

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5015 GIBRALTAR Thursday 8th December 2022

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B. 26/22

## BILL

FOR

**AN ACT** to provide for the revival of the common law offence of conspiracy to defraud; to amend the Crimes Act 2011, the Legal Services Act 2017 and for connected purposes.

**ENACTED** by the Legislature of Gibraltar.

### Title.

1. This Act may be cited as the Crimes and Miscellaneous Provisions (Amendment) Act 2022.

### Commencement.

2. This Act comes into operation on the day of publication.

### Conspiracy to defraud.

3.(1) The common law offence of conspiracy to defraud is to continue to have effect as if it had not been abolished by section 35(1) of the Crimes Act 2011 (conspiracy: abolitions etc.), subject to subsection (2).

(2) A person may not be prosecuted for the common law offence of conspiracy to defraud in respect of conduct occurring after the abolition of the offence by section 35(1) of that Act and before the revival of the offence by subsection (1) above (except in so far as the person is liable to prosecution in accordance with section 35(2) to (5)).

(3) In section 34 of that Act (conspiracy to defraud) before subsection (1) insert-

“(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 2022).”.

(4) In section 35(1) of that Act after “Subject to the following provisions” insert “and to section 34(A1)”.

**Amendment of section 298 of the Crimes Act 2011.**

4. For section 298 substitute –

**“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.

(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.”.

**Amendment of the Legal Services Act 2017.**

5.(1) The Legal Services Act 2017 is amended in accordance with this section.

- (2) In section 6(3)(e) –
  - (a) in subparagraph (ii), for “;” substitute “,;”;
  - (b) in the line immediately below subparagraph (ii) insert “(Part 5);”.

## **EXPLANATORY MEMORANDUM**

Section 3 revives the common law offence of conspiracy to defraud.

Section 4 replaces section 298 of the Crimes Act 2011 with a new section 298. This relates to sexual offences committed outside Gibraltar.

Subsection (1) of the current section 298 makes it an offence in Gibraltar to commit certain acts overseas against a child. The act done must amount to a sexual offence listed in Part A of Schedule 2 and must also amount to an offence in the country where it was committed. The exact description of the offence does not need to be the same in both countries. For example, the provisions could apply to someone who raped a child in another country although that offence was described differently under the law in that country. However, there is no provision requiring there be a link between the person being prosecuted and Gibraltar.

This amendment corrects that position, and also updates the law to strengthen it. It makes it an offence for a Gibraltar resident or Gibraltarian national to commit an act outside Gibraltar which would constitute a relevant sexual offence if done in Gibraltar. For Gibraltarians, there is no requirement that the act committed must also have been illegal in the country where it took place. However, this requirement remains for the prosecution of Gibraltar residents under new section 298(2) and those who become Gibraltar residents or Gibraltarians under new section 298(3) and (4). Where a person becomes a Gibraltarian or Gibraltar resident after having committed a relevant sex offence, in a country outside Gibraltar, such a person must also be a Gibraltarian or resident at the time the proceedings are brought. The new sections 298(5) to (8) replicate provisions in the current section 298. They provide rules relating to how the prosecution can prove that the offence was an offence in the country in which it was committed.

Section 5 amends the Legal Services Act 2017 to correct an error.