

Subsidiary Legislation made under s.697.

## **Interpretation and Translation in Criminal Proceedings Regulations 2013**

### **LN.2013/144**

*Commencement*                      **27.10.2013**

Amending enactments	Relevant current provisions	Commencement date
LN.2020/521    r. 2		1.1.2021

**Transposing:**  
Directive 2010/64/EU

**2011-24**

**Criminal Procedure and Evidence**

**2013/144**

**Interpretation and Translation in Criminal Proceedings  
Regulations 2013**

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**ARRANGEMENT OF REGULATIONS**

Regulation

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*In exercise of the powers conferred upon him by section 697 of the Criminal Procedure and Evidence Act 2011 and section 23(g)(i) 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 Minister has made the following Regulations—*

**Title and commencement.**

1. These Regulations may be cited as the Interpretation and Translation in Criminal Proceedings Regulations 2013 and come into operation on 27 October 2013.

**Interpretation.**

2. In these Regulations—

“competent authority” means the Chief Executive of the Gibraltar Courts Service or such other person as the Minister may appoint by notice in the Gazette;

“Directive” means 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, as the same may be amended from time to time;

“European arrest warrant” shall have the meaning assigned to it by section 2 of the Extradition Arrest Warrant Act 2004;

“Minister” means the Minister with responsibility for Justice.

**Scope and application of these Regulations.**

3.(1) These Regulations provide for the right to interpretation and translation in—

- (a) criminal proceedings; and
- (b) proceedings for the execution of a European arrest warrant.

(2) The right referred to in subregulation (1) shall apply to persons who are brought before a court and stand accused or suspected of having committed a criminal offence.

(3) For the purposes of these Regulations criminal proceedings shall continue to subsist until the court disposes of the proceedings or, where there is an appeal, when that appeal has been determined.

(4) Where provision is made for an appeal to be made to a court in respect of a criminal offence that is, at first instance, dealt with otherwise than by a court, only the appeal shall be deemed to be criminal proceedings.

(5) These Regulations shall not affect any rule of law or practice concerning—

- (a) the presence of legal counsel during any stage of the criminal proceedings; and
- (b) the right of access of a suspected or accused person to documents in criminal proceedings.

#### **Interpretation in criminal proceedings.**

4.(1) A defendant has a right to be provided with interpretation if that person is the subject of criminal proceedings and that person either does not speak or understand English or otherwise has a speech or hearing impediment.

(2) Where the defendant has a speech or hearing impediment, the right to interpretation includes the right to receive appropriate assistance.

(3) Where a defendant is brought before a court in connection with criminal proceedings it must take every reasonable step to ascertain whether the defendant speaks and understands English or has a speech or hearing impediment and whether the defendant requires the assistance of an interpreter.

(4) The competent authority shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between the defendant and his legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.

(5) 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 proceedings.

(6) In proceedings for the execution of a European arrest warrant, the competent authority must provide a person who does not speak or understand English or has a speech or hearing impediment with interpretation in accordance with this regulation.

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

**Written translation of documents in criminal proceedings.**

5.(1) Where in any criminal proceedings a defendant does not understand English, the court may order that the defendant is provided, within a reasonable period of time, with a written translation, into a language which the defendant understands, of any essential document or part of such a document to—

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

(2) The power in subregulation (1) is exercisable by the court on its own motion or on application by the defendant.

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

(4) In subregulation (1), “essential document” includes any decision depriving the defendant’s liberty, any charge or indictment, and any judgment.

(5) The prosecutor shall, in any given case, decide whether any other document is essential and a defendant or his legal counsel may submit a reasoned request to that effect.

(6) In proceedings for the execution of a European arrest warrant, the competent authority must provide the defendant with a written translation of that document if the defendant does not understand the language in which the European arrest warrant is drawn up, or into which it has been translated by the issuing Member State.

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

(8) As an exception to the general rules established by subregulations (1), (2), (4), (5) and (6), 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 proceedings.

(9) A defendant may waive the right to receive translated documents only if—

- (a) the defendant 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.

**Costs of interpretation and translation.**

6. The Government shall meet the costs of interpretation and translation resulting from the application of regulations 4 and 5, irrespective of the outcome of the proceedings.

**Quality of the interpretation and translation.**

7. The competent authority shall ensure that the interpretation and translation provided meets the quality required under regulations 4(7), and 5(7).

**Duty to make records.**

8. Where—

- (a) a defendant has been the subject of questioning or a hearing with the assistance of an interpreter;
- (b) the defendant has exercised the right to waive the requirement to be provided with a written translation under regulation 5(9); and
- (c) an oral translation or oral summary of essential documents has been provided under regulation 5(8),

such details shall be entered into the court record.

**Complaints about interpretation and written translation.**

9.(1) Where—

- (a) the competent authority has not arranged for interpretation to be provided to a defendant in criminal proceedings;
- (b) the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings; or
- (c) a written translation of documents or parts thereof has not been provided to the defendant; or

- (d) a written translation has been provided but the quality of the translation is not sufficient to safeguard the fairness of the proceedings,

the defendant may apply to a judge or magistrate.

(2) In considering an application under subregulation (1) the judge or magistrate may make such order as the judge or magistrate deems fit for the purposes of compliance with these Regulations and with the Directive.

(3) An order under subregulation (2) may provide that interpretation is to be provided by a different interpreter.

**Training.**

10. Where training is provided to judges, prosecutors and judicial staff involved in criminal proceedings, the Government shall, without prejudice to the need for judicial independence, request those responsible for the training to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.

**Non-regression.**

11. Nothing in these Regulations 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.