

Transposition Note

Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (“the Directive”)

This transposition note has been prepared for the UK Parliament to set out the respects in which the following instruments implement the Directive. These instruments are all subject to the negative procedure and have been laid together. The note does not deal with aspects of the Directive to which these instruments are not directly relevant. The instruments are:

- the Criminal Procedure (Amendment) Rules 2013 (S.I. 2013/2525) (“the Criminal Procedure Amendment Rules”);
- the Costs in Criminal Cases (General) (Amendment) Regulations 2013 (S.I. 2013/2526) (“the Costs Amendment Regulations”);
- the Armed Forces (Interpretation, Translation and Alcohol and Drug Tests) Rules 2013 (S.I. 2013/2527) (“the Armed Forces Amendment Rules”);
- the Court Martial Appeal Court (Amendment) Rules 2013 (S.I. 2013/2524) (“the CMAC Amendment Rules”).

Article	Detail	Implementation	Responsibility
Article 2	Right to interpretation		
2(1) and (2)	These paragraphs set out rights to interpretation in criminal proceedings. They provide that Member States must ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings are to be provided with interpretation during those proceedings and that, in certain circumstances, interpretation is available for communication between suspected or accused persons and their legal representatives.	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>New rule 3.8(5)(a) and (6) of the Criminal Procedure Rules provides that the court officer must arrange for interpretation to be provided at every hearing which the defendant is due to attend if the defendant does not speak or understand English. This supports the common law rule that in all criminal proceedings a defendant who does not speak or understand English is provided with interpretation. See in particular <i>R v Lee Kun</i> [1916] 1 KB 337. There is also an obligation on the courts to act compatibly with the European Convention on Human Rights (“ECHR”), section 6 of the Human Rights Act 1998, which may include the need to arrange interpretation. This interpretation is available for communication at the hearing between the defendant and the defendant’s legal representative.</p> <p><u>The Armed Forces Amendment Rules, rules 3, 6, 10, 13, 16 and 20</u></p> <p>New provisions relating to interpretation are set out in changes to the Armed Forces</p>	<p>Throughout this Directive, responsibility for implementation is as follows:</p> <ul style="list-style-type: none"> • for criminal cases in England and Wales, the Secretary of State for Justice; • for service law, the Secretary of State for Defence.

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		<p>(Custody Proceedings) Rules 2009 (new rule 20), the Armed Forces (Summary Appeal Court) Rules 2009 (new rule 29), the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009 (new rules 11A and 33A), the Armed Forces (Court Martial) Rules 2009 (new rule 22), and the Armed Forces (Service Civilian Court) Rules 2009 (new rule 21). These changes provide that an interpreter shall be appointed to act at a hearing which a person to whom proceedings relate (or person to whom any proceedings relate, or appellant, or accused, or offender, depending on the proceedings concerned) is due to attend unless the court administration officer (or commanding officer, depending on the proceedings concerned) is satisfied that the person does not need interpretation. In those hearings where legal representatives are present, the provision of interpretation includes assisting a person to communicate with their legal representative – see new rule 22(9) of the Armed Forces (Court Martial) Rules 2009 and the equivalent provisions in the other service court rules.</p> <p><u>The CMAC Amendment Rules, rule 3</u></p> <p>The Court Martial Appeal Court Rules 2009 (new rule 16) provide that an interpreter must be appointed to act at a hearing which a person to whom proceedings relate is due to attend if the Registrar is satisfied that the person needs interpretation. The provision of interpretation includes assisting a person to communicate with their legal representative – see new rule 16(8).</p>	
2(3)	<p>The purpose of this paragraph is to provide that the right to interpretation under articles 2(1) and (2) includes appropriate assistance for persons with hearing or speech impediments.</p>	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>The rules identified for article 2(1) and (2) apply in the same way for persons with hearing or speech impediments. See new rule 3.8(5)(b) and (6) of the Criminal Procedure Rules. In particular, appropriate assistance for persons with speech impediments may be provided by way an intermediary, new rule 3.8(6)(b).</p> <p><u>The Armed Forces Amendment Rules, rules 3, 6, 10, 13, 16 and 20 and the CMAC Amendment Rules, rule 3</u></p> <p>The rules identified for article 2(1) and (2) apply in the same way for persons with hearing or speech impediments. See new rule 22(7) of the Armed Forces (Court Martial) Rules 2009 and the equivalent provisions in the other service court rules. In particular, appropriate assistance for persons with speech impediments may be provided by way of</p>	

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		an intermediary.	
2(4)	<p>It is an obligation under this paragraph to have a procedure or mechanism to ascertain whether suspected or accused persons need interpretation.</p>	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>Criminal courts are obliged to take every reasonable step to determine whether a defendant needs interpretation, see new rule 3.8(5) of the Criminal Procedure Rules.</p> <p><u>The Armed Forces Amendment Rules, rules 3, 6, 10, 13, 16 and 20</u></p> <p>The changes to the various service court rules provide that an interpreter shall be appointed to act at a hearing which a person to whom the proceedings relate (or person to whom any proceedings relate, or appellant, or accused, or offender, depending on the proceedings concerned) is due to attend unless the court administration officer (or commanding officer, depending on the proceedings concerned) is satisfied that the person does not need interpretation – see Armed Forces (Court Martial) Rules 2009 (new rule 22(1)) and the equivalent provisions in the other service court rules.</p> <p><u>The CMAC Amendment Rules, rule 3</u></p> <p>The Court Martial Appeal Court Rules 2009 (new rule 16) provide that an interpreter must be appointed to act at a hearing which a person to whom proceedings relate is due to attend if the Registrar is satisfied that the person needs interpretation.</p>	
2(5)	<p>This paragraph provides that suspected or accused persons must have the right to challenge or complain about the following:</p> <ul style="list-style-type: none"> • a decision finding that there is no need for interpretation; • the quality of the interpretation. <p>There is a related recital (26) which states that when the quality</p>	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>The changes to the Criminal Procedure Rules set out a complaints procedure by which the defendant may apply to the court where no interpretation is provided or the defendant complains about the quality of the interpretation. The court must give any direction it thinks appropriate, including a direction for interpretation by a different interpreter. See new rule 3.8(6)(d)(i) and (iii) of the Criminal Procedure Rules.</p> <p><u>The Armed Forces Amendment Rules, rules 3, 6, 10, 13, 16 and 20 and the CMAC Amendment Rules, rule 3</u></p> <p>The changes to the various service court rules set out a complaints procedure by which the person to whom the proceedings relate (or person to whom any proceedings relate, or</p>	

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	of interpretation is considered insufficient, the competent authorities should be able to replace the appointed interpreter.	appellant, or accused, or offender, depending on the proceedings concerned) may apply to the court (or judge advocate or commanding officer depending upon the proceedings concerned) where no interpretation is provided or the person complains about the quality of the interpretation. The court (or judge advocate or commanding officer depending upon the proceedings concerned) shall give any direction (or take such steps) it thinks appropriate, including a direction for interpretation by a different interpreter – see rule 22(6) of the Armed Forces (Court Martial) Rules 2009 and the equivalent provisions in the other service court rules.	
2(7)	This paragraph provides a right to interpretation in proceedings for the execution of an EAW where the subject of those proceedings does not speak or understand the language of the proceedings.	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>The Criminal Procedure Rules which apply for interpretation in criminal proceedings also apply to proceedings concerning the EAW. This means that the court officer must arrange for interpretation to be provided at every hearing which the defendant is due to attend if the defendant does not speak or understand English. See new rule 3.8(5)(a) and (6) of the Criminal Procedure Rules.</p>	
Article 3	Right to translation of essential documents		
3(1)	This article provides that suspected or accused persons who do not understand the language of the criminal proceedings are provided with written translations of essential documents. Paragraphs (1), (2), (3), (4), (7) and (8) deal with the meaning of essential documents and when essential documents need otherwise not be translated in writing.	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>New rule 3.8(6)(c) provides that where the defendant does not understand English, on application or its own initiative, the court may require a written translation of a document or part of a document. However, there is no need to translate the part of the document that is not needed to explain the case against the defendant or the defendant waives the right to a written translation. These rule changes support the courts' inherent common law powers to require written translations of documents, which the court will exercise when it considers that a written translation of a document is necessary to ensure that the defendant receives a fair trial.</p> <p><u>The Armed Forces Amendment Rules, rules 3, 6, 10, 13, 16 and 20 and the CMAAC Amendment Rules, rule 3</u></p> <p>The changes to the various service court rules provide that on application or on its own initiative, the court (or judge advocate or commanding officer depending upon the proceedings concerned) may require a written translation of a document or part of a</p>	

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		document. However, there is no need to translate the part of the document that is not needed to explain the issues arising in the proceedings in relation to the person (including, in the case of a trial, the case against the defendant), or if the person waives the right to a written translation. See rule 22(5) of the Armed Forces (Court Martial) Rules 2009 and the equivalent provisions in the other service court rules.	
3(5)	<p>This paragraph provides there to be a right to challenge:</p> <ul style="list-style-type: none"> • a decision finding that there is no need for a translation; • the quality of the translation. 	<p><u>Criminal Procedure Amendment Rules, rule 3</u></p> <p>The Criminal Procedure Rules set out a complaints procedure by which the defendant may apply to the court where no translation is provided or the defendant complains about the quality of the translation. The court must give any direction it thinks appropriate. See new rule 3.8(6)(d)(ii) and (iii).</p> <p><u>The Armed Forces Amendment Rules, rules 3, 6, 10, 13, 16 and 20 and the CMAAC Amendment Rules, rule 3</u></p> <p>The changes to the various service court rules set out a complaints procedure by which the person to whom the proceedings relate (or person to whom any proceedings relate, or appellant, or accused, or offender, depending on the proceedings concerned) may apply to the court (or judge advocate or commanding officer depending upon the proceedings concerned) where no translation is provided or the person complains about the quality of the translation. The court (or judge advocate or commanding officer depending upon the proceedings concerned) shall give any direction (or take such steps) it thinks appropriate – see rule 22(6) of the Armed Forces (Court Martial) Rules 2009 and the equivalent provisions in the other service court rules.</p>	
3(6)	<p>Where the person subject to EAW proceedings does not understand the language of the warrant or into which it has been translated, that person has a right to a written translation of the document.</p> <p>This is subject to paragraph (7) which deals with the circumstances when an oral translation or oral</p>	<p>The Criminal Procedure Rules which apply for interpretation in criminal proceedings also apply to proceedings concerning the EAW. See the court proceedings section of article 3(1).</p>	

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	summary of the document may be provided.		
Article 4	Costs of interpretation and translation		
4	Member States shall meet the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings.	<p><u>The Costs Amendment Regulations</u></p> <p>The costs of interpretation and translation for defendants in criminal courts are already met out of central funds (that is, public money). See the Prosecution of Offences Act 1985, s 19(3)(b) and the Costs in Criminal Cases (General) Regulations 1986 (“the 1986 Regulations”), Part 5.</p> <p>The 1986 Regulations are amended by regulation 2(4) of the Costs Amendment Regulations so that the costs of an intermediary required to assist a defendant with a speech impediment are also met out of central funds.</p>	
Article 7	Record-keeping		
7	<p>This article sets out the requirements for record-keeping. The following events will need to be noted:</p> <ul style="list-style-type: none"> • when a suspected or accused person has been subject to questioning or hearings in court with the assistance of an interpreter; • when an oral translation or oral summary of essential documents has been provided in the presence of such an authority; • when a person has waived the 	<p><u>Criminal Procedure Amendment Rules, rule 4</u></p> <p>See the Criminal Procedure Rules, rule 5.4.</p> <p><u>The Armed Forces Amendment Rules, rules 4, 7, 12, 14, 17 and 21 and the CMAC Amendment Rules, rule 3</u></p> <p>The changes to the various service court rules set out procedures for the keeping of records – see rule 23(2) of the Armed Forces (Court Martial) Rules 2009 and the equivalent provisions in the other service court rules.</p>	

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	right to translation.		