

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5188 GIBRALTAR Thursday 14th November 2024

B. 32/24

BILL

FOR

AN ACT to amend the Crimes Act 2011 and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Short title.

1. This Act may be cited as the Crimes (Amendment) Act 2024.

Commencement.

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

Amendment of the Crimes Act 2011.

3.(1) The Crimes Act 2011 is amended in accordance with this section.

(2) In section 98–

(a) after the definition of “hatred on the grounds of sexual orientation” insert–

“ “hatred on the grounds of transgender identity” means hatred against a group of persons defined by reference to being transgender;”;

(b) after subsection (2) insert–

“ (3) References in this Part to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.”.

(3) In the heading after section 98(3) for “*or hatred on the grounds of sexual orientation*” substitute “, *hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity*”.

(4) In section 99–

(a) in subsection (1)–

- (i) in paragraph (a) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
 - (ii) in paragraph (b) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
 - (b) in subsection (3) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”.
- (5) In section 100–
- (a) in subsection (1)–
 - (i) in paragraph (a) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
 - (ii) in paragraph (b) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
 - (b) in subsection (2) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”.
- (6) In section 101–
- (a) in subsection (1)–
 - (i) in paragraph (a) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
 - (ii) in paragraph (b) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”.
 - (b) in subsection (2)–
 - (i) in the opening paragraph for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;

- (ii) in paragraph (c) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”.

(7) In section 102–

(a) in subsection (1)–

- (i) in paragraph (a) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
 - (ii) in paragraph (b) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
- (b) in subsection (2) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”.

(8) In section 103–

(a) in subsection (1)–

- (i) in paragraph (a) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
 - (ii) in paragraph (b) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
- (b) in subsection (3) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;

(c) in subsection (4)–

- (i) in the opening paragraph for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
- (ii) in paragraph (b) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;

(d) in subsection (5)–

- (i) in the opening paragraph for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
 - (ii) in paragraph (b) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
 - (e) in subsection (6) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”.
- (9) In section 104–
- (a) in subsection (1)–
 - (i) in paragraph (a) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
 - (ii) in paragraph (b) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”;
 - (b) in subsection (3) for “or hatred on the grounds of sexual orientation” substitute “, hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity”.
- (10) In the heading after section 104(3) for “*or hatred on the grounds of sexual orientation*” substitute “, *hatred on the grounds of sexual orientation or hatred on the grounds of transgender identity*”.
- (11) After section 111A insert–
- “Freedom of expression (transgender identity).**
- 111B. Nothing in this Part is to be read or given effect in a way which prohibits–
- (a) discussion or criticism of matters relating to transgender identity; or
 - (b) urging persons to refrain from conduct or practices relating to transgender identity,
- and such discussion, criticism or urging shall not be taken of itself to be threatening, abusive or insulting or intended to stir up hatred.”.
- (12) In section 112(2)(b)(i) after “age group” insert “or that any person is, or group of persons are, transgender”.

(13) In section 112A(2)(b)(i) after “age group” insert “or that any person is, or group of persons are, transgender”.

(14) In section 112B(2)(b)(i) after “age group” insert “or that any person is, or group of persons are, transgender”.

(15) In section 112C(2)(b)(i) after “age group” insert “or that any person is, or group of persons are, transgender”.

(16) In section 112D(2)(b)(i) after “disability group” insert “or that any person is, or group of persons are, transgender”.

(17) After section 112D insert—

“Meaning of “aggravated by reason of transgender identity”.

112E.(1) An offence is aggravated by reason of transgender identity 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 being (or being presumed to be) transgender; or
- (b) the offence is motivated (wholly or partly) by hostility towards persons who are transgender.

(2) For the purposes of subsection (1)—

(a) —

“basic offence” means an offence mentioned in any of sections 113E(1), 114E(1), 115E(1) and 116E(1);

“presumed” means presumed by the offender;

- (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, sexually orientated group or age group; or
 - (ii) any other factor not mentioned in that paragraph.”.

(18) After section 113D insert—

“Aggravated assaults by reason of transgender identity.

113E.(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 transgender identity 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.”.

(19) After section 114D insert—

“Aggravated criminal damage by reason of transgender identity.

114E.(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 transgender identity 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 112E(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.”.

(20) After section 115D insert–

“Aggravated public order offences by reason of transgender identity.

115E.(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 transgender identity 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.”.

(21) In section 116–

- (a) delete subsection (2);
- (b) delete subsection (8).

(22) In section 116A–

- (a) delete subsection (2);
- (b) delete subsection (8).

(23) In section 116B–

- (a) delete subsection (2);
- (b) delete subsection (8).

(24) In section 116C–

- (a) delete subsection (2);
- (b) delete subsection (8).

(25) In section 116D–

- (a) delete subsection (2);

(b) delete subsection (8).

(26) After section 116D insert–

“Aggravated harassment etc. by reason of transgender identity.

116E.(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);
- (d) an offence under section 92A (Stalking);
- (e) an offence under section 94 (Putting people in fear of violence);
- (f) an offence under section 94A (Stalking involving fear of violence or serious alarm or distress); or
- (g) an offence under section 97A (Harassment of a person in his home),

which is aggravated by reason of transgender identity for the purposes of this Part.

(2) 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.

(3) 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.

(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.

(5) 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 2 years.
- (6) 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.
- (7) 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 7 years.
- (8) A person who commits an offence under subsection (1)(g) 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.
- (9) For the purpose of subsection (1)(a) and (b), section 112E(1)(a) has effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.”.
- (27) In section 117—
- (a) in subsection (1) for “116D” substitute “116E”;
 - (b) in subsection (2)—
 - (i) for “or 116D(1)(d)” substitute “, 116D(1)(d) or 116E(1)(e)”;
 - (ii) for “or 116D(1)(c)” substitute “, 116D(1)(c) or 116E(1)(c)”.
- (28) In section 117A—
- (a) in the heading after “**sexual orientation**” insert “**or transgender identity**”;
 - (b) in subsection (1) for “116D” substitute “116E”;
 - (c) in subsection (2) after “sexual orientation” insert “or transgender identity”.

EXPLANATORY MEMORANDUM

This Bill amends Part 7 of the Crimes Act 2011 to extend the existing framework containing offences aggravated by race, religious belief, disability, sexual orientation and age to include a new characteristic of transgender identity.

The Bill also extends stirring up hatred offences to include hatred on the grounds of transgender identity, with provision made to protect freedom of expression.

The Bill removes the reference to a police officer's power to arrest in sections 116(2), 116A(2), 116B(2), 116C(2) and 116(D)(2) in relation to the aggravated offences contained therein. This has the effect of removing the specific power of arrest for these provisions, given that they erroneously displace the normal powers of arrest without warrant contained in the Criminal Procedure and Evidence Act 2011.

Sections 116(8), 116A(8), 116B(8), 116C(8) and 116D(8) are also removed to reflect the fact that section 95 of the Crimes Act 2011 was amended by the Domestic Abuse Act 2023 to allow the court to make restraining orders following conviction of any offence, as opposed to only certain specific offences.