
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 159

CRIMINAL LAW

The Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014

<i>Made</i>	- - - -	<i>4th June 2014</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>5th June 2014</i>
<i>Coming into force</i>	- -	<i>6th June 2014</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾ and all other powers enabling them to do so.

Citation, commencement and extent

1. (1) These Regulations may be cited as the Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014 and come into force on 6th June 2014.
- (2) These Regulations extend to Scotland only.

Interpretation

2. (1) For the purposes of these Regulations, a person is in police custody if—
 - (a) the person is being detained under section 14 of the Criminal Procedure (Scotland) Act 1995⁽²⁾ and has been taken to a police station or other premises or place; or
 - (b) the person has been arrested by a constable in connection with an offence, under any enactment (other than the Extradition Act 2003⁽³⁾) or rule of law whatsoever, and is in custody in a police station or other premises.
- (2) In these Regulations—

(1) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule 1, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(2) 1995 c.46. Section 14 was amended by section 81(6) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) and sections 1(2) and 3(1) of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15).

(3) 2003 c.41.

“chief constable” means the constable appointed to the office of chief constable under section 7(1)(a) of the Police and Fire Reform (Scotland) Act 2012⁽⁴⁾;

“constable” means a constable of the Police Service of Scotland (as defined by section 99(1) of the Police and Fire Reform (Scotland) Act 2012);

“police staff” means staff appointed under section 26(1) of the Police and Fire Reform (Scotland) Act 2012;

“the Directive” means Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings⁽⁵⁾.

Information about a person’s rights

3. (1) Paragraph (2) applies to a person who is in police custody.

(2) The person must be provided as soon as reasonably practicable with such information (verbally or in writing) as is necessary to satisfy the requirements of Articles 3 and 4 of the Directive.

(3) A constable must record the time at which, and the identity of the person by whom, the person referred to in paragraph (1) is provided with information in accordance with paragraph (2).

Right to access documents held by the police

4. (1) Following a request made by a person held, at any time on or after the coming into force of these Regulations, in police custody, a constable must make available to the person any documents held by a constable or any member of police staff, related to the specific case, which are essential to challenging effectively the lawfulness of the person’s detention or arrest as necessary to satisfy the requirements of Article 7(1) of the Directive.

(2) Where documents are made available in accordance with paragraph (1) they must be made available free of charge.

(3) A request made in accordance with paragraph (1) may be refused where—

- (a) the documents have already been made available to the person; or
- (b) the documents will shortly be made available to the person in accordance with the disclosure provisions contained in Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010⁽⁶⁾.

(4) The chief constable must publish guidance—

- (a) describing the documents which may be requested in accordance with paragraph (1) and how a constable must handle any such request; and
- (b) explaining how a person may seek a review of any failure or refusal by a constable to make such documents available.

St Andrew’s House, Edinburgh
4th June 2014

KENNY MACASKILL
A member of the Scottish Government

(4) 2012 asp 8.

(5) OJ L 142 1.6.2012, p.1.

(6) 2010 asp 13.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in part, Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings (OJ L 142 1.6.2012, p.1). They extend to Scotland only.

In particular, the Regulations require—

- (a) that persons in police custody are provided with information about their rights, verbally or in writing, as required to satisfy the requirements of Articles 3 and 4 of the Directive (regulation 3(1) and (2));
- (b) that a person, held at any time, in police custody can access any documents held by constables of the Police Service of Scotland or members of police staff which are essential to challenging effectively the lawfulness of their arrest and detention as required to satisfy Article 7(1) of the Directive (except insofar as they have been, or will shortly be, made available to the person under the disclosure regime contained in Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010) (regulation 4(1) and (3));
- (c) the chief constable to publish guidance describing the documents that are accessible, how requests must be handled and how a person can obtain a review of any failure or refusal to make such documents available (regulation 4(4)).

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.