

I assent.

(L.S.)

GEORGE VELLA
President

14th December, 2021

ACT No. LXIV of 2021

AN ACT to amend the Criminal Code, Cap. 9 and other laws on sexual offences and other matters relating to minors.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

1. The short title of this Act is the Various Laws relating to Sexual Offences and Matters relating to Minors (Amendment) Act, 2021.

Short title.

PART I

Amendments to the Criminal Code

2. This Part amends the Criminal Code and it shall be read and construed as one with the Criminal Code, hereinafter in this Part referred to as "the Code".

Amendments to the Criminal Code.
Cap. 9.

3. In sub-article (1) of article 87 of the Code, the words "from thirteen months to three years in each of the following cases:" shall be substituted by the words "from thirteen (13) months to six (6) years if any one or more of the following circumstances results:".

Amendment of article 87 of the Code.

4. Immediately after article 89 of the Code there shall be added

Addition of new article to the Code.

A 1550

the following new article:

"Removal from Malta of a minor in breach of an order of any authority. Cap. 602.

89A. (1) Whosoever removes from Malta or retains a minor under the age of sixteen (16) years abroad in breach of an order given by the Maltese court or in breach of a care order issued by a competent authority in accordance with the Minor Protection (Alternative Care) Act shall, on conviction, be liable to imprisonment from thirteen (13) months to three (3) years.

(2) For the purposes of this article:

(a) "removes from Malta" means the removal from Malta of a minor, even if by deceit or fraud and even if by a person having parental authority over the minor in breach of a court order or of a care order as referred to in sub-article (1);

(b) "retain" means the retention outside Malta for a period of more than three (3) days of a minor, even if by deceit or fraud and even if by a person having parental authority over the minor in breach of a court order or of a care order as referred to in sub-article (1)."

Amendment of article 198 of the Code.

5. Article 198 of the Code shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) Whosoever shall engage in non-consensual carnal connection, that is to say, vaginal, anal or oral penetration with any sexual organ of the body of another person, shall, on conviction, be liable to imprisonment for a term from six (6) to twelve (12) years:

Provided that whosoever shall engage in non-consensual vaginal, anal, or oral penetration with any other part of the body not mentioned in sub-article (1) on the body of another person, shall, on conviction, be liable to imprisonment for a term from three (3) to nine (9) years:

Provided further that penetration with any bodily part shall be deemed to be complete by its commencement, and it shall not be necessary to prove any further acts.";

(b) immediately after sub-article (1) thereof there shall be added the following new sub-article:

"(1A) Whosoever shall engage in non-consensual vaginal, anal or oral penetration of a sexual nature with an object, whether the object is intended for activities of a sexual nature or otherwise, shall, on conviction, be liable to imprisonment for a term from three (3) to twelve (12) years:

Provided that penetration with an object shall be deemed to be complete by the commencement of the penetration with that object, and it shall not be necessary to prove any further acts.";

(c) in sub-article (2) thereof the words "in the preceding sub-article with any person shall, on conviction, be liable to imprisonment for a term from six to twelve years." shall be substituted by the words "in the preceding sub-articles with any person shall, on conviction, be liable to the punishment mentioned in the same sub-articles."; and

(d) in sub-article (3) thereof the words "The acts referred to in sub-article (1)" shall be substituted by the words "The acts referred to in sub-articles (1) and (1A)".

6. Article 202 of the Code shall be amended as follows:

Amendment of
article 202 of
the Code.

(a) the words "two degrees in each of the following cases" shall be substituted by the words "two degrees if any one or more of the following circumstances results";

(b) paragraph (g) thereof shall be substituted by the following new paragraph:

"(g) when the offence is committed on a minor;"

(c) paragraph (h) thereof shall be amended as follows:

(i) sub-paragraph (v) thereof shall be substituted by the following new sub-paragraph:

"(v) another person living in the same household as the offender or who had lived with the offender before the offence was committed;" and

(ii) sub-paragraph (vi) thereof shall be substituted by the following new sub-paragraph:

"(vi) another person who is or was in a relationship with the offender whether with the

A 1552

intention of marriage or not;".

Amendment of
article 203 of
the Code.

7. Article 203 of the Code shall be amended as follows:

(a) sub-article (1) thereof shall be amended as follows:

(i) in the marginal note of sub-article (1) thereof the word "minors" shall be substituted by the words "persons under sixteen (16) years of age";

(ii) in the proviso thereof the words "in each of the following cases" shall be substituted by the words "where any one or more of the circumstances results";

(b) immediately after sub-article (1) thereof there shall be added the following new sub-article:

"(1A) When the act is consensual between peers who are close in age and in the level of development and provided that the acts do not involve physical and, or psychological abuse, the punishment shall be decreased by one or two degrees.";

(c) sub-article (2) thereof shall be amended as follows:

(i) in the marginal note thereof the word "197 (4)" shall be substituted by the word "197(5)"; and

(ii) the word "197(4)" shall be substituted by the word "197(5)"; and

(d) in sub-article (3) thereof the words "minors involved" shall be substituted by the words "person under the age of sixteen (16) involved".

Amendment of
article 203A of
the Code.

8. In the proviso to article 203A of the Code the words "to article 203(1)." shall be substituted by the words "to article 203(1):" and immediately thereafter there shall be added the following new proviso:

"Provided further that when the act is consensual between peers who are close in age and in the level of development and provided that the acts do not involve physical and, or psychological abuse, the punishment shall be decreased by one or two degrees.".

Amendment of
article 204 of
the Code.

9. Article 204 of the Code shall be amended as follows:

(a) in the proviso to sub-article (1) thereof the words "in each of the following cases" shall be substituted by the words "if

any one or more of the following circumstances results"; and

(b) in sub-article (2) thereof the word "197(4)" shall be substituted by the word "197(5)".

10. In sub-article (2) of article 204A of the Code the words "increased by one degree, with or without solitary confinement, in each of the following cases:" shall be substituted by the words "increased by one or two degrees, with or without solitary confinement, if any one or more of the following circumstances results:". Amendment of article 204A of the Code.

11. In sub-article (2) of article 204B of the Code the words "in each of the following cases" shall be substituted by the words "if any one or more of the following circumstances results". Amendment of article 204B of the Code.

12. Article 204C of the Code shall be amended as follows: Amendment of article 204C of the Code.

(a) in sub-article (2) thereof the words "in each of the following cases" shall be substituted by the words "if any one or more of the following circumstances results"; and

(b) immediately after sub-article (2) thereof there shall be added the following new sub-article:

"(3) When the act is consensual between peers who are close in age and in the level of development and provided that the acts do not involve physical and, or psychological abuse, the punishment shall be decreased by one or two degrees."

13. In sub-article (2) of article 204D of the Code the words "in each of the following cases" shall be substituted by the words "if any one or more of the following circumstances results". Amendment of article 204D of the Code.

14. In sub-article (1) of article 208A of the Code immediately after the words "indecent material" there shall be added the words "involving or showing persons under age". Amendment of article 208A of the Code.

15. Article 208AA of the Code shall be amended as follows: Amendment of article 208AA of the Code.

(a) sub-article (1) thereof shall be substituted by the

A 1554

following new sub-article:

"Meeting a
child
following
sexual
grooming etc.

(1) Whosoever being a person aged eighteen (18) years or over who has met or communicated with a person under the age of sixteen (16) years on one or more occasions intentionally meets or by any means proposes to meet or arranges to meet the said person under the age of sixteen (16) years, who he does not reasonably believe to be over the age of sixteen (16) years, intending to do anything to or in respect of the said person under the age of sixteen (16) years during or after the said meeting which if done would involve the commission of any of the offences in articles 204, 204A to 204D, both included, or 208A, shall be liable on conviction to the punishment of imprisonment not exceeding six (6) years.";

(b) sub-article (2) thereof shall be amended as follows:

(i) the words "in each of the following cases" shall be substituted by the words "if any one or more of the following circumstances results";

(ii) in paragraph (a) thereof the words "under age" shall be substituted by the words "under the age of sixteen (16) years"; and

(iii) in paragraph (d) thereof the words "person under age" shall be substituted by the words "the person under the age of sixteen (16) years".

Amendment of
article 208AB
of the Code.

16. Sub-article (2) of article 208AB of the Code shall be amended as follows:

(a) the words "in each of the following cases" shall be substituted by the words "if any one or more of the following circumstances results";

(b) in paragraph (a) thereof the words "under age" shall be deleted; and

(c) in paragraph (d) thereof the words "over the person under age" shall be substituted by the words "over the person".

Amendment of
article 208AC
of the Code.

17. Sub-article (1) of article 208AC of the Code shall be amended as follows:

(a) the words "in each of the following cases" shall be substituted by the words "where any one or more of the following circumstances results"; and

(b) in paragraph (a) thereof the words "under age" shall be deleted.

18. Article 208B of the Code shall be amended as follows:

Amendment of article 208B of the Code.

(a) in the marginal note thereof immediately after the word "articles" there shall be added the word "198,";

(b) in sub-article (1) thereof immediately after the word "articles" there shall be added the word "198,"; and

(c) in sub-article (6) thereof the words "from the day on which the victim attains the age of majority" shall be substituted by the words "from the day on which the victim attains the age of twenty-three (23) years".

19. Article 209A of the Code shall be deleted.

Deletion of article 209A of the Code.

20. Nothing in this Part shall be interpreted as reviving any period of prescription which had lapsed at the time when this Act came into force.

Transitory provision.

PART II

Amendments to the Juvenile Court Act

21. This Part amends the Juvenile Court Act and it shall be read and construed as one with the Juvenile Court Act, hereinafter in this Part referred to as "the principal Act".

Amendments to the Juvenile Court Act. Cap. 287.

22. In article 2 of the principal Act, in the definition "child or young person", the words "sixteen years" shall be substituted by the words "eighteen (18) years".

Amendment of article 2 of the principal Act.

23. Article 6 of the principal Act shall be amended as follows:

Amendment of article 6 of the principal Act.

(a) in sub-article (1) thereof the words "has attained the age of sixteen years" shall be substituted by the words "has attained the age of eighteen (18) years";

(b) in sub-article (2) thereof the words "is under the age of sixteen years" shall be substituted by the words "is under the age of eighteen (18) years"; and

(c) sub-article (3) thereof shall be deleted and immediately

A 1556

after sub-article (2) there shall be added the following new sub-articles:

"Child or young person charged jointly with other person of age.

(3) Notwithstanding the provisions of article 3 and of sub-articles (1) and (2), it shall be lawful to charge a child or young person before a court other than the Juvenile Court when the child or young person is charged jointly with another person who is not a child or young person.

Transfer of jurisdiction.

(4) Where a child or young person is charged before a court other than the Juvenile Court jointly with any other person not being a child or young person that court shall notify the Juvenile Court of the charges and the Juvenile Court shall, after granting an opportunity to the parties to the case to make their submissions on whether it should hear the case against the child or young person separately or whether it should transfer its jurisdiction to the court before which the charges were made in order to allow that court to proceed with the hearing of the case, decide whether to transfer its jurisdiction in respect of the child or young person to the court before which the child or young person stands so charged.

(5) Where the Juvenile Court decides that a transfer of jurisdiction to the court before which the charges were made should not take place, the court before which the charges were made shall order the separation of the proceedings against the child or young person from the rest of the proceedings and it shall send the case against the child or young person to be heard separately before the Juvenile Court. In such a case the prosecution shall do all that is necessary for that purpose.

(6) Where the Juvenile Court transfers or declines to transfer its jurisdiction in terms of sub-article (4):

(a) no appeal shall lie from the decision to transfer or to decline to transfer jurisdiction or from any decision which implements any transfer so ordered; and

(b) where the transfer of jurisdiction is made the provisions of article 8 shall *mutatis mutandis* apply to the court to which jurisdiction is transferred in respect of the proceedings insofar as they concern the child or young person as if any reference in that article to the Juvenile Court were a reference to the court to which jurisdiction was transferred."

24. In article 10 of the principal Act the words "No child or young person who is not accompanied" shall be substituted by the words "No person under the age of sixteen (16) years who is not accompanied" and the words "any child or young person present in court" shall be substituted by the words "any person under the age of sixteen (16) years present in court".

Amendment of article 10 of the principal Act.

25. Nothing in this Part shall affect the validity or the continuation of any proceedings commenced before the coming into force of this Act in accordance with the Juvenile Court Act as in force at the time of the commencement of the said proceedings.

Transitory provision.

Cap. 287.

PART III

Amendment to the Animal Welfare Act

26. This Part amends the Animal Welfare Act and it shall be read and construed as one with the Animal Welfare Act, hereinafter in this Part referred to as "the principal Act".

Amendment to the Animal Welfare Act.
Cap. 439.

27. Sub-article (2) of article 8 of the principal Act shall be substituted by the following new sub-article:

Amendment of article 8 of the principal Act.

"(2) Animals shall not be caused any unnecessary pain, suffering or distress or be subjected to activities which are not in their nature. No animal shall be abandoned:

Provided that for the purposes of this sub-article, the words "activities which are not in their nature" include activities of a sexual nature between a person and an animal whether by any part of the body or by any object."

PART IV

Amendment to the Health Act

28. This Part amends the Health Act and it shall be read and construed as one with the Health Act, hereinafter in this Part referred to as "the principal Act".

Amendment to the Health Act.
Cap. 528.

29. Immediately after sub-article (3) of article 27 of the principal Act there shall be added the following new sub-article:

Amendment of article 27 of the principal Act.

"(4) In this article any reference to treatment shall be deemed to include a reference to psychiatric treatment and to counselling."

A 1558

Passed by the House of Representatives at Sitting No. 529 of the 7th
December, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

