

Statutory Instrument 2 of 2024.

[CAP. 10:20

Presidential Powers (Temporary Measures) (Criminal Laws  
(Protection of Children and Young Persons)) Regulations, 2024

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HIS Excellency the President, in terms of section 2 of the Presidential Powers (Temporary Measures) Act [*Chapter 10:20*], hereby makes the following regulations:—

PART I

PRELIMINARY

*Title*

1. These regulations may be cited as the Presidential Powers (Temporary Measures) (Criminal Laws (Protection of Children and Young Persons)) Regulations, 2024.

*Interpretation*

2. In these regulations—

“Criminal Law Code” means the Criminal Law (Codification and Reform) Act [*Chapter 9:23*];

“Criminal Procedure Act” means the Criminal Procedure and Evidence Act [*Chapter 9:07*].

PART II

AMENDMENTS TO CRIMINAL LAW CODE

*Amendment of section 61 of Cap. 9:23*

3. Section 61 (“Interpretation in Part III of Chapter V”)(1) of the Criminal Law Code is amended—

(a) in the definition of “extra-marital sexual intercourse” by the insertion after “spouses” of “both of whom are of or over the age of eighteen years”;

(b) by the repeal of the definition of “young person” and the substitution of—

““young person” means a boy or girl under the age of eighteen years.”.

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*New section substituted for section 70 of Cap. 9:23*

4. Section 70 (“Sexual intercourse or performing indecent acts with young persons”) of the Criminal Law Code is repealed and the following is substituted—

“70 Sexual intercourse or performing indecent acts with young persons

(1) Subject to this section, any person who—

- (a) has extra-marital sexual intercourse with a young person; or
- (b) commits upon a young person any act involving physical contact that would be regarded by a reasonable person to be an indecent act; or
- (c) solicits or entices a young person to have extra-marital sexual intercourse with him or her or to commit any act with him or her involving physical contact that would be regarded by a reasonable person to be an indecent act;

shall be guilty of sexual intercourse or performing an indecent act with a young person, as the case may be, and liable to a fine not exceeding level 12 or imprisonment for a period not exceeding ten years or both.

(2) It shall be no defence to a charge of sexual intercourse or performing an indecent act with a young person to prove that he or she consented to such sexual intercourse or indecent act.

(3) Where sexual intercourse or an indecent act takes place between—

- (a) young persons between whom the difference in age is not more than three years; or
- (b) a young person and an adult who is not more than three years older than the young person;

neither of them shall be charged with sexual intercourse or performing an indecent act with a young person unless the Prosecutor-General, after considering a report by a probation officer appointed in terms of the Children’s Act [*Chapter 5:06*], has authorised the charge.

(4) The requirements of subsection (3) shall be additional to the requirements of any other law relating to the prosecution and charging of young persons.

(5) It shall be a defence to a charge under subsection (1) for the accused person to satisfy the court that he or she had reasonable cause to believe that the young person concerned was of or over the age of eighteen years at the time of the alleged crime:

Provided that the apparent physical maturity of the young person concerned shall not, on its own, constitute reasonable cause for the purposes of this subsection.

(6) For the avoidance of doubt—

(a) the competent charge against a person who—

- (i) has sexual intercourse with a female person below the age of twelve years, shall be rape; or
- (ii) commits upon a female or male person below the age of twelve years any act referred to in section 66(1), shall be aggravated indecent assault; or
- (iii) commits upon a female or male person below the age of twelve years any act involving physical contact (other than an act referred to in section 66(1)) that would be regarded by a reasonable person to be an indecent act, shall be indecent assault; or
- (iv) without the consent of a female person of or above the age of twelve years but below the age of eighteen years, has sexual intercourse with that female person, shall be rape; or
- (v) without the consent of a female or male person of or above the age of twelve years but below the age of eighteen years, commits upon that female or male person any act referred to in section 66(1) shall be aggravated indecent assault; or

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- (vi) without the consent of a female or male person of or above the age of twelve years but below the age of eighteen years, commits upon that female or male person any act involving physical contact (other than an act referred to in section 66(1)) that would be regarded by a reasonable person to be an indecent act, shall be indecent assault; and not sexual intercourse or performing an indecent act with a young person;
- (b) a young person shall be deemed not to have consented to sexual intercourse, or to any act involving physical contact that would be regarded by a reasonable person to be an indecent act, in any of the circumstances referred to in section 69, in which event the person accused of having sexual intercourse or performing an indecent act with the young person shall be charged with rape, aggravated indecent assault or indecent assault, as the case may be.”.

*Amendment of section 73 of Cap. 9:23*

5. Section 73 (“Sodomy”)(3) of the principal Act is amended by the deletion from paragraphs (b) and (c) of “but below the age of sixteen years”.

*Amendment of section 75 of Cap. 9:23*

6. Section 75 (“Sexual intercourse within a prohibited degree of relationship”) of the principal Act is amended—

- (a) in subsection (2) by the deletion from paragraphs (b) and (j) of “Marriages Act, 2022” and the substitution of “Marriages Act [*Chapter 5:15*] (No. 1 of 2022)”;
- (b) in subsection (4)(b)—
  - (i) by the repeal of subparagraphs (i) and (ii) and the substitution of—
    - “(i) whether or not the natural parents of the person were married in a customary law marriage

solemnised, registered or recognised under the Marriages Act [*Chapter 5:15*] or an enactment repealed by that Act; or

- (ii) whether or not the person lives among other members of such a community and is regarded by such other members as belonging to that community, notwithstanding that the person’s natural parents were not married to each other, or were married in a civil marriage under the Marriages Act [*Chapter 5:15*] or an enactment repealed by that Act;”.

*New section substituted for section 76 of Cap. 9:23*

7. Section 76 of the principal Act is repealed and substituted by—

**“76 Complicity in sexual crimes**

For the avoidance of doubt it is declared that any person who—

- (a) being the owner or occupier of any premises, knowingly permits another person on the premises to commit rape, aggravated indecent assault, indecent assault, sexual intercourse or performing an indecent act with a young person, sodomy, bestiality or sexual intercourse within a prohibited degree of relationship; or
- (b) detains a person with the intention that a crime referred to in paragraph (a) should be committed by another person against the person so detained;

may be charged with being an accomplice or accessory to the commission of the crime concerned, or with kidnapping or unlawful detention, or both.”.

*Amendment of section 78 of Cap. 9:23*

8. Section 78 (“Deliberate infection of another with a sexually-transmitted disease”)(1) of the principal Act is amended by the repeal of the definition of “sexually-transmitted disease” and the substitution of—

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““sexually-transmitted disease” includes HIV, syphilis, gonorrhoea, herpes, and all other forms of sexually-transmitted diseases.”.

*New section substituted for section 83 of Cap. 9:23*

9. Section 83 (“Procuring”) of the principal Act is repealed and the following section is substituted—

“83 Procuring

Any person who procures any other person—

- (a) for the purposes of engaging in unlawful sexual conduct with another person or with persons generally, whether inside or outside Zimbabwe; or
- (b) to become a prostitute, whether inside or outside Zimbabwe; or
- (c) to leave Zimbabwe with the intent that the other person may become a prostitute; or
- (d) to leave his or her usual place of residence, not being a brothel, with the intent that he or she may become an inmate of or frequent a brothel elsewhere;

shall be guilty of procuring and liable to a fine not exceeding level 14 or—

- (i) in a case where the person procured is a young person, imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment;
- (ii) in any other case, imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.”.

*New section substituted for section 86 of Cap. 9:23*

10. Section 86 of the principal Act is repealed and substituted by—

“86 Permitting young person to resort to place for purpose of engaging in unlawful sexual conduct

(1) If the owner of a place knowingly induces or allows a young person to enter or be in the place for the purpose of engaging in unlawful sexual conduct with another person or with other persons generally, the owner shall be guilty of permitting a young person to resort to a place for the purpose of engaging in unlawful sexual conduct and—

- (a) if the young person is under the age of twelve years, liable to a fine not exceeding level 11 or imprisonment for a period not exceeding ten years or both;
- (b) if the young person is over the age of twelve years, liable to a fine not exceeding level 10 or imprisonment for a period not exceeding seven years or both.

(2) It shall be a defence to a charge under subsection (1) for the accused to prove that he or she had reasonable cause to believe that the young person was of or over the age of eighteen years:

Provided that the apparent physical maturity of the young person concerned shall not, on its own, constitute reasonable cause for the purposes of this subsection.”.

### PART III

#### AMENDMENTS TO CRIMINAL PROCEDURE ACT

##### *Amendment of Cap. 9:07*

11. The Criminal Procedure Act is amended—

- (a) in section 319A (“Interpretation in Part XIVA”) by the repeal of the definition of “vulnerable witness” and the substitution of—
  - ““vulnerable or incapacitated witness” means a person for whom any measure has been or is to be taken in terms of section 319B.”;
- (b) in section 319B (“Measures to protect vulnerable witnesses”) by the insertion of the following subsections, the existing section becoming subsection (1)—

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“(2) If it appears to a court in any criminal proceedings that a person who is giving or will give evidence in the proceedings is unable for any reason to give evidence orally, the court may, subject to this Part, do any one or more of the following, either on its own motion or on the application of a party to the proceedings—

- (a) permit the person to give their evidence in any other manner that makes it intelligible, for example by writing or by signs or other augmentative and alternative communications:

Provided that that the writing shall be written, and the signs and communications shall be made, in open court;

- (b) appoint an intermediary for the person;
- (c) appoint a support person for the person.

(3) For the avoidance of doubt it is declared that a court may take measures under both subsections (1) and (2) for a person who is vulnerable as described in subsection (1) and incapacitated as described in subsection (2).”;

- (c) in section 319C (“Factors to be considered in deciding whether or not to protect vulnerable witness”) by the insertion after “vulnerable” wherever it occurs of “or incapacitated”;
- (d) in section 319F (“Persons who may be appointed intermediaries or support persons”)—
  - (i) in subsection (1) by the insertion of the following provisos—

“Provided that—

- (i) when appointing an intermediary for a vulnerable or incapacitated witness who is unable to give evidence orally,



the court may appoint any person who can communicate with the witness and interpret the witness's writing, signs, sounds or other forms of communication;

- (ii) an intermediary who is not employed by the State as an interpreter shall, before acting as intermediary, take the oath required of interpreters in the court concerned;
- (ii) in subsection (2) by the insertion after "vulnerable" of "or incapacitated";
- (e) in section 319G ("Functions of intermediary or support person") by the insertion after "vulnerable" wherever it occurs of "or incapacitated";
- (f) in section 319H by the insertion after "vulnerable" of "or incapacitated";
- (g) in Part XIVA by the insertion after section 319H of the following section—

**"319I Part XIVA additional to other laws protecting children and vulnerable or incapacitated persons**

The provisions of this Part shall be additional to any other law relating to protecting and assisting witnesses who are children or vulnerable or incapacitated."

