

STRENGTHENING THE GUARANTEES OF JUSTICE FOR CITIZENS



WHAT ARE THE AIMS OF THIS BILL?

1. This Bill has the main aim of transposing into Maltese law Directive 2013/48/EU (European Parliament and Council dated 22nd October 2013) relating to the right of access to a lawyer in criminal procedures and procedures relating to European arrest warrants and to the right of third parties to be informed on measures restricting the liberty of a person and to communicate with third parties and consular authorities during the time of restriction of liberty.
2. This Directive incorporates a number of rights appertaining to persons under arrest. Some of those rights are already obtaining in our Criminal Code (like for instance, the right of an arrested person to obtain medical assistance from a doctor of his or her choice and the right to have a relative or a friend informed of a person's arrest). However, the Directive contains other rights which need to be incorporated in the Criminal Code for a correct implementation of the Directive.
3. The Directive and the Bill tackle the rights of three categories of persons:
 - Persons who are under arrest but have not yet been brought in front of the Courts or any other judicial authority;
 - Persons who have been accused of a criminal offence;
 - Persons who are subject to European Arrest Warrant procedures.
4. Those persons would have the following procedural rights:
 - The right of access to a lawyer;
 - That a third party be informed of their restriction of liberty;
 - The right to communicate with a third party or with consular authorities during the period of their restriction of liberty.

5. The most important innovation of this Bill is the new right of access to a lawyer from the moment of arrest in a manner which allows the arrested person to exercise his or her defence rights in a practical and effective manner. This right applies both during questioning by the Police authorities as well as when the Police is making other investigative acts such as identity parades, witness confrontations and reconstruction of the scene of the crime;

6. In practice the right of access to a lawyer means the following:

- Before the start of an interrogation, the suspected person must be informed about the alleged crime;
- The right that a suspected person meets his or her lawyer and communicates with his or her lawyer in private;
- The right that his or her lawyer be present and participates in an effective manner during the interrogation. The participation of a lawyer during interrogation can be regulated.

This right, for instance, cannot be interpreted to mean that a lawyer can jeopardise an investigation or suggest replies and, save for exceptional circumstances, any question or comment by a lawyer must be made after police questioning or questioning from the part of the authority which is leading the interrogation.

7. The Bill, in full adherence to the Directive, provides also for certain exceptions and limitations in so far as this right is concerned. Such as, in exceptional circumstances, the rights granted in the Bill can be limited or excluded where needed in order to safeguard life, liberty or physical integrity of a person or when an immediate action is needed by an investigative authority in order to safeguard criminal procedures from serious jeopardy. These derogations are particularly relevant in cases related, but not limited to, terrorism and organised crime. These derogations must be authorised only by a Magistrate by means of a decision which would contain reasons and that an appeal can be filed on that decision to the Court of Criminal Appeal.

8. A suspected or accused person can also renounce to the right of presence of a lawyer during interrogation or during other investigative acts. However, this renunciation must be voluntary and unequivocal and must be registered along with a reference to the circumstances within which the renunciation was given. That renunciation can be retracted at any stage – however the retraction does not apply retroactively;
9. In the case of persons subjected to European Arrest Warrant procedures, they have the right to be assisted by a lawyer in Malta or in any other Member State which would be asking for their arrest as per Directive.
10. Any person who feels that the rights afforded under the Directive and this Bill are not being safeguarded has the right to seek a remedy. The request should be filed, without delay, in front of that Court of Criminal Judicature which would be seized of the case.
11. Particular circumstances or factors relating to vulnerable persons should also be taken in consideration.
12. The Bill also seeks to implement the non-regression rule contemplated by the Directive. The rule provides that the Bill cannot be interpreted in a way which decreases the level of rights which suspected or accused persons enjoy today in the case that the present scenario affords a better level of protection.
13. The Bill also incorporates a number of recommendations done by the Final Report of the Commission for Holistic Reform in the Justice sector and therefore it represents another step forward for the Justice Reform.

A BILL ENTITLED

AN ACT to provide for legal assistance during detention and other rights to arrested persons.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

Short title and commencement.

Cap. 9.

1. (1) The short title of this Act is the Criminal Code (Amendment No. 2) Act, 2016, and this Act shall be read and construed as one with the Criminal Code, hereinafter referred to as “the Code”.
- (2) This Act shall come into force on such date as the Minister responsible for justice may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes of this Act.
- (3) A notice under sub-article (2) may make such transitory provisions as appear to the Minister to be necessary or expedient in connection with the provisions thereby brought into force and may also delete the words “where possible” in articles 355AUA(8) (c) and (d), and in Schedule E of the Criminal Code.

Substitution of the heading of Sub-title IX of Title I of Part I of Book Second of the Code.

- 2.** The heading of Sub-title IX of Title I of Part I of Book Second of the Code shall be substituted by the following:

“Sub-title IX

Right to Legal Assistance and Other Rights during Detention”.

Substitution of article 355AS of the Code.

- 3.** Article 355AS of the Code shall be substituted by the following:
“Right to consult a medical practitioner. 355AS.

- (1) The suspect or accused person shall, at his request, be allowed to consult a medical practitioner of his choice and, if such medical practitioner is not readily available, any other medical practitioner.
- (2) Immediately upon arrest and without undue delay, the Executive Police or any other law enforcement or judicial authority shall inform the suspect or an arrested person of such a right.
- (3) A record shall be kept that the suspect or accused person has been duly informed of such right by the Executive Police or by any other law enforcement or judicial authority.
- (4) The words “the suspect” and “the accused person” in this article have the same meaning assigned to them by article 355AT(2).”.

Substitution of articles 355AT and 355AU of the Code.

4. Articles 355AT and 355AU of the Code shall be substituted by the following:

“Subject matter of this Sub-title. 355AT.

- (1) This Sub-title transposes the provisions of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, published in the Official Journal of the European Union on 6 November 2013 (L 294/1).
- (2) This Sub-title lays down minimum rules concerning the rights of:
 - (a) the suspect (hereinafter in this Sub-title referred to as “the suspect”), that is, a person who is detained or arrested by the Executive Police or any other law enforcement or judicial authority where such person has not been charged before a court of justice of criminal jurisdiction and who is being questioned by the Executive Police or any other authority as aforesaid in relation to any criminal offence;
 - (b) a person charged or accused of having committed a criminal offence (hereinafter referred to in this Sub-title as “the accused person”);
 - (c) a person subject to proceedings pursuant to Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States of 13 June 2002 published in the Official Journal on 18 July 2002 (L. 190/1), hereinafter referred to as “the European arrest warrant proceedings”.
- (3) The persons mentioned in sub-article (2) shall enjoy the following rights:

- (a) to have access to a lawyer;
 - (b) to have a third party informed of the deprivation of their liberty; and
 - (c) to communicate with third persons and with consular authorities whilst deprived of their liberty.
- (4) For the purpose of this Sub-title, the expression “lawyer” means an advocate or a legal procurator who is authorised by law to exercise that respective profession in terms of law.

Scope of this Sub-title. HĠ355AU.

- (1) This Sub-title applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the Executive Police or by any other law enforcement or judicial authority, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty.
- (2) This Sub-title applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or the accused person has committed an offence, including, where applicable, sentencing and the resolution of any appeal.
- (3) This Sub-title applies also to persons subject to European arrest warrant proceedings in terms of Framework Decision 2002/584/JHA referred to in article 355AT(2)(c) (hereinafter referred to as “the requested persons”) from the time of their arrest in accordance with article 355AUJ.
- (4) This Sub-title also applies, under the same conditions as provided for in sub-article (1), to persons other than the suspect or the accused person who, in the course of questioning by the Executive Police or by another law enforcement or judicial authority, become suspects or accused persons.

- (5) Without prejudice to the right to a fair trial, in respect of minor offences -
- (a) where the law provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or
 - (b) where deprivation of liberty cannot be imposed as a sanction, this Sub-title shall only apply to the proceedings before a court having jurisdiction in criminal matters:

Provided that, in any event, this Sub-title shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.

The right of access to a lawyer in criminal proceedings. 355AUA.

- (1) The suspect or the accused person shall have the right of access to a lawyer in such time and in such a manner so as to allow him to exercise his rights of defence practically and effectively.
- (2) The suspect or the accused person shall have access to a lawyer without undue delay. In any event, the suspect or the accused person shall have access to a lawyer from whichever of the following points in time is the earliest:
 - (a) before they are questioned by the Executive Police or by another law enforcement or judicial authority in respect of the commission of a criminal offence;
 - (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with sub-article (8)(e);
 - (c) without undue delay after deprivation of liberty;

- (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.
- (3) A request for legal assistance shall be recorded in the custody record together with the time when it was made unless the request is made at a time when the person who makes it is at court after being charged with an offence in which case the request need not be so recorded.
- (4) Once a request for legal assistance is made, the suspect or the accused person shall be provided with a list of lawyers drawn up by the Chamber of Advocates and the Chamber of Legal Procurators and submitted on a yearly basis to the Executive Police and to any other law enforcement and judicial authority, from which the suspect or the accused person may select a lawyer of his own choice. Alternatively, the suspect or the accused person may elect to be assisted by the Advocate for Legal Aid in which case the Advocate for Legal Aid shall assign a lawyer for this purpose.
- (5) Without prejudice to the provisions of article 355AUI(3), any police officer who indicates or attempts to indicate to a person detained the advocate or legal procurator who should be engaged during the detention of such person, shall be guilty of an offence and shall be punishable with a fine (ammenda) and this without prejudice to any disciplinary proceedings that may be taken against him as a consequence of a finding of guilt in respect of such an offence or in lieu of prosecution for such an offence in accordance with any disciplinary regulations in force from time to time.
- (6) Where the person detained chooses not to seek legal assistance the Executive Police, investigating officer or any other law enforcement or judicial investigating officer shall record this fact in writing in the presence of two witnesses and thereupon questioning may proceed immediately. It shall

not be admissible for the prosecution to comment during any proceedings before a court of justice of criminal jurisdiction on the fact that the suspect or the accused person did not avail himself of the right to legal assistance in the course of his detention under arrest.

- (7) Where in any proceedings before a court of justice of criminal jurisdiction against a person for an offence, evidence is given that the suspect or the accused person -
 - (a) at any time before he was charged with the offence, on being questioned by the Executive Police or by any other law enforcement or judicial authority trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or
 - (b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time the suspect or the accused person could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, no inference may be drawn from the suspect's or the accused person's failure to mention facts which may be considered as evidence of guilt or as amounting to corroboration of any evidence of guilt of the suspect or the person accused.
- (8) The right of access to a lawyer shall entail the following:
 - (a) the suspect or the accused person, if he has elected to exercise his right to legal assistance, and his lawyer, shall be informed of the alleged offence about which the suspect or the accused person is to be questioned. Such information shall be provided to the suspect or the accused person prior to the commencement of questioning, which time shall not be less than one hour before questioning starts;

- (b) the suspect or the accused person shall have the right to meet in private and communicate with the lawyer representing him, including prior to questioning by the police or by another law enforcement or judicial authority;
- (c) the suspect or the accused person shall have the right for his lawyer to be present and participate effectively when questioned. Such participation may be regulated in accordance with procedures which the Minister responsible for justice may by regulations establish, provided that such procedures shall not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using where possible audiovisual means in terms of paragraph
- (d) Provided that the right of the lawyer to participate effectively shall not be interpreted as including a right of the lawyer to hinder the questioning or to suggest replies or other reactions to the questioning and any questions or other remarks by the lawyer shall, except in exceptional circumstances, be made after the Executive Police or other investigating or judicial authority shall have declared that it has no further questions;
- (d) questioning, all answers given thereto and all the proceedings related to the questioning of the suspect or accused person, shall where possible be recorded by audio-visual means and in such case a copy of the recording shall be handed over to the suspect or the accused person following the conclusion of the questioning. Any such recording shall be admissible in evidence, unless the suspect or the accused person alleges and proves that the recording is not the original recording and that it has been tampered with. No transcription need be made of the recording when used in proceedings before any court of justice of criminal jurisdiction, nor need the suspect or the accused person sign any written statement made following the conclusion of the questioning once all the

questions and answers, if any, are recorded on audio-visual means;

- (e) the suspect or the accused person shall have the right for his lawyer to attend the following investigative or evidence-gathering acts if the suspect or accused person is required or permitted to attend the act concerned:
 - (i) identity parades;
 - (ii) confrontations;
 - (iii) reconstructions of the scene of a offence.

- (9) General information to facilitate the briefing of a lawyer by suspects or accused persons shall be made available in terms of sub-article (4) or such other procedure as the Minister responsible for justice may by regulations establish.

- (10) Notwithstanding the provisions of this Sub-title concerning the mandatory presence of a lawyer, the Executive Police or any other law enforcement or judicial authority shall ensure that suspects or accused persons who are deprived of liberty shall be in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with article 355AUG.

- (11) In exceptional circumstances and only at the pre-trial stage, a temporary derogation may be made from the application of the right provided for in sub-article (2)(c) where the geographical remoteness of the suspect or the accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

- (12) In exceptional circumstances and only at the pre-trial stage, a temporary derogation from the application of the rights provided for in sub-article (8) may be made to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
 - (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.
- (13) For the purposes of this Sub-title, the expression “pre-trial stage” means the stage immediately prior to the filing of the bill of indictment in the Criminal Court or, as the case may be, before the Attorney General sends the record of proceedings to the Court of Magistrates as a Court of Criminal Judicature, in terms of article 370(3), for the person accused to be tried by that court.

Confidentiality. 355AUB.

- (1) The confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Sub-title shall be respected.
- (2) Such communication shall include meetings, correspondence, telephone conversations and any other form of communication permitted by law.

The right to have a third person informed of the deprivation of liberty. 355AUC. (1) Suspects or accused persons who are deprived of liberty shall be informed, without undue delay, by the Executive Police or by any other enforcement or judicial authority, that they have the right to have at least one person, such as a relative or an employer or any other person of their choice, nominated by them, informed of their deprivation of liberty without undue delay if they so wish, unless such other person is reasonably suspected of being involved in the offence being investigated. A record shall be kept of the manner in which the Executive Police or other law

enforcement or judicial authority concerned has discharged its duty under this article.

- (2) If the suspect or accused person is a child, at least one person having parental authority, tutorship, curatorship or guardianship in respect of the child shall be informed as soon as possible of the deprivation of liberty and of the reasons therefor, unless it would be contrary to the best interests of the child to do so, in which case another appropriate adult shall be informed. For the purposes of this article, a person below the age of eighteen years shall be considered to be a child.
- (3) In all cases, the details of the person mentioned in sub-article (1) or of the holder of parental authority, tutorship, curatorship or guardianship over the child mentioned in sub-article (2) as well as the day and time at which the information was given to such person or holder of parental or other authority as aforesaid, shall be entered in the detention record of the suspect or in the record of the proceedings of the person accused, as the case may be.
- (4) It shall be permissible to temporarily derogate from the application of the rights set out in sub-articles (1) and (2) where justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:
 - (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
 - (b) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised:

Provided that in any such case, the delay shall not be later than six hours from the time when the arrest was effected.

- (5) Where a derogation from the application of the right set out in sub-article (2) is made, the Executive Police or other law enforcement or judicial authority concerned shall ensure that an authority responsible for the protection or welfare of children, as designated from time to time by the Minister responsible for justice by order in the Gazette, is informed without undue delay of the deprivation of liberty of the child.

The right to communicate, with third persons, while deprived of liberty. 355AUD. (1) The suspect or the accused person who is deprived of liberty shall have the right to communicate without undue delay with at least one third person, such as a relative, friend or other person nominated by him.

- (2) A Magistrate may, following a written request from the Executive Police or any other law enforcement authority or from another authority other than a court exercising judicial functions, limit or defer the exercise of the right referred to in sub-article (1) in view of imperative requirements or proportionate operational requirements.

The right to communicate with consular authorities. 355AUE.

- (1) The suspect or the accused person who is a non-national and who is deprived of liberty shall have the right to have the consular authorities of his State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities, if he so wishes. However, where the suspect or accused person has two or more nationalities, he may choose which consular authorities, if any, are to be informed of the deprivation of liberty and with which he wishes to communicate.
- (2) Suspects or accused persons shall also have the right to be visited by their consular authorities, the right to converse and correspond with them and the right to have legal representation arranged for by their consular authorities,

subject to the agreement of those authorities and the wishes of the suspects or accused persons concerned.

- (3) The exercise of the rights laid down in this article may be regulated by such regulations to be made by the Minister responsible for justice or by such procedures as may be in force from time to time, provided that such regulations or procedures enable full effect to be given to the purposes for which these rights are intended.

General conditions for applying temporary derogations.355AUF.

- (1) Any temporary derogation under article 355AUA(11) or (12) or under article 355AUC(4) shall:
 - (a) be proportionate and not go beyond what is necessary;
 - (b) be strictly limited in time;
 - (c) not be based exclusively on the type or the seriousness of the alleged offence; and
 - (d) not prejudice the overall fairness of the proceedings.
- (2) Temporary derogations under article 355AUA(11) or (12) may be authorised only by a duly reasoned decision taken on a case-by-case basis by a Magistrate, which decision may be subject to appeal to the Court of Criminal Appeal as constituted under article 418 by application to be filed within two working days from when the decision is given. The Court of Criminal Appeal shall regulate its own procedure with regard to the determination of such an appeal. The filing of an appeal shall not prevent the execution of the decision of the Magistrate unless the Court of Criminal Appeal otherwise orders. The duly reasoned decision shall be recorded in the relative acts of the proceedings.
- (3) Temporary derogations under article 355AUC(4) may be authorised, only on a case-by-case basis, by a Magistrate.

Waiver. 355AUG.

- (1) Without prejudice to the provisions of this Sub-title requiring the mandatory presence or assistance of a lawyer, in relation to any waiver of a right as referred to in articles 355AUA and 355AUH:
 - (a) the suspect or accused person shall be provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it;
 - (b) the waiver shall be given voluntarily and unequivocally.
- (2) The waiver, which can be made in writing or orally, shall be noted as well as the circumstances under which the waiver was given, using any recording procedure permitted by law.
- (3) The suspect or accused person may revoke a waiver subsequently at any point during the criminal proceedings, and shall be informed about this possibility. Such a revocation shall have effect only from the moment it is made.

The right of access to a lawyer in European arrest warrant proceedings. 355AUH. (1) A requested person shall have the right of access to a lawyer upon arrest in Malta pursuant to a European arrest warrant.

- (2) With regard to the content of the right of access to a lawyer in Malta as the executing Member State, a requested person shall have the following rights in Malta:
 - (a) the right of access to a lawyer in such time and in such a manner as to allow the requested person to exercise his rights effectively and in any event without undue delay from deprivation of liberty;
 - (b) the right to meet and communicate with the lawyer representing him;

- (c) the right for his lawyer to be present and, in accordance with procedures established by law, to participate during a hearing of the requested person by the competent executing judicial authority in Malta. Where a lawyer participates during the hearing, this shall be noted in the records of the proceedings of the competent judicial authority in Malta.
- (3) The rights provided for in articles 355AUB, 355AUC, 355AUD, 355AUE, 355AUG, and, where a temporary derogation under article 355AUC(4) is applied, in article 355AUF, shall apply, mutatis mutandis, to European arrest warrant proceedings in Malta as the executing Member State.
- (4) The competent authority in Malta as the executing Member State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State, that is, a Member State of the European Union which has issued a European arrest warrant with a view to the arrest and surrender by Malta of a requested person. The role of that lawyer in the issuing Member State shall be to assist the lawyer in Malta, as the executing Member State, by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA.
- (5) Where a requested person wishes to exercise the right to appoint a lawyer in the issuing Member State and does not already have such a lawyer, the competent authority in Malta as the executing Member State shall promptly inform the competent authority in the issuing Member State.
- (6) The competent authority in Malta as the issuing Member State in European arrest warrant proceedings shall, without undue delay, upon a request from a competent authority in the executing Member State, provide the requested persons with information to facilitate their appointing a lawyer in Malta.

- (7) The right of a requested person to appoint a lawyer in the issuing Member State is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation on the executing judicial authority in Malta to decide, within those time-limits and the conditions defined under that Framework Decision, whether the person is to be surrendered.

Remedies. 355AUI.

- (1) The suspect or accused person in criminal proceedings, and the requested persons in European arrest warrant proceedings, shall be entitled to seek redress in the event of a breach of their rights under this Sub-title before the courts of criminal jurisdiction which may be seized of their case, or before a Magistrate. Such a claim for redress shall be filed promptly and the court seized with the claim shall have authority to grant such redress as it deems appropriate, which redress shall be granted without undue delay. There shall be a right of appeal from a decision to grant or to deny such redress to the Court of Criminal Appeal as constituted under article 418. The said appeal shall be made by application to be filed within eight working days from the decision and the Court of Criminal Appeal shall regulate its own procedure with regard to the hearing of such an appeal.
- (2) Without prejudice to the provisions of this Code related to the admissibility of evidence, the rights of the defence and the fairness of the proceedings shall be respected in all criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with article 355AUA(12).

Vulnerable persons. 355AUJ.

- (1) The Executive Police and any other law enforcement or judicial authority shall ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of the provisions of this Sub-title.
- (2) The Minister responsible for justice may make regulations to give better effect to the provisions of this article.
- (3) For the purposes of this Sub-title, the expression “vulnerable person” shall have the same meaning assigned to it by article 208AC(2).

Non-regression clause. 355AUK. Nothing in this Sub-title shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Constitution, the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights, or other relevant provisions of international or national law which are enforceable in the courts of Malta and which provide a higher level of protection.”.

Amendment to article 534AB of the Code.

- 5.** Immediately after paragraph (e) of article 534AB(1) of the Code there shall be added the following paragraphs:

“(f) the right to have a third party informed of the suspect’s or the accused person’s deprivation of liberty;

(g) the right to communicate with third persons and with consular authorities when the suspect or an arrested person is deprived of his liberty;

(h) the right to be allowed to consult a medical practitioner;

(i) should the suspect or arrested person be illiterate, the right to have the Letter of Rights read out and explained to him.”.

Amendment of article 658 of the Code.

- 6.** In article 658 of the Code, for the words “whether in writing or orally, may be received in evidence against the person” there shall be substituted the words “whether in writing, orally, by audiovisual means or by other means, may be received in evidence against or in favour of the person, as the case may be.”.

Amendment of article 659 of the Code.

- 7.** In sub-article (1) of article 649 of the Code, for the words “If a confession is reduced to writing” there shall be substituted the words “Where it is not possible to record a confession by audiovisual means in terms of article 355AUA(8)(e), if a confession is reduced to writing”.

Substitution of article 660 of the Code.

- 8.** Article 660 of the Code shall be substituted by the following:

“Confession to be produced in full. 660. It shall not be permissible to give in evidence only a part of an audiovisual recording or of a written or oral statement against the accused except in extraordinary circumstances which the court may allow.”.

Amendment of Schedule E to the Code.

- 9.** Schedule E to the Code shall be amended as follows:

(a) the six paragraphs under the heading “A. ASSISTANCE OF A LAWYER/ENTITLEMENT TO LEGAL AID” in Part I thereof shall be substituted by the following:

“You have the right to access a lawyer whilst in detention. Such right begins from the moment of your detention and before you are questioned.

You have the right to be provided with a list of advocates and a list of legal procurators from which you can choose one to assist you or to elect to be assisted by the Advocate for Legal Aid. In the latter case, legal assistance is free of charge. The police may not indicate to you the name of the lawyer you may engage during your arrest or detention. Not less than one hour before the commencement of questioning, you and your lawyer have the right to be informed of the alleged offence about which you will be questioned. Such information shall be provided to you prior to the commencement of questioning, which time shall not be less than one hour before questioning starts.

Upon detention, you have the right to meet in private and communicate with the lawyer representing you, including prior to questioning by the police.

You have the right for your lawyer to be present and participate effectively when questioned.

All questioning, all answers given thereto and all the proceedings related to the questioning of the suspect or accused person, are where possible to be recorded by audio-visual means, you have the right to be given a copy of the recording following the conclusion of the questioning.

You have the right for your lawyer to attend the following investigative or evidence-gathering acts:

- (i) identity parades;
- (ii) confrontations;
- (iii) reconstructions of the scene of an offence.

The confidentiality of your communication with your lawyer in the exercise of your right to access a lawyer shall be respected.

Upon arrest you are to be informed of your right to have at least one person, such as a relative, an employer or any other person of your choice informed of your deprivation of liberty.

If you are a child, that is, a person below the age of eighteen years, a person entitled to exercise parental authority, tutorship, curatorship or guardianship over you is informed of your arrest or detention and the reasons for such arrest or detention.”;

(b) the words “Such delay may not be more than six hours from the time of arrest.” in the second paragraph under the heading “F. INFORMING SOMEONE ELSE ABOUT YOUR ARREST OR DETENTION/INFORMING YOUR CONSULATE OR EMBASSY” in Part I thereof shall be deleted;

and

(c) the six paragraphs under the heading “B. ASSISTANCE OF A LAWYER” in Part II thereof shall be substituted by the following:

“You have the right to access a lawyer whilst in detention. Such right begins from the moment of your detention and before you are questioned.

You have the right to be provided with a list of advocates and a list of legal procurators from which you can choose one to assist you or to elect to be assisted by the Advocate for Legal Aid. In the latter case, legal assistance is free of charge. The police may not indicate to you the name of the lawyer you may engage during your arrest or detention.

Not less than one hour before the commencement of questioning, you and your lawyer have the right to be informed of the alleged offence about which you will be questioned. Such information shall be provided to you prior to the commencement of questioning, which time shall not be less than one hour before questioning starts.

Upon detention, you have the right to meet in private and communicate with the lawyer representing you, including prior to questioning by the police.

You have the right for your lawyer to be present and participate effectively when questioned. All questioning, all answers given thereto and all the proceedings related to the questioning of the suspect or accused person, are where possible to be recorded by audio-visual means, you have the right to be given a copy of the recording following the conclusion of the questioning.

You have the right for your lawyer to attend the following investigative or evidence-gathering acts:

- (i) identity parades;
- (ii) confrontations;
- (iii) reconstructions of the scene of a crime.

The confidentiality of your communication with your lawyer in the exercise of your right to access a lawyer shall be respected. Upon arrest you are to be informed of your right to have at least one person, such as a relative, an employer or any other person of your choice informed of your deprivation of liberty. If you are a child, that is, a person below the age of eighteen years, a person exercising parental authority, tutorship, curatorship or guardianship over you is informed of your arrest or detention and the reasons for such arrest or detention.”.

Consequential amendments to the Police Act.
Cap. 164.

10. The Police Act shall be amended as follows:

- (a) article 67 thereof shall be deleted;
- (b) the Fourth Schedule thereto shall be amended as follows:
 - (i) the fourth and fifth sub-paragraphs of paragraph 4 thereof, entitled “Caution” shall be deleted;

and

(ii) immediately after paragraph 7 thereof there shall be added the following new paragraph:

“7A. Legal assistance during detention.

An arrested person shall benefit from the right to legal assistance and from the rights listed in article 355AUK(1) of the Criminal Code in terms of the provisions of Sub-title IX of Title I of Part I of Book Second of the Criminal Code and the provisions contained in the said Sub-title shall apply and be observed during the arrest, detention and questioning of an arrested person.

The provisions of paragraphs 8, 9 and 10 of this Schedule shall apply only in those situations where a statement cannot be taken by audiovisual means.”.



MINISTRY FOR JUSTICE,
CULTURE AND LOCAL GOVERNMENT