

POLICY NOTE

THE RIGHT TO INFORMATION (SUSPECTS AND ACCUSED PERSONS) (SCOTLAND) REGULATIONS 2014

SSI 2014/159

The Right to Information (Suspects and Accused Persons) (Scotland) (Regulations) 2014 (“the Regulations”) were made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative procedure.

Policy Objectives

The Regulations ensure that a person is provided as soon as reasonably practicable with such information (verbally or in writing) as is necessary to satisfy the requirements of Articles 3 and 4 of the Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings (“the Directive”). This formally enhances human rights in Scotland.

This information is included within a “Letter of Rights” to be passed to every suspect who is in police custody, conveying information about the right of access to a lawyer and assisting in ensuring that suspects are informed of essential information.

The Carloway Review into Criminal Law and Practice separately recommended the introduction of a Letter of Rights in Scotland. Accordingly a non-statutory Letter of Rights was introduced in July 2013, available in 34 languages. The Regulations bring this provision onto a statutory footing in order to comply with Articles 3 and 4 of the Directive.

To transpose Article 8.1 of the Directive into Scots law in relation to the Letter of Rights, the Regulations also provide that a constable will record the time at which and the identity of the person by whom the suspect is provided with the Letter of Rights.

Furthermore the Regulations ensure that, upon request, suspects or their solicitors will be provided free of charge with access to any documents held by Police Scotland, related to their specific case, which are essential to challenging effectively the lawfulness of their arrest and detention. This will satisfy Article 7.1 of the Directive. The police will also be required to issue guidance under the regulations which will explain how a person may challenge a refusal or failure to provide access to information under the Regulations.

Many of the requirements of the Directive are already covered by Scots law under the Criminal Procedure (Scotland) Act 1995 and the disclosure regime under Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010. The Regulations will provide a statutory basis for the Letter of Rights and transpose the remaining provisions of the Directive into Scots Law.

Originally Articles 3 and 4 of the Directive were to have been transposed by section 5 of the Criminal Justice (Scotland) Bill (“the Bill”). On 24 April the Scottish Government agreed to a proposal from opposition parties to reschedule Stage 2 of the Bill to take place after Lord Bonomy’s Review of post-corroboration safeguards has reported in 2015. The provisions will remain in the Bill for discussion at Stage 2 in relation to the new arrest and detention

regime set out in the Bill. In the meantime, this instrument will make provision for the existing regime.

Consultation

Formal public consultation on Lord Carloway's recommendations and the plans for the Bill, including provision of the Letter of Rights, took place between July and October 2012. An analysis of responses to this consultation is available online¹. This report includes a full list of those who responded and agreed to the release of this information.

Further consultation with key stakeholders, specifically on plans for the Letter of Rights, took place between January and May 2013 ahead of the introduction of the Bill in June 2013 and the roll out of the Letter of Rights in July 2013. Provision of the Letter of Rights was also subject to Parliamentary scrutiny at Stage 1 of the Bill. The general principles of the Bill were agreed by Parliament following the Stage 1 debate on 27 February 2014.

During Parliamentary scrutiny of the provisions in the Bill, an amendment was suggested to the effect that information about suspects' rights should be provided both verbally and in writing. However Police Scotland have indicated that they already endeavour to ensure all suspects understand their rights, and that providing it both verbally and in writing would result in disproportionate time and resource implications. Uninterrupted the Letter of Rights takes around 5 minutes to read, and with c.200,000 suspects a year being processed, this could equate to an additional 16,666 hours of police time per annum associated with this specific task alone. Having considered this amendment, officials recommended that the Regulations should reflect the Bill, i.e. not requiring the information to be given both verbally and in writing. This also allows the police to deliver the Letter of Rights verbally if a suspect cannot read, or if a person cannot be given a paper copy of the Letter of Rights due to safety concerns. The Letter of Rights provisions will remain in the Bill for discussion at Stage 2, in the context of the new regime.

Further discussions have also been held with Police Scotland, the Crown Office and Procurator Fiscal Service, Scottish Legal Aid Board and the Law Society.

Impact Assessments

An equality impact assessment has been completed on the draft SSI and is attached.

For the majority of protected characteristics,² the policy creates no negative impacts. There are positive impacts for all groups stemming from an increased awareness of their rights in custody and the fact that simple and accurate information will be provided to all.

Further work is required for full benefits to be received by: 1) some children and young people; 2) those with learning difficulties and some disabilities; 3) those whose first or only language is not English.

With regards to the first two categories above, work is underway to improve accessibility, informed through on-going consultation with stakeholder groups. For the third category, the

¹ <http://www.scotland.gov.uk/Resource/0041/00410913.pdf>

² As per the Equality Act 2010, section 4, the protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

current non-statutory Letter has been made available in 34 languages, and the Scottish Government will continue to assess the need for additional translations.

Financial Effects

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

This instrument will have a small financial impact on the Scottish Police Authority (SPA), as the police will have to provide a Letter of Rights to all suspected or accused persons in police custody, unless there are particular reasons not to do so. Anticipated costs for the production of English language version of the Letter of Rights agreed with Police Scotland is £6,000 per annum for 200,000 copies of double sided A4 with two columns of print per page. Additional costs for desktop, ad hoc printing for non-English language versions are unlikely to exceed £1,000 per annum.

Police Scotland have confirmed that they do not expect the Regulations to create any further substantial costs. Total estimated SPA costs for the Letter of Rights are therefore £7,000 per annum and £2,000 initial costs. These costs were included in the Bill's financial memorandum³, which the Finance Committee considered and reported on in November 2013⁴.

Scottish Government
Justice Directorate
2 June 2014

³ [http://www.scottish.parliament.uk/S4_Bills/Criminal%20Justice%20\(Scotland\)%20Bill/b35s4-introd-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Criminal%20Justice%20(Scotland)%20Bill/b35s4-introd-en.pdf)

⁴ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/71208.aspx>

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	THE RIGHT TO INFORMATION (SUSPECTS AND ACCUSED PERSONS) (SCOTLAND) REGULATIONS 2014
Summary of aims and desired outcomes of Policy	<p>To provide a statutory framework for Scotland's compliance with Articles 3 and 4 of Directive 2012/13 EU on the Right to Information in Criminal Proceedings ("the Directive"). The Directive requires member states to ensure that suspects or accused persons are provided promptly with information concerning their procedural rights, as they apply under national law. This information is currently included within a "Letter of Rights" to be passed to every suspect who is in a police station, conveying information about the right of access to a lawyer and assisting in ensuring that suspects are informed of essential information. The Directive also sets out other information that suspects who have been detained have a right to.</p> <p>Following the decision to reschedule Stage 2 of the Criminal Justice (Scotland) Bill, the Scottish Government intends to use regulations to transpose the provisions of the Directive into Scots Law.</p>
Directorate: Division: team	Justice Directorate: Criminal Justice Division: Criminal Justice Bill Team

Executive summary

1. The Scottish Government intends to place Scotland's current operational compliance with Articles 3 and 4 of the Directive into statute. This includes creating a statutory duty for the police to provide suspects with a 'Letter of Rights' setting out their procedural rights, including the right to legal advice. Since 1 July 2013, a Letter of Rights has been provided to suspects on a non-statutory basis. The Scottish Government is working with police and other stakeholders to improve the Letter of Rights that is currently used, in order to better meet the needs of children and those with learning difficulties and disabilities.

2. This statutory duty to provide the Letter of Rights was to be given effect by the Criminal Justice (Scotland) Bill. Following the rescheduling of the Bill's Parliamentary passage until 2015, the Scottish Government is bringing forward regulations to ensure the policy is given effect as soon as possible, thus implementing the relevant Articles of the Directive at the earliest opportunity.
3. Much work has already been undertaken in equality impact assessment on this policy in preparation for the introduction of the Bill in 2013. This has been published in the Bill's EQIA⁵. This remains valid for the Letter of Rights. This work has since been supplemented with significant further engagement with stakeholders specifically on the Letter of Rights. Consultation with stakeholders originally informed the development of the non-statutory Letter of Rights, and further consultation and development is on-going. Officials have also considered the wider requirements of the Directive, with which Scotland is already operationally compliant, and have concluded that other than the Letter of Rights, there is no disproportionate impact on the protected characteristics.
4. The EQIA identified some potential impacts against the protected characteristics, both positive and negative. Positive impacts were considered to be apparent across the range of characteristics, in that all persons in police custody will receive the letter, thus potentially benefit from increased awareness of rights, regardless of characteristics. Potential impacts for those with learning difficulties and disabilities and for children and young people, related to the ability to read and digest a written document, were identified.
5. Whilst the view has been taken that the potential negative effects of the policy are justified and proportionate to the overall benefit, measures have nevertheless been taken to mitigate the potential issues for these groups commensurate to the desire to achieve best practice. Officials are engaging with stakeholders on developing a possible 'easy-read' version of the Letter of Rights, aimed at better communicating the relevant rights to those with learning difficulties and disabilities. Similar engagement is underway to consider the needs of children and young people in custody.
6. Overall, the Scottish Government believes that all those that come under suspicion should be adequately made aware of their rights, and is working to increase awareness. This represents a fair balance between the need to efficiently and effectively deal with crime, while ensuring fairness for accused people. Furthermore, the Scottish Government is committed to ensuring that young people and those with learning difficulties and disabilities are made aware of their rights in as effective a way as possible.

Background

Lord Carloway's Review of Criminal Law and Practice

⁵ <http://www.scotland.gov.uk/Publications/2013/09/6764>

7. On 26 October 2010, Lord Carloway was asked to lead an independent review of criminal law and practice. This followed the case of *Cadder v HM Advocate* in which the United Kingdom Supreme Court decided that the European Convention on Human Rights required that a person detained by the police has the right to access a solicitor prior to being interviewed, unless, in the particular circumstances of the case, there are compelling reasons to restrict that right.
8. The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (The 2010 Act) was introduced to deal with the immediate impact of that decision. The Scottish Government considered there was a further need not only to ensure the Scottish criminal justice system continued to be fit for purpose, but that it also provides the appropriate balance of protecting the rights of accused persons with the rights of victims of crime. The Cabinet Secretary for Justice, therefore, asked Lord Carloway to undertake his review.
9. Among the package of reforms recommended, the Carloway Review recommended the introduction of a Letter of Rights in Scotland. His Lordship noted that the 2010 Act required that a suspect, in a police station, must be informed of their various (newly created) rights, but that there was no statutory guidance on how this should be achieved. The report noted the development of the requirement to provide a Letter of Rights, in the draft (as it was then) Directive on the Rights to Information in criminal proceedings, but concluded that there was no reason as to why Scotland should not introduce a Letter of Rights at the earliest opportunity:

Every suspect, who is in a police station, should be entitled to a paper copy of that letter unless there are special reasons why he/she should not be given such a copy. The letter should include information about the right of access to a lawyer. Provision of this letter will assist in demonstrating that the suspect has indeed been informed of his/her right to legal advice. Obviously, the letter should be available in different languages and in different forms (e.g. audible and braille) to take account of any linguistic difficulties or physical and other disabilities.⁶

10. Following the subsequent Scottish Government consultation, described below, the majority of the Review's recommendations, including on the Letter of Rights, went on to form the backbone of the Criminal Justice (Scotland) Bill, introduced to the Scottish Parliament on 20 June 2013.

Directive on the right to information in criminal proceedings (Directive 2012/13/EU)

11. On 22 May 2012 the Directive on the right to information in criminal proceedings was adopted. The aim of the draft Directive is to set common minimum standards regarding the right to information in criminal proceedings throughout the EU. The Directive requires that information on a suspect's procedural rights be contained within and communicated, generally, via a Letter of Rights:

⁶ Para 6.1.24, <http://www.scotland.gov.uk/About/Review/CarlowayReview/LegalAdvice>

Where suspects or accused persons are arrested or detained, information about applicable procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner so as to assist those persons in understanding their rights. Such a Letter of Rights should be provided promptly to each arrested person when deprived of liberty by the intervention of law enforcement authorities in the context of criminal proceedings. It should include basic information concerning any possibility to challenge the lawfulness of the arrest, obtaining a review of the detention, or requesting provisional release where, and to the extent that, such a right exists in national law.⁷

12. The deadline for transposition of the Directive by Member States is 2 June 2014. The Criminal Justice (Scotland) Bill will transcribe the Directive, section 5 thereof pertaining to the Letter of Rights. However, the rescheduling of the Bill, announced by the Cabinet Secretary for Justice on 23 April 2014, to continue its Parliamentary passage in 2015 means that an earlier legislative vehicle for the Directive is required to ensure compliance in good time. It is considered that Regulations are the best method for doing this.

Non-statutory Letter of Rights

13. Following the publication of the Carloway Review, the Scottish Government consulted with, and actively involved, partners in the criminal justice system and wider public sector in the development of the policy and provisions in the Bill. Many respondents commented on the need to provide a written notice or Letter of Rights.
14. In parallel with the consultation pertaining to the provisions of the Bill, , a ‘Stakeholder discussion paper on a Letter of Rights for Scotland’ was issued. The paper was issued to twenty-one organisations with interests in the representation of various groups and the wider justice sector. This consultation sought views on a draft Letter of Rights, including:
 - *Is the wording used in the Letter appropriate and accessible to all?;*
 - *How would you suggest the Letter is made accessible to those with differing levels of literacy or with learning difficulties/disabilities?;*
 - *Do you agree that the Letter should be made available in the languages identified by the Scottish Prison Service as those most commonly spoken amongst the Scottish prison population?; and*
 - *What other forms do you think the Letter should be provided in e.g. print, Braille?*
15. On the whole it was felt that the draft Letter was reasonably accessible to a wide section of society, however it was observed that best practice would be achieved by providing dedicated versions of the Letter to those with learning difficulties and to children. With some minor adjustments made in light of the consultation, the non-statutory Letter of Rights was introduced in July 2013, available in 34 languages.

Subsequent actions

16. Building on what was learned from the above consultation, the Scottish Government sought to engage with stakeholders again in March 2014, Two stakeholder workshops

⁷ Para. 22, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>

were held. The first of these was attended by representatives of disability organisations, and the second was attended by advocates of children’s rights and representatives of child justice organisations.

17. The opinions expressed at these workshops are helping to inform the current on-going work to further develop the Letter.

The Scope of the EQIA

18. The Scottish Government examined a wide variety of sources in order to ascertain the impact of the policy behind the Criminal Justice (Scotland) Bill (‘the Bill’) on the seven protected characteristics, and on equality matters in general. More detail on this can be found in the Bill’s EQIA. As set out above, there has also been specific activity on the Letter of Rights policy, including a discussion paper prior to introduction, and the stakeholder workshops in March 2014.
19. The responses to the consultations described above were an important resource for the EQIA process. Whilst these consultations did not contain specific equality impact questions, with the exception of the stakeholder discussion paper, they provided opportunity for organisations and individuals to comment and raise concerns in relation to groups with specific additional needs.
20. In preparation for the introduction of the Bill, policy officials took part in an EQIA framing workshop, facilitated by Scottish Government Justice Analytical Services, to identify whom the policy will impact on – both positively or negatively and directly or indirectly. From the results of the workshop, analysts and policy officials worked together to identify and, where possible, fill any evidence gaps, to ensure that the EQIA was developed upon a robust evidence base.
21. The Scottish Government consulted with, and actively involved, justice partners in the criminal justice system and wider public sector in the development of the policy and provisions in the Bill. This included COPFS, Police Scotland, SCS, the Scottish Legal Aid Board (SLAB), the Law Society of Scotland, the Convention of Scottish Local Authorities (COSLA), the Scottish Children’s Reporter Administration (SCRA), and the Scottish Appropriate Adults Network (SAAN). With specific regards to the Letter of Rights, an ‘operational delivery’ group, made up of representatives of the previously noted organisations, was convened to discuss how the Letter of Rights was currently working in practice. This group first met on 23 April 2014.

Key Findings on the 7 Protected Characteristics

Age

22. Evidence emanating from stakeholder discussions suggested that some children may struggle to understand a Letter of Rights that was not drafted in language that was suitable for them. It was felt that consideration should also be given to the presentation of the Letter, with the aim of making it more accessible to younger people.

23. While the current, non-statutory Letter of Rights was drafted in accessible language, the Scottish Government is considering developing either a specific child-friendly version of the Letter or child-friendly supplementary guidance.

Disability

24. Evidence sourced for the EQIA demonstrated that people with learning disabilities can experience difficulties with communication and social interaction, which can impact on their ability to participate effectively in criminal investigations and proceedings. As a result, people in this group may not be able to understand and exercise their rights to the same degree that a person who does not have a learning disability can.⁸
25. In addition, blind people would either require the Letter to be read to them or to be provided with a copy in Braille.
26. While the current, non-statutory Letter of Rights was drafted in accessible language, the Scottish Government intends to develop a specific ‘easy-read’ version of the Letter, aimed at those with learning disabilities or difficulties.

Race

27. Language and communication barriers may impact on the ability to understand information supplied to some individuals from ethnic minorities for whom English is not their first language.
28. It is essential, therefore, to ensure information on rights continues to be translated into a variety of languages representative of the diverse population in Scotland, as is already the case with regards to the current, non-statutory Letter of Rights. Following the commencement of the regulations, it will be a statutory duty on the part of the police to provide a translation of the Letter of Rights in a language that they understand, without undue delay.
29. The current non-statutory Letter of Rights is available in 34 languages. It is expected that, at least, this level of provision would continue.

Religion and belief

30. The EQIA identified no significant impacts in relation to religion and belief.

Sex (including pregnancy and maternity)

⁸ Justice Disability Steering Group: Final Report of Access to Justice Project, December 2009 (Capability Scotland, June 2010) and Guide about people with Learning Disabilities, including those on the Autistic Spectrum, who come into contact with the Scottish Criminal Justice System, associated services, information and resources (Scottish Government, August 2011).

31. The EQIA identified no significant impacts in this area.

Sexual orientation

32. The EQIA identified no significant impacts in relation to sexual orientation.

Gender reassignment

33. The EQIA identified no significant impacts in relation to gender reassignment.

Conclusion

34. For the majority of protected characteristics, the policy creates no negative impacts. For the same groups there are positive impacts stemming from an increased awareness of their rights in custody and the fact that simple and accurate information will be provided to all.

35. Further work is required for the same benefits to be received by:

- a. some children and young people;
- b. those with learning difficulties and some disabilities;
- c. those whose first or only language is not English.

36. With regards to the first two categories, above, work is underway to improve accessibility, informed through on-going consultation with stakeholder groups. For the third category, the current non-statutory Letter has been made available in 34 languages, and the Scottish Government will continue to assess the need for additional translations.

37. The Scottish Government is confident that the strengthening and simplification of information will help raise awareness of rights for all that come into contact with the criminal justice system. On-going monitoring and engagement with stakeholders will ensure that the policy aim and the aims outlined in this EQIA remain satisfied.