

Ordinance 01 of 2019

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**CRIMINAL CODE (AMENDMENT) ORDINANCE
2019**

An Ordinance to amend the Criminal Code.

J. Illingworth
ADMINISTRATOR

18 January 2019

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

PART 1

Preliminary

Short title

1. This Ordinance may be cited as the Criminal Code (Amendment) Ordinance 2019.

Commencement

2. This Ordinance comes into force on 4 February 2019.

PART 2

Amendment of the Criminal Code

Sexual Offences

Amendment of the Criminal Code

3. The Criminal Code(a) is amended as follows.

Amendment of section 4

4. In section 4 (interpretation)(b) at the appropriate place in alphabetical order insert—

““child” means a person under the age of 18;”.

New section 34A

5. After section 34 (court may order supervision in certain cases) insert—

“Sexual offenders supervision order

34A.—(1) If requested to do so by the Attorney General and Legal Adviser, the Court may make a sexual offenders supervision order in respect of a person (P) if satisfied that—

(a) subsection (2) applies to P, and

(b) it is necessary to make the order to protect children or a particular child from sexual harm from P.

(2) This subsection applies if—

(a) P has been convicted of an offence listed in subsection (3), and

(b) the Court has ordered that P serves a term of imprisonment in respect of that conviction.

(3) In this section, “sexual harm” from P means physical or psychological harm caused by P committing one or more of the following offences—

(a) offences under sections 177A to 177H of the Criminal Code;

(b) offences under sections 5 and 5A of the Human Trafficking and Exploitation Ordinance 2009(c).

(4) The Attorney General and Legal Adviser may make a request under subsection (1) any time after the Court has ordered P to serve the term of imprisonment referred to in subsection (2)(b) but before P has been released.

(5) A person subject to an order under subsection (1) must attend appointments with a probation officer or another person determined by the Court at such time and place as may be determined by the probation officer or another person.

(6) In determining whether to make an order under subsection (1) the Court must take into account—

(a) the seriousness of the offence;

(b) the time that has lapsed since the commission of the offence;

(a) Cap. 154, Laws of Cyprus (1959 ed.). Legislation of the former colony of Cyprus has effect in the Areas by virtue of article 5 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369 (UK)). Schedule 2 to the Interpretation Ordinance 2012 makes provision for the interpretation of such legislation.

(b) Section 4 has been amended by Ordinances 2/2005 and 1/2000.

(c) Ordinance 25/2009.

- (c) the risk of P committing further offences listed in subsection (3);
- (d) P's age at the time the offence was committed;
- (e) P's age at the time of conviction;
- (f) P's record of previous convictions in respect of offences listed in subsection (3) or similar offences;
- (g) opinion of a probation officer on P's suitability for the order.

(7) The order made under subsection (1) has effect for a period specified by the Court.

(8) The Attorney General and Legal Adviser, P or any other person mentioned in the order made under subsection (1) may apply to the Court for the order to be varied, renewed or discharged.

(9) A person who, without reasonable excuse, fails to comply with an order under subsection (1) is guilty of an offence and is liable on conviction to imprisonment for 5 years.”

Omission of sections 153, 154, 157, 159, 171, 174

6. Omit—

- (a) section 153 (defilement of girls under thirteen years of age)(a);
- (b) section 154 (defilement of girls between thirteen and sixteen years of age)(b);
- (c) section 157 (procuration)(c);
- (d) section 159 (procuring defilement of a woman or a man by threats, etc)(d);
- (e) section 171 (sexual intercourse between males)(e);
- (f) section 174 (sexual intercourse with male under thirteen years)(f).

Substitution of section 155

7. For section 155 (defilement of idiots or imbeciles)(g) substitute—

“Defilement of an intellectually or mentally impaired person

155. Any person who, knowing another person (A) to have an intellectual or mental impairment, has or attempts to have unlawful sexual intercourse with A in circumstances not amounting to rape or an offence under section 172 is guilty of a felony and shall be liable to imprisonment not exceeding fourteen years.”

New sections 177A to 177L

8. After section 177 insert—

“Causing a child to watch a sexual act

177A.—(1) A person (P) commits an offence if—

- (a) P intentionally causes another person (A) to watch P or 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

(a) Section 153 has been amended by Ordinances 7/1979 and 7/2003.

(b) Section 154 has been substituted by Ordinance 7/2003.

(c) Section 157 has been amended by Ordinance 2/1997.

(d) Section 159 has been substituted by Ordinance 7/2003.

(e) Section 171 has been substituted by Ordinances 19/2000 and 7/2003.

(f) Section 174 has been substituted by Ordinances 19/2000 and 7/2003.

(g) Section 155 has been substituted by Ordinance 7/2003.

(c) A is under 17.

(2) A person guilty of an offence under this section, if the activity involves coercion, is liable to imprisonment for 15 years.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable to imprisonment for 10 years.

Causing a child under 13 to watch a sexual act

177B.—(1) A person (P) commits an offence if—

(a) P intentionally causes another person (A) to watch P or 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) A is under 13.

(2) A person guilty of an offence under this section is liable to imprisonment for life.

Sexual activity with a child

177C.—(1) A person (P) commits an offence if—

(a) P intentionally engages in an activity with another person (A),

(b) the activity is sexual, and

(c) either—

(i) A is under 17, or

(ii) A is 17 and subsection (2) applies.

(2) This subsection applies if the activity involves coercion.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable to imprisonment for 20 years.

(4) If subsection (2) applies, a person guilty of an offence under this section is liable to—

(a) imprisonment for life if A is under 17, or

(b) imprisonment for 20 years if A is 17.

Sexual activity with a child under 13

177D.—(1) A person (P) commits an offence if—

(a) P intentionally engages in an activity with another person (A),

(b) the activity is sexual, and

(c) A is under 13.

(2) A person guilty of an offence under this section is liable to imprisonment for life.

Causing or inciting a child to engage in sexual activity

177E.—(1) A person (P) commits an offence if—

(a) P intentionally causes or incites another person (A) to engage in an activity with a third person,

(b) the activity is sexual, and

(c) either—

(i) A is under 17, or

(ii) A is 17 and subsection (2) applies.

(2) This subsection applies if the activity involves coercion.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable to imprisonment for 25 years.

(4) If subsection (2) applies, a person guilty of an offence under this section is liable to—

(a) imprisonment for life if A is under 17, or

(b) imprisonment for 20 years if A is 17.

Causing or inciting a child under 13 to engage in sexual activity

177F.—(1) A person (P) commits an offence if—

(a) P intentionally causes or incites another person (A) to engage in an activity with a third person,

(b) the activity is sexual, and

(c) A is under 13.

(2) A person guilty of an offence under this section is liable to imprisonment for life.

Child pornography

177G.—(1) A person must not—

(a) produce child pornography;

(b) distribute, disseminate or transmit child pornography in any way, including by means of a computer system;

(c) offer or provide information about how to obtain child pornography, including by means of a computer system;

(d) acquire or possess child pornography in printed form or in a form held on a computer system;

(e) invite a child to participate in child pornography, including by means of a computer system;

(f) intentionally view child pornography by any means.

(2) This subsection applies if the child is under 13.

(3) Unless subsection (2) applies, a person who contravenes subsection (1) commits an offence and is liable to—

(a) imprisonment for 10 years if paragraph (d), (e) or (f) applies,

(b) imprisonment for 15 years if paragraph (b) or (c) applies, or

(c) imprisonment for 20 years if paragraph (a) applies.

(4) If subsection (2) applies, a person who contravenes subsection (1) commits an offence and is liable to imprisonment for life.

(5) In this section—

(a) “computer system” means any device or group of interconnected or related devices, one or more of which, pursuant to a programme, performs automatic processing of data, and

(b) “child pornography” means a visual, audiovisual or other representation of—

(i) a real child involved or engaged in sexually explicit conduct, including lewd exhibition of the genitals or pubic area of a child,

(ii) a real person appearing to be a child involved or engaged in the conduct mentioned in subparagraph (i), or

(iii) realistic images of a non-existing child involved or engaged in the conduct mentioned in subparagraph (i).

Arranging or facilitating commission of sexual offences involving children

177H.—(1) A person (P) commits an offence if—

(a) P intentionally arranges or facilitates something that P intends to do, intends another person to do, or believes that another person will do, in any part of the world, and

(b) doing it would involve the commission of an offence under any of sections 177A to 177G if it were to take place within the Areas.

(2) A person guilty of an offence under this section is liable to imprisonment for 10 years.

Reporting commission of sexual offences involving children

177I.—(1) Despite any duty of confidentiality, a person (P) must report to the police anything which P has reason to suspect involves an offence under sections 177A to 177H.

(2) Any person who contravenes subsection (1) commits an offence and is liable to imprisonment for 15 years or a fine of €20,000 or both.

Attempt to commit offences under section 177A to 177H

177J. A person who attempts to commit an offence under any of sections 177A to 177H is liable to—

(a) imprisonment for 14 years unless paragraph (b) applies, or

(b) imprisonment for 7 years in relation to offences under sections 177A, 177G(1)(d) to 177G(1)(f) and 177H.

Meaning of sexual

177K. In sections 177A to 177F, penetration, touching or any other activity is “sexual” if a reasonable person would consider that—

(a) it is sexual by nature regardless of its circumstances or the purpose of any person in relation to it, or

(b) it may be sexual by nature and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

Meaning of coercion

177L. In sections 177A, 177C and 177E, “coercion” includes—

(a) use of threats or force;

- (b) abduction, restraint, deceit or fraud;
- (c) abuse of a position of authority or trust or of a position of vulnerability such that the person who is abused has no reasonable alternative but to submit to the abuse involved;
- (d) conduct or a course of action which is intended to create an impression on any person that failing to perform an act will result in injury, serious damage to property or restraint of a person;
- (e) abuse or threatened abuse of legal or administrative procedures relating to a person's status;
- (f) paying or conferring a benefit on a person having control over another person for the purpose of controlling that other person;
- (g) administering any substance with the intention to overpower a person or to impair the senses or the understanding of a person.”

Miscellaneous Amendments

Amendment of section 188A

9. In section 188A (soliciting for customers)(a) for subsection (4) substitute—

“(4) In the case of a second or subsequent conviction for an offence under subsection (1) within a period of 2 years from the first conviction, a person is liable to imprisonment for a term not exceeding 3 years or to a fine not exceeding €3,000, or to both.”

Amendment of section 306

10.—(1) Section 306 (receiving etc.) is amended as follows.

(2) Number the existing text as subsection (1).

(3) After subsection (1) (as numbered by subsection (2) above) insert—

“(2) The provisions of subsection (1) relating to property, which has been stolen or obtained in any way whatsoever under circumstances which amount to felony or misdemeanour, apply whether the stealing or obtaining occurred in the Areas or elsewhere, provided that the stealing or obtaining (if not an offence under this Ordinance) amounted to an offence under the law of the place where it occurred and at the time when the property was stolen or obtained.”

PART 3

Miscellaneous provisions

Amendment of the Notification of Sexual Offences Ordinance 2008

11.—(1) The Schedule to the Notification of Sexual Offences Ordinance 2008(b) is amended as follows.

(2) Omit—

- (a) paragraph 8;

(a) Section 188A has been inserted by Ordinance 15/2014.

(b) Ordinance 17/2008, as amended by Ordinances 25/2009 and 9/2016.

- (b) paragraph 9;
- (c) paragraph 11;
- (d) paragraph 12;
- (e) paragraph 16;
- (f) paragraph 18.

(3) In paragraph 10 for “defilement of idiots or imbeciles” substitute “defilement of an intellectually or mentally impaired person”.

(4) After paragraph 20 insert—

“**20A.** section 177A (causing a child to watch a sexual act);

20B. section 177B (causing a child under 13 to watch a sexual act);

20C. section 177C (sexual activity with a child);

20D. section 177D (sexual activity with a child under 13);

20E. section 177E (causing or inciting a child to engage in sexual activity);

20F. section 177F (causing or inciting a child under 13 to engage in sexual activity);

20G. section 177G (child pornography) if—

(1) the pornographic material depicted a person under the age of 16 years, and

(2) the offender—

(a) was 18 years or over, or

(b) is sentenced (in respect of the offence) to imprisonment for a term of at least 12 months;

20H. section 177H (arranging or facilitating commission of sexual offences involving children);

20I. section 177J (attempt to commit offences under sections 177A to 177H);”.

(5) After paragraph 21 insert—

“**21A.** section 5A (sexual exploitation of a child under 13);”.

(6) Omit paragraph 22.

Amendment of the Protection of Witnesses Ordinance 2005

12.—(1) The Protection of Witnesses Ordinance 2005(a) is amended as follows.

(2) In section 2 (interpretation) at the appropriate place in alphabetical order insert—

““child” means a person under the age of 18;”.

(3) In section 15 (prohibition on disclosing identity), after subsection (1) insert—

“(1A) A person shall not publish the name, address or any particulars calculated to lead to the identification of a child in respect of whom proceedings under the following Ordinances are taken—

(a) the Human Trafficking and Exploitation Ordinance 2009;

(b) sections 177A to 177H of the Criminal Code.”

(4) In section 15 (prohibition on disclosing identity), in subsection (3) after “(1)” insert “, (1A)”.

(a) Ordinance 4/2005, as amended by Ordinances 25/2009, 32/2013 and 9/2016.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Criminal Code (Amendment) Ordinance 2019 (“the Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The Ordinance amends the Criminal Code (“the principal Ordinance”).

3. Part 2 of the Ordinance amends the principal Ordinance by inserting new sexual offences against children. The new provisions cover offences of causing a child to watch a sexual act, sexual activity with a child, causing or inciting a child to engage in sexual activity, and arranging or facilitating commission of sexual offences involving children.

4. The child pornography offences have been omitted from the Human Trafficking and Exploitation Ordinance 2009 and included into the Criminal Code for completeness.

5. Part 2 of the Ordinance contains a new measure for protecting children or a particular child from sexual harm – a sexual offenders supervision order. The order may be made by the Court in the Areas upon the request of the Attorney General and Legal Adviser.

6. The effect of amendments to section 306 (receiving etc.) of the principal Ordinance is to enable the prosecution in the Areas for the offences of receiving or retaining goods which have been stolen outside the Areas.

7. Part 2 also contains further minor and consequential amendments to the principal Ordinance.

8. Part 3 contains consequential amendments to the Notification of Sexual Offences Ordinance 2008.

9. The Protection of Witnesses Ordinance 2005 is amended by inserting new provisions prohibiting publication of the name, address or any particulars calculated to lead to the identification of a child in respect of whom proceedings under certain sections of the Criminal Code or the Human Trafficking and Exploitation Ordinance 2009 have been taken.

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