

Criminal Procedure and Evidence

STANDING OF VICTIMS IN CRIMINAL PROCEEDINGS
REGULATIONS 2014

2011-24
Revoked
Subsidiary
2014/219

Subsidiary Legislation made under s. 697.

**STANDING OF VICTIMS IN CRIMINAL PROCEEDINGS
REGULATIONS 2014**

Revoked by LN. 2015/201 as from 16.11.2015

(LN. 2014/219)

Commencement **1.12.2014**

Amending enactments	Relevant current provisions	Commencement date
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Transposing:

Council Framework Decision 2001/220/JHA

EU Legislation/International Agreements involved:

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred upon him by section 697 of the Criminal Procedure and Evidence Act 2011 and all other enabling powers, and in order to implement Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, the Minister has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Standing of Victims in Criminal Proceedings Regulations 2014 and come into operation on the day of publication.

Interpretation.

2. In these Regulations—

“a person with responsibility for victims” means, where the context so admits, all or any of the following—

- (a) the Minister;
- (b) the Chief Justice;
- (c) the Commissioner of Police;
- (d) the Collector of Customs,

in so far as it relates to matters within their competence;

“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;

“criminal proceedings” has the meaning given in the Act;

“Framework Decision” means Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, as the same may be amended from time to time;

“mediation in criminal cases” means the search, prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person;

“Minister” means the Minister with responsibility for Justice;

“proceedings” shall be construed broadly to include, in addition to criminal proceedings, all contacts of victims as such with any authority, public service or victim support organisation in connection with their case, before, during, or after criminal process;

“victim” means a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal laws of Gibraltar or of a Member State; and

“victim support organisation” means a non-governmental organisation, legally established in Gibraltar or in a Member State, whose support to victims of crime is provided free of charge and, conducted under appropriate conditions, complements the action of the State in this area.

Objectives with regards to victims.

3. When investigating or prosecuting criminal offences a person with responsibility for victims shall have regard to the following objectives-

- (a) that victims have a real and appropriate role in the criminal justice system;
- (b) that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings; and
- (c) that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances.

Right to receive information.

4.(1) It shall be the duty of the competent authority, to ensure that victims in particular have access, as from their first contact with them, by any means that they deem appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests.

(2) The information referred to in subregulation (1) must be at least-

- (a) the type of services or organisations to which they can turn for support;

- (b) the type of support which they can obtain;
- (c) where and how they can report an offence;
- (d) procedures following such a report and their role in connection with such procedures;
- (e) how and under what conditions they can obtain protection;
- (f) to what extent and on what terms they have access to—
 - (i) legal advice;
 - (ii) legal aid; or
 - (iii) any other sort of advice;

and if, in the cases envisaged in subparagraphs (i) and (ii), they are entitled to receive it;

- (g) requirements for them to be entitled to compensation;
- (h) if they are not resident in Gibraltar but are resident in a Member State, any special arrangements available to them in order to protect their interests.

(3) Access to advice referred to in subregulation (2)(f)(iii) concerning the victims role in the proceedings shall be free of charge, where warranted.

Wish to be kept informed.

5.(1) Where a victim has expressed a wish to be kept informed the competent authority shall keep the victim informed of—

- (a) the outcome of the complaint;
- (b) relevant factors enabling the victim, in the event of a prosecution, to know the conduct of the criminal proceedings regarding the person prosecuted for offences concerning him;
- (c) the court's sentence.

(2) Subregulation (1)(b) shall not apply to cases where informing the victim may adversely affect the proper handling of the case.

Notification to victim.

6. A competent authority shall, at least in cases where there might be danger to the victims, when the person prosecuted or sentenced for an offence is released, consider whether it is necessary to notify the victim and where deemed necessary to notify the victim.

Right not to receive information.

7. Unless required by any other enactment, information under regulations 5 and 6 that is provided on the initiative of a competent authority shall not be provided to a victim who has informed the competent authority that he does not want to receive such information.

Communication safeguards.

8. The Chief Executive of the Gibraltar Courts Service or such other person as the Minister may appoint by notice in the Gazette, shall in respect of victims who are witnesses in criminal proceedings, take the necessary measures to minimise, as far as possible, communication difficulties as regards their understanding of, or involvement in, the relevant steps of the criminal proceedings in question to an extent comparable with the measures of this type which it takes in respect of defendants.

Victims' expenses with respect to criminal proceedings.

9.(1) A victim who may incur an expense through his participation as a witness in criminal proceedings may apply to the Registrar of the Supreme Court for reimbursement before incurring that expense.

(2) Where the matter was too urgent to allow for an application to be made before incurring that expense an application may be made after the expense was incurred.

(3) In considering an application under subregulations (1) and (2) the Registrar shall consider, having regard to the nature of criminal proceedings in Gibraltar, whether that expense was necessary having regard to the following—

- (a) the victim's right to provide and receive information;
- (b) the victim's right to understand and be understood;
- (c) the victim's right to have allowance made for the disadvantage of living in a different jurisdiction from the one in which the crime was committed;

- (d) whether the costs have been or will be met from other public funds;
- (e) whether the eligibility criteria referred to in subregulation (4) is satisfied.

(4) For the purposes of subregulation (3)(e) a person is eligible if he meets the conditions set out in section 13(1) (Financial Conditions of Legal Assistance) of the Legal Aid and Assistance Act.

(5) A victim whose costs have been paid pursuant to this regulation shall repay those costs to the Registrar if he is awarded any sum, whether by way of compensation or otherwise, in the proceedings in respect of which he is a witness.

(6) Where the sum received by the victim is less than the costs paid out under this regulation, the victim shall only be liable to repay the sum equal to the sum received as compensation or otherwise.

(7) Any expense allowed by the Registrar under this regulation shall be paid out of the Consolidated Fund and any monies received pursuant to subregulations (5) and (6) shall be paid into the Consolidated Fund.

Right to protection.

10. It shall be the duty of competent authorities to ensure that there is a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, in particular where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy.

Offences committed overseas against Gibraltar resident.

11.(1) Where a resident of Gibraltar is the victim of an offence in a Member State the matter may be reported to the Royal Gibraltar Police, if the victim—

- (a) was unable to do so make the complaint in the Member State where the offence was committed; or
- (b) did not wish to do so and the matter involved a serious offence.

(2) Where subregulation (1) applies the Royal Gibraltar Police shall transmit the complaint without delay to the competent authority in the territory in which the offence was committed.

Receipt of complaints.

12. The Commissioner of the Royal Gibraltar Police shall receive a complaint made through the competent authority in a Member State pursuant to article 11 of the Framework Decision.

Victims resident in another Member State.

13. A complaint received under regulation 12 shall for all purposes be treated as though the complainant had made the complaint in Gibraltar.

Promotion of penal mediation.

14. A person with responsibility for victims shall seek to promote mediation in criminal cases for offences which are considered to be appropriate.

Recognition of mediation agreement.

15. In sentencing a defendant a court must take into account a mediation agreement entered into between the victim and that defendant.

Specialist services and victim support organisations.

16.(1) A person with responsibility for victims shall, in the context of proceedings, promote the involvement of victim support systems responsible for organising the initial reception of victims and for victim support and assistance thereafter, whether through the provision of specially trained personnel within the public services or through recognition and funding of victim support organisations.

(2) A person with responsibility for victims shall encourage action taken in proceedings by such personnel or by victim support organisations, particularly as regards—

- (a) providing victims with information;
- (b) assisting victims according to their immediate needs;
- (c) accompanying victims, if necessary and possible during criminal proceedings;
- (d) assisting victims, at their request, after criminal proceedings have ended.

Training for personnel involved in proceedings or otherwise in contact with victims.

17.(1) A person with responsibility for victims shall encourage initiatives enabling personnel involved in proceedings or otherwise in contact with victims to receive suitable training with particular reference to the needs of the most vulnerable groups.

(2) Subregulation (1) shall apply in particular to police officers and legal practitioners.

Practical conditions regarding the position of victims in proceedings.

18.(1) A person with responsibility for victims shall support the progressive creation, in respect of proceedings in general, and particularly in venues where criminal proceedings may be initiated, of the necessary conditions for attempting to prevent secondary victimisation and avoiding placing victims under unnecessary pressure, this shall apply particularly as regards proper initial reception of victims, and the establishment of conditions appropriate to their situation in the venues in question.

(2) In discharging the duties imposed under subregulation (1) particular regard is to be had to facilities within courts, police stations, public services and victim support organisations.