

**The Scottish Human Rights Commission**

**Submission to the Scottish Government**

**25 July 2014**

Fiona Howe

Criminal Procedure (GW14)   
Scottish Government   
St Andrew’s House   
Regent Road   
Edinburgh   
EH1 3DG

Dear Fiona Howe,

The Commission welcomes the Scottish Government consultation on the Letter of Rights. We agree that notification of rights of suspects held in police detention must be given in writing in order to help suspects understand their legal rights. Research on this area of law in the EU as well as jurisprudence from the ECtHR indicate that; while in most EU states have legal provisions governing defence rights of suspects and defendants in criminal proceedings, their effectiveness and observance depends to a large extent on the existence of procedural and institutional enforcement mechanisms in practice. One of the key factors in ensuring fair proceedings is whether suspects have a sufficiently detailed knowledge of their rights and this includes the initial stages.

The Commission would like to make a number of recommendations/additions in order to ensure the ‘Letter of Rights’ comply with human rights standards.

A. Content of the Letter of Rights.

Simple and short sentences, and perhaps a more detailed explanations could be given in the next pages of the Letter of Rights, on the following subjects:

* The suspect entitlement to legal advice free of charge and conditions for obtaining it.

The Commission recommends to clarify the circumstances in which advice is free (for example if a phone call with the on-call lawyer is always free that should be made clear); as well as to explain the circumstances in which someone will not get free advice. There is a danger that people may waive their right to legal assistance because they think that even asking for a phone consultation might cost money. It is important to note that the EU Directive applies throughout the proceedings, not just when initially in custody (Article 2).

* The right to be informed in a language he/she understands of the reasons forthe arrest or at least before the first official interview by the police.

The Commission suggests that in the first box "Remember your rights" it is inserted: *"If you do not speak English, you have the right to be told in a language you understand: a) why the police are holding you in custody, b) what the police suspect you have done. You have a right to an interpreter free of charge to tell you this."*

The letter should also contain information for people who are going to be questioned. For example, where it talks about getting legal advice, the Letter should make clear that the person can have an interpreter to help him/her speak to a lawyer if necessary.

* The possibility to challenge the lawfulness of the arrest, to obtain a review of the detention, or to apply for provisional release.

The letter should inform the suspect not only how long he/she can be kept in custody, but it should also deal with challenging the detention before the court. The Commission recommends to include a section: *How can you challenge your detention?* This section should contain information not only dealing with police procedure but also relating to the whole proceedings. For example; appeals to the High Court, police complaints procedure for unlawful detention, access to materials to allow challenge to detention and also civil litigation.

* The Right to compensation if the arrest is in contravention of the Convention

Art 5 (5) of the European Convention of Human Rights states:

” Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

* Legal status, citizenship or nationality.

The Commission recommends including a sentence that the rights in the Letter apply to all people in custody.

*About the Commission:* The Scottish Human Rights Commission (SHRC) is the national human rights institution (NHRI) for Scotland, accredited with A status by the International Coordinating Committee of NHRIs. SHRC was established by an Act of the Scottish Parliament and has a general duty to promote awareness, understanding and respect for all human rights and to encourage best practice (including through education, training and awareness raising, and by publishing research). SHRC also has a number of powers including:

-The power to conduct inquiries into the policies or practices of Scottish public authorities;

-Recommending such changes to Scottish law, policy and practice as it considers necessary.

-The power to enter some places of detention as part of an inquiry, and

-The power to intervene in some civil court cases.

SHRC is one of the three national human rights institutions in the UK and currently chairs the European Network of NHRIs. SHRC is a member of the UK’s National Preventive Mechanism (NPM) designated in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

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