows at the time when he causes the computer to perform the function that that is the case.

(2) The intent a person has to have to commit an offence under this section need not be directed at–

(a) any particular programme or data;

(b) a programme or data of any particular kind; or

(c) a programme or data held in any particular computer.

Unauthorised access with intent to commit or facilitate commission of further offences.

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363.(1) A person commits an offence under this section if he commits an offence under section 362 with intent–

(a) to commit an offence to which this section applies ("the further offence"); or

(b) to facilitate the commission of such an offence (whether by himself or by any other person).

(2) This section applies to offences–

(a) for which the sentence is fixed by law; or

(b) for which a person of or over the age of 18 years may be sentenced to imprisonment for 5 years or more.

(3) It is immaterial for the purposes of this section whether the further offence is to be committed on the same occasion as the offence under section 362 or on any future occasion.

(4) A person may be guilty of an offence under this section even though the facts are such that the commission of the further offence is impossible.

Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc.

364.(1) A person commits an offence if–

(a) he does any unauthorised act in relation to a computer;

(b) at the time when he does the act he knows that it is unauthorised; and

(c) either subsection (2) or (3) applies.

(2) This subsection applies if the person intends by doing the act–

(a) to impair the operation of any computer;

(b) to prevent or hinder access to any programme or data held in any computer;

(c) to impair the operation of any such programme;

(d) to impair the reliability of any such data or the authenticity of any such data resulting in it being considered or acted upon for legal purposes as authentic;

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(e) to cause a loss of property to any other person or to derive an economic benefit for himself or any other person; or

(f) to enable any of the things mentioned in paragraphs (a) to (e) to be done.

(3) This subsection applies if the person is reckless as to whether the act will do any of the things mentioned in subsection (2)(a) to (f).

(4) The intention referred to in subsection (2), or the recklessness referred to in subsection (3), need not relate to–

(a) any particular computer;

(b) any particular programme or data; or

(c) a programme or data of any particular kind.

(5) In this section–

(a) "impair" includes damaging a computer; deleting, deteriorating, altering or suppressing data; inputting data to cause damage, deterioration, alteration or suppression; and introducing contaminants to cause the cessation of a computer's functions; and

(b) a reference to impairing, preventing or hindering something includes a reference to doing so temporarily.

Unauthorised interception of computer service.

365.(1) A person commits an offence if–

(a) he does any unauthorised act in relation to a computer;

(b) at the time he does the act he knows that it is unauthorised; and

(c) he intends by doing the act to intercept or cause to be intercepted, directly or indirectly, any non-public electronic transmission or electro-magnetic emission of computer data to, from or within a computer, by any electro-magnetic, acoustic, mechanical or other technical means.

(2) The intention referred to in subsection (1)(c) need not relate to–

(a) any particular computer;

(b) any particular transmission or emission;

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(c) any particular data; or

(d) a transmission or emission of any particular kind.

Making, supplying or obtaining articles for use in offence under section 362, 364, 365 or 366A.

366.(1) A person commits an offence if he makes, adapts, supplies or offers to supply any article intending it to be used to commit, or to assist in the commission of, an offence under section 362, 364, 365 or 366A.

(2) A person commits an offence if he supplies or offers to supply any article believing that it is likely to be used to commit, or to assist in the commission of, an offence under section 362, 364, 365 or 366A.

(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.

(4) In this section "article" includes any programme or data held in electronic form 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.

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;

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(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.

Unauthorised disclosure of access code.

367.(1) A person commits an offence if for any wrongful gain or unlawful purpose, and knowing that the access intended to be secured is unauthorised and is likely to cause wrongful loss to any person–

(a) he discloses any password, access code or any other means of gaining access to any programme or data held in a computer;

(b) he possesses any password, access code or any other means of gaining access to any programme or data in a computer with a view to its being used or supplied for

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use to commit, or to assist in the commission of an offence under section 362, 364, 365 or 366A.

(2) The intention referred to in subsection (1) need not relate to–

(a) any particular computer;

(b) any particular programme or data; or

(c) a programme or data of any particular kind.

Attempts and ancillary offences punishable as offences.

368.(1) A person who attempts to commit or who aids and abets the commission of or who does any act preparatory to or in furtherance of the commission of any offence under this Part commits that offence and is liable on conviction to the punishment provided for the offence.

(2) For an offence to be committed under this section, it is immaterial where the act in question took place.

Jurisdiction

Territorial scope of offences under this Part.

369.(1) Except as provided in this section, it is immaterial for the purposes of any offence under section 362 to 368–

(a) whether any act or other event proof of which is required for conviction of the offence occurred in Gibraltar; or

(b) whether the defendant was in Gibraltar at the time of any such act or event.

(2) Subject to subsection (3), in the case of such an offence at least one significant link with Gibraltar must exist in the circumstances of the case for the offence to be committed.

(3) There is no need for any such link to exist for the commission of an offence under section 362 to be established in proof of an allegation to that effect in proceedings for an offence under section 363.

(4) Subject to section 372, if–

(a) any such link does in fact exist in the case of an offence under section 362; and

(b) commission of that offence is alleged in proceedings for an offence under section 363,

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section 363 applies as if anything the defendant intended to do or facilitate in any place outside Gibraltar which would be an offence to which section 363 applies if it took place in Gibraltar were the offence in question.

Significant links with Gibraltar.

370.(1) The following provisions of this section apply for the interpretation of section 369.

(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.

(2) In relation to an offence under section 362, either of the following is a significant link with Gibraltar–

(a) that the defendant was in Gibraltar at the time when he did the act which caused the computer to perform the function; or

(b) that any computer containing any programme or data to which the defendant by doing that act secured or intended to secure unauthorised access, or enabled or intended to enable unauthorised access to be secured, was in Gibraltar at that time.

(3) In relation to an offence under section 364 or 365, either of the following is a significant link with Gibraltar–

(a) that the defendant was in Gibraltar at the time when he did the unauthorised act (or caused it to be done); or

(b) that the unauthorised act was done in relation to a computer in Gibraltar.

(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.

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Territorial scope of inchoate offences related to offences under this Part.

371.(1) On a charge of conspiracy to commit an offence under this Part the following questions are immaterial to the defendant's guilt–

(a) where any person became a party to the conspiracy; and

(b) whether any act, omission or other event occurred in Gibraltar.

(2) On a charge of attempting to commit an offence under section 364 or 365 the following questions are immaterial to the defendant's guilt–

(a) where the attempt was made; and

(b) whether it had an effect in Gibraltar.

(3) On a charge of encouraging or assisting the commission of an offence under section 362 to 368, the question where the encouragement or assistance took place is immaterial to the defendant's guilt.

Relevance of external law.

372.(1) A person commits an offence triable by virtue of section 369(4) only if what he intended to do or facilitate would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(2) A person commits an offence triable by virtue of section 371 only if what he had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(3) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(4) Subject to subsection (6), a condition specified in subsection (1) or (2) is to be taken as satisfied unless, not later than rules of court may provide, the defence serve on the prosecution a notice–

(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

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(5) In subsection (4) "the relevant conduct" means–

(a) if the condition in subsection (1) is in question, what the defendant intended to do or facilitate;

(b) if the condition in subsection (2) is in question, what the defendant had in view.

(6) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).

(7) In the Supreme Court the question whether the condition is satisfied is to be decided by the judge alone.

National status immaterial.

373.(1) In any proceedings brought in respect of any offence to which this section applies it is immaterial to guilt whether or not the defendant was a British person at the time of any act, omission or other event proof of which is required for conviction of the offence.

(2) This section applies to the following offences–

(a) any offence under section 362 to 368;

(b) any attempt to commit an offence under section 364 or 365; and

(c) encouraging or assisting the commission of an offence under section 362 to 368.

Investigation of offences

Search warrants.

374.(1) If a magistrate is satisfied by information on oath given by a police officer that there are reasonable grounds to suspect–

(a) that an offence has been or is about to be committed in any premises; and

(b) that evidence that such an offence has been or is about to be committed is in those premises,

the magistrate may issue a warrant authorising a police officer to enter and search the premises, using such reasonable force as is necessary.

(2) A warrant under this section–

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(a) may authorise persons with appropriate technical knowledge and expertise to accompany and assist, as necessary, the police officer executing the warrant; and

(b) remains in force for as long as is reasonably necessary for the investigation of an offence.

(3) In executing a warrant issued under this section a police officer may seize an article if he reasonably believes that it is evidence that an offence has been or is about to be committed or that the article has been acquired by a person as a result of an offence.

(4) In seizing any article referred to in subsection (3), a police officer must have due regard to the rights and interests of any person affected by such seizure to carry on his normal activities.

(5) A person who without lawful excuse obstructs the lawful exercise of the powers granted under this section commits an offence.

(6) In this section–

"premises" includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft;

"article" includes a computer or part of a computer, a computer system or part of it, a computer data storage system and a document.

Warrant for access to computer and data for investigation of offences.

375.(1) If a magistrate is satisfied by information on oath given by a police officer that there are reasonable grounds to suspect–

(a) that a computer is being or has been used in connection with an offence; and

(b) that evidence that such an offence is being or has been committed is in that computer,

the magistrate may issue a warrant authorising a police officer to do such things as are permitted under subsection (2).

(2) A warrant under subsection (1) may authorise a police officer to enter any premises where the computer is kept, using such reasonable force as is necessary, and to–

(a) have access to and use the computer and examine the operation of that computer;

(b) search any data stored or available in the computer or in any computer data storage system forming part of the computer; or

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(c) have access to any password or access code or any other means of gaining access to the computer;

(d) have access to any programme having the capability of retransforming or unscrambling encrypted data in the computer into readable and comprehensible format or into plain text;

(e) make and take any copies or take any samples of any data held in the computer; and

(f) require any person whom the police officer has reasonable cause to suspect is or has been using the computer, or any person having charge or control of or operating the computer, to provide him with such reasonable technical and other assistance as he may require for the purposes of carrying out the investigation authorised under this section.

(3) In taking any samples or copies of data or performing any of the actions referred to in subsection (2), a police officer must have due regard to the rights and interests of any person affected by such actions to carry on his normal activities.

(4) A warrant under this section–

(a) may authorise persons with appropriate technical knowledge and expertise to accompany and assist, as may be necessary, a police officer executing the warrant; and

(b) remains in force until such time as may be reasonably be required for the investigation of an offence.

(5) A person who without lawful excuse obstructs the lawful exercise of the powers under subsection (2)(a) to (e) or who fails to comply with a requirement under subsection (2)(f) commits an offence.

(6) An information given under subsection (1) may be combined with an information given for the purposes of section 374 and a warrant issued under this section may be combined with a warrant issued under that section.

(7) In this section "premises" has the meaning given by section 374(6).

Record of seized articles, etc.

376.(1) If a computer or computer programme or data has been removed following a search under section 374, the police officer who carried out the search must, at the time of the search or as soon as practicable after it–

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(a) make an official record of the articles seized and removed, of the premises from where they were removed, and the date and time of seizure; and

(b) give a copy of the record to the owner, lessee or occupier of the premises if they are immovable property; to the master, captain or person in charge of a vehicle, vessel, aircraft, hovercraft or other movable structure; or to the person in charge or control of the articles seized and removed.

(2) Subject to subsection (3), if a computer has been used or its operation examined or a programme or data has been accessed under section 375, the police officer who carried out those actions may authorise a person who had charge or control of the computer to access and copy a programme or data in the computer.

(3) The police officer may refuse to permit access to the computer under subsection (2) if he has reasonable grounds for believing that giving the access would lead to the commission of a criminal offence or would prejudice–

(a) the investigation in connection with which the search was carried out;

(b) another ongoing investigation; or

(c) any criminal proceedings which are pending or which may be brought in relation to any of those investigations.

Preservation of data.

377.(1) If the Commissioner of Police is satisfied that–

(a) a programme or data, including traffic data, stored in a computer is necessary for the purposes of a criminal investigation; and

(b) there is a risk that the programme or data may be lost, destroyed or rendered inaccessible or modified,

he may by written notice given to a person in charge or in control of the computer require that person to ensure that the programme or data specified in the notice be preserved for the period stated in the notice, which must not exceed 30 days.

(2) Before the period stated in the notice issued under subsection (1) has expired, the Magistrates' Court may, on the Application of the Attorney-General, order that the period stated in the notice be extended for a maximum of up to 90 days from the date of first issue.

(3) Traffic data may be ordered to be preserved under subsection (1) irrespective of whether one or more service providers were involved in the transmission of the data.

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(4) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Interception of traffic data.

378.(1) If traffic data associated with a specified communication or general traffic data is reasonably required for the purposes of a criminal investigation, the Magistrates' Court may, on the application of the Attorney-General, order a person in charge or in control of such data or an internet service provider, to–

(a) collect and record traffic data associated with such communication for the period of time specified in the notice; or

(b) permit and assist any named person with appropriate technical knowledge and expertise to collect and record that data.

(2) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Order for disclosure of stored traffic.

379.(1) If a magistrate is satisfied on an application by the Attorney-General that specified data stored in a computer is reasonably required for the purpose of a criminal investigation or criminal proceedings, the magistrate may issue an order requiring a person in charge or in control of the computer to preserve and disclose to a police officer an amount of traffic data about specified communication sufficient to identify–

(a) the internet service providers; and

(b) the path through which the communication was transmitted.

(2) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Order for production of data.

380.(1) If a magistrate is satisfied on an application by the Attorney-General that a specified computer programme, data, printout of that data or any other information, is reasonably required for the purpose of a criminal investigation or criminal proceedings, the magistrate may issue an order requiring–

(a) a person in charge or in control of a computer to produce to a police officer any computer programme, data or printout of data specified in the order which is stored

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in the computer or in a computer data storage system in that person's possession or control; and

(b) an internet service provider with a place of business in Gibraltar to produce to a police officer any subscriber information specified in the order relating to a service provided by that service provider.

(2) In this section, "subscriber information" means any information in the form of computer data, or in any other form, which is held by a service provider, which relates to subscribers of its service other than traffic or content data, and by which can be established–

(a) the subscriber's identity, telephone or access number, postal address and billing and payment information;

(b) the type of communication service used by the subscriber, the technical provisions relating to it and the period of service; and

(c) any other information on the site relating to the installation of communication equipment.

(3) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Order for interception of electronic communication.

381.(1) If a magistrate is satisfied on an application by the Attorney-General that the contents of electronic communication or any other information connected with such communication are reasonably required for the purpose of a criminal investigation or criminal proceedings, the magistrate may issue an order requiring an internet service provider with a place of business in Gibraltar–

(a) to apply such technical means as are necessary to collect and record; or

(b) to permit or assist any named person with appropriate technical knowledge and expertise to collect and record,

content data associated with specified communications transmitted by means of a computer.

(2) A person who without lawful excuse fails to comply with a requirement under this section commits an offence.

Rights and duties of internet service providers.

382.(1) An internet service provider is not liable under civil or criminal law for the disclosure of any data or other information that he discloses under any of sections 378 to 381.

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(2) An internet service provider who without lawful authority discloses–

(a) the fact that a notice has been given under section 378 or that an order has been issued under section 379, 380 or 381;

(b) anything done under the notice or order; or

(c) any data collected or recorded under the notice or order,

commits an offence.

Saving for certain law enforcement powers.

383.(1) Section 362(1) does not affect the operation of other provisions of this Part or any other enactment relating to powers of inspection, search or seizure.

(2) Nothing designed to indicate a withholding of consent to access to any programme or data from persons as enforcement officers makes access unauthorised for the purposes of section 362(1).

(3) In subsection (2)–

(a) "enforcement officer" means a police officer or other person charged with the duty of investigating offences; and

(b) withholding consent from a person "as" an enforcement officer of any description includes the operation, by the person entitled to control access, of rules whereby enforcement officers of that description are, as such, disqualified from membership of a class of persons who are authorised to have access.

Penalties.

384.(1) A person who commits an offence under section 362, 366 or 367 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.

(2) A person who commits an offence under section 363 or 365 is liable–

(a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;

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(b) on conviction on indictment to imprisonment for 5 years.

(3) A person who commits an offence under section 364 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 10 years.

(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.

(4) A person or a service provider who commits an offence under section 375, 377 to 382 or 388 is liable on summary conviction to the statutory maximum fine.

Offences by and for the benefit of corporate bodies.

385.(1) If an offence under section 362, 363, 364, 365 or 366A which was committed by any person is proved to have been committed for the benefit of a corporate body, irrespective of whether that person acted individually or as the holder of a position in or as the agent of the corporate body, the corporate body commits a similar offence.

(1A) If an offence under section 362, 363, 364, 365 or 366A was committed by a person ("P")–

(a) by reason of the failure, by any director, manager, secretary or other similar officer of the body corporate, to adequately supervise or control P; and

(b) where the corporate body benefitted from the commission of the offence,

the corporate body commits a similar offence.

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(2) A corporate body which commits an offence under subsection (1) or (1A) is liable on summary conviction to twice the statutory maximum fine.

Forfeiture.

386. A court before which a person is convicted of an offence under any of sections 362 to 368 may, in addition to imposing any other penalty, make an order for the forfeiture of any computer, computer programme or data, computer data storage system, or other apparatus, article or thing which is the subject matter of the offence or which was used in connection with the commission of the offence.

Compensation.

387.(1) The court before which a person is convicted of an offence under any of sections 362 to 368 may order the person to pay a sum fixed by the court by way of compensation to any other person for damage caused to that person's computer, computer data storage system, programme or data by the offence for which the person is convicted.

(2) A claim by a person for damage caused by an offence under any of section 362 to 368 is deemed to have been satisfied to the extent of any amount ordered to be paid to him by way of compensation under subsection (1), but the order does not affect any right to a civil remedy for the recovery of damages beyond the amount of such compensation.

(3) Compensation awarded by an order under subsection (1) is recoverable as a civil debt.

Breach of confidentiality.

388.(1) Except for any prosecution for an offence under this Part, for other purposes of this Part, or for or pursuant to an order of a court, a person who has had access to–

(a) any computer, computer data storage system, programme or data during the course of an investigation under this Part;

(b) any record, book, register, correspondence, information, document or any other material during the course of an investigation under this Part;

(c) any confidential information which may have been received from the competent authorities of a State which is a party to the Convention, for the purpose of an investigation under this Part,

must not disclose to any other person, or use for any purpose other than that for which he obtained access or received information, the contents of the material mentioned in paragraphs (a) to (c).

(2) A person who contravenes subsection (1) commits an offence.

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(3) In subsection (1) "the Convention" means the Council of Europe Convention on Cybercrime of 23 November 2001.

Codes of practice.

389.(1) The Minister with responsibility for justice may issue one or more codes of practice relating to the exercise and performance of the powers and duties under this Part.

(2) Without affecting the generality of subsection (1) a code of practice made under this section may make provision limiting–

(a) the class of criminal offences in respect of which warrants and orders under this Part may be applied for;

(b) the class of criminal offences in respect of which notices under this Part may be issued;

(c) the class of person in respect of whom a notice under section 377 or an order under section 378, 379, 380 or 381 may be issued;

(d) the duration of notices under section 377 and orders under section 378, 379, 380 or 381;

(e) the number of persons to whom any of the material or data obtained by virtue of this Part may be disclosed or otherwise made available;

(f) the extent to which any of the material or data may be disclosed or otherwise made available;

(g) the extent to which any of the material or data may be copied;

(h) the number of copies that may be made; and

(i) the use that can be made of the material or data.

(3) The Minister may by order prescribe the circumstances under which and the time within which material or data obtained under this Part must be destroyed, and the penalties for failure to comply with the order.

(4) In issuing a code of practice or an order under this section the Minister must have due regard to the fundamental rights and freedoms under the Constitution and in particular to the right of privacy and the requirement of proportionality in the investigation and prevention of crime.

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(5) The Minister must lay before Parliament every code of practice issued by him under this section.

(6) A person exercising or performing any power or duty in relation to which provision may be made by a code of practice under this section must, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force under this section.

(7) A failure on the part of any person to comply with any provision of a code of practice issued under this section does not of itself render him liable to any criminal or civil proceedings but may be taken into account in deciding on the admissibility and weight of any evidence obtained in contravention of the provision.

(8) A code of practice issued under this section is admissible in evidence in any criminal or civil proceedings.

(9) Where the Minister has issued a code of practice under this section he may, by notice in the Gazette, revoke, replace or amend it (whether by adding to it, deleting from it, or otherwise).

(10) Where the Minister exercises his power to replace or amend a code of practice, pursuant to subsection (9), the replacing or duly amended code of practice, as the case may be, shall be laid before the Parliament.

PART 16
THEFT AND FRAUD

Interpretation of Part.

390.(1) In this Part, unless the context otherwise requires–

"gain" and "loss" are to be construed as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent;

"gain" includes a gain by keeping what one has, as well as a gain by getting what one has not;

"loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has;

"goods", unless the context otherwise requires, includes money and every other description of property except land, and includes things severed from the land by stealing;

"mail bag" "parcel" and "postal packet" have the meanings given by section 2(1) of the Post Office Act;

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"trustee" means a trustee on some express trust created by some deed, will or instrument in writing and includes–

(a) the heir or personal representative of any such trustee and any other person upon or to whom the duty of such trust has devolved or come; and

(b) an executor and administrator and an official receiver, trustee, assignee, liquidator or other like officer acting under any present or future Act relating to joint stock companies or bankruptcy.

(2) Sections 394(1) and 395(1) apply generally for purposes of this Part as they apply for purposes of section 391.

Definition of theft

Basic definition of theft.

391.(1) A person commits theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and "thief" and "steal" is to be construed accordingly.

(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

(3) Sections 392 to 396 have effect as regards the interpretation and operation of this section (and, except as otherwise provided by this Part, apply only for purposes of this section).

"Dishonestly".

392.(1) A person's appropriation of property belonging to another is not to be regarded as dishonest–

(a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person; or

(b) if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it; or

(c) (unless the property came to him as trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) A person's appropriation of property belonging to another may be dishonest even if he is willing to pay for the property.

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"Appropriates".

393.(1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, if he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

(2) If property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by him of rights which he believed himself to be acquiring amounts, by reason of any defect in the transferor's title, to theft of the property.

"Property".

394.(1) "Property" includes money and all other property, real or personal, including things in action and other intangible property.

(2) A person cannot steal land, or things forming part of land and severed from it by him or by his directions, except in the following cases, that is to say–

(a) when he is a trustee or personal representative, or is authorised by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him; or

(b) when he is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or

(c) when, being in possession of the land under a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

(3) For purposes of subsection (2)–

(a) "land" does not include incorporeal hereditaments;

(b) "tenancy" means a tenancy for years or any less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy;

(c) "let" is to be construed accordingly.

(4) A person who picks mushrooms growing wild on any land, or who picks flowers, fruit or foliage from a plant wild on any land, does not (although not in possession of the land) steal what he picks, unless he does it for reward or for sale or other commercial purpose.

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(5) For purposes of subsection (4) "mushroom" includes any fungus, and "plant" includes any shrub or tree.

(6) Wild creatures, tamed or untamed, are to be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcase of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.

"Belonging to another".

395.(1) Property is to be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

(2) If property is subject to a trust, the persons to whom it belongs are to be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust is to be regarded accordingly as an intention to deprive of the property any person having that right.

(3) If a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds is to be regarded (as against him) as belonging to the other.

(4) If a person gets property by another's mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds are to be regarded (as against him) as belonging to the person entitled to restoration, and an intention not to make restoration is to be regarded accordingly as an intention to deprive that person of the property or proceeds.

(5) Property of a corporation sole is to be regarded as belonging to the corporation despite a vacancy in the corporation.

"With the intention of permanently depriving the other of it".

396.(1) A person who appropriates property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other's rights; and a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(2) Without limiting subsection (1), if a person, having possession or control (lawfully or not) of property belonging to another, parts with the property under a condition as to its return

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which he may not be able to perform, this (if done for purposes of his own and without the other's authority) amounts to treating the property as his own to dispose of regardless of the other's rights.

Theft, robbery, burglary, etc.

Theft.

397. A person who commits theft 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 10 years.

Robbery.

398.(1) A person commits robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.

(2) A person who commits robbery, or an assault with intent to rob, is liable on conviction to imprisonment for life.

Burglary.

399.(1) A person commits burglary if–

(a) he enters any building or part of a building as a trespasser and with intent to commit an offence as mentioned in subsection (2); or

(b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

(2) The offences referred to in subsection (1)(a) are–

(a) stealing anything in the building or part of a building in question;

(b) inflicting on any person in the building any grievous bodily harm;

(c) doing unlawful damage to the building or anything in it.

(3) References in subsections (1) and (2) to a building, and the reference in subsection (2) to a building which is a dwelling, applies also to an inhabited vehicle or vessel, and applies to

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any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.

(4) A person who commits burglary 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.

Aggravated burglary.

400.(1) A person commits aggravated burglary if he commits any burglary and at the time has with him any firearm or imitation firearm, any weapon of offence, or any explosive.

(2) For the purpose of subsection (1)–

"firearm" includes an airgun or air pistol;

"imitation firearm" means anything which has the appearance of being a firearm, whether capable of being discharged or not;

"weapon of offence" means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use; and

"explosive" means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him for that purpose.

(3) A person who commits aggravated burglary is liable on conviction to imprisonment for life.

Going equipped for stealing etc.

401.(1) A person commits an offence if, when not at his place of abode, he has with him any article for use in the course of or in connection with any burglary or theft.

(2) 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 3 years.

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(3) If a person is charged with an offence under this section, proof that he had with him any article made or adapted for use in committing a burglary or theft is evidence that he had it with him for such use.

(4) For purposes of this section an offence under section 408 of taking a conveyance is to be treated as theft.

Theft of or from mails outside Gibraltar, and robbery, etc. on such a theft.

402.(1) If a person–

(a) steals or attempts to steal any mail bag or postal packet in the course of transmission to or from Gibraltar, or any of the contents of such a mail bag or postal packet; or

(b) in stealing or with intent to steal any such mail bag or postal packet or any of its contents, commits any robbery, attempted robbery or assault with intent to rob,

then, even if he does so outside Gibraltar, he is guilty of committing or attempting to commit the offence against this Part as if he had done so in Gibraltar, and is liable to be prosecuted, tried and punished in Gibraltar without proof that the offence was committed there.

(2) For the purposes of this section a postal packet is deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed.

(3) In this section "mail bag" and "postal packet" have the same meaning as in the Post Office Act.

Offences relating to stolen goods

Scope of offences relating to stolen goods.

403.(1) The provisions of this Part relating to goods which have been stolen apply whether the stealing occurred in Gibraltar or elsewhere, if the stealing (not being an offence under this Part) amounted to an offence where the goods were stolen; and references to stolen goods are to be construed accordingly.

(2) For purposes of those provisions, references to stolen goods include, in addition to the goods originally stolen and parts of them (whether in their original state or not)–

(a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realisation of the whole or part of the goods stolen or of goods so representing the stolen goods; and

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(b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a handler of the stolen goods or any part of them as being the proceeds of any disposal or realisation of the whole or part of the stolen goods handled by him or of goods so representing them.

(3) No goods are to be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased as regards those goods to have any right to restitution in respect of the theft.

(4) For purposes of the provisions of this Part relating to goods which have been stolen (including subsections (1) to (3) of this section), goods obtained in Gibraltar or elsewhere either by blackmail or, subject to subsection (5), by fraud (within the meaning of section 415) are to be regarded as stolen; and "steal", "theft" and "thief" are to be construed accordingly.

(5) Subsection (1) applies in relation to goods obtained by fraud.

Handling stolen goods.

404.(1) A person commits the offence of handling stolen goods if (otherwise than in the course of the stealing) knowing or believing them to be stolen goods he–

(a) dishonestly receives the goods;

(b) dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person; or

(c) arranges to do (a) or (b).

(2) A person who commits the offence of handling stolen goods 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.

Falsely describing a parcel or package.

405.(1) If–

(a) a person knowingly makes a written statement in respect of any parcel or package intended for or in the course of transmission within or from Gibraltar which is false in any particular; and

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(b) the false statement was made for the purpose of–

(i) protecting or preventing anything from being seized on suspicion of its being stolen or otherwise unlawfully obtained; or

(ii) preventing anything from being produced or made to serve as evidence concerning any offence committed or supposed to be committed in Gibraltar,

the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction, to imprisonment for 6 months or a fine at level 3 on the standard scale;

(b) for a second or subsequent offence - on conviction on indictment, to imprisonment for 2 years.

Advertising rewards for return of goods stolen or lost.

406.(1) If any public advertisement of a reward for the return of any goods which have been stolen or lost uses any words to the effect that–

(a) no questions will be asked;

(b) the person producing the goods will be safe from arrest or inquiry; or

(c) money paid for the purchase of the goods or advanced by way of loan on them will be repaid,

the person advertising the reward and any person who prints or publishes the advertisement commits an offence and is liable on summary conviction to the statutory maximum fine.

(2) A person who takes money or reward, directly or indirectly, for the purpose or on account of helping a person to recover property which has been stolen or lost, in response to an advertisement of the kind described in subsection (1), commits an offence and is liable on summary conviction to the statutory maximum fine.

Search for stolen goods.

407.(1) Subject to subsection (2), if it is made to appear by information on oath before a magistrate that there is reasonable cause to believe that any person has in his custody or possession or on his premises any stolen goods, the magistrate may grant a warrant to search for and seize the same.

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(2) No warrant to search for stolen goods may be addressed to a person other than a police officer except under the authority of an enactment expressly so providing.

(3) If under this section a person is authorised to search premises for stolen goods, he may enter and search the premises accordingly, and may seize any goods he believes to be stolen goods.

(4) This section is to be construed in accordance with section 403.

Offences akin to theft

Taking a conveyance without authority.

408.(1) Subject to subsections (4) and (5), a person commits an offence if, without having the consent of the owner or other lawful authority, he takes any conveyance for his own or another's use or, knowing that any conveyance has been taken without such authority, drives it or allows himself to be carried in or on it.

(2) A person who commits an offence under subsection (1) above 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 3 years.

(3) If on the trial of an indictment for theft the jury are not satisfied that the defendant committed theft, but it is proved that the defendant committed an offence under subsection (1), the jury may find him guilty of the offence under subsection (1), and if he is found guilty, he is liable as he would be liable under subsection (2) on summary conviction.

(4) Subsection (1) does not apply in relation to pedal cycles; but, subject to subsection (5), a person who, without having the consent of the owner or other lawful authority, takes a pedal cycle for his own or another's use, or rides a pedal cycle knowing it to have been taken without such authority, is liable on summary conviction to a fine at level 3 on the standard scale.

(5) A person does not commit an offence under this section by anything done in the belief that he has lawful authority to do it or that he would have the owner's consent if the owner knew of his doing it and the circumstances of it.

(6) For purposes of this section–

"conveyance" means any conveyance constructed or adapted for the carriage of a person or persons whether by land, water or air, except that it does not include a conveyance

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constructed or adapted for use only under the control of a person not carried in or on it, and "drive" is to be construed accordingly; and

"owner", in relation to a conveyance which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the conveyance under that agreement.

Aggravated vehicle-taking.

409.(1) Subject to subsection (3), a person commits aggravated taking of a vehicle if–

(a) he commits an offence under section 408(1) (in this section referred to as a "basic offence") in relation to a mechanically propelled vehicle; and

(b) it is proved that, at any time after the vehicle was unlawfully taken (whether by him or another) and before it was recovered, the vehicle was driven, or injury or damage was caused, in one or more of the circumstances set out in paragraphs (a) to (d) of subsection (2).

(2) The circumstances referred to in subsection (1)(b) are that–

(a) the vehicle was driven dangerously on a road or other public place;

(b) owing to the driving of the vehicle, an accident occurred by which injury was caused to any person;

(c) owing to the driving of the vehicle, an accident occurred by which, damage was caused to any property, other than the vehicle;

(d) damage was caused to the vehicle.

(3) A person is not guilty of an offence under this section if he proves that, as regards any proven driving, injury or damage as referred to in subsection (1)(b), either–

(a) the driving, accident or damage referred to in subsection (2) occurred before he committed the basic offence; or

(b) he was neither in nor on nor in the immediate vicinity of the vehicle when that driving, accident or damage occurred.

(4) A person who commits an offence under this section is liable–

(a) on summary conviction, to imprisonment for 9 months or a fine at level 4 on the standard scale, or both;

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(b) on conviction on indictment, to imprisonment for 5 years;

(c) if it is proved that, in circumstances falling within subsection (2)(b) the accident caused the death of the person concerned – to imprisonment for 14 years.

(5) If a person who is charged with an offence under this section is found not guilty of that offence but it is proved that he committed a basic offence, he may be convicted of the basic offence.

(6) If by virtue of subsection (5) a person is convicted of a basic offence before the Supreme Court, that court has the same powers and duties as the Magistrates' Court would have had on convicting him of such an offence.

(7) For the purposes of this section a vehicle is driven dangerously if–

(a) it is driven in a way which falls far below what would be expected of a competent and careful driver; and

(b) it would be obvious to a competent and careful driver that driving the vehicle in that way would be dangerous.

(8) For the purposes of this section a vehicle is recovered when it is restored to its owner or to other lawful possession or custody; and in this subsection "owner" has the same meaning as in section 408.

Interfering with vehicles.

410.(1) A person commits the offence of vehicle interference if he interferes with a motor vehicle or trailer or with anything carried in or on a motor vehicle or trailer with the intention that an offence specified in subsection (2) below will be committed by himself or some other person.

(2) The offences mentioned in subsection (1) are–

(a) theft of the motor vehicle or trailer or part of it;

(b) theft of anything carried in or on the motor vehicle or trailer;

(c) an offence against section 408,

and, if it is shown that a person accused of an offence under this section intended that one of those offences should be committed, it is immaterial that it cannot be shown which it was.

(3) A person who commits an offence under this section is liable on summary conviction to imprisonment for 9 months or to a fine at level 4 on the standard scale, or both.

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(4) In this section "motor vehicle" and "trailer" have the meanings given by section 2 of the Traffic Act.

Removing articles from places open to the public.

411.(1) Subject to subsections (2) to (4), if the public have access to a building in order to view the building or part of it, or a collection or part of a collection housed in it, any person who without lawful authority removes from the building or its grounds the whole or part of any article displayed or kept for display to the public in the building or that part of it or in its grounds commits an offence.

(2) For the purpose of subsection (1)–

(a) "collection" includes a collection got together for a temporary purpose; but

(b) references in this section to a collection do not apply to a collection made or exhibited for the purpose of effecting sales or other commercial dealings.

(3) For purposes of subsection (1)–

(a) it is immaterial that the public's access to a building is limited to a particular period or particular occasion; but

(b) if anything removed from a building or its grounds is there otherwise than as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public, the person removing it does not thereby commit an offence under this section unless he removes it on a day when the public have access to the building as mentioned in that subsection.

(4) A person does not commit an offence under this section if he believes that he has lawful authority for the removal of the thing in question or that he would have it if the person entitled to give it knew of the removal and the circumstances of it.

(5) 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 5 years.

Making off without payment.

412.(1) Subject to subsection (3), a person who, knowing that payment on the spot for any goods supplied or service done is required or expected from him, dishonestly makes off

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without having paid as required or expected and with intent to avoid payment of the amount due commits an offence.

(2) For purposes of this section "payment on the spot" includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.

(3) Subsection (1) above does not apply in cases in which the supply of the goods or the doing of the service is contrary to law, or in which the service done is such that payment is not legally enforceable.

(4) A person who commits an offence under this section is liable–

(a) on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both;

(b) on conviction on indictment to imprisonment for 2 years.

Abstracting of electricity.

413.(1) A person who dishonestly–

(a) uses without due authority; or

(b) causes to be wasted or diverted,

any electricity, commits an offence.

(2) A person who commits an offence under this section is liable–

(a) on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both;

(b) on conviction on indictment to imprisonment for 5 years.

Blackmail.

414.(1) A person who, with a view to gain for himself or another or with intent to cause loss to another, makes any unwarranted demand with menaces, is guilty of blackmail and is liable on conviction to imprisonment for 14 years.

(2) For the purpose of this section, a demand with menaces is unwarranted unless the person making it does so in the belief that—

(a) he has reasonable grounds for making the demand; and

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(b) the use of the menaces is a proper means of reinforcing the demand.

(3) The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand.

Fraud

Offence of fraud.

415.(1) A person commits fraud if he is in breach of any of sections 416, 417 or 418 (which provide for different ways of committing the offence).

(2) A person who commits fraud 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 10 years.

Fraud by false representation.

416.(1) A person is in breach of this section if he–

(a) dishonestly makes a false representation; and

(b) intends, by making the representation–

(i) to make a gain for himself or another; or

(ii) to cause loss to another or to expose another to a risk of loss.

(2) A representation is false if–

(a) it is untrue or misleading; and

(b) the person making it knows that it is, or might be, untrue or misleading.

(3) In this section, "representation" means any representation as to fact or law, including a representation as to the state of mind of–

(a) the person making the representation; or

(b) any other person.

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(4) For the purposes of this section a representation may be–

(a) express or implied;

(b) regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

Fraud by failing to disclose information.

417. A person is in breach of this section if he–

(a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose; and

(b) intends, by failing to disclose the information–

(i) to make a gain for himself or another; or

(ii) to cause loss to another or to expose another to a risk of loss.

Fraud by abuse of position.

418.(1) A person is in breach of this section if he–

(a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person;

(b) dishonestly abuses that position; and

(c) intends, by means of the abuse of that position–

(i) to make a gain for himself or another; or

(ii) to cause loss to another or to expose another to a risk of loss.

(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

Possession etc. of articles for use in frauds.

419.(1) A person commits an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.

(2) A person who commits an offence under this section is liable–

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(a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;

(b) on conviction on indictment to imprisonment for 5 years.

Making or supplying articles for use in frauds.

420.(1) A person commits an offence if he makes, adapts, supplies or offers to supply any article–

(a) knowing that it is designed or adapted for use in the course of or in connection with fraud; or

(b) intending it to be used to commit, or assist in the commission of, fraud.

(2) 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 10 years.

Participating in fraudulent business carried on by sole trader etc.

421.(1) A person who is knowingly a party to the carrying on of a business to which this section applies commits an offence.

(2) This section applies to a business which is carried on–

(a) by a person who is outside the reach of section 315 of the Companies Act (responsibility of directors for fraudulent trading); and

(b) with intent to defraud creditors of any person or for any other fraudulent purpose.

(3) 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 10 years.

Obtaining services dishonestly.

422.(1) A person commits an offence if he obtains services for himself or

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another–

(a) by a dishonest act; and

(b) in breach of subsection (2).

(2) A person obtains services in breach of this subsection if–

(a) they are made available on the basis that payment has been, is being or will be made for or in respect of them;

(b) he obtains them without any payment having been made for or in respect of them or without payment having been made in full; and

(c) when he obtains them, he knows that they–

(i) are being made available on the basis described in paragraph (a), or

(ii) might be so made available,

but intends that payment will not be made, or will not be made in full.

(3) 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 5 years.

Fraud: Definitions.

423.(1) For the purposes of sections 416 to 418, "gain" and "loss"–

(a) extend only to gain or loss in money or other property;

(b) include any such gain or loss whether temporary or permanent;

and in this context, "property" means any property whether real or personal (including things in action and other intangible property).

(2) For the purposes of–

(a) sections 419 and 420; and

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(b) section 5(7) of the Criminal Procedure and Evidence Act 2011; (meaning of "prohibited articles" for the purposes of stop and search powers),

so far as they relate to articles for use in the course of or in connection with fraud, "article" includes any programme or data held in electronic form.

Fraud: Evidence.

424.(1) A person is not to be excused from–

(a) answering any question put to him in proceedings relating to property; or

(b) complying with any order made in proceedings relating to property,

on the ground that doing so may incriminate him or his spouse of an offence under sections 415 to 422 or a related offence.

(2) In proceedings for an offence under sections 415 to 422 or a related offence, a statement or admission made by the person in–

(a) answering such a question; or

(b) complying with such an order,

is not admissible in evidence against him or (unless they married after the making of the statement or admission) his spouse.

(3) In this section–

"proceedings relating to property" means any proceedings for–

(a) the recovery or administration of any property;

(b) the execution of a trust; or

(c) an account of any property or dealings with property,

"property" means money or other property whether real or personal (including things in action and other intangible property);

"related offence" means–

(a) conspiracy to defraud;

(b) any other offence involving any form of fraudulent conduct or purpose.

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Offences akin to fraud

False accounting.

425.(1) A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another–

(a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or

(b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular,

commits an offence.

(2) A person who commits an offence under subsection (1) 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.

(3) For purposes of this section a person who–

(a) makes or concurs in making in an account or other document an entry which is or may be misleading, false or deceptive in a material particular; or

(b) omits or concurs in omitting a material particular from an account or other document,

is to be treated as falsifying the account or document.

False statements by company directors, etc.

426.(1) An officer of a corporate body or unincorporated association (or person purporting to act as such) who, with intent to deceive members or creditors of the corporate body or association about its affairs, publishes or concurs in publishing a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular, commits an offence.

(2) A person who commits an offence under subsection (1) is liable–

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(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.

(3) For the purposes of this section a person who has entered into a security for the benefit of a corporate body or association is to be treated as a creditor of it.

(4) If the affairs of a corporate body or association are managed by its members, this section applies to any statement which a member publishes or concurs in publishing in connection with his functions of management as if he were an officer of the corporate body or association.

Suppression etc. of documents.

427.(1) A person who dishonestly, with a view to gain for himself or another, or with intent to cause loss to another, destroys, defaces or conceals–

(a) any valuable security;

(b) any will or other testamentary document; or

(c) any original document of or belonging to, or filed or deposited in, any court of justice or any government department,

commits an offence.

(2) A person who commits an offence under subsection (1) 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.

(3) In this section, "valuable security" means any document–

(a) creating, transferring, surrendering or releasing any right to, in or over property;

(b) authorising the payment of money or delivery of any property; or

(c) evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.

Dishonestly retaining a wrongful credit.

428.(1) A person commits an offence if–

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(a) a wrongful credit has been made to an account kept by him or in respect of which he has any right or interest;

(b) the person knows or believes that the credit is wrongful; and

(c) he dishonestly fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled.

(2) A credit to an account is wrongful to the extent that it derives from–

(a) theft;

(b) blackmail;

(c) fraud (contrary to section 415); or

(d) stolen goods.

(3) In determining whether a credit to an account is wrongful, it is immaterial whether the account is overdrawn before or after the credit is made.

(4) In this section–

"account" means an account kept with–

(a) a bank;

(b) a person carrying on a business which falls within subsection (5); or

(c) an issuer of electronic money (as defined in section 2 of the Financial Services (Banking) Act);

"credit" means a credit of an amount of money;

"stolen goods" include money which is dishonestly withdrawn from any account to which a wrongful credit has been made, but only to the extent that the money derives from the credit;

(5) A business falls within this subsection if–

(a) in the course of the business money received by way of deposit is lent to others; or

(b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

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(6) For purpose of subsection (5)–

(a) references to a deposit must be read with section 4 of the Financial Services (Banking) Act;

(b) any restriction on the meaning of "deposit" which arises from the identity of the person making it is to be disregarded;

(c) all the activities which a person carries on by way of business are to be regarded as a single business carried on by him; and

(d) "money" includes money expressed in a currency other than sterling.

(7) 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 7 years.

Miscellaneous provisions

Procedure and evidence on charge of theft or handling stolen goods.

429.(1) Any number of persons may be charged in one indictment, with reference to the same theft, with having at different times or at the same time handled all or any of the stolen goods, and the persons so charged may be tried together.

(2) On the trial of 2 or more persons indicted for jointly handling any stolen goods, the jury may find any of the defendants guilty if the jury are satisfied that the person handled all or any of the stolen goods, whether or not he did so jointly with the other defendant or any of them.

(3) If a person is being proceeded against for handling stolen goods (but not for any offence other than handling stolen goods), then at any stage of the proceedings, if evidence has been given of his having or arranging to have in his possession the goods the subject of the charge, or of his undertaking or assisting in, or arranging to undertake or assist in, their retention, removal, disposal or realisation, the following evidence is admissible for the purpose of proving that he knew or believed the goods to be stolen goods–

(a) evidence that he has had in his possession, or has undertaken or assisted in the retention, removal, disposal or realisation of, stolen goods from any theft taking place not earlier than 12 months before the offence charged; and

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(b) if 7 days' notice in writing has been given to him of the intention to prove the conviction - evidence that he has within the 5 years preceding the date of the offence charged been convicted of theft or of handling stolen goods.

(4) In any proceedings for the theft of anything in the course of transmission (whether by post or otherwise), or for handling stolen goods from such a theft, a statutory declaration made by any person that he despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when despatched or received by him were in a particular state or condition, is admissible as evidence of the facts stated in the declaration, subject to the following conditions–

(a) a statutory declaration is only admissible if and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and

(b) a statutory declaration is only admissible if at least 7 days before the hearing or trial a copy of it has been given to the person charged, and he has not, at least 3 days before the hearing or trial or within such further time as the court may in special circumstances allow, given the prosecutor written notice requiring the attendance at the hearing or trial of the person making the declaration.

(5) This section is to be construed in accordance with section 403.

Spouses.

430.(1) This Part applies in relation to the parties to a marriage, and to property belonging to the wife or husband whether or not by reason of an interest derived from the marriage, as it would apply if they were not married and any such interest subsisted independently of the marriage.

(2) Subject to subsection (3), a person has the same right to bring proceedings against that person's wife or husband for an offence under this Part as if they were not married, and a person bringing any such proceedings is competent to give evidence for the prosecution at every stage of the proceedings.

(3) Subject to subsection (5), proceedings against a person for any offence of stealing property which at the time of the offence belongs to that person's wife or husband, or for any attempt, encouraging or assisting the commission of or conspiracy to commit such an offence, may not be commenced except by, or with the consent of, the Attorney-General.

(4) In subsection (3), the term "proceedings" includes–

(a) an arrest without warrant made by the wife or husband; and

(b) a warrant of arrest issued on an information laid by the wife or husband.

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(5) Subsection (3) does not apply to proceedings against a person for an offence–

(a) if that person is charged with committing the offence jointly with the wife or husband;

(b) if by virtue of any judicial decree or order (wherever made) that person and the wife or husband are at the time of the offence under no obligation to cohabit.

431. *Not used.*

PART 17
FORGERY AND COUNTERFEITING

Interpretation of Part.

432. In this Part, unless the context otherwise requires–

"currency note" means any note–

(a) which–

(i) has been issued by the relevant authority in Gibraltar or the United Kingdom;

(ii) is or has been customarily used as money in Gibraltar; and

(iii) is payable on demand; or

(b) which–

(i) has been issued by the relevant authority in some country other than Gibraltar or the United Kingdom; and

(ii) is customarily used as money in that or another country;

"postal operator" means a person who provides the service of conveying postal packets from one place to another by post or any of the incidental services of receiving, collecting, sorting and delivering such packets;

"protected coin" means any coin which–

(a) is customarily used as money in any country; or

(b) is specified in an order made by the relevant authority for the purposes of this Part;

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"relevant authority", in relation to a coin or a currency note of any particular description, means the authority empowered by law to issue those coins, or notes of that description, as the case may be;

"revenue stamp" means a stamp for denoting any duty or fee, whether an adhesive stamp or a stamp impressed by means of a die;

"share certificate" means an instrument entitling or evidencing the title of a person to a share or interest–

(a) in any public stock, annuity, fund or debt of any government or state, including a state which forms part of another state; or

(b) in any stock, fund or debt of a body (whether corporate or unincorporated) established in Gibraltar or elsewhere.

Forgery and kindred offences

Meaning of "instrument".

433.(1) Subject to subsection (2), in this Part "instrument" means–

(a) any document, whether of a formal or informal character;

(b) any stamp issued or sold by a postal operator;

(c) any revenue stamp; and

(d) any disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic or other means.

(2) A currency note as defined in section 432 is not an instrument for the purposes of this Part.

(3) A mark denoting payment of postage which the postal operator authorises to be used instead of an adhesive stamp is to be treated for the purposes of this Part as if it were a stamp issued by the postal operator concerned.

Meaning of "false" and "making".

434.(1) An instrument is false for the purposes of this Part if it purports–

(a) to have been made in the form in which it is made by a person who did not in fact make it in that form;

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(b) to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form;

(c) to have been made in the terms in which it is made by a person who did not in fact make it in those terms;

(d) to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms;

(e) to have been altered in any respect by a person who did not in fact alter it in that respect;

(f) to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect;

(g) to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered; or

(h) to have been made or altered by an existing person but he did not in fact exist.

(2) A person is to be treated for the purposes of this Part as making a false instrument if he alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).

Meaning of "prejudice" and "induce".

435.(1) Subject to subsections (2) and (4), for the purposes of this Part an act or omission intended to be induced is to a person's prejudice if, and only if, it is one which, if it occurs–

(a) will result in–

(i) his temporary or permanent loss of property;

(ii) his being deprived of an opportunity to earn remuneration or greater remuneration; or

(iii) his being deprived of an opportunity to gain a financial advantage otherwise than by way of remuneration; or

(b) will result in somebody being given an opportunity–

(i) to earn remuneration or greater remuneration from him; or

(ii) to gain a financial advantage from him otherwise than by way of remuneration; or

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(c) will be the result of his having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with his performance of any duty.

(2) Doing something that a person has an enforceable duty to do and omitting to do something that a person is not entitled to do are to be disregarded for the purposes of this Part.

(3) In this Part references to inducing somebody to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, include references to inducing a machine to respond to the instrument or copy as if it were a genuine instrument or, as the case may be, a copy of a genuine one.

(4) If subsection (3) applies, the act or omission intended to be induced by the machine responding to the instrument or copy is to be treated as an act or omission to a person's prejudice.

(5) In this section, "loss" includes not getting what one might get as well as parting with what one has.

The offence of forgery.

436. A person who makes a false instrument, with the intention that he or another will use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, commits an offence.

The offence of copying a false instrument.

437. A person who makes a copy of an instrument which is, and which he knows or believes to be, a false instrument, with the intention that he or another will use it to induce somebody to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, commits an offence.

The offence of using a false instrument.

438. A person who uses an instrument which is, and which he knows or believes to be, false, with the intention of inducing somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, commits an offence.

The offence of using a copy of a false instrument.

439. A person who uses a copy of an instrument which is, and which he knows or believes to be, a false instrument, with the intention of inducing somebody to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, commits an offence.

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Offences relating to money orders, share certificates, passports, etc.

440.(1) A person who has in his custody or under his control an instrument to which this section applies which is, and which he knows or believes to be, false, with the intention that he or another will use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, commits an offence.

(2) A person who has in his custody or under his control, without lawful authority or excuse, an instrument to which this section applies which is, and which he knows or believes to be, false, commits an offence.

(3) A person who makes or has in his custody or under his control a machine or implement, or paper or any other material, which to his knowledge is or has been specially designed or adapted for the making of an instrument to which this section applies, with the intention–

(a) that he or another will make an instrument to which this section applies which is false; and

(b) that he or another will use the instrument to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice,

commits an offence.

(4) A person who makes or has in his custody or under his control any machine, implement, paper or material as described in subsection (3), without lawful authority or excuse, commits an offence.

(5) The instruments to which this section applies are–

(a) money orders;

(b) postal orders;

(c) Gibraltar postage stamps;

(d) revenue stamps;

(e) share certificates;

(f) passports and documents which can be used instead of passports;

(g) identity cards issued under the Civilians Registration Act;

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(h) cheques and other bills of exchange;

(i) travellers' cheques;

(j) bankers' drafts;

(k) promissory notes;

(l) cheque cards;

(m) debit cards;

(n) credit cards;

(o) certified copies relating to an entry in a register of births, adoptions, marriages or deaths and issued by the Marriage Registrar; and

(p) certificates relating to entries in such registers.

(6) The Minister responsible for finance may by order declare other monetary instruments as instruments to which this section applies.

Abolition of offence of forgery at common law.

441. The offence of forgery at common law is abolished for all purposes except in relation to offences committed before the commencement of this Part.

Counterfeiting and kindred offences

Offences of counterfeiting notes and coins.

442.(1) A person who makes a counterfeit of a currency note or of a protected coin, intending that he or another will pass or tender it as genuine, commits an offence.

(2) A person who, without lawful authority or excuse, makes a counterfeit of a currency note or of a protected coin, commits an offence.

Offences of passing, etc. counterfeit notes and coins.

443.(1) A person who–

(a) passes or tenders as genuine anything which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin; or

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(b) delivers to another anything which is, and which he knows or believes to be, such a counterfeit, intending that the person to whom it is delivered or another will pass or tender it as genuine,

commits an offence.

(2) A person who, without lawful authority or excuse, delivers to another anything which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin, commits an offence.

Offences involving the custody or control of counterfeit notes and coins.

444.(1) A person who has in his custody or under his control anything which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin, intending either to pass or tender it as genuine or to deliver it to another with the intention that he or another will pass or tender it as genuine, commits an offence.

(2) A person who, without lawful authority or excuse, has in his custody or under his control anything which is, and which he knows or believes to be, a counterfeit of a currency note or of a protected coin, commits an offence.

(3) It is immaterial for the purposes of subsections (1) and (2)–

(a) that a coin or note is not in a fit state to be passed or tendered; or

(b) that the making or counterfeiting of a coin or note has not been finished or perfected.

Offences involving the making, etc. of counterfeiting materials and implements.

445.(1) A person who–

(a) makes; or

(b) has in his custody or under his control,

anything which he intends to use, or to permit any other person to use, for the purpose of making a counterfeit of a currency note or of a protected coin with the intention that it be passed or tendered as genuine, commits an offence.

(2) A person who, without lawful authority or excuse–

(a) makes; or

(b) has in his custody or under his control,

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anything which, to his knowledge, is or has been specially designed or adapted for the making of a counterfeit of a currency note, commits an offence.

(3) Subject to subsection (4), a person who–

(a) makes; or

(b) has in his custody or under his control,

any implement which, to his knowledge, is capable of imparting to any thing a resemblance–

(i) to the whole or part of either side of a protected coin; or

(ii) to the whole or part of the reverse of the image on either side of a protected coin,

commits an offence.

(4) It is a defence for a person charged with an offence under subsection (3) to show that he–

(a) made the implement or, as the case may be, had it in his custody or under his control, with the written consent of the relevant authority; or

(b) had lawful authority otherwise than by virtue of paragraph (a), or a lawful excuse, for making it or having it in his custody or under his control.

Meaning of "counterfeit".

446.(1) For the purposes of this Part a thing is a counterfeit of a currency note or of a protected coin if–

(a) it is not a currency note or a protected coin but resembles a currency note or protected coin (whether on one side only or on both) to such an extent that it is reasonably capable of passing for a currency note or protected coin of that description; or

(b) it is a currency note or protected coin which has been so altered that it is reasonably capable of passing for a currency note or protected coin of some other description.

(2) For the purpose of this Part–

(a) a thing consisting of one side only of a currency note, with or without the addition of other material is a counterfeit of such a note;

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(b) a thing consisting–

(i) of parts of two or more currency notes; or

(ii) of parts of a currency note, or of parts of two or more currency notes, with the addition of other material,

is capable of being a counterfeit of a currency note.

(3) References in this Part to passing or tendering a counterfeit of a currency note or a protected coin are not to be construed as confined to passing or tendering it as legal tender.

The offence of reproducing currency notes.

447.(1) A person who reproduces any currency note or any part of a currency note, without the previous consent in writing of the relevant authority, commits an offence.

(2) Subsection (1) applies to reproduction on any substance whatsoever, and whether or not on the correct scale.

Offences of making, etc. imitation protected coins.

448.(1) A person who–

(a) makes an imitation protected coin in connection with a scheme intended to promote the sale of any product or the making of contracts for the supply of any service; or

(b) sells or distributes imitation protected coins in connection with any such scheme, or has imitation coins in his custody or under his control with a view to such sale or distribution,

commits an offence, unless the relevant authority has previously consented in writing to the sale or distribution of such imitation coins in connection with that scheme.

(2) In this section "imitation protected coin" means any thing which resembles a protected coin in shape, size and the substance of which it is made.

Prohibition of importation or exportation of counterfeit notes and coins.

449.(1) A person who imports, lands, loads or unloads a counterfeit of a currency note or of a protected coin without the consent of the relevant authority commits an offence.

(2) A person who exports a currency note or protected coin without the consent of the relevant authority commits an offence.

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(3) Without affecting subsection (1) or (2), the importation or exportation of a counterfeit of a currency note or of a protected coin without the consent of the relevant authority is prohibited for purposes of the Imports and Exports Act 1986.

Penalties and powers

Penalties for forgery offences.

450.(1) A person who commits an offence under any of sections 436, 437, 438, 439 or 440(1) 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 10 years.

(2) A person who commits an offence under section 440(2) or (4) 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.

Penalties for counterfeiting offences.

451.(1) A person who commits an offence under any of sections 442(1), 443(1), 444(1) or 445(1) 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 10 years.

(2) A person who commits an offence under any of sections 442(2), 443(2), 444(2), 445(2) or (3) or 449(1) or (2) 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.

(3) A person who commits an offence under section 447 or 448 is liable–

(a) on summary conviction, to the statutory maximum fine;

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(b) on conviction on indictment, to a fine.

Powers of search and seizure.

452.(1) If it appears to a magistrate, from information given him on oath, that there is reasonable cause to believe that a person has in his custody or under his control–

(a) anything which he or another has used or intends to use for making a false instrument or copy of a false instrument, contrary to section 436 or 437;

(b) any false instrument or copy of a false instrument which he or another has used, or intends to use, contrary to section 438 or 439; or

(c) anything custody or control of which without lawful authority or excuse is an offence under section 440,

the magistrate may issue a warrant authorising a police officer to search for and seize the object in question, and for that purpose to enter any premises specified in the warrant.

(2) If it appears to a magistrate, from information given him on oath, that there is reasonable cause to believe that a person has in his custody or under his control–

(a) anything which is a counterfeit of a currency note or of a protected coin, or which is a reproduction made in contravention of section 447 or 448; or

(b) anything which he or another has used, or intends to use, for the making of any such counterfeit, or the making of any reproduction in contravention of section 447 or 448,

the magistrate may issue a warrant authorising a police officer to search for and seize the object in question, and for that purpose to enter any premises specified in the warrant.

(3) A police officer may at any time after the seizure of any object suspected of falling within subsection (1)(a), (b) or (c) or subsection (2)(a) or (b) (whether the seizure was effected by virtue of a warrant under that subsection or otherwise) apply to the Magistrates' Court for an order under this subsection with respect to the object; and the court, if it is satisfied–

(a) that the object in fact falls within any of those paragraphs; and

(b) that it is conducive to the public interest to do so,

may make such order as it thinks fit for the forfeiture of the object and its subsequent destruction or disposal.

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Power of forfeiture.

453.(1) Subject to subsection (2), the court by or before which a person is convicted of an offence under this Part may order any object shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order.

(2) The court must not order any object to be forfeited under subsection (1) if a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

(3) Without limiting subsections (1) and (2), the powers conferred on the court by those subsections include power to direct that any object is to be passed to an authority with power to issue notes or coins or to any person authorised by such an authority to receive the object.

Obligations of financial institutions.

454.(1) This section applies to–

(a) undertakings carrying out relevant financial business as defined by section 8 of the Crime (Money Laundering and Proceeds) Act 2007;

(b) any other institution or person engaged in the sorting and distribution to the public of notes and coins as a professional activity.

(2) If a business, institution or person to which this section applies receives any note or coin which it knows to be or has sufficient reason to believe is forged or counterfeit, it must–

(a) withdraw the note or coin from circulation;

(b) forthwith notify the Royal Gibraltar Police of all relevant facts;

and

(c) hand over the relevant note or coin to the Commissioner of Currency appointed under section 3 of the Currency Notes Act, or some other person authorised by him to act on his behalf, or to any police officer.

(3) A person that contravenes any provision of subsection (2) commits an offence and is liable–

(a) on summary conviction to the statutory maximum fine;

(b) on conviction on indictment to imprisonment for 2 years.

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(4) If an offence under this section is committed by a partnership, or by an unincorporated association other than a partnership, and is proved–

(a) to have been committed with the consent or connivance of; or

(b) to be attributable to any neglect on the part of,

a partner in the partnership or (as the case may be) a person concerned in the management or control of the association, he, as well as the partnership or association, commits the offence and is liable to be proceeded against and punished accordingly.

(5) This section does not affect any other law relating to the criminal liability of corporate bodies or partnerships, or the application of any regulatory or licensing provision or sanction to any relevant business, institution or person.

Counterfeiting of Euros

Offences concerning Euro currency notes and coins.

455.(1) In respect of an offence concerning the counterfeiting of a Euro currency note or coin, if–

(a) an offence would have been committed under any of sections 442 to 445, 447 or 448 if all the relevant conduct had taken place within Gibraltar; and

(b) part of the relevant conduct took place in Gibraltar,

the offence may be treated as having wholly taken place in Gibraltar.

(2) In subsection (1) a reference to an offence includes a reference to an attempt to commit the offence, aiding and abetting the offence, assisting an offender, concealing an offence or providing false information about an offence.

PART 18
PERJURY AND FALSE STATEMENTS

Interpretation of Part.

456.(1) For the purposes of this Part, the forms and ceremonies used in administering an oath are immaterial, if–

(a) the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question; and

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(b) the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection, or has declared to be binding on him.

(2) The expression "judicial proceedings" includes proceedings before the European Court or any other court, tribunal or person having by law power to hear, receive, and examine evidence on oath.

(3) "European Court" means the Court of Justice of the European Union.

Perjury

Perjury in judicial proceedings.

457.(1) A person lawfully sworn as a witness or as an interpreter in any judicial proceedings who wilfully makes a statement material in the proceeding, which he knows to be false or does not believe to be true, commits perjury, and is liable on conviction to imprisonment for 7 years.

(2) If a statement made for the purposes of any judicial proceedings is not made before the tribunal itself, but is made on oath before a person authorised by law to administer an oath to the person who makes the statement, and to record or authenticate the statement, it is, for the purposes of this section, to be treated as having been made in judicial proceedings.

(3) A statement made by a person lawfully sworn in Gibraltar for the purposes of any judicial proceedings in a country or territory outside Gibraltar is, for the purposes of this section, to be treated as a statement made in judicial proceedings in Gibraltar.

(4) If, for the purposes of judicial proceedings in Gibraltar, a person is lawfully sworn under the authority of any enactment–

(a) in any part of Her Majesty's dominions; or

(b) before a British officer in a foreign country,

a statement made by the person (unless the enactment under which it was made otherwise specifically provides) is to be treated for the purposes of this section as having been made in the judicial proceedings in Gibraltar for the purposes of which it was made.

(5) The question whether a statement in respect of which perjury is alleged was material is a question of law to be determined by the court of trial.

Perjury in the European Court, etc.

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458.(1) A person who, in sworn evidence before the European Court, makes any statement which he knows to be false or does not believe to be true, commits an offence and may be proceeded against and punished as for an offence under section 457(1).

(2) For the purposes of this section, it is immaterial whether the person charged is or is not a Commonwealth citizen.

False statements

Penalty for giving false unsworn evidence.

459.(1) This section applies when a person gives unsworn evidence in criminal proceedings pursuant to section 342 of the Criminal Procedure and Evidence Act 2011 (Reception of unsworn evidence).

(2) A person who wilfully gives false evidence in such circumstances that, had the evidence been given on oath, he would have been guilty of perjury, commits an offence and is liable on summary conviction to imprisonment for 12 months, or the statutory maximum fine, or both.

(3) In relation to a person under the age of 14, subsection (2) has effect as if for the words "statutory maximum fine" there were substituted "a fine at level 3 on the standard scale".

False written statements tendered in evidence.

460. A person who in a written statement tendered in evidence in criminal proceedings by virtue of section 405 of the Criminal Procedure and Evidence Act 2011 wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, commits an offence and is liable–

(a) on summary conviction to imprisonment for 6 months or the statutory maximum fine;

(b) on conviction on indictment to imprisonment for 2 years.

False unsworn statements under the Evidence Act.

461. A person who, in giving any testimony (either orally or in writing) otherwise than on oath, when required to do so by an order under section 10 of the Evidence Act, makes a statement–

(a) which he knows to be false in a material particular; or

(b) which is false in a material particular and which he does not believe to be true,

commits an offence and is liable–

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(i) on summary conviction to imprisonment for 12 months or the statutory maximum fine;

(ii) on conviction on indictment to imprisonment for 2 years.

False statements on oath made otherwise than in judicial proceedings.

462. A person who–

(a) being required or authorised by law to make any statement on oath for any purpose, and being lawfully sworn (otherwise than in judicial proceedings) wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true; or

(b) wilfully uses any false affidavit for the purposes of the Bills of Sale Act,

commits an offence and is liable on conviction to imprisonment for 7 years.

False statements, etc. with reference to marriage.

463.(1) A person who, for the purpose of procuring a marriage, or a certificate or licence for marriage, knowingly and wilfully makes a false oath, or makes or signs a false declaration, notice or certificate, required under any enactment for the time being in force relating to marriage, commits an offence.

(2) A person who knowingly and wilfully makes, or knowingly and wilfully causes to be made, for the purpose of being inserted in any register of marriage, a false statement as to any particular required by law to be known and registered relating to any marriage, commits an offence.

(3) A person who forbids any marriage or the issue of any certificate or licence for marriage by falsely representing himself to be a person–

(a) whose consent to the marriage is required by law; or

(b) who is authorised to forbid the issue of such a certificate,

knowing such representation to be false, commits an offence.

(4) A person who commits an offence under this section is liable–

(a) on summary conviction to imprisonment for 4 months or a fine at level 2 on the standard scale, or both;

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(b) on conviction on indictment to imprisonment for 2 years.

False statements, etc. as to births or deaths.

464.(1) A person who knowingly and wilfully–

(a) makes any false answer to any question put by the Registrar of Births and Deaths relating to the particulars required to be registered concerning any birth or death;

(b) gives to the Registrar any false information concerning any birth or death or the cause of any death;

(c) makes any false certificate or declaration under or for the purposes of any enactment relating to the registration of births or deaths;

(d) knowing any such certificate or declaration to be false, uses it as true or gives or sends it as true to any person;

(e) makes, gives or uses, any false statement or declaration as to a child born alive as having been still-born, or as to the body of a deceased person or a still-born child in any coffin;

(f) falsely pretends that any child born alive was still-born; or

(g) makes any false statement with intent to have it inserted in any register of births or deaths,

commits an offence.

(2) A person who commits an offence under subsection (1) 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.

Time limit for proceedings under sections 463 and 464.

465.(1) A prosecution on indictment for an offence under section 464 may not be commenced more than 3 years after the commission of the offence.

(2) Summary proceedings for an offence under section 463 or 464 may, regardless of any provision of the Criminal Procedure and Evidence Act 2011, be instituted at any time within 12 months after the commission of the offence.

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False statutory declarations and other false statements.

466.(1) A person who knowingly and wilfully makes (otherwise than on oath) a statement that is false in a material particular commits an offence if the statement is made–

(a) in a statutory declaration;

(b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which he is authorised or required to make, attest or verify, by any enactment then in force in Gibraltar; or

(c) in any written statement which he is required to make or makes for the purposes of or in connection with any civil proceedings;

(d) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment,

commits an offence.

(2) A person who commits an offence under subsection (1) 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.

False declarations, etc. to obtain registration, etc. for carrying on a vocation.

467.(1) A person who–

(a) procures or attempts to procure himself to be registered on any register or roll kept under or in pursuance of any enactment then in force in Gibraltar of persons qualified by law to practise any vocation or calling; or

(b) procures or attempts to procure a certificate of the registration of any person on any such register or roll,

by wilfully making or producing or causing to be made or produced either verbally or in writing, any declaration, certificate, or representation which he knows to be false or fraudulent, commits an offence.

(2) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction to a fine at level 2 on the standard scale;

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(b) on conviction on indictment to imprisonment for 12 months.

False statement to procure passport.

468. A person who, for the purpose of procuring a passport for himself or for any other person, makes a statement which is to his knowledge untrue, commits an offence and is liable–

(a) on summary conviction to imprisonment for 6 months or a fine at level 3 on the standard scale, or both;

(b) on conviction on indictment to imprisonment for 2 years.

Offences under the British Nationality Act 1981.

469.(1) A person who, for the purpose of procuring anything to be done or not to be done under the British Nationality Act 1981, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, commits an offence and is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

(2) A person who fails to comply with any requirement imposed on him by regulations made under the British Nationality Act 1981 with respect to the delivering up of certificates of naturalization, commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

Miscellaneous provisions

Corroboration.

470.(1) A person is not liable to be convicted of any offence under this Part (except an offence under section 468 or 469) or for any offence declared by any other enactment to be perjury or subornation of perjury, or to be punishable as perjury or subornation, solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

(2) The requirement for corroboration in relation to certain offences contained in subsection (1) applies also to an attempt to commit any of those offences.

Proof of former trial.

471. On a prosecution–

(a) for perjury alleged to have been committed on the trial of an indictment or criminal information; or

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(b) for procuring or suborning the commission of perjury on any such trial,

the fact of the former trial may be proved by the production of a certificate containing the substance and effect (omitting the formal parts) of the indictment or information and trial purporting to be signed by the clerk of the court, or other person having the custody of the records of the court where the indictment was tried, or by the deputy of that clerk or other person, without proof of the signature or official character of the clerk or person appearing to have signed the certificate.

Form of indictment.

472.(1) In an indictment–

(a) for making any false statement or false representation punishable under this Part; or

(b) for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly taking, making, signing, or subscribing any oath, affirmation, solemn declaration, statutory declaration, affidavit, deposition, notice, certificate, or other writing,

it is sufficient to set forth the substance of the offence charged, and before which court or person (if any) the offence was committed, without setting forth the proceedings or any part of the proceedings in the course of which the offence was committed, and without setting forth the authority of any court or person before whom the offence was committed.

(2) In an indictment for aiding, abetting, counselling, suborning, or procuring any other person to commit an offence as described in subsection (1), or for conspiring with any other person to commit any such offence, it is sufficient–

(a) if that offence has been committed - to allege that offence, and then to allege that the defendant procured the commission of that offence;

(b) if that offence has not been committed - to set forth the substance of the offence charged against the defendant without setting forth any matter or thing which it is unnecessary to aver in the case of an indictment for a false statement or false representation that is an offence under this Part.

Saving for corrupt practice offence.

473. If the making of a false statement is not only an offence under this Part, but also by virtue of some other Part is a corrupt practice, the liability of the offender under this Part is in addition to and not in substitution for his liability under that other Part.

PART 19
OFFENCES RELATING TO JUDICIAL PROCEEDINGS

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Reporting, etc.

Restriction on reports of family proceedings.

474.(1) It is an offence for a person to print or publish, or cause or procure to be printed or published in relation to any judicial proceedings under the Matrimonial Causes Act, any particulars other than–

(a) the names and occupations of the parties and witnesses;

(b) a concise statement of the charges, defences and countercharges in support of which evidence has been given;

(c) submissions on any point of law arising in the course of the proceedings, and the decision of the court on them;

(d) the judgment of the court and observations made by the judge in giving judgment.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both.

(3) No prosecution for an offence under this section may be commenced except by, or with the consent of, the Attorney-General.

(4) Nothing in this section applies to–

(a) the printing of any pleading, transcript of evidence or other document for use in connection with any judicial proceedings or the communication of them to persons concerned in the proceedings;

(b) the printing or publishing of any notice or report in pursuance of the directions of a court; or

(c) the printing or publishing of any matter–

(i) in a separate volume or part of a *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law; or

(ii) in a publication of a technical character *bona fide* intended for circulation among members of the legal or medical profession.

Publication of information relating to proceedings in private.

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475.(1) Subject to subsection (3), the publication of information relating to proceedings before any court sitting in private is a contempt of court if–

(a) the proceedings–

(i) relate to the exercise of the inherent jurisdiction of the Supreme Court with respect to minors;

(ii) are brought under the Children Act 2009; or

(iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor;

(b) the proceedings are brought under Part 5 of the Mental Health Act 2016;

(c) the court sits in private for reasons of the security of Gibraltar during that part of the proceedings about which the information in question is published;

(d) the information relates to a secret process, discovery or invention which is in issue in the proceedings;

(e) the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2) Without limiting subsection (1), the publication of the text or a summary of the whole or part of an order made by a court sitting in private is not of itself contempt of court unless the court (having power to do so) expressly prohibits the publication.

(3) The court may in its absolute discretion give leave for the publication of any information the publication of which under subsection (1) would otherwise be a contempt of court.

(4) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting *in camera* or in chambers.

(5) Nothing in this section is to be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section.

Restriction on reports of other judicial proceedings.

476.(1) Sections 204 to 206 of the Criminal Procedure and Evidence Act 2011 apply in relation to the reporting of committal and sending proceedings.

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(2) Sections 459 to 468 of the Criminal Procedure and Evidence Act 2011 apply in relation to the reporting of judicial proceedings which involve vulnerable witnesses.

(3) Section 655 of the Criminal Procedure and Evidence Act 2011 applies in relation to the publication of reports of judicial proceedings which involve young offenders.

Taking photographs, etc. in court.

477.(1) It is an offence for a person–

(a) to take or attempt to take in any court any photograph;

(b) with a view to publication, to make or attempt to make in any court any portrait or sketch of the judge of the court, or a juror or witness in or a party to any proceedings before the court, whether civil or criminal; or

(c) to publish any photograph, portrait, or sketch taken or made in contravention of paragraph (a) or (b), or any reproduction of such a photograph, portrait or sketch.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine at level 3 on the standard scale.

(3) For the purposes of this section–

(a) "court" means any court of justice, including the court of a coroner;

(b) "judge" includes a registrar, magistrate, justice and coroner;

(c) a photograph, portrait or sketch of a person is deemed to be taken or made in court if it is taken or made in the courtroom or in the building or in the precincts of the building in which the court is held, or if it is taken or made of the person while he is entering or leaving the courtroom or any such building or precincts.

Intimidation, etc.

Intimidation, etc. of witnesses, jurors and others.

478.(1) A person commits an offence if–

(a) he does an act which intimidates, and is intended to intimidate, another person ("the victim");

(b) he does the act knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence; and

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(c) he does it intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.

(2) A person commits an offence if–

(a) he does an act which harms, and is intended to harm, another person or, intending to cause another person to fear harm, he threatens to do an act which would harm that other person;

(b) he does or threatens to do the act knowing or believing that the person harmed or threatened to be harmed, or some other person, has assisted in an investigation into an offence or has given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence; and

(c) he does or threatens to do it because of that knowledge or belief.

(3) For the purposes of subsections (1) and (2) it is immaterial that the act is or would be done, or that the threat is made–

(a) otherwise than in the presence of the victim; or

(b) to a person other than the victim.

(4) The harm that may be done or threatened may be financial as well as physical (whether to the person or a person's property) and similarly as respects an intimidatory act which consists of threats.

(5) The intention required by subsection (1)(c) and the motive required by subsection (2)(c) above need not be the only or the predominating intention or motive with which the act is done or, in the case of subsection (2), threatened.

(6) 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 5 years.

(7) If, in proceedings against a person for an offence under subsection (1), it is proved that he did an act falling within subsection (1)(a) with the knowledge or belief required by subsection (1)(b), he is presumed, unless the contrary is proved, to have done the act with the intention required by subsection (1)(c).

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(8) If, in proceedings against a person for an offence under subsection (2), it is proved that within the relevant period–

(a) he did an act which harmed, and was intended to harm, another person; or

(b) intending to cause another person fear of harm, he threatened to do an act which would harm that other person,

and that he did the act, or (as the case may be) threatened to do the act, with the knowledge or belief required by subsection (2)(b), he is presumed, unless the contrary is proved, to have done the act or (as the case may be) threatened to do the act with the motive required by subsection (2)(c).

(9) In this section–

"investigation into an offence" means such an investigation by the police or other person charged with the duty of investigating offences or charging offenders;

"offence" includes an alleged or suspected offence;

"potential", in relation to a juror, means a person who has been summoned for jury service at the court at which proceedings for the offence are pending; and

"the relevant period" means–

(a) in relation to a witness or juror in any proceedings for an offence - the period beginning with the institution of the proceedings and ending with the first anniversary of the conclusion of the trial or, if there is an appeal, of the conclusion of the appeal;

(b) in relation to a person who has, or is believed by the defendant to have, assisted in an investigation into an offence, but was not also a witness in proceedings for an offence - the period of one year beginning with any act of his, or any act believed by the defendant to be an act of his, assisting in the investigation; and

(c) in relation to a person who both has, or is believed by the defendant to have, assisted in the investigation into an offence and was a witness in proceedings for the offence - the period beginning with any act of his, or any act believed by the defendant to be an act of his, assisting in the investigation and ending with the anniversary mentioned in (a) above.

(10) For the purposes of the definition of the relevant period in subsection (9)–

(a) proceedings for an offence are instituted at the earliest of the following times–

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(i) when a magistrate issues a summons or warrant under section 134 Criminal Procedure and Evidence Act 2011 in respect of the offence;

(ii) when a person is charged with the offence after being taken into custody without a warrant;

(iii) when a bill of indictment is preferred by virtue of section 289 of the Criminal Procedure and Evidence Act 2011;

(b) proceedings at a trial of an offence are concluded with the discontinuance of the prosecution, the discharge of the jury without a finding, the acquittal of the defendant or the sentencing of or other dealing with the defendant for the offence of which he was convicted; and

(c) proceedings on an appeal are concluded on the determination of the appeal or the abandonment of the appeal.

(11) This section is in addition to, and does not derogate from, any offence subsisting at common law.

Contempt of court

Strict liability rule.

479.(1) In this Part "the strict liability rule" means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.

(2) The strict liability rule applies–

(a) only in relation to publications, and for this purpose "publication" includes any speech, writing, programme included in a cable programme service or other communication in whatever form, which is addressed to the public at large or any section of the public;

(b) only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced;

(c) to a publication only if the proceedings in question are active within the meaning of this section at the time of the publication.

(3) Section 484 applies for determining the times at which proceedings are to be treated as active within the meaning of this section.

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(4) A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter to which that rule applies if at the time of publication (having taken all reasonable care) he does not know and has no reason to suspect that relevant proceedings are active.

(5) A person is not guilty of contempt of court under the strict liability rule as the distributor of a publication containing any such matter if at the time of distribution (having taken all reasonable care) he does not know that it contains such matter and has no reason to suspect that it is likely to do so.

(6) The burden of proof of any fact tending to establish a defence afforded by this section to any person lies upon that person.

(7) Subject to this section a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith.

(8) In any such proceedings the court may, if it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for a period the court thinks necessary for that purpose.

(9) For the purposes of subsection (7) a report of proceedings is to be treated as published contemporaneously−

(a) in the case of a report of which publication is postponed pursuant to an order under subsection (8) of this section - if published as soon as practicable after that order expires;

(b) in the case of a report of committal proceedings of which publication is permitted by virtue only of section 475(2)- if published as soon as practicable after publication is so permitted.

(10) A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest is not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

Confidentiality of jury's deliberations.

480.(1) Subject to subsection (2), it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings.

(2) This section does not apply to any disclosure of any particulars–

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(a) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict; or

(b) in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings,

or to the publication of any particulars so disclosed.

Use of tape recorders.

481.(1) Subject to subsection (4), it is a contempt of court to–

(a) use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court;

(b) publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication;

(c) use any such recording in contravention of any conditions of leave granted under paragraph (a).

(2) Leave under paragraph (a) of subsection (1) may be granted or refused at the discretion of the court, and if granted may be granted subject to conditions the court thinks proper with respect to the use of any recording made pursuant to the leave; and if leave has been granted the court may at the like discretion withdraw or amend it either generally or in relation to any particular part of the proceedings.

(3) Without affecting any other power to deal with an act of contempt under paragraph (a) of subsection (1), the court may order the instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited must (unless the court otherwise determines on application by a person appearing to it to be the owner) be sold or otherwise disposed of in the manner the court directs.

(4) This section does not apply to the making or use of sound recordings for purposes of official transcripts of proceedings.

Offences of contempt of Magistrates' Court.

482.(1) The Magistrates' Court has jurisdiction under this section to deal with any person who–

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(a) wilfully insults the magistrate or magistrates, any witness before or officer of the court or any legal representative having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or

(b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court.

(2) In any such case the court may–

(a) order any officer of the court, or any police officer, to take the offender into custody and detain him until the rising of the court; and

(b) commit the offender to custody for a specified period not exceeding one month or impose on him a fine at level 4 on the standard scale,or both.

(3) The Magistrates' Court may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his discharge.

(4) Sections 575 (Limit on fines), 579 to 586 (Enforcement of fines) and 180 (Power to rectify mistakes) and Part 13 (Appeals to Supreme Court) of the Criminal Procedure and Evidence Act 2011 apply in relation to an order under this section as they apply in relation to a sentence on conviction or finding of guilty of an offence.

Penalties and procedure.

483.(1) If a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal–

(a) must (without affecting the power of the court to order his earlier discharge) be for a fixed term;

(b) must not on any one occasion exceed 2 years in the case of committal by the Supreme Court or Court of Appeal, or one month in the case of committal by the Magistrates' Court or the Coroners' Court.

(2) If the Magistrates' Court or the Coroners' Court has power to fine a person for contempt of court and (apart from this provision) no limit applies to the amount of the fine, the fine must not exceed level 4 on the standard scale.

(3) A court has the same power to make a hospital order under Part 28 of the Criminal Procedure and Evidence Act 2011 in the case of a person suffering from mental disorder who could otherwise be committed to prison for contempt of court as it has under that Part in the case of a person convicted of an offence.

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(4) Proceedings for a contempt of court under this Part may not be instituted except by or with the consent of the Attorney-General or on the motion of a court having jurisdiction to deal with it.

(5) A fine imposed under this section is, for the purposes of any enactment, deemed to be a sum adjudged to be paid by a conviction and may be enforced accordingly.

Times when proceedings are active.

484.(1) Criminal, appellate and other proceedings are active within the meaning of section 479 at the times respectively prescribed by the following subsections; and in relation to proceedings in which more than one of the steps described in any of those subsections is taken, the reference in that subsection is a reference to the first of those steps.

(2) Subject to the following subsections, criminal proceedings are active from the relevant initial step specified in subsection (3) until concluded as described in subsection (4).

(3) The initial steps of criminal proceedings are–

(a) arrest without warrant;

(b) the issue of a warrant for arrest;

(c) the issue of a summons to appear;

(d) the service of an indictment or other document specifying the charge;

(e) an oral charge.

(4) Criminal proceedings are concluded–

(a) by acquittal or, as the case may be, by sentence;

(b) by any other verdict, finding, order or decision which puts an end to the proceedings;

(c) by discontinuance or by operation of law.

(5) The reference in subsection (4)(a) to sentence includes any order or decision consequent on conviction or finding of guilt which disposes of the case, either absolutely or subject to future events and a deferment of sentence under Part 20 of the Criminal Procedure and Evidence Act 2011.

(6) Proceedings are discontinued within the meaning of subsection (4)(c)–

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(a) if the charge or summons is withdrawn or a *nolle prosequi* entered;

(b) in the case of proceedings commenced by arrest without warrant, if the person arrested is released, otherwise than on bail, without having been charged.

(7) Criminal proceedings cease to be active if an order is made for the charge to lie on the file, but become active again if leave is later given for the proceedings to continue.

(8) Without affecting subsection (4)(b), criminal proceedings against a person cease to be active if–

(a) the defendant is found to be under a disability such as to render him unfit to be tried or unfit to plead; or

(b) a hospital order is made in his case under Part 28 of the Criminal Procedure and Evidence Act 2011,

but become active again if they are later resumed.

(9) Criminal proceedings against a person which become active on the issue of a warrant for his arrest cease to be active 12 months after the date of the warrant unless he has been arrested within that period, but become active again if he is subsequently arrested.

(10) Proceedings other than criminal proceedings and appellate proceedings are active from the time when a date for the trial or hearing is fixed until the proceedings are disposed of or discontinued or withdrawn; and for the purposes of this subsection any motion or application made in or for the purposes of any proceedings is to be treated as a distinct proceeding.

(11) Appellate proceedings are active from the time when they are commenced–

(a) by application for leave to appeal or apply for review, or by notice of such an application;

(b) by notice of appeal or of application for review;

(c) by other originating process, until disposed of or abandoned, discontinued or withdrawn.

(12) If, in appellate proceedings relating to criminal proceedings, the court–

(a) remits the case to the court below; or

(b) orders a new trial,

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any further or new proceedings which result are to be treated as active from the conclusion of the appellate proceedings.

Supplementary provisions.

485.(1) No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or the security of Gibraltar or for the prevention of disorder or crime.

(2) If a court that has power to do so allows a name or other matter to be withheld from the public in proceedings before the court, the court may give directions prohibiting the publication of that name or matter in connection with the proceedings that appear to the court to be necessary for the purpose for which it was so withheld.

(3) Nothing in this Part–

(a) prejudices any defence available at common law to a charge of contempt of court under the strict liability rule;

(b) implies that any publication is punishable as contempt of court under that rule which would not be so punishable apart from those provisions;

(c) restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.

PART 20
HARMFUL AND OBSCENE PUBLICATIONS, ETC.

Interpretation of Part.

486. In this Part, unless the context otherwise requires–

"article" means–

(a) any description of article containing or embodying matter to be read or looked at or both;

(b) any sound record; and

(c) any film or other record of a picture or pictures, moving or otherwise;

"communication" includes communication by electronic media;

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"film exhibition" means an exhibition of moving pictures produced otherwise than by the simultaneous reception and exhibition of programmes included in a programme service;

"harmful publication" means a publication included in an order made under subsection (2);

"import" in relation to a publication means to bring into Gibraltar;

"periodical publication" includes every publication issued periodically or in parts or numbers at intervals whether regular or irregular;

"plate" (except where it occurs in the expression "photographic plate") includes block, mould, matrix and stencil;

"photographic film" includes photographic plate;

"publication" includes–

(a) all written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape, or in any manner capable of suggesting words or ideas, and every copy and reproduction of any publication;

(b) an article.

(2) If the Minister is of the opinion that any publication is of a kind likely to fall into the hands of children or young persons and consists wholly or mainly of stories told in pictures (with or without the addition of written matter), being stories portraying–

(a) the commission of crimes;

(b) acts of violence or cruelty; or

(c) incidents of a repulsive or horrible nature,

in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it might fall, the Minister–

(a) may by order declare it to be a harmful publication;

(a) if it is published outside Gibraltar, may prohibit the importation of it and in the case of a periodical publication, by the same or a subsequent order, may prohibit the importation of any past or future issue of it.

Harmful publications

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Prohibition of importation of harmful publications.

487.(1) A person who imports–

(a) any harmful publication;

(b) any plate prepared for the purpose of printing copies of a harmful publication; and

(c) any photographic film prepared for that purpose,

commits an offence and is liable on summary conviction to imprisonment for 6 months or a fine at level 3 on the standard scale, or both.

(2) Without affecting criminal liability under subsection (1), the importation of an article of a kind mentioned in that subsection is prohibited for the purposes of the Imports and Exports Act 1986.

Offence of printing, publishing, selling, etc. harmful publications.

488.(1) A person who prints, publishes, sells or lets on hire a harmful publication, or has any such publication in his possession for the purpose of selling it or letting it on hire, commits an offence and is liable on summary conviction to imprisonment for 6 months or a fine at level 3 on the standard scale, or both.

(2) In any proceedings against a person in respect of selling or letting on hire a harmful publication or of having it in his possession for the purpose of selling it or letting it on hire, it is a defence for him to prove that he had not examined the contents of the publication and had no reasonable cause to suspect that it was one to which this section applies.

(3) A prosecution for an offence under this section may not be commenced except by, or with the consent of, the Attorney-General.

Powers of search and seizure.

489.(1) If a magistrate is satisfied by written information on oath that there are reasonable grounds for suspecting that a person–

(a) has committed an offence under section 488 in relation to a publication ("the relevant publication"); and

(b) has in his possession or under his control–

(i) any copies of the relevant publication or any other harmful publication; or

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(ii) any plate prepared for the purpose of printing copies of the relevant publication or any other harmful publication, or any photographic film prepared for that purpose,

the magistrate may issue a search warrant authorising a named police officer to enter (if necessary by force) the premises specified in the warrant and any vehicle or stall used by the person for the purposes of trade or business and to search the premises, vehicle or stall and seize any of the things mentioned in paragraph (b) that the officer finds in the premises or stall or vehicle.

(2) The court by or before which a person is convicted of an offence under section 488 with respect to a publication may order any copies of that publication and any plate prepared for the purpose of printing copies of it, or photographic film prepared for that purpose, being copies which have, or a plate or film which has, been found in the possession of the person or under his control, to be forfeited.

(3) An order made under this section by the Magistrate's Court or, on appeal from that court, by the Supreme Court, does not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be lodged (whether by giving notice of appeal or applying for a case to be stated for the opinion of the Supreme Court) or, if such an appeal is duly lodged, until the appeal is finally decided or abandoned.

Obscene publications

Test of obscenity.

490.(1) For the purposes of this Part an article is deemed to be obscene if its effect or (if the article comprises 2 or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) In proceedings against a person for an offence under section 491, the question whether the article is obscene is to be determined by reference to such publication as in the circumstances it may reasonably be inferred he had in contemplation and to any further publication that could reasonably be expected to follow from it, but not to any other publication.

(3) For the purposes of this Part a person publishes an article who–

(a) distributes, circulates, sells, lets on hire, gives, or lends it, or who offers it for sale or for letting on hire; or

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(b) in the case of an article containing or embodying matter to be looked at or a record - shows, plays or projects it, or, if the matter is data stored electronically, transmits the data.

(4) For the purposes of this Part a person also publishes an article to the extent that any matter recorded on it is included by him in a programme included in a programme service.

(5) If the inclusion of any matter in a programme included in a programme service would, if that matter were recorded matter, constitute the publication of an obscene publication for the purposes of this Part by virtue of subsection (4) this Part has effect in relation to the inclusion of that matter in that programme as if it were recorded matter.

(6) References in this Part to publication for gain apply to any publication with a view to gain, whether the gain is to accrue by way of consideration for the publication or in any other way.

Publication and possession of obscene matter.

491.(1) Subject to the following provisions of this section, a person who–

(a) publishes an obscene publication, whether for gain or not; or

(b) has in his possession an obscene article for publication for gain (whether gain to himself or gain to another),

commits an offence.

(2) A person who commits an offence under subsection (1) 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 3 years.

(3) A prosecution for an offence against this section may not be commenced more than 2 years after the commission of the offence.

(4) Regardless of section 158 of the Criminal Procedure and Evidence Act 2011, summary proceedings for an offence under this section may be brought at any time within 12 months from the commission of the offence.

(5) Proceedings for an offence under this section may not be commenced except by, or with the consent of, the Attorney-General if the article in question is a moving picture film and the relevant publication or the only other publication which followed or could reasonably have

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been expected to follow from the relevant publication took place or (as the case may be) was to take place in the course of a film exhibition.

(6) For the purposes of subsection (5), "the relevant publication" means–

(a) in the case of any proceedings under this section for publishing an obscene article - the publication in respect of which the defendant would be charged if the proceedings were brought; and

(b) in the case of any proceedings under this section for having an obscene article for publication for gain - the publication which, if the proceedings were brought, the defendant would be alleged to have had in contemplation.

(7) For the purpose of proceedings for an offence under this section, a person is deemed to have in his possession an article for publication for gain if with a view to such publication he has the article in his ownership, possession or control.

(8) A person may not be convicted of an offence under this section in respect of an article if he proves that he had not examined the article and had no reasonable cause to suspect that it was such that his having it would make him liable to be convicted of an offence against this section.

Negatives, etc. for production of obscene articles.

492.(1) This Part applies in relation to anything which is intended to be used, either alone or as one of a set, for the reproduction or manufacture from it of articles containing or embodying matter to be read, looked at or listened to, as if it were an article containing or embodying that matter so far as that matter is to be derived from it or from the set.

(2) For the purposes of this Part, an article is deemed to be had or kept for publication if it is had or kept for the reproduction or manufacture from it of articles for publication; and the question whether an article so had or kept is obscene is–

(a) for purposes of section 491 - to be determined as if any reference to publication of an article were a reference to publication of articles reproduced or manufactured from it; and

(b) for purposes of section 494 - to be determined on the assumption that articles reproduced or manufactured from it would be published in any manner likely having regard to the circumstances in which it was found, but in no other manner.

Common law offence abolished.

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493.(1) No proceedings may be brought against a person who publishes an article for an offence at common law which consists of the publication of any matter contained or embodied in the article if it is of the essence of the offence that the matter is obscene.

(2) Without limiting subsection (1), no proceedings may be brought against a person for an offence at common law–

(a) in respect of a film exhibition or anything said or done in the course of such an exhibition, if it is of the essence of the common law offence that the exhibition or, as the case may be, what was said or done was obscene, indecent, offensive, disgusting or injurious to morality; or

(b) in respect of an agreement to give a film exhibition or to cause anything to be said or done in the course of such an exhibition if the common law offence consists of conspiring to corrupt public morals or to do any act contrary to public morals or decency.

Powers of search and seizure.

494.(1) If a magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that, in any premises or on any stall or vehicle specified in the information, an obscene article is kept for publication for gain, the magistrate may issue a warrant under his hand empowering any police officer–

(a) to enter (if need be by force) and search the premises, or to search the stall or vehicle; and

(b) to seize and remove any article found therein or thereon which the officer has reason to believe to be an obscene article and to be kept for publication for gain.

(2) If any obscene article is seized under a warrant under subsection (1), the warrant, also empowers the seizure and removal of any documents found in the premises or, as the case may be, on the stall or vehicle, which relate to a trade or business carried on at the premises or from the stall or vehicle.

(3) Subject to subsection (4), any article seized under subsection (1) or (2) must be brought before a magistrate, who may issue a summons to the occupier of the premises or, as the case may be, the user of the stall or vehicle to appear on a day specified in the summons before the Magistrates' Court to show cause why the article should not be forfeited.

(4) If on a hearing under subsection (3) the court is satisfied, as respects any article, that at the time when it was seized it was an obscene article kept for publication for gain, the court must order the article to be forfeited.

Forfeiture of seized articles: Supplementary provision.

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495.(1) If, when a court is considering the forfeiture of any article that has been seized under section 494, the person summoned under section 494(3) does not appear, the court may not make an order unless service of the summons is proved.

(2) Section 494(4) does not apply in relation to any article seized under section 494 which is returned to the occupier of the premises or, as the case may be, to the user of the stall or vehicle in or on which it was found.

(3) If by virtue of section 491(5) proceedings for an offence under section 491 cannot be instituted except by or with the consent of the Attorney-General, no order for the forfeiture of a publication may be made under section 494 unless the warrant under which the publication was seized was issued on an information laid by or on behalf of the Attorney-General.

(4) In addition to the person summoned under section 494(3)–

(a) the owner, author or maker of any article brought before the court; and

(b) any other person through whose hands the article had passed before being seized,

is entitled to appear before the court on the day specified in the summons to show cause why the article should not be forfeited.

(5) If an order is made under section 494(4) for the forfeiture of any article, any person who appeared, or was entitled to appear, to show cause against the making of the order may appeal to the Supreme Court, and the order does not take effect until–

(a) the expiration of the period within which notice of appeal to the Supreme Court may be given against the order; or

(b) if before the expiration of that period notice of appeal is duly given or application is made for the statement of a case for the opinion of the Supreme Court - until the final determination or abandonment of the proceedings on the appeal or case.

(6) If as respects any article brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for the seizure of the article was issued to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why the article should not be forfeited; and costs ordered to be paid under this subsection are enforceable as a civil debt.

(7) For the purposes of this section, the question whether an article is obscene is to be determined on the assumption that copies of it would be published in any manner likely having regard to the circumstances in which it was found, but in no other manner.

Forfeiture on conviction.

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496.(1) If an article is seized under section 494 and a person is convicted under section 491 of having it for publication for gain, the court on his conviction must order the forfeiture of the article.

(2) An order made by virtue of subsection (1), including an order so made on appeal, does not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be instituted or, if such an appeal is duly instituted, until the appeal is finally decided or abandoned.

(3) For the purpose of subsection (2)–

(a) an application for a case to be stated or for leave to appeal is to be treated as the institution of an appeal; and

(b) if a decision on appeal is subject to a further appeal, the appeal is not deemed to be finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, if a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

Defence of public good.

497.(1) Subject to subsection (2), a person may not be convicted of an offence under section 491, and no order for forfeiture may be made under section 494 or 496, if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern.

(2) Subsection (1) does not apply if the article in question is a moving picture film or soundtrack, but–

(a) a person may not be convicted of an offence under section 491 in relation to any such film or soundtrack; and

(b) an order for forfeiture of any such film or soundtrack may not be made under section 494 or 496,

if it is proved that publication of the film or soundtrack is justified as being for the public good on the ground that it is in the interests of drama, opera, dance or any other art form, or of literature or learning.

(3) The opinion of experts as to the literary, artistic, scientific or other merits of an article may be admitted in any proceedings under this Part either to establish or to negative the ground mentioned in subsection (1) or (2).

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(4) In this section "moving picture soundtrack" means any sound record designed for playing with a moving picture film, whether incorporated with the film or not.

Indecent displays

Indecent displays: Offence.

498.(1) If any indecent matter is publicly displayed, the person making the display and any person causing or permitting the display to be made each commits an offence and 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.

(2) Any matter which is displayed in or so as to be visible from any public place is, for the purposes of this section, deemed to be publicly displayed.

(3) In subsection (2), "public place", in relation to the display of any matter, means any place to which the public have or are permitted to have access (whether on payment or otherwise) while that matter is displayed.

(4) Nothing in this section applies in relation to any matter–

(a) included by any person in a television broadcasting service or other television programme service;

(b) included in the display of an art gallery or museum and visible only from within the gallery or museum; or

(c) displayed by or with the authority of, and visible only from within a building occupied by, the Crown; or

(d) included in a performance of a play.

(5) In this section "matter" includes anything capable of being displayed, except that it does not include an actual human body or any part thereof; and in determining for the purpose of this section whether any displayed matter is indecent–

(a) any part of that matter which is not exposed to view is to be disregarded; and

(b) account may be taken of the effect of juxtaposing one thing with another.

Indecent displays: Powers of entry and seizure.

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499.(1) A police officer may seize any article which he has reasonable grounds for believing to be or to contain indecent matter and to have been used in the commission of an offence under section 498.

(2) A magistrate, if satisfied on information on oath that there are reasonable grounds for suspecting that an offence under section 498 has been or is being committed on any premises, may issue a warrant authorising any police officer to enter the premises specified in the information (if need be by force) within 14 days from the date of issue of the warrant to seize any article which the officer has reasonable grounds for believing to be or to contain indecent matter and to have been used in the commission of an offence under section 498.

PART 20A
EXTREME PORNOGRAPHY

Possession of extreme pornographic images.

499A.(1) It is an offence for a person to be in possession of an extreme pornographic image.

(2) An "extreme pornographic image" is an image which is both—

(a) pornographic; and

(b) an extreme image.

(3) An image is "pornographic" if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(4) Where (as found in the person's possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to—

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) So, for example, where—

(a) an image forms an integral part of a narrative constituted by a series of images; and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

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the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

(6) In relation to possession of an image, an "extreme image" is an image which—

(a) falls within subsection (7) or (8); and

(b) is grossly offensive, disgusting or otherwise of an obscene character.

(7) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following—

(a) an act which threatens a person's life;

(b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals;

(c) an act which involves sexual interference with a human corpse; or

(d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive);

and a reasonable person looking at the image would think that any such person or animal was real.

(8) An image falls within this subsection if it portrays, in an explicit and realistic way, either of the following—

(a) an act which involves the non-consensual penetration of a person's vagina, anus or mouth by another with the other person's penis; or

(b) an act which involves the non-consensual sexual penetration of a person's vagina or anus by another with a part of the other person's body or anything else,

and a reasonable person looking at the image would think that the persons were real.

(9) For the purposes of subsection (8)—

(a) penetration is a continuing act from entry to withdrawal;

(b) "vagina" includes vulva.

(10) In this section "image" means—

(a) a moving or still image (produced by any means); or

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(b) data (stored by any means) which is capable of conversion into an image within paragraph (a).

(11) In this section references to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).

(12) Proceedings for an offence under this section may not be instituted except by or with the consent of the Director of Public Prosecutions.

Exclusion of classified films etc.

499B.(1) Section 499A does not apply to excluded images.

(2) An "excluded image" is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.

(3) But such an image is not an "excluded image" if—

(a) it is contained in a recording of an extract from a classified work; and

(b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.

(4) Where an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to—

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images;

and section 499A(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic.

(5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to—

(a) a defect caused for technical reasons or by inadvertence on the part of any person; or

(b) the inclusion in the recording of any extraneous material (such as advertisements),

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is to be disregarded.

(6) In this section—

"classified work" means (subject to subsection (7)) a video work in respect of which a classification certificate has been issued by the British Board of Film Classification (whether before or after the commencement of this section);

"classification certificate" means a certificate –

(a) issued in respect of a video work in pursuance of arrangements made by the British Board of Film Classification in accordance with their obligations under the United Kingdom Video Recordings Act 1984, and which satisfies the requirements of paragraph (b) below;

(b) the requirements are that the certificate must contain the title assigned to the video work in accordance with the provisions of the United Kingdom's Video Recordings Act 1984 and –

(i) a statement that the video work concerned is suitable for general viewing and unrestricted supply (with or without any advice as to the desirability of parental guidance with regard to the viewing of the work by young children or as to the particular suitability of the work for viewing by children or young children); or

(ii) a statement that the video work concerned is suitable for viewing only by persons who have attained the age (not being more than eighteen years) specified in the certificate and that no video recording containing that work is to be supplied to any person who has not attained the age so specified; or

(iii) the statement mentioned in subparagraph (ii) above together with a statement that no video recording containing that work is to be supplied other than in a licensed sex shop;

(c) For the purposes of this Act, a video work is not a video work in respect of which a classification certificate has been issued if every classification certificate issued in respect of the video work has been revoked.

"video work" means any series of visual images (with or without sound)—

(a) produced electronically by the use of information contained on any disc, magnetic tape or any other device capable of storing data electronically; and

(b) shown as a moving picture;

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"extract" includes an extract consisting of a single image;

"image" and "pornographic" have the same meanings as in section 499A;

"recording" means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

(7) Where any alteration is made to a video work in respect of which a classification certificate has been issued, the classification certificate is not to be treated for the purposes of this Act as issued in respect of the altered work.

Defences: general.

499C. (1) Where a person is charged with an offence under section 499A, it is a defence for the person to prove any of the matters mentioned in subsection (2).

(2) The matters are—

(a) that the person had a legitimate reason for being in possession of the image concerned;

(b) that the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image;

(c) that the person—

(i) was sent the image concerned without any prior request having been made by or on behalf of the person; and

(ii) did not keep it for an unreasonable time.

(3) In this section "extreme pornographic image" and "image" have the same meanings as in section 499A.

Defence: participation in consensual acts.

499D.(1) Subsection (2) applies where —

(a) a person ("D") is charged with an offence under section 499A; and

(b) the offence relates to an image that portrays an act or acts within subsection (7)(a) to (c) or (8) of that section (but does not portray an act within subsection (7)(d) of that section).

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(2) It is a defence for D to prove—

(a) that D directly participated in the act or any of the acts portrayed; and

(b) that the act or acts did not involve the infliction of any non-consensual harm on any person; and

(c) if the image portrays an act within section 499A(7)(c), that what is portrayed as a human corpse was not in fact a corpse; and

(d) if the image portrays an act within section 499A(8), that what is portrayed as non-consensual penetration was in fact consensual.

(3) For the purposes of this section harm inflicted on a person is "non-consensual" harm if-

(a) the harm is of such a nature that the person cannot, in law, consent to it being inflicted on himself or herself; or

(b) where the person can, in law, consent to it being so inflicted, the person does not in fact consent to it being so inflicted.

Penalties etc. for possession of extreme pornographic images.

499E.(1) This section has effect where a person is guilty of an offence under section 499A.

(2) If the offence relates to an image that portrays any relevant act (with or without other acts), the offender is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or a fine or both.

(3) If the offence relates to an image that does not portray any relevant act, the offender is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

(4) In this section "relevant act" means an act within section 499A(7)(a) or (b) or (8)(a) or (b).

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Special rules relating to providers of information society services.

499F. Schedule 4A makes special provision in connection with the operation of section 499A in relation to persons providing information society services within the meaning of that Schedule.

PART 21
DRUGS MISUSE

Preliminary

Interpretation.

500.(1) In this Part, unless the context otherwise requires–

"Advisory Council" means the Advisory Council on the Misuse of Drugs established under section 530;

"cannabis" (except in the expression "cannabis resin") means any part of a plant of the genus *cannabis* from which the resin has not been extracted, by whatever name it may be designated;

"cannabis resin" means the separated resin, whether crude or purified, obtained from any plant of the genus *cannabis;*

"contravention" includes failure to comply, and "contravene" has a corresponding meaning;

"controlled drug" has the meaning assigned by section 502;

"Convention State" means a state outside Gibraltar which is a party to the Vienna Convention;

"corresponding law" has the meaning assigned by section 501;

"dentist" means a person registered as a dentist under the Medical and Health Act, 1997;

"Director" means the Director of Medical and Health Services;

"doctor" means a person who is registered as a medical practitioner under the Medical and Health Act 1997;

"medical practitioner" means a person registered under Part I, Part IA or Part IB of the Register established under section 7 of the Medical and Health Act, 1997;

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"person lawfully conducting a retail pharmacy business" means a person lawfully conducting such a business in accordance with the Medical and Health Act, 1997;

"pharmacist" means a person registered in Part III of the Register established under section 7 of the Medical and Health Act, 1997;

"practitioner" means a doctor, dentist or veterinary practitioner;

"prepared opium" means opium prepared for smoking and includes dross and any other residues remaining after opium has been smoked;

"produce", where the reference is to producing a controlled drug, means producing it by manufacture, cultivation or any other method, and "production" has a corresponding meaning;

"Scheduled Substance" means a substance specified in Schedule 6;

"supplying" includes distributing;

"veterinary practitioner" means (in the absence of another definition in this Part) a person registered in the register of veterinary surgeons kept in the United Kingdom under the Veterinary Surgeons Act 1966;

"Vienna Convention" means the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December 1988.

(2) References in this Part to misusing a drug are references to misusing it by taking it; and references to the taking of a drug are references to the taking of it by a human being by way of any form of self-administration, whether or not involving assistance by another.

(3) For the purposes of this Part the things which a person has in his possession include anything subject to his control which is in the custody of another.

(4) References in this Part to the supply by any person of a controlled drug to another are references to the supply of such a drug to any other person, whether or not the other person is in Gibraltar.

Meaning and evidence of "corresponding law".

501.(1) In this Part the expression "corresponding law" means–

(a) a law stated in a certificate purporting to be issued by or on behalf of the government of a country outside Gibraltar to be a law providing for the control and regulation in that country of the production, supply, use, export and import of drugs

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and other substances in accordance with the provisions of the Single Convention on Narcotic Drugs signed at New York on 30th March, 1961; or

(b) a law providing for the control and regulation in that country of the production, supply, use, export and import of dangerous or otherwise harmful drugs in pursuance of any treaty, convention or other agreement or arrangement to which the government of that country and Her Majesty's Government in the United Kingdom are parties.

(2) A statement in a certificate as mentioned in subsection (1)(a) to the effect that any facts constitute an offence against the law mentioned in the certificate is evidence of the matters stated.

Controlled drugs and their classification.

502.(1) In this Part–

(a) the expression "controlled drug" means any substance or product specified in Part I, II, or III of Schedule 5; and

(b) the expressions "Class A drug", "Class B drug" and "Class C drug" mean any of the substances and products specified respectively in Part I, Part II or Part III of that Schedule,

and the provisions of Part IV of that Schedule have effect with respect to the meanings of expressions used in that Schedule.

(2) The Minister may by order make any amendments to Schedule 5 that are needed for the purpose of adding a substance or product to, or removing a substance or product from, any of Parts I to III of that Schedule, including amendments to remove a substance or product from any of those Parts or to insert a substance or product into any of those Parts.

(3) An Order under this section may amend Part IV of Schedule 5, whether or not it amends any other Part of that Schedule.

(4) If an Advisory Council has been established under this Part, the Government must not make an Order under this section except after consultation with or on the recommendation of the Council.

Restrictions concerning controlled drugs.

Restriction of importation and exportation.

503.(1) Subject to subsection (2)–

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(a) the importation of any controlled drug; and

(b) the exportation of any controlled drug,

are prohibited.

(2) Subsection (1) does not apply to–

(a) the importation or exportation of a controlled drug which is excepted from paragraph (a) or, as the case may be, paragraph (b) of subsection (1) by regulations made under section 509; or

(b) the importation or exportation of a controlled drug under, and in accordance with, the terms of a licence issued by the Government, and in compliance with, any conditions attached to it.

Restriction of production and supply.

504.(1) Subject to any regulations made under section 509, it is unlawful for a person to–

(a) produce a controlled drug; or

(b) supply or offer to supply a controlled drug to another person.

(2) Subject to section 526, it is an offence for a person to–

(a) produce a controlled drug in contravention of subsection (1); or

(b) be concerned in the production of such a drug by another person in contravention of that subsection.

(3) Subject to section 526, it is an offence for a person to–

(a) supply or offer to supply a controlled drug to another in contravention of subsection (1);

(a) be concerned in the supplying of such a drug to another in contravention of that subsection; or

(b) be concerned in the making to another of an offer to supply such a drug in contravention of that subsection.

Aggravation of offence of supply of a controlled drug.

505.(1) This section applies if–

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(a) a court is considering the seriousness of an offence under section 504(3); and

(b) at the time the offence was committed the offender had attained the age of 18.

(2) If either of the following conditions is met the court must–

(a) treat the fact that the condition is met as an aggravating factor (that is to say, a factor that increases the seriousness of the offence); and

(b) state in open court that the offence is so aggravated.

(3) The first condition is that the offence was committed on or in the vicinity of school premises at a relevant time.

(4) The second condition is that in connection with the commission of the offence the offender used a courier who, at the time the offence was committed, was under the age of 18.

(5) In subsection (3), a relevant time is–

(a) any time when the school premises are in use by persons under the age of 18;

(b) up to one hour before the start and one hour after the end of any such time.

(6) For the purposes of subsection (4), a person uses a courier in connection with an offence under section 504(3) if he causes or permits another person (the courier)–

(a) to deliver a controlled drug to a third person; or

(b) to deliver a drug-related consideration to himself or a third person.

(7) For the purposes of subsection (6), a drug-related consideration is a consideration of any description which is–

(a) obtained in connection with the supply of a controlled drug; or

(b) intended to be used in connection with obtaining a controlled drug.

(8) In this section–

"school premises" means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school; and

"school" has the same meaning as in the Education and Training Act.

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Restriction of possession.

506.(1) Subject to any regulations made under section 509 and subsection (4) of this section, it is unlawful for a person to have a controlled drug in his possession.

(2) Subject to section 526 and to subsection (4) of this section, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1) of this section.

(3) Subject to section 526, it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 504(1).

(4) In any proceedings for an offence under subsection (2) in which it is proved that the defendant had a controlled drug in his possession, it is a defence for him to prove that, knowing or suspecting it to be a controlled drug,

(a) he–

(i) took possession of it for the purpose of preventing another from committing or continuing to commit an offence in connection with that drug; and

(ii) as soon as possible after taking possession of it, took all steps reasonably open to him to destroy the drug or to deliver it into the custody of a person lawfully entitled to take custody of it; or

(b) he–

(i) took possession of it for the purpose of delivering it into the custody of a person lawfully entitled to take custody of it; and

(ii) as soon as possible after taking possession of it, took all steps reasonably open to him to deliver it into the custody of such a person.

(5) Subsection (4) applies in the case of proceedings for an offence under section 521(1) consisting of an attempt to commit an offence against subsection (2) of this section as it applies in the case of proceedings for an offence against subsection (2), subject to the following modifications–

(a) for the references to the defendant having in his possession, and to his taking possession of, a controlled drug there are substituted respectively references to his attempting to get, and to his attempting to take, possession of such a drug; and

(b) in paragraphs (a) and (b) the words from "and that as soon as possible" onwards are omitted.

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(6) Nothing in subsection (4) or (5) affects any defence which it is open to a person charged with an offence against this section to raise apart from that subsection.

Prohibition of supply, etc. of articles for administering or preparing controlled drugs.

507.(1) A person who supplies or offers to supply any article which may be used or adapted to be used (whether by itself or in combination with another article or other articles) in the administration by any person of a controlled drug to himself or another, believing that the article (or the article as adapted) is to be so used in circumstances where the administration is unlawful, commits an offence.

(2) It is not an offence under subsection (1) to supply or offer to supply a hypodermic syringe, or any part of one.

(3) A person who supplies or offers to supply any article which may be used to prepare a controlled drug for administration by any person to himself or another, believing that the article is to be so used in circumstances where the administration is unlawful, commits an offence.

(4) For the purposes of this section, any administration of a controlled drug is unlawful except–

(a) the administration by a person of a controlled drug to another person in circumstances where the administration of the drug is not unlawful under section 504(1); or

(b) the administration by any person of a controlled drug to himself in circumstances where having the controlled drug in his possession is not unlawful under section 506(1).

(5) In this section, references to administration by any person of a controlled drug to himself include a reference to his administering it to himself with the assistance of another.

(6) A person who commits an offence under this section is liable on a summary conviction, to imprisonment for 12 months and the statutory maximum fine.

Restriction of cultivation of *cannabis.*

508.(1) Subject to any regulations made under section 509, it is unlawful for a person to cultivate any plant of the genus *cannabis.*

(2) Subject to section 526, it is an offence to cultivate any such plant in contravention of subsection (1) of this section.

Authorisation of activities otherwise unlawful.

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509.(1) The Government may by regulations–

(a) exclude from the operation of section 503(1)(a) or (b), 504(1)(a) or (b) or 506(1) the controlled drugs specified in the regulations; and

(b) make such other provision as it thinks fit for the purpose of making it lawful for persons to do things which under section 504(1), 506(1) and 508(1) it would otherwise be unlawful for them to do.

(2) Without limiting paragraph (b) of subsection (1), regulations under that subsection authorising the doing of anything of a kind mentioned in that paragraph may in particular provide for the doing of that thing to be lawful if it is done–

(a) under and in accordance with the terms of a licence or other authority issued by the Government and in compliance with any conditions attached to the licence or authority; or

(b) in compliance with prescribed conditions.

(3) Subject to subsection (4) the Government must so exercise its power to make regulations under subsection (1) as to ensure that–

(a) it is not unlawful under section 504(1) for–

(i) a doctor, dentist, veterinary practitioner or veterinary surgeon, acting in his capacity as such, to prescribe, administer, manufacture, compound or supply a controlled drug; or

(ii) a pharmacist or a person lawfully conducting a retail pharmacy business, acting in either case in his capacity as such, to manufacture, compound or supply a controlled drug; and

(b) it is not unlawful under section 506(l) for a doctor, dentist, veterinary practitioner, veterinary surgeon, pharmacist or person lawfully conducting a retail pharmacy business to have a controlled drug in his possession for the purpose of acting in his capacity as such.

(4) If, in the case of any controlled drug, the Government is of the opinion that it is in the public interest–

(a) for production, supply and possession of that drug to be either wholly unlawful, or unlawful except for purposes of research or other special purposes; or

(b) for it to be unlawful for practitioners, pharmacists and persons lawfully conducting retail pharmacy business to do in relation to that drug any of the things mentioned

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in subsection (3) except under a licence or other authority issued by the Government,

the Minister may by order designate that drug as a drug to which subsection (5) applies.

(5) While there is in force an order under subsection (4) designating a controlled drug as one to which this subsection applies, subsection (3) does not apply with regard to that drug.

(6) Without affecting subsections (1) to (5), the Government may by regulations make provision–

(a) for excluding in such cases as may be prescribed–

(i) the application of any provision of this Part which creates an offence; or

(ii) the application of any of the provisions of the Imports and Exports Act, 1986 in so far as they apply in relation to a prohibition or restriction on importation or exportation having effect by virtue of section 503;

(b) for the application of any of the provisions of this Part or regulations or orders made under it to servants or agents of the Crown, subject to any prescribed exceptions, adaptations and modifications.

Prevention of, and precautions against, misuse

Power to make regulations for preventing misuse.

510.(1) Subject to this Part, the Government may by regulations make any provision as appears to it necessary or expedient for preventing the misuse of controlled drugs.

(2) Without limiting subsection (1), regulations under this section may, in particular, make provision–

(a) requiring precautions to be taken for the safe custody of controlled drugs;

(b) imposing requirements as to the documentation of transactions involving controlled drugs, and requiring copies of documents relating to such transactions to be furnished to the prescribed authority;

(c) requiring the keeping of records and the furnishing of information with respect to controlled drugs in such circumstances and in such manner as may be prescribed;

(d) for the inspection of any precautions taken or records kept pursuant to regulations made under this section;

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(e) as to the packaging and labelling of controlled drugs;

(f) regulating the transport of controlled drugs and the method used for destroying or otherwise disposing of such drugs when no longer required;

(g) regulating the issue of prescriptions containing controlled drugs and the supply of controlled drugs on prescriptions, and requiring persons issuing or dispensing prescriptions containing such drugs to furnish to the prescribed authority prescribed information relating to those prescriptions;

(h) requiring any doctor who attends a person who he considers, or has reasonable grounds to suspect, is addicted (within the meaning of the regulations) to controlled drugs of any description to furnish to the prescribed authority prescribed particulars with respect to that person;

(i) prohibiting any doctor from administering, supplying and authorising the administration and supply to persons so addicted, and from prescribing for such persons, prescribed controlled drugs, except under and in accordance with the terms of a licence issued by the Government pursuant to the regulations;

(j) excluding in prescribed cases the application of any provision of this Part which creates an offence, or the application of any of the provisions of the Imports and Exports Act, 1986 to the extent that they relate to a prohibition or restriction on importation or exportation which has effect by virtue of section 503;

(k) applying any of the provisions of this Part or subsidiary legislation made under it to servants or agents of the Crown, subject to prescribed exceptions, adaptations and modifications.

Special precautions for safe custody.

511.(1) Without affecting any requirement imposed by regulations made under paragraph (a) of section 510(2), the Government may, by notice in writing served on the occupier of any premises on which controlled drugs are or are proposed to be kept, give directions as to the taking of precautions or further precautions for the safe custody of any controlled drugs of a description specified in the notice which are kept on those premises.

(2) It is an offence to contravene any directions given under subsection (l).

Vienna Convention.

Manufacture and supply of Scheduled Substance.

512.(1) It is an offence for a person–

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(a) to manufacture a Scheduled Substance; or

(b) to supply such a substance to another person;

knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug.

(2) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction, to imprisonment for 12 months or to the statutory maximum fine, or both;

(b) on conviction on indictment, to imprisonment for 14 years or to a fine, or both.

(3) Subject to subsection (4), the Minister may by order amend Schedule 6 (whether by addition, deletion or transfer from one Table in the Schedule to the other).

(4) An order under subsection (3) must not add any substance to the Schedule unless–

(a) it appears to the Government to be frequently used in or for the unlawful production of a controlled drug; or

(b) it has been added to the Annex to the Vienna Convention under Article 12 of that Convention; or

(c) it is necessary in order to give effect to Gibraltar's European Union obligations.

Regulations about Scheduled Substances.

513.(1) The Government may by regulations–

(a) impose requirements as to the documentation of transactions involving Scheduled Substances;

(b) require the keeping of records and the furnishing of information with respect to such substances;

(c) provide for the inspection of records kept pursuant to the regulations;

(d) require the labelling of consignments of Scheduled Substances;

(e) prohibit the manufacture of Scheduled Substances in Gibraltar except in accordance with a licence issued by the Government;

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(f) prohibit the importation or exportation of certain Scheduled Substances, or prohibit the importation or exportation of certain scheduled substances, other than in a particular form.

(2) Regulations made under subsection (1)(b) may, in particular, require–

(a) the notification of the proposed exportation of substances specified in Table I in Schedule 8 to prescribed countries; and

(b) the production, in prescribed circumstances of evidence that the required notification has been given.

(3) For the purposes of section 79 of the Imports and Exports Act, 1986 any Scheduled Substance exported without the required notification having been given is deemed to be exported contrary to a restriction for the time being in force with respect to it under that Act.

(4) Regulations under this section may make different provision in relation to the substances specified in Table I and Table II in Schedule 6 respectively and in relation to different cases or circumstances.

(5) A person who fails to comply with a requirement imposed by the regulations or who, in purported compliance with such a requirement, furnishes information which he knows to be false in a material particular, commits an offence and is liable–

(a) on summary conviction, to imprisonment for 6 months or a fine at level 4 on the standard scale or both;

(b) on conviction on indictment, to imprisonment for 2 years or a fine, or both.

(6) Information obtained pursuant to regulations made under this section must not be disclosed except for the purposes of criminal proceedings or of proceedings under the provisions of the Drug Trafficking Offences Act, 1995 relating to the confiscation of the proceeds of, or benefits from, drug trafficking.

Offences on Gibraltar registered ships.

514. Conduct which would constitute an offence under this Part if done on land in Gibraltar constitutes that offence if done on a ship registered in Gibraltar.

Ships used for illicit traffic.

515.(1) This section applies to a ship registered in Gibraltar and a ship registered in a state outside Gibraltar which is party to the Vienna Convention (a "Convention state").

(2) A person commits an offence if–

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(a) on a ship to which this section applies, wherever it may be, he–

(i) has a controlled drug in his possession; or

(ii) is in any way knowingly concerned in the carrying or concealing of a controlled drug on the ship; and

(b) he knows or has reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 503(1) or to the law of a state outside Gibraltar.

(3) A certificate purporting to be issued by or on behalf of the government of a state or territory to the effect that the importation or exportation of a controlled drug is prohibited by the law of that state or territory is evidence of the matter stated.

(4) A person who commits an offence under this section is liable–

(a) if the controlled drug is a Class A drug–

(i) on summary conviction, to imprisonment for 12 months or to the statutory maximum fine or both;

(ii) on conviction on indictment, to imprisonment for life or to a fine, or both;

(b) if the controlled drug is a Class B drug–

(i) on summary conviction, to imprisonment for 9 months or to a fine at level 4 on the standard scale or both;

(ii) on conviction on indictment, to imprisonment for 14 years or to a fine, or both;

(c) if the controlled drug is a Class C drug–

(i) on summary conviction, to imprisonment for 6 months or to a fine at level 4 on the standard scale, or both;

(ii) on conviction on indictment, to imprisonment for 5 years or to a fine, or both.

Enforcement powers.

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516.(1) The powers conferred on an enforcement officer by Schedule 7 are exercisable in relation to any ship to which section 514 or 515 applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.

(2) Those powers must not be exercised outside the territorial waters of Gibraltar in relation to a ship registered in a Convention State except with the authority of the Collector of Customs, who must not give his authority unless that state has in relation to that ship–

(a) requested the assistance of the Government of Gibraltar for the purpose mentioned in subsection (1); or

(b) authorised the Government of Gibraltar to act for that purpose.

(3) In giving his authority pursuant to a request or authorisation from a Convention State, the Collector of Customs must impose any conditions or limitations on the exercise of the powers necessary to give effect to any conditions or limitations imposed by that state.

(4) The Collector of Customs may, either on his own initiative or in response to a request from a Convention State, authorise a Convention State to exercise, in relation to a Gibraltar registered ship, powers corresponding to those conferred on enforcement officers by Schedule 7 but subject to any conditions or limitations he imposes.

(5) Subsection (4) does not affect any agreement made, or which may be made, on behalf of the Government of Gibraltar by which the Government undertakes not to object to the exercise by any other state or territory in relation to a Gibraltar registered ship of powers corresponding to those conferred by Schedule 7.

(6) The powers conferred by Schedule 7 must not be exercised in the territorial waters of any state or territory outside Gibraltar without the authority of the Collector of Customs, who must not give his authority unless that state or territory has consented to the exercise of those powers.

Jurisdiction and prosecutions.

517.(1) Proceedings under this Part or Schedule 8 in respect of an offence on board a ship may be taken, and the offence may, for all incidental purposes, be treated as having been committed, in Gibraltar.

(2) No such proceedings may be instituted except by or with the consent of the Attorney-General.

(3) Without affecting subsection (2)–

(a) no proceedings for an offence under section 515 alleged to have been committed outside the territorial waters of Gibraltar on a ship registered in a Convention State

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may be instituted except pursuant to the exercise, with the authority of the Collector of Customs, of the powers conferred by Schedule 7;

(b) section 3 of the Territorial Waters Jurisdiction Act 1878, as it applies in Gibraltar, does not apply to those proceedings.

Offences and enforcement

Liability of occupiers.

518. A person commits an offence if, being the occupier or concerned in the management of any premises, he knowingly permits or suffers any of the following activities to take place on those premises–

(a) producing or attempting to produce a controlled drug in contravention of section 504(1);

(b) supplying or attempting to supply a controlled drug to another in contravention of section 504(1), or offering to supply a controlled drug to another in contravention of that subsection;

(c) preparing opium for smoking;

(d) smoking cannabis, cannabis resin or prepared opium.

Prohibitions concerning opium.

519. Subject to section 526, it is an offence for a person–

(a) to smoke or otherwise use prepared opium;

(b) to frequent a place used for the purpose of opium smoking; or

(c) to have in his possession–

(i) any pipe or other utensil made or adapted for use in connection with the smoking of opium, being a pipe or utensil which has been used by him or with his knowledge and permission in that connection or which he intends to use or permit others to use in that connection; or

(ii) any utensil which has been used by him or with his knowledge and permission in connection with the preparation of opium for smoking.

Prohibition of supply, etc. of articles for administering or preparing controlled drugs.

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520.(1) A person who supplies or offers to supply any article which can be used or adapted to be used (whether by itself or in combination with another article or other articles) in the administration by any person of a controlled drug to himself or another, believing that the article (or the article as adapted) is to be so used in circumstances where the administration is unlawful, commits an offence.

(2) A person who supplies or offers to supply any article which can be used to prepare a controlled drug for administration by any person to himself or another, believing that the article is to be so used in circumstances where the administration is unlawful, commits an offence.

(3) For the purposes of this section, any administration of a controlled drug is unlawful except–

(a) the administration by any person of a controlled drug to another in circumstances where the administration of the drug is not unlawful under section 504(1); or

(b) the administration by any person of a controlled drug to himself in circumstances where having the controlled drug in his possession is not unlawful under section 506(1).

(4) In this section, references to administration by any person of a controlled drug to himself include a reference to his administering it to himself with the assistance of another.

Miscellaneous offences.

521.(1) It is an offence for a person to contravene any regulations made under this Part other than regulations made in pursuance of paragraph (h) or (i) of section 510(2).

(2) It is an offence for a person to contravene a condition or other term of a licence issued under section 503 or of a licence or other authority issued under regulations made under this Part, not being a licence issued under regulations made pursuant to paragraph (i) of section 510(2).

(3) It is an offence for a person, in purported compliance with any obligation to give information to which he is subject under or by virtue of regulations made under this Part–

(a) to give any information which he knows to be false in a material particular; or

(b) recklessly to give any information which is so false.

(4) It is an offence for a person, for the purpose of obtaining, whether for himself or another, the issue or renewal of a licence or other authority under this Part or under any regulations made under this Part, to–

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(a) make any statement or give any information which he knows to be false in a material particular;

(b) recklessly give any information which is so false; or

(c) produce or otherwise make use of any book, record or other document which to his knowledge contains any statement or information which he knows to be false in a material particular.

Assisting, etc. commission of offence outside Gibraltar.

522. It is an offence for a person in Gibraltar to assist in or induce the commission in any place outside Gibraltar of an offence punishable under the provisions of a corresponding law in force in that place.

Powers of search and seizure.

523.(1) A customs officer or police officer has, for the purposes of the enforcement of this Part, power to–

(a) enter the premises of a person carrying on business as a producer or supplier of any controlled drug or Scheduled Substance;

(b) demand the production of, and inspect, any books or documents relating to dealings in any such drug or substance; and

(c) inspect stocks of any such drug or substance held on the premises.

(2) If a customs officer or police officer has reasonable grounds to suspect that any person is in possession of a controlled drug or Scheduled Substance in contravention of this Part or of any regulations made under it, the officer may–

(a) search that person, and detain him for the purpose of searching him;

(b) search any vehicle or vessel in which the officer suspects that the drug may be found, and for that purpose require the person in control of the vehicle or vessel to stop it;

(c) seize and detain, for the purposes of proceedings under this Act, anything found in the course of the search which appears to the officer to be evidence of an offence against this Part.

(3) Nothing in this section affects any power of search or any power to seize or detain property which is exercisable by a customs or police officer apart from this section, but any

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power of search and seizure must be exercised in accordance with the Criminal Procedure and Evidence Act 2011.

(4) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that–

(a) any controlled drug or Scheduled Substance is, in contravention of this Part or of any regulations made under it, in the possession of a person on any premises; or

(b) a document directly or indirectly relating to, or connected with, a transaction or dealing which was, or an intended transaction or dealing which would, if carried out, be an offence against this Part, or in the case of a transaction or dealing carried out or intended to be carried out in a place outside Gibraltar an offence against the provisions of a corresponding law (as defined in section 501) in force in that place, is in the possession of a person on any premises,

the magistrate may grant a warrant authorising any customs or police officer at any time or times within one month from the date of the warrant, to enter, if need be by force, the premises named in the warrant, and to search the premises and any persons found in them and, if there is reasonable ground for suspecting that an offence against this Part has been committed in relation to any controlled drug or Scheduled Substance found on the premises or in the possession of any such persons, or that a document so found is such a document as is mentioned in paragraph (b), to seize and detain that drug or substance or that document, as the case may be.

(5) A person who–

(a) intentionally obstructs a person in the exercise of his powers under this section;

(b) conceals from a person acting in the exercise of his powers under subsection (1) any such books, documents, stocks or drugs as are mentioned in that subsection; or

(c) without reasonable excuse (proof of which lies on him) fails to produce any such books or documents when their production is demanded by a person in the exercise of his powers under that subsection,

commits an offence.

Prosecution and punishment.

524.(1) Schedule 8 has effect, in accordance with subsection (2), with respect to the way in which offences under this Part are punishable on conviction.

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(2) In relation to an offence against a provision of this Part specified in the first column of Schedule 8–

(a) the general nature of the offence is described in the second column;

(b) the third column shows whether the offence is punishable on summary conviction or on indictment or either way;

(c) the fourth, fifth and sixth columns show respectively the punishments which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column, that is to say, summarily or on indictment, according to whether the controlled drug in relation to which the offence was committed was a Class A drug, a Class B drug or a Class C drug; and

(d) the seventh column shows the punishments which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column, that is to say, summarily or on indictment, whether or not the offence was committed in relation to a controlled drug and, if it was so committed, irrespective of whether the drug was a Class A drug, a Class B drug or a Class C drug,

and in the fourth, fifth, sixth and seventh columns a reference to a period gives the maximum term of imprisonment and a reference to the level of fine.

(3) Notwithstanding anything in section 158 of the Criminal Procedure and Evidence Act 2011, the Magistrates' Court may try an information for an offence under this Part if the information was laid at any time within 12 months from the commission of the offence.

(4) No person may be proceeded against by indictment for an offence against this Part unless the proceedings are instituted by, or with the consent of, the Attorney-General, unless the person charged claims, pursuant to Part 8 of the Criminal Procedure and Evidence Act 2011, to be tried by a jury.

Miscellaneous

Forfeiture.

525.(1) Subject to subsection (2) the court by or before which a person is convicted of an offence against this Part may order anything shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in any other manner the court orders.

(2) The court must not order anything to be forfeited under this section if a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

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Evidence and defences.

526.(1) This section applies to offences against any of sections 504(2) and (3), 506(2) and (3), 508(2), 512, 513, 515 and 519.

(2) Subject to subsection (3), in any proceedings for an offence to which this section applies it is a defence for the defendant to prove that he neither knew of nor suspected nor had reason to suspect the existence of some fact alleged by the prosecution which it is necessary for the prosecution to prove if he is to be convicted of the offence charged.

(3) If in any proceedings for an offence to which this section applies, it is necessary, if the defendant is to be convicted of the offence charged, for the prosecution to prove that some substance or product involved in the alleged offence was the controlled drug which the prosecution alleges it to have been, and it is proved that the substance or product in question was that controlled drug, the defendant–

(a) is not to be acquitted of the offence charged by reason only of proving that he neither knew nor suspected nor had reason to suspect that the substance or product in question was the particular controlled drug alleged; but

(b) must be acquitted of the offence charged if he–

(i) proves that he neither believed nor suspected nor had reason to suspect that the substance or product in question was a controlled drug or Scheduled Substance; or

(ii) proves that he believed the substance or product in question to be a controlled drug or Scheduled Substance, or a drug or substance of a description, such that, if it had in fact been that drug or substance, or a drug of that description, he would not, at the material time, have been committing any offence to which this section applies.

(4) Nothing in this section affects any defence which it is open to a person charged with an offence to which this section applies to raise apart from this section.

Licences and authorities.

527. A licence or other authority issued by the Government for the purposes of this Part or of regulations made under it may be issued on such terms and subject to such conditions, including, in the case of a licence, the payment of a prescribed fee, as the Government thinks proper, and may be modified or revoked by the Government at any time.

Certificate of analysis.

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528.(1) In any proceedings for an offence against this Part a certificate signed by any person designated by the Public Health Director, by notification in the Gazette, as a person competent to give evidence of analysis for the purposes of this Part, is admissible as evidence of the matters stated in it.

(2) In the case of a certificate tendered by a prosecutor–

(a) a copy of the certificate must be given to the defendant; and

(b) either party may require the person by whom the analysis was made to be called as a witness.

General provisions as to regulations.

529. Regulations made by the Government under this Part may–

(a) make different provision in relation to different controlled drugs, different classes of persons, different provisions of this Part or other different cases or circumstances;

(b) make the opinion, consent or approval of a prescribed authority or of any person authorised in a prescribed manner material for purposes of any provision of the regulations; and

(c) contain such supplementary, incidental and transitional provisions as appear expedient to the Government.

Advisory Council.

530.(1) The Government may, by order, constitute, in accordance with Schedule 9, an Advisory Council on the Misuse of Drugs, and the supplementary provisions contained in that Schedule have effect in relation to the Council.

(2) The Advisory Council must–

(a) keep under review the situation in Gibraltar with respect to drugs which are being or appear to the Council likely to be misused and of which the misuse is having or appears to it capable of having harmful effects sufficient to constitute a social problem; and

(b) give the Government advice on measures (whether or not involving alteration of the law) which in the opinion of the Council ought to be taken for preventing the misuse of such drugs or dealing with social problems connected with their misuse.

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(3) The matters on which the Council is to advise the Government under subsection (2) in relation to the drugs mentioned in that subsection include, but are not limited to, measures which in the opinion of the Council ought to be taken to–

(a) restrict the availability of such drugs or supervise the arrangements for their supply;

(b) enable persons affected by the misuse of such drugs to obtain proper advice, and secure the provision of proper facilities and services for the treatment, rehabilitation and after-care of such persons;

(c) promote co-operation between the various professional and community services which in the opinion of the Council have a part to play in dealing with social problems connected with the misuse of such drugs;

(d) educate the public and, in particular, the young in the dangers of misusing such drugs, and give publicity to those dangers; and

(e) promote research into, or otherwise obtain information about, any matter which in the opinion of the Council is of relevance for the purpose of preventing the misuse of such drugs or dealing with any social problem connected with their misuse.

(4) The Advisory Council must also consider any matter relating to drug dependence or the misuse of drugs which is referred to it by the Government, and must advise the Government on any such matter.

(5) The composition and procedure of the Advisory Council are as set out in Schedule 9.

PART 22
CRIMINAL TRESPASS

Interpretation of Part.

531.(1) In this Part, unless the context otherwise requires–

"access", in relation to any premises, means any part of any site or building within which the premises are situated which constitutes an ordinary means of access to the premises (whether or not that is its sole or primary use);

"caravan" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

"Crown land" means all land other than private land, and includes–

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(a) cliffs, beaches and foreshore;

(b) streets, roads, paths, lay-bys and areas set aside for parking; and

(c) recreation and pleasure grounds and public gardens;

"displaced residential occupier" has the meaning given by section 537;

"intending residential occupier" has the meaning given by section 538;

"land" includes premises;

"premises" means any building, any part of a building under separate occupation, any land ancillary to a building and the site comprising any building or buildings together with any land ancillary thereto;

"residential premises" means premises that are or form part of premises used mainly for residential purposes, or intended by the owner to be used for those purposes, whether by the owner or some other person;

"site" means the whole or part of any building or buildings, or any land, or both;

"vehicle" includes any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle, and a caravan.

(2) References to a building apply also to any structure other than a movable one, and to any movable structure, vehicle or vessel designed or adapted for use for residential purposes; and for this purpose–

(a) a part of a building is under separate occupation if anyone is in occupation or entitled to occupation of that part as distinct from the whole;

(b) land is ancillary to a building if it is adjacent to it and used (or intended for use) in connection with the occupation of that building or any part of it.

Criminal trespass

Failing to obey directions to leave land.

532.(1) If a police officer of the rank of Inspector or above reasonably believes–

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(a) that a person, or any number of persons, are trespassing on land with the purpose of residing there for any period;

(b) that reasonable steps have been taken by or on behalf of the occupier to ask the person to leave; and

(c) that the person or any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his;

the officer may direct the person or any or all of them, to leave the land and to remove any vehicles or other property they have with them on the land.

(2) If the police officer reasonably believes that the person was not, or the persons were not, originally trespassers but has become a trespasser, or have become trespassers, on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after the person or persons became trespassers before he can exercise the power conferred by subsection (1).

(3) A direction under subsection (1), if not communicated to the persons referred to in that subsection by the police officer giving the direction, may be communicated to them by any police officer at the scene.

(4) A person who, knowing that a direction under subsection (1) has been given which applies to him–

(a) fails to leave the land as soon as reasonably practicable; or

(b) having left again enters the land as a trespasser within 3 months after the direction was given,

commits an offence and is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

(5) If a direction has been given under subsection (1) and a police officer reasonably suspects that any person to whom the direction applies has, without reasonable excuse–

(a) failed to remove from the land a vehicle which appears to the officer to belong to him or to be in his possession or under his control; or

(b) entered the land as a trespasser with a vehicle within 3 months after the direction was given,

the officer may seize and remove the vehicle.

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(6) In proceedings for an offence under this section it is a defence for the defendant to show–

(a) that he was not trespassing on the land; or

(b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

(7) A person may be regarded for the purposes of this section as having a purpose of residing in a place even if he has a home elsewhere.

Forcible entry on or holding of land.

533.(1) A person who, in order to take possession of any land, enters on the land in a violent manner, whether such violence consists in actual force applied to any other person or in threats or in breaking open any house or in collecting an unusual number of people, commits the offence of forcible entry on land.

(2) For the purpose of subsection (1)–

(a) it is immaterial whether the person is entitled to enter on the land or not; but

(b) a person who enters upon land of his own which is in the custody of a servant or agent of his does not commit forcible entry.

(3) A person who–

(a) is in actual possession of land when not entitled by law to possession of it; and

(b) holds possession of it, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person who is so entitled,

commits the offence of forcible holding of land.

(4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both.

Trespass in Government housing.

534.(1) A person who–

(a) without lawful authority, enters upon or remains within any premises that comprise Government housing, within the meaning of the Housing Act 2007; and

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(b) refuses or fails to leave such premises within 24 hours of being requested in writing to do so by or on behalf of the Housing Authority and then remain out of the premises,

commits an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

(2) No prosecution for an offence against this section may be commenced except by, or with the consent of, the Attorney-General.

Remaining in public premises.

535.(1) A person who, having entered any public premises, persists without lawful excuse in remaining in the premises after being required to leave by a police officer acting on the request of a person in control of the premises, commits an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

(2) In this section, "public premises" means–

(a) any building or part of a building, any land ancillary to a building, and the site comprising any building or buildings together with any ancillary land, which belongs to or is occupied by the Government of Gibraltar, the Secretary of State for Defence or any statutory public body; and

(b) any premises used for public worship or for education,

and for the purposes of this definition land is ancillary to a building if it is adjacent to it and used (or intended for use) in connection with the occupation of that building or any part of it.

(3) In this section, "person in control" includes (without limiting the scope of that expression) the owner, tenant or licensee of premises, and any person in lawful occupation of them, and, in relation to premises belonging to or occupied by the Government of Gibraltar or the Secretary of State for Defence, includes any Government or Crown servant; and any employee or agent of a person mentioned in this definition.

Remaining in residential premises.

536.(1) Subject to the following provisions of this section, a person who is in any residential premises as a trespasser after having entered as such commits an offence if he fails to leave the premises within 48 hours after being required to do so by or on behalf of–

(a) a displaced residential occupier of the premises; or

(b) an individual who is an intending residential occupier of the premises.

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(2) In proceedings for an offence under this section it is a defence for the defendant to prove that he believed that the person requiring him to leave the premises was not a displaced residential occupier or intending residential occupier of the premises or a person acting on behalf of such an occupier.

(3) In proceedings for an offence under this section it is a defence for the defendant to prove–

(a) that the premises in question are or form part of premises used mainly for non-residential purposes; and

(b) that he was not on any part of the premises used wholly or mainly for residential purposes.

(4) A reference in the preceding subsections to premises includes a reference to any access to them, whether or not such access itself constitutes premises within the meaning of this Part.

(5) A person who commits an offence under this section is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both.

(6) A requirement to leave the premises made pursuant to subsection (1) must be in writing served on the trespasser in person or, if that is not practicable, by affixing it to the premises in a conspicuous place at or near the main or usual entrance.

Meaning of "displaced residential occupier".

537.(1) Subject to subsection (2), any person who was occupying any premises as a residence immediately before being excluded from occupation by anyone who entered those premises, or any access to those premises, as a trespasser is a displaced residential occupier of the premises for the purposes of this Part so long as he continues to be excluded from occupation of the premises by the original trespasser or by any subsequent trespasser.

(2) A person who was himself occupying the premises in question as a trespasser immediately before being excluded from occupation is not by virtue of subsection (1) a displaced residential occupier of the premises for the purposes of this Part.

(3) A person who by virtue of subsection (1) is a displaced residential occupier of any premises is to be regarded for the purposes of this Part as a displaced residential occupier also of any access to those premises.

(4) Anyone who enters or is on or in occupation of any premises by virtue of–

(a) any title derived from a trespasser; or

(b) any licence or consent given by a trespasser or by a person deriving title from a trespasser,

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is to be treated as a trespasser for the purposes of this Part; and references in this Part to a person entering or being on or occupying any premises as a trespasser are to be construed accordingly.

(5) A person who is on any premises as a trespasser does not cease to be a trespasser for the purposes of this Part by virtue of being allowed time to leave the premises, nor does a person cease to be a displaced residential occupier of any premises by virtue of any such allowance of time to a trespasser.

Meaning of "intending residential occupier".

538.(1) For the purposes of this Part an individual is an intending residential occupier of premises if–

(a) he has in those premises a freehold interest or a leasehold interest;

(b) he requires the premises for his own occupation as a residence or for occupation by a proposed tenant as a residence;

(c) he or the proposed tenant is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser.

(2) An individual is also an intending residential occupier of premises if–

(a) he has a tenancy of those premises or a licence to occupy those premises granted by a person with a freehold interest or a leasehold interest in them;

(b) he requires the premises for his own occupation as a residence;

(c) he is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser.

(3) A person who is an intending residential occupier of any premises is to be regarded for the purposes of this Part as an intending residential occupier also of any access to those premises.

Aggravated trespass

Offence of aggravated trespass.

539.(1) A person commits the offence of aggravated trespass if he trespasses on land in the open air and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land in the open air, does there anything which is intended by him to have the effect–

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(a) of intimidating those persons or any of them so as to deter them or any of them from engaging in that activity,

(b) of obstructing that activity, or

(c) of disrupting that activity.

(2) Activity on any occasion on the part of a person or persons on land is lawful for the purposes of this section if he or they may engage in the activity on the land on that occasion without committing an offence or trespassing on the land.

(3) A person who commits an offence under this section is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

Power to remove persons committing or participating in aggravated trespass.

540.(1) If the senior police officer present at the scene reasonably believes–

(a) that a person is committing, has committed or intends to commit the offence of aggravated trespass on land in the open air; or

(b) that 2 or more persons are trespassing on land in the open air and are present there with the common purpose of intimidating persons so as to deter them from engaging in a lawful activity or of obstructing or disrupting a lawful activity,

the officer may direct that person or (as the case may be) those persons (or any of them) to leave the land.

(2) A direction under subsection (1), if not communicated to the persons referred to in that subsection by the police officer giving the direction, may be communicated to them by any police officer at the scene.

(3) A person who, knowing that a direction under subsection (1) has been given which applies to him–

(a) fails to leave the land as soon as practicable; or

(b) having left again enters the land as a trespasser within 3 months after the direction was given,

commits an offence and is liable on summary conviction to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

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(4) In proceedings for an offence under subsection (3) it is a defence for the defendant to show–

(a) that he was not trespassing on the land; or

(b) that he had a reasonable excuse for failing to leave the land as soon as practicable or, as the case may be, for again entering the land as a trespasser.

(5) In this section "lawful activity" has the same meaning as in section 539(2).

Trespassing with a weapon of offence.

541.(1) A person who is on any premises as a trespasser, after having entered as such, commits an offence if, without lawful authority or reasonable excuse, he has with him on the premises any weapon of offence.

(2) In subsection (1) "weapon of offence" means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use.

(3) A person who commits an offence under this section is liable on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both.

Unauthorised camping

Camping on Crown land or private land.

542.(1) Subject to subsection (2), a person who camps on Crown land except–

(a) with the previous permission in writing of–

(i) the Minister with responsibility for the environment; or

(ii) the Ministry of Defence, in relation to land in the occupation of the Secretary of State for Defence; or

(b) such persons who are authorised to use the facilities at the Governor's Lookout Scout Camp (being the land in the Upper Rock Area shown edged with red on plan numbered T39),

commits an offence.

(2) Nothing in this section applies to the use of any portion of the seashore under and in accordance with a permit issued by the Minister with responsibility for the environment under rule 3 of the Seashore Rules.

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(3) Not used.

(4) A person who camps on private land except with the previous permission of the owner or his agent commits an offence.

(5) Nothing in this section applies to a member of Her Majesty's Forces (including the Royal Gibraltar Regiment) in relation to land in the occupation of the Secretary of State for Defence, when engaged in the execution of his duty.

(6) A person who commits an offence under this section is liable on summary conviction to imprisonment for 6 months or a fine at level 3 on the standard scale, or both.

Camping in a vehicle.

543.(1) If it appears to the Commissioner of Police that persons are for the time being residing in a vehicle or vehicles within Gibraltar–

(a) on any land forming part of a highway;

(b) on any other unoccupied land; or

(c) on any occupied land without the consent of the occupier,

the Commissioner may direct that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land.

(2) Notice of a direction under subsection (1) must be served on the persons to whom the direction applies, but it is sufficient for this purpose for the direction to specify the land and (unless the direction applies to only one person) to be addressed to all occupants of the vehicles on the land, without naming them.

(3) A person who, knowing that a direction under subsection (1) above has been given which applies to him–

(a) fails, as soon as practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction; or

(b) having removed any such vehicle or property again enters the land with a vehicle within 3 months after the direction was given,

commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

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(4) A direction under subsection (1) operates to require persons who re-enter the land within 3 months of the giving of the direction with vehicles or other property to leave and remove the vehicles or other property as it operates in relation to the persons and vehicles or other property on the land when the direction was given.

(5) In proceedings for an offence under this section it is a defence for the defendant to show that his failure to leave or to remove the vehicle or other property as soon as practicable or his re-entry with a vehicle was due to illness, mechanical breakdown or other immediate emergency.

Orders for removal of unauthorised campers.

544.(1) The Magistrates' Court may, on a complaint made by the Commissioner of Police, if satisfied that persons and vehicles in which they are residing are present on land within Gibraltar in contravention of a direction given under section 543, make an order requiring the removal of any vehicle or other property which is so present on the land and any person residing in it.

(2) An order under this section may authorise the Commissioner of Police to take such steps as are reasonably necessary to ensure that the order is complied with and, in particular, may authorise the Commissioner, by any police officer–

(a) to enter upon the land specified in the order; and

(b) to take, in relation to any vehicle or property to be removed in pursuance of the order, such steps for securing entry and rendering it suitable for removal as may be so specified.

(3) A police officer must not enter upon any occupied land pursuant to this section unless the owner and occupier of the land has been given at least 24 hours notice of the intention to do so, or unless after reasonable inquiries it is not possible to ascertain their names and addresses.

(4) A person who wilfully obstructs a police officer in the exercise of powers conferred by an order under this section commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(5) If a complaint is made under subsection (1), a summons issued by the court requiring the person or persons to whom it is directed to appear before the court to answer to the complaint may be directed–

(a) to the occupant of a particular vehicle on the land in question; or

(b) to all occupants of vehicles on the land in question,

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without naming him or them.

(6) Section 36(2) of the Magistrates' Court Act (Warrant for arrest of defendant failing to appear) does not apply to proceedings on a complaint made under this section.

Provisions as to directions and orders.

545.(1) The following provisions apply in relation to the service of notice of a direction under section 543 and of a summons under section 544, referred to in this section as a "relevant document".

(2) If it is impracticable to serve a relevant document on a person named in it, the document is to be treated as duly served on him if a copy of it is fixed in a prominent place to the vehicle concerned; and if a relevant document is directed to the unnamed occupants of vehicles, it is to be treated as duly served on those occupants if a copy of it is fixed in a prominent place to every vehicle on the land in question at the time when service is thus effected.

(3) The Commissioner of Police must take such steps as may be reasonably practicable to secure that a copy of any relevant document is displayed on the land in question (otherwise than by being fixed to a vehicle) in such a manner that it is likely to be seen by any person camping on the land.

(4) Notice of any relevant document must given by a police officer to the owner of the land in question and to any occupier of that land unless, after reasonable inquiries, it is not possible to ascertain the name and address of the owner or occupier; and the owner of any such land and any occupier of such land is entitled to appear and to be heard in the proceedings.

Designated sites

Trespassing on a designated site.

546.(1) A person commits an offence if he enters, or is on, any designated site as a trespasser.

(2) A "designated site" means a site–

(a) specified or described (in any way) in an order made by the Minister with responsibility for the environment; and

(b) designated for the purposes of this section by the order.

(3) The Minister with responsibility for the environment may only designate a site for the purposes of this section if–

(a) it is comprised in Crown land; or

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(b) it appears to the Minister that it is appropriate to designate the site in the public interest of Gibraltar.

(4) It is a defence for a person charged with an offence under this section to prove that he did not know, and had no reasonable cause to suspect, that the site in relation to which the offence is alleged to have been committed was a designated site.

(5) A person who commits an offence under this section is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both.

(6) No proceedings for an offence under this section may be commenced against any person except by, or with the consent of, the Attorney-General.

(7) For the purposes of this section a person who is on any designated site as a trespasser does not cease to be a trespasser by virtue of being allowed time to leave the site.

PART 23
PUBLIC NUISANCES, ETC.

547. *Repealed*

Noise.

548.(1) Subject to section 549, a person who through the use of an instrument or by any other means–

(a) makes noise; or

(b) causes noise to be made,

commits an offence if the noise causes or is likely to cause–

(i) annoyance or distress to a reasonable person having regard to the time of day; or

(ii) a breach of the peace.

(2) In having regard to the time of day, the hours between 11 p.m. and 6 a.m. are deemed to be quiet hours and a lower level of noise is to be considered tolerable by a reasonable person and subparagraph (i) of subsection (1) is to construed accordingly.

(3) If the noise is emitted or caused by an animal, the owner and the person who is responsible for, or who has charge or control of the animal, are both liable as though each was making the noise himself.

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(4) If a person makes noise between the hours of 6 a.m. and 11 p.m. contrary to this section, a police officer may, instead of taking proceedings, request the person concerned to reduce the level of noise or to stop making it or to take any steps required to reduce the level of noise or to stop the making of it.

(5) If a person makes noise between the hours of 11 p.m. and 6 a.m. contrary to this section, a police officer may, instead of taking proceedings, request the person concerned to stop or to take any steps required to stop the making of the noise.

(6) In proceedings under subsection (1) it is immaterial whether the person making the noise is in a public place, a dwelling or elsewhere.

(7) A person who fails to comply with a reasonable request by a police officer under subsection (4) or (5) commits an offence.

(8) A person who commits an offence under subsection (1), (4) or (5) is liable on summary conviction to a fine at level 4 on the standard scale.

(9) A person does not commit an offence under this section if the making of the noise is authorised under another enactment or is in accordance with the terms and conditions of a permit or licence issued under another enactment or under section 549.

Exemptions.

549.(1) The Minister with responsibility for culture may issue a permit to named persons for the purposes of authorising a public performance, a fair or other event, subject to such conditions as he, in his absolute discretion,
considers appropriate.

(2) In considering the application for a permit and the imposition of any conditions, the Minister must have regard to the interests of the persons whom he foresees may be affected by the grant of the permit.

(3) A person who acts within the terms of a permit issued under subsection (1) is not liable to proceedings for an offence under section 548.

(4) If a condition of a permit is breached the person to whom the permit is issued, as well as the person who commits the breach, may be proceeded with for an offence under section 548.

Other nuisances.

550.(1) A person who without lawful authority–

(a) causes an obstruction on a public highway;

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(b) places any article in such a manner that it encroaches onto a public footway and thereby obstructs or incommodes any person using that footway;

(c) spills any thing, whether solid, liquid or otherwise, in a public place whereby it causes a public nuisance or a danger to the public by reason of–

(i) the properties of the spilt article; or

(ii) the quantities spilt;

(d) does any thing, either on, over or under a public highway or public footway by which another person may be exposed to danger;

(e) fails to maintain or repair any article under his control whereby another person in a public place may be exposed to danger;

(f) deposits any offensive matter in a public place; or

(g) plays any game or undertakes any activity in a public place in such circumstances and in such a manner that a breach of the peace may be caused,

commits an offence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he had a permit or licence for the activity issued under an enactment and that he had not exceeded any limitations imposed by the permit or licence.

(3) It is also a defence for a person charged with an offence under subsection (1) to prove that he took all reasonable steps to avoid committing the offence.

(4) A person who commits an offence under subsection (1) is liable on summary conviction–

(a) for a first offence, to a fine at level 4 on the standard scale;

(b) for a second or subsequent offence, to the statutory maximum fine.

(5) If any article, matter or thing is placed or allowed to remain in any public place so that it causes obstruction, annoyance or danger to any person, a police officer may–

(a) remove the thing or cause it to be removed and taken to a place of safety;

(b) detain it at the risk of the owner until the expenses of removal and detention are paid; and

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(c) if such expenses are not paid within 7 days, sell or dispose of the thing and apply the proceeds as specified in section 551.

Disposal of proceeds of sale, etc.

551.(1) If in exercise of the powers conferred by section 550(5) a police officer has removed and detained anything, or caused it to be removed and detained, and the expenses of detention and removal have not been paid within 7 days, the Commissioner of Police, or any person authorised by him in writing to act as his agent for the purpose–

(a) must publish in the Gazette his intention to sell or otherwise dispose of the thing;

(b) may, after the expiry of 7 days after such publication, sell or otherwise dispose of the thing, or cause it to be sold or otherwise disposed of.

(2) When a thing has been sold or disposed of pursuant to subsection (1)–

(a) any proceeds of the sale or disposition must be applied first towards recouping the expenses of removal, detention and sale or other disposition of the thing; and

(b) any balance of the proceeds of sale or disposition must be paid into the Consolidated Fund.

Posting bills and graffiti.

552.(1) It is an offence for a person to affix any posting bill or other paper against or upon any building, wall, fence, hoarding or pole without the express consent of the owner or occupier of the premises or property concerned.

(2) It is an offence for a person to allow his goods, trade, business occupation, profession or other concern to be given publicity by or to benefit from the affixing of a posting bill or other paper in contravention of subsection (1), unless the person shows that the affixing of the bill whereby such publicity was given occurred
without his consent.

(3) It is an offence for a person, without the express consent of the owner or occupier–

(a) to write upon, soil, deface or mark any building, wall, fence, hoarding or pole; or

(b) wilfully to break, destroy or damage any part of such building, wall, fence or pole or any fixture or appendage to it.

(4) A person who commits an offence under any of subsections (1), (2) or (3) is liable on summary conviction to a fine at level 2 on the standard scale.

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Prohibited areas for pleasure boats and bathing.

553.(1) It is an offence for a person–

(a) during the months of April to October inclusive, being the navigator of a pleasure boat propelled by an internal combustion engine, to cause or permit the vessel or any person or thing being towed behind it to enter any area of sea prescribed by order by the Minister responsible for the environment;

(b) to bathe in the sea at Catalan Bay, Sandy Bay, Eastern Beach, Little Bay, Camp Bay or Western Beach in breach of the signal given by the display of a flag prohibiting such bathing exhibited at the beach in question.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine at level 2 on the standard scale.

(3) In subsection (1)–

(a) the words "bathe" and "bathing" do not include "paddle" or "paddling";

(b) "paddling" means being upright in water which is not above knee depth prior to the receding of a wave;

(c) "navigator" means the person who, whether as owner or otherwise, has the charge or control of a pleasure boat and includes a person who, being present, is entitled to give orders to the person having charge or control.

Vessels not to inconvenience bathers.

554.(1) It is an offence for a person in charge of a vessel to cause or allow the vessel to be navigated in such a manner as to be a source of danger or inconvenience to persons who are bathing in the sea or are on the foreshore.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine at level 4 on the standard scale.

Underwater fishing.

555.(1) Subject to the provisions of any other Act and any subsidiary legislation made under it, it is an offence for a person–

(a) to carry or use an aqualung or any other respiratory apparatus for the purpose of underwater fishing on the seashore or in the port, harbour or any part of the territorial waters of Gibraltar; or

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(b) *Repealed*

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine at level 3 on the standard scale.

Discharging firearms, etc.

556.(1) A person who–

(a) intentionally and without lawful authority or excuse discharges any firearm;

(b) in any manner or from any place throws or discharges any stone or other missile or thing whatsoever to the damage or danger of any person; or

(c) without lawful authority or excuse makes any bonfire,

commits an offence.

(2) Upon summary conviction under subsection (1) a person is liable-

(a) in the case of a person convicted under paragraph (a) or (b), to imprisonment for 12 months or the statutory maximum fine, or both;

(b) in the case of a person convicted under paragraph (c), to a fine at level 3 on the standard scale.

(3) This section does not affect or limit the provisions of any other law relating to the possession and use of firearms.

Intoxication

Interpretation for sections 558 to 563.

557. In sections 558 to 563 "intoxication" means physical or mental impairment, whether caused by the consumption of alcohol, drugs or other means, or by a combination of means, and "intoxicated" is to be construed accordingly.

Intoxication in public places.

558.(1) It is an offence for a person to be found intoxicated in any public place.

(2) A person who commits an offence under subsection (1) is liable on summary conviction–

(a) on first conviction - to imprisonment for 2 months or a fine at level 1 on the standard scale, or both;

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(b) on a second or subsequent conviction - to imprisonment for 4 months or a fine at level 2 on the standard scale, or both.

Disorderly or indecent conduct while intoxicated.

559.(1) A person who is intoxicated and acts in a disorderly or indecent manner in a public place or in a police station commits and offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction–

(a) on first conviction - to imprisonment for 4 months or a fine at level 2 on the standard scale, or both;

(b) on a second or subsequent conviction - to imprisonment for 6 months or a fine at level 3 on the standard scale, or both.

Possession of firearms while intoxicated.

560.(1). A person who is intoxicated and is in possession of a firearm in a public place commits an offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction–

(a) on first conviction - to imprisonment for 4 months or a fine at level 2 on the standard scale, or both;

(b) on a second or subsequent conviction - to imprisonment for 6 months or a fine at level 3 on the standard scale, or both.

(3) In dealing with a person under this section, in addition to any penalty the court imposes, if the defendant has a permit allowing him to possess a firearm, the court may suspend, revoke or impose conditions on the permit as it thinks fit although the permit was not issued under this Act.

Being intoxicated while in charge of a child.

561.(1) A person who is intoxicated in any public place, whether a building or not, or on any licensed premises, while having the charge of a child under the age of 13 years commits an offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for 4 months or to a fine at level 2 on the standard scale, or both.

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(3) If the child appears to the court to be under the age of 13, the child is, for the purposes of this section, deemed to be under that age unless the contrary is proved.

Permitting drunkenness or disorderly conduct in licensed premises.

562.(1) If the sale of alcohol on premises is permitted by a licence or permit issued under any enactment, it is an offence for a person to–

(a) permit drunkenness or other disorderly conduct in the premises;

(b) sell any intoxicating liquor to an intoxicated person on the premises;

(c) knowingly permit any unlawful games or any gaming in the premises; or

(d) knowingly permit soliciting for prostitution on the premises.

(2) In subsection (1) the reference to "a person" means–

(a) the person to whom the licence or permit is issued; and

(b) a person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the conduct.

(3) A person who commits an offence under subsection (1) is liable−

(a) on summary conviction to a fine at level 3 on the standard scale;

(b) on conviction for a third such offence within 18 months of the first such conviction - to the cancellation or suspension of his licence in addition to a fine under paragraph (a).

Procuring alcohol for an intoxicated person.

563.(1) A person who procures alcohol for the consumption, on licensed premises or in a public place, by a person who is intoxicated commits an offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for 1 month or a fine at level 1 on the standard scale, or both.

Begging, etc.

Begging, etc.

564.(1) A person who in any public place begs or gathers alms commits an offence.

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(2) A person who commits an offence under subsection (1) is liable on summary conviction–

(a) on first conviction - to imprisonment for 4 months or a fine at level 2 on the standard scale, or both;

(b) on a second or subsequent conviction - to imprisonment for 9 months or a fine at level 4 on the standard scale, or both.

(3) It is a defence to a charge under subsection (1) for a person to show that his conduct was authorised by a permit issued pursuant to an enactment.

Using children for begging, etc.

565.(1) A person who in any public place causes, procures, encourages or allows a child under the age of 16 to beg or seek alms in a public place, commits an offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction–

(a) on first conviction - to imprisonment for 1 month or a fine at level 2 on the standard scale, or both;

(b) on a second or subsequent conviction - to imprisonment for 2 months or a fine at level 4 on the standard scale, or both.

PART 24
BRIBERY OFFENCES

General bribery offences

Offences of bribing another person.

566.(1) A person ('P') commits an offence in either of the following cases.

(2) Case 1 is where –

(a) P offers, promises or gives a financial or other advantage to another person; and

(b) P intends the advantage to−

(i) induce a person to perform improperly a relevant function or activity; or

(ii) reward a person for the improper performance of such a function or activity.

(3) Case 2 is where−

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(a) P offers, promises or gives a financial or other advantage to another person; and

(b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

(4) In Case 1 it is irrelevant whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

(5) In Cases 1 and 2 it is irrelevant whether the advantage is offered, promised or given by P directly or through a third party.

Offences relating to being bribed.

567.(1) A person ('R') commits an offence in any of the following cases.

(2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly

(3) Case 4 is where–

(a) R requests, agrees to receive or accepts a financial or other advantage; and

(b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.

(4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.

(5) Case 6 is where, in anticipation or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly by–

(a) R; or

(b) another person at R's request, or with R's assent or acquiescence.

(6) In Cases 3 to 6 it is irrelevant whether-

(a) R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or though a third party;

(b) the advantage is (or is to be) for the benefit of R or another person.

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(7) In Cases 4 to 6 it is irrelevant whether R knows or believes that the performance of the function or activity is improper.

(8) In Case 6, if a person other than R is performing the function or activity, it is also irrelevant whether that person knows or believes that the performance of the function or activity is improper.

Function or activity to which bribe relates.

568.(1) For the purposes of this Part, a function or activity is a relevant function or activity if it–

(a) falls within subsection (2); and

(b) meets one of more of conditions A to C.

(2) The following functions and activities fall within this subsection–

(a) any function of a public nature;

(b) any activity connected with a business;

(c) any activity performed by or on behalf of a body of persons (whether incorporated or not).

(3) Condition A is that a person performing the function or activity is expected to perform it in good faith.

(4) Condition B is that a person performing the function or activity is expected to perform it impartially.

(5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.

(6) A function or activity is a relevant function or activity even if it−

(a) has no connection with Gibraltar; and

(b) is performed in a country or territory outside Gibraltar.

(7) In this section, "business" includes trade or profession.

Improper performance to which bribe relates.

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569.(1) For the purposes of this Part a relevant function or activity is–

(a) performed improperly if it is performed in breach of a relevant expectation; and

(b) to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.

(2) In subsection (1), "relevant expectation"–

(a) in relation a function or activity which meets condition A or B - means the expectation mentioned in the condition concerned;

(b) in relation a function or activity which meets condition C - means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.

(3) Anything that a person does (or omits to do) arising from or in connection with that person's past performance of a relevant function or activity is to be treated for purposes of this Part as being done (or omitted) by that person in the performance of that function or activity.

Expectation test.

570.(1) For the purposes of sections 568 and 569, the test of what is expected is a test of what a reasonable person in Gibraltar would expect in relation to the performance of the type of function or activity concerned.

(2) In deciding what such a person would expect in relation to the performance of a function or activity, in a place where the performance is not subject to the law of Gibraltar, any local custom or practice is to be disregarded unless it is permitted or required by the written law of the country or territory concerned.

(3) In subsection (2), "written law" means law contained in−

(a) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned; or

(b) any judicial decision which is so applicable and is evidenced in published written sources.

Bribery of foreign public officials

Bribery of foreign public officials.

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571.(1) A person ('P') who bribes a foreign public official ('F') with intent to influence F in F's capacity as a foreign public official commits an offence if P's intention is to obtain or retain−

(a) business; or

(b) an advantage in the conduct of business.

(2) P bribes F if, and only if–

(a) directly or through a third party P offers, promises or gives any financial advantage to -

(i) F; or

(ii) another person at F's request or with F's assent or acquiescence; and

(b) F is neither permitted nor required by the written law applicable to F to be influenced in F's capacity as a foreign public official by the promise, offer or gift.

(3) References in this section to influencing F in F's capacity as a foreign public official mean influencing F in the performance of F's functions as such an official, including−

(a) any omission to exercise those functions; and

(b) any use of F's position as such an official, even if not within F's authority.

(4) The term "foreign public official" means an individual who−

(a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside Gibraltar (or any subdivision of such a country or territory);

(b) exercises a public function−

(i) for or on behalf of a country or territory outside Gibraltar (or any subdivision of such a country or territory); or

(ii) for any public agency or public enterprise of that country or territory (or subdivision); or

(c) is an official or agent of a public international organisation.

(5) In this section, "public international organisation" means an organisation whose members are−

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(a) countries or territories;

(b) governments of countries or territories;

(c) other public international organisations; or

(d) a mixture of any of the above.

(6) For the purpose of subsection (2)(b), the written law applicable to F is–

(a) if the performance of the functions of F which P intends to influence would be subject to the law of Gibraltar - that law;

(b) if paragraph (a) does not apply and F is an official or agent of a public international organisation - the applicable written rules of that organisation;

(c) if paragraphs (a) and (b) do not apply, the law of the country or territory in relation to which F is a foreign public official so far as that law is contained in–

(i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned; or

(ii) any judicial decision which is so applicable and is evidenced in published written sources.

(7) For the purposes of this section, a trade or profession is a business.

Failure of commercial organisations to prevent bribery

Failure of commercial organisations to prevent bribery.

572.(1) Subject to subsection (2), a relevant commercial organisation ('C') commits an offence under this section if a person ('A') associated with C bribes another person intending to–

(a) obtain or retain business for C; or

(b) obtain or retain an advantage in the conduct of business for C.

(2) It is a defence to a charge under subsection (1) for C to show that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

(3) For the purposes of this section, A bribes another person if, and only if–

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(a) A is, or would be, guilty of an offence under section 566 or 571 (whether or not A has been prosecuted for such an offence); or

(b) A would be guilty of such an offence if section 577(1)(c) and (3) were omitted.

(4) Section 573 applies to this section in respect of the meaning of a person associated with C and section 574 applies in respect of the duty on the Minister to publish guidance.

(5) In this section–

"partnership" means–

(a) a partnership within the meaning of the Partnership Act;

(b) a limited partnership within the meaning of the Limited Partnership Act; or

(c) a firm or entity of a similar character to (a) or (b) formed under the law of a country or territory outside Gibraltar;

"relevant commercial organisation" means–

(a) a body incorporated under the law of Gibraltar which carries on a business there or elsewhere;

(b) any other corporate body (wherever incorporated) which carries on business, or part of a business, in Gibraltar;

(c) a partnership formed under the law of Gibraltar which carries on a business (whether there or elsewhere); or

(d) any other partnership (wherever formed) which carries on a business, or part of a business, in Gibraltar,

and for purposes of this section, a trade or profession is a business.

Meaning of "associated person".

573.(1) For the purposes of section 572 a person ('A') is associated with C if (disregarding any bribe under consideration) A is a person who performs services for or on behalf of C.

(2) The capacity in which A performs services for or on behalf of C is irrelevant, so that A may (for example) be C's employee, agent or subsidiary.

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(3) Subject to subsection (4), the question of whether A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between A and C.

(4) In determining a question as mentioned in subsection (3), if A is an employee of C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.

Guidance about commercial organisations preventing bribery.

574.(1) The Minister may by order publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentioned in section 572(1).

(2) The Minister may from time to time by order publish revisions to guidance published under this section, or to revised guidance.

(3) Expressions used in this section have the same meaning as in section 572.

Prosecution and penalties

Consent to prosecution.

575. No proceedings under this Part may be instituted except by, or with the consent of, the Attorney-General.

Penalties.

576.(1) An individual who commits an offence under section 566, 567 or 571 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 10 years or a fine, or both.

(2) Any other person who commits an offence under section 566, 567 or 571 is liable–

(a) on summary conviction, to the statutory maximum fine;

(b) on conviction on indictment, to a fine.

(3) A person who commits an offence under section 572 is liable on conviction on indictment to a fine.

Miscellaneous

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Territorial application of this Part.

577.(1) If–

(a) no act or omission which forms part of an offence under section 566, 567 or 571 takes place in Gibraltar;

(b) a person's acts or omissions done or made outside Gibraltar would form part of such an offence if done or made in Gibraltar; and

(c) that person has a close connection with Gibraltar,

proceedings for the offence may be taken in Gibraltar.

(2) An offence can be committed under section 572 whether the acts or omissions which form part of the offence take place in Gibraltar or elsewhere.

(3) For the purposes of subsection (1), a person has a close connection with Gibraltar if at the time when the acts or omissions were done or made, the person was–

(a) an individual who was a British person or a Gibraltarian; or

(b) a body incorporated under the law of Gibraltar.

Offences on Gibraltar registered vessels.

577A. Except for offences under sections 2 to 5 of the Proceeds of Crime Act 2015, for which separate provision is made under that Act, a court in Gibraltar shall have jurisdiction to hear any other matter which would constitute a relevant offence as defined in section 7 of the Mutual Legal Assistance (Merida Convention) Act 2022, where that offence was committed wholly or partly on board a vessel that is registered under the laws of Gibraltar at the time the relevant offence was committed.

Legitimate purpose as a defence.

578.(1) It is a defence for a person charged with a relevant bribery offence to prove that the person's conduct was necessary for the proper exercise of the functions of–

(a) the security services; or

(b) the armed services when engaged on active service.

(2) For the purposes of subsection (1), a "relevant bribery offence" means–

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(a) an offence under section 566 which would not also be an offence under section 571;

(b) an offence under section 567;

(c) an offence committed by aiding, abetting , counselling or procuring the commission of an offence falling within paragraph (a) or (b);

(d) an offence of attempting or conspiring to commit, or of encouraging or assisting the commission of an offence falling within paragraph (a) or (b); or

(e) an offence of encouraging or assisting an offence falling with paragraph (a) or (b).

Bribery offences by corporate bodies.

579.(1) This section applies if an offence under section 566, 567 or 571 is committed by a corporate body.

(2) If the offence is proved to have been committed with the consent or connivance of–

(a) a senior officer of the corporate body; or

(b) a person purporting to act in such a capacity,

the senior officer or person (as well as the corporate body) commits the offence and is liable to be proceeded against and punished accordingly.

(3) Subsection (2) does not apply, in the case of an offence under section 566, 567 or 571 committed by virtue of section 577(2) or (3), to a senior officer or person purporting to act in such a capacity unless the senior officer or person has a close connection with Gibraltar (within the meaning given by section 577(3).

(4) In this section–

"director" means, in relation to a corporate body the affairs of which are managed by its members, a member of the body;

"senior officer" means, in relation to a corporate body, a director, manager, secretary or other similar officer of the body.

Bribery offences by partnerships.

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580.(1) Proceedings for an offence under section 572 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).

(2) For the purpose of such proceedings–

(a) provisions relating to the service of documents have effect as if the partnership were a corporate body; and

(b) the provisions of the Criminal Procedure and Evidence Act 2011 relating to proceedings against a corporate body apply as they apply in relation to such a body.

Application to Crown.

581. This Part applies to individuals in the public service of the Crown as it applies to other individuals.

Abolition of common law offences.

582. The common law offences of bribery and embracery are abolished.

PART 25
DANGEROUS DOGS

Prohibition of dangerous dogs.

583.(1) No dangerous dog may be imported into Gibraltar, or, after the relevant date, kept in Gibraltar.

(2) After the relevant date, no person may sell, buy or otherwise deal with a dangerous dog.

(3) The Minister may by order published in the Gazette amend Part A of Schedule 10 to remove any type of dog, or to add any type of dog bred for fighting or which is dangerous to persons or property.

(4) The Minister may by order declare a particular dog or dogs which is or are dangerous to persons or property to be a dangerous dog or dogs.

(5) In this Part–

"relevant date" means the date on which this Part comes into operation or the date of publication of an order under subsection (4), whichever is later;

"dangerous dog" means–

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(a) a dog of a type listed in Part A of Schedule 10;

(b) a dog appearing to be a cross breed of or substantially of one of those types; and

(c) a dog that is the subject of an order under subsection (4).

Export or destruction of dangerous dogs.

584. (1) The owner of a dangerous dog must export it or arrange for its destruction within 21 days after the relevant date.

(2) After the relevant date the person in control of a dangerous dog must keep it muzzled and on a lead while it is in a public place.

Offences.

585.(1) A person who imports or, from the relevant date, keeps in Gibraltar a dangerous dog commits an offence.

(2) A person who sells, buys or otherwise deals with a dangerous dog commits an offence.

(3) An owner of a dangerous dog who fails to arrange for its export or destruction as required by section 584(1) commits an offence.

(4) The person in control of a dangerous dog who fails to keep it muzzled and on a lead as required by section 584(2) commits an offence.

(5) A person who commits an offence under this section is liable on summary conviction to the statutory maximum fine.

(6) On convicting a person of an offence under this section, the court -

(a) must order the destruction of the dog in respect of which the proceedings were taken; and

(b) may make an order disqualifying the person convicted from owning or being in control of any dog for a specified period, or for life.

Stray dangerous dogs.

586. A dangerous dog which is seized as a stray under section 24(6) of the Animals and Birds Act must be destroyed under arrangements made by the Commissioner of Police and subsections (2) to (4) of section 24 do not apply to such a dog.

Entry and seizure.

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587.(1) If, after the relevant date, a Magistrate is satisfied by information on oath that a dangerous dog, not being a dog in respect of which a certificate of exemption has been issued under section 590, is kept on any premises in Gibraltar, he may issue a warrant authorising a police officer to enter those premises and seize the dog concerned.

(2) A dog seized under subsection (1) must be destroyed under arrangements made by the Commissioner of Police.

Compensation.

588. The Minister with responsibility for the environment may grant compensation of up to £200 to the owner of a dog destroyed pursuant to section 584(1) or 587(2).

General exemptions.

589. A police officer, veterinary surgeon or other person who has custody of a dangerous dog under arrangements made by the Commissioner of Police under this Part pending its destruction under any provision of this Part does not commit an offence by virtue of that custody.

Exemption for individuals.

590.(1) The owner of a dangerous dog which is registered and licensed under the Animals and Birds Act may before the relevant date apply in writing to the Environmental Agency for exemption from the requirements imposed on owners by sections 583 to 585 in respect of a particular dog.

(2) The Environmental Agency may only issue an exemption under subsection (1) on the authority of the Commissioner of Police and if satisfied that the dog concerned does not and will not foreseeably represent a danger to the public or property.

(3) The Commissioner of Police may only give authority under subsection (2) on the advice of a committee composed as set out in Part B of Schedule 10.

(4) The Minister may by order amend Part B of Schedule 10 as to the composition of the committee and may make consequential changes in the appointments.

(5) The Commissioner of Police may, on the advice of the committee, direct the Environmental Agency to revoke a certificate of exemption in relation to a dog if he considers that the dog has become, or is likely to become, a danger to the public or property.

(6) On revocation of a certificate of exemption under subsection (5), the obligations on owners under sections 583 to 585 apply as if the period of 7 days after the revocation of the certificate were substituted for the relevant date in all 3 sections.

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(7) The fee for the issue of a certificate of exemption is £50 or such other sum as the Minister responsible for finance may declare by order published in the Gazette.

(8) A lost or damaged certificate of exemption may be replaced on application to the Environmental Agency, for the same fee as for a new certificate.

Consequences of exemption.

591.(1) If a certificate of exemption in relation to a dog is issued under section 590–

(a) the dog must be neutered;

(b) the dog must have a microchip inserted and registered under the Animals and Birds Rules 2004;

(c) the owner of the dog must maintain a policy of insurance in respect of damage or injury caused by the dog to a third party;

(d) the certificate must be carried by the person in control of the dog whenever the dog is in a public place;

(e) no person under the age of 18 may have control of the dog in a public place;

(f) the requirement of section 585(4) continues to apply (Dog to be muzzled and on a lead in public places).

(2) If the owner of an exempted dangerous dog fails to comply with any of the requirements of subsection (1)–

(a) the owner commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale;

(b) the exemption ceases to have effect forthwith.

(3) A person in control of a dog in respect of which a certificate of exemption has been issued (an "exempted dangerous dog") who fails to produce–

(a) the certificate of exemption;

(b) the certificate of insurance,

(or either of them) in respect of the dog on request by a police officer or customs officer commits an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

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(4) If a person in control of an exempted dangerous dog fails to produce the certificate of exemption and certificate of insurance on request by a police or customs officer, the dog must be seized and, unless the relevant certificate is produced to the Commissioner of Police within 7 days of the seizure, destroyed under arrangements made by the Commissioner of Police.

PART 26
SECURITY AND THE ARMED FORCES

Security

Restricted areas.

592.(1) The Minister, in respect of any land belonging to or in the occupation of the Government, or the Governor, in respect of any land belonging to or in the occupation of the Secretary of State for Defence, may by notice in the Gazette–

(a) declare any area of the land to be closed to the public;

(b) prescribe any place on the land in which photographs, sketches or other pictures must not be made.

(2) A person who, without the permission in writing of the Government or the Governor (as the case may be) or other lawful authority, or in breach of the terms of such permission–

(a) enters upon or loiters in the immediate vicinity of an area declared closed under subsection (1)(a); or

(b) makes a photograph, sketch or other picture in or of a place prescribed under subsection (1)(b),

commits an offence.

(3) A person who commits an offence under subsection (2) is liable on summary conviction to imprisonment for 3 months or a fine at level 3 on the standard scale, or both.

(4) A person does not commit an offence under subsection (2) unless the area or place in question has placed on it, so as to be clearly seen by persons entering it in the normal way, a notice setting out the prohibitions or restrictions relating to it as notified in the Gazette under subsection (1).

(5) A court before whom a person is convicted of an offence under this section may order any photograph, sketch or other picture or material for making the same which was found in the possession of the person at the time of the offence to be forfeited.

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Disclosure of classified Euratom information.

593.(1) A person who acquires, or obtains cognizance of, any classified information as a result of his–

(a) duties as a member of any Euratom institution or committee, or an officer or servant of Euratom; or

(b) dealings in any capacity (official or unofficial) with any Euratom institution or installation or with any Euratom joint enterprise,

commits an offence if, knowing or having reason to believe that it is classified information, he communicates it to any unauthorised person or makes any public disclosure of it, whether in Gibraltar or elsewhere and whether before or after the termination of those duties or dealings.

(2) For the purpose of subsection (1), "classified information" means any facts, information, knowledge, documents or objects that are subject to the security rules of a State which is a member of the European Atomic Energy Community or any Euratom institution.

(3) For the purposes of this section, it is immaterial that the person charged is or is not a Commonwealth citizen.

(4) This subsection is to be construed, and the Official Secrets Acts 1911 to 1939 have effect, as if this subsection were contained in the Official Secrets Act 1911, but so that in that Act sections 10 and 11, except section 10(4), do not apply.

The Armed Forces

594. *Repealed*.

Uniforms not to be worn without authority.

595.(1) It is an offence for a person who is not serving in the armed forces of the Crown to wear without the permission of the Secretary of State for Defence expressed through the Governor, the uniform of any of those forces, or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform.

(2) A person who commits an offence under subsection (1) is liable on summary conviction a fine at level 1 on the standard scale.

(3) Subsection (1) does not prevent any person from wearing any uniform or dress in the course of a stage play performed in a place duly licensed or authorised for the public performance of stage plays, or in the course of a music hall or circus performance or in the course of any *bona fide* military representation.

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(4) For the purposes of this section and of section 597, "the armed forces of the Crown" means any of Her Majesty's military, naval or air forces.

Bringing contempt on uniform.

596.(1) It is an offence for a person who is not serving in the armed forces of the Crown–

(a) to wear without the permission of the Governor the uniform of any of those forces, or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform, in such a manner or under such circumstances as to be likely to bring contempt upon that uniform; or

(a) to employ any other person so to wear that uniform or dress.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for 1 month or a fine at level 1 on the standard scale, or both.

Annoying or interfering with troops, etc.

597.(1) It is an offence for a person wilfully to interfere with or cause annoyance to–

(a) any member of the armed forces of the Crown or any police officer while on duty; or

(b) any person who is on military guard or sentry duty after being warned to desist.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine at level 2 on the standard scale.

PART 27
SUPPLEMENTARY PROVISIONS

Regulations.

598.(1) The Minister may make regulations, in relation to property forfeited under this Act, for disposing of the property and dealing with the proceeds in cases where–

(a) no application for recovery of the property has been made within 6 months of the forfeiture order being made; or

(b) no such application has succeeded.

(2) The Minister may make regulations regulating the retention and safe keeping, and the disposal and destruction in prescribed circumstances, of things seized under this Act, and the

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regulations may make different provisions for different classes of things or for different circumstances.

(3) The Minister may make regulations to provide for investing money and auditing accounts when powers of forfeiture or disposal are exercised under this Act or under section 65(1) of the Interpretation and General Clauses Act.

(4) Any regulations or orders made under this Act must be laid before the Parliament at the next sitting after they have been made.

Repeal and savings.

599.(1) Subject to subsection (2), the following Acts and items of subsidiary legislation made under them ("the repealed Acts") are repealed–

(a) Criminal Offences Act;

(b) Drugs (Misuse) Act;

(c) Dangerous Dogs Act 2003;

(d) Crimes (Computer Hacking) Act 2009;

(e) Crimes (Indecent Photographs with Children) Act 2009.

(2) The Drugs (Misuse) Regulations 2005 continue in force as if made under section 510 of this Act until revoked or amended by the Minister under that section.

(3) The members of the Advisory Council on the Misuse of Drugs appointed under section 35 of the Drugs (Misuse) Act continue in office as if appointed under section 530 of this Act on the day on which that section comes into force.

(4) The members of the advisory committee appointed under section 9 of and the Schedule to the Dangerous Dogs Act 2003 continue in office as if appointed under section 590(3) of this Act on the day on which that section comes into force.

(5) Any direction, exemption, notice or other non-legislative instrument made or issued by the Government or any person or body under any of the repealed Acts which could be made or issued by the Government or an equivalent person or body under this Act continues to have effect as if made or issued by the Government or that person or body under this Act until varied or revoked under this Act.

(6) Any delegation made, direction given or other action taken by a person under any of the repealed Acts which could be taken by an equivalent person under this Act continues to have effect as if taken by that person under this Act.

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Savings for other laws.

600.(1) Except as expressly provided in this Act, and subject to subsection (2), nothing in this Act affects–

(a) the liability, trial or punishment of a person for an offence against the common law or against any other law in force in Gibraltar other than this Act;

(b) any of the statutes, Acts, regulations or articles for the time being in force for the government of armed forces of the Crown or the military or police forces of Gibraltar.

(2) If a person does an act which is punishable under this Act and is also punishable under another law of any of the kinds mentioned in this section, he may not be punished for that act both under this Act and under that other law.

Transitional provisions.

601.(1) Proceedings for an offence under any of the repealed Acts that had commenced before the commencement of this Act must continue under the respective Act as if it had not been repealed.

(2) If proceedings for an offence committed under any of the repealed Acts have not been commenced at the commencement of this Act–

(a) if there is an equivalent offence under this Act - proceedings must be brought under this Act;

(b) if there is no equivalent offence - proceedings cannot be brought.

(3) The maximum sentence for an offence under a repealed Act that can be imposed for an offence under that Act committed before the commencement of this Act is the maximum sentence for that offence under that Act.

(4) If an offence committed before the commencement of this Act is by any Act in force that was passed before the commencement of this Act made punishable only on summary conviction, it remains only so punishable.

(5) An appeal against conviction or sentence in respect of an offence committed before the commencement of this Act must be conducted as if this Act had not been enacted.

(6) Subsection (1) does not apply in relation to an offence of conspiracy if the agreement was entered into before the commencement of this Act and the conspiracy continued to exist after that date.

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(7) For purposes of this section, proceedings for an offence commence on–

(a) arrest without warrant;

(b) the issue of a warrant for arrest;

(c) the issue of a summons to appear;

(d) the service of an indictment or other document specifying the charge;

(e) an oral charge,

in respect of the offence.

(8) For the purposes of this section, an offence is committed wholly or partly before the commencement of this Act if any of the conduct or events alleged to constitute the offence occurred before that commencement.

Consequential amendments.

602.(1) A reference in any other Act to any of the repealed Acts is, to the extent possible, to be read as a reference to the corresponding provision of this Act.

(2) Items 15 and 18 in Part III of the Schedule to the English Law (Application) Act (which concern the Malicious Damage Act 1861 and the Explosive Substances Act 1883) are deleted.

(3) Section 66 of the Mental Health Act (Sexual intercourse with patients) is repealed.

(4) The Government may by order declare the consequential amendments to other enactments that are required as a result of the commencement of this Act.

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SCHEDULE 1

(Section 260)

FORFEITURE OF INDECENT PHOTOGRAPHS OF CHILDREN

Application of Schedule.

1.(1) This Schedule applies if–

(a) property which has been lawfully seized in Gibraltar is in the custody of a police officer;

(b) apart from this Schedule, there is no legitimate reason for the officer to retain custody of the property;

(c) the officer is satisfied that there are reasonable grounds for believing that the property is or is likely to be forfeitable property; and

(d) apart from this Schedule, the officer is not aware of any person who has a legitimate reason for possessing the property or any readily separable part of it.

(2) The term "forfeitable property" means–

(a) any indecent photograph or pseudo-photograph of a child;

(b) any property which it is not reasonably practicable to separate from any property within subparagraph (a).

(3) For the purposes of this paragraph–

(a) a part of any property is a "readily separable part" of the property if, in all the circumstances, it is reasonably practicable for it to be separated from the remainder of that property; and

(b) it is reasonably practicable for a part of any property to be separated from the remainder if it is reasonably practicable to separate it without prejudicing the remainder of the property or another part of it.

(4) The circumstances mentioned in subparagraph (3)(a) include the time and costs involved in separating the property.

Possession pending forfeiture.

2.(1) The property must be retained in the custody of a police officer until it is returned or otherwise disposed of in accordance with this Schedule.

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(2) The provisions of the Police Act 2006 and of the Criminal Procedure and Evidence Act 2011 relating to property seized in the investigation of an offence do not apply to property held under this Schedule.

The relevant officer.

3. "The relevant officer", in relation to any property, is the police officer who for the time being has custody of the property.

Notice of intended forfeiture.

4.(1) The relevant officer must give notice of the intended forfeiture of the property ("notice of intended forfeiture") to–

(a) every person whom he believes to have been the owner of the property, or one of its owners, at the time of the seizure of the property;

(b) if the property was seized from premises - every person whom he believes to have been an occupier of the premises at that time; and

(c) if the property was seized as a result of a search of any person - that person.

(2) The notice of intended forfeiture must set out–

(a) a description of the property; and

(b) how a person may give a notice of claim under this Schedule and the period within which such a notice must be given.

(3) Subject to subparagraph (4), the notice of intended forfeiture may be given to a person only by–

(a) delivering it to him personally;

(b) addressing it to him and leaving it for him at the appropriate address; or

(c) addressing it to him and sending it to him at that address by post.

(4) A notice given in accordance with subparagraph (1)(b) may, if it is not practicable to give the notice in accordance with subparagraph (3), be given by–

(a) addressing it to "the occupier" of those premises, without naming him; and

(b) leaving it for him at those premises or sending it to him at those premises by post.

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(5) Property may be treated or condemned as forfeited under this Schedule only if–

(a) the requirements of this paragraph have been complied with in the case of the property; or

(b) it was not reasonably practicable for them to be complied with.

(6) In this paragraph "the appropriate address", in relation to a person, means–

(a) in the case of a corporate body - its registered or principal office in Gibraltar;

(b) in the case of a firm - the principal office of the partnership;

(c) in the case of an unincorporated body or association - the principal office of the body or association;

(d) in any other case - his usual or last known place of residence in Gibraltar or his last known place of business in Gibraltar.

(7) In the case of–

(a) a company registered outside Gibraltar;

(b) a firm carrying on business outside Gibraltar; or

(c) an unincorporated body or association with offices outside Gibraltar,

the references in this paragraph to its principal office include references to its principal office within Gibraltar (if any).

Notice of claim.

5.(1) A person claiming that he has a legitimate reason for possessing the property or a part of it may give notice of his claim to a police officer at any police station.

(2) Oral notice is not sufficient for this purpose.

Time and form of notice.

6.(1) A notice of claim may not be given more than one month after–

(a) the date of the giving of the notice of intended forfeiture; or

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(b) if no such notice has been given - the date on which the property began to be retained under this Schedule (see paragraph 2).

(2) A notice of claim must specify–

(a) the name and address of the claimant;

(b) a description of the property, or part of it, in respect of which the claim is made;

(c) in the case of a claimant who is outside Gibraltar, the name and address of a solicitor in Gibraltar who is authorised to accept service, and to act, on behalf of the claimant.

(3) Service upon a solicitor so specified is to be taken to be service on the claimant for the purposes of any proceedings by virtue of this Schedule.

(4) In a case in which notice of intended forfeiture was given to different persons on different days, the reference in this paragraph to the day on which that notice was given is a reference in relation–

(a) to a person to whom notice of intended forfeiture was given - to the day on which that notice was given to that person; and

(b) to any other person - to the day on which notice of intended forfeiture was given to the last person to be given such a notice.

Automatic forfeiture if no claim is made.

7.(1) If the property is unclaimed it is treated as forfeited.

(2) The property is "unclaimed" if, by the end of the period for the giving of a notice of claim–

(a) no such notice has been given in relation to it or any part of it; or

(b) the requirements of paragraphs 5 and 6 have not been complied with in relation to the only notice or notices of claim that have been given.

(3) Subparagraph (1) applies in relation to a readily separable part of the property as it applies in relation to the property, and for this purpose paragraph (2) applies as if references to the property were to the part.

(4) In this paragraph "readily separable part" has the meaning given by paragraph 1.

Decision whether to take court proceedings to condemn property as forfeited.

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8.(1) If a notice of claim in respect of the property, or a part of it, is duly given in accordance with paragraphs 5 and 6, the relevant officer must decide whether to take proceedings to ask the court to condemn the property or a part of it as forfeited.

(2) The decision whether to take such proceedings must be made as soon as reasonably practicable after the giving of the notice of claim.

Return of property if no forfeiture proceedings.

9.(1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides not to take proceedings–

(a) for condemnation of the property; or

(b) for condemnation of a part of the property.

(2) The relevant officer must return the property or part to the person who appears to him to have a legitimate reason for possessing the property or, if there is more than one such person, to one of those persons.

(3) Any property required to be returned in accordance with subparagraph (2) must be returned as soon as reasonably practicable after the decision not to take proceedings for condemnation.

Forfeiture proceedings.

10.(1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides to take proceedings for condemnation of the property or a part of it ("the relevant property").

(2) Subject to subparagraphs (5) and (7), the court must condemn the relevant property if it is satisfied that–

(a) the relevant property is forfeitable property; and

(b) no-one who has given a notice of claim has a legitimate reason for possessing the relevant property.

(3) If the court is not satisfied that the relevant property is forfeitable property, the court must order its return to the person who appears to the court to have a legitimate reason for possessing it or, if there is more than one such person, to one of those persons.

(4) If the court is satisfied that–

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(a) the relevant property is forfeitable property; and

(b) a person who has given a notice of claim has a legitimate reason for possessing the relevant property, or that more than one such person has such a reason,

the court must order the return of the relevant property to that person or, as the case may be, to one of those persons.

(5) If the court is satisfied that any part of the relevant property is a separable part, subparagraphs (2) to (4) apply separately in relation to each separable part of the relevant property as if references to the relevant property were references to the separable part.

(6) For this purpose a part of any property is a "separable part" of the property if–

(a) it can be separated from the remainder of that property; and

(b) if a person has a legitimate reason for possessing the remainder of that property or any part of it - the separation will not prejudice the remainder or part.

(7) If the court is satisfied that–

(a) a person who has given a notice of claim has a legitimate reason for possessing part of the relevant property; and

(b) although the part is not a separable part within the meaning given by subparagraph (6), it can be separated from the remainder of the relevant property,

the court may order the return of that part to that person.

(8) Subparagraph (7) does not apply to any property required to be returned to a person under subparagraph (4).

Supplementary orders.

11.(1) If the court condemns property under paragraph 10(2), the court–

(a) may order the relevant officer to take such steps in relation to the property or any part of it as it thinks appropriate; and

(b) if it orders a step to be taken - may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.

(2) A court order under paragraph 10(3), (4), (5) or (7) requiring the return of a part of the relevant property to a person may be made conditional on specified costs relating to the

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separation of the part from the remainder of the relevant property being paid by that person within a specified period.

(3) If the court makes an order under paragraph 10(7) for the return of a part of the relevant property, the court–

(a) may order the relevant officer to take such steps as it thinks appropriate in relation to any property which will be prejudiced by the separation of that part; and

(b) if it orders a step to be taken - may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.

(4) For the purposes of this paragraph, "specified" means specified in, or determined in accordance with, the court order.

Magistrates' Court.

12. Proceedings by virtue of this Schedule are civil proceedings and may be instituted in the Magistrates' Court.

Appeals.

13.(1) Either party may appeal against the decision of the Magistrates' Court to the Supreme Court.

(2) This paragraph does not affect any right to require the statement of a case for the opinion of the Supreme Court.

(3) If an appeal has been made (whether by case stated or otherwise) against the decision of the Magistrates' Court in proceedings by virtue of this Schedule in relation to property, the property is to be left in the custody of a police officer pending the final determination of the matter.

Effect of forfeiture.

14. If property is treated or condemned as forfeited under this Schedule the forfeiture is to be treated as having taken effect as from the time of the seizure.

Disposal of property which is not returned.

15.(1) If–

(a) property is required to be returned to a person under this Schedule;

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(b) the property is (without having been returned) still in the custody of the relevant officer after the end of the period of 12 months beginning with the day on which the requirement to return it arose; and

(c) it is not practicable to dispose of it by returning it immediately to the person to whom it is required to be returned,

the relevant officer may dispose of it in any manner he thinks fit.

(2) If property would be required to be returned to a person under this Schedule but for a failure to satisfy a condition imposed by virtue of paragraph 11(2) (return of property conditional on payment of costs within specified period) - the relevant officer may dispose of the property in any manner he thinks fit.

Provisions as to proof.

16.(1) In proceedings under this Schedule, the fact, form and manner of the seizure are to be taken, without further evidence and unless the contrary is shown, to have been as set forth in the process.

(2) In proceedings, the condemnation by a court of property as forfeited under this Schedule may be proved by the production of either–

(a) the order of condemnation; or

(b) a certified copy of the order purporting to be signed by an officer of the court by which the order was made or granted.

Saving for owner's rights.

17. Neither the imposition of a requirement by virtue of this Schedule to return property to a person nor the return of it to a person in accordance with such a requirement affects–

(a) the rights in relation to that property, or any part of it, of any other person; or

(b) the right of any other person to enforce his rights against the person to whom it is returned.

Interpretation.

18.(1) In this Schedule–

"the court" is to be construed in accordance with paragraph 12;

"forfeitable property" is to be construed in accordance with paragraph 1(2);

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"the relevant officer" is to be construed in accordance with paragraph 3.

(2) For the purposes of this Schedule the circumstances in which a person ("P") has a legitimate reason for possessing an indecent photograph of a child ("C") include–

(a) the photograph was of C aged 16 or over;

(b) one or both of the following apply–

(i) P and C are married or are living together as partners in an enduring family relationship;

(ii) P and C were married or were so living together at the time P obtained the photograph;

(c) the photograph shows C alone or with P, but does not show any other person;

(d) C has consented to the photograph being in P's possession (and that consent has not been withdrawn); and

(e) P owns the photograph, or is authorised (directly or indirectly) by the owner to possess it.

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SCHEDULE 2

(Sections 298(6), 299)

PART A

SEXUAL OFFENCES TO WHICH SECTION 298 APPLIES

1. The following are sexual offences to which section 298 (Offences outside Gibraltar) applies–

(a) an offence under any of sections 217 to 220(Rape etc. against children under 13);

(b) an offence under any of sections 221 to 225 (Child sex offences);

(c) an offence under any of the following sections if the victim of the offence was under 16 at the time of the offence–

- sections 213 to 216 (Rape and related offences)
- sections 228 to 231 (Abuse of position of trust)
- sections 236 and 237 (Familial child sex offences)
- sections 241 to 244 (Offences against persons with a mental disorder)
- sections 245 to 248 (Inducements etc. to person with a mental disorder)
- sections 249 to 252 (Offences by care workers)
- sections 262 to 265 (Abuse of children through prostitution and pornography)
- section 266A (Pornographic performances involving children)
- section 287 (Administering a substance with intent);

(d) an offence under section 288 or 289 (Preparatory offences) if the intended offence was an offence against a person under 16;

(e) an offence under section 256 or 257 (Indecent photographs of children) in relation to a photograph or pseudo-photograph showing a child under 16.

2. A reference in Paragraph 1 to an offence includes–

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(a) an attempt, conspiracy or encouraging or assisting to commit that offence; and

(b) aiding and abetting, counselling or procuring the commission of that offence.

PART B

SEXUAL OFFENCES TO WHICH SECTION 299 APPLIES

The following are sexual offences to which section 299 (Encouraging or assisting the commission of certain sexual acts outside Gibraltar) applies–

An offence under any of the following sections-

section 213 (Rape)

section 214 (Assault by penetration)

section 215 (Sexual assault)

section 217 (Rape of a child under 13)

section 218 (Assault of a child under 13 by penetration)

section 219 (Sexual assault of a child under 13)

section 221 (Sexual activity with a child)

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SCHEDULE 3

(Sections 306, 307, 316, 322, 323, 326, 327, 334, 335, 348 and 350)

SEXUAL OFFENCES FOR PURPOSES OF PART 13

1. An offence under section 103 of the Criminal Offences Act or section 213 (Rape).

2. An offence under section 107 of the Criminal Offences Act (Intercourse with girl under 13).

3. An offence under section 108 of the Criminal Offences Act (Intercourse with girl under 16) if the offender was 20 or over.

4. An offence under section 112 of the Criminal Offences Act (Incest by a man) if the victim or (as the case may be) other party was under 18.

5. An offence under section 115 of the Criminal Offences Act (Buggery) if–

(a) the offender was 20 or over; and

(b) the victim or (as the case may be) other party was under 18.

6. An offence under section 116 of the Criminal Offences Act (Indecency between men) if–

(a) the offender was 20 or over; and

(b) the victim or (as the case may be) other party was under 18.

7. An offence under section 117 of the Criminal Offences Act (Indecent assault on a woman) if–

(a) the victim or (as the case may be) other party was under 18; or

(b) the offender, in respect of the offence or finding, is or has been–

(i) sentenced to imprisonment for not less than 30 months; or

(ii) admitted to a hospital subject to a restriction order.

8. An offence under section 118 of the Criminal Offences Act (Indecent assault on a man) if–

(a) the victim or (as the case may be) other party was under 18; or

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(b) the offender, in respect of the offence or finding, is or has been–

(i) sentenced to imprisonment for a term of not less than 30 months; or

(ii) admitted to a hospital subject to a restriction order.

9. An offence under section 119 of the Criminal Offences Act (Indecent conduct towards young child).

10. An offence under section 120 of the Criminal Offences Act (Assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.

11. An offence under section 127 of the Criminal Offences Act (Causing or encouraging prostitution of, intercourse with or indecent assault on, girl under 16).

11A. An offence under section 2 or 3 of the Crimes (Indecent Photographs with Children) Act 2009 (Indecent photographs of children) if the indecent photographs or pseudo-photographs showed persons under 16 and 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.

11B. An offence under section 167A (Strangulation or suffocation).

12. An offence under section 214 (Assault by penetration).

13. An offence under section 215 (Sexual assault) if–

(a) in the case of an offender under 18 - he is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months;

(b) in any other case–

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been–

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community service order of at least 120 hours.

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14. An offence under any of sections 216 (Causing a person to engage in sexual activity without consent), 217 (Rape of a child under 13), or 218 (Assault of a child under 13 by penetration).

15. An offence under section 219 (Sexual assault of a child under 13) 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.

16. An offence under any of sections 220 to 224 (causing or inciting a child under 13 to engage in sexual activity, child sex offences committed by adults) if the offender is or has been sentenced, in respect of the offence, to imprisonment for not less than 12 months.

17. *Not used*

18. An offence under section 226 (Arranging or facilitating the commission of a child sex offence) 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.

19. An offence under section 227 (Meeting a child following sexual grooming etc.).

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

20. An offence under section 228, 229, 230 or 231 (Abuse of position of trust), if the offender was 20 or over.

21. An offence under any of sections 228 to 231 (Abuse of position of trust) if the offender, in respect of the offence, is or has been–

(a) sentenced to a term of imprisonment;

(b) detained in a hospital; or

(c) made the subject of a community service order of at least 120 hours.

22. An offence under section 236 or 237 (Familial child sex offences) if the offender–

(a) was 18 or over; or

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

23. An offence under any of sections 241 to 244 (Offences against persons with a mental disorder impeding choice).

24. An offence against any of sections 246 to 248 (Inducements etc. to persons with a mental disorder).

25. An offence under any of sections 249 to 252 (Care workers for persons with a mental disorder) if–

(a) in the case of an offender under 18, he is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case, the offender, in respect of the offence or finding, is or has been–

(i) sentenced to a term of imprisonment;

(ii) detained in a hospital; or

(iii) made the subject of a community service order of at least 120 hours.

26. An offence under 256 or 257 (Indecent photographs of children) if the indecent photographs or pseudo-photographs showed persons under 16 and 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.

27. An offence under section 262 (Paying for sexual services of a child) if the victim or (as the case may be) other party was under 16, and 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.

28. An offence under section 263 (Causing or encouraging or assisting child prostitution or pornography) if the offender–

(a) was 18 or over; or

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

29. An offence under section 264 (Controlling a child prostitute or a child involved in pornography) 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.

30. An offence under section 265 (Arranging or facilitating child prostitution or pornography) 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.

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.

31. An offence under section 287 (Administering a substance with intent).

32. An offence under section 288 or 289 (Committing an offence or trespass, with intent to commit a sexual offence) if–

(a) in the case of an offender under 18 - he is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case–

(i) the intended offence was an offence against a person under 18; or

(ii) the offender, in respect of the offence or finding, is or has been–

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

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(C) made the subject of a community service order of at least 120 hours.

33. An offence under section 290 or 291 (Sex with an adult relative) if–

(a) in the case of an offender under 18 - he is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been–

(i) sentenced to a term of imprisonment; or

(ii) detained in a hospital.

34. An offence under section 292 (Genital exposure) if–

(a) in the case of an offender under 18 - he is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case–

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been–

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community service order of at least 120 hours.

34A. An offence under section 292A (sending etc. photograph or film of genitals) if –

(a) where the offender was under 18, the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;

(b) in any other case-

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been-

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

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(C) made the subject of a community service order of at least 120 hours.

35. An offence under section 293 (Voyeurism) or section 293A (Voyeurism: additional offences) if–

(a) in the case of an offender under 18 - he is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case–

(i) the victim was under 18; or

(ii) the offender, in respect of the offence or finding, is or has been–

(A) sentenced to a term of imprisonment;

(B) detained in a hospital; or

(C) made the subject of a community service order of at least 120 hours.

36. An offence under section 295 (Intercourse with an animal) or 296 (Sexual penetration of a corpse) if–

(a) in the case of an offender under 18 - he is or has been sentenced in respect of the offence to imprisonment for not less than 12 months;

(b) in any other case - the offender, in respect of the offence or finding, is or has been–

(i) sentenced to imprisonment; or

(ii) detained in a hospital.

36A. An offence under section 499A of the Crimes Act 2011 (possession of extreme pornographic images) if the offender –

(a) was 18 or over; and

(b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.

37. An offence under section 14(1)(b) of the Imports and Exports Act 1986 (Prohibited imports) in relation to indecent or obscene articles), if–

(a) the prohibited articles included indecent photographs of persons under 16; and

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(b) the offender was 18 or over.

38. An offence under section 66 of the Mental Health Act 2016 (Sexual intercourse with patients).

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SCHEDULE 4

(Sections 326, 23, 44, 46)

OTHER OFFENCES FOR THE PURPOSES OF PART 13

1. Murder at common law or under section 149.

2. Manslaughter at common law or under section 153.

3. Kidnapping under section 143 of the Criminal Offences Act or section 189.

4. An offence under any of sections 138 to 141 of the Criminal Offences Act or any of sections 184 to 188 (Abduction).

5. False imprisonment at common law or under section 189.

6. An offence under section 190 (Torture).

7. Outraging public decency at common law.

8. An offence under section 262 (Paying for sexual services of a child) if the victim or (as the case may be) other party was 16 or over.

9. An offence under section 267 or 268 (Exploitation of prostitution).

10. An offence under section 191A as read with section 280 (Sex trafficking).

11. An offence of riot at common law or under section 55 (Riot).

12. An offence under section 56 (Violent disorder).

13. An offence of affray at common law or under section 57 (Affray).

14. An offence under section 43 of the Criminal Offences Act or section 136 (Possession of explosives).

15. An offence under section 65 of the Criminal Offences Act or section 156 (Soliciting murder).

16. An offence under section 66 of the Criminal Offences Act or section 157 (Threats to kill).

17. An offence under section 69 of the Criminal Offences Act or section 160 (Infanticide).

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18. An offence under section 70 of the Criminal Offences Act or section 161 (Child destruction).

19. An offence under section 75 of the Criminal Offences Act or section 166 (Wounding with intent to cause grievous bodily harm).

20. An offence under section 76 of the Criminal Offences Act or section 167 (Wounding).

21. An offence under section 77 of the Criminal Offences Act or section 168 (Attempting to choke etc. with intent to commit indictable offence).

22. An offence under section 78 of the Criminal Offences Act or section 169 (Using drugs to facilitate offence).

23. An offence under section 79 of the Criminal Offences Act or section 170 (Administering poison).

24. An offence under section 81 of the Criminal Offences Act or section 171 (Abandoning children or young persons).

25. An offence under section 172 (Cruelty to young persons).

26. An offence under section 83 of the Criminal Offences Act or section 137 (Causing grievous harm by explosion).

27. An offence under section 84 of the Criminal Offences Act or section 138 (Causing explosion with intent).

28. An offence under section 85 of the Criminal Offences Act or section 139 (Placing explosives with intent).

29. An offence under section 86 of the Criminal Offences Act or section 173 (Setting spring guns etc.).

30. An offence under section 87 of the Criminal Offences Act or section 174 (Causing harm by furious driving).

31. *Not used.*

32. An offence under section 92 of the Criminal Offences Act or section 178 (Assault to prevent arrest).

33. An offence under section 94 of the Criminal Offences Act or section 176 (Assault occasioning actual bodily harm).

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34. An offence under section 183 (Causing or allowing the death of a child or vulnerable adult).

35. An offence under section 23 of the Firearms Act (Possessing firearm with intent to injure).

36. An offence under section 24(1) of the Firearms Act (Use of firearm to resist arrest).

37. An offence under section 24(2) of the Firearms Act (Possessing firearm when committing or being arrested for offence).

38. An offence under section 177 of the Criminal Offences Act or section 397 (Theft).

39. An offence under section 178 of the Criminal Offences Act or section 398 (Robbery).

40. An offence under section 179 of the Criminal Offences Act or section 399 (Burglary).

41. An offence under section 180 of the Criminal Offences Act or section 400 (Aggravated burglary).

42. An offence under section 409 (Aggravated vehicle-taking) involving an accident which caused the death of any person.

43. An offence under section 159(1) or (2) of the Criminal Offences Act or section 354 (Destroying or damaging property other than by arson).

44. An offence under section 159(3) of the Criminal Offences Act or section 355 (Arson).

45. An offence under section 24 of the Terrorism Act 2005 (Hostage-taking).

46. An offence under section 2 of the Maritime Security Act (Hijacking of ships).

47. An offence under section 3 of the Maritime Security Act (Seizing or exercising control of fixed platforms).

48. An offence under section 4 of the Maritime Security Act (Destroying ships or fixed platforms or endangering their safety).

49. An offence under section 5 of the Maritime Security Act (Other acts endangering or likely to endanger safe navigation).

50. An offence under section 6 of the Maritime Security Act (Offences involving threats).

51. An offence under section 110 of the Mental Health Act 2016 (Ill-treatment of patients).

52. An offence under section 45 of the Traffic Act 2005 (causing death by dangerous driving).

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53. An offence under section 45 of the Communications Act 2006 (Improper use of public electronic communications network).

54. An offence under section 97 (offence of improper use of public electronic communications network).

55. An offence under section 97B (disclosing private sexual photographs and films with intent to cause distress).

56. An offence under section 88 (intentional harassment, alarm or distress).

57. An offence under section 89 (harassment, alarm or distress).

58. An offence under section 92A (stalking).

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SCHEDULE 4A

Exceptions for mere conduits

1.(1) A service provider is not capable of being guilty of an offence under section 499A in respect of anything done in the course of providing so much of an information society service as consists in-

(a) the provision of access to a communication network; or

(b) the transmission in a communication network of information provided by a recipient of the service,

if the condition in sub-paragraph (2) is satisfied.

(2) The condition is that the service provider does not-

(a) initiate the transmission;

(b) select the recipient of the transmission; or

(c) select or modify the information contained in the transmission.

(3) For the purposes of sub-paragraph (1)-

(a) the provision of access to a communication network, and

(b) the transmission of information in a communication network,

includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

(4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

Exception for caching

4.(1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.

(2) The service provider is not capable of being guilty of an offence under section 499A in respect of the automatic, intermediate and temporary storage of information so provided, if—

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(a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request; and

(b) the condition in sub-paragraph (3) is satisfied.

(3) The condition is that the service provider—

(a) does not modify the information;

(b) complies with any conditions attached to having access to the information; and

(c) (where sub-paragraph (4) applies) expeditiously removes the information or disables access to it.

(4) This sub-paragraph applies if the service provider obtains actual knowledge that—

(a) the information at the initial source of the transmission has been removed from the network;

(b) access to it has been disabled; or

(c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

Exception for hosting

5.(1) A service provider is not capable of being guilty of an offence under section 499A in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if—

(a) the service provider had no actual knowledge when the information was provided that it contained offending material; or

(b) on obtaining actual knowledge that the information contained offending material, the service provider expeditiously removed the information or disabled access to it.

(2) "Offending material" means material the possession of which constitutes an offence under section 499A.

(3) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

Interpretation

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6.(1) This paragraph applies for the purposes of this Schedule.

(2) "Information society services" has the meaning in Part 1 of the Electronic Commerce Act 2001.

(3) "Recipient", in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible.

(4) "Service provider" has the meaning in Part I of the Electronic Commerce Act 2001.

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SCHEDULE 5

(Sections 500(1) and 502)

CONTROLLED DRUGS

Part I

Class A Drugs

1. The following substances and products, namely–

(a)

Acetorphine	Lysergamide
Alfentanil	Lysergide and other *N*-alkyl derivatives of lysergamide
Allylprodine	Mescaline
Alphacetylmethadol	Metazocine
Alphameprodine	Methadone
Alphamethadol	Methadyl acetate
Alphaprodine	Methyldesorphine
Anileridine	Methyldihydromorphine (6-methyldihydromorphine)
Benzethidine	Metopon
Benzylmorphine (3-benzylmorphine)	Morpheridine
Betacetylmethadol	Morphine
Betameprodine	Morphine methobromide, morphine *N*-oxide and other pentavalent nitrogen morphine derivatives
Betamethadol	Myrophine
Betaprodine	Nicomorphine (3,6-dinicotinoyl-morphine)
Bezitramide	Noracymethadol
Bufotenine	Norlevorphanol
Cannabinol, except where contained in cannabis or cannabis resin	Normethadone
Cannabinol derivatives	Normorphine
Carfentanil	Norpipanone
Clonitazene	Opium, whether raw, prepared or medicinal

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Coca leaf	Oxycodone
Cocaine	Oxymorphone
Desomorphine	Pethidine
Dextromoramide	Phenadoxone
Diamorphine	Phenampromide
Diampromide	Phenazocine
Diethylthiambutene	Phencyclidine
Difenoxin (1-(3-cyano-3,3-diphenylpropyl) -4-phenylpiperidine-4-carboxylic acid)	Phenomorphan
Dihydrocodeinone O-carboxymethyloxime	Phenoperidine
Dihydroetorphine	Piminodine
Dihydromorphine	Piritramide
Dimenoxadole	Poppy-straw and concentrate of poppy-straw
Dimepheptanol	Proheptazine
Dimethylthiambutene	Properidine (1-methyl-4-phenyl-piperidine-4-carboxylic acid isopropyl ester)
Dioxaphetyl butyrate	Psilocin
Diphenoxylate	Racemethorphan
Dipipanone	Racemoramide
(Drotebanol (3,4-dimethoxy-17-methylmorphinan-6 beta, 14-diol)	Racemorphan
Ecgonine, and any derivative of ecgonine which is convertible to ecgonine or to cocaine	Remifentanil
Ethylmethylthiambutene	Rolicyclidine
Eticyclidine	Sufentanil
Etonitazene	Tenocylidine
Etorphine	Thebacon
Etoxeridine	Thebaine
Etryptamine	Tilidate
Fentanyl	Trimeperidine
Furethidine	4-Bromo-2,5-dimethoxy-alpha-methylphenethylamine
Hydrocodone	4-Cyano-2-dimethylamino-4, 4-diphenylbutane

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Hydromorphinol	4-Cyano-1-methyl-4-phenyl-piperidine
Hydromorphone	*N,N*-Diethyltryptamine
Hydroxypethidine	*N,N*-Dimethyltryptamine
Isomethadone	2,5-Dimethoxy-alpha,4-dimethylphenethylamine
Ketobemidone	N-Hydroxy-tenamphetamine
Levomethorphan	1-Methyl-4-phenylpiperidine-4-carboxylic acid
Levomoramide	2-Methyl-3-morpholino-1, 1-diphenylpropanecarboxylic acid
Levophenacylmorphan	4-Methyl-aminorex
Levorphanol	4-Phenylpiperidine-4-carboxylic acid ethyl ester
Lofentanil	

(b) any compound (not being a compound specified in subparagraph (a)) structurally derived from tryptamine or from a ring-hydroxy tryptamine by substitution at the nitrogen atom of the sidechain with one or more alkyl substituents but no other substituent;

(c) the following phenethylamine derivatives, namely–

Allyl(□-methyl-3,4-methylenedioxyphenethyl)amine
2-Amino-1-(2,5-dimethoxy-4-methylphenyl)ethanol
2-Amino-1-(3,4-dimethoxyphenyl)ethanol
Benzyl(*α*-methyl-3,4-methylenedioxyphenethyl)amine
4-Bromo-*β*,2,5-trimethoxyphenethylamine
N-(4-*sec*-Butylthio-2,5-dimethoxyphenethyl)hydroxylamine
Cyclopropylmethyl(*α*-methyl-3,4-methylenedioxyphenethyl)amine
2-(4,7-Dimethoxy-2,3-dihydro-1*H*-indan-5-yl)ethylamine
2-(4,7-Dimethoxy-2,3-dihydro-1*H*-indan-5-yl)-1-methylethylamine
2-(2,5-Dimethoxy-4-methylphenyl)cyclopropylamine
2-(1,4-Dimethoxy-2-naphthyl)ethylamine
2-(1,4-Dimethoxy-2-naphthyl)-1-methylethylamine

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N-(2,5-Dimethoxy-4-propylthiophenethyl)hydroxylamine
2-(1,4-Dimethoxy-5,6,7,8-tetrahydro-2-naphthyl)ethylamine
2-(1,4-Dimethoxy-5,6,7,8-tetrahydro-2-naphthyl)-1-methylethylamine
α,,α-Dimethyl-3,4-methylenedioxyphenethylamine
α,,α -Dimethyl-3,4-methylenedioxyphenethyl(methyl)amine
Dimethylα(*α*-methyl-3,4-methylenedioxyphenethyl)amine
N-(4-Ethylthio-2,5-dimethoxyphenethyl)hydroxylamine
4-Iodo-2,5-dimethoxy-*α*-methylphenethyl(dimethyl)amine
2-(1,4-Methano-5,8-dimethoxy-1,2,3,4-tetrahydro-6-naphthyl)ethylamine
2-(1,4-Methano-5,8-dimethoxy-1,2,3,4-tetrahydro-6-naphthyl)-1- Methylethylamine
2-(5-Methoxy-2,2-dimethyl-2,3-dihydrobenzo*b*furan-6-yl)-1-Methylethylamine
2-Methoxyethyl(*a*-methyl-3,4-methylenedioxyphenethyl)amine
2-(5-Methoxy-2-methyl-2,3-dihydrobenzo*b*furan-6-yl)-1-Methylethylamine
β;-Methoxy-3,4-methylenedioxyphenethylamine
1-(3,4-Methylenedioxybenzyl)butyl(ethyl)amine
1-(3,4-Methylenedioxybenzyl)butyl(methyl)amine
2-(α-Methyl-3,4-methylenedioxyphenethylamino)ethanol
α-Methyl-3,4-methylenedioxyphenethyl(prop-2-ynyl)amine
N-Methyl-*N*-(α-methyl-3,4-methylenedioxyphenethyl)hydroxylamine
O-Methyl-*N*-(α-methyl-3,4-methylenedioxyphenethyl)hydroxylamine
α-Methyl-4-(methylthio)phenethylamine
β,3,4,5-Tetramethoxyphenethylamine
β,2,5-Trimethoxy-4-methylphenethylamine

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(d) any compound (not being methoxyphenamine or a compound specified in subparagraph (a)) structurally derived from phenethylamine, an *N*-alkylphenethylamine, alpha-methylphenethylamine, an *N*-alkyl-alpha-methylphenethylamine, alpha -ethylphenethylamine, or an *N*-alkyl-alpha-ethylphenethylamine by substitution in the ring to any extent with alkyl, alkoxy, alkylene- dioxy or halide substituents, whether or not further substituted in the ring by one or more other univalent substituents;

(e) any compound (not being a compound specified in subparagraph (a)) structurally derived from fentanyl by modification in any of the following ways, that is to say,–

(i) by replacement of the phenyl portion of the phenethyl group by any heteromonocycle whether or not further substituted in the heterocycle;

(ii) by substitution in the phenethyl group with alkyl, alkenyl, alkoxy, hydroxy, halogeno, haloalkyl, amino or nitro groups;

(iii) by substitution in the piperidine ring with alkyl or alkenyl groups;

(iv) by substitution in the aniline ring with alkyl, alkoxy, alkylenedioxy, halogeno or haloalkyl groups;

(v) by substitution at the 4-position of the piperidine ring with any alkoxycarbonyl or alkoxyalkyl or acyloxy group; or

(vi) by replacement of the *N*-propionyl group by another acyl group;

(f) any compound (not being a compound specified in subparagraph (a)) structurally derived from pethidine by modification in any of the following ways, that is to say,–

(i) by replacement of the 1-methyl group by an acyl, alkyl whether or not unsaturated, benzyl or phenethyl group, whether or not further substituted;

(ii) by substitution in the piperidine ring with alkyl or alkenyl groups or with a propano bridge, whether or not further substituted;

(iii) by substitution in the 4-phenyl ring with alkyl, alkoxy, aryloxy, halogeno or haloalkyl groups;

(iv) by replacement of the 4-ethoxycarbonyl by any other alkoxycarbonyl or any alkoxyalkyl or acyloxy group; or

(v) by formation of an *N*-oxide or of a quaternary base.

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2. Any stereoisomeric form of a substance specified in paragraph 1 not being dextromethorphan or dextrorphan.

3. Any ester or ether of a substance specified in paragraph 1 or 2 not being a substance specified in Part II of this Schedule.

4. Any salt of a substance specified in any of paragraphs 1 to 3.

5. Any preparation or other product containing a substance or product specified in any of paragraphs 1 to 4.

6. Any preparation designed for administration by injection which includes a substance or product specified in any of paragraphs 1 to 3 of Part II of this Schedule.

Part II

Class B Drugs

1. The following substances and products, namely–

(a)

Acetyldihydrocodeine
Amphetamine
Cannabis and cannabis resin
Codeine
Dihydrocodeine
Ethylmorphine (3-ethylmorphine)
Flunitrazepam
Glutethimide
Lefetamine
Mecloqualone
Methaqualone
Methcathinone
Methylamphetamine
a-Methylphenethylhydroxylamine
Methylphenidate

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Methylphenobarbitone
Nicodine
Nicodicodine (6-nicotinoyldihydrocodeine)
Norcodeine
Pentazocine
Phenmetrazine
Pholcodine
Propiram
Zipeprol.

(b) any 5, 5 distributed barbituric acid.

2. Any stereoisomeric form of a substance specified in paragraph 1 of this Part of this Schedule.

3. Any salt of a substance specified in paragraph 1 or 2 of this Part of this Schedule.

4. Any preparation or other product containing a substance or product specified in any of paragraphs 1 to 3 of this Part of this Schedule, not being a preparation falling within paragraph 6 of Part 1 of this Schedule.

Part III

Class C Drugs

1. The following substances, namely–

(a)	Alprazolam	Haloxazolam
	Aminorex	4-Hydroxy-n-butyric acid
	Benzphetamine	Ketamine
	Bromazepam	Ketazolam
	Brotizolam;	Loprazolam
	Buprenophine;	Lorazepam
	Camazepam;	Lormetazepam

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	Cathine;	Mazindol
	Cathinone;	Medazepam
	Chordiazepoxide;	Mefenorex
	Cholrphentermine	Mephentermine
	Clobazam	Meprobabate
	Clonazepam	Mesocarb
	Clorazepic acid	Methyprylone
	Clotiazepam	Midazolam
	Cloxazolam	Nimetazepam
	Delorazepam	Nitrazepam
	Dextropropoxyphene	Nordazepam
	Diazepam	Oxazepam
	Diethylpropion	Oxazolam
	Estazolam	Pemoline
	Ethcholorvynol	Phendimetrazine
	Ethinamate	Phentermine
	Ethyl loflazepate	Pinazepam
	Fencamfamin	Pipradol
	Fenethylline	Prazepam
	Fenproporex	Pyrovalerone
	Fludiazepam	Temazepam
	Flurazepam	Tetrazepam
	Halazepam	Triazolam
		N-Ethylamphetamine
		Zolpidem
(b)	4-Androstene-3, 17 dione	Methenolone
	5-Androstene-3, 17 diol	Methyltestosterone

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	Atamestane	Metribolone
	Bolandiol	Mibolerone
	Bolasterone	Nandrolone
	Bolazine	19-Nor-4-Androstene-3, 17-dione
	Boldenone	19-Nor-5-Androstene-13, 17-diol
	Bolenol	Norboletone
	Bolmantalate	Norclostebol
	Calusterone	Norethandrolone
	4-Cholormethandienone	Ovandrotone
	Clostebol	Oxabolone
	Drotanolone	Oxandrolone
	Enestebol	Oxymesterone
	Epitiostanol	Oxymetholone
	Ethyloetrenol	Prasterone
	Fluoxymesterone	Propetandrol
	Formbolone	Quinbolone
	Furazabol	Roxibolone
	Mebolazine	Silandrone
	Mepitiostane	Stanolone
	Mesabolone	Stanozolol
	Mestanolone	Stenbolone
	Mesterolone	Testosterone
	Methandienone	Thimesterone
	Methandriol	Trenbolone

(c) any compound (not being Trilostane or a compound specified in subparagraph (b)) structurally derived from 17-hydroxyandrostan-3-one or from 17-hydroxyestran-3-one by modification in any of the following ways, that is to say,–

(i) by further substitution at position 17 by a methyl or ethyl group;

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(ii) by substitution to any extent at one or more of positions 1, 2, 4, 6, 7, 9, 11 or 16, but at no other position;

(iii) by unsaturation in the carbocyclic ring system to any extent, provided that there are no more than two ethylenic bonds in any one carbocyclic ring; or

(iv) by fusion of ring A with a heterocyclic system;

(d) any substance which is an ester or ether (or, where more than one hydroxyl function is available, both an ester and an ether) of a substance specified in subparagraph (b) or described in subparagraph (c);

(e) Chorionic Gonadotrophin (HCG);
Clenbuterol;
Non-human chorionic gonadotrophin;
Somatotropin;
Somatrem;
Somatropin.

2. Any stereoisomeric form of a substance specified in paragraph 1 of this Part of this Schedule not being phenylpropanolamine.

3. Any salt of a substance specified in paragraph 1 or 2 of this Part of this Schedule.

4. Any preparation or other product containing a substance specified in any of paragraphs 1 to 3 of this Part of this Schedule.

Part IV

Meaning of Certain Expressions used in this Schedule

For the purposes of this Schedule the following expressions have the following meanings–

"cannabinol derivatives" means the following substances, except where contained in cannabis or cannabis resin, namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives;

"coca leaf" means the leaf of any plant of the genus Erythroxylon from whose leaves cocaine can be extracted either directly or by chemical transformation;

"concentrate of poppy-straw" means the material produced when poppy-straw has entered into a process for the concentration of its alkaloids;

"medicinal opium" means raw opium which has undergone the process necessary to adapt it for medicinal use in accordance with the requirements of the British

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Pharmacopoeia, whether it is in the form of powder or is granulated or is in any other form, and whether it is or is not mixed with neutral substances;

"opium poppy" means the plant of the species Papaver somniferum L;

"poppy straw" means all parts, except the seeds, of the opium poppy after mowing;

"raw opium" includes powdered or granulated opium but does not include medicinal opium.

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SCHEDULE 6

(Section 500(1) and 13(1))

SUBSTANCES USEFUL FOR MANUFACTURING CONTROLLED DRUGS

TABLE I

N-acetylanthranilic acid
Ephedrine
Ergometrine
Ergotamine
Isofrole
Lysergic acid
3,4-methylenedioxyphenyl-2-propanone
1-phenyl-propanone
Piperonal
Pseudoephedrine
Safrole,

and the salts of the substances listed in this Table whenever the existence of such salts is possible.

TABLE II

Acetic anhydride
Acetone
Anthranilic acid
Ethyl ether
Hydrochloric acid
Metyl ethyl ketone
Phenylacetic acid
Piperidine
Potassium permanganate
Sulphuric acid
Toluene,

and the salts of the substances listed in this Table whenever the existence of such salts is possible, except the salts of hydrochloric acid and sulphuric acid.

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SCHEDULE 7

(Section 516(1))

DRUGS ENFORCEMENT POWERS IN RESPECT OF SHIPS

Preliminary.

1.(1) In this Schedule "enforcement officer" means–

(a) a customs or police officer;

(b) any other person of a description specified in an order made for the purposes of this Schedule by the Government.

(2) In this Schedule "ship" means a ship in relation to which the powers conferred by this Schedule are exercised.

Power to stop, board, divert and detain.

2.(1) An enforcement officer may stop a ship, board it and, if he thinks it necessary for the exercise of his functions, require it to be taken to the Port of Gibraltar and detain it there.

(2) If an enforcement officer is exercising his powers with the authority of the Collector of Customs given under section 517(2) the officer may require the ship to be taken to a port in the Convention state in question or, if that has so requested, in any other country or territory willing to receive it.

(3) For any purpose falling within subparagraphs (1) and (2), an enforcement officer may require the master or any member of the crew of the ship to take such action as may be necessary.

(4) If an enforcement officer detains the ship, he shall serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by an enforcement officer.

Power to search and obtain information.

3.(1) An enforcement officer may search the ship, anyone on it and anything on it including its cargo.

(2) An enforcement officer may require any person on the ship to give information concerning himself or anything on the ship.

(3) Without limiting those powers, an enforcement officer may–

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(a) open any container;

(b) make test and take samples of anything on the ship;

(c) require the production of documents, books or records relating to the ship or anything on it;

(d) make photographs or copies of anything whose production he has power to require.

Powers in respect of suspected offence.

4. If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 514 or 515 has been committed on a ship to which either section applies he may–

(a) arrest without warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence; and

(b) seize and detain anything found on the ship which appears to him to be evidence of the offence.

Assistants.

5.(1) An enforcement officer may take with him, to assist him in exercising his powers–

(a) any other persons; and

(b) any equipment or material.

(2) A person whom an enforcement officer takes with him to assist him may perform any of the officer's functions but only under the officer's supervision.

Use of reasonable force.

6. An enforcement officer may use reasonable force, if necessary, in the performance of his functions.

Evidence of authority.

7. An enforcement officer must, if required, produce evidence of his authority.

Protection of officers.

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8. An enforcement officer is not liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Schedule if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Offences.

9.(1) A person commits an offence if he–

(a) intentionally obstructs an enforcement officer in the performance of any of his functions under this Schedule;

(b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or

(c) in purporting to give information required by an officer for the performance of those functions–

(i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular; or

(ii) intentionally fails to disclose any material particular.

(2) A person who commits an offence under this paragraph is liable on summary conviction to the statutory maximum fine.

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SCHEDULE 8

(Section 524)

PROSECUTION AND PUNISHMENT OF OFFENCES

Section Creating Offence	General Nature of Offence	Mode of Prose-cution	Punishment			
			Class A drug involved	Class B drug involved	Class C drug involved	General
Section 504(2)	Production, or being concerned in the production, of a controlled drug.	(a) Summary	12 months or an amount at level 5 on the standard scale, or both	12 months or an amount at level 5 on the standard scale, or both	9 months or an amount at level 4 on the standard scale, or both	
		(b) On indictment	life imprisonment or a fine, or both.	life imprisonment or a fine, or both.	14 years or a fine, or both.	
Section 504(3)	Supplying or offering to supply a controlled drug or being concerned in the doing of either activity by another.	(a) Summary	12 months or an amount at level 5 on the standard scale, or both	12 months or an amount at level 5 on the standard scale, or both	9 months or an amount at level 4 on the standard scale, or both	
		(b) On indictment	life imprisonment or a fine, or both.	life imprisonment or a fine, or both.	14 years or a fine, or both.	
Section 506(2)	Having possession of a controlled drug.	(a) Summary	12 months or an amount at level 5 on the standard scale, or both	12 months or an amount at level 5 on the standard scale, or both	9 months or an amount at level 4 on the standard scale, or both	
		(b) On indictment	7 years or a fine, or both	5 years or a fine, or both.	2 years or a fine, or both.	
Section 506(3)	Having possession of a controlled drug with intent to supply it to another.	(a) Summary	12 months or an amount at level 5 on the standard scale, or both	12 months or an amount at level 5 on the standard scale, or both	9 months or an amount at level 4 on the standard scale, or both	
		(b) On indictment	life imprisonment or a fine, or both.	life imprisonment or a fine, or both.	14 years or a fine, or both.	
Section 508(2)	Cultivation of cannabis plant.	(a) Summary	———	———	———	9 months or an amount at level 4 on the standard scale, or both
		(b) On indictment	———	———	———	14 years or a fine, or both
Section 511(2)	Contra-vention of directions relating to safe custody of controlled drugs.	(a) Summary	———	———	———	12 months or an amount at level 5 on the standard scale, or both
		(b) On indictment	———	———	———	14 years or a fine, or both

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Section 518	Being the occupier, or concerned in the management, of premises and permitting or suffering certain activities to take place there.	(a) Summary	12 months or an amount at level 5 on the standard scale, or both	12 months or an amount at level 5 on the standard scale, or both	9 months or an amount at level 4 on the standard scale, or both	
		(b) On indictment	14 years and a fine. or a fine, or both.	14 years or a fine, or both.	5 years or a fine, or both	
Section 519	Offences relating to opium.	(a) Summary	———	———	———	12 months or an amount at level 5 on the standard scale, or both
		(b) On indictment	———	———	———	14 years or a fine, or both
Section 520	Prohibition of supply etc of articles for administering or preparing controlled drugs	Summary	———	———	———	12 months or an amount at level 5 on the standard scale, or both
Section 521(1)	Contra-vention of regulations (other than regulations relating to addicts).	(a) Summary	———	———	———	12 months or an amount at level 5 on the standard scale, or both
		(b) On indictment	———	———	———	2 years or a fine, or both
Section 521(2)	Contra-vention of terms of licence or other authority (other than licence issued under regulation relating to addicts).	(a) Summary	———	———	———	12 months or an amount at level 5 on the standard scale, or both
		(b) On indictment	———	———	———	2 years or fine, or both
Section 521(3)	Giving false information in purported compliance with obligation to give information imposed under or by virtue of regulations.	(a) Summary	———	———	———	12 months or an amount at level 5 on the standard scale or both
		(b) On indictment	———	———	———	2 years or a fine, or both
Section 521(4)	Giving false information, or producing document etc., containing false statement etc. for purposes of obtaining issue or renewal of a licence or other authority.	(a) Summary	———	———	———	12 months or an amount at level 5 on the standard scale , or both
		(b) On indictment	———	———	———	2 years or a fine, or both
Section 522	Assisting in or inducing commission outside Gibraltar of an offence punishable under a correspond-ing law.	(a) Summary	———	———	———	12 months or an amount at level 5 on the standard scale, or both
		(b) On indictment	———	———	———	14 years or a fine, or both.

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Section 523(4)	Obstructing exercise of powers of search etc., or concealing books drugs, etc.	(a) Summary	———	———	———	12 months or an amount at level 5 on the standard scale, or both
		(b) On indictment	———	———	———	14 years or a fine, or both.

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SCHEDULE 9

(Section 530(5))

CONSTITUTION, ETC., OF ADVISORY COUNCIL ON THE MISUSE OF DRUGS

1.(1) The members of the Advisory Council, of whom there must be not less than 5, are appointed by the Government after consultation with such organisations as it considers appropriate, and must include–

(a) in relation to each of the activities specified in subparagraph (2), at least one person appearing to the Government to have wide and recent experience of that activity; and

(b) persons appearing to the Government to have wide and recent experience of social problems connected with the misuse of drugs.

(2) The activities referred to in subparagraph (1)(a) are–

(a) the practice of medicine (other than veterinary medicine);

(b) the practice of dentistry;

(c) the practice of pharmacy.

(3) The Government must appoint one of the members of the Advisory Council to be chairman of the Council.

2. The Advisory Council may appoint committees, which may consist in part of persons who are not members of the Council, to consider and report to the Council on any matter referred to them by the Council.

3. At meetings of the Advisory Council the quorum is 3 members, and subject to that the Council may determine its own procedure.

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SCHEDULE 10

(Sections 583 and 590)

DANGEROUS DOGS

PART A

1. Pit Bull Terrier
2. American Staffordshire
3. Japanese Tosa
4. Dogo Argentino
5. Fila Braziliero
6. American Bulldog

PART B
Composition of the advisory committee

(a) a veterinary surgeon appointed by Minister with responsibility for the environment, as Chair;

(b) a senior police officer appointed by the Commissioner of Police;

(c) the chief executive officer of the Department of Environment;

(d) two members appointed by the Minister with responsibility for the environment;

(e) an officer of the Environmental Agency, as Secretary.

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