

Ordinance 21 of 2020

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CRIMINAL CODE (AMENDMENT) ORDINANCE 2020

An Ordinance to make provision to amend the Criminal Code.

R. Thomson
ADMINISTRATOR

29 June 2020

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

Short title

1. This Ordinance may be cited as the Criminal Code (Amendment) Ordinance 2020.

Commencement

2. This Ordinance comes into force on 1 August 2020.

New section 17A

3. After section 17 (necessity) of the Criminal Code insert—

“Self-defence and the defence of others etc.

17A.—(1) A person (“D”) has a defence to a charge of an offence involving the use of force, if the degree of force used by D is reasonable in the circumstances as D believes them to be for the purposes of—

- (a) self-defence;
- (b) defence of property;
- (c) the prevention of crime; or
- (d) effecting or assisting lawful arrest of an offender or suspected offender or person unlawfully at large.

(2) A person may rely on the common law defences of self-defence or defence of property, as they apply in England and Wales.”

New section 17B

4. After section 17A insert—

“Reasonable force for purposes of self-defence etc.

17B.—(1) This section applies where in proceedings for an offence—

- (a) an issue arises as to whether a person charged with the offence (“D”) is entitled to rely on a defence within section 17A; and
- (b) the question arises as to whether the degree of force used by D against a person (“V”) was reasonable in the circumstances.

(2) The question of whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be, and subsections (3) to (8) also apply in connection with deciding that question.

(3) If D claims to have held a particular belief as regards the existence of any circumstances—

- (a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but
- (b) if it is determined that D did genuinely hold it, D is entitled to rely on it for the purposes of subsection (2), whether or not—
 - (i) it was mistaken; or
 - (ii) (if it was mistaken) the mistake was a reasonable one to have made.

(4) But subsection (3)(b) does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced.

(5) In a householder case, the degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was grossly disproportionate in those circumstances.

(6) In a case other than a householder case, the degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.

(7) In deciding the question mentioned in subsection (2), a possibility that D could have retreated is to be considered (so far as relevant) as a factor to be taken into account, rather than as giving rise to a duty to retreat.

(8) In deciding the question mentioned in subsection (2) the following considerations are to be taken into account (so far as relevant in the circumstances of the case)—

- (a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and

(b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

(9) Subsections (7) and (8) are not to be read as preventing other matters from being taken into account where they are relevant to deciding the question mentioned in subsection (2).

(10) For the purposes of this section “a householder case” is a case where—

- (a) the defence concerned is the common law defence of self-defence;
- (b) the force concerned is force used by D while in or partly in a building, or part of a building, that is a dwelling;
- (c) D is not a trespasser at the time the force is used; and
- (d) at that time D believed V to be in, or entering, the building or part as a trespasser.

(11) Where—

- (a) a part of a building is a dwelling where D dwells,
- (b) another part of the building is a place of work for D or another person who dwells in the first part, and
- (c) that other part is internally accessible from the first part,

that other part, and any internal means of access between the two parts, are each treated for the purposes of subsection (10) as a part of a building that is a dwelling.

(12) The fact that a person derives title from a trespasser, or has the permission of a trespasser, does not prevent the person from being a trespasser for the purposes of subsection (10).

(13) This section, except so far as making different provision for householder cases, is intended to clarify the operation of the defences mentioned in section 17A.

(14) In this section and section 17A—

- (a) “legitimate purpose” means—
 - (i) the purpose of common law self-defence, as it applies in England and Wales,
 - (ii) the purpose of defence of property under the common law as it applies in England and Wales, or
 - (iii) the prevention of crime or effecting or assisting in the lawful arrest of persons referred to in section 17A;
- (b) references to self-defence include acting in defence of another person;
- (c) references to the degree of force used are to the type and amount of force used;
- (d) references to crime means a crime under the law of the Sovereign Base Areas of Akrotiri and Dhekelia.

(15) In subsections (10) to (13)—

“building” includes a vehicle or vessel;

“premises” includes any place and in particular includes—

- (a) any vehicle, ship or aircraft; and
- (b) any tent or movable structure;

“dwelling” includes accommodation provided by the Armed Forces as live in accommodation.”

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Criminal Code (Amendment) Ordinance 2020 (“the Ordinance”). It has been prepared by the Office of the Attorney General 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. Section 3 inserts section 17A (self-defence and the defence of others etc) into the principal Ordinance to provide a defence to any charge relating to the use of reasonable force.

4. Section 4 inserts Section 17B (reasonable force for purposes of self-defence etc) into the principal Ordinance to provide clarity on the interpretation of section 17A.

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