

POLICY NOTE

THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS (SCOTLAND) REGULATIONS 2014

SSI 2014/95

1. The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to the negative procedure.

Policy Objectives

2. The provision of interpretation and translation in criminal proceedings, for persons who would otherwise be unfairly disadvantaged because they do not understand or speak English, has long been considered essential in Scotland. This position has been reinforced by the Human Rights Act 1998¹, which incorporates into Scots law the European Convention on Human Rights, including its requirements that trials be fair.

3. On 20 October 2010 the European Parliament and Council adopted the Directive on the right to interpretation and translation in criminal proceedings². This provides that Member States shall ensure that suspected or accused persons who do not speak or understand the language of criminal proceedings, or who have hearing or speech impediments, are provided with interpretation and a written translation of essential documents.

4. Accordingly, the Regulations are intended to transpose the Directive's requirements in so far as it is within the Scottish Parliament's legislative competence to do so (which excludes the requirements relating to European arrest warrants). While the Regulations come into force after the transposition deadline of 27 October 2013 they will essentially put on a statutory footing the administrative arrangements that have been in place since long before that date and which largely give effect to the Directive's requirements.

5. The policy intent embodied in the Regulations has been to give suspected or accused persons who require it the statutory right to interpretation in police custody and during police questioning, and also in criminal proceedings before a court. The Regulations make clear that the purpose of this is to safeguard the fairness of the proceedings in accordance with the Directive. The Directive requires interpretation to be provided during police questioning and all court hearings, and also – where necessary to ensure fairness – for communication between a suspected or accused person and his or her legal representative in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications (Article 2(1) and (2)). Regarding the latter, where interpretation is provided in criminal proceedings, it is expected that this will cover any such communication concerning appeals or procedural applications as occur in court (for example, for the purpose of lodging a bail appeal or applying for leave to appeal the court's decision on a preliminary matter). However, it is for the solicitor to provide for private consultations outwith the court, and legal aid is available for qualifying persons.

¹ 1998 c. 42

² Directive 2010/64/EU (OJ L 280, 26.10.2010, p.1).

6. Similarly, suspected or accused persons who require it have been given the right to translation of essential documents. The Directive does not affect national law concerning the right of access of a suspected or accused person to documents in criminal proceedings (Article 1(4)). Therefore translation is offered of those categories of documents listed as essential in Article 3(2) which are provided under any legislation (whether currently or in the future) to a person who is in police custody or the subject of criminal proceedings before a court. Should fairness require that other documents not comprehended by this definition be translated, the court has the power to order this. An oral translation may be provided instead of a written one unless fairness requires otherwise. The right to translation may be waived only if done unequivocally and in full awareness of the consequences: such a waiver is to be recorded.

7. The Directive requires that Member States are to meet the costs of interpretation and/or translation (Article 4): accordingly the Regulations provide, at regulation 16, that this assistance is to be provided free of charge.

8. Mechanisms are provided so that suspected or accused persons can seek a review of any determination that they do not require interpretation or translation of essential documents, or complain about the quality of interpretation or translation offered to them. The intention is to give persons who enjoy the right to interpretation and translation access to rapid means of giving effect to that right, so that interpretations and/or translations of acceptable quality are made available quickly where these are needed. The review provisions in relation to court proceedings do not, however, replace any current right of appeal open to accused persons requiring interpretation and/or translation.

9. A record is to be kept of certain information concerning the use of interpretation and translation in police custody, during police questioning and in criminal proceedings before a court.

10. Other provisions of the Directive, which do not directly involve giving effect to suspected or accused persons' rights to interpretation and translation, are to be transposed by administrative arrangements. In relation to Article 5, regarding the quality of interpretation and translation, there is a Scottish Government framework agreement which addresses the standard of interpretation and translation services to be provided as well as obligations of confidentiality. There is a Diploma in Public Service Interpreting (Scottish legal option), and possession of this is one of the standard conditions of the framework agreement. Separately, the Scottish Legal Aid Board maintains a register of interpreters and translators which is available to solicitors. In relation to Article 6, regarding training on dealing with interpreters in criminal proceedings, it will be for those responsible for the training of the judiciary and prosecutors to make the necessary training arrangements. Those responsible are aware of the requirements in the Directive.

Consultation

11. The Regulations have been considered by a Working Group on Interpretation and Translation, consisting of representatives of the Crown Office & Procurator Fiscal Service, the Law Society of Scotland, Police Scotland, the Scottish Legal Aid Board, the Scottish Court Service, the Scottish Association of Sign Language Interpreters, and Skills for Justice. These represent between them those who provide interpretation and translation, those who

will be required to ensure that persons who are suspected or accused receive them, and those who represent such persons.

Impact Assessment

12. There are no equality impact issues: any equality impact can only be favourable, by securing rights to interpretation and translation.

Financial Effects

13. A final Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

Scottish Government
Justice Directorate
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