

Stakeholder discussion paper on a Letter of Rights for Scotland

Purpose

1. The purpose of this discussion paper is to seek the views of key stakeholders on the introduction of a non-statutory Letter of Rights for Scotland.

Introduction

2. The Scottish Government (“the Government”) plans to introduce a non-statutory Letter of Rights for Scotland in spring 2013. The Letter will be given promptly to all persons held in police custody in Scotland, to help suspects and accused persons understand their rights as provided for in domestic legislation.
3. To ensure the Letter is fit for purpose, the Government is keen to gather the views of key stakeholders on the content of the Letter, the language used in the Letter and the formats in which the Letter is to be made accessible.
4. The Government recognises that the Letter will remain a working document, which will undoubtedly change as law and practice changes.

Structure of discussion paper

5. This paper provides a brief background to the Letter of Rights and the development of a Letter for Scotland. Questions can be found under each of the relevant sections under the heading ‘[Draft Letter of Rights](#)’ on page 3 and a [summary of the questions](#) is given at page 6.
6. The draft Letter is provided at [Annex A](#). At [Annex B](#) there is a list of the languages that it is proposed the Letter will be available in and, at [Annex C](#), the stakeholders that have been invited to respond to this discussion paper.

Responding to this discussion paper

7. Responses to the discussion paper should be submitted by **4 pm on Tuesday 19 February 2013** to Bekki Smith, email: Rebecca.smith4@scotland.gsi.gov.uk or

by post to Criminal Procedure Policy Unit, Scottish Government, GW.14, St Andrew's House, Regent Road, Edinburgh, EH1 3DG.

8. Any queries regarding the discussion paper should be addressed to Bekki Smith at the email address above or by telephone on 0131 244 2265.

Background

- **European Union (EU) Directive on the right to information in criminal proceedings**

9. The second measure under the EU road map on procedural rights focuses on providing information to suspects. It takes the form of a Directive on the Right to Information in criminal proceedings. The UK Government has opted in to this measure and negotiations on the text were concluded at the end of 2011. Official publication of the Directive was on 22 May 2012, providing a deadline for implementation of the Directive by 2 June 2014. Amongst other things, this requires the establishment of a Letter of Rights for suspects and accused persons in Scotland by June 2014. The full text of the Directive can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:01:EN:HTML>.

10. The Directive contains an indicative Letter of Rights, intended to assist Member States in tailoring their own Letters. This text has been taken into account in preparing a Scottish Letter of Rights. The Directive also contains a separate indicative Letter of Rights for cases involving a European Arrest Warrant, which the Government plans to implement following introduction of a generic Letter.

- **PACE/Notice of Rights and Entitlements in England and Wales**

11. Current practice in England and Wales is to provide all arrested persons who are detained at a police station with a Notice of Rights and Entitlements as set out in the Police and Criminal Evidence Act 1984 (PACE). Creation of a Letter of Rights would therefore bring Scotland into line with the other UK jurisdictions and provide a further safeguard for suspects detained in Scotland.

12. Although a Letter of Rights, as such, is not provided to suspects in Scotland, the Solicitor Access Recording Form (SARF) used by the police has become much more extensive and does ensure that some valuable information is provided to detainees.

- **UK Supreme Court Cases and Lord Carloway's Review**

13. On 23 November 2011, the UK Supreme Court decided four cases (*Hodgson, Birnie, Jude & B*) related to the 2010 *Cadder* decision. They were effectively an appeal by the Crown of an 11 May 2011 High Court decision that suspects must receive "legal advice" before they could properly waive the right to a lawyer. The

UK Supreme Court did not go this far. It confirmed that suspects may continue to decide to waive their right to a lawyer on the basis of information provided by the police.

14. The rulings by the Supreme Court are in line with Lord Carloway's recommendation that waiver should be "express and recorded." Although not expressly required by the Supreme Court decision, it is considered that a Letter of Rights for suspects could form an important part of ensuring that any decision on waiver of legal advice by a suspect is adequately informed.
 15. In his report, Lord Carloway recommended that a Letter of Rights should be drafted "without delay" and it should be available to "every arrested and detained suspect" unless there was a "particular reason not to do so". Lord Carloway indicated that there was no need to wait for the Directive to be in place before introducing a Letter of Rights. The Review did not set out a specific format for the Letter.
- **Work to date**
16. In preparing the draft Letter, the Government has met and discussed the Letter with a number of criminal justice partners including the Law Society of Scotland, the Scottish Legal Aid Board and the Association of Chief Police Officers in Scotland (ACPOS).

Draft Letter of Rights

17. A draft Letter of Rights is provided at [Annex A](#).

- **Content**

18. The Letter, does not create new rights (other than the right to information), but rather provides information on existing rights in a format that can be easily understood and retained by a person in custody (subject to risk assessment).
19. The Directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant. As noted at paragraph 10 above, the Government plans to introduce a Letter specifically for those subject to a European Arrest Warrant once a generic Letter has been established.
20. Article 3(2) of the Directive requires the needs of vulnerable suspects to be taken into account when providing information on rights. The Government agrees that additional support may be required for vulnerable persons, for example, because

of their youth or physical or mental condition. The Carloway Review makes a number of recommendations for their additional support and the Government is actively considering how best to give effect to them.

A. Questions on Content

A.1. Is the content of the draft Letter easy to understand and does it cover the key points? If not, please indicate where the content requires clarification and suggest alternative content. Please also indicate if there are any key points you consider missing from the Letter.

A.2. Do you have any other comments on the content of the Letter?

- **Language**

21. In drafting the Letter, the Government has sought to use plain English and avoid legal jargon, whilst ensuring rights are accurately communicated.
22. In the spirit of the EU, which translates all new legislation into all of the 23 official EU languages, the Government proposes to translate the Letter of Rights into the 23 official languages. These languages are listed at [Annex B](#).
23. In consultation with the Scottish Prison Service, the Government has also identified the top 8 non-EU languages spoken by the Scottish prison population (as at 20 December 2012). Given that many of those held in a Scottish prison will have been held in police custody on entering the criminal justice system, the Government believes this evidence to be a suitable base to decide the non-EU languages into which the Letter will be translated. These languages are also listed at [Annex B](#).
24. As noted at paragraph 4, the Letter will remain a working document. A consequence of the dynamic nature of the document is that, with each update, new translations may be required. Such updates will also present an opportunity to review the range of languages in which the Letter is available to ensure it reflects the linguistic diversity of the users of the Scottish criminal justice system.
25. Current procedure around interpretation services used by the police will not be affected by the introduction of the Letter of Rights.

B. Questions on Language

B.1. Is the wording used in the Letter appropriate and accessible? If not, please indicate areas where it is not appropriate or accessible and suggest alternatives.

B.2. How would you suggest the Letter is made accessible to those with differing levels of literacy or with learning difficulties/disabilities?

B.3. Do you agree that the Letter should be made available in the 23 official languages of the EU and, also, the top 8 non-EU languages identified by the Scottish Prison Service as those most common amongst the Scottish prison population [as listed at [Annex B](#)]? If not, please indicate the languages you would include/not include.

B.4. Do you have any other comments on the language used in the Letter?

- **Format**

26. The Scottish Government is currently working with ACPOS to consider the most practical way to ensure those in custody have access to a Letter of Rights whilst minimising risks to those detained.

27. The Government is keen to hear suggestions from stakeholders on specific groups who may require the Letter in different formats and how the information included could best be communicated to people in such groups.

C. Questions on Format

C.1. What format(s) do you think the Letter should be provided in e.g. print, Braille, audio?

C.2. Do you have any other comments on the format or layout of the draft Letter?

Summary of Questions

A. Content

A.1. Is the content of the draft Letter easy to understand and does it cover the key points? If not, please indicate where the content requires clarification and suggest alternative content. Please also indicate if there are any key points you consider missing from the Letter. We have indicated some examples below where the wording could be changed to make the content of the letter clearer.

A.2. Do you have any other comments on the content of the Letter?

The letter starts with the following paragraph:

‘Please read this information as soon as possible. It will help you to make decisions while you are at the police station. If you do not understand any of the information in this leaflet, please ask the police to explain it to you’.

This should be explained verbally to the person being arrested before handing out this letter. Otherwise, the person may not understand that they can ask the police officer to explain it to them.

B. Language

B.1. Is the wording used in the Letter appropriate and accessible? If not, please indicate areas where it is not appropriate or accessible and suggest alternatives. We have indicated some examples below where the wording could be changed to make the letter clearer.

B.2. How would you suggest the Letter is made accessible to those with differing levels of literacy or with learning difficulties/disabilities?

The letter and advice need to comply with Plain English Advice. For example, the sentence,

‘If you want to speak to a lawyer, then the police are not normally allowed to ask you questions until you have had the chance to talk to your lawyer.’

is too long and convoluted. Sentences should be no longer than 20 words approx. Besides, what does ‘..have a chance...’ mean here? You have had

'a chance' but it has not come to fruition and so the police can then question you?

The above sentence could be rewritten as :

'You may want to speak to a lawyer. In this case the police are not normally allowed to question you until you have spoken to your lawyer'

On page 11 there is the 'sentence'

'You may use a toilet and have a wash, however, there may be times when there is a delay in this being available to you. '

However, this 'sentence' is in fact two sentences. 'You may use a toilet and have a wash. However, there may be times when there is a delay in this being available to you. '

B.3. Do you agree that the Letter should be made available in the 23 official languages of the EU and, also, the top 8 non-EU languages identified by the Scottish Prison Service as those most common amongst the Scottish prison population [as listed at [Annex B](#)]? If not, please indicate the languages you would include.

British Sign Language

B.4. Do you have any other comments on the language used in the Letter?

Again, as in Plain English Advice the active rather than the passive voice should be used for clarity.

For example, the sentence

'You can normally be detained for questioning for up to 12 hours without being charged.'

should be rewritten as

'The police can normally detain you for questioning for up to 12 hours without charging you.'

C. Format

C.1. What format(s) do you think the Letter should be provided in e.g. print, Braille, audio? Yes, all three. There should also be a video/DVD of the letter illustrating its contents through British Sign Language.

The person may have dyslexia or another learning difficulty but they may not necessarily wish to mention this. We would suggest the following:

It would be helpful if the arresting person were mindful to ask if the person has issues with reading the document and to offer them the option, if they prefer, to listen to an audio version. Or there could be the option to give them the letter to read and then offer to help if they have any questions about the letter. In either case, they should give the person enough time to digest the letter and to ask any questions and to process any responses.

For someone with dyslexia, a DVD or audio tape would be good but the police are then still expecting someone to 'listen' and process a lot of information.

It might be quicker and cheaper for a recording/MP3 to be made available to back up the letter or have someone read it aloud to them. But both would need to be made available immediately and the fact that this could be made available would need to be made clear before the interview begins. If the person requires it they could then ask questions.

C.2. Do you have any other comments on the format or layout of the draft Letter?

Although the letter is long (6 pages), the fact that it is large font (size 14) and 1.5 lined spacing is likely to be helpful for anyone with dyslexia. It is important as outlined above under C.1 to make sure that help is offered to the person before they are given the letter. This will help to make sure that they have time and support to fully understand and digest the letter contents. Each person is different so their needs will be different – the arresting person should check that the person has had enough time to take in the information and that the letter is in the right format for that person.

Dyslexia Scotland has attached a leaflet with this response which outlines some suggested Dyslexia-Friendly Formats.

Your rights

And what to expect at the police station

This leaflet gives you important information about your rights under the law in Scotland. It also tells you what to expect if you are held in custody at a police station.

Please read this information as soon as possible. It will help you to make decisions while you are at the police station. If you do not understand any of the information in this leaflet, please ask the police to explain it to you. **NB This should be explained before handing out this letter**

Remember your rights:

- 1. You have the right to know why you are being held in custody by the police and what you are suspected of having done.**
- 2. You have the right to have a lawyer told that you are at the police station.**
- 3. If you are under 16, you have the right to have your parent or guardian told that you are at the police station.**
- 4. You have the right to have someone else told that you are at the police station. For example, this may be a family member or a friend.**
- 5. You have the right to remain silent, other than giving the police your personal details.**
- 6. If you are going to be questioned by the police, you have the right to speak to a lawyer in private.**

Part A: Your rights

Please note: In special cases, the police have the right to delay or withhold your access to these rights (except your right to silence). The police will explain this to you.

1. Information for people held in police custody

- **Right to silence**

If you are asked questions about a suspected offence, you do not have to say anything. Anything you do say may be noted and given in evidence at trial, if your case is taken to court.

You do have to tell the police your name and address, date of birth, place of birth and nationality when they ask you for these details.

- **Telling a lawyer that you are at the police station**

You can ask the police to arrange for a lawyer to be told that you are at the police station. This can be your own lawyer or, if you don't know a lawyer, the on-call lawyer. The police will arrange for a lawyer to be contacted as soon as they can.

People who need extra support

Some people may require the support of another adult, called an Appropriate Adult, when they are in the police station. This may apply to you if you have a mental disorder or learning disability. Speak to the police if you think you need this support.

If the police think you need the support of an Appropriate Adult, they will ask for one to attend, even if you do not ask for one.

If you are under 16, the police must try to inform your parent or guardian that you are at the police station.

- **Telling someone else that you are at the police station**

You can ask the police to contact someone else (such as a family member, your partner or a friend) to inform them that you are at the police station. This is free. They will arrange for that person to be contacted as soon as they can.

- **What happens if you are charged or brought into custody on a warrant?**

If you are charged, you may be released or you can be held and taken to court on the next day that the court sits. If you have been brought into custody on a warrant, you can be held and taken to court on the next day that the court sits.

- **Access to documents**

If your case goes to court and you plead not guilty, the material evidence for or against you, will be made available to you or your lawyer. This will allow you/your lawyer to prepare your defence.

2. Information for people who are going to be questioned by the police

- **Getting a lawyer to help you**

A lawyer's role is to protect and promote your rights. A lawyer will also provide you with advice about the law. If you say you do want to speak to a lawyer, the police will arrange for a lawyer to be contacted as soon as possible.

If you ask to speak to a lawyer, it does not make it look like you have done something wrong. It will not count against you if you ask to speak to a lawyer.

You can choose to speak to a lawyer you know or the on-call lawyer. If you do not know a lawyer or the police cannot contact your own lawyer after making a reasonable attempt to contact him or her, you

can speak to the on-call lawyer. The police will arrange for your lawyer, or the on-call lawyer, to be contacted for you. The on-call lawyer is nothing to do with the police.

You are entitled to a private conversation with a lawyer on the telephone or they may come and see you at the police station.

If you want to speak to a lawyer, then the police are not normally allowed to ask you questions until you have had the chance to talk to your lawyer. When the police ask you questions, you can ask for a lawyer to be in the room with you.

If a lawyer does not turn up, or you need to talk to a lawyer again, ask the police to contact him or her again. If you tell the police that you don't want to speak to a lawyer but then change your mind, tell the police custody officer. The police will then arrange for a lawyer to be contacted for you.

- **How long can you be detained for questioning?**

You can normally be detained for questioning for up to 12 hours without being charged. This can be extended for up to a further 12 hours but only if a Police Inspector agrees to this. You have the right to have your say about this decision, unless you are not in a fit state.

Part B: What to expect at the police station

1. How you should be cared for

These are short notes about what you can expect while you are kept at the police station:

- **Your Cell**

Your cell should be clean and warm. Your bedding should be clean and in good order. You may use a toilet and have a wash. However, there may be times when there is a delay in this being available to you. If this is the case, it will be explained to you.

- **Clothes**

If your own clothes are taken from you, then the police will arrange for other clothing to be brought to the police station for you, from your home address or from family, friends or elsewhere.

- **Food and drink**

You must be offered 3 meals in 24 hours, with drinks. You can also have drinks between meals. You should tell the police if you have any religious, dietary or health requirements

- **If you are unwell**

Tell the police immediately if you feel ill or need medicine. If you have medicine that you usually take, tell the police as soon as you can. They will contact a nurse or doctor for you. It is in your best interests to tell the police about anything that may affect your health, wellbeing or care whilst you are at the police station.

2. If the police question you

The room should be clean, warm and lit. You should be given a chair or bench to sit on.

The police officers should tell you their name and their rank.

You should have a break at meal times and a break for a drink after about 2 hours. You should be allowed time to rest.

3. Getting an interpreter to help you

If you do not speak or understand English the police will arrange for someone who speaks your language (an interpreter) to help you.

If you are deaf or have difficulty speaking, the police will arrange for a British Sign Language/English interpreter/ [Lip Speaker](#) to help you.

4. If you are not British

If you are not British, you can tell the police that you want to contact your High Commission, Embassy or Consulate, to tell them where you are and why you are in the police station. They can also visit you in private or arrange for a lawyer to see you.

ANNEX B – List of languages

Official EU languages (in alphabetical order):

Bulgarian
Czech
Danish
Dutch
English
Estonian
Finnish
French
German
Greek
Hungarian
Irish
Italian
Latvian
Lithuanian
Maltese
Polish
Portuguese
Romanian
Slovak
Slovene
Spanish
Swedish

Top 8 non-EU languages spoken across the Scottish prison estate (in alphabetical order):

Albanian
Arabic
Cantonese
Mandarin
Punjabi
Russian
Urdu
Vietnamese

ANNEX C – Organisations invited to respond to this discussion paper

Association of Chief Police Officers in Scotland

BEMIS

CHANGE

Children 1st

Citizens Advice Scotland

Council of Ethnic Minority Voluntary Sector Organisations (Scotland)

Crown Office and Procurator Fiscal Service

Dyslexia Scotland

Epilepsy Scotland

Equality and Human Rights Commission

Faculty of Advocates

HM Revenue and Customs

Inclusion Scotland

Interfaith Scotland

JUSTICE

Law Society of Scotland

Mental Welfare Commission for Scotland

National Autistic Society Scotland

People First (Scotland)

Plain English Society

Public Defence Solicitors Office

Royal National Institute of Blind People

Scottish Appropriate Adult Network

Scottish Association for Mental Health

Scottish Child Law Centre

Scottish Children's Reporter Administration

Scottish Commissioner for Children and Young People

Scottish Consortium for Learning Disability

Scottish Human Rights Commission

Scottish Legal Aid Board

Scottish Refugee Council

UK Border Agency

VOX (Scotland)