

Consultation Response

Consultation on the Letter of Rights for Scotland

10 December 2019



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Consultation on the Letter of Rights for Scotland (the consultation).

We would strongly recommend that the "Letter of Rights" is rethought. With advances in technology, there should be other methods of communicating the relevant information regarding a suspect's rights as well as producing a much more simplified version of the "Letter of Rights."

This encompasses a range of interests. We would suggest that a short life working group should be convened to consider the issue of how best to undertake the relevant and necessary communication as well as the future format of any "Letter of Rights." This would need to include representatives from third sector organisations and those involved at the police station such as solicitors, police and Appropriate Adults.

General Comments

It is important to recognise the context in which the Letter of Rights is given to the person in the police station. The best outline is provided by Justice Scotland in its Report on "Legal assistance in the police station:"

"The "Letter of Rights" provided to suspects in police detention should be composed as a document which has as its primary purpose the imparting of important information to a readership which includes many who may require a text with simple short sentences and a layout which makes it as "easy read."¹

¹ Page 75 of the Report by Justice Scotland

Two versions of a Letter of Rights have been provided with the consultation in Annexes A and B respectively.² It should be noted that only the version at Annex A is on the gov.scot website.

There seems to be an argument for one version in an easy read fashion for all concerned. Certainly, in the experience of those solicitors attending police stations, they are unaware of when a decision is made to give the easy to read version to the suspect; such a decision is clearly subjective and presumably, made by the Duty Sergeant on a case by case basis.

We would strongly suggest that one version is used to avoid any confusion or problems. Running to a number of pages, as both versions do, we doubt if ever that suspects are given adequate time to read this lengthy version. Remember too that suspects are inevitably in a state of some distress and concern which will impact on their ability to take in and process any relevant information in what is on many occasions an unfamiliar situation. This is compounded for anyone who is vulnerable such as those with learning disabilities and indeed many falling into the category of “protected characteristics” under the Equality Act 2010.

There are also issues with the amount of information which is supplied. Suspects in our experience do not routinely have access to the Letter of Rights when in a cell so observations such as “if the lawyer does come to the police station when they said they would Ask the police to contact him or her again” cannot be accessed.

All this supports much greater simplification of wording of the Letter of Rights, consistent with the requirements of the EU Directive on the right to information in criminal proceedings that the language deployed should be “simple and accessible.”³ The overriding requirement is for the Letter of Rights to “be drafted in language which is easily understood by a lay person without any [pre-existing] knowledge of criminal procedure.”⁴

Additionally, we would support the Justice Scotland’s suggestion of the production of a video to be viewed in the police station by the suspect during or after the booking-in process but before the issue of legal advice is raised. That would provide a clearer way of communicating with many suspects (see the airport security videos by way of analogy).⁵

We would reply to the various questions as follows:

Questions on Content and Format

² These are understood to be the versions which were put into force and available with effect from January 2018 following the implementation of the Criminal Justice (Scotland) Act 2016.

³ Eu Directive 2012/13 article 3(2) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0013>

⁴ Paragraphs 22 and 25 of the Eu Directive 2012/13 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0013>

⁵ Paragraph 4 of the Justice Scotland Report

Question 1: Do you understand the content of the “standard” version of the Letter of Rights easy to understand?

No. We refer to our General Comments above about the two versions of the Letter of Rights. If there are to be two versions, both require to be easily understood.

We would recommend that the Letter of Rights requires a radical overhaul and rethink. We would suggest that a much simpler format for one Letter of Rights is adopted. Though it would require amendment to reflect the changes brought in by the Criminal Justice (Scotland) Act 2016, we would support the suggested version provided by Justice Scotland in Annex 2 of their Report.⁶

That version has headings which personify the approach being adopted. We consider that this represents a better approach and also sets out a more logical progression. Fundamentally, the suspect wants to know why they are at the police station to be followed by being advised about their rights.

So, by setting questions such as “Why am I here in the police station?” seems to present an inclusive approach to adopt. This is then followed by practical information such as “How long can I be kept here in the police station?” “Who can I tell?” From our experience that is where a suspect is primarily concerned.

Thereafter, there is a positive and arguably proactive approach adopted of “Getting help from a lawyer”, “Why do you need a lawyer”, “How can you get a lawyer?” and “When and Where can you speak to a lawyer?” This seems much more understandable than merely “You have a right to have a lawyer told that you are at the police station.” That provides no information on the role of a lawyer. Knowing that they can have a lawyer advised may mean little to a suspect if they do not know or are unaware of what services a lawyer may offer.

This is also a point that also applies to the use of the term “Appropriate Adult” which does not define their role and indeed, how that differs from a lawyer’s role.⁷

We note that there are three paragraphs of complex English on “freedoms and supports and “rights” which we would suggest are not commonly used expressions, are somewhat technical/legal in nature and do not promote easy understanding. Only after these three paragraphs would a suspect be made aware that they can ask for an easy-read copy or a translation. That is an issue with content.

Fundamentally, the requirement is on the authorities, in this case, Police Scotland, to take all reasonable steps to ensure that a suspect is fully aware of their rights and address any communication problems which require support or an interpreter. Putting the onus on the suspect to inform them is not correct.

Question 2: Is the content of the “easy to read” version of the Letter of Rights easy

⁶ Page 82 of Justice Scotland Report.

⁷ We refer to the ongoing work of the Scottish Government work on Appropriate Adults. This could reflect the output of that work.

to understand?

No. We refer to our answer to Question 1 and our General Comments.

We would consider that advice on the format would be best obtained from those who are experienced with those who may have language issues as to what format and language is best to communicate the information which is required.

We also understand from discussion with relevant third sector organisations that the easy read version is text heavy which many people will find difficult to read. “Getting help with communication” should appear at the start. There is no point in including this as this needs to be explained verbally given a number of people cannot read.

There are diagrams included which we understand may well be deemed as patronising. Perhaps their use could be considered further.

Question 3: Do you consider that the versions of the Letter of Rights cover the key information individuals need to know when being heard in custody?

We refer to our answers to Question 1 and our General Comments The key information is being communicated but not in an easily understood fashion or structure. There are numerous examples to highlight but the following represent a few:

- This is free. This could be better explained by reference to free from any (legal) charge. However, there are times when a legal aid form will require to be completed from the lawyer’s perspective with the relevant Custody Number in order to obtain their payment from the Scottish Legal Aid Board.
- Exceptional circumstances replicate what the Criminal Justice (Scotland) Act 2016 states but it is not a term which can be understood by any lay person. Furthermore, this is a paragraph applying to 16-year-old.
- The term “right to remain silent” varies to “your right not to speak.” It seems to us that the term “right to remain silent” is understandable and should be consistently used throughout.
- The requirement is to provide certain specific information. We would suggest that this should be communicated positively in that “You are required to provide your name “You do not need to answer any other questions and emphasise the right to remain silent.

We also note that is no reference to the rights of the vulnerable accused as set out in section 42 of the Criminal Justice (Scotland) Act 2016.

Question 4: Does the way the information is organised in the “standard” version of the Letter of Rights i.e. with a text box at the beginning help to convey key

information in a way that is easily understood?

We refer to our answer to Question 1 and our General Comments.

There may be merit in having a text box, but much will depend on the overall style and content of any future “Letter of Rights”. There is however currently no linking between the text box and the information which follows.

Question 5: Does the way the information is organised in the easy read version of the Letter of Rights i.e. with a text box at the beginning help to convey key information in a way that is easily understood?

We refer to our answers to Questions 1 and 2 and our General Comments. We consider a rethink is required.

Question 6: What alternative format(s) do you think that the Letter of Rights should be provided in e.g. print, Braille, and audio?

Technology is advancing so that there are many formats and ways that information can be captured so it can be effectively relayed to those in a manner that suits them and who are required to obtain and understand that information.

We would suggest advice is best taken from the third sector groups who represent the “protected characteristics” under the Equality Act 2010.

Question 7. Do you have any other questions or comments on the content or format of the Letter of Rights?

We have no comment to make.

Questions on Accessibility and Language of the Letter of Rights

Question 8: Is the wording used in the “standard” version of the Letter of Rights appropriate and accessible?

No. We refer to our answers to Questions 1 and 2 and our General Comments as the language used includes terms that would not be readily understood.

We would suggest that the reference to the term “lawyer” is changed to solicitor. It is only a solicitor who is legally qualified and holds a valid practicing certificate issued by the Law Society of Scotland who can provide advice and representation in a police station.

As matters stand at present, the term lawyer is not a reserved or protected title. Therefore, any person can refer to themselves as a ‘lawyer’ regardless of qualification and status. The issues around the use of the term “lawyer” have been highlighted recently by the independent review of legal services.⁸ Discussions are currently ongoing with the Scottish Government as part of the proposal to develop a new regulatory framework and model for the Scottish legal profession. To retain the use of the term ‘lawyer’ within the Letter of Rights may be inconsistent with the final proposals and the outcome of the review of legal services and this will need to be considered carefully.

In any event we would suggest that the role of a solicitor is set out clearly as indicated above.

Question 9: Is the wording used in the easy read version of the Letter of Rights appropriate and accessible?

There seems little difference between the two versions except for the addition of pictures.

The advice regarding the wording would best be supplied by those third sector groups who represent the “protected characteristics” under the Equality Act 2010.

Question 10: Does the “easy to read” version meet the aims of making the information provided easier to understand and more accessible to those with differing levels of literacy or with learning difficulties and disabilities?

We have no specific comment to make. The advice regarding the wording would best be supplied by those third sector groups who represent the “protected characteristics” under the Equality Act 2010.

Question 11: Do the illustrations included in the “easy to read” version of the Letter

⁸ <https://www2.gov.scot/Resource/0054/00542583.pdf>

of Rights help support understanding of the content of the letter?

We have already referred to the use of diagrams which we do not understand or enhance understanding. We would suggest that other forms of communicating the relevant information are explored. The advice regarding the wording would best be supplied by those third sector groups who represent the “protected characteristics” under the Equality Act 2010.

Question 12: Aside from providing the “easy read” version, how would you suggest that the Letter of Rights is made accessible to those with differing levels of literacy or with learning difficulties /disabilities?

The advice regarding the wording would best be supplied by those third sector groups who represent the “protected characteristics” under the Equality Act 2010.

Question 13: Are there any further languages in everyday use of Scotland which you think the Letter of Rights should be made available?

We have no comment in relation to this question.

Question 14: Do you have any other questions or comments on the accessibility of the Letter of Rights or the language used in the letter?

We have no further comment to make.





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