



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1543 of 22nd June 2009
LEGISLATION

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CRIMINAL CODE (AMENDMENT) ORDINANCE 2009

An Ordinance to amend the Criminal Code and for related matters.

J. H. GORDON
ADMINISTRATOR

15th June 2009.

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

1. Short Title

This Ordinance may be cited as the Criminal Code (Amendment) Ordinance 2009.

2. Amendment to the offence of recklessness and negligence

Section 236(g) of the Criminal Code(a) is amended by inserting “substance, equipment, device or other thing” after “any machinery”.

3. Amendment to the offence of kidnapping

The Criminal Code is amended by adding the following section after section 245—

“245A. Definition of kidnapping by a parent or a person exercising joint guardianship

- (1) Any parent or guardian of a child under the age of sixteen years who takes that child from the Areas without the consent of the other parent or guardian kidnaps that child from lawful guardianship within section 248.
- (2) Subsection (1) does not apply if the person takes the child from the Areas and—
 - (a) that person does it in the belief that the other parent or guardian—
 - (i) has consented; or
 - (ii) would consent if aware of all the relevant circumstances; or

- (b) that person has taken all reasonable steps to communicate with the other parent or guardian but has been unable to do so; or
- (c) the other parent or guardian has unreasonably refused to consent.”.

4. Repeal and replacement of section 305A

Section 305A of the Criminal Code is repealed and replaced as follows—

“305A. Issue of cheques without security

- (1) A person commits an offence if that person issues a cheque which—
 - (a) is presented at the credit institution on which it is drawn on or after the date on which it is made payable and is dishonoured because—
 - (i) there are insufficient funds in the account of the person issuing the cheque for the cheque to be honoured; or
 - (ii) the account of the person issuing the cheque has been closed; and
 - (b) after the date the cheque is presented it remains unpaid for 15 days or more.
- (2) A person commits an offence if that person issues a cheque and, without reasonable excuse, causes that cheque to be dishonoured.
- (3) A reasonable excuse under subsection (2) must be supported by evidence in writing showing why that person gave instructions to the credit institution not to honour the cheque.
- (4) A person who is guilty of an offence under subsection (1) or (2) is liable to imprisonment for 3 years or a fine of €10,000 or both.
- (5) A credit institution which refuses to honour a cheque must endorse on the cheque one of the following reasons that the cheque has not been honoured—
 - (a) that there are insufficient funds in the account of the person issuing the cheque for the cheque to be honoured; or
 - (b) that the account of the person issuing the cheque has been closed; or
 - (c) that the person who has issued the cheque has instructed the credit institution not to honour the cheque.
- (6) If a cheque is presented by electronic means and that cheque is not honoured, the credit institution on which the cheque is drawn must inform the credit institution which presented the cheque of the date on which the cheque was presented for payment and one of the following reasons that the cheque has not been honoured—
 - (a) that there are insufficient funds in the account of the person issuing the cheque for the cheque to be honoured; or
 - (b) that the account of the person issuing the cheque has been closed; or
 - (c) that the person who has issued the cheque has instructed the credit institution not to honour the cheque.
- (7) If a credit institution presents a cheque for payment by electronic means and that cheque is not honoured, the credit institution which presented the cheque must endorse on the cheque the information notified to it under subsection (6).
- (8) A credit institution is not in breach of any duty of confidentiality to its customers by reason of its compliance with its obligations under this section.
- (9) Subject to subsection (10), an officer or an employee of a credit institution who breaches subsections (5), (6) or (7) or who authorises or knowingly permits a person to breach any of those subsections commits an offence.

- (10) A person does not commit an offence under subsection (9) if the breach of subsections (5), (6) or (7) was made as a result of a mistake made in good faith.
- (11) A person who is guilty of an offence under subsection (9) is liable to imprisonment for 3 months or a fine of €2,000 or both.
- (12) This section does not apply to a cheque which is issued in satisfaction of any obligation for the breach of which the drawer would not be liable in civil proceedings.
- (13) In this section “credit institution” means—
 - (a) a bank within the meaning of the Banking Business Law**(b)** of the Republic;
 - (b) a cooperative credit institution within the meaning of the Cooperative Societies Law**(c)** of the Republic; or
 - (c) any financial institution or organisation which has been formed under any law and which issues cheque books to its customer.”.

5. Commencement

This Ordinance comes into force on the day it is published in the Gazette.

Notes

- (a)** Cap 154, Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Laws (Adaptation and Interpretation) (Consolidation and Extension) Ordinance 1968 (5/68).
- (b)** Law No. 166(I)/1997, Republic of Cyprus.
- (c)** Law No. 22(I)/1985, Republic of Cyprus.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This explanatory note relates to the Criminal Code (Amendment) Ordinance 2009 (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. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

Particular points

3. The Ordinance amends section 236(g) of the Criminal Code to clarify the prohibition on reckless acts or omissions. Previously it was an offence to act rashly or negligently in such a manner as to endanger human life or to be likely to cause harm to any other person by doing any act (or failing to take proper precautions) with respect to any machinery of which the defendant was in charge. This offence has been widened to include acts or omissions with respect to any machinery, substance, equipment, device or other thing of which the defendant was in charge.

4. The remaining provisions in the Ordinance replicate the effect of the Republican Criminal Code (Amendment) Law 2008 (law 70(I)/2008).

5. The Ordinance amends the Criminal Code by inserting section 245A and by replacing section 305A.

6. Section 245A amplifies section 245 (which contains the definition of kidnapping) by providing that a person is deemed to kidnap a minor over which that person has joint guardianship if the person takes that minor from the Areas without the consent of the other guardians. The offence is not committed if the person taking the minor from the Areas believes the other guardian has consented, if consent could not be obtained or if consent is unreasonably withheld.

7. Section 305A is repealed and replaced. Section 305A makes it an offence to draw cheques which (in general terms) are not honoured. The amendments;

- deal with cheques which are paid electronically;
- require the cheque to be honoured within 15 days instead of 7 days; and
- increase the penalties for drawing dishonoured cheques.

(SBA/AG/ 2/CR/133)