

Submission template

The right to interpretation and translation and the right to information in criminal proceedings in the EU May 2015

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FRANET contractor: Irish Centre for Human Rights, National University of Ireland, Galway

Author(s)' name: Irish Council for Civil Liberties, Grace Mulvey, Research and Policy Officer (Justice), and *JUSTICIA*

European Rights Network Programme Manager

Reviewed by: Professor Michael O'Flaherty

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QUESTIONS

As envisaged in the section on Research Methodology, please note that some questions require consultation with organisations and/or practitioners working in relevant fields covered by the research to cross-check findings from the desk research with respect to the way in which the examined rights are applied in practice (such as judges, lawyers, interpreters and translators or civil society organisations active in the field of legal assistance in criminal proceedings).

SECTION A: The right to interpretation and translation in criminal proceedings

Stakeholder communications in relation to right to interpretation and translation:

In order to cross-check the desk-based research findings below, and verify what occurs in practice, contact was made with the following key stakeholders: criminal practitioners (solicitors and barristers)*, members of the judiciary,** An Garda Síochána***, the Department of Justice & Equality, the Irish Association of Interpreters and Translators and relevant academics.

*A number of criminal practitioners were contacted with requests for assistance with a number of subsequent follow-up communications. Requests for information were submitted to two Senior Counsel (barristers), two Junior Counsel (barristers) and five solicitors, all of whom maintain busy criminal law practices. We received responses from two Junior Counsels and two solicitors. Responses received after 15 May 2015 will be inputted, where provided, in subsequent revisions.

**Letters were sent to the Presidents of each Court. Communication was received from the Office of the Chief Justice of the Supreme Court indicating an interest in participating in the research, along with an offer to coordinate feedback on behalf of the Irish judiciary and the courts service. The judicial response is currently being coordinated through the Office of the Chief Justice, who are in the process of liaising with representatives of the judiciary from the District, Circuit and High Court, as well as the Court of Appeal, and the Courts Service. Correspondence received from the Courts Services indicated that a combined response to the research questions will be submitted prior to the 15 May 2015 deadline. The combined response of the Courts Service and the judiciary was received after 15 May 2015 and was inputted into this report. Please note that although this combined response has been signed off by the judiciary, it is indicated which responses are specifically attributed to the Judiciary and which are attributed to the Courts Service. Furthermore, please note in relation to Section B no answers from the Courts Service and Judiciary have been provided as they noted that the questionnaire “had already identified in that section relevant statutory provisions and case-law on disclosure, and it was considered that the remaining subject-matter of this Section is more appropriate for answer by the prosecution authorities.” A letter of engagement was sent to the Director of Public Prosecutions requesting her office’s participation in this research, a response to which was received on 2 July 2015. An official from the Office of the Director of Public Prosecutions provided responses only in relation to Section B and not Section A. This was due to the fact that the Courts Service and Judiciary had already provided sufficient response to Section A. When analysing the responses from the DPP official under Section B, it is important to be aware of the how the criminal process is organised in Ireland, i.e. An Garda Síochána and specialised investigating agencies conduct criminal investigations; most summary prosecutions in the District Court in relation to lesser offences are prosecuted by An Garda Síochána; Investigative Agencies prepare and submit files to the Office of the Director of Public (Dublin cases) in relation to more serious indictable offences. The prosecution authorities, i.e. DPP’s Office in Dublin can conduct certain summary prosecutions in District

Court, The DPP's office conducts all indictable cases and directs initiation or continuance of a prosecution.¹The information provided by the Office of the DPP official is on that basis. Any information provided in relation to summary offences is given on the basis of his personal experience as a defence lawyer.

A response was received from An Garda Síochána on 14 July 2015. It was noted that not all of the questions were answered by An Garda Síochána due to the fact that the "section that reviewed this was under intense pressure from a range of other priorities." Please note that minimal response was provided by an Garda Síochána in relation to Section A.

All research participants were requested to verify findings, cross-check inserted desk-based research with how said rights were applied in practice, provide additional useful information, and address any identifiable research gaps. Amended and consolidated versions, depending on the participant, of the questionnaire were sent to each participant. Where participants confirmed the desk-based research findings and/or had no additional information to add, no additional information was provided.

Please note the following documents, part of the package of documents submitted by the Irish Government to the European Commission as proof of compliance under the said directive, are not publicly available.

1. Quality assurance in Interpretation in Police interviews 14/05/2013
2. A Guide for Members of An Garda Síochána (Irish Police Force)using Interpreters and Translation during Criminal Investigations 01/01/2008
3. Quality assurance in Interpretation in Court Proceedings 14/12/2010 (See answer provided by the judiciary to question 3.2).

NB: Where respondents requested answers to be anonymised, no identifying information is provided.

¹ For more information please see Director of Public Prosecutions at https://www.dppireland.ie/about_us/criminal_process_chart/ , accessed on 15/07/15.

RIGHT TO INTERPRETATION

1.	RIGHT TO INTERPRETATION ²	Brief Description
1.1	<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) Who has the responsibility for determining the need of interpretation at each stage of the proceedings?</p> <p>b) How it works in practice for the various stages of the proceedings to ascertain whether suspected or accused persons speak and understand the language of the proceedings?</p> <p>c) Who bears the cost of interpretation at each stage?</p> <p>d) What is the timeframe (deadline) for providing interpretation at each stage of the proceedings?</p> <p>.Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	
1.1.1	<ul style="list-style-type: none"> • police questioning; 	<p>a) Pursuant to Regulations 4 (1), 4(2), and 12 of <i>European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013</i>³ the member in charge is responsible for determining the need for interpretation for an arrested person in custody. A member in charge is defined as a member of An Garda Síochána (police force) who is in charge of the Garda Station (police station) at the time the member in charge is required to do anything or cause anything to be done.⁴</p>

² See in particular Articles 2 and 4 and related recitals of Directive 2010/64/EU.

³ Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*, available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

⁴ Under Part I, Regulation 2, Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*, available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15, a “member” is defined as a member of the Garda Síochána, whereas the “member in charge” is given the meaning assigned to it by Regulation 4(1) of Statutory Instrument No.119 of 1987 *Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987*, available at <http://www.irishstatutebook.ie/1987/en/si/0119.html#zzsi119y1987a4>>, accessed on 05/03/15. Regulation 4 (1) of the *Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987*.

Practitioner Comment:

Criminal practitioners have noted that in practice the member in charge of the investigating team will usually get an interpreter, however the defence solicitor may have to ask for one from time to time.⁵ Some criminal practitioners have noted that the provision of interpreters can vary from Garda (police) station to police station.⁶ It appears that interpreters are widely provided at the police station for accused or suspected persons who clearly have very little or no English. However, there are many cases in which the accused or suspected person has basic or even conversational English, and an interpreter is not offered. In these cases it remains incumbent on the solicitor to request the interpreter.

No response was provided by An Garda Síochána.

b) Under Regulation 4 (1) of the *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*⁷ “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.” Regulation 4 (2) of the said 2013 Regulations elaborates further on the factors the member in charge shall consider when deciding whether an interpreter is required or not, namely “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. “ If any doubt exists, it is presumed that interpretation is required.”⁸
In relation to persons with hearing or speech impediments the member in charge “shall make appropriate arrangements to take account of the person’s circumstances.”⁹
However, the process of how the member in charge ascertains whether suspected or accused persons speak

⁵ Ireland, solicitor.

⁶ Ireland, solicitor.

⁷ Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013* , available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

⁸ Regulation 4 (2) of Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013* , available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

⁹ Regulation 12 of Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013* , available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

and understand the language of the proceedings is not published. In its notification to the European Commission of the list of measures taken to implement the Directive, Ireland made reference to the document *A Guide for Members of An Garda Síochána (Irish Police Force) using Interpreters and Translation during Criminal Investigations*, 01/01/2008.¹⁰ However, a copy of this document has not been published.

Practitioner Comment:

One criminal practitioner noted “I doubt if members of An Garda Síochána are aware of their obligations and there are times when Gardaí will say it is up to the solicitor/defence to provide their own interpreter. This is problematic from a payment point of view as there is no payment scheme available unless the Gardaí request an interpreter.” See answer provided under 1.1.1 (a) for more information regarding what happens in practice.¹¹ No response was provided by An Garda Síochána.

c) In accordance with section 3 of the *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*¹² an arrested person in custody, who does not speak or understand the English language has the right to an interpreter “at no cost”. No further guidance is provided in these Regulations.

Criminal Legal Aid is available for interpretation and translation claims on behalf of the defence under the criminal legal aid scheme, and such claims for payment from an interpretation/translation company must be submitted by the solicitor to Financial Shared Services (FSS), Department of Justice & Equality who will then process the claim and, as appropriate, make payment directly to the translation/interpretation provider.¹³

Comment from An Garda Síochána:

It has been noted that An Garda Síochána bear the cost for interpretation and translation during police questioning.

¹⁰ Eur-Lex, National implementing measures, CELEX number of the Directive:72010L0064, available at http://eur-lex.europa.eu/search.html?DB_CELEX_OTHER=72010L0064*&qid=1418827274922&DTS_DOM=NATIONAL_LAW&type=advanced&lang=en&UBDOM_INIT=MNE&DTS_SUBDOM=MNE&AU_CODED=IRL , accessed on 05/03/15.

¹¹ Ireland, solicitor.

¹² Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013* , available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

¹³ Department of Justice and Equality website, *Criminal Legal Aid : Interpretation/Translation Claims*, 01/10/11, Available at < [http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf/Files/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf](http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf/Files/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf)>, accessed on 05/03/15.

Practitioner Comment:

It has been noted by a criminal practitioner “the problem with this system is that you do not know if legal aid is going to be granted when you are in the station and there is no specific scheme to cover this situation.”¹⁴

Comment from the Department of Justice and Equality (unofficial):

The Department of Justice & Equality has noted in their response that “Where an interpreter is engaged by the Garda Síochána...it is they who pay for the service. In the case of consultations between lawyer and client interpretation can be claimed under the legal aid scheme where the client has been granted legal aid by the court. Both Sis [Statutory Instruments] refer specifically to the provision of interpretation and translation to the person "at no cost".

Additional Comment:

Dr. Mary Phelan, Chair of Irish Translators and Interpreters Association and Programme Chair of European Masters in Translation Studies and MSc in Translation Technology, School of Applied Language and Intercultural Studies, Dublin City University has noted that interpreters who work for the Garda are paid only €18 per hour.

d) When it is decided that the assistance of an interpreter is required, the member in charge shall arrange for the attendance of an interpreter at the Garda station without delay.¹⁵

Research has noted that the length of time it takes to summon an interpreter can vary depending on the availability of an interpreter in a particular language.¹⁶ Although the Irish Courts have interpreted Article 38.1 of the Irish Constitution, i.e. “No person shall be tried on any criminal charge save in due course of law”,¹⁷ to implicitly include a constitutional right to a fair trial *within a reasonable time*,¹⁸ is the constitutional right to a fair trial under Article 38(1) it has been noted that as a general rule an interpreter will be provided in every court appearance and in the police station investigation. An interpreter will be provided for consultations with lawyers and none of this tends to delay the process although it can lengthen a trial.¹⁹

¹⁴ Ireland, solicitor.

¹⁵ Regulation 4(3), Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*, available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

¹⁶ JUSTICIA European Rights Network, *Report on the Implementation of the Right to Interpretation and Translation Services in Criminal Proceedings*, December 2012, available at , http://www.eujusticia.net/images/uploads/pdf/Report_Right_to_Interpretation_Justicia_December_2012.pdf , accessed on 06/03/15, at p.24.

¹⁷ Bunreacht na hÉireann, 29/12/1937, available at *McFarlane v DPP [2008] I.E.S.C. 7.*, accessed on 06/03/15.

¹⁸ See for example, *State (O’Connell) v Fawsitt [1986] I.R. 362*; *DPP v Bryne [1994] 2 I.R.236*; *McFarlane v DPP [2008] I.E.S.C. 7.*

¹⁹ Ireland, barrister.

		<p>No further publically available guidance is provided on what the timeframe (deadline) for providing interpretation at police questioning.</p> <p>Comment from An Garda Síochána: It has been noted by An Garda Síochána that “a person will generally not be questioned in the absence of an interpreter save in extraordinary excusing circumstances such as the right to life.”</p> <p>Practitioner Comment: Criminal Practitioners have noted that if it is a planned detention of a person who does not speak English, the police will usually prearrange the interpreter. However it has also been noted that there is no provision to extend detention period to accommodate interpreter attendance, and thus the police have to work within the current detention time limits. In addition, it has been noted by one criminal practitioner “I have come across situations where Gardaí have waited hours for the arrival of a translator [interpreter]. I have also come across situations where Gardaí have proceeded with interviews in circumstances where it is clear that the person being investigated is struggling with the terminology.”²⁰</p> <p>Comment from the Department of Justice and Equality (unofficial): The Department of Justice & Equality have noted in their response “The wording of this question is somewhat troublesome and it is difficult to provide an answer. It seems to suggest that interpretation exists in a vacuum. There is no timeframe or deadline. However the time when it must be provided is related to the purpose for which it is necessary. For example, for questioning in a station where interpretation is necessary then it must be provided at the time of the questioning, similarly with court proceedings. In essence it must be provided at the time when it is necessary.”</p>
1.1.2	<ul style="list-style-type: none"> • court hearings; 	<p>a) Pursuant to Regulation 4 of the <i>European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013</i>, the Court is responsible for determining the need of interpretation at all hearings.²¹</p>

²⁰ Ireland, solicitor.

²¹ Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

Comment from the judiciary:

“The court determines having regard to the accused’s language ability whether there is a need for interpretation, either
(a) on its own initiative,
(b) on a request made by the accused or his/her legal representative for interpretation services or
(c) on the matter being drawn to the court’s attention by the prosecution, where the accused appears without legal representation.”

Practitioner Comment:

Criminal Practitioners have confirmed that the State is required to have an interpreter present in Court where it is their application, and conversely the defence is required to confirm the attendance of an interpreter for applications the defence bring, for example High Court Bail applications.²² It has been noted by a criminal practitioner that “Most judges are heavily swayed by the prosecuting Garda and the defence solicitor’s views. There have been a number of Judicial Review cases concerning the refusal to grant an interpreter.” However, it has also been noted that on the occasion, where the Court will make a determination on whether an interpreter is needed, “more often than not, it is based on a question to the Accused as to whether they are willing to proceed without a translator.”²³

One practitioner recalled a case, albeit before the Directive came into force, where an accused brought his ten-year old daughter to interpret for a road traffic offence before the Circuit Court.²⁴ Upon seeing this the practitioner requested that an interpreter be provided at the Circuit Court and subsequently parties had to wait for an available interpreter to arrive for the case. However, the child had been allowed to interpret in the District Court.

Additional Comment:

Dr. Mary Phelan, Chair of Irish Translators and Interpreters Association and Programme Chair of European Masters in Translation Studies and MSc in Translation Technology, School of Applied Language and Intercultural Studies, Dublin City University has noted that interpreters those working in the courts are paid only €15 per hour.

²² Ireland, solicitor.

²³ Ireland, solicitor.

²⁴ Ireland, barrister.

Comment from the Department of Justice and Equality (unofficial):

The Department of Justice & Equality has noted in their response that “Where an interpreter is engaged by ...the Court Service it is they who pay for the service. In the case of consultations between lawyer and client interpretation can be claimed under the legal aid scheme where the client has been granted legal aid by the court. Both SIs refer specifically to the provision of interpretation and translation to the person "at no cost". No additional official material was provided.

b) When a person appears before a court exercising criminal jurisdiction, and is charged with an offence, or is appealing against a conviction or a penalty upon conviction, and does not speak or understand the English language, the person has the right to an interpreter at all hearings.²⁵

The Court orders the attendance of an interpreter at all hearings where “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”.²⁶ No further guidance is provided.

Recent research has noted, however, that no uniform procedure exists in determining whether to assign an interpreter in the courts, and that sometimes judges will leave it up to the solicitor/barrister, Garda (police) or defendant to request an interpreter for the accused person.²⁷ These research findings has been affirmed by a criminal practitioner.²⁸

Comment from the judiciary:

“In most cases, in practice the legal representative of the accused, being best placed to understand the needs of the client, will bring the application. The view of the judiciary is that the arrangements work very well, and no difficulties of any significance have been identified in the operation, within the compass of court proceedings, of

²⁵ Regulations 3 and 4 Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

²⁶ Regulation 4, Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

²⁷ K.Waterhouse, *The Rise and Failure of Court Interpreting in Ireland*, (2010), available at <http://humanrights.ie/criminal-justice/guest-contribution-waterhouse-on-the-rise-and-failure-of-court-interpreting-in-ireland/>, accessed on 09/03/15 as cited in JUSTICIA European Rights Network, *Report on the Implementation of the Right to Interpretation and Translation Services in Criminal Proceedings*, December 2012, available at http://www.eujusticia.net/images/uploads/pdf/Report_Right_to_Interpretation_Justicia_December_2012.pdf, accessed on 06/03/15, at p. 25.

²⁸ Solicitor(No. 5)

the translation and interpretation arrangements.”

Practitioner Comment:

It has been noted by a criminal practitioner that “Often a judge will ask the accused or their legal representatives if an interpreter is required. There does not appear to be a uniform procedure.”²⁹

c) In accordance with section 3 of the *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, where a person appears before a court and is charged with an offence or is appealing against a conviction or a penalty upon conviction, and does not speak or understand the English language, the person will be provided with the assistance of an interpreter “at no cost”.³⁰ When the Court orders the attendance of an interpreter, the Courts Service arranges and pays for this attendance.³¹ No further guidance is provided in these Regulations. In 2013 the Court Services spent €1.26 million on interpretation services.³²

The document entitled the *Criminal Legal Aid: Interpretation/Translation Claims* document, which outlines the conditions and good practice guidelines in relation to interpretation/translation service providers, notes that “The Criminal Legal Aid Scheme does not cover interpretation/translation services provided for in the court as it is the subject of a separate contract arranged by the Courts Service.”³³ This would indicate that the Courts Services do bear the cost of translation at court hearings.

The Courts Policy Division of the Department of Justice & Equality confirmed that expenditure under the Criminal Legal Aid Scheme in respect of Interpretation/Translation services was €823,846 (2012) and €707,259 (2013).

Comment from the Courts Service:

“The Courts Service tenders for interpretation and translation services and currently has contracts with two

²⁹ Ireland, solicitor.

³⁰ Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

³¹ Regulation 5, Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

³² Courts Service, *Annual Report 2013*, p. 11, available at [http://www.courts.ie/Courts.ie/library3.nsf/%28WebFiles%29/BA7D7195FC5AAD7280257D1F0030ECD4/\\$FILE/Courts%20Service%20Annual%20Report%202013.pdf](http://www.courts.ie/Courts.ie/library3.nsf/%28WebFiles%29/BA7D7195FC5AAD7280257D1F0030ECD4/$FILE/Courts%20Service%20Annual%20Report%202013.pdf), accessed on 10/03/15. Note: 2014 Annual Report has yet to be published.

³³ Department of Justice and Equality website, *Criminal Legal Aid : Interpretation/Translation Claims*, 01/10/11, Available at < [http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf/Files/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf](http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf/Files/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf)>, accessed on 05/03/15.

providers. When the court orders that an interpreter or translator be provided, the Courts Service books an interpreter and meets the cost of this interpreter.”

d) No deadline for the provision of interpretation is provided in the *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*.³⁴ The Rules of the Superior Courts note that interpreters shall be available to attend Courts “as required for the hearing of any cause or matter”.³⁵

However, as previously stated, the Irish Courts have interpreted Article 38.1 of the Irish Constitution, i.e. “No person shall be tried on any criminal charge save in due course of law”,³⁶ to implicitly include a constitutional right to a fair trial *within a reasonable time*,³⁷ is the constitutional right to a fair trial under Article 38(1) it has been noted that as a general rule an interpreter will be provided in every court appearance and in the police station investigation. An interpreter will be provided for consultations with lawyers and none of this tends to delay the process although it can lengthen a trial.³⁸

Comment from the Courts Service and the judiciary:

“Time scales are determined by when cases are listed and adjourned etc. Requirements to provide interpreters do not influence when cases are listed/adjourned. In urgent cases a delay of some hours may occur if an interpreter is needed without prior notice to the Courts Service (e.g. a new arrest brought to the court directly). Translations must be provided, in accordance with the SI, “as soon as is practicable”.

The Courts Service further explained that there are two categories of interpreter bookings as follows:
“a. Routine court booking – which generally relates to where the requirement for an interpreter is known in advance to the court. In most instances this relates to requirements within the District Court where a requirement exists for interpretation in a specified case(s) before the Court which will be dealt with on the day for which the interpreter is booked. Routine bookings also relate to requirements where for example a trial may be held over a number of days.

³⁴ Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

³⁵ Order 120 (1), Rules of the Superior Courts, available at <http://www.courts.ie/rules.nsf/8652fb610b0b37a980256db700399507/6b924bdea9b16f0880256d2b0046b3a5?OpenDocument>, accessed on 09/03/15.

³⁶ Bunreacht na hÉireann, 29/12/1937; *McFarlane v DPP [2008] I.E.S.C. 7.*, accessed on 06/03/15.

³⁷ See for example *State (O’Connell) v Fawsitt [1986] I.R. 362*; *DPP v Bryne [1994] 2 I.R.236*; *McFarlane v DPP [2008] I.E.S.C. 7.*

³⁸ Ireland, barrister.

<p>b. Urgent Attendance booking – which generally relates to instances where the requirement for an interpreter is only made known to the court at short notice e.g. the evening before the court is scheduled to sit or on the day of the sitting.</p> <p>Providers have been required to provide a service/booking desk facility which clearly demonstrates the competence to deliver a high availability and reliable booking system. The booking system facility must comply with the following requirements:</p> <ul style="list-style-type: none"> i. Access to the booking desk must be available to staff of the Courts Service between the hours of 9am to 5.30pm Monday to Friday excluding public holidays for booking interpreters for routine court bookings ii. For urgent attendance bookings the service provider must be in a position to provide a 24 hour 7 days per week telephone booking service iii. The Courts Service’s preference in respect of routine court bookings is for an on-line booking system, however alternatives will be considered which will provide a high level of availability and reliability iv. A mechanism to advise the Courts Service staff member who booked an interpreter of any difficulties in providing the service and the likely duration of any interruption v. A mechanism for the escalation of booking calls within the service provider organisation where issues or difficulties arise. <p>The view of the judiciary is that the arrangements work very well.”</p> <p><u>Practitioner Comment:</u></p> <p>It has been noted by a criminal practitioner that “There is no timeframe for interpretation; however, very often a case will have to be adjourned because an interpreter has not shown up for court; they were not requested, or, even when they were requested they were not contacted by the courts office or the courts office has contacted them on the morning of the case to see if anyone can attend.”³⁹</p>
<p>a) See answers to 1.1.2. No further guidance is provided.</p> <p>Comment from the Courts Service and the judiciary:</p> <p>As per 1.1.2 a)</p>

- any necessary interim hearings;

³⁹ Ireland, barrister.

1.1.3		<p>b) See answers to 1.1.2. No further guidance is provided. Comment from the Courts Service and the judiciary: As per 1.1.2 a)</p> <p>c) See answers to 1.1.2. No further guidance is provided. Comment from the judiciary: “The view of the judiciary is that the arrangements work very well.”</p> <p>d) See answers to 1.1.2. No further guidance is provided. Comment from the Courts Service and the judiciary: See answer to 1.1.2 d).</p>
1.1.4	<ul style="list-style-type: none"> any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings? 	<p>a) See answers to 1.1.1 and 1.1.2. No further guidance is provided. An Garda Síochána, Code of Practice on Access to a Solicitor by Persons in Garda Custody notes that “The guidelines for use of an interpreter by a suspect’s solicitor is provided for in the following document which is available on the Garda Portal “A Guide for members of An Garda Síochána using Interpreters and Translation during Criminal Investigations.” In this respect, the interpreter being used by An Garda Síochána to interview a suspect can be used by the suspect’s solicitor to assist in the giving of legal advice. If the suspect and/or solicitor object to the use of the interpreter, the suspect/solicitor will be advised to make their own arrangements for an interpreter. An Garda Síochána will provide a reasonable opportunity for a further interpreter to be located. If no interpreter is present and a solicitor is of the opinion that one is required in order to facilitate the giving of legal advice, then that solicitor must arrange for the interpreter to be present.”⁴⁰</p> <p>Practitioner Comment: Criminal practitioners have noted that if an interpreter is at the police station for the interview, they will also be made available for the solicitor consultation.⁴¹ However, it has also been noted that in cases where the interpreter has not arrived at the police station the police at times press the solicitor to proceed with the client consultation in the absence of an interpreter. It has further been noted that it is incumbent on the solicitor to often press for the need of an interpreter and to ask for this request to be recorded in the custody record, if such</p>

⁴⁰ An Garda Síochána, Code of Practice on Access to a Solicitor by Persons in Garda Custody, April 2015, available at <http://garda.ie/Documents/User/Code%20of%20Practice%20on%20Access%20to%20a%20Solicitor%20by%20Persons%20in%20Garda%20Custody.pdf> , accessed on 21/06/15, P. 11

⁴¹ Ireland, solicitor.

<p>request is refused.</p> <p>One particular criminal practitioner described a case (unreported) which involved three Asian co-accused, who had been charged with section 17 of the <i>Misuse of Drugs Act 1997</i> (cultivating plants of the genus cannabis), section 15 and 17 of the <i>Misuse of Drugs Act 1977</i>, as amended (possession of cannabis for the purpose of selling or supplying), and section 3 and 27 <i>Misuse of Drugs Act 1977</i> (possession of cannabis of a value over €1 million).⁴² In this case, although the solicitor had the opportunity to meet with the co-accused individually in prison in advance of the court hearing, the barrister, who was unable to attend this consultation at such late notice, was thus provided with only one interview with all three co-accused. This interview took place in the courtroom together with all the co-accused and one interpreter under pressure from the judge to make progress.</p> <p>Comment from An Garda Síochána:</p> <p>It was noted by An Garda Síochána that “The Interpreter provided at the Garda station is independent from the Garda Síochána and so can assist a suspect to communicate with his/her legal representative while in custody. In proceedings, the Court can direct the presence of an interpreter. This service is paid from the Garda Vote.”</p> <p>The following further clarification was provided by An Garda Síochána, “Where an interpreter is required during a person’s detention in Garda Síochána custody then that service is at the cost of the Garda Vote which means that the cost is borne by the Garda Síochána budget. Such interpretation services are not paid for by the Courts Services. It is only when a person is before the courts that the cost is borne by the Courts Service. The Courts Service is responsible for providing an interpreter at court appearances.”</p>
<p>b) See answers to 1.1.1, 1.1.2 and 1.1.4.</p> <p>Practitioner Comment:</p> <p>In addition, a criminal practitioner noted that applications should be made more readily available for the use of interpreters for consultations outside of the court hours. It was noted that in practice a barrister may have to wait for the custody van to arrive at the court from prison, which is usually late, exacerbating matters.⁴³</p>

⁴² Ireland, barrister.

⁴³ Ireland, barrister.

		<p>c) Criminal Legal Aid is available for interpretation and translation claims on behalf of the defence under the criminal legal aid scheme, and such claims for payment from an interpretation/translation company must be submitted by the solicitor to Financial Shared Services (FSS), Department of Justice & Equality who will then process the claim and, as appropriate, make payment directly to the translation/interpretation provider.⁴⁴ No further guidance is provided.</p> <p>Practitioner Comment: Criminal practitioners have noted that there has not been a noticeable change since 7 May 2014, where, following a Supreme Court judgment of DPP v Gormley & White, solicitors have been permitted to attend police interviews with their clients.⁴⁵</p> <p>Comment from the Department of Justice and Equality: The Department of Justice & Equality noted that “in the case of consultations between lawyer and client interpretation can be claimed under the legal aid scheme where the client has been granted legal aid by the court. Both Sis [Statutory Instruments] refer specifically to the provision of interpretation and translation to the person “at no cost”.”</p> <p>d) See answers to 1.1.1 and 1.1.2. No further guidance is provided.</p>
1.2	<p>How do authorities ensure interpretation into rare/lesser known languages where no certified interpreters exist?</p> <p>Please cross-check findings from the desk research by consulting relevant organisations</p>	<p>No information publically available.</p> <p>Comment from the Courts Service: “The Courts Service asks interpretation companies to provide suitably qualified interpreters for as many languages as feasible. If an unusual language cannot be provided locally, Courts Service has sourced interpreters in the UK.”</p> <p>Additional Comment from the Courts Service: The Courts Service has clarified that the above practice would be very unusual indeed, noting that this was mentioned to make the point that they will do whatever it takes to get an interpreter. The Courts Service further</p>

⁴⁴ Department of Justice and Equality website, *Criminal Legal Aid : Interpretation/Translation Claims*, 01/10/11, Available at < [http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf/Files/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf](http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf/Files/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf)>, accessed on 05/03/15.

⁴⁵ Ireland, solicitor.

	<p>and/or practitioners.</p>	<p>noted “In practice we can only speak of one instance when this happened and it was for interpreting sign language into a foreign language. A sign language provider here recommended someone in the UK and we contacted this person and sought a quote. The person travelled to Ireland and was present in court. It was not done by telephone or video conference.”</p> <p>Practitioner Comment:</p> <p>However, it was noted by a criminal practitioner “I haven’t seen a situation where an interpreter was not available in a Garda station or in court in the relevant language for many years.”⁴⁶</p> <p>No response was provided by An Garda Síochána.</p>
<p>1.3</p>	<p>Please describe procedures in place, if any, to ensure that suspects or accused persons have the right to challenge the decision that no interpretation is needed? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>In relation to police questioning, Regulation 4(4) of <i>European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013</i>⁴⁷ notes that a member in charge will inform the arrested person of the decision that the assistance of an interpreter is not required and the reasons of this decision. No further guidance is published on whether the arrested person can challenge this decision. However, it has been noted by a criminal practitioner “I am not aware of any such procedure.”</p> <p>In relation to court proceedings no specific mechanism is provided for. It appears that the only mechanism through which a person can challenge the Court’s decision not to appoint an interpreter is through an appeal/judicial review. A judicial review is where a Court reviews the soundness of the decision-making process but not the decision itself.</p> <p>Comment from the judiciary:</p> <p>“In so far as interpretation of court proceedings or translation of court documents are concerned, a determination by a judge that no translation or interpretation was required is open to challenge by way of judicial review in the case of a decision of the Circuit or District Court, and where a trial in any court proceeded without interpretation or translation where such was necessary for the trial, may also form the basis for an appeal against conviction or, as relevant, sentence.”</p> <p>Practitioner Comment:</p> <p>It was confirmed by a criminal practitioner that there is no other mechanism.⁴⁸</p> <p>Comment from An Garda Síochána:</p>

⁴⁶ Ireland, solicitor.

⁴⁷ Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013* , available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

⁴⁸ Ireland, solicitors.

		This was further confirmed by An Garda Síochána that this decision can be challenged before the trial court.
1.4	With regard to remote interpretation via communication technologies :	No response was provided by An Garda Síochána in relation to 1.4.
	a) Can communication technologies for the purpose of remote interpretation be used? If so, at what stage(s) of the proceedings?	<p>In relation to police questioning “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.”⁴⁹ No further guidance is publically available. Requests for assistance were made to the Garda (police) Commissioner, however no commitment has yet been made permitting members of the force to participate in the research. Any late response will be inputted accordingly during the next round of revisions.</p> <p>Comment from the Courts Service: “The Courts Service does not at present provide remote interpretation, whether by telephone or video-conference.”</p> <p>Additional Comment: In relation to court proceedings no guidance has been published. Dr. Mary Phelan, Chair of Irish Translators and Interpreters Association and Programme Chair of European Masters in Translation Studies and MSc in Translation Technology, School of Applied Language and Intercultural Studies, Dublin City University has noted that she is aware of remote interpreting being used on occasion at Cloverhill Courthouse usually in relation to short procedural issues rather than for an entire case.</p> <p>Practitioner Comment: However, it was noted by a criminal practitioner “I am not aware of any instances of remote interpretation”.⁵⁰</p>

⁴⁹ Regulation 6, Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013* , available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

⁵⁰ Ireland, solicitor.

<p>b) Which technologies are used, if any (videoconference, telephone, internet, etc.)</p>	<p>In relation to police questioning telephone or electronic means of communication.⁵¹</p> <p>Comment from the Courts Service: See answer to 1.4 a). “The Courts Service does not at present provide remote interpretation, whether by telephone or video-conference.”</p> <p>Dr. Mary Phelan, Chair of Irish Translators and Interpreters Association and Programme Chair of European Masters in Translation Studies and MSc in Translation Technology, School of Applied Language and Intercultural Studies, Dublin City University has noted that videoconference interpreting is used at Cloverhill Courthouse, whereas telephone interpreting is sometimes used by the Garda (police) who had a contract with Language Line in the UK to provide interpreters over the phone.</p> <p>In relation to court proceedings no guidance has been published. The combined delayed response from the judiciary and the courts service will be inputted accordingly during the next round of revisions</p>
<p>c) Do competent authorities rely on the tools developed in the context of European e-Justice (e.g. information on courts with videoconferencing equipment provided on the European E-justice Portal)? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>No guidance is publically available.</p> <p>Comment from the Courts Service: See answer to 1.4 a).</p>

⁵¹ Regulation 6, Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013* , available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

TRAINING ⁵²		Yes	No	Brief Description
1.5	Are providers of judicial training requested to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication? If yes, briefly provide details.		N	<p>No guidance provided.</p> <p>Comment from the judiciary: “By the nature of the common law system, where judges are appointed after considerable experience as legal practitioners, judges by their training and experience will be in a position to identify deficiencies in the manner in which proceedings are being interpreted. Quite apart from this consideration, however, the Committee on Judicial Studies has availed of a specialised course on language interpretation in the courts provided by the Judicial Institute for Scotland.”</p> <p>It was confirmed in a follow-up phone-call that one representative of the judiciary, known as a Rapporteur, participated in the aforesaid training in March 2015, and disseminated the materials upon return.</p>
2.	RIGHT TO TRANSLATION OF DOCUMENTS ⁵³	Brief Description		
2.1	<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) Which documents (according to national law or established practice) are considered essential to translate in order to safeguard the fairness of the proceedings?</p> <p>b) Who bears the cost of translation at each stage?</p> <p>c) What is the timeframe (deadline) for the translation of documents at each stage of the proceedings?</p> <p>Please cross-check findings from the desk-research by consulting relevant organisations and/or practitioners.</p>			

⁵² See in particular Article 6 and relevant recitals of Directive 2010/64/EU.

⁵³ See in particular Articles 3 and 4 and relevant recitals of Directive 2010/64/EU.

<p>2.1 .1</p>	<ul style="list-style-type: none"> • police questioning; 	<p>a) Where an arrested person has had the assistance of an interpreter whilst in custody, a translation in the language in which the interpretation was provided will be given of the following documents: the arrest warrant; the charge sheet containing the particulars of the offence; the recognisance entered into if arrested person released from the police station on bail.⁵⁴</p> <p>Practitioner Comment:</p> <p>Criminal practitioners have noted that in practice charge sheets do not arise at this time, i.e. during police questioning, but at the end of the detention. Oral translations are given for the questions during the interview.⁵⁵ Another criminal practitioner noted that they were not sure whether this occurs in all cases.⁵⁶</p> <p>No response was provided by An Garda Síochána.</p>
		<p>b) In accordance with section 3 of the <i>European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013</i>⁵⁷ an arrested person in custody , who does not speak or understand the English language has the right to the translation “at no cost” of the documents specified in the said Regulations, namely the arrest warrant; the charge sheet containing the particulars of the offence; the recognisance entered into if arrested person released from the police station on bail .</p> <p>Criminal Legal Aid is available for interpretation and translation claims on behalf of the defence under the criminal legal aid scheme, and such claims for payment from an interpretation/translation company must be submitted</p>

⁵⁴ Regulations 8, 9 and 10 of Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013* , available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 06/03/15.

⁵⁵ Ireland, solicitor.

⁵⁶ Ireland, solicitor.

⁵⁷ Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013* , available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

		<p>by the solicitor to Financial Shared Services (FSS), Department of Justice & Equality, Deerpark Road, Killarney, Co. Kerry who will then process the claim and, as appropriate, make payment directly to the translation/interpretation provider.⁵⁸</p> <p>Practitioner Comment: It has been noted by a criminal practitioner “the problem with this system is that you do not know if legal aid is going to be granted when you in the station and there is no specific scheme to cover this situation.”⁵⁹</p> <p>Comment from An Garda Síochána: It has been noted that An Garda Síochána bear the cost for interpretation and translation during police questioning.</p> <p>c) Translation of the documents specified in the <i>European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013</i>,⁶⁰ namely the arrest warrant; the charge sheet containing the particulars of the offence; the recognisance entered into if arrested person released from the police station on bail, are to be provided “as soon as practicable”.⁶¹ No further guidance is provided. No response was provided by An Garda Síochána.</p>
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⁵⁸ Department of Justice and Equality website, *Criminal Legal Aid : Interpretation/Translation Claims*, 01/10/11, Available at < [http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf/Files/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf](http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf/Files/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf)>, accessed on 05/03/15.

⁵⁹ Ireland, solicitor.

⁶⁰ Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013* , available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

⁶¹ Regulations 8, 9 and 10 of the Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013* , available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 06/03/15.

<p>2.1.2</p> <ul style="list-style-type: none"> • court hearings; 	<p>a) Where the Court has already ordered an interpreter to attend all hearings,⁶² it is provided that an oral translation or summary of any recognisance the person before the Court is required to enter into, or any committal or remand warrant by which the person is deprived of liberty.⁶³ A written translation of these documents may be directed when the Court “considers it to be essential in the interests of justice”.⁶⁴</p> <p>The <i>Criminal Legal Aid: Interpretation/Translation Claims</i> document refers to the cost per word/page of the “book of evidence”. The book of evidence contains the evidence against the accused, as well as a summary of the charge. This document further notes that “the use of interpretation/translation companies engaged by the solicitor is limited to what is absolutely necessary in defence of the client.”⁶⁵ No further guidance is provided.</p> <p>Comment from the judiciary: “Recognisances in each case are translated orally by the interpreter assigned to interpret that case, where the accused is willing to accept an oral translation. This allows the accused to take up bail without any undue delay.”</p> <p>Practitioner Comment: A criminal practitioner noted that they “have not seen charge sheets in the District Court ever provided other than in English. If the client is legally aided, the translators’ services are certified by the judge. It was confirmed by a criminal practitioner that in practice the book of evidence and other large documents may be translated.⁶⁶ At the Circuit Court the translation of the book of evidence must be approved by the Department of Justice & Equality. It was further noted that smaller documents such as charge sheets and warrants will generally not be certified for translation, however it will be expected that the solicitor and interpreter will orally relay the content of these documents to the accused. It has been noted by a criminal practitioner, that “In cases proceeded on indictment, as a general rule, a translation of the book of evidence will be provided. Translation of further documents might</p>
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⁶² In accordance with Regulation 4, Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

⁶³ Regulation 8 (1) of Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

⁶⁴ Regulation 8 (2) of Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

⁶⁵ Department of Justice and Equality website, *Criminal Legal Aid : Interpretation/Translation Claims*, 01/10/11, Available at <
[http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf/Files/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf](http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf/Files/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf)>, accessed on 05/03/15.

⁶⁶ Ireland, solicitor.

<p>be provided on an ad hoc basic. In relation to an appeal, a translation of the written submissions and extracts of the transcript might be provided.”⁶⁷</p> <p>A criminal practitioner also commented that “the situation in relation to extradition warrants is more complex. Translation of pleadings will only be confirmed as being paid at the end of the case; therefore everyone is left in uncertainty as to whether they will be paid. It makes it very difficult to engage experts and translators as the solicitor cannot guarantee how much they will be paid, if at all.”⁶⁸</p>
<p>b) Who bears the cost of translation at each stage?</p> <p>See 1.1.2 (c). No further guidance is provided specifically in relation to translation. However, it is worth noting that the <i>Criminal Legal Aid: Interpretation/Translation Claims</i> document, which outlines the conditions and good practice guidelines in relation to interpretation/translation service providers, does note that “The Criminal Legal Aid Scheme does not cover interpretation/translation services provided for in the court as it is the subject of a separate contract arranged by the Courts Service.”⁶⁹ This would indicate that the Courts Services do bear the cost of translation at court hearings, although it is not very clear.</p> <p>See answer to 2.1.2 (a)</p> <p>Comment from the Courts Service and the judiciary:</p> <p>See answer to 1.1.2 c) “The Courts Service tenders for interpretation and translation services and currently has contracts with two providers. When the court orders that an interpreter or translator be provided, the Courts Service books an interpreter and meets the cost of this interpreter.”</p> <p>“Written translation is available, if required, for court hearings. However, the usual practice, to suit the accused’s convenience, is that an oral translation is provided for bail bonds.”</p>

⁶⁷ Ireland, barrister.

⁶⁸ Ireland, solicitor.

⁶⁹ Department of Justice and Equality website, *Criminal Legal Aid : Interpretation/Translation Claims*, 01/10/11, Available at < [http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf/Files/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf](http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf/Files/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf)>, accessed on 05/03/15.

c) No timeframe appears to be in place. Translations are to be provided “as soon as is practicable”.⁷⁰

Comment from the Courts Service and the judiciary:

See answer to 1.1.2 d)

Additional comment from the Courts Service:

It was noted that “In practice we rarely if ever use translators. Normally an oral translation is given by the interpreter in court of any bail bonds etc. Other documents are given to the Prison Service and they may engage translators but the Courts Service does not do so.”

Practitioner Comment:

One criminal practitioner noted that “The book of evidence can take a long time to translate and the quality of the translation varies according to the person involved. I know of a solicitor that is using a different translator rather than the ones on the list to translate the book of evidence as he finds her much better than the one provided by the state. Also, she takes less time to translate it too.”⁷¹

However, as previously stated, the Irish Courts have interpreted Article 38.1 of the Irish Constitution, i.e. “No person shall be tried on any criminal charge save in due course of law”,⁷² to implicitly include a constitutional right to a fair trial *within a reasonable time*,⁷³ is the constitutional right to a fair trial under Article 38(1) it has been noted that as a general rule an interpreter will be provided in every court appearance and in the police station investigation. An interpreter will be provided for consultations with lawyers and none of this tends to delay the process although it can lengthen a trial.⁷⁴

⁷⁰ Regulation 8 (2) of Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 05/03/15.

⁷¹ Ireland, solicitor.

⁷² *Bunreacht na hÉireann, 29/12/1937*, available at *McFarlane v DPP [2008] I.E.S.C. 7.*, accessed on 06/03/15.

⁷³ See for example *State (O’Connell) v Fawsitt [1986] I.R. 362*; *DPP v Bryne [1994] 2 I.R.236*; *McFarlane v DPP [2008] I.E.S.C. 7.*

⁷⁴ Ireland, barrister.

2.1.3	<ul style="list-style-type: none"> any necessary interim hearings; 	<p>a) See answers to 2.1.2 (a). No further guidance is provided. Comment from the judiciary: See answer to 2.1.2 a)</p>
		<p>b) See answers to 2.1.2 (b). No further guidance is provided. Comment from the Courts Service and the judiciary: See answer to 1.1.2 c)</p>
		<p>c) See answers to 2.1.2 (c). No further guidance is provided. Comment from the Courts Service and the judiciary: See answer to 1.1.2 d)</p>
2.1.4	<ul style="list-style-type: none"> any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings? 	<p>a) The <i>Criminal Legal Aid: Interpretation/Translation Claims</i> document refers to the cost per word/page of the “book of evidence”. The book of evidence contains the evidence against the accused, as well as a summary of the charge. This document further notes that “the use of interpretation/translation companies engaged by the solicitor is limited to what is absolutely necessary in defence of the client.”⁷⁵ No further guidance is provided. See answers to 2.1.1 and 2.2.2.</p>
		<p>b) Criminal Legal Aid is available for interpretation and translation claims on behalf of the defence under the criminal legal aid scheme, and such claims for payment from an interpretation/translation company must be submitted by the solicitor to Financial Shared Services (FSS), Department of Justice & Equality who will then process the claim and, as appropriate, make payment directly to the translation/interpretation provider.⁷⁶ See answers to 2.1.1 and 2.2.2.</p>
		<p>c) No timeframe is provided for the translation of documents at this stage. See answers to 2.1.1 and 2.2.2.</p>

⁷⁵ Department of Justice and Equality website, *Criminal Legal Aid : Interpretation/Translation Claims*, 01/10/11, Available at < [http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf/Files/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf](http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf/Files/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf)>, accessed on 05/03/15.

⁷⁶ Department of Justice and Equality website, *Criminal Legal Aid : Interpretation/Translation Claims*, 01/10/11, Available at < [http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf/Files/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf](http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf/Files/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf)>, accessed on 05/03/15.

<p>2.2</p>	<p>How do the competent authorities ascertain whether oral translation or oral summary of essential documents may be provided instead of a written translation? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>Police force: Provision is made for “oral translation or summary of the document” pending the written translation⁷⁷ of the documents specified in Regulations 8,9 and 10 of the <i>European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013</i>.⁷⁸ No further guidance is provided.</p> <p>Court authorities: Provision is made for an oral translation or a summary of document and a written translation is provided of the document if the Court considers it to be “essential in the interests of justice”.⁷⁹</p> <p>No further guidance is provided.</p> <p>Comment from the judiciary: “A written translation of all documents required to enable an accused to defend the case will be presented at no cost to the accused. By way of exception, in view of the urgency attaching to facilitating an accused to take up bail, the court, at the request of the accused, will permit an oral translation by an interpreter of the recognisance to be entered.”</p> <p>No response was provided by An Garda Síochána.</p>
<p>2.3</p>	<p>Please describe procedures in place, if any, to ensure that suspects or accused persons have the right to challenge the decision that no translation is needed? Please cross-check findings from the desk</p>	<p>In relation to police questioning see answer 1.3. No further guidance is given.</p> <p>Comment from the judiciary: See answer in 1.3.</p> <p>Practitioner Comment: However, it has been noted by a criminal practitioner “I am not aware of any such procedure.” In relation to court proceedings no specific mechanism is provided for.⁸⁰ The only mechanism through which a person can challenge the Court’s decision not to translate a document is through an appeal/ a judicial review. A judicial review is where a Court reviews the soundness of the decision-making process but not the decision itself. It was confirmed by a criminal practitioner that there is no other mechanism.⁸¹</p>

⁷⁷ Regulation 11 of the Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*, available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 06/03/15.

⁷⁸ Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*, available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

⁷⁹ Regulation 8(1) and 8(2) of Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

⁸⁰ Ireland, solicitor.

⁸¹ Ireland, solicitors.

	research by consulting relevant organisations and/or practitioners.			
		Yes	No	Brief Description
2.4	Do all documents that the suspected or accused person has to sign during the proceedings have to be translated?	n/a	n/a	No guidance provided. Comment from the judiciary: “The only document which would require to be signed by the accused is the recognisance, to which reference has been made earlier.” The Department of Justice & Equality noted in their response “Both Sis [statutory instruments] refer to the translation of recognisances which the person would be required to sign.” No response was provided by An Garda Síochána.
2.5	Is it possible to waive the right to translation of documents and if so, what form can it have and under which conditions can it be accepted?	n/a	n/a	No guidance provided. Comment from the judiciary: “Insofar as court documents are concerned, there is no provision for waiver of the right to a written translation of documents save as indicated at 2.2 above.” Practitioner Comment: The Department of Justice & Equality noted in their response “As a matter of policy it was decided not to legislate to provide for a waiver of this right.” No response was provided by An Garda Síochána.
3.	RIGHTS CONCERNING BOTH INTERPRETATION AND TRANSLATION⁸²			
3.1	With regard to use of registers of interpreters and translators in EU Member States:	Yes	No	Brief Description
	a) Do national databases		No	In 2013 the Courts Services relationship with interpreters was streamlined with country wide services provided by a contracted supplier, which includes a back up service. ⁸³ No further

⁸² See in particular Article 5 and relevant recitals of Directive 2010/64/EU.

	<p>or registers exist for legal translators and interpreters?</p>			<p>information is published.</p> <p>In relation to the provision of interpreters and translators in police questioning no information is published. However, it has recently been noted by the Chairperson of the Irish Translators' and Interpreters' Association that the An Garda Síochána (police) are also using contracted interpreters/translators obtained through a tendering process.⁸⁴</p> <p>There does not appear to be any national database or register of interpreters and translators to assist selection for communications between suspected or accused persons and their counsel. Recent research has noted that a register of interpreters and translators is run voluntarily by the Irish Translators' and Interpreters' Association.⁸⁵ This was confirmed by the Irish Translators and Interpreters Association.⁸⁶</p> <p>Comment from the Courts Service: "The Courts Service is not aware of any such database or register." It was noted that the first procurement of contract interpreters was in 2005.</p> <p>No response was provided by An Garda Síochána.</p>
	<p>b) Do translators and interpreters have to be</p>		<p>No*</p>	<p>*In relation to the provision of interpreters and translators in Court proceedings, since 2013 interpreters and translators are come from the contracted suppliers, whereas as noted in 3.1 (a), it</p>

⁸³ Courts Service, *Annual Report 2013*, available at [http://www.courts.ie/Courts.ie/library3.nsf/%28WebFiles%29/BA7D7195FC5AAD7280257D1F0030ECD4/\\$FILE/Courts%20Service%20Annual%20Report%202013.pdf](http://www.courts.ie/Courts.ie/library3.nsf/%28WebFiles%29/BA7D7195FC5AAD7280257D1F0030ECD4/$FILE/Courts%20Service%20Annual%20Report%202013.pdf) accessed on 11/03/15, P.11, and Mytenders Ireland, *AUG370295 - Request for Tenders ("RDT") for Provision of Managed Interpretation Services Contract Award*, available at http://www.mytenders.ie/search/show/search_view.aspx?ID=MAR405778&catID=136, accessed on 11/03/15.

⁸⁴ Public Affairs Ireland, Issue no.100, Mary Phelan, *Three Centuries on, Ireland None the Wiser in Interpreter Provision*, December 2014, p.21, available at http://www.publicaffairsireland.com/system/journal_downloads/116/original/PAI%20100th%20Edition%20Web%20Version.pdf?1417776254 , accessed on 10/03/15.

⁸⁵ JUSTICIA European Rights Network, *Report on the Implementation of the Right to Interpretation and Translation Services in Criminal Proceedings*, December 2012, available at http://www.eujusticia.net/images/uploads/pdf/Report_Right_to_Interpretation_Justicia_December_2012.pdf , accessed on 06/03/15, p. 34.

⁸⁶ Irish Translators and Interpreters Association.⁸⁶ available at http://translatorsassociation.ie/component/option,com_docman/task,cat_view/gid,19/Itemid,16/, accessed on 8/5/15.

<p>listed in databases/registers for their services to be used? In other words, is membership/registration mandatory?</p>			<p>appears that An Garda Síochána also use contracted suppliers. It is unclear what the situation is in relation to obtaining an interpreter/translator to assist with communications between suspected or accused persons and their counsel.</p> <p>Comment from the Courts Service: See answer to 3.1 a)</p> <p>No response was provided by An Garda Síochána.</p>
<p>c) Who has access to these databases?</p>			<p>Brief Description:</p> <p>If an interpreter is ordered by the Court, then the Courts Service “shall arrange for the attendance of the interpreter”,⁸⁷ if a member in charge (police) decided an interpreter is required then the member in charge “shall arrange...for the attendance of an interpreter at the station”.⁸⁸ As a result it appears that the Court Services and An Garda Síochána (the police) have access to the contracted suppliers in these circumstances, whereas it is unclear what the situation is in relation to obtaining an interpreter/translator to assist with communications between suspected or accused persons and their counsel.</p> <p>No further information is provided.</p> <p>Comment from the Courts Service: See answer to 3.1 a) In addition, it was noted that “The Courts Service does not take responsibility for interpretation of consultations between the accused and his/her representative outside the courtroom.”</p> <p>No response was provided by An Garda Síochána.</p>
<p>d) Which professional qualifications are needed by:</p> <ul style="list-style-type: none"> • translators and • interpreters 			<p>Brief Description:</p> <p>Neither the Courts Services’ nor An Garda Síochána (police) requests for tender in relation to interpreters required a qualification in interpretation.</p> <p>It has been noted that the 2012 Courts Service request for tender specified three levels of interpreters and that although tenderers had to provide details of any systems or training programmes “in place to verify compliance</p>

⁸⁷ Regulation 5 of Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

⁸⁸ Regulation 4 (3) of Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*, available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 06/03/15.

<p>in order to be registered in the database?</p>	<p>by interpreters utilised by the company with competency levels, professional standards and ethics”, there was no requirement to have a qualification in interpretation. The first two levels did not require any minimum level of education, and the third level only required any third level qualification undertaken in the language required. ⁸⁹ It has further been noted that the 2013 Garda Síochána (police) request for tender required interpreters to have a “FETAC level 5 standard of education at a minimum; seventy hours of interpreting experience; be trained interpreting techniques and should ‘provide genuine and accurate interpretation’.”⁹⁰ It has been recently noted that due to the lack of “a state system to train and test legal interpreters, the responsibility for standards has been transferred to contractors”.⁹¹</p> <p>The <i>Criminal Legal Aid: Interpretation/Translation Claims</i> document, which provides guidance to solicitors who engages an interpretation company, does not outline any professional qualifications that the interpreter/translator needs. It does however note that as good practice an interpreter should have “linguistic competence, a professional attitude, an understanding of the legal process and of his/her duties and must ensure impartiality and confidentiality.” ⁹² No further guidance is required.</p> <p>Comment from the Courts Service: See answer to 3.1 a) In addition, see answer 3.2.</p> <p>Practitioner Comment: A criminal practitioner has noted that “Anecdotal evidence suggests the standards of interpreters varies significantly. There is no requirement that they undergo any specific training. Often interpreters’ sole qualification</p>
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⁸⁹ Public Affairs Ireland, Issue no.100, Mary Phelan, *Three Centuries on, Ireland None the Wiser in Interpreter Provision*, December 2014, available at http://www.publicaffairsireland.com/system/journal_downloads/116/original/PAI%20100th%20Edition%20Web%20Version.pdf?1417776254 , accessed on 10/03/15, p.21. The actual tender is not available online.

⁹⁰ Public Affairs Ireland, Issue no.100, Mary Phelan, *Three Centuries on, Ireland None the Wiser in Interpreter Provision*, December 2014, available at http://www.publicaffairsireland.com/system/journal_downloads/116/original/PAI%20100th%20Edition%20Web%20Version.pdf?1417776254 , accessed on 10/03/15, p.21. The actual tender is not available online.

⁹¹ Public Affairs Ireland, Issue no.100, Mary Phelan, *Three Centuries on, Ireland None the Wiser in Interpreter Provision*, December 2014, available at http://www.publicaffairsireland.com/system/journal_downloads/116/original/PAI%20100th%20Edition%20Web%20Version.pdf?1417776254 , accessed on 10/03/15, p.21.

⁹² Department of Justice and Equality website, *Criminal Legal Aid : Interpretation/Translation Claims*, 01/10/11, Available at < [http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf/Files/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf](http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf/Files/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf)>, accessed on 05/03/15.

		<p>is that [their] ability to speak both languages fluently without any training in the importance of precision. It has been suggested there is a widespread practice of using Google Translate to translate court documents.⁹³ By definition these problems are difficult to police.”⁹⁴</p> <p>No response was provided by An Garda Síochána.</p>	
	<p>e) Are there any requirements in place to ensure the independence of interpreters and translators? If yes, provide a brief overview (for both translators and interpreters).</p>	<p>Yes</p>	<p>No</p> <p>No guidance provided. Only the <i>Criminal Legal Aid: Interpretation/Translation Claims</i> document, which provides guidance to solicitors who engage an interpretation company, outlines the good practice of the interpreter being impartial.⁹⁵ See answer to 3.2. (a) for more information.</p> <p>NGO Comment:</p> <p>It was noted by an NGO with experience of working with interpreters in criminal proceedings stems from trafficking cases where the suspect/accused person is a suspected victim of trafficking. MRCI raised the issue of cultural sensitivities, which are often overlooked especially in the trafficking cases they are involved in there are not enough checks and balances to ensure that the interpreter is not related to the trafficker. Moreover, it was noted that “In closed linguistic communities this has been an issue in the past; whereby the interpreter has relayed information to the alleged trafficker or has passed judgments in relation to the victim. As some of these cases involve disclosing very delicate information such as health status, it is important to ensure that issues like this do not arise.” Further it was noted that in some cases certain information relayed at the proceedings were “leaked” into the communities causing difficulties for the suspected victims.</p> <p>Additional Comment:</p> <p>It was further noted by Dr. Mary Phelan, Chair of Irish Translators and Interpreters Association and Programme Chair of European Masters in Translation Studies and MSc in Translation Technology, School of Applied Language and Intercultural Studies, Dublin City University that there are no proper requirements in place, however interpreters are told to declare any conflict of interest or prior interactions with clients and translators have to sign their documents so they can be traced back to the translator. Dr. Phelan further noted that some of the contracted translation companies have their own code of conduct for their employed interpreters.</p>

⁹³ Ireland, barrister.

⁹⁴ Ireland, barrister.

⁹⁵ Department of Justice and Equality website, *Criminal Legal Aid : Interpretation/Translation Claims*, 01/10/11, Available at <[http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf/Files/Interpretation%20Translation%20Claims%20\(PDF%20-22%20KB\).pdf](http://www.justice.ie/en/JELR/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf/Files/Interpretation%20Translation%20Claims%20(PDF%20-22%20KB).pdf)>, accessed on 05/03/15.

				The Department of Justice & Equality have noted in their response that they believe there to be some requirement contained within both the Garda Síochána and Courts' contract with the translation companies in relation to independence. In relation to the Courts' contact with translation companies, please see Section 3.2 a) of this questionnaire for further details. No response was provided by An Garda Síochána.
	f) Is access to existing databases provided through the <u>European e-Justice portal</u> ? ⁹⁶ How is this register available to legal counsel and relevant authorities?		n/a	N/A. See answer to 3.1 (a)
	g) Are criminal justice institutions required to use interpreters and translators listed in these registers?		No	<p>The criminal justice institutions such as the Courts Services and An Garda Síochána use the contracted suppliers. As the Courts Services relationship with interpreters was streamlined in 2013 through the provision by a contracted supplier, which includes a back up service.⁹⁷ No further information is published.</p> <p>However, the Court Services have noted that the 1st contract was put in place on 5th March 2007, and the current contract is due to expire 6th February 2017 (with an option to extend for 1 year). Dr. Phelan confirmed that the system first started in 2007 when LionBridge was awarded the contract for all courts.</p> <p>In relation to the provision of interpreters and translators in police questioning no information is published. However, it has recently been noted by the Chairperson of the Irish Translators' and</p>

⁹⁶ <https://e-justice.europa.eu/home.do?plang=en&action=home>

⁹⁷ Courts Service, *Annual Report 2013*, available at [http://www.courts.ie/Courts.ie/library3.nsf/%28WebFiles%29/BA7D7195FC5AAD7280257D1F0030ECD4/\\$FILE/Courts%20Service%20Annual%20Report%202013.pdf](http://www.courts.ie/Courts.ie/library3.nsf/%28WebFiles%29/BA7D7195FC5AAD7280257D1F0030ECD4/$FILE/Courts%20Service%20Annual%20Report%202013.pdf) accessed on 11/03/15, P.11, and Mytenders Ireland, *AUG370295 - Request for Tenders ("RDT") for Provision of Managed Interpretation Services Contract Award*, available at http://www.mytenders.ie/search/show/search_view.aspx?ID=MAR405778&catID=136, accessed on 11/03/15.

			<p>Interpreters' Association that the An Garda Síochána (police) are also using contracted interpreters/translators obtained through a tendering process.⁹⁸</p> <p>There does not appear to be any national database or register of interpreters and translators to assist selection for communications between suspected or accused persons and their counsel. Recent research has noted that a register of interpreters and translators is run voluntarily by the Irish Translators' and Interpreters' Association.⁹⁹</p> <p>Please note: On 19 May 2015, the Office of Government Procurement (OGP) launched a tendering competition to put a whole-of-government framework in place for multi-language translation services. This call for tenders follows extensive consultation with a representative cross section of language service providers and with the public bodies that are the large users of such services, including An Garda Síochána, the Department of Justice & Equality, the Legal Aid Board, the Department of Foreign Affairs and Trade, the Irish Naturalisation and Immigration Service and the Local Government sector.¹⁰⁰</p> <p>Practitioner Comment:</p> <p>A criminal practitioner provided a redacted statement contained within a book of evidence in relation to a garda (police) statement used during a criminal case, which was made by the suspect to a Garda (police office) at the police station: "I spoke to Mr.X who had very limited English, he informed Garda Y through his friend Z of...[address/date of birth], who had fluent English, that he had been drinking with a few friends at....." Therefore this statement was taken without the use of an official interpreter, but the suspect's friend.¹⁰¹</p> <p>The combined delayed response from the judiciary and the courts service will be inputted accordingly during the next round of revisions.</p>
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⁹⁸ Public Affairs Ireland, Issue no.100, Mary Phelan, *Three Centuries on, Ireland None the Wiser in Interpreter Provision*, December 2014, p.21, available at: http://www.publicaffairsireland.com/system/journal_downloads/116/original/PAI%20100th%20Edition%20Web%20Version.pdf?1417776254 , accessed on 10/03/15.

⁹⁹ JUSTICIA European Rights Network, *Report on the Implementation of the Right to Interpretation and Translation Services in Criminal Proceedings*, December 2012, available at http://www.eujusticia.net/images/uploads/pdf/Report_Right_to_Interpretation_Justicia_December_2012.pdf , accessed on 06/03/15, p. 34.

¹⁰⁰ Per.Gov.ie, OGP to put in place whole-of-government framework for multi-language translation services, available at <http://www.per.gov.ie/ogp-to-put-in-place-whole-of-government-framework-for-multi-language-translation-services/> . Accessed on 25/05/15.

¹⁰¹ Ireland, barrister.

				No response was provided by An Garda Síochána.
3.2	With regard to other mechanisms/procedures :	Yes	No	Brief Description
	a) Are there other mechanisms or procedures in place to ensure the quality and independence of interpretation and translation during the course of the proceedings? Are there any quality checks? Who is responsible for carrying them out?		No	<p>When Ireland notified the European Commission of the list of measures taken to implement said Directive, reference was made to two documents relating to quality of interpretation, namely, <i>Quality assurance in Interpretation in Police Interviews</i>, 14/05/2013, and <i>Quality Assurance in Interpretation in Court Proceedings</i>, 14/12/2010. Neither of which are available online, or publically available.</p> <p>Comment from the Courts Service: In relation to <i>Quality assurance in Interpretation in Police Interviews</i>, 14/05/2013, and <i>Quality Assurance in Interpretation in Court Proceedings</i>, 14/12/2010 it was noted that “It is presumed that the Department of Justice and Equality referred to these documents, and reference should be made to the Department for same.”</p> <p>In addition, it was noted that “The Courts Service’s most recent Invitation to Tender for interpretation and translation services made the following provision concerning quality of the service to be provided:</p> <p>“2.2.3 Availability and Quality of Interpretation Resources.</p> <p>Tenderers should indicate the numbers of interpreters for each of the 10 most frequently used languages as specified in the first column of Appendix C (in this document referred to as “the most frequently used languages”) and each of the languages used less frequently as specified in the second column of that Appendix (in this document referred to as “the less frequently used languages”) who will be available for each region and the location of each interpreter concerned (taking into account the need for the Courts Service to manage the expenses and service delivery for each Region). In this regard please complete Appendix I – Language Resource – for each Region tendered.</p> <p>The selected tenderer must be in a position to certify, based on objective criteria and verifiable evidence as explained further below, that all persons to be engaged by the tenderer to meet the interpretation requirements set out in this RFT have the necessary levels of competence to provide a satisfactory level of assurance that the court will receive an interpretation service to a standard of quality which will meet the requirements of due process in the particular proceedings interpreted.</p>

Appendix E to this invitation to tender sets out three objective levels of competency/proficiency and tenderers are required to indicate the minimum standard they can provide on this scale for each of the 10 most frequently used languages. This information must be provided separately for each LOT for which a tender is being submitted in the format detailed in the Table at Appendix E.

Tenderers should also submit a list of interpreters, their names, locations, the language (s) they can interpret, the Level of competence claimed and the basis for that qualification. If the basis is a certificate, diploma or any other document issued by an educational institution the institution should be named. If the basis for claiming the level of competency is the nationality of the person then the nationality should be given.

Where a tenderer claims Level 3 competence for an interpreter the following must be provided: Documentary proof that the person is a native speaker of English (copy of a relevant certificate from an Irish/English educational institution) with a third level qualification in the language concerned (copy of relevant third level qualifications) OR a native speaker of the language concerned (copy of passport) with a third level qualification in English (copy of relevant third level qualification)

For the most frequently used languages , credit will be given in the evaluation process, on production of documentary evidence, for the number of interpreters who are graded by the tenderer as having Level 3 competence. For the less frequently used languages, credit will be given in the evaluation process for the number of interpreters who are graded by the tenderer as having Level 3 competence and the number of interpreters graded by the tenderer as having Level 2 and Level 1 competence for each language concerned.

Tenderers may list interpreters for more than 1 Region but in doing so they it will be considered that they are accepting the arrangements for cost of travel outlined in Section 2.2.7.

The Courts Service reserves the right to seek documentary proof of any qualifications claimed and will seek evidence of these from a representative sample of interpreters of each tenderer.

As mentioned above, the information requested above must be provided by each tenderer in relation to each Lot being tendered for.

2.2.4 Quality Control and Contract Management

The quality and efficiency of the Services provided under this contract will be closely monitored by the Courts Service. The tenderer's capacity to provide a high level of quality control and

contract management is a key requirement of this procurement.

The selected tenderer(s) must be in a position to ensure that a high quality timely and complete interpretation service will be provided for the duration of the contract. Responsibility for the provision of such a quality service will rest with the successful tenderer(s). Any problems that may arise with individual personnel providing Services under this contract must be dealt with by the successful tenderer(s). However, the Courts Service reserves the right to refuse to use individuals at short notice in the event of misbehaviour, breach of security or confidentiality, non-adherence to standards or serious incompetence.

In response to this Section, tenderers must set out in detail the management structure they will put in place to deliver the Services and, as a minimum, please provide the following information:

- a. Details of the staff resources and the responsibilities thereof which will be put in place to ensure proper administration of the Services and to ensure the requirements of the Courts Service in terms of volume and quality of service delivery are met.
- b. A chart of management structure and responsibilities of those staff managing the delivery of the Services.
- c. Copies of C.V's. of those members of staff who will be managing the delivery of the Services (see Section 3.2.2 (c)).
- d. Information on the quality control and monitoring systems and processes that will apply to the Services and the reasons why these systems are capable of providing the Courts Service with a high level of confidence that an excellent quality of service will be delivered
- e. An explanation of the arrangements that will be put in place to resolve the issue of non-attendance of interpreters, performance of interpreters and any other issues or problems that may arise in relation to the delivery of the Services. The arrangements which are outlined should include a time scale for resolving such issues.
- f. Details of the arrangements they would propose to put in place for monitoring of any contract arising from this procurement and specifically in relation to interaction with the Courts Service in the context of reviewing the service at regular intervals.
- g. A draft Service Level Agreement specifically outlining the service levels a tenderer would propose to commit to as part of any contract arising from this competition. The draft

Service Level Agreement should specifically outline the response times offered for the 10 most frequently used languages and the less frequently used languages and also the response times for standard bookings and for urgent attendance requirements. "Response times" means the elapsed time between the booking being agreed between the service provider and the Courts Service and the time of attendance in Court

- h. Details of the reporting system that will be put in place in order to provide management and statistical information to the Courts Service and assist in the overall monitoring and management of the Services contract. In this regard monthly reports are considered the optimum requirement. Reports should as a minimum be capable of providing data on interpreter usage by venue and language. Tenderers must provide a sample report which they would propose to provide as standard, and a description of any additional reports which they would consider useful in the management of the contract.

2.2.5 Professional standards.

Tenderers are invited to outline details of their training programmes for staff particularly interpreters and other staff who would be directly involved in the delivery of the Services under the contract subject to this RFT.

In response to this section, tenderers must provide in particular:

- a. Details of any systems or training programmes they have in place to verify compliance by interpreters utilised by the company with competency levels, professional standards and ethics.
- b. Details of any health and safety training provided to staff and interpreters.

Notwithstanding the foregoing, the Court Service reserves the right to require interpreters to ensure at their own expense that interpreters undergo induction in respect of Court processes and the court environment."

The Courts Service in its most recent Invitation to Tender required as a general minimum standard, that all interpreters provided shall be competent to interpret sworn testimony by defendants and witnesses, submissions by lawyers and judges' rulings from English to the language concerned and from the language concerned to English to a standard of quality which will meet the requirements of due process in the particular proceedings interpreted. The Courts Service set three levels of competence for interpretation for the purposes of the procurement process thereunder, as follows:

			<p>“Levels of competence for Interpretation</p> <p>...</p> <p>Level 1 The person can demonstrate that they are competent in both English and the language concerned.</p> <p>Level 2 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.</p> <p>Level 3 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.”</p> <p>For that purpose, “native speaker” means a person who naturally acquired fluency in the relevant language in early childhood and continues to use the spoken language in day-to-day life.</p> <p>For the purposes of this document, “Third Level Qualification” means a qualification awarded by a University, Institute of Technology or Higher / Further Education and Training Council that is recognised as falling within or being equivalent to a Level 6 – Level 10 qualification, as defined by the National Qualification Authority of Ireland’s Qualification Framework.”</p> <p>The contracted interpreter was required to undertake that in the execution of the contract the interpreters to be used will be of level 3 standard in the first instance, only where no level 3 interpreter is available will the Courts Service consider using a level 2 interpreter or where a level 2 interpreter is not available using a level 1 interpreter.</p> <p>Insofar as independence is concerned, an interpreter for the court is required to swear to well and truly interpret and explain all matters and things as shall be required of him / her “to the best of my skill and understanding”.</p> <p>In any event, the judge retains ultimate control of the issue of whether the interpreter or translator provided is sufficiently competent to discharge their function in a manner which vindicates the right of the accused to a fair trial. “</p> <p>General Guidelines are provided for interpretation in court, as follows: “General Guidelines for Interpreting in Court.</p> <p>The Courts Service will pay the supplier for the interpreters time spent in court from the time they are booked to be in court or arrive in court only, to the time they finish interpreting, regardless of the number of individuals the interpreting is provided for or the number of languages interpreted.</p>
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			<p>1. Interpretation services shall not be provided to parties other than the Court, without the expressed consent of the Court.</p> <p>2. Interpretation mode Interpretation services are for Consecutive Interpretations only. That is, where the speaker states a few phrases and then pauses while the interpreter interprets. Consecutive interpretation is bidirectional. For this reason it is helpful to ask witnesses and all other parties addressing the Court to keep their statements as short and precise as possible. Simultaneous interpretation is, generally, not feasible in a courtroom for a variety of reasons including the need to install sound proof interpreters' booths.</p> <p>3. Interpreters' Responsibilities</p> <p>3.1 The role of the interpreter is to: Provide precise and accurate oral translation of the spoken word Enable effective communication Not to omit, add to, or offer an opinion on anything stated during the hearing.</p> <p>3.2 The interpreter's role is to provide a channel of communication (including words, culture and emotions). The interpreter will interpret as faithfully and precisely as possible without additions, omissions or modifications. If a literal translation appears to be impossible, it may be necessary for the interpreter to paraphrase to facilitate good comprehension.</p> <p>3.3 The interpreter's role is neutral. The interpreter may not engage in any conversation with defendants during the hearing.</p> <p>3.4 The interpreter is bound by a duty of confidentiality and is not allowed to disclose, discuss, use, or pass to any other persons any information gathered while performing his/her functions.</p> <p>3.5 If ties exist (or appear to exist) between the interpreter and the defendant or if a conflict of interest is involved, this will be reported to the Court.</p> <p>3.6 In delivering interpretations services, the interpreters' client is the Judge, the Registrar, and/or any member of staff of the Courts Service. For the purposes of this Protocol, any defendant, solicitors, barristers, member of An Garda Síochána, witness or any other party, is not considered to be the interpreter's client/service user.</p> <p>3.7 Interpreters will observe punctuality; introduce themselves to the Registrar before the start of proceedings and display their Company badge with their photograph at all times.</p> <p>3.8 Interpreters may take notes during their assignments to: guarantee accuracy help remind themselves of details (dates, figures, etc) an aid to memory Taking notes is a singularly individual exercise. Therefore some interpreters do not take notes. Interpreters are instructed to destroy their notes after each case. These notes do not</p>
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			<p>constitute legal documents nor should they be used as evidence at any stage.</p> <p>3.9 Interpreters will not give any opinions or volunteer any information, even if asked to do so. Their sole role is to provide interpretation services.</p> <p>3.10 Interpreters may consult their dictionaries during the course of their work to look up words or expressions that might be new to them. For some languages (e.g. tribal and rare languages) there are no dictionaries available.</p> <p>3.11 Interpreters will inform the Judge in the unlikely event that they make a mistake or encounter a term/word that they are not familiar with.</p> <p>3.12 Interpreters will use the first person and never say “he said” or “she said”.</p> <p>3.13 Interpreters will refer to themselves at any point during the hearing as “the interpreter”. That distinction is made to eliminate any confusion as to whom “I” refers.</p> <p>3.14 Interpreters will not interrupt defendants while giving evidence. If the defendant/witness makes long statements, the interpreter will not interrupt him/her. Although the interpreter might be taking notes, the interpretation might not be as accurate as it is in the case of short statements. It is the function of the Judge only to instruct defendants, and/or any other party in the case, to keep their statements short and precise or to allow for pauses in long answers as indicated at paragraph 4 hereunder.</p> <p>3.15 The interpreter will abstain from giving any comments. If required by the Judge (or the interpreter), they may intervene to:-</p> <ul style="list-style-type: none"> Clarify something he/she did not understand. Inform the Judge if he/she is having communication problems with the non-English speaker due to differences in dialect Inform the Judge if the defendant has a speech impediment Indicate where his/her interpretation is impaired as a result of fatigue, illness, long sentences or any other reason Indicate that the non-English speaker has changed languages <p>3.16 Interpreters will translate swearwords accurately and literally.</p> <p>3.17 Interpreters will, as far as possible, endeavour to reflect the emotion/tone of the person they are interpreting for.</p> <p>3.18 The interpreter will remain in Court until all cases requiring his/her services are disposed of.</p> <p>3.19 Interpreters will dress appropriately for appearance in court.</p> <p>3.20 Interpreters will not communicate with the witnesses or defendants other than to interpret.</p> <p>4. Courts Service/Judges’ responsibilities</p> <p>4.1 Service users will state two or three sentences at a time and then pause to allow enough time for the interpreter to interpret them into the other language. The Judge may, where possible, instruct the other participants, to say two or three sentences only at a time. This will ensure that the interpreter has enough time to translate fully and accurately all statements made.</p>
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			<p>4.2 It is the function of the Judge only to stop the speaker after two or three sentences in order to allow the interpreter interpret consecutive sentences. All parties should be advised at the outset that they should pause, or will be asked to pause, after two to three sentences.</p> <p>4.3 The presiding Judge has of course discretion in applying paragraphs 4.1 and 4.2 according to the circumstances of the case. A presiding Judge may also ask a witness to speak more slowly or more clearly if it appears that the interpreter has difficulty in following or keeping up with a witness.</p> <p>4.4 When considered necessary the presiding Judge will explain the role of interpreter to all parties prior to the commencement of cases.</p> <p>4.5 Where necessary, interpreters should be provided with a short briefing on the content of the case prior to the hearing in certain situations. These could include:- Where particular vulnerabilities or circumstances exist (e.g. cases involving minors, sensitive cases, cases where defendants are prone to violence) Where there are likely to be questions involving technical or medical terms or abbreviations.</p> <p>4.6 Service users will bear in mind that rare expressions and/or complex structures may not translate accurately, especially in tribal languages. When such situations arise the interpreter will indicate to the presiding Judge the nature of the difficulty in order to allow the witness to explain what he or she means in another way.</p> <p>4.7 Service users will not interrupt interpreters before they finish speaking and will ensure that interpreters will not be interrupted by any other party whilst delivering their services.</p> <p>4.8 The Court Registrar shall not sign the Interpreters attendance form until all cases requiring their services have been dealt with.</p> <p>4.9 Interpreters are contracted to provide a service to the Courts and shall not engage on a personal basis or on behalf of any other person/company to provide a service to the Courts Service at the same location on the same day.”</p> <p>The Courts Service subsequently provided a summary of material from the handbook for judges on the Equal Treatment of Persons in Court, which contains material on the conduct of proceedings involving persons with language or communication difficulties. inter alia -</p> <ul style="list-style-type: none"> • The legal framework surrounding the right to an interpreter • The need to be aware of linguistic difficulties • The role and responsibilities of the interpreter • Provision of guidance to the interpreter • The need for judicial supervision at all times • issues arising in the case of persons with a hearing or sight impairment. <p>Full access to this document can only be granted with permission of the Committee for Judicial</p>
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			<p>Studies subsequent to the submission of such a request. The next meeting of the Committee is in early July.</p> <p>Practitioner Comment: A criminal practitioner noted that they have had complaints from many accused persons regarding the quality of the interpretation/translation provided, as well as “witness[ing] court interpreters who are clearly not capable, sitting silently beside accused persons while their case is being dealt with.¹⁰² I have been told that a translator [interpreter] used her time to scold the accused for his behaviour rather than translate [interpret] what was happening. I witnessed a translator [interpreter] who could not grasp basic English, let alone translate [interpret] legal terms into her native language. The judge halted proceedings so that another translator [interpreter] could be found, but nothing was done about the greater problem. There appears to be no minimum standard.”</p> <p>Another criminal practitioner has noted their concerns in relation to the translation of the indictment and relayed an instance where the case was listed for arrangement, i.e. there would be a presumption in this case that there would be a guilty plea, and after the charges were read out in English, interpreted, the accused first pleaded “not guilty”, and subsequently “guilty” after consulting their solicitor/barrister. Moreover, a criminal practitioner noted serious concerns in relation to whether in certain circumstances the accused person actually understands the charges before the court, and what plea he/she should make.¹⁰³</p> <p>NGO Comment: It was noted by an NGO with experience of working with interpreters in criminal proceedings stems from trafficking cases where the suspect/accused person is a suspected victim of trafficking, that they have heard anecdotally through reliable sources of suspected victims pleading guilty of charges due to incorrect interpretation and having to go through the process before withdrawing their plea.</p>
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¹⁰² Ireland, solicitor.

¹⁰³ Ireland, barrister.

			<p>Practitioner Comment: It has further been noted by a criminal practitioner that “Where an accused is interviewed on video (which is mandatory) the interpretation can be scrutinised by another interpreter watching the video which is made available to the accused.”¹⁰⁴</p> <p>Additional Comment: Dr. Mary Phelan, Chair of Irish Translators and Interpreters Association and Programme Chair of European Masters in Translation Studies and MSc in Translation Technology, School of Applied Language and Intercultural Studies, Dublin City University has noted that there is no certification at all for the majority of the interpreters working in Garda stations and at the courts as there is no centralised system of testing interpreters. In addition, Dr. Phelan has noted that translation companies also do not test interpreters to establish if they can actually interpret, and when an interpreter of a rare language is required translation companies will “just try and find someone, anyone, who speaks English and the other language. If the case is a serious one, they may try and find someone who is well educated, but the interpreter will probably not have any training or experience in interpreting.... All legal interpreters should be properly trained on accredited courses and independently tested to ensure that they can provide accurate interpreting.”</p> <p>Comment from the Department of Justice and Equality: The Department of Justice & Equality has noted in their response that they believe that there to be some requirement contained within both the Garda Síochána and Courts’ contract with the translation companies in relation to quality and monitoring. In relation to the Courts’ Services’ contract with the translation companies, please see section 3.2 a) of this questionnaire. No response was provided by An Garda Síochána.</p>
	b) Is there any procedure in place to ensure that suspects or accused persons have the possibility, when	Yes	<p>When an arrested person is in custody at the police station he or she can make a complaint about the quality of the interpretation provided. However, further information on the procedure to make a complaint is not provided in the relevant Statutory Instrument.¹⁰⁵</p> <p>When a person appears before the Court the Court can order that the interpreter be replaced where upon “its own motion or on application by any of the parties to the hearing, considers that</p>

¹⁰⁴ Ireland, barrister.

¹⁰⁵ Regulation 7 (1) of the Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*, available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 06/03/15.

	<p>interpretation and translation has been provided, to complain about the quality and independence of the interpretation and translation?</p>		<p>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".¹⁰⁶ No further information is provided. See answer to 3.2 (a).</p> <p>Comment from the judiciary: "There is no procedure laid down in legislation but it is open to any party at any time in criminal proceedings to raise any issue which would impact upon the trial. This would be a matter for the judge to adjudicate on. Complaints as to the quality and independence of the interpretation/translation can be raised before the court, which is charged with ensuring that a fair trial takes place."</p> <p>NGO Comment: It was noted by an NGO with experience of working with interpreters in criminal proceedings stems from trafficking cases where the suspect/accused person is a suspected victim of trafficking, have noted that the quality of the interpreters used in the criminal proceedings they have been involved in varies greatly. In addition, it was noted that many of the suspected victims in the cases they were involved in have complained about the quality of interpretation, and when it was possible have attempted to find a replacement, although this is not a guarantee. No response was provided by An Garda Síochána.</p>
<p>c) Are there any mechanisms in place that allow for the replacement of the appointed interpreter or a new translation when the quality of the interpretation or the independence of the interpreter is considered</p>	<p>Yes</p>		<p>During police questioning the relevant Statutory Instrument provides that the member in charge (a member of the police force who is in charge of the police station at the time the member in charge is required to do anything or cause anything to be done) will "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." It should be noted that it is open for the member in charge to consult with other persons when deciding what steps to take, including the solicitor for the arrested person and the interpreter themselves.¹⁰⁷</p> <p>When a person appears before the Court the Court can order that the interpreter be replaced where upon "its own motion or on application by any of the parties to the hearing, considers that</p>

¹⁰⁶ Regulation 7 of Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

¹⁰⁷ Regulation 7(2) of the Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*, available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 06/03/15.

	insufficient? If yes, briefly provide information.			<p>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”.¹⁰⁸ No further information is provided.</p> <p>Comment from the judiciary: “A new interpreter is booked and an incident raised with the supplier informing them of the difficulty.”</p> <p>No response was provided by An Garda Síochána.</p>
3.3	Are there special procedures designed to take into account the special needs of vulnerable suspects or vulnerable accused persons which affect their ability to communicate effectively? ¹⁰⁹ If yes, briefly provide information on those mechanisms considering the following vulnerable groups:			
	a) suspect or accused persons with physical impairment or disability;	Yes		<p>In relation to arrested persons in custody at the police station, who has hearing or speech impediments, “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.”¹¹⁰ However, no further information is provided on what these “appropriate arrangements” entails.</p> <p>Comment from the judiciary: In relation to court proceedings “In accordance with regulation 9 of SI 565 of 2013 aforementioned, where it appears to a Court that the person before it has a hearing or speech</p>

¹⁰⁸ Regulation 7 of Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

¹⁰⁹ See in particular recital 27 of Directive 2010/64/EU.

¹¹⁰ Regulation 12 of Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*, available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

			<p>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 is required to order the attendance of an interpreter or other appropriate assistance at all hearings.</p> <p>The practice followed for that purpose is the same as for foreign language interpreters.”</p> <p>In relation to a person who appears before the Court , who has hearing or speech impediments , “which affects that person's ability to participate fully in the proceedings and thereby effectively exercise his or her rights to a fair trial, the court shall order the attendance of an interpreter or other appropriate assistance at all hearings.”¹¹¹</p> <p>No response was provided by An Garda Síochána.</p>
	b) suspect or accused persons with intellectual impairment or disability;	No	<p>No information publically available.</p> <p>Comment from the judiciary:</p> <p>In relation to court proceedings, “Under section 4(2) of the Criminal Law(Insanity) Act 2006 a person is deemed unfit to be tried if (s)he is unable by reason of mental disorder to understand the nature or course of the proceedings so as to—</p> <p>(a) plead to the charge, (b) instruct a legal representative, (c) in the case of an indictable offence which may be tried summarily, elect for a trial by jury, (d) make a proper defence, (e) in the case of a trial by jury, challenge a juror to whom he or she might wish to object, or (f) understand the evidence.</p> <p>Reference should be made to the Criminal Law (Insanity) Acts 2006 and 2010 for the procedure for determination of a person's fitness to be tried.”</p> <p>Comment from An Garda Síochána:</p> <p>It was noted by An Garda Síochána that “These persons as per the custody regulations are dealt with as if they were under 18 years.”</p>
	c) children who are suspects/defendants,	No	<p>No information publically available. However, the part 6 of the Children's Act 2001¹¹² and section 55 states that “In any investigation relating to the commission or possible commission of an</p>

¹¹¹ Regulation 9 of Statutory Instrument No.565 of 2013, *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013*, available at <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0565.pdf>, accessed on 09/03/15.

¹¹² No.24 of 2001, available at <http://www.irishstatutebook.ie/2001/en/act/pub/0024/>,

<p>and/or ii) holders of parental responsibility (please distinguish between the two).</p>		<p>offence by children, members of the Garda Síochána shall act with due respect for the personal rights of the children and their dignity as human persons, for their vulnerability owing to their age and level of maturity and for the special needs of any of them who may be under a physical or mental disability, while complying with the obligation to prevent escapes from custody and continuing to act with diligence and determination in the investigation of crime and the protection and vindication of the personal rights of other persons.”</p> <p>Comment from the judiciary:</p> <p>In relation to court proceedings “Please see Part 8 (Proceedings in court) and part 9 (Powers of Courts in relation to child offenders) of the Children Act 2001 for the special regime which applies where a child is charged, or as the case may be, the court is satisfied as to the guilt of a child charged, with an offence. In particular, section 96 of that Act provides:</p> <p>“96. Principles relating to exercise of criminal jurisdiction over children</p> <p>(1) Any court when dealing with children charged with offences shall have regard to—</p> <p>(a) the principle that children have rights and freedom before the law equal to those enjoyed by adults and, in particular, a right to be heard and to participate in any proceedings of the court that can affect them, and</p> <p>(b) the principle that criminal proceedings shall not be used solely to provide any assistance or service needed to care for or protect a child.</p> <p>(2) Because it is desirable wherever possible—</p> <p>(a) to allow the education, training or employment of children to proceed without interruption,</p> <p>(b) to preserve and strengthen the relationship between children and their parents and other family members,</p> <p>(c) to foster the ability of families to develop their own means of dealing with offending by their children, and</p> <p>(d) to allow children reside in their own homes,</p> <p>any penalty imposed on a child for an offence should cause as little interference as possible with the child's legitimate activities and pursuits, should take the form most likely to maintain and promote the development of the child and should take the least restrictive form that is appropriate in the circumstances; in particular, a period of detention should be imposed only as a measure of last resort.</p> <p>(3) A court may take into consideration as mitigating factors a child's age and level of maturity in determining the nature of any penalty imposed, unless the penalty is fixed by law.</p> <p>(4) The penalty imposed on a child for an offence should be no greater than that which would be appropriate in the case of an adult who commits an offence of the same kind and may be less, where so provided for in this Part.</p> <p>(5) Any measures for dealing with offending by children shall have due regard to the interests of any victims of their offending.””</p>
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				<p>Comment from An Garda Síochána: It was noted by An Garda Síochána that “Children (under 18) can have a responsible adult (parent etc) and an interpreter present during questioning.”</p>
3.4	Is there any recording procedure to note that interpretation and translation have occurred and in which form? ¹¹³ If yes, briefly provide information on how this procedure is organised in practice.		No	<p>In the police station once a decision has been made as to whether the assistance of the interpreter is required or not is recorded in the custody record. ¹¹⁴However, it is not clear whether it is the actual decision itself, and/or the occurrence of the translation that will be recorded. The custody record is the record kept of the arrest person whilst he or she is in custody.</p> <p>Comment from the judiciary: In relation to court proceedings “A record is placed on the file that an interpreter has been certified. Furthermore, criminal proceedings are digitally recorded.”</p> <p>Comment from An Garda Síochána: It was noted by An Garda Síochána that “Any interaction that a detained person has with an interpreter will be recorded in the custody record”.</p>

¹¹³ See in particular Article 7 and relevant recitals of Directive 2010/64/EU.

¹¹⁴ Regulations 7(3), (4) of Statutory Instrument No.564 of 2013 *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*, available at < <http://www.irishstatutebook.ie/pdf/2013/en.si.2013.0564.pdf>>, accessed on 05/03/15.

SECTION B: Right to information in criminal proceedings

1.	PROVISION OF INFORMATION ON THE PROCEDURAL RIGHTS ¹¹⁵	Brief Description
1.1		<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) What information is provided? b) How is it provided (e.g. orally or in writing)? c) What is the timeframe (deadline) for providing information at each stage of the proceedings?</p> <p>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>
	<ul style="list-style-type: none"> • police questioning; 	<p>a) An arrested person who is in custody at a Garda Síochána (police) station is to be informed of the offence in respect of which he/she has been arrested; the entitlement to consult a solicitor*; the entitlement to have another person (named by the suspect) notified of his/her custody at the station; and, in relation to a suspect under 18¹¹⁶ years of age, that a parent/guardian/spouse has been informed about the juvenile’s arrest/detention/respective offence/entitlement to consult a solicitor* and that the parent/guardian/spouse is requested to attend the station.¹¹⁷ In addition, the arrested person will be informed that even if these rights are not exercised immediately, they can access them later.¹¹⁸ This information is provided orally.¹¹⁹</p> <p>In addition, the arrested person is also provided with a written letter of rights (known as the C-72) which outlines the information relating to the right to legal advice, notification of a third party, medical treatment, telephone calls and personal visits and meal provision, as well as information regarding searches, and the taking of fingerprints.</p>

¹¹⁵ See in particular Article 3 and relevant recitals of Directive 2012/13/EU.

¹¹⁶ Please note that Regulation 3 of Statutory Instrument No 641 of 2006, *Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) (Amendment) Regulations 2006* available at <http://www.irishstatutebook.ie/2006/en/si/0641.html> , accessed on 31.07.15, provides that the 1984 regulations are amended by “the substitution of “eighteen” for “seventeen” wherever it occurs” in the 1984 Regulations. Available at <http://www.irishstatutebook.ie/2006/en/si/0641.html> , accessed on 31.07.15.

¹¹⁷ Regulation 8 (1) and 9 (1) Statutory Instrument No.119/1987, *Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Station) Regulations, 1987*, available at <http://www.irishstatutebook.ie/1987/en/si/0119.html> accessed on 12/03/15.

¹¹⁸ Regulation 8 (1) and 9 (1) Statutory Instrument No.119/1987, *Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Station) Regulations, 1987*, available at <http://www.irishstatutebook.ie/1987/en/si/0119.html> accessed on 12/03/15.

¹¹⁹ Regulation 8 (1) and 9 (1) Statutory Instrument No.119/1987, *Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Station) Regulations, 1987*, available at <http://www.irishstatutebook.ie/1987/en/si/0119.html> accessed on 12/03/15.

Current challenges have been identified in relation to receiving information regarding the allegation at the pre-arrest stage, as well as with those who voluntarily attend the Garda (police) station to participate in police questioning, but may not yet have been arrested.¹²⁰

When taking bodily samples in a Garda (police) station, but before a sample is taken, the suspect or accused person must be informed of the nature of the offence in accordance with section 2 (6) of the Criminal Justice (Forensic Evidence) Act 1990¹²¹ as amended.

*Please note that following the 6 March 2014 Irish Supreme Court judgment in the case of *DPP v Gormley and White*¹²² the Director of Public Prosecutions issued guidance ¹²³ to An Garda Síochána (police) indicating that people in Garda custody who request should be permitted to have their lawyer present during police questioning. In addition, An Garda Síochána (police) are in the process of drafting a *Code of Practice on Access to a Solicitor by Persons in Garda Custody*.

The right to remain silent is outlined in the initial caution during the actual arrest. It should be noted, however, that under Irish law inferences can be drawn from a suspected person's silence and the form of initial caution given on arrest has yet to be amended to reflect this.

An Garda Síochána, Code of Practice on Access to a Solicitor by Persons in Garda Custody notes that "Members should be aware that solicitors may seek information which they consider essential to assist them to act in the best interests of their client. An Garda Síochána is not obliged to disclose any information that could prejudice an investigation. In this regard, the premature disclosure of information/details may sometimes impede or interfere with the investigation. It must be remembered that an interview is part of the investigation process and there must be some spontaneity about the actual interview. If information is handed out first, the suspect can make up his/her answers and there is no spontaneity about the matter. The information which is readily available and which should as a general principle be provided to solicitors include the following:

- Confirmation of the suspect's identity;
- The alleged offence;
- The suspect's state of health or physical condition (information concerning medical or vulnerability issues relating

¹²⁰ Jean Tomkin, Solicitor, Sheehan and Partners, *The Rights to Know your Rights & Wrongs Alleged*, presentation at JUSTICIA European Rights Network Seminar *Know Your Rights Legal Training Event*, on 23/09/13 at Law Society, Dublin, Ireland.

¹²¹ No.34 of 1990, available at <http://www.irishstatutebook.ie/1990/en/act/pub/0034/>, accessed on 08/05/15.

¹²² Ireland (2014), *People (DPP) v. Gormley and White* [2014] IESC 17,6 March 2014.

¹²³ No official documentation is available from the DPP. A draft protocol was issued to solicitors.

		<p>to the suspect which may have a bearing on the solicitor's contact with the suspect or have a bearing on the safety of the solicitor); • The names of the arresting member(s);</p> <ul style="list-style-type: none"> • Time of arrest; • Reason for arrest; • Time of arrival at the Garda station; • Whether an interview has already taken place; • When legal advice was first requested; • Salient points - admissions/denials made by the suspect; • Any available material evidence provided it does not prejudice an investigation. <p>Solicitors should, where possible, be advised when samples are to be taken from their client. Ideally where samples have been taken, they should be mentioned in the next recorded interview as having been taken.....</p> <p>There is no legal requirement to have a meeting with a suspect's solicitor, or to provide information prior to interview. Whilst there is no requirement to meet or share information with a suspect's solicitor, not doing so may increase the likelihood of a 'no comment' interview, or interviews being interrupted by the suspect requesting a consultation with his/her solicitor."¹²⁴</p> <p>The aforesaid Code, which is dated April 2015, does not contain any reference to the relevant Directive.</p> <p>Comment from The Department of Justice & Equality (unofficial):</p> <p>The Department of Justice & Equality have noted in their response that the C72 (letter of rights) is the means by which the information required under Articles 3 and 4 of the Directive is given to a suspect and therefore the information on procedural rights is included. It is not a two-step process. Further clarification was provided that no legislative amendment is or was required. The C72 is governed by the 1987 Custody Regulations and can be amended at any time without any legislative measure.</p> <p>Practitioner Comment:</p> <p>A criminal practitioner noted "If a person attends a station voluntarily, i.e. they are not arrested and subsequently deprived of their liberty, they are not covered by the same safeguards in terms of receiving a notice of rights, custody records, Member-in-Charge, advised on the right to a solicitor. None of those safeguards are required, and it is on a case by case basis how much information one would receive from Gardaí and if a solicitor had been contacted prior to an invitation to attend a Garda station voluntarily. In this regard, the new directive in relation to</p>
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¹²⁴ An Garda Síochána, Code of Practice on Access to a Solicitor by Persons in Garda Custody, April 2015, available at <http://garda.ie/Documents/User/Code%20of%20Practice%20on%20Access%20to%20a%20Solicitor%20by%20Persons%20in%20Garda%20Custody.pdf> , accessed on 21/06/15, P. 5-6.

		<p>the right to information is a welcome development as it applies to arrested and suspected persons. Although, the directive so far has not really been incorporated in practice by An Garda Síochána.”¹²⁵</p> <p>Comment from An Garda Síochána: It was noted by An Garda Síochána that the age has been raised from 17 to 18. In addition, it was noted that “On arrival at the Garda station, a custody record is filled out for the prisoner and he/she has their rights read over and explained to them.”</p> <p>b) Orally and in writing. See answer to 1.1 (a). Comment from An Garda Síochána: It was noted by An Garda Síochána that “The person to be interviewed has a notice read over and explained to them before the interview (which is conducted on video) – Regulation 5 of the Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997 SI 74/1997”.</p> <p>c) The information outlined in answer 1.1 (a) is to be provided “without delay”.¹²⁶ No further guidance is given. Comment from An Garda Síochána: It was noted by An Garda Síochána that “the notice of rights and information is supplied on arrival at the Garda Station when the custody record in being completed. The video recording information is provided before the commencement of the interview”.</p>
<ul style="list-style-type: none"> • court hearings; 		<p>a) a) What information is provided? This is a function which is placed on the presiding judge by Article 38 of the Constitution. See <i>State (Healy) v O’Donoghue</i> [1976] 1 I.R 325.¹²⁷ Article 38.1 States “No person shall be tried on any criminal charge save in due course of law.”</p> <p>Comment from Office of DPP official: It was noted that at the 1st date of court appearance evidence of the arrest, charge and caution of the suspect or</p>

¹²⁵ Ireland, solicitor.

¹²⁶ Regulation 8 (1) and (2) Statutory Instrument No.119/1987, *Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Station) Regulations, 1987*, available at <http://www.irishstatutebook.ie/1987/en/si/0119.html> accessed on 12/03/15.

¹²⁷ *State (Healy) v O’Donoghue* [1976] 1 I.R 325

accused person are given by the arresting Garda. The judge typically makes enquiries as to whether a solicitor is required, if a solicitor not already representing the accused; whether legal aid is to be assigned and whether interpretation and translation services are required.

No further information is provided during the court hearings in relation to the provision of additional information on procedural rights. The notice of rights (C72), provides this additional information during the detention and police questioning stage. However, at no time does the judge reiterate the procedural rights afforded to the suspect or accused person as outlined in the notice of rights (C72) during the court proceedings.

Practitioner Comment:

One criminal practitioner noted that “In relation to court proceedings, there is no statutory right to be told of a right to a lawyer but there is a common law right to be told of his right to a solicitor. When an accused is liable to receive a custodial sentence he should be advised of his right to a solicitor without which the subsequent detention may be deemed unlawful. An accused has a statutory right to a summons or charge sheet which is required to set out in ordinary language the nature of the allegation in general terms. The right to an interpreter appears to have no statutory basis but in practice an accused who has not got proficiency in English will be afforded an interpreter for both proceedings and consulting with his lawyers. The right to remain silent is more something that an accused is told by the police. When the case reaches court in a common law jurisdiction the investigation is usually complete.”¹²⁸

One criminal practitioner noted that at the District Court if an accused person arrives without a solicitor, usually, the Court will advise that the person is entitled to have access to a solicitor and for a solicitor to act on their behalf.¹²⁹ The Judge will normally also advise that they may be entitled to free legal advice, as well as the right for an interpreter to be present if one is required.

However, another criminal practitioner noted “It is left up to the individual lawyer to explain procedural rights in the vast majority of cases. Where a defendant is representing themselves, judges will to varying degrees explain the process to them. They are almost always told they are entitled to be legally represented. There are some obligations to explain certain procedures e.g the right of election on theft and fraud charges and an alibi caution when a defendant is sent from the district to the circuit court.

In District Court, you are generally provided with a precis of the evidence and in certain cases you can apply for copy statement, custody record, notebook entries, cctv footage etc. A defendant or his or her solicitor can apply

¹²⁸ Ireland, barrister.

¹²⁹ Ireland, solicitor.

for a court order for this information. There is no statutory right to this information and it is governed by case-law and right to fair procedures, due process etc. It is often the case that a scant precis will be furnished and when an application for statements is made, the prosecution will say that none were taken, in which case most judges will say the defence are not entitled to statements. In the Circuit Court, Central and Special a book of evidence is given to the accused. Later additional evidence is served on the defendant and/or his solicitor. Disclosure is furnished to the solicitor.”¹³⁰

To clarify a criminal practitioner noted “If the case is a minor offence being tried summarily (with a judge and no jury) there is a right to direct disclosure which derives from the common law. See the case of *DPP v Gary Doyle* [1994] 2 I.R. 286. It remains in the discretion of the trial judge as to whether statements or indeed other documents held by the prosecution, which will be evidence in his trial should be furnished to the accused. It is for the District Judge to determine whether it is necessary in the interests of justice and fair procedures for the accused to be furnished pre-trial with information.

If the case is to be tried on indictment, there is a statutory right to be given a book of evidence well in advance of the trial. The book of evidence contains the following:

- (i) a statement of the charges against the accused;
- (ii) a copy of any sworn information in writing upon which the proceedings were initiated;
- (iii) a list of the witnesses the prosecutor proposes to call at the trial;
- (iv) a statement of the evidence that is expected to be given by each of them;
- (v) a copy of any documentary evidence;
- (vi) where appropriate, a copy of a certificate authenticating any documentary evidence;
- (vii) a list of the exhibits (if any).

There can be additional evidence and exhibits served on the accused right up to and during the trial but it cannot be called unless it has first been served.

The statutory duty to serve a book of evidence combines with a common law duty of disclosure of all relevant evidence, parol or otherwise, in its possession, so that if the prosecution does not adduce such evidence, the defence may, if it wishes, do so. The courts have gone a considerable distance in extending the application of fair procedures to include various forms of disclosure in criminal litigation. A statutory code is being introduced but there remains no protocol for obtaining disclosure from non-parties to criminal litigation.”¹³¹

¹³⁰ Ireland, solicitor.

¹³¹ Ireland, barrister.

b) How is it provided (e.g. orally or in writing)?

Comment from Office of DPP official:

It was noted that any information provided during court hearings is provided orally during court hearings. See answer to 1.1 a) above.

Practitioner Comment:

Criminal practitioners have noted that generally this is left up to the defence lawyer to explain and it is always orally by the presiding judge.¹³²

It has been noted by a criminal practitioner that “In summary proceedings, usually the information is provided in the form of statements and other documents. In simpler cases it can take the form of a written précis of the evidence. Occasionally the court will direct the provision of an ‘oral précis’ but this is rare. In proceedings on indictment, the book of evidence is in documentary form as is the disclosure of other material.”¹³³

c) What is the timeframe (deadline) for providing information at each stage of the proceedings?

Comment from Office of DPP official:

It was noted that this is provided on the 1st date of court appearance. However, see answer provided to 1 a) above.

Practitioner Comment:

A criminal practitioner noted that there is no timeframe, although it usually happens immediately upon being brought before the Court.¹³⁴ Another criminal practitioner noted that provision of information occurs at the outset of the first hearing. A failure to do so would render the further detention of the accused unlawful.¹³⁵

It has been noted by a criminal practitioner that “Implicit in the duty to disclose is that disclosure is made in good time with the opportunity given to the defence to consider it. See the decision of *People (DPP) v A.C.* [2005] IECCA 69 [2005] 2 I.R. 217. Where there is late disclosure the case will usually be adjourned to allow the defence ample opportunity to consider it. In proceedings on indictment the book of evidence must be served before the

¹³² Ireland, solicitor.

¹³³ Ireland, barrister.

¹³⁴ Ireland, solicitor.

¹³⁵ Ireland, barrister.

		<p>accused is sent forward for trial. This is usually about 7 weeks before he will be asked how he proposes to plead.”¹³⁶</p>
	<ul style="list-style-type: none"> • any necessary interim hearings; 	<p>a) What information is provided? This is a function which is placed on the presiding judge by Article 38 of the Constitution. See <i>State (Healy) v O'Donoghue</i> [1976] 1 I.R. 325 Comment from Office of DPP official: See information provided under “court hearings” above. Practitioner Comment: It has been noted by a criminal practitioner that in terms of interim court appearances, the accused person is usually represented, and the Court would not usually advise throughout proceedings on rights or procedures.¹³⁷</p> <p>b) How is it provided (e.g. orally or in writing)? Comment from Office of DPP official: See information provided under “court hearings” above. Practitioner Comment: It was confirmed by a criminal practitioner that this is provided orally by the presiding judge.¹³⁸ It has been noted by a criminal practitioner that when a person is being sent forward for trial to the circuit court they are advised by the Court in relation to the alibi warning.¹³⁹ It has been noted by a criminal practitioner that “In summary proceedings, usually the information is provided in the form of statements and other documents. In simpler cases it can take the form of a written précis of the evidence. Occasionally the court will direct the provision of an ‘oral précis’ but this is rare. In proceedings on indictment, the book of evidence is in documentary form as is the disclosure of other material.”¹⁴⁰</p>

¹³⁶ Ireland, barrister.

¹³⁷ Ireland, solicitor.

¹³⁸ Ireland, barrister.

¹³⁹ Ireland, solicitor.

¹⁴⁰ Ireland, barrister.

	<p>c) What is the timeframe (deadline) for providing interpretation at each stage of the proceedings? Comment from Office of DPP official: See information provided under “court hearings” above. Practitioner Comment There appears to be no deadline, this has been confirmed by criminal practitioners.¹⁴¹ Another criminal practitioner noted that provision of information occurs at the outset of the first hearing. A failure to do so would render the further detention of the accused unlawful.¹⁴² It has been noted by a criminal practitioner that “Implicit in the duty to disclose is that disclosure is made in good time with the opportunity given to the defence to consider it. See the decision of <i>People (DPP) v A.C.</i> [2005] IECCA 69 [2005] 2 I.R. 217. Where there is late disclosure the case will usually be adjourned to allow the defence ample opportunity to consider it. In proceedings on indictment the book of evidence must be served before the accused is sent forward for trial. This is usually about 7 weeks before he will be asked how he proposes to plead.”¹⁴³</p>
<ul style="list-style-type: none"> any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings? 	<p>a)What information is provided? Practitioner Comment: It has been noted by a criminal practitioner in relation to “Contact throughout proceedings. If an accused person is giving any evidence then they cannot discuss the case while under cross examination with their legal team or any person. This is the same for any person who is giving evidence. Where a witness giving evidence [that] may self incriminate the Could would provide an opportunity to contact a solicitor during proceedings.”¹⁴⁴</p> <hr/> <p>c) How is it provided (e.g. orally or in writing)? Practitioner Comment: It has been confirmed by criminal practitioners that this has been provided orally.¹⁴⁵</p>

¹⁴¹ Ireland, solicitors.

¹⁴² Ireland, barrister.

¹⁴³ Ireland, barrister.

¹⁴⁴ Ireland, solicitors.

¹⁴⁵ Ireland, solicitor.

		<p>c) c) What is the timeframe (deadline) for providing information at each stage of the proceedings?</p> <p>Practitioner Comment: It has been confirmed by criminal practitioners that there is no deadline.¹⁴⁶</p>
1.2	Do authorities provide information about any other procedural rights (apart from those established in Article 3 of the Directive)? If yes, briefly provide information.	<p>No information provided.</p> <p>Comment from An Garda Síochána: No response was provided by An Garda Síochána.</p> <p>Comment from Office of DPP official: <u>No, however, see answer provided to 1.1.</u></p>
2.	LETTER OF RIGHTS¹⁴⁷	Brief Description
2.1	What rights does the letter of rights provide information about? What information is included in the letter of rights when children are arrested or detained?	<p>The arrested person is also provided with a written letter of rights (known as the C-72) which outlines the information relating to the right to legal advice, notification of a third party, medical treatment, telephone calls and personal visits and meal provision, as well as information regarding searches, and the taking of forensic samples</p> <p>Practitioner Comment: A criminal practitioner noted “No extra information. In fact we ran a case on the basis that the letter of rights was not suitable for children, or for those who are intellectually impaired, but the court, although it admitted that there should be something for children, was unable to find in our favour as no adapted letter of rights exists. Secondly, often rather than a parent, an ‘appropriate adult’ is contacted which can be (and has been) a local adult, i.e. The next door security guard in a shop, who attends the interview to ensure that the child is treated well. This has changed now that a solicitor can also attend interviews, although there remains the provision for ‘an appropriate adult’ to attend also.”¹⁴⁸</p>
2.2	At what stage of the proceedings is the letter	<p>The letter of rights is provided “without delay” to an arrested person in custody at a Garda (police) station.</p> <p>Comment from An Garda Síochána:</p>

¹⁴⁶ Ireland, solicitor.

¹⁴⁷ See in particular Article 4 and relevant recitals of Directive 2012/13/EU.

¹⁴⁸ Ireland, solicitor.

	<p>of rights provided? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>No response was provided by An Garda Síochána.</p>
<p>2.3</p>	<p>Is the letter of rights drafted in simple and accessible language? How do competent authorities verify whether the language is simple and accessible enough for the suspects or accused persons and/or that the suspects or accused persons understand the language? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>The letter of rights (C72) is not drafted in simple and accessible language. Comment from An Garda Síochána: It was noted by An Garda Síochána that “There are different versions of the notice available depending on the primary language of the prisoner. The notice is also explained to the prisoner. A new version of the C72 is currently at an advanced stage of drafting.”</p>

3.	RIGHT TO INFORMATION ABOUT THE ACCUSATION ¹⁴⁹	Brief Description
3.1	<p>What information is provided to the suspects or accused persons regarding what they have been accused of and how is it provided (e.g. orally or in writing)</p>	<p>The arrested person will be informed orally in ordinary language of the offence without delay.¹⁵⁰</p> <p>Practitioner Comment A criminal practitioner noted that no information is provided to suspects or accused persons not arrested regarding the information about the criminal act they are suspected of having committed before their first official interview by the police.¹⁵¹</p> <p>Comment from An Garda Síochána: It was noted by An Garda Síochána that “If a person is charged with an offence they are provided with copies of the charge sheet and any associated bail bond.”</p>
3.2	<p>At which stage of the proceedings is the information provided? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>In the case of <i>Health Service Executive v White</i> [2009] IEHC 242 where Edwards J notes “Strictly speaking there is no such remedy as a disclosure order known to the criminal law.¹⁵² Disclosure...is a legal duty that rests on the prosecuting authorities in a criminal trial. It is a duty to disclose evidence in good time with the opportunity given to the defence to consider it. An accused is entitled to be served with a copy of the book of evidence prior to his being sent forward for trial. Notices of additional evidence must be served in advance of that evidence being tendered. In <i>People (DPP) v A.C.</i>, - The defence had requested a copy of the Garda file relating to a complaint made against the accused by the complainant’s cousin which had not been the subject of a prosecution. The material had been sought some months before the start of the trial but only disclosed minutes before the start of the trial. Denham J. set out factors that should be taken into account in assessing whether a trial is rendered unfair by later disclosure:</p> <p>“1. the court should consider, by reference to the principles already established in respect of cases where evidence emerges subsequent to trial, the materiality of the new evidence;</p> <p>2. by analogy with the principles already established in such cases, the court should consider the extent to which the unavailability of the evidence in question until a late stage in the criminal process was contributed to, on the one hand, by any default on the part of the prosecution, and, on the other hand, any</p>

¹⁴⁹ See in particular Article 6 and relevant recitals of Directive 2012/13/EU.

¹⁵⁰ Regulation 8 (1) and 9 (1) Statutory Instrument No.119/1987, *Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Station) Regulations, 1987*, available at <http://www.irishstatutebook.ie/1987/en/si/0119.html> accessed on 12/03/15.

¹⁵¹ Solicitor, (No.6)

¹⁵² Abrahamson, Dwyer and Fitzpatrick; *Discovery and Disclosure*, 2nd Ed., 2013, Thompson Roundhall, Chapter 22 Procedure for seeking discovery, at pp 22.09

		<p>failure on the part of the defendant; and</p> <p>3. where some of the failure to ensure that the relevant evidence was available in a timely fashion is attributable to the defence and/or where the defence may have been culpable, notwithstanding the late disclosure of availability of such evidence, in failing to utilise such evidence, the court should consider the extent to which it may be reasonable to infer that the failure to call or exploit such evidence may have been due to a tactical decision on the part of the defence.”¹⁵³</p> <p>Practitioner Comment: In addition, it has been noted by a criminal practitioner that at the point of the charge a charge sheet is served on the accused or they receive a summons outlining the alleged offence(s).¹⁵⁴ In the District Court a precis of the evidence is sometimes served on the first day or an order is made for it on the first or second day in court. In addition, an application can be made for more detailed disclosure where it is appropriate and available.</p> <p>See above for circuit court.</p> <p>A criminal practitioner has noted that there is no timeframe during pre-trial proceedings in relation to the information provision.¹⁵⁵</p> <p>Comment from An Garda Síochána: No response was provided by An Garda Síochána.</p>
3.3	How are suspects or accused persons informed when, in the course of the criminal proceedings, the details of the accusation	<p>Comment from Office of DPP official: It was noted that this doesn’t usually arise in practice and if it does the accused is further charged and given copies of the new charges</p> <p>Practitioner Comment: It has been noted by the criminal practitioner that the accused is entitled to be on notice of any evidence that may</p>

¹⁵³ *Health Service Executive v White* [2009] IEHC 242

¹⁵⁴ Ireland, solicitor.

¹⁵⁵ Ireland, solicitor.

<p>change?</p>	<p>be given, prior to it being given and will be provided with written ‘notice of additional evidence’ . It was further noted by a criminal practitioner that if there is a fundamental change to the accusation, then an application to amend the charge sheet or summons will be made in court at any time prior to the conclusion of the prosecution evidence. Amendments can also be made to the indictment in the higher courts. Additional evidence can be served in the higher courts right up to the conclusion of the prosecution case. This happens very frequently. It was further noted that in the District Court you frequently hear evidence for the first time in the witness box due to the fact that the Gardaí are not obliged to take or make statements in every instance and if there are no statements there is no obligation to furnish them.¹⁵⁶</p> <p>A criminal practitioner noted that “The indictment (which sets out the charges before the court) can be changed at any stage during the course of the trial (and often is) where it is found to be defective. It cannot be changed in circumstances where it would be prejudicial to the defence, but my experience has been to date that when they seek to change the indictment during a trial they are allowed to do so by the trial judge on foot of an application by the defence.” In addition, a criminal practitioner noted that “the defence must be provided with written notice of any evidence that may be called during the course of the trial. This can be done throughout the trial. So for example, they may decide to call an extra witness, but they must serve us with notice of additional evidence enclosing the statement before the evidence can be called.”¹⁵⁷</p> <p>In addition, it has been noted by a criminal practitioner that “In summary proceedings further charges can be preferred. This is subject to a 6-month time limit for summary-only offences. This will not be allowed after the trial starts. There are no strict rules in relation to this but is governed by the law on abuse of process. In proceedings on indictment further charges can be added to the indictment at any time until the trial begins.</p> <p>In summary trials and trials on indictment a charge can be amended at any time up to and during the trial provided there is no prejudice to the accused.</p> <p>On a trial on indictment as a general rule, no evidence can be given of which the accused has not been given notice. This is not the case in summary proceedings which are governed by the more flexible principles set out in the case of <i>Gary Doyle</i>.”¹⁵⁸</p> <p>Comment from An Garda Síochána: It was noted by An Garda Síochána that “Should the reason for the person’s detention be extended or amended to</p>
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¹⁵⁶ Ireland, barrister.

¹⁵⁷ Ireland, solicitor.

¹⁵⁸ Ireland, barrister.

		include an offence for which they were not initially detained for then this will be explained to them by the member in charge. The relevant legislation under which the person is detained contains its own provision for extensions/ time frames and continued detention for other offences”.
4.	RIGHT OF ACCESS TO CASE MATERIALS¹⁵⁹	Brief Description
4.1	What material evidence can be accessed by suspected or accused persons (e.g. documents, photographs, audio, video, summaries...)?	<p>During the investigation stage access is granted to the charge sheets,¹⁶⁰ custody records,¹⁶¹ interview statements and videos of the interview¹⁶².</p> <p>There is a difference between what material evidence can be accessed in relation to summary prosecutions versus prosecutions on indictment.</p> <p>With regards to summary prosecutions the material evidence that can be accessed is limited and is defined by the Supreme Court in <i>Director of Public Prosecutions v. Gary Doyle</i> [1994] 2 IR 286. As a result of which there is no general duty on the prosecution in a summary case to provide the statements of the intended witnesses in advance unless, upon application by the defence, the court believes “<i>in the interests of justice on the facts of the particular case</i>” that this should be done.</p> <p>In relation to prosecutions on indictment the prosecution has a statutory duty to provide the accused or his lawyer with the “book of evidence” pursuant to section 4 B and 4 C of the <i>Criminal Procedure Act, 1967</i>, as inserted by section 9 of the <i>Criminal Justice Act 1999</i>.¹⁶³ Pursuant to section 4B the book of evidence should include the following:</p> <ul style="list-style-type: none"> (a) a statement of the charges against the accused; (b) a copy of any sworn information in writing upon which the proceedings were initiated; (c) a list of the witnesses the prosecutor proposes to call at the trial;

¹⁵⁹ See in particular Article 7 and relevant recitals of Directive 2012/13/EU.

¹⁶⁰ Regulation 15 (1) S.I No. 119/1987 CRIMINAL JUSTICE ACT, 1984 (TREATMENT OF PERSONS IN CUSTODY IN GARDA SÍOCHÁNA STATIONS) REGULATIONS, 1987. CRIMINAL JUSTICE ACT, 1984 (TREATMENT OF PERSONS IN CUSTODY IN GARDA SÍOCHÁNA STATIONS) REGULATIONS, 1987. Available at <http://www.irishstatutebook.ie/1987/en/si/0119.html> , accessed on 01.04.15.

¹⁶¹ Regulation 6 S.I No. 119/1987 CRIMINAL JUSTICE ACT, 1984 (TREATMENT OF PERSONS IN CUSTODY IN GARDA SÍOCHÁNA STATIONS) REGULATIONS, 1987. CRIMINAL JUSTICE ACT, 1984 (TREATMENT OF PERSONS IN CUSTODY IN GARDA SÍOCHÁNA STATIONS) REGULATIONS, 1987. Available at <http://www.irishstatutebook.ie/1987/en/si/0119.html> , accessed on 01.04.15.

¹⁶² Section 56 of the *Criminal Justice Act 2007*, No. 29 of 2007, available at <http://www.irishstatutebook.ie/2007/en/act/pub/0029/>, accessed on 01.04.15.

¹⁶³ Criminal Procedure Act 1976, as inserted by section 9 of the *Criminal Justice Act 1999*, No.10 of 1999, available at <http://www.irishstatutebook.ie/1999/en/act/pub/0010/index.html>, accessed on 01.04.15.

- (d) a statement of the evidence that is expected to be given by each of them;
- (e) a copy of any document containing information which it is proposed to give in evidence by virtue of Part II of the *Criminal Evidence Act, 1992*.
- (f) Where appropriate, a copy of a certificate under section 6 (1) of that Act;
- (g) A list of the exhibits (if any).

Section 4 C applies if the prosecutor wishes to call additional evidence or witnesses. There is also provision for the disclosure of evidence which is relevant to the case but the prosecution has decided not to use at trial. In relation to prosecution on indictment the accused has the right to inspect all exhibits mentioned in the list of exhibited served on the accused or his lawyer pursuant to section 4 B/4C.

There are also a number of statutory rights to disclosure which permeate the criminal code, including the right to disclosure of a custody record pertaining to a period of detention in a Garda station,¹⁶⁴ the right to a copy of a video of interview of a prisoner in a garda station,¹⁶⁵ a probation report created in relation to a child accused,¹⁶⁶ a certificate of analysis of the concentration of alcohol in a drunken driving prosecution.¹⁶⁷

Comment from Office of DPP official:

With regards to summary proceedings it was noted that usually the prosecutor will disclose the material evidence if it is relevant whether a court order has been made or not. It was further noted that if an application is made in relation to access of material evidence, the judge will adjudicate whether to disclose this evidence on the basis of “relevance”.

Practitioner Comment:

It was noted by a criminal practitioner that “On trials on indictment there is a well-established right to materials other than in the book of evidence which assist the defence, damage the prosecution or provide a lead on either of those things. This is subject to a valid claim of privilege. There is a duty on the Gardaí arising out of their unique function to seek out and preserve relevant evidence whether exculpatory or inculpatory.”¹⁶⁸

¹⁶⁴ Regulation 24(2) of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. 119 of 1987). See *DPP (Sheridan) v Dempsey* unreported High Court, Kinlen J., July 2, 1997.

¹⁶⁵ Regulation 16 of the Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997 (S.I. 74 of 1997). See also s. 56 of the Criminal Justice Act 2007.

¹⁶⁶ s. 103 of the Children Act 2001.

¹⁶⁷ ss. 17(2) and 19(3) of the Criminal Justice Act 1994.

¹⁶⁸ Ireland, barrister.

		<p>Another criminal practitioner noted that in relation to inspection, “the solicitor for the Plaintiff will have to write to request to inspect the documents and then a date and time will be arranged. Very often this inspection will happen in court on an informal basis. I had one case where I inspected cigarettes which they were alleged they were counter fit. I had to go to customs in Dublin to examine them. [They actually had stamp duty and tax paid on most of them and therefore the charges were incorrect].¹⁶⁹</p> <p>In addition, a criminal practitioner noted that “An accused person is entitled to the videotape of interview and they are also entitled to disclosure of any CCTV footage. There have been instances where CCTV footage has not been obtained by the Gardaí even though it existed. When an accused person went to look for it, the CCTV footage can be destroyed due to the delay in seeking same.”¹⁷⁰</p> <p>Moreover, it has been noted by a criminal practitioner that very often additional information can be disclosed after the book of evidence has been served. If this occurs then the Defence can seek and adjournment to consider same. I have seen this happen on the day the case has been listed for trial.</p> <p>Comment by The Department of Justice & Equality (unofficial):</p> <p>The Department of Justice & Equality have noted in their response the heavy burden of disclosure on prosecutors.</p> <p>Comment from An Garda Síochána:</p> <p>It was noted by An Garda Síochána that “The duty to disclose includes the provision of all relevant materials in the possession of the prosecution which proves the guilt/ innocence of the accused. It is set out at Chapter 9 of the Director of Public Prosecutions’ Guidelines for Prosecutors.”¹⁷¹</p>
4.2	<p>At what stage of the proceedings is access to case materials granted? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>In relation to summary prosecution the defence can make a pre-trial application for disclosure of the intended witness statements in accordance with the <i>Gary Doyle</i> case.¹⁷²</p> <p>In relation to prosecution upon indictment, the book of evidence, as laid out under section 4 B, should be served on the accused person within 42 days of the accused’s first appearance in the District Court, although this time period can be extended.</p> <p>During the investigation stage the appointed lawyer is allowed access to documents as soon as practicable.</p>

¹⁶⁹ Ireland, barrister.

¹⁷⁰ Ireland, barrister.

¹⁷¹ see DPP *Guidelines for Prosecutors*, Revised November 2010, available at https://www.dppireland.ie/filestore/documents/GUIDELINES_-_Revised_NOV_2010_eng.pdf, accessed on 15/07/15.

¹⁷² *Director of Public Prosecutions v. Gary Doyle* [1994] 2 IR 286

		<p>Section 4C of the Act of 1967 permits the prosecution to serve additional evidence on the accused at any time after the service of the book of evidence.</p> <p>Comment from Office of DPP official:</p> <p>It was noted in relation to summary proceedings that access to case materials is usually provided after the 1st remand and before the accused has to indicate a plea. This often happens at the 2nd court appearance, but not always. In relation to indictable proceedings, the aforementioned information on the book of evidence has been confirmed.</p> <p>Comment from An Garda Síochána:</p> <p>It was noted by An Garda Síochána that “Access to case materials is granted following charge/ summons. It is not permitted during the investigation stage as stated above.”</p>
4.3	Under what circumstances is access to material refused? Who takes the decision of refusal?	<p>In relation to summary prosecution the Court makes the decision of whether to order the prosecution to disclose intended witness statements to the defence taking into consideration the following matters as outlined by the Supreme Court in the <i>Gary Doyle</i> case:</p> <ul style="list-style-type: none"> “(a) the seriousness of the charge; (a) the importance of the statements or documents; (b) the fact that the accused has already been adequately informed of the natures and substance of the accusation; (c) the likelihood that there is no risk of injustice in failing to furnish the statements of documents in issue to the accused.”¹⁷³ <p>In relation to prosecution upon indictment, as already noted a statutory duty to furnish the book of evidence within a certain time period exists. However, the prosecution is not required to disclose a confidential statement by a Garda (police) informant where this statement would identify the informant, or the “identity of a potential witness who has assisted the Garda Síochána without intending to be witness and the prosecution has agreed not to call the person unless that person has evidence which would assist the defence”.</p> <p>Practitioner Comment:</p> <p>It was noted by a criminal practitioner that “Objections can be made on the grounds of public interest privilege which includes informer privilege, where there a risk to the life of another, where there is an ongoing investigation,</p>

¹⁷³ *Director of Public Prosecutions v. Gary Doyle* [1994] 2 IR 286

		<p>etc.”¹⁷⁴</p> <p>Comment from Office of DPP official: In relation to summary proceedings the DPP provides the majority of what is relevant to the defence. If the DPP does not provide certain information, an application can be made to a judge for disclosure, who will make a decision based on “relevance”.</p> <p>In relation to indicatable offences, in general the DPP provides all relevant evidence,¹⁷⁵ even without a written request by the defence solicitor. However, failing this, the defence lawyer can make an application to the court and ask that it be disclosed on basis of “relevance”</p> <p>Comment from An Garda Síochána: It was noted by An Garda Síochána that “A claim of privilege will ultimately be decided upon by the Court.”</p>
5.	CROSS-CUTTING ISSUES: LANGUAGES, COMPLAINT MECHANISMS, RECORDING & SPECIAL MEASURES¹⁷⁶	Brief Description
5.1	In which languages can information be provided for the following?	<p>Practitioner Comment: It has been noted by a criminal practitioner that this information is generally provided in the first language of the accused if they do not have adequate proficiency in English.¹⁷⁷ However, a criminal practitioner has noted that regardless an interpreter will interpret into any language orally. Requests for assistance were made to the Garda</p>

¹⁷⁴ Ireland, barrister.

¹⁷⁵ For more information see DPP *Guidelines for Prosecutors*, Revised November 2010, available at https://www.dppireland.ie/filestore/documents/GUIDELINES_-_Revised_NOV_2010_eng.pdf, accessed on 15/07/15.

¹⁷⁶ See in particular Articles 3 - 8 and relevant recitals of Directive 2012/13/EU.

¹⁷⁷ Ireland, barrister.

		(police) Commissioner, however no commitment has yet been made permitting members of the force to participate in the research. Any late response will be inputted accordingly during the next round of revisions. ¹⁷⁸		
		Comment from Office of DPP official: It was noted in response to 5.1 a) c) that the information is provided in the first instance in English and Irish, and then at a later stage translation is provided, in particular in relation to the “book of evidence” in indictable cases.		
	a) information on procedural rights	Comment from An Garda Síochána: No response was provided by An Garda Síochána.		
	b) letter of rights	Comment from An Garda Síochána: It was noted by An Garda Síochána that “The C72 is available in a number of languages”.		
	c) information about the accusation	Comment from An Garda Síochána: No response was provided by An Garda Síochána.		
	d) case materials	Comment from An Garda Síochána: It was noted by An Garda Síochána that “The information is supplied in English or Irish only.”		
		Yes	No	Brief Description
5.2	Is there any procedure to ensure that suspects or accused persons have	Y		Practitioner Comment: It has been noted by a criminal practitioner ¹⁷⁹ that in relation to information about the accusation or case materials a judicial review is last resort to go to the high court, or more usually an application

¹⁷⁸ Ireland, solicitor.

¹⁷⁹ Ireland, solicitor.

<p>the right to challenge the failure or refusal to provide information on the following? If yes, briefly describe the procedure where relevant.</p>	<p>before the trial judge in accordance with <i>PG v DPP</i> [2006] IESC 19 [2007] 3 I.R. 39 as outlined <i>Discovery and Disclosure (Abrahamson, Dwyer & Fitzpatrick)</i> book¹⁸⁰, which contains up to date information as of August 1st 2013 , where the following extract is given:</p> <p>“The trial judge must be and is in law, bound to arrange the progress of the trial so as to render justice and to guarantee fair procedure to all parties, especially the accused. I agree with the submission of the respondent that matters of disclosure are within the province of the trial judge. They are not matters for judicial review except to the extent that an accused person can show that, having taken all reasonable steps to obtain disclosure, necessary material has been withheld from him to such an extent as to give rise to a real risk of an unfair trial.”¹⁸¹</p> <p>In relation to the letter of rights and other procedural rights, it is very much a case by case basis, and would usually form the basis of legal argument in the absence of the jury before the trial judge. Another criminal practitioner has noted that this can be done by way of application to the trial court for a disclosure order, and that where a failure to disclose or a failure to seek out and preserve evidence gives rise to a real risk of an unfair trial, an accused can apply to the High Court to prohibit his trial.¹⁸²</p> <p>Comment from Office of DPP official:</p> <p>It was noted in response to 5.2 (a)(c) and (d) that again any challenge to the failure or refusal to provide such information takes place in the form of a “relevance hearing”¹⁸³ before a judge.</p> <p>Comment from An Garda Síochána:</p> <p>It was noted by An Garda Síochána that “Article 38.1 of the Constitution of Ireland states that no one shall be tried except in due course of law. The Constitution also guarantees fair procedures. As part of this an accused is entitled to full disclosure of information of case against him/ her to allow them prepare a defence. Failure to comply with this may result in an order of prohibition by the High Court in respect of any criminal proceedings. A failure to provide a notice of rights and relevant information may result in a Court ruling that the detention was unlawful.”</p>
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¹⁸⁰ Abrahamson, Dwyer and Fitzpatrick; *Discovery and Disclosure*, 2nd Ed., 2013, Thompson Roundhall, Chapter 22 Procedure for seeking discovery, at pp 22.23

¹⁸¹ See at pp. 55-56, para. 53. See also *Berry v Hickson* [2012] IEHC 320, unreported High Court, Hedigan J., July 26, 2012, *Dowling v Brennan* [2010] IEHC 522, unreported High Court, O’Keeffe J., November 11, 2010.

¹⁸² Ireland, barrister.

¹⁸³ Relevant hearing is not an official term. It is used by the DPP official to describe the application the defence brings before the court for disclosure of information when not already provided by the prosecution.

	a) information on procedural rights			See overall answers in 2 and 5.2. Comment from An Garda Síochána: No response was provided by An Garda Síochána.
	b) letter of rights			See overall answers in 2 and 5.2. Comment from An Garda Síochána: No response was provided by An Garda Síochána.
	c) information about the accusation			See overall answers in 2 and 5.2. Comment from An Garda Síochána: No response was provided by An Garda Síochána.
	d) access to case materials			See overall answers in 2 and 5.2. Comment from An Garda Síochána: No response was provided by An Garda Síochána.
5.3	Is any official record kept to note the provision of information about the following? If yes, briefly describe where relevant.	Y		Practitioner Comment: It has been noted by a criminal practitioner that any information which is provided to the accused in custody will appear in the custody record. This will include whether the information was translated or the information was translated via the phone to the accused person. ¹⁸⁴ A criminal practitioner noted that “a person who is not arrested does not have the benefits of the custody records”. ¹⁸⁵ Comment from Office of DPP official: It was noted in response to 5.3 a) c) and d) that yes a record should be kept in relation to the provision of information but that it is dependent on who provides the said information. However, it was further noted that the Court will not keep this record, but that the prosecutor should.
	a) information on	Y		Practitioner Comment:

¹⁸⁴ Ireland, barrister.

¹⁸⁵ Ireland, solicitor.

	procedural rights			<p>Yes, the custody record records this. In addition, the caution read out at interview stage is as follows: “You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence. As you are aware this interview is being recorded and the DVD may be used in evidence”. Moreover, where inferences are invoked they too are explained. This information was obtained from a criminal practitioner. See answer to (b) below.¹⁸⁶</p> <p>Comment from An Garda Síochána: It was noted by An Garda Síochána that “Extensions of detentions/ authorisations for forensic samples etc will be recorded in the custody record”.</p>
	b) letter of rights	Y		<p>The Garda (member in charge) will “ask the arrested person or cause him to be asked to sign the custody record in acknowledgement of receipt of the notice. If he refuses to sign, the refusal shall be recorded.”¹⁸⁷ In accordance with the Custody Records Part C the time, date and signature of the arrested person is required on the custody record.¹⁸⁸</p> <p>Comment from An Garda Síochána: No response was provided by An Garda Síochána.</p>
	c) information about the accusation		N	<p>See answer to (b) above. Criminal practitioners have noted that no information is provided and that in practice a solicitor usually asks prior to advising client for the details of the case. One can ask that information be recorded by the member in charge also, but usually a solicitor would record the details themselves.¹⁸⁹</p> <p>Comment from An Garda Síochána: It was noted by An Garda Síochána that “The reason for the arrest/ detention will be set out in the Custody Regulations”.</p>
	d) access to case materials		N	<p>See answer to 5.3 (c)</p> <p>Practitioner Comment: Although it has been noted by a criminal practitioner that this will usually be done by correspondence between the prosecutor and accused’s solicitor.¹⁹⁰</p>

¹⁸⁶ Ireland, solicitor.

¹⁸⁷ Regulation 8 .4 Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. 119 of 1987).

¹⁸⁸ Ireland, solicitor.

¹⁸⁹ Ireland, solicitors.

¹⁹⁰ Ireland, barrister.

			<p>Comment from An Garda Síochána: It was noted by An Garda Síochána that “Items for disclosure are itemised and recorded in the file, including the date/ time of delivery/ hand over and the person/ office delivered to.”</p>
5.4	<p>Are there special procedures designed to take into account the special needs of vulnerable suspects or vulnerable accused persons (e.g. because of any physical impairments which affect their ability to communicate effectively (persons with hearing, sight or speech impediments), intellectual disabilities or in case of children and the holder of parental responsibility) in relation to:</p> <p>a) suspect or accused persons with physical impairment or disability; b) suspect or accused persons intellectual impairment or disability; c) suspect or accused children who are</p>		<p>Practitioner Comment: It has been noted by a criminal practitioner that there are no specific procedures in place but the power and duty of a trial judge to take measures to ensure a fair trial allows such measures to be taken as are appropriate to ensure an accused with particular needs receives a fair trial.¹⁹¹</p> <p>Comment from An Garda Síochána: No response was provided by An Garda Síochána.</p> <p>Comment from Office of DPP official: In response to 5.4a) and b) it was noted that during the court proceedings it is dependent on the judge presiding over a case to have the sensitivity to recognise any special needs of vulnerable suspects or accused persons, or upon the lawyer to make enquiries. In response to 5.4 c) it was noted that when a case involves a child suspect or accused person the court will sit as a Children’s Court and <i>in camera</i>. It was further noted that at the Garda station at the arrest there is a requirement that the child suspect or accused person cannot be questioned in the absence of a responsible adult. In addition, the child has a right to have their rights explained to them in the presence of an adult.</p>

¹⁹¹ Ireland, barrister.

<p>suspects/defendants and/or the holder of parental responsibility.</p> <p>If yes, briefly provide information on those mechanisms in relation to each of the listed vulnerable groups. Is this information in simple and accessible language?</p>			
<ul style="list-style-type: none"> information on procedural rights 	a)		<p>N</p> <p>No information available.</p> <p>Practitioner Comment:</p> <p>It has been confirmed by a criminal practitioner that there are no special procedures are in place, but a sign language interpreter will be provided where it is necessary and will sign as requested by the court, the accused and the defence solicitor.¹⁹²</p> <p>Comment from An Garda Síochána: No response was provided by An Garda Síochána.</p>
	b)		<p>N</p> <p>No information available.</p> <p>Practitioner Comment: It has been confirmed by a criminal practitioner that there is no special procedure in place.¹⁹³</p> <p>Comment from An Garda Síochána:</p>

¹⁹² Ireland, solicitor.

¹⁹³ Ireland, solicitor.

			It was noted by An Garda Síochána that “Regulation 22 of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 sets out that such persons will be dealt with as if they are under 18”.
	c)	Y	In relation to a suspect under 18 years of age ¹⁹⁴ , that a parent/guardian/spouse has been informed about the juvenile’s arrest/detention/respective offence/entitlement to consult a solicitor* and that the parent/guardian/spouse is requested to attend the station. ¹⁹⁵
• letter of rights	a)	N	No information available. Practitioner Comment: It has been noted by a criminal practitioner that there are no special procedures are in place, but a sign language interpreter will be provided where it is necessary and will sign as requested by the court, the accused and the defence solicitor ¹⁹⁶ . Comment from An Garda Síochána: No response was provided by An Garda Síochána.
	b)	N	No information available. Practitioner Comment: It has been confirmed by a criminal practitioner that there is no special procedure in place. ¹⁹⁷ Comment from An Garda Síochána: It was noted by An Garda Síochána that “Regulation 22 of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 sets out that such persons will be dealt with as if they are under 18”.

¹⁹⁴ Please note that Regulation 3 of Statutory Instrument No 641 of 2006, *Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) (Amendment) Regulations 2006* available at <http://www.irishstatutebook.ie/2006/en/si/0641.html> , accessed on 31.07.15, provides that the 1984 regulations are amended by “the substitution of “eighteen” for “seventeen” wherever it occurs” in the 1984 Regulations. Available at <http://www.irishstatutebook.ie/2006/en/si/0641.html> , accessed on 31.07.15.

¹⁹⁵ Regulation 8 (1) and 9 (1) Statutory Instrument No.119/1987, *Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Station) Regulations, 1987*, available at <http://www.irishstatutebook.ie/1987/en/si/0119.html> accessed on 12/03/15.

¹⁹⁶ Ireland, solicitor.

¹⁹⁷ Ireland, solicitor.

		c)	Y	There is an entitlement to have the notice of rights sent to another person. ¹⁹⁸ Comment from An Garda Síochána: No response was provided by An Garda Síochána.
• information about the accusation		a)	N	No information available. Practitioner Comment: It has been noted by a criminal practitioner that there are no special procedures are in place, but a sign language interpreter will be provided where it is necessary and will sign as requested by the court, the accused and the defence solicitor. ¹⁹⁹ Comment from An Garda Síochána: No response was provided by An Garda Síochána.
		b)	N	No information available. Practitioner Comment: It has been confirmed by a criminal practitioner that there is no special procedure in place. ²⁰⁰ Comment from An Garda Síochána: It was noted by An Garda Síochána that “Regulation 22 of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 sets out that such persons will be dealt with as if they are under 18”.
		c)	N	No information available. Practitioner Comment: This has been confirmed by a criminal practitioner. ²⁰¹ Comment from An Garda Síochána: No response was provided by An Garda Síochána.
• access to case materials		a)	N	No information available. Practitioner Comment:

¹⁹⁸ Regulation 9 (1) (b) custody regs

¹⁹⁹ Ireland, solicitor.

²⁰⁰ Ireland, solicitor.

²⁰¹ Ireland, solicitor.

			<p>It has been noted by a criminal practitioner that there are no special procedures are in place, but a sign language interpreter will be provided where it is necessary and will sign as requested by the court, the accused and the defence solicitor.²⁰²</p> <p>Comment from An Garda Síochána: No response was provided by An Garda Síochána.</p>
	b)	N	<p>Practitioner Comment: It has been confirmed by a criminal practitioner that there is no special procedure in place.²⁰³</p> <p>Comment from An Garda Síochána: It was noted by An Garda Síochána that “Regulation 22 of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 sets out that such persons will be dealt with as if they are under 18”.</p>
	c)	N	<p>No information available.</p> <p>Practitioner Comment: This has been confirmed by a criminal practitioner.²⁰⁴</p> <p>Comment from An Garda Síochána: No response was provided by An Garda Síochána.</p>

²⁰² Ireland, solicitor.

²⁰³ Ireland, solicitor.

²⁰⁴ Ireland, solicitor.

