

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,033 of 24 October, 2013

LEGAL NOTICE NO. 142 OF 2013.

INTERPRETATION AND GENERAL CLAUSES ACT

**CRIMINAL PROCEDURE AND EVIDENCE ACT 2011
(AMENDMENT NO. 2) REGULATIONS 2013**

In exercise of the powers conferred upon it under section 23(g)(ii) of the Interpretation and General Clauses Act, and for the purpose of transposing, in part, 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 Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Criminal Procedure and Evidence Act 2011 (Amendment No. 2) Regulations 2013 and come into operation on 27 October 2013.

Amendments to the Criminal Procedure and Evidence Act 2011.

2. The Criminal Procedure and Evidence Act 2011 is amended by inserting the following sections after section 85—

“Interpretation and translation

Right to interpretation.

85A.(1) A suspected person has a right to interpretation if that person either does not speak or understand English or otherwise has a speech or hearing impediment.

(2) It shall be the duty of the Commissioner of Police to ensure that a person with a right to interpretation is provided with interpretation, without delay, throughout the investigative process and until such time as the person is handed into the custody of a court or until the person is no longer a suspect in the investigation.

(3) The right to interpretation referred to in subsection (1) includes the right to appropriate assistance to persons with a hearing or speech impediment.

(4) The Commissioner of Police must ensure that appropriate procedures are in place to ascertain whether a suspected person has a right to interpretation under subsection (1).

(5) The Commissioner of Police must ensure that, where necessary for the purpose of safeguarding the fairness of the investigation, interpretation is available for communication between the suspected person and his legal counsel in direct connection with any questioning or hearing during the investigation.

(6) Where appropriate, communication technology such as videoconferencing, the telephone or the internet may be used, unless the physical presence of the interpreter is required in order to safeguard the fairness of the investigation.

(7) Interpretation provided under this section shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that a suspected person has knowledge of the case against him and is able to exercise his right of defence.

(8) In this section and in sections 85B to 85E a “suspected person” means a person who is under suspicion of having committed a criminal offence.

(9) For the purposes of subsection (2) where a certain period of time elapses before interpretation is provided, that shall not constitute an infringement of the requirement that interpretation be provided without delay, as long as the period of time is reasonable in the circumstances.

Written translation of documents.

85B.(1) If a suspected person does not understand English, the Commissioner of Police must, within a reasonable time, provide that person with a written translation of any essential document or part of such a document into a language which that person understands to—

- (a) ensure that he is able to exercise the right of defence; and
- (b) safeguard the fairness of the investigation.

(2) A written translation need not consist of those parts of a document which are not relevant for the purposes of enabling the suspected person to know the case against him.

(3) In subsection (1), “essential document” includes any decision depriving a person of his liberty and any charge or indictment.

(4) Translation provided under this section shall be of a quality sufficient to safeguard the fairness of the investigation, in particular by ensuring that the suspected person has knowledge of the case against him and is able to exercise the right of defence.

(5) As an exception to the general rules established in subsections (1), (2) and (3) an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the investigation.

(6) A suspected person may waive the right to receive translated documents only if—

- (a) the suspected person has received prior legal advice or has otherwise obtained full knowledge of the consequences of such a waiver; and
- (b) the waiver is unequivocal and given voluntarily.

Cost of interpretation and translation.

85C. Interpretation and translation under sections 85A and 85B shall be provided at no cost to the suspected person.

Duty to record.

85D. The Commissioner of Police must maintain a record—

- (a) where a suspected person has been the subject of questioning or a hearing with the assistance of an interpreter;
- (b) where the suspected person has exercised the right to waive the requirement to be provided with a written translation under section 85B(6); and

- (c) where an oral translation or oral summary of essential documents has been provided under section 85B(5).

Unsatisfactory interpretation or translation.

85E.(1) Where—

- (a) the Commissioner of Police has not arranged for interpretation to be provided to a suspected person as required under section 85A;
- (b) the quality of the interpretation provided under section 85A is not sufficient to safeguard the fairness of the proceedings;
- (c) a written translation of documents or parts thereof has been not been provided to the suspected person; or
- (d) a written translation has been provided under section 85B but the quality of the translation is not sufficient to safeguard the fairness of the proceedings,

that person may apply to the Magistrates' Court for an order.

(2) Upon hearing an application under subsection (1) the Magistrates' Court may make an order requiring the Commissioner of Police to take such steps as are necessary for ensuring compliance with 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.

(3) An order under subsection (2) may include ordering that interpretation be provided by a different interpreter.

Non-regression.

85F. Nothing in sections 85A to 85D shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union, other relevant provisions of international law or any law in force in Gibraltar which provides a higher level of protection.”

Dated 18th October, 2013.

G H LICUDI QC,
Minister with responsibility for Justice for the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the Criminal Procedure and Evidence Act 2011 in order to transpose, in part, 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.

