



**IRISH TRANSLATORS' and INTERPRETERS' ASSOCIATION
CUMANN AISTRITHEOIRÍ agus ATEANGAIRÍ na hÉIREANN**

**Submission on the Transposition into Irish law of
Directive 2010/64/EU on the Right to
Interpretation and Translation in
Criminal Proceedings**

October 2014

Contents

The Irish Translators' and Interpreters' Association.....	3
Interpreter Recruitment in Ireland	3
Transposition of the Directive into Irish Law – SI565 (Courts)	4
Transposition of the Directive into Irish Law – SI564 (Garda)	6
Conclusion.....	7
Table comparing Directive 2010/64/EU and Statutory Instrument 565 of 2013 (Courts)	8
Table comparing Directive 2010/64/EU and Statutory Instrument 564 of 2013 (Garda)	12
Full text of SI565 of 2013 (Courts)	17
Full text of SI564 2013 (Garda)	19

The Irish Translators' and Interpreters' Association

The Irish Translators' and Interpreters' Association (ITIA) was founded in 1986 and is a not-for-profit organisation. It is the only professional association in Ireland representing the interests of practising translators and interpreters. The ITIA aims to promote the highest standards within the profession and to foster an understanding among translator and interpreter clients of the highly-skilled and exacting nature of the profession. To this end we have introduced translation tests for professional membership and a separate test for professional members who wish to specialise in the translation of documents such as contracts and birth, marriage and death certificates.

The ITIA has made a number of submissions to the Courts Service (2002, 2008 and 2011) and to the Garda (2003, 2006, 2007), in which we have outlined our concerns with the system of interpreter recruitment. The submissions are available on our website www.translatorsassociation.ie.

Interpreter Recruitment in Ireland

Translation and interpreting are unregulated in Ireland, which means that anyone who speaks English and another language can call themselves a translator or an interpreter. The Courts Service and the Garda (Irish police) have outsourced recruitment to companies and have set very low standards for interpreters, whose interpreting ability is not assessed in any way and who attend one-day 'training courses'. The Courts Service issued a request for tender in 2011 in which it laid down three levels for court interpreters:

Level One	The person can be shown to be competent in both English and the language concerned.
Level Two	The person is a native speaker of the language concerned and can be shown to be competent in English or is a native speaker of English and can be shown to be competent in the language concerned.
Level Three	The person is a native speaker of English with a third level qualification in the language concerned or a native speaker of the language concerned with a third level qualification in English

No explanation was provided as to what was meant by 'competent'. These levels are appallingly low; a level one interpreter could be, for example, an Albanian who interprets for English-Spanish. A level two interpreter could be someone who studied French or another foreign language at school. Only level three is anywhere near a suitable standard and even it is unsatisfactory as it could be anyone with a degree in a language, which is very different from a qualification in interpreting.

In May 2013 the Garda issued a request for tender for interpreters in which they stipulated that interpreters shall;

- a) Have, at a minimum, FETAC Level 5 standard of education;
- b) Have, at a minimum, 70 hours of experience in providing interpretations (sic) services previously;
- c) Have been training in interpreting techniques
- d) Provide genuine and accurate interpretations

Again, the standard here is extremely low; FETAC level 5 standard of education corresponds to completing secondary school education. Seventy hours of experience as an interpreter is no guarantee of competent interpreting. Training in interpreting techniques could be training that lasts half a day and merely explains whispered simultaneous and consecutive interpreting. 'Provide genuine and accurate interpretations' is rather naïve to say the least. The request for tender makes no reference to sign language interpreters.

It is clear from these 'standards' that the quality of interpreting is not a concern for the Courts Service or the Garda. It is true that, in general, interpreters are provided in Ireland but there is little point in providing interpreters who cannot interpret to a high standard and who cannot possibly carry out the work they are asked to do. Those interpreters who are qualified and competent are reluctant to work for the low rates of pay currently on offer.

The ITIA was pleased to see the new Directive and hoped that it would lead to higher standards and a better service. Sadly, the transposition into Irish law does not give us any hope of an improvement and there is absolutely no evidence of any 'concrete measures to ensure that interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9)'.

Transposition of the Directive into Irish Law – SI565 (Courts)

Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings has been transposed into Irish law by two statutory instruments, SI565 for the Courts and SI564 for the Garda (Irish police). We appreciate that statutory instruments do not have to refer specifically to every single item in a directive, but on comparing the Directive with the two statutory instruments, we find that some important elements are missing and some provisions have been altered.

Our most serious concern is Articles 2.5 and 3.5 on the right to challenge a decision that there is no need for interpreting or translation or to question quality. In SI565 for the Courts, there is no mechanism to appeal a decision that an interpreter or a translation is not needed. Our

understanding, based on legal advice, is that in all other regards a defendant can invoke the rights contained in the Directive, as it has direct effect, but a statutory mechanism has not been established outlining how decisions could be challenged.

Similarly, as far as we are aware, no procedure has been introduced to ascertain if a defendant speaks English (Article 2.4). We would have liked to have seen a simple procedure, for example a set of questions, that judges could use to decide if an interpreter is required but to the best of our knowledge this has not been done. There have been newspaper reports of judges who refuse to sanction an interpreter for people who have been living in Ireland for a number of years, on the grounds that they should speak English.

While Article 2.8 of the Directive stipulates that interpreting ‘shall be of a quality sufficient to safeguard the fairness of the proceedings’, Article 7 of SI565 provides for the interpreter to be replaced:

<p>8. Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.</p>	<p><i>Quality of Interpretation</i> 7. Where the Court, of its own motion or on application by any of the parties to the hearing, considers that the interpretation being provided is not of such a quality as to ensure that the person before it can effectively exercise his or her right to a fair trial, it may direct that the interpreter be replaced.</p>
--	---

Instead of ensuring that all interpreters who work in the courts are qualified to work in this area, the approach taken here is to find another interpreter if a problem arises. The quality of translation is not addressed at all.

The Right to Translation of essential documents (Article 3 of the Directive) is substantially changed in SI564 to oral translation or summary, with written translations only provided in certain cases (Article 8(1) and (2)). What was supposed to be an exception as outlined in Article 3.7 of the Directive becomes the norm:

<p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Right to translation of essential documents</p> <p>1. Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.</p>	<p><i>Translation of documents</i> 8. (1) A person to whom Regulation 4 applies shall be provided with an oral translation or summary of any recognisance he or she is required to enter into or any committal or remand warrant by which he or she is deprived of liberty. (2) A Court may direct, where it considers it to be essential in the interests of justice, that a written translation of a document mentioned in (1) above is also provided to the person as soon as is practicable— (a) in the case of a recognisance, by the Courts Service, and (b) in the case of a committal or remand warrant, by the Governor of the prison to which the person has been committed or remanded.</p>
<p>3.7. As an exception to the general rules established in paragraphs 1, 2, 3 and 6, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral</p>	<p><i>Translation of documents</i> 8. (1) A person to whom Regulation 4 applies shall be provided with an oral translation or summary of any</p>

translation or oral summary does not prejudice the fairness of the proceedings.	recognisance he or she is required to enter into or any committal or remand warrant by which he or she is deprived of liberty.
---	--

We are very concerned that the thrust of the Directive is being changed in this way and that untrained, untested interpreters will be expected to do sight translations, or even more alarming, summaries, when they have no training in how to carry out these tasks.

The right to challenge a decision not to provide translation or to complain about the quality of a translation is not addressed at all in SI565:

3.5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.	Not addressed
--	---------------

While the Directive allows for a waiver for translation, SI565 makes no mention of how waivers will be documented by the Courts Service.

Transposition of the Directive into Irish Law – SI564 (Garda)

Overall, Directive 564 for the Garda is more detailed than SI565 for the courts. We welcome Article 4(2) in particular, which states ‘In case of doubt it shall be presumed that interpretation is required.’ Article 5(a) provides that the arrested person will also be entitled to an interpreter during any meeting or communication with his or her solicitor. Provision is made for the translation of charge sheets, recognisances and arrest warrants, but the inclusion of the phrase ‘as soon as practicable’ could mean that the arrested person has to wait days or weeks to actually see the translated documents.

Once again, there is a problem with the response to Article 2.5 on the right to challenge a decision not to provide an interpreter or to complain about the quality of interpreting. Under the provisions of SI564, detainees can complain to the member in charge in the garda station and notes have to be made in the custody record. The solution offered to deal with the quality issue is to provide a replacement interpreter (which could of course have implications in relation to the length of time a person can be detained):

2.5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality	<p><i>Quality of Interpretation</i></p> <p>7. (1) An arrested person may make a complaint about the quality of the interpretation provided.</p> <p>(2) Where a complaint is made, the member in charge shall investigate the matter and take such steps as he or she considers appropriate in the circumstances including, where appropriate and practicable, arranging to replace the interpreter. In deciding what steps to take he or she</p>
--	---

of the interpretation is not sufficient to safeguard the fairness of the proceedings.

may consult, where appropriate, with other members, the solicitor for the arrested person and the interpreter.
(3) The member in charge shall note in the custody record the making of such a complaint and the actions taken by him or her on foot of it.

The right to challenge a decision finding that there is no need for the translation of documents or to complain about the quality of a translation is not addressed. In addition, there is no mention of waivers to translation and how they would be documented.

Conclusion

The Irish Translators' and Interpreters' Association saw Directive 2010/64/EU as an opportunity to improve standards in legal interpreting and translation. This could have been done by, as the Directive suggests, introducing concrete measures to improve quality. Instead, it would appear that the Courts Service and the Garda have decided to continue with an inadequate system where interpreters and translators require no qualification in the field. It is impossible for untrained interpreters to understand legal language, the abbreviations and shortcuts employed by lawyers and judges, and to interpret this information into another language. We believe that the current system of provision is unacceptable and if the authorities were to commission some research such as an analysis of recordings, they would realise that the ability to speak English and another language is no guarantee of competent interpreting. Interpreters have to be trained and tested to ensure they can carry out the task they are paid to do. The Courts Service, Garda and Department of Justice have to take responsibility. Our association would be happy to work with all stakeholders to bring about change.

Table comparing Directive 2010/64/EU and Statutory Instrument 565 of 2013 (Courts)

Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings	Statutory Instrument 565 of 2013 European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013. (Courts)
<p style="text-align: center;"><i>Article 2</i></p> <p style="text-align: center;">Right to interpretation</p> <p>1. Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.</p>	<p><i>General</i></p> <p>3. A person— (a) who appears before a court either charged with an offence or who, having been convicted of an offence, is appealing against that conviction or the penalty imposed on conviction, and (b) who does not speak or who does not understand the English language shall, where the proceedings are being conducted in the English language, have the right to the assistance, at no cost, of an interpreter as set out in these Regulations and to the translation of the documents specified in these Regulations</p> <p><i>Court</i></p> <p>4. Where, in proceedings which are being conducted in the English language, it appears to the Court that the person before it does not speak or understand the English language sufficiently to enable the person to participate fully in the proceedings and thereby effectively exercise his or her right to a fair trial, the Court shall order the attendance of an interpreter at all hearings.</p>
<p>2. Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.</p>	<p>Not addressed. However, there is a system in place whereby the Legal Aid Board can provide payment to interpreters who work for lawyers.</p>
<p>3. The right to interpretation under paragraphs 1 and 2 includes appropriate assistance for persons with hearing or speech impediments.</p>	<p><i>Persons with hearing or speech impediments</i></p> <p>9. Where in any proceedings it appears to a Court that the person before it has a hearing or speech impediment which affects that person's ability to participate fully in the proceedings and thereby effectively exercise his or her right to a fair trial, the Court shall order the attendance of an interpreter or other appropriate assistance at all hearings.</p>
<p>4. Member States shall ensure that a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter.</p>	<p>Not addressed – to our knowledge there is no procedure or mechanism in place; individual judges decide.</p>
<p>5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.</p>	<p>Not addressed - the lack of a mechanism to appeal a decision that an interpreter or a translation is not needed is a key problem in the transposition of the directive</p>

<p>Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings</p>	<p>Statutory Instrument 565 of 2013 European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013. (Courts)</p>
<p>6. Where appropriate, communication technology such as videoconferencing, telephone or the Internet may be used, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings</p>	<p>Not addressed despite the use of video remote interpreting in Cloverhill courts.</p>
<p>7. In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide persons subject to such proceedings who do not speak or understand the language of the proceedings with interpretation in accordance with this Article.</p>	<p><i>Proceedings for the execution of a European arrest warrant</i> 10. Notwithstanding the provisions of the European Arrest Warrant Act 2003 (as amended), Parts I, II and III of these Regulations shall apply with any necessary modifications in proceedings for the execution of a European arrest warrant.</p>
<p>8. Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.</p>	<p><i>Quality of Interpretation</i> 7. Where the Court, of its own motion or on application by any of the parties to the hearing, considers that the interpretation being provided is not of such a quality as to ensure that the person before it can effectively exercise his or her right to a fair trial, it may direct that the interpreter be replaced.</p>
<p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Right to translation of essential documents</p> <p>1. Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.</p>	<p><i>Translation of documents</i> 8. (1) A person to whom Regulation 4 applies shall be provided with an oral translation or summary of any recognisance he or she is required to enter into or any committal or remand warrant by which he or she is deprived of liberty. (2) A Court may direct, where it considers it to be essential in the interests of justice, that a written translation of a document mentioned in (1) above is also provided to the person as soon as is practicable— (a) in the case of a recognisance, by the Courts Service, and (b) in the case of a committal or remand warrant, by the Governor of the prison to which the person has been committed or remanded.</p>
<p>2. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.</p>	<p>Recognisances, committal and remand warrants included in 8 above</p>
<p>3. The competent authorities shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect.</p>	<p>Not addressed</p>
<p>4. There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.</p>	<p>Not addressed</p>
<p>5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons</p>	<p>Not addressed</p>

<p>Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings</p>	<p>Statutory Instrument 565 of 2013 European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013. (Courts)</p>
<p>have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.</p>	
<p>6. In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand the language in which the European arrest warrant is drawn up, or into which it has been translated by the issuing Member State, with a written translation of that document.</p>	<p><i>Proceedings for the execution of a European arrest warrant</i> 10. Notwithstanding the provisions of the European Arrest Warrant Act 2003 (as amended), Parts I, II and III of these Regulations shall apply with any necessary modifications in proceedings for the execution of a European arrest warrant.</p>
<p>7. As an exception to the general rules established in paragraphs 1, 2, 3 and 6, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.</p>	<p><i>Translation of documents</i> 8. (1) A person to whom Regulation 4 applies shall be provided with an oral translation or summary of any recognisance he or she is required to enter into or any committal or remand warrant by which he or she is deprived of liberty.</p>
<p>8. Any waiver of the right to translation of documents referred to in this Article shall be subject to the requirements that suspected or accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.</p>	<p>Not addressed</p>
<p>9. Translation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.</p>	<p>Not addressed</p>
<p style="text-align: center;"><i>Article 4</i></p> <p style="text-align: center;">Costs of interpretation and translation</p> <p>Member States shall meet the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings.</p>	<p><i>Courts Service</i> 5. Where a Court orders the attendance of an interpreter, the Courts Service shall arrange for the attendance of the interpreter and shall bear the cost of such attendance.</p> <p>Article 3 (b) covers ‘the right to the assistance, at no cost, of an interpreter as set out in these Regulations and to the translation of the documents specified in these Regulations’ but does not indicate who will pay for translation. Will the Courts Service cover this cost?</p>
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Quality of the interpretation and translation</p> <p>1. Member States shall take concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9).</p>	<p><i>Quality of Interpretation</i> 7. Where the Court, of its own motion or on application by any of the parties to the hearing, considers that the interpretation being provided is not of such a quality as to ensure that the person before it can effectively exercise his or her right to a fair trial, it may direct that the interpreter be replaced.</p> <p>What about the quality of translation?</p>

<p>Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings</p>	<p>Statutory Instrument 565 of 2013 European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013. (Courts)</p>
<p>2. In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities.</p>	<p>No mention of a register of independent translators and interpreters who are appropriately qualified</p>
<p>3. Member States shall ensure that interpreters and translators be required to observe confidentiality regarding interpretation and translation provided under this Directive</p>	<p><i>Role of Interpreter</i> 6. The role of the interpreter and the manner in which it is carried out (sic) in each case shall be as directed by the Court.</p>
<p style="text-align: center;"><i>Article 6</i></p> <p style="text-align: center;">Training</p> <p>Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.</p>	<p>Not addressed</p>
<p style="text-align: center;"><i>Article 7</i></p> <p style="text-align: center;">Record-keeping</p> <p>Member States shall ensure that when a suspected or accused person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter pursuant to Article 2, when an oral translation or oral summary of essential documents has been provided in the presence of such an authority pursuant to Article 3(7), or when a person has waived the right to translation pursuant to Article 3(8), it will be noted that these events have occurred, using the recording procedure in accordance with the law of the Member State concerned.</p>	<p>Not addressed</p>

Table comparing Directive 2010/64/EU and Statutory Instrument 564 of 2013 (Garda)

Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings	Statutory Instrument 564 of 2013 – European Communities Act (Interpretation and Translation for Persons In Custody in Garda Síochána Stations) Regulations, 2013
<p style="text-align: center;"><i>Article 2</i></p> <p style="text-align: center;">Right to interpretation</p> <p>1. Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.</p>	<p><i>General</i></p> <p>3. An arrested person, other than a person who is being dealt with through the medium of the Irish language, who does not speak or who does not understand the English language shall have the right while in custody to the assistance, at no cost, of an interpreter and to the translation, at no cost, of the documents specified in these Regulations.</p>
<p>2. Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.</p>	<p><i>Assistance of the Interpreter</i></p> <p>5. Where an interpreter is provided, the arrested person shall be entitled to the assistance of the interpreter—</p> <p>(a) during any meeting or communication with his or her solicitor, and</p> <p>(b) during any interview.</p>
<p>3. The right to interpretation under paragraphs 1 and 2 includes appropriate assistance for persons with hearing or speech impediments.</p>	<p><i>Persons with hearing or speech impediments</i></p> <p>12. Without prejudice to the provisions of any other enactment, where an arrested person is deaf or there is doubt about his or her hearing ability or where the person suffers from a speech impediment which significantly affects his or her ability to be understood, the member in charge shall make appropriate arrangements to take account of the person's circumstances.</p>
<p>4. Member States shall ensure that a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter.</p>	<p><i>Member in charge</i></p> <p>4. (1) Where it appears to the member in charge, or the member in charge is made aware, that an arrested person may require interpretation while in custody, the member in charge shall take such steps as are reasonable in all the circumstances to verify if the person requires the assistance of an interpreter.</p> <p>(2) In deciding whether the assistance of an interpreter is required, the member in charge shall consider whether interpretation is necessary to ensure that the arrested person knows the offence or other matter in respect of which he or she has been arrested, will be able to communicate effectively with his or her solicitor and will be able to appreciate the significance of questions put to him or her or of his or her answers during interview. In case of doubt it shall be presumed that interpretation is required.</p> <p>(3) Where the member in charge decides that the assistance of an interpreter is required, the member in charge shall arrange, without delay, for the attendance of an interpreter at the station and shall record this in the custody record.</p> <p>(4) Where the member in charge decides that the assistance of an interpreter is not required, the member in charge shall inform the arrested person of this and the</p>

<p>Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings</p>	<p>Statutory Instrument 564 of 2013 – European Communities Act (Interpretation and Translation for Persons In Custody in Garda Síochána Stations) Regulations, 2013</p>
	<p>reasons for the decision. This information and any response made by the arrested person shall be recorded in the custody record.</p>
<p>5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.</p>	<p><i>Quality of Interpretation</i> 7. (1) An arrested person may make a complaint about the quality of the interpretation provided. (2) Where a complaint is made, the member in charge shall investigate the matter and take such steps as he or she considers appropriate in the circumstances including, where appropriate and practicable, arranging to replace the interpreter. In deciding what steps to take he or she may consult, where appropriate, with other members, the solicitor for the arrested person and the interpreter. (3) The member in charge shall note in the custody record the making of such a complaint and the actions taken by him or her on foot of it. No mention of the right to challenge a decision finding that there is no need for interpretation</p>
<p>6. Where appropriate, communication technology such as videoconferencing, telephone or the Internet may be used, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings</p>	<p><i>Remote interpretation</i> 6. Interpretation may, in appropriate circumstances, be provided by telephone or electronic means of communication where the member in charge considers that, in all the circumstances, the arrested person is not disadvantaged by the interpreter not being physically present at the station.</p>
<p>7. In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide persons subject to such proceedings who do not speak or understand the language of the proceedings with interpretation in accordance with this Article.</p>	<p>Not addressed, although there is a mention of the translation of arrest warrants</p>
<p>8. Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.</p>	<p>Not addressed</p>
<p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Right to translation of essential documents</p> <p>1. Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.</p>	<p><i>Translation of charge sheet</i> 8. Where an arrested person who has had the assistance of an interpreter while in custody is charged with an offence, a copy of the charge sheet containing particulars of the offence translated into the language in which interpretation was provided shall be given to the arrested person as soon as practicable. <i>Translation of recognisance</i> 9. Where an arrested person who has had the assistance of an interpreter while in custody is released from the station on bail, a copy of the recognisance entered into, translated into the language in which interpretation was provided, shall be given to the arrested person as soon as practicable. <i>Translation of arrest warrant</i></p>

<p>Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings</p>	<p>Statutory Instrument 564 of 2013 – European Communities Act (Interpretation and Translation for Persons In Custody in Garda Síochána Stations) Regulations, 2013</p>
	<p>10. An arrested person who was arrested on foot of an arrest warrant and who has the assistance of an interpreter while in custody shall be given a copy of the arrest warrant translated into the language in which interpretation is provided as soon as practicable.</p> <p><i>Oral translation</i></p> <p>11. Pending the provision of the written translation of the documents specified in Regulations 8, 9 and 10, an oral translation or summary of the document concerned should be provided to the arrested person as soon as possible.</p>
<p>2. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.</p>	<p>Charge sheet, recognisance, arrest warrant What about book of evidence?</p>
<p>3. The competent authorities shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect.</p>	<p>Not addressed</p>
<p>4. There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.</p>	<p>Not addressed</p>
<p>5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.</p>	<p>Not addressed</p>
<p>6. In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand the language in which the European arrest warrant is drawn up, or into which it has been translated by the issuing Member State, with a written translation of that document.</p>	<p>While arrest warrants are mentioned, there is no specific mention of European arrest warrants</p>
<p>7. As an exception to the general rules established in paragraphs 1, 2, 3 and 6, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.</p>	<p><i>Oral translation</i></p> <p>11. Pending the provision of the written translation of the documents specified in Regulations 8, 9 and 10, an oral translation or summary of the document concerned should be provided to the arrested person as soon as possible.</p>
<p>8. Any waiver of the right to translation of documents referred to in this Article shall be subject to the requirements that suspected or accused persons have received prior legal advice or have otherwise obtained full</p>	<p>Not addressed</p>

<p>Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings</p>	<p>Statutory Instrument 564 of 2013 – European Communities Act (Interpretation and Translation for Persons In Custody in Garda Síochána Stations) Regulations, 2013</p>
<p>knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.</p>	
<p>9. Translation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.</p>	<p>Not addressed</p>
<p style="text-align: center;"><i>Article 4</i></p> <p style="text-align: center;">Costs of interpretation and translation</p> <p>Member States shall meet the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings.</p>	<p><i>General</i></p> <p>3. An arrested person, other than a person who is being dealt with through the medium of the Irish language, who does not speak or who does not understand the English language shall have the right while in custody to the assistance, at no cost, of an interpreter and to the translation, at no cost, of the documents specified in these Regulations.</p>
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Quality of the interpretation and translation</p> <p>1. Member States shall take concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9).</p>	<p>Not addressed as such.</p> <p>Article 7 Quality of Interpretation focuses on complaints and mentions replacement of the interpreter</p>
<p>2. In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities.</p>	<p>Not addressed</p>
<p>3. Member States shall ensure that interpreters and translators be required to observe confidentiality regarding interpretation and translation provided under this Directive.</p>	<p>Not addressed</p>
<p style="text-align: center;"><i>Article 6</i></p> <p style="text-align: center;">Training</p> <p>Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.</p>	<p>Not applicable to the Garda – although it would be a very good idea to provide training in how to work with interpreters, and how to assess levels of fluency in English.</p>
<p style="text-align: center;"><i>Article 7</i></p> <p style="text-align: center;">Record-keeping</p>	<p>(3) Where the member in charge decides that the assistance of an interpreter is required, the member in charge shall arrange, without delay, for the attendance of</p>

<p>Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings</p>	<p>Statutory Instrument 564 of 2013 – European Communities Act (Interpretation and Translation for Persons In Custody in Garda Síochána Stations) Regulations, 2013</p>
<p>Member States shall ensure that when a suspected or accused person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter pursuant to Article 2, when an oral translation or oral summary of essential documents has been provided in the presence of such an authority pursuant to Article 3(7), or when a person has waived the right to translation pursuant to Article 3(8), it will be noted that these events have occurred, using the recording procedure in accordance with the law of the Member State concerned.</p>	<p>an interpreter at the station and shall record this in the custody record.</p> <p>(4) Where the member in charge decides that the assistance of an interpreter is not required, the member in charge shall inform the arrested person of this and the reasons for the decision. This information and any response made by the arrested person shall be recorded in the custody record.</p> <p>7(3) The member in charge shall note in the custody record the making of such a complaint and the actions taken by him or her on foot of it.</p> <p>But no mention of oral translation/oral summary of essential documents or that a person has waived the right to translation</p>

Full text of SI565 of 2013 (Courts)

STATUTORY INSTRUMENTS.

S.I. No. 565 of 2013

EUROPEAN COMMUNITIES ACT 1972 (INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS) REGULATIONS, 2013.

EUROPEAN COMMUNITIES ACT 1972 (INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS) REGULATIONS, 2013.

I, ALAN SHATTER, Minister for Justice and Equality, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving effect to Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings¹, hereby make the following regulation:

Title

1. These Regulations may be cited as the European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013.

PART I

Interpretation

2. In these Regulations—

“court” means a court exercising criminal jurisdiction;

“Courts Service” means the body established under Section 4 of the Courts Service Act 1998.

General

3. A person—

(a) who appears before a court either charged with an offence or who, having been convicted of an offence, is appealing against that conviction or the penalty imposed on conviction, and

(b) who does not speak or who does not understand the English language

shall, where the proceedings are being conducted in the English language, have the right to the assistance, at no cost, of an interpreter as set out in these Regulations and to the translation of the documents specified in these Regulations.

Court

4. Where, in proceedings which are being conducted in the English language, it appears to the Court that the person before it does not speak or understand the English language sufficiently to enable the person to participate fully in the proceedings and thereby effectively exercise his or her right to a fair trial, the Court shall order the attendance of an interpreter at all hearings.

Courts Service

5. Where a Court orders the attendance of an interpreter, the Courts Service shall arrange for the attendance of the interpreter and shall bear the cost of such attendance.

Role of Interpreter

6. The role of the interpreter and the manner in which it is carried out in each case shall be as directed by the Court.

Quality of Interpretation

7. Where the Court, of its own motion or on application by any of the parties to the hearing, considers that the interpretation being provided is not of such a quality as to ensure that the person before it can effectively exercise his or her right to a fair trial, it may direct that the interpreter be replaced.

PART II

Translation of documents

8. (1) A person to whom Regulation 4 applies shall be provided with an oral translation or summary of any recognisance he or she is required to enter into or any committal or remand warrant by which he or she is deprived of liberty.

(2) A Court may direct, where it considers it to be essential in the interests of justice, that a written translation of a document mentioned in (1) above is also provided to the person as soon as is practicable—

(a) in the case of a recognisance, by the Courts Service, and
(b) in the case of a committal or remand warrant, by the Governor of the prison to which the person has been committed or remanded.

PART III

Persons with hearing or speech impediments

9. Where in any proceedings it appears to a Court that the person before it has a hearing or speech impediment which affects that person's ability to participate fully in the proceedings and thereby effectively exercise his or her right to a fair trial, the Court shall order the attendance of an interpreter or other appropriate assistance at all hearings.

PART IV

Proceedings for the execution of a European arrest warrant

10. Notwithstanding the provisions of the European Arrest Warrant Act 2003 (as amended), Parts I, II and III of these Regulations shall apply with any necessary modifications in proceedings for the execution of a European arrest warrant.

GIVEN under my Official Seal,

20 December 2013.

ALAN SHATTER,

Minister for Justice and Equality

Full text of SI564 2013 (Garda)

S.I. No. 564 of 2013

EUROPEAN COMMUNITIES ACT 1972 (INTERPRETATION AND TRANSLATION FOR PERSONS IN CUSTODY IN GARDA SÍOCHÁNA STATIONS) REGULATIONS, 2013.

I, ALAN SHATTER, Minister for Justice and Equality, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving effect to Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, hereby make the following regulations:

Title

1. These Regulations may be cited as the European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013.

PART I

Interpretation.

2. In these Regulations—

“arrested person” means a person who is taken on arrest to, or arrested in, a station;

“custody” means custody in a Garda Síochána station;

“custody record” means a record kept under Regulation 6 of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987;

“member” means a member of the Garda Síochána;

“member in charge” has the meaning assigned to it by Regulation 4(1) of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987;

“station” means a Garda Síochána station.

General

3. An arrested person, other than a person who is being dealt with through the medium of the Irish language, who does not speak or who does not understand the English language shall have the right while in custody to the assistance, at no cost, of an interpreter and to the translation, at no cost, of the documents specified in these Regulations.

Member in charge

4. (1) Where it appears to the member in charge, or the member in charge is made aware, that an arrested person may require interpretation while in custody, the member in charge shall take such steps as are reasonable in all the circumstances to verify if the person requires the assistance of an interpreter.

(2) In deciding whether the assistance of an interpreter is required, the member in charge shall consider whether interpretation is necessary to ensure that the arrested person knows the offence or other matter in respect of which he or she has been arrested, will be able to communicate effectively with his or her solicitor and will be able to appreciate the significance of questions put to him or her or of his or her answers during interview. In case of doubt it shall be presumed that interpretation is required.

(3) Where the member in charge decides that the assistance of an interpreter is required, the member in charge shall arrange, without delay, for the attendance of an interpreter at the station and shall record this in the custody record.

(4) Where the member in charge decides that the assistance of an interpreter is not required, the member in charge shall inform the arrested person of this and the reasons for the decision. This information and any response made by the arrested person shall be recorded in the custody record.

Assistance of the Interpreter

5. Where an interpreter is provided, the arrested person shall be entitled to the assistance of the interpreter—

(a) during any meeting or communication with his or her solicitor, and

(b) during any interview.

Remote interpretation

6. Interpretation may, in appropriate circumstances, be provided by telephone or electronic means of communication where the member in charge considers that, in all the circumstances, the arrested person is not disadvantaged by the interpreter not being physically present at the station.

Quality of Interpretation

7. (1) An arrested person may make a complaint about the quality of the interpretation provided.

(2) Where a complaint is made, the member in charge shall investigate the matter and take such steps as he or she considers appropriate in the circumstances including, where appropriate and practicable, arranging to replace the interpreter. In deciding what steps to take he or she may consult, where appropriate, with other members, the solicitor for the arrested person and the interpreter.

(3) The member in charge shall note in the custody record the making of such a complaint and the actions taken by him or her on foot of it.

Translation of charge sheet

8. Where an arrested person who has had the assistance of an interpreter while in custody is charged with an offence, a copy of the charge sheet containing particulars of the offence translated into the language in which interpretation was provided shall be given to the arrested person as soon as practicable.

Translation of recognisance

9. Where an arrested person who has had the assistance of an interpreter while in custody is released from the station on bail, a copy of the recognisance entered into, translated into the language in which interpretation was provided, shall be given to the arrested person as soon as practicable.

Translation of arrest warrant

10. An arrested person who was arrested on foot of an arrest warrant and who has the assistance of an interpreter while in custody shall be given a copy of the arrest warrant translated into the language in which interpretation is provided as soon as practicable.

Oral translation

11. Pending the provision of the written translation of the documents specified in Regulations 8, 9 and 10, an oral translation or summary of the document concerned should be provided to the arrested person as soon as possible.

Persons with hearing or speech impediments

12. Without prejudice to the provisions of any other enactment, where an arrested person is deaf or there is doubt about his or her hearing ability or where the person suffers from a speech impediment which significantly affects his or her ability to be understood, the member in charge shall make appropriate arrangements to take account of the person's circumstances.

GIVEN under my Official Seal,

20 December 2013.

ALAN SHATTER,

Minister for Justice and Equality.

Author: Mary Phelan, Irish Translators' and Interpreters' Association