

CHAPTER 518

PROTECTION OF MINORS (REGISTRATION) ACT

To provide for the registration of sexual offenders and other offenders who commit offences of serious violence.

20th January, 2012*

ACT XXIII of 2011, as amended by Legal Notice 426 of 2012.

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| 1. The short title of this Act is the Protection of Minors (Registration) Act. | Short title. |
| 2. (1) In this Act, unless the context otherwise requires: | Interpretation. |
| "admitted to a hospital" means admitted to a hospital under the <u>Mental Health Act</u> ; | Cap. 525. |
| "cautioned" means cautioned by a police or other law enforcement officer after the person concerned has admitted the offence; | |
| "the Code" means the <u>Criminal Code</u> ; | Cap. 9. |
| "community sanction" means a probation order, a community service order or a combination order as specified in the <u>Probation Act</u> ; | Cap. 446. |
| "competent court" shall have the same meaning given by article 4(1); | |
| "country" includes territory; | |
| "detained in a hospital" means detained in a hospital under the <u>Mental Health Act</u> ; | Cap. 525. |
| "earlier event" has the meaning given by article 8(2)(a); | |
| "finding" refers to the situation where a person is found not guilty of a scheduled offence by reason of insanity; | |
| "home address" has the meaning given by article 8(6); | |
| "interim notification order" has the meaning given by article 21(2); | |
| "the Minister" means the Minister responsible for justice; | |
| "notification order" has the meaning given by article 18(1); | |
| "notification period" has the meaning given by article 7(1); | |
| "parental authority" has the same meaning as in the <u>Civil Code</u> ; | Cap. 16. |
| "the period of conditional discharge" has the meaning given by article 22(2) of the <u>Probation Act</u> ; | Cap. 446. |
| "probation order" has the meaning given by article 2 of the <u>Probation Act</u> ; | Cap. 446. |

*see article 1(2) of the Act as originally promulgated, and Legal Notice 15 of 2012.

- Cap. 446. "probation period" has the meaning given by article 2 of the [Probation Act](#);
- "the Register" means the register established under article 3;
- "the Registrar" has the meaning given by article 3;
- "registered person" means a person registered in the Register;
- "relevant date" has, save in the circumstances mentioned in articles 19 and 21, the meaning given by article 7(4);
- "relevant entity" means any institution, establishment or organisation which provides or organises any service or activity which involves the education, care, custody, welfare or upbringing of minors;
- "relevant offender" has the meaning given by article 6(3);
- "scheduled offence" means an offence listed in Schedule I;
- "supervision" means supervision in pursuance of an order made for the purpose;
- "subject person" has the meaning given by article 13(6);
- "young offender" has the meaning given by article 13(2).
- Cap. 446. (2) Notwithstanding the provisions of any other law, a person convicted for an offence for which an order is made under the [Probation Act](#) placing the offender on a community sanction or discharging the offender absolutely or conditionally shall, for the purpose of this Act, be deemed to be a person convicted of an offence.
- (3) Where under article 1(2) different days are appointed for the commencement of different provisions of this Act, a reference in any such provision to the commencement of this Act is to be read (subject to article 19(4)) as a reference to the commencement of that provision.
- Establishment of Register. 3. (1) The Registrar, Civil Courts and Tribunals, hereinafter in this Act referred to as "the Registrar", shall maintain a register within which there shall be noted down the name of any person who is subject to notification requirements, together with those details which are required to be notified, under the provisions of this Act, as well as an authentic copy of the relevant judgment or court decree, as the case may be.
- (2) Any register as provided in sub-article (1) may be kept and maintained in electronic format.
- (3) Any registered person shall be ineligible for membership of, or any employment or other position with, any institution, establishment or organisation providing or organising any service or activity which involves the education, care, custody, welfare or upbringing of minors, whether such membership, employment or other position is against payment or otherwise.
- (4) Any registered person who is a member of, or is employed or holds any position with, any institution, establishment or organisation as is mentioned in sub-article (3), whether such membership, employment or other position is against payment or

otherwise, shall have his membership, employment or position terminated with immediate effect without that person being entitled to any compensation other than any remuneration that may be due to him for services rendered until termination.

4. (1) Notwithstanding the provisions of any other law, any relevant entity shall, not earlier than six months from the coming into force of this Act but not later than eighteen months from the coming into force of this Act, request the Voluntary Jurisdiction Section of the Civil Court (First Hall), hereinafter in this Act referred to as "the competent court", for information which may be registered in the Register in respect of any person who is employed or holds any position with the same institution, establishment or organisation whether such employment or position is against payment or otherwise.

Requests for information from the Register.

(2) Any relevant entity which, against payment or otherwise, intends to employ any person or to entrust any person with a position within the entity shall, before so employing or entrusting such person, request the competent court for information which may be registered in the Register in respect of that person.

(3) The relevant entity referred to in sub-articles (1) and (2) shall be bound by the provisions of the [Data Protection Act](#).

Cap. 586.

(4) Any such request shall be by application which shall be served on the Attorney General who shall be allowed a period of seven working days for a reply.

(5) The competent court may appoint a date for the hearing of the application in order to determine whether the application should be allowed and the date of the hearing shall be served on the Attorney General who may take part in the hearing.

(6) If the competent court allows the application, it shall identify the information which may be disclosed and shall order that such information be communicated in writing to the applicant.

(7) The registrar of the Court shall keep a separate record of all applications filed under this article.

5. (1) Any person who recruits, engages or employs a registered person with a relevant entity or who assigns to a registered person a position with such an entity shall be guilty of an offence and shall on conviction be liable to the punishment of imprisonment from three months to four years or to a fine (*multa*) of not less than two thousand five hundred euro (€2,500) and not more than fifty thousand euro (€50,000) or to both such fine and imprisonment.

Offences.

(2) Any person being a director, manager, secretary or other similar officer of a relevant entity, as well as any other person who may in any way be involved in the management of the relevant entity, who becomes aware of the commission of a scheduled offence which is committed in the relevant entity to which he appertains and fails to report the fact to the Commissioner of Police shall be guilty of an offence and shall on conviction be liable to the same punishment laid down in sub-article (1) decreased by one

degree.

Persons subject to notification requirements.

6. (1) A person shall be subject to the notification requirements under this Act for the period set out in article 7 ("the notification period") if that person -

(a) is convicted of a scheduled offence:

Provided that the Court may, if it deems it appropriate, decide not to subject a person to the notification requirements if, in its opinion, the case so merits;

(b) is found not guilty of such an offence by reason of insanity;

(c) is convicted of an offence not listed in Schedule I but the Court is of the opinion that the person convicted constitutes a threat or a danger to the education, care, custody, welfare or upbringing of minors and orders the registration of that person in the Register.

(2) Where any court of first instance finds any person guilty of a scheduled offence, that court shall order that the judgment shall, upon becoming final, be notified to the Registrar. Where the court is a court of appeal which delivers a judgment having the effect of confirming or declaring a person guilty of an offence as aforesaid, that court of appeal shall order that the judgment shall forthwith be notified to the Registrar.

(3) A person for the time being subject to the notification requirements under this Act is referred to in this Act as "a relevant offender".

Notification period.

7. (1) The notification period for a person referred to in article 6(1) is the period in the second column of Schedule II, opposite the description that applies to that person.

(2) Where a person is under eighteen years of age on the relevant date, sub-article (1) shall have effect as if for any reference to a period referred to in Schedule II there were a reference to one-half of any of the relevant period therein mentioned.

(3) Where a relevant offender falling under article 6(1)(a) has been sentenced to a term of imprisonment or detention and, before the notification period in respect of that offence has expired, is again subsequently convicted of a scheduled offence and sentenced to a term of imprisonment or detention, sub-article (1) shall have effect as if that offender had been sentenced to a period of imprisonment or detention equal to the aggregate of the those terms.

(4) In this Act, "relevant date" means -

(a) in the case of a person under article 6(1)(a) and 6(1)(c), the date of the conviction;

(b) in the case of a person under article 6(1)(b), the date of the finding.

8. (1) A relevant offender shall, within the period of three days beginning with the relevant date, notify to the Registrar the information set out in sub-article (4).

Initial notification.
Amended by:
L.N. 426 of 2012.

(2) Sub-article (1) does not apply to a relevant offender in respect of a conviction or finding under article 6(1) if -

- (a) immediately before the conviction or finding he was subject to the notification requirements under this Act as a result of another conviction, finding or order of a court (the "earlier event");
- (b) at that time, he had made a notification under sub-article (1) in respect of the earlier event; and
- (c) throughout the period referred to in sub-article (1), he remains subject to the notification requirements as a result of the earlier event.

(3) Where a notification order is made in respect of a conviction or finding, sub-article (1) shall not apply to the relevant offender in respect of the conviction, or finding if -

- (a) immediately before the order was made, he was subject to the notification requirements under this Act as a result of another conviction, finding or caution or an order of a court ("the earlier event"),
- (b) at that time, he had made a notification under sub-article (1) in respect of the earlier event, and
- (c) throughout the period referred to in sub-article (1), he remains subject to the notification requirements as a result of the earlier event.

(4) The information referred to in sub-article (1) is -

- (a) the relevant offender's date of birth;
- (b) his legally valid identification document or passport number;
- (c) his name on the relevant date and, where he used one or more other names on that date, each of those names;
- (d) his home address on the relevant date;
- (e) his name on the date on which notification is given and, where he used one or more other names on that date, each of those names;
- (f) his home address on the date on which notification is given;
- (g) the address of any other premises in Malta at which, at the time the notification is given, he regularly resides or stays.

(5) When determining the period for the purpose of sub-article (1), there shall be disregarded any time when the relevant offender is -

- (a) remanded in or committed to custody by an order of a court;
- (b) serving a sentence of imprisonment or detention;

- (c) detained in a hospital; or
- (d) outside Malta.

(6) In this Act, "home address" means, in relation to any person:

- (a) the address of his sole or main residence in Malta, or
- (b) where he has no such residence, the address or location of a place in Malta where he can regularly be found and, if there is more than one such place, such one of those places as the person may select.

Changes in notified information.

9. (1) A relevant offender must, within the period of three days beginning with -

- (a) his using a name which has not been notified to the Registrar under article 8(1) or this sub-article,
- (b) any change of his home address,
- (c) his having resided or stayed, for a qualifying period, at any premises in Malta the address of which has not been notified to the Registrar under article 8(1) or this sub-article, or
- (d) his release from custody pursuant to an order of a court or from imprisonment or detention in a hospital,

notify to the police that name, the new home address, the address of those premises or, as the case may be, the fact that he has been released, and, in addition, the information set out in article 8(4).

(2) A notification under sub-article (1) may be given before the name is used, the change of home address occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.

(3) If a notification is given in accordance with sub-article (2) and the event to which it relates occurs more than two days before the date specified, the notification does not affect the duty imposed by sub-article (1).

(4) If a notification is given in accordance with sub-article (2) and the event to which it relates has not occurred by the end of the period of three days beginning with the date specified -

- (a) the notification does not affect the duty imposed by sub-article (1), and
- (b) the relevant offender must, within the period of six days beginning with the date specified, notify to the police the fact that the event did not occur within the period of three days beginning with the date specified.

(5) Article 8(5) applies to the determination of the period of three days mentioned in sub-article (1) and the period of six days mentioned in sub-article (4)(b), as it applies to the determination of the period mentioned in article 8(1).

(6) In this article, "qualifying period" means -

- (a) a period of seven days, or

- (b) two or more periods, in any period of twelve months, which taken together amount to seven days.

10. (1) A relevant offender must, within the period of one year after each event referred to in sub-article (2), notify to the Registrar the information set out in article 8(4) unless within that period he has given a notification under article 9(1).

Periodic
notification.

- (2) The events to which reference is made in sub-article (1) are:
 - (a) the commencement of this article, but only in the case of a person who is a relevant offender from that commencement;
 - (b) any notification given by the relevant offender under articles 8(1) or 9(1); and
 - (c) any notification given by him under sub-article (1).
- (3) Where the period referred to in sub-article (1) would, apart from this sub-article, end whilst sub-article (4) applies to the relevant offender, that period is to be treated as continuing until the end of the period of three days beginning when sub-article (4) first ceases to apply to the relevant offender.
- (4) The provisions of this sub-article apply to the relevant offender if he is -
 - (a) remanded in or committed to custody by an order of a court,
 - (b) serving a sentence of imprisonment or detention,
 - (c) detained in a hospital, or
 - (d) outside Malta.

11. (1) The Minister may by regulations make provision requiring relevant offenders who leave Malta, or any description of such offenders -

Travel outside
Malta.

- (a) to give in accordance with the regulations, before they leave, a notification under sub-article (2);
- (b) if they subsequently return to Malta, to give in accordance with the regulations a notification under sub-article (3).
- (2) A notification under this sub-article must disclose -
 - (a) the date on which the offender will leave Malta;
 - (b) the country or, if there is more than one country, the first country, to which he will travel and his point of arrival, determined in accordance with the regulations, in that country;
 - (c) any other information, prescribed by the regulations, which the offender holds about his departure from or return to Malta or his movements while outside Malta.
- (3) A notification under this sub-article must disclose any information prescribed by the regulations about the offender's return to Malta.

(4) Regulations made under sub-article (1) may make different provision for different categories of person.

Method of
notification and
related matters.

12. (1) A person shall be deemed to have given a notification under articles 8(1), 9(1) or 10(1) by -

- (a) attending at the Registry of the Civil Courts and Tribunals as the Minister may by regulations prescribe; and
- (b) giving an oral notification to the official at the said Registry authorised for the purpose by the Registrar.

(2) Any notification under this article must be acknowledged; and an acknowledgment under this sub-article must be in writing, and in such form as the Registrar may direct.

Parental directions.

13. (1) The provisions of sub-article (2) apply to -

- (a) a relevant offender under articles 6(1)(a) to (c) or 6(2);
- (b) a subject person; or
- (c) a respondent under sub-article (4).

(2) Where a person to whom this sub-article applies is under eighteen years of age ("the young offender") -

- (a) the court which deals with the relevant offender under sub-article (1)(a), or
- (b) the court which makes the order in respect of the subject person under sub-article (1)(b), or
- (c) the court which hears the application in respect of the respondent under sub-article (1)(c),

may direct that sub-article (3) applies in respect of an individual ("the parent") having parental authority over the young offender.

(3) Where this sub-article applies -

- (a) the obligations that would, apart from this sub-article, be imposed by or under articles 8 to 11 on the young offender are to be treated instead as obligations on the parent, and
- (b) the parent must ensure that the young offender attends at the Registry of the Civil Courts and Tribunals with him, when a notification is being given.

(4) A direction under sub-article (1) shall take immediate effect and shall apply -

- (a) until the young offender attains the age of eighteen years; or
- (b) for such shorter period as the court may, at the time the direction is given, direct.

(5) The Commissioner of Police may apply to the competent court for a direction under sub-article (1) in respect of a relevant offender ("the respondent") whom he reasonably believes to be under eighteen years of age.

(6) For the purposes of this article "subject person" means a person who is the subject of a notification order or of an interim notification order.

14. (1) A person mentioned in sub-article (2) may make an application to the competent court for an order varying, renewing or discharging a direction under article 13(2).

Variations,
renewals and
discharges of
parental directions.

(2) The persons referred to in sub-article (1) are:

- (a) the young offender;
- (b) the parent;
- (c) the Commissioner of Police.

(3) The application shall be served on the other persons, other than the applicant, mentioned in sub-article (2) and the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in sub-article (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate.

15. Whosoever -

Offences relating
to notification.

- (a) fails, without reasonable cause, to comply with articles 8(1), 9(1), 9(4)(b), 10(1), or 13(3)(b) or any requirement imposed by regulations made under article 11(1); or
- (b) notifies to the police, in purported compliance with articles 8(1), 9(1) or 10(1) or any requirement imposed by regulations made under article 11(1), any information which he knows to be false,

shall be guilty of an offence and shall be liable on conviction to the punishment of imprisonment from three months to four years or to a fine (*multa*) of not less than one hundred euro (€100) and not more than one thousand euro (€1,000) or to both such fine and imprisonment.

16. (1) The provisions of sub-article (2) apply where on any date a person is -

Certificates.

- (a) convicted of an offence listed in Schedule I;
- (b) found not guilty of such an offence by reason of insanity.

(2) If the court by or before which the person is so convicted or found -

- (a) states in open court -
 - (i) that on that date that person has been convicted or found not guilty by reason of insanity, and
 - (ii) that the offence in question is an offence listed in Schedule I, and
- (b) certifies those facts, whether at the time or subsequently,

the relevant certificate shall, for the purposes of this Act, be

deemed to be sufficient evidence of those facts.

Information about
release or transfer.

17. (1) The provisions of this article shall apply to a relevant offender who is serving a sentence of imprisonment or is detained in a hospital.

(2) The Minister may by regulations make provision requiring notice to be given by the person who is responsible for that offender to persons prescribed by the regulations, of any occasion when the offender is released or a different person becomes responsible for him.

(3) The regulations may make provision for determining who is to be treated, for the purposes of this article, as responsible for an offender.

Applications and
grounds for
notification orders.

18. (1) The Commissioner of Police may apply to the Court of Magistrates for an order under this article (a "notification order") in respect of a person ("the defendant") if -

- (a) it appears to him that the three conditions referred to in sub-articles (2), (3) and (4) are met with respect to the defendant, and
- (b) the defendant resides in Malta or the Commissioner of Police believes that the defendant is in, or is intending to come to, Malta.

(2) The first condition is that under the law in force in a country outside Malta:

- (a) the defendant has been convicted of a relevant offence, whether or not he has been punished for it,
- (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the defendant is not guilty by reason of insanity,
- (c) such a court has made, in respect of a relevant offence, a finding equivalent to a finding that the defendant is under a disability and committed the act charged against him in respect of the offence, or
- (d) the defendant has been cautioned in respect of a relevant offence.

(3) The second condition is that:

- (a) the first condition is met because of a conviction, finding or caution which occurred on or after the date of the coming into force of this Act;
- (b) the first condition is met because of a conviction or finding which occurred before that date, but the person was dealt with in respect of the offence or finding on or after that date, or has yet to be dealt with in respect of it; or
- (c) the first condition is met because of a conviction or finding which occurred before that date, but on that date the person was, in respect of the offence or

finding, subject under the law in force in the country concerned to detention, supervision or any other disposal equivalent to any of those mentioned in sub-article (2).

(4) The third condition is that the period set out in article 8, as modified by article 19(2) and (3), in respect of the relevant offence has not expired.

(5) If on the application it is proved that the conditions referred to in sub-articles (2) to (4) are met, the court shall make a notification order.

(6) In this article and in article 19, "relevant offence" has the meaning given by article 20.

19. (1) Where a notification order is made -

Effect of
notification orders.

- (a) the application of this Act to the defendant in respect of the conviction, finding or caution to which the order relates shall be subject to the modifications set out below, and
- (b) subject to those modifications, the defendant shall become or, as the case may be, shall remain subject to the notification requirements of this Act for the notification period set out in article 8.

(2) The "relevant date" means:

- (a) in the case of a person referred to in article 18(2)(a), the date of the conviction;
- (b) in the case of a person referred to in article 18(2)(b) or (c), the date of the finding;
- (c) in the case of a person referred to in article 18(2)(d), the date of the caution.

(3) In article 7 -

- (a) references, except in Schedule II, to a person, or relevant offender, within any provision of article 6 are to be read and construed as references to the defendant;
- (b) references to an order of any description are to be read and construed as references to any corresponding disposal made in relation to the defendant in respect of an offence or finding by reference to which the notification order was made;
- (c) the reference to offences listed in Schedule I is to be read and construed as a reference to relevant offences.

(4) In articles 8 and 10, references to the commencement date are to be read as references to the date of service of the notification order.

20. (1) "Relevant offence" in articles 18 and 19 means an act which -

Relevant offences.

- (a) constituted an offence under the law in force in the

country concerned, and

- (b) would have constituted an offence listed in Schedule I, other than the offence referred to in paragraph 6 thereof, if it had been committed in Malta.

(2) An act punishable under the law in force in a country outside Malta constitutes an offence under that law for the purposes of sub-article (1), howsoever it is described in that law.

(3) Subject to sub-article (4), on an application for a notification order, the condition in sub-article (1)(b) shall be taken as met unless, not later than such period as may be provided by Rules of Court made under this article, the defendant serves on the applicant a notice -

- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met,
- (b) showing his grounds for that opinion, and
- (c) requiring the applicant to prove that the condition is met.

(4) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under sub-article (3).

Interim notification orders.

21. (1) The provisions of this article shall apply where an application for a notification order ("the main application") has not been determined.

(2) An application for an order under this article ("an interim notification order") -

- (a) may be made in the main application, or
- (b) if the main application has been made, may be made by the person who has made that application, by another application to the court to which the main application has been made.

(3) The court may, if it considers it appropriate to do so, make an interim notification order.

(4) An interim notification order -

- (a) shall have effect only for a fixed period, specified in the order;
- (b) shall cease to have effect, if it has not already done so, on the determination of the main application.

(5) While an interim notification order has effect -

- (a) the defendant shall be subject to the notification requirements of this Act; and
- (b) the provisions of this Act shall apply to the defendant, subject to the modification set out in sub-article (6).

(6) The "relevant date" means the date of service of the order.

(7) The applicant or the defendant may apply to the court which made the interim notification order for the order to be varied,

renewed or discharged.

22. A defendant may apply to the Criminal Court for the revocation of a notification order or interim notification order.

Applications regarding notification and interim notification orders.

23. (1) The Minister may by order amend the Schedules I or II.

Power to amend Schedules.

(2) Any amendment which falls within the provisions of sub-article (3) shall not apply to convictions, findings and cautions before the amendment takes effect.

(3) An amendment shall be deemed to fall within the prohibition referred to in sub-article (2) if such amendment -

- (a) adds an offence,
 - (b) removes a threshold relating to an offence, or
 - (c) changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within a Schedule when it would not otherwise be so included.
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SCHEDULE I

(Article 2)

Offences

Criminal Code (Cap. 9)

1. Articles 197(1) and (2), 198;
2. Article 199 when the offence is committed on a minor;
3. Articles 202, 203, 203A, 204, 204A, 204B, 204C and 204D;
4. Article 207 when the offence is committed on a minor;
5. Articles 208A, 247A, 248D;
6. Articles 251A and 251B when the offence is committed on a minor;

Medical and Kindred Professions Ordinance (Cap. 31)

1. Second proviso to article 120A(2)(b)(ii) when the offence is committed on a minor

White Slave Traffic Ordinance (Cap. 63)

1. Article 3 when the offence is committed on a minor;
2. Proviso to article 7(1)

Dangerous Drugs Ordinance (Cap. 101)

1. Second proviso to article 22(2)(b)(ii) when the offence is committed on a minor.
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SCHEDULE II

(Article 7)

Description of relevant offender	Notification period
A person who, in respect of the offence, has been sentenced to imprisonment for life or for a term of 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence or finding, is admitted to a hospital	An indefinite period beginning with that date
A person who, in respect of the offence, has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	15 years beginning with that date
A person who, in respect of the offence, has been sentenced to imprisonment for a term of 6 months or less	10 years beginning with that date
A person in whose case an order for conditional discharge or a probation order is made in respect of the offence	10 years beginning with the date of the conditional discharge or the probation period
A person within article 18(2)(d)	2 years beginning with that date
A person of any other description	5 years beginning with the relevant date, or such longer period as the Court may determine
