

TRANSPOSITION NOTE

This transposition note shows how Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings (“the Directive”) is implemented by the Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014 (“the Regulations”).

The Regulations transpose the provisions of the Directive which require persons who are the subject of criminal proceedings, and who do not understand or speak English or have a hearing or speech impediment, to be provided with interpretation assistance and/or a translation of all essential documents. They apply to individuals who are in police custody, or subject to police questioning about an offence, as well as to those who are the subject of criminal proceedings before a court.

However, the Regulations do not transpose the requirements of the Directive which relate to individuals who are the subject of proceedings for the execution of a European arrest warrant. This is because the Scottish Parliament does not have legislative competence to legislate for these proceedings, as they relate to a matter (extradition) which is reserved under the Scotland Act 1998 (c.46).

The Regulations do not address certain other requirements of the Directive, which are to be transposed by administrative arrangements.

The provisions of the Directive are transposed by the Regulations as follows:

Directive Article	Objective(s) of Article	Transposition in Scotland
1	Sets out the Directive’s subject matter and scope.	No transposition required.
2(1) and (3)	Requires suspected or accused persons who do not speak or understand the language of criminal proceedings, or who have a hearing or speech impediment, to be provided with interpretation during those proceedings, including during police questioning and all court hearings.	Regulations 3 and 8.
2(2) and (3)	Requires, where necessary to safeguard the fairness of criminal proceedings, interpretation to be available for communication between suspected or accused persons and their legal representative in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural application.	Regulations 3(3)(b) and 8(2)(b).
2(4)	Requires a procedure to be in place to ascertain whether suspected or accused persons need the assistance of an interpreter.	Regulations 3(2) and 8(1).

2(5)	Requires suspected or accused persons to have a right to challenge a decision that interpretation is not needed, or to complain about the quality of the interpretation provided.	Regulations 5, 6, 11, 12 and 13.
2(6)	Allows communication technology to be used to provide interpretation so long as this does not compromise fairness.	Regulations 3(4) and 8(3).
2(7)	Requires interpretation to be provided to persons who are the subject of proceedings for the execution of a European arrest warrant, and who do not speak or understand the language used in those proceedings.	Not transposed by the Regulations (see paragraph 3 of this note).
2(8)	Requires interpretation to be of a quality sufficient to safeguard the fairness of proceedings.	Regulations 3(3)(b), 6, 8(2)(b), 12 and 13.
3(1) and (4)	Requires suspected or accused persons who do not understand the language of criminal proceedings to be provided with a written translation of all documents which are essential to enable them to exercise their right of defence and to safeguard the fairness of proceedings. However, there is no requirement to translate passages of such documents which are not relevant for the purpose of informing suspected or accused persons of the case against them.	Regulations 4 and 9.
3(2)	Defines “essential documents” (subject to Article 1(4)).	Regulations 2(1), 4(4) and 9(4).
3(3)	Requires that the competent authorities decide whether any other document is essential in any given case, and provides that suspected or accused persons may submit a request to that effect.	Regulations 9(4)(b) and 10.
3(5)	Requires suspected or accused persons to have a right to challenge a decision that translation of essential documents is not needed, or to complain about the quality of the translation provided.	Regulations 5, 6, 11, 12 and 13.
3(6)	Requires a written translation of a European arrest warrant to be provided to persons who are the subject of proceedings for the execution of such a warrant, and who do not understand the	Not transposed by the Regulations (see paragraph 3 of this note).

	language in which the warrant is drawn up or into which it is translated by the issuing Member State.	
3(7)	Allows an oral translation or oral summary of essential documents to be provided, instead of a written translation, so long as this does not prejudice the fairness of proceedings.	Regulations 4(3)(b) and 9(3)(b).
3(8)	Provides that the right to translation of essential documents may be waived subject to certain requirements.	Regulation 15.
3(9)	Requires translation of essential documents to be of a quality sufficient to safeguard the fairness of proceedings.	Regulations 4(2)(b), 6, 9(2)(b), 12 and 13.
4	Requires Member States to meet the costs of providing interpretation and translation pursuant to the Directive.	Regulation 16.
5(1)	Requires Member States to take concrete measures to ensure that the interpretation and translation provided (pursuant to the Directive) meets the quality required by Articles 2(8) and 3(9).	No transposition required.
5(2)	Requires Member States to endeavour to establish a register or registers of independent interpreters and translators who are appropriately qualified, to be made available to legal advisers and relevant authorities where appropriate.	No transposition required.
5(3)	Requires Member States to ensure that interpreters and translators are required to observe confidentiality regarding interpretation and translation provided pursuant to the Directive.	No transposition required.
6	Requires Member States to request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.	No transposition required.
7	Requires a record to be made of certain information relating to the provision of interpretation and translation pursuant to the Directive.	Regulations 7 and 14.
8	Provides for non-regression, making it clear that the Directive does not take	No transposition required.

	anything away from existing legal rights and procedural safeguards.	
9	Requires transposition of the Directive by Member States.	The Regulations.
10	Requires the Commission to report on Member States' compliance with the Directive.	No transposition required.
11	Provides for the Directive's entry into force.	No transposition required.
12	Addresses the Directive to the Member States in accordance with the Treaties.	No transposition required.