

Subsidiary Legislation made under s.697.

## **Right to Information in Criminal Proceedings Regulations 2014**

**LN.2014/084**

*Commencement*

**2.6.2014**

**Transposing:**

Directive 2012/13/EU

---

### **ARRANGEMENT OF REGULATIONS**

Regulation

1. Title and commencement.
2. Interpretation.
3. Scope and application of these Regulations.
4. Right to information about rights.
5. Letter of Rights on arrest.
6. Right to information about the accusation.
7. Right of access to the materials of the case.
8. Duty to make records.
9. Complaints about failure or refusal to provide information.
10. Training.
11. Non-regression.

**2011-24**

## Criminal Procedure and Evidence

### **2014/084** Right to Information in Criminal Proceedings Regulations **2014**

---

*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 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, the Minister has made the following Regulations—*

#### **Title and commencement.**

1. These Regulations may be cited as the Right to Information in Criminal Proceedings Regulations 2014 and come into operation on 2 June 2014.

#### **Interpretation.**

2. In these Regulations—

“the Act” means the Criminal Procedure and Evidence Act 2011;

“competent authority” means a body established by law whose officers are empowered to arrest and keep a person in custody against that person’s will;

“the Directive” means Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, as the same may be amended from time to time;

“Minister” means the Minister with responsibility for Justice;

“suspect” means a person who is under suspicion of having committed a criminal offence.

#### **Scope and application of these Regulations.**

3.(1) These Regulations provide for the rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them, regardless of their legal status citizenship or nationality.

(2) The right referred to in subregulation (1) shall apply to a person who stands accused or suspected of having committed a criminal offence until the final determination of criminal proceedings.

(3) For the purposes of these Regulations criminal proceedings shall continue to subsist-

(a) until the court disposes of the proceedings; or

(b) where there is an appeal, when that appeal has been finally 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 to a court shall be deemed to be criminal proceedings.

**Right to information about rights.**

4.(1) The competent authority must ensure that every suspect or accused person is promptly provided with the information specified in subregulation (2).

(2) The information referred to in subregulation (1) must relate to the following procedural rights to allow the suspect or the accused person for those rights to be exercised effectively–

- (a) the right of access to a lawyer;
- (b) any entitlement to free legal advice and the conditions for obtaining such advice;
- (c) the right to be informed of the accusation, in accordance with regulation 6;
- (d) the right to interpretation and translation; and
- (e) the right to remain silent.

(3) The competent authority must ensure that the information provided for under subregulations (1) and (2) is given orally or in writing, in simple and plain language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.

**Letter of Rights on arrest.**

5.(1) The competent authority must ensure that a suspect or accused person who is arrested or detained is provided promptly with a Letter of Rights in writing.

(2) The suspect or accused person referred to in subregulation (1) must be–

- (a) given an opportunity to read the Letter of Rights; and
- (b) allowed to keep it in his possession throughout the time that he is deprived of liberty.

(3) In addition to the information specified in regulation 4(2), the Letter of Rights referred to in subregulation (1) must contain information about the following rights–

- (a) the right of access to the materials of the case;
  - (b) in the case of a foreign detainee, the right to have consular authorities informed;
  - (c) the right to have another person informed of their arrest or detention pursuant to section 83(1) of the Act, which right is subject to sections 83(2) to 83(7) inclusive;
  - (d) the right of access to urgent medical assistance; and
  - (e) the maximum number of hours or days the suspect or accused person may be deprived of liberty before being brought before a court.
- (4) The Letter of Rights must also contain basic information about any possibility of–
- (a) challenging the illegality of the arrest;
  - (b) obtaining a review of the detention; or
  - (c) making a request for provisional release.
- (5) The Letter of Rights must be drafted–
- (a) in simple and plain language; and
  - (b) following the model Letter of Rights set out in the Schedule.
- (6) The competent authority must ensure that the suspect or accused person receives the Letter of Rights written in a language that he understands.
- (7) Where a Letter of Rights is not available in the appropriate language, the suspect or accused person must be informed of his rights orally in a language that he understands and a Letter of Rights in a language that he understands must then be given to him without undue delay.

**Right to information about the accusation.**

6.(1) The competent authority must ensure that the suspect or the accused person is provided with information about the criminal act that he is suspected or accused of having committed and that information is provided promptly and in such detail as is necessary to–

- (a) safeguard the fairness of the proceedings; and

(b) the effective exercise of the rights of the defence.

(2) The competent authority must ensure that the suspect or the accused person who is arrested or detained is informed of the reasons for his arrest or detention, including the criminal act he is suspected or accused of having committed.

(3) The prosecutor must ensure that, at the latest on the substantive hearing of the case or matter by the court, detailed information is provided on the charge, including the nature and legal classification of the offence, as well as the nature of participation by the defendant.

(4) The competent authority or, where the accused person is before a court, the prosecutor must ensure that the suspect or the accused person is informed promptly of any changes in the information given under this regulation where this is necessary to safeguard the fairness of the proceedings.

**Right of access to the materials of the case.**

7.(1) If the suspect or the accused person is arrested and detained at any stage of the criminal proceedings, the competent authority must make available to that suspect or accused person or to his lawyer such documents which are–

- (a) related to the specific case against him;
- (b) in the possession of the competent authority; and
- (c) essential to challenging effectively the legality of the arrest or detention.

(2) In order to safeguard the fairness of the proceedings and to prepare the defence, the competent authority must ensure that access is granted to the suspect or accused person or to his lawyer at least to all material evidence that is in the possession of the competent authority irrespective of whether that material evidence is in favour of or against the suspect or the accused person.

(3) Without prejudice to subregulation (1), the competent authority or, where the accused person is before a court, the prosecutor must ensure that access to the materials referred to in subregulation (2) is granted to the suspect or the accused person or his lawyer–

- (a) in due time to allow the effective exercise of the rights of the defence; or
- (b) at the latest, on the substantive hearing of the case or matter by the court.

(4) Without prejudice to subregulation (1), the competent authority must ensure that if any further material evidence, other than that referred to subregulation (2), comes into the possession of the competent authority, access shall be granted to the suspect or accused person or to his lawyer in due time to allow for it to be considered.

(5) Notwithstanding subregulations (2) to (4), where it does not prejudice the right to a fair trial, the competent authority or the prosecutor may refuse access to certain materials if such—

- (a) access may lead to a serious threat to the life or the fundamental rights of another person; or
- (b) refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the security of Gibraltar.

(6) Where a request for access has been refused under subregulation (5)—

- (a) if proceedings have not been commenced in a court, the Magistrate's Court; or
- (b) if proceedings have been commenced, the court hearing the matter,

may hear and determine an application against such refusal and may make such order as it deems expedient in the circumstances.

(7) Where access is granted under this regulation, it must be provided free of charge.

#### **Duty to make records.**

8. Where a suspect or accused person has been provided with information in accordance with regulations 4 to 7, the details of such information must be entered into a record maintained under section 85D of the Act.

#### **Complaints about failure or refusal to provide information.**

9.(1) Where the competent authority has failed or refused to provide information or access to the suspect or to the accused person or to his lawyer in accordance with these Regulations, an application may be made under regulation 7(6).

#### **Training.**

10. Where training is provided to judges, prosecutors, police 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 provide appropriate training with respect to the objectives of the Directive.

**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.

## SCHEDULE

Regulation 5(5)

**Indicative model Letter of Rights**

NOTE: The sole purpose of this model is to assist the competent authority in drawing up a Letter of Rights. The competent authority is not bound to use this model. When preparing the Letter of Rights, the competent authority may amend this model in order to align it with the laws of Gibraltar and add further useful information. The Letter of Rights must be given upon arrest or detention. This however does not prevent the competent authority from providing the defendant with written information in other situations during criminal proceedings.

“You have the following rights when you are arrested or detained:

**A. ASSISTANCE OF A LAWYER/ENTITLEMENT TO LEGAL AID**

You have the right to speak confidentially to a lawyer. A lawyer is independent from the police. Ask the police if you need help to get in contact with a lawyer, the police shall help you. Ask the police for more information.

**B. INFORMATION ABOUT THE ACCUSATION**

You have the right to know why you have been arrested or detained and what you are suspected or accused of having done.

**C. INTERPRETATION AND TRANSLATION**

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to translation of at least the relevant passages of essential documents, including any order by a judge allowing your arrest or keeping you in custody, any other decision depriving you of your liberty, any charge or indictment and any judgment. You may in some circumstances be provided with an oral translation or summary.

**D. RIGHT TO REMAIN SILENT**

While questioned by the police or other authorities, you do not have to answer questions about the alleged offence or at all. Your lawyer can help you to decide on that.

**E. ACCESS TO DOCUMENTS**



When you are arrested and detained, you (or your lawyer) have the right to access essential documents you need to challenge the arrest or detention. If your case goes to court, you (or your lawyer) have the right to access the material evidence for or against you.

**F. INFORMING SOMEONE ELSE ABOUT YOUR ARREST OR DETENTION/INFORMING YOUR CONSULATE OR EMBASSY**

When you are arrested or detained, you should tell the police if you want someone to be informed of your detention, for example a family member or your employer. In certain cases the right to inform another person of your detention may be temporarily restricted. In such cases the police will inform you of this.

If you are a foreigner, tell the police if you want your consular authority to be informed of your detention. Please also tell the police if you want to contact an official of your consular authority.

**G. URGENT MEDICAL ASSISTANCE**

When you are arrested or detained, you have the right to urgent medical assistance. Please let the police know if you are in need of such assistance.

**H. PERIOD OF DEPRIVATION OF LIBERTY**

After your arrest you may be deprived of liberty or detained for a maximum period of 42 hours unless you are charged, in which case the maximum period is 108 hours. At the end of that period you must either be released or be heard by a magistrate who will decide on your further detention. Ask your lawyer or the magistrate for information about the possibility to challenge your arrest, to review the detention or to ask for provisional release.”.