

Subsidiary Legislation made under s.697.

Victims in Criminal Proceedings Regulations 2015

LN.2015/201

Commencement **16.11.2015**

Transposing:
Directive 2012/29/EU

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In exercise of the powers conferred upon him by section 697 of the Criminal Procedure and Evidence Act 2011 and all other enabling powers, and in order to transpose Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, the Minister has made the following Regulations-

Title and commencement.

1. These Regulations may be cited as the Victims in Criminal Proceedings Regulations 2015 and come into operation on 16 November 2015.

Interpretation.

2.(1) In these Regulations-

“a person with responsibility for victims” means, where the context so admits, all or any of the following-

- (a) the Minister;
- (b) the Chief Executive of the Gibraltar Courts Service;
- (c) the Commissioner of Police;
- (d) the Collector of Customs,

in so far as it relates to matters within their competence;

“Act” means the Criminal Procedure and Evidence Act 2011;

“child” means any person below 18 years of age;

“competent authority” means a body established by law whose officers are empowered to arrest and keep a person in custody against that person’s will;

“criminal proceedings” has the meaning given in the Act;

“Directive” means Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, as the same may be amended from time to time;

“family members” means-

- (a) the spouse;
- (b) the civil partner; or
- (c) the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis;

and includes the relatives in direct line, the siblings and the dependants of the victim;

“restorative justice” means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party;

“Member State” means a Member State of the European Union;

“Minister” means the Minister with responsibility for Justice;

“proceedings” shall be construed broadly to include, in addition to criminal proceedings, all contacts of victims as such with any authority, public service or victim support organisation in connection with their case, before, during, or after criminal proceedings;

“victim” means-

- (a) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
- (b) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death; and

“victim support services” includes a non-governmental organisation, legally established in Gibraltar or in a Member State, whose support to victims of crime is provided free of charge and, conducted under appropriate conditions, complements the action of the State in this area.

(2) Subject to subregulation (1), any expression used in these Regulations which is used in the Directive has the meaning given by the Directive.

General Provisions

Objectives with regards to victims.

3.(1) During investigations or prosecutions of criminal offences a person with responsibility for victims shall have regard to the following objectives-

- (a) that victims receive appropriate information, support and protection and are able to participate in criminal proceedings;
- (b) that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victims support or restorative justice services or a competent authority, operating within the context of criminal proceedings;
- (c) that the rights in these Regulations apply to all victims in a non-discriminatory manner, including with respect to the victim's residence status; and
- (d) that where the victim is a child, the child's best interests are a primary consideration and shall be assessed on an individual basis.

(2) In the individual assessment of the child victim's best interests referred to in subregulation (1)(d) a child-sensitive approach shall prevail, taking due account of the child's-

- (a) age;
- (b) maturity;
- (c) views;
- (d) needs;
- (e) concerns.

(3) The child and the holder of parental responsibility or legal representative shall be informed, by a person with responsibility for victims, of a measure or rights specifically focused on the child.

Provision of Information and Support

Right to understand and to be understood.

4.(1) It shall be the duty of a person with responsibility for victims, to ensure that a victim is assisted to understand and be understood from the first contact and during any further necessary interaction he has with a competent authority in the context of criminal proceedings, including where information is provided by that authority.

(2) It shall be the duty of a person with responsibility for victims to ensure that communications with a victim, whether orally or in writing, are given in simple and accessible language and take into account the personal characteristics of the victim including any disability which may affect his ability to understand or to be understood.

(3) Subject to subregulation (4) a victim may be accompanied by a person of his choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or be understood.

(4) A victim may not be accompanied by a person of his choice as provided for under subregulation (3) whereby to be accompanied would be contrary to the interests of the victim or would prejudice the course of criminal proceedings.

Right to receive information from first contact.

5.(1) Where a victim comes into contact with a competent authority, the victim shall be offered, without unnecessary delay, the information in subregulation (2).

(2) The information referred to in subregulation (1) must be at least—

- (a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;
- (b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
- (c) how and under what conditions they can obtain protection, including protection measures;
- (d) how and what conditions they can access legal advice, legal aid and any other sort of advice;
- (e) how and under what conditions they can access compensation;
- (f) how and under what conditions they are entitled to interpretation and translation;
- (g) where a victim is not resident in Gibraltar, and the criminal offence was committed in Gibraltar, any special measures, procedures or arrangements, which are available to protect the victim's interests in Gibraltar;

- (h) the available procedures for making complaints where their rights are not respected by the authority operating within the context of criminal proceedings;
- (i) the contact details for communications about their case;
- (j) the available restorative justice services; and
- (k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

(3) The extent or detail of information referred to in subregulations (1) and (2) may vary depending on the specific needs and personal circumstances of a victim and the type or nature of the crime.

(4) Additional details of information may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.

(5) A victim has a right to decline to receive any or all of the information set out in this regulation.

Making a complaint.

6.(1) Where a victim has made a complaint to a competent authority that authority must provide the victim with a written acknowledgement of receipt.

(2) The written acknowledgement referred to in subregulation (1) must contain the basic elements of the criminal offence concerned.

(3) The written acknowledgement referred to in subregulation (1) may be communicated by whatever means the competent authority deems to be expedient.

(4) If the victim is unable to understand or speak English the complaint may be made in a language that the victim understands or by receiving the necessary linguistic assistance.

(5) If the victim neither understands nor speaks English and the victim requests that the written acknowledgement referred to in subregulation (1) be in a language the victim understands, the competent authority shall provide it in that language at no cost to the victim.

(6) The information to which this regulation refers need not be provided where the victim has requested not to receive the information.

Right to receive information about the case.

7.(1) A competent authority shall ensure that a victim is notified without unnecessary delay of his right to receive the information in subregulation (2) about the criminal proceedings instituted as a result of his complaint with regard to a criminal offence suffered by him.

(2) Where a victim expresses a wish to be kept informed of his complaint the competent authority shall inform the victim of-

- (a) a decision not to proceed with or to end an investigation or not to prosecute the offender; or
- (b) the time and place of the trial, and the nature of the charges against the offender.

(3) A competent authority shall ensure that, in accordance with the victim's role in the justice system, a victim is notified without unnecessary delay of his right to receive the information in subregulation (4) about the criminal proceedings instituted as a result of his complaint with regard to a criminal offence suffered by him.

(4) Where a victim expresses a wish to be kept informed of his complaint a competent authority shall inform the victim of-

- (a) a final judgment in a trial; or
- (b) information enabling a victim to know the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.

(5) The information referred to in paragraphs (2)(a) and 4(a) shall include reasons or a brief summary of the reasons for the decision concerned, unless the reasons are confidential and are not provided as a matter of law.

(6) A victim may express a wish not to be kept informed of his complaint.

Wish to be kept informed.

8.(1) Subject to subregulation (2), where a victim has expressed a wish either to receive information or not to receive information a competent authority shall be bound by the victim's wish.

(2) A competent authority shall not be bound by the victim's wish where the information must be provided due to the entitlement of the victim to active participation in the criminal proceedings.

(3) A competent authority shall permit a victim to modify his wish at any time, and shall take such modification into account.

Notification to victim.

9.(1) A competent authority shall ensure that a victim is offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for a criminal offence concerning the victim is released from or has escaped from detention.

(2) A competent authority shall ensure that a victim is informed of a relevant measure issued for his protection in the case of release or escape of the offender.

(3) Subject to subregulation (4), a victim shall, upon request, receive the information provided for in subregulations (1) and (2) at least in cases where there is a danger or an identified risk of harm to him.

(4) A notification as described in this regulation shall not be given where there is an identified risk of harm to the offender which would result from such notification.

Right to interpretation and translation.

10.(1) To the extent that a victim is required to participate in criminal proceedings and that person does not understand or speak English and requests interpretation, it shall be provided at no cost to the victim.

(2) For the purposes of subregulation (1) participation in criminal proceedings shall be deemed to include, at least-

- (a) during any interview or questioning by the police or other investigating authority;
- (b) where the victim is an active participant at a court hearing, at that hearing; or
- (c) where the victim is an active participant at an interim court hearing, at that interim hearing.

(3) A victim who does not understand or speak English may request that information be provided in a language which the victim understands, and such information shall be provided at no cost to the victim if the competent authority determines that the information requested is essential for the victim to exercise his rights in criminal proceedings.

(4) For the purposes of subregulation (3) the following information shall be deemed to be essential for the victim to exercise his rights in criminal proceedings-

- (a) any decision ending the criminal proceedings related to the criminal offence suffered by the victim;
- (b) where the victim has made a request, the reasons or a brief summary of reasons for such decision,

but paragraph (b) does not apply to a decision reached by a jury or in a case where as a matter of law the reasons are confidential.

(5) Where a victim who does not understand English expresses a wish to be provided with a translation of the information to which he is entitled about the time and place of the trial, in accordance with regulation 7(2)(b), a competent authority shall ensure the victim is provided with a translation of the information to which he is entitled.

(6) A victim may submit a reasoned request to the competent authority to consider a document as essential.

(7) A competent authority is not required to translate passages of essential documents which are not relevant for the purpose of enabling victims to actively participate in the criminal proceedings.

(8) Subject to subregulation (9), the competent authority may provide the victim with either a written translation or summary of essential documents or an oral translation or summary of essential documents.

(9) The competent authority may provide an oral translation or summary where an oral translation or summary would not prejudice the fairness of the criminal proceedings.

(10) The competent authority shall ensure that a victim's needs for interpretation or translation are assessed, in accordance with this regulation, and the result is communicated to the victim.

(11) A victim may within 7 days of receipt of notice of the competent authority's decision not to provide him with interpretation or translation appeal to the magistrates' court.

(12) The provision of interpretation or translation and any appeal under subregulation (11) must not unreasonably prolong the criminal proceedings.

Right to victim support services.

11.(1) Subject to the provisions of this regulation-

- (a) a person who is a victim of a crime; and

- (b) where a person with responsibility for victims deems it appropriate, a family member of a victim of crime,

shall be entitled to access victim support services and a person with responsibility for victims and other relevant entities shall assist in referring them to the victim support services.

(2) The victim support services referred to in subregulation (1), include specialist support services, and must be-

- (a) confidential;
- (b) free of charge to the user;
- (c) in accordance with the needs of the victim, available before, during and (for an appropriate time, having regard to the needs of the victim) after criminal proceedings.

(3) A family member's access to victim support services shall be dependent on the person with responsibility for victims' assessment of their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

(4) The provision of services referred to in this regulation shall not be made conditional on the victim having made a formal complaint to a competent authority with regard to a criminal offence.

(5) In this regulation "other relevant entities" includes public agencies, hospitals, schools, welfare or employment services who are in contact with a victim and identify a need to refer the victim to the victim support services.

Establishment.

12. Victim support services and specialist support services may be established either as a public body or non-governmental organisation and organised either on a professional or voluntary basis and where established other than as a public body the Minister may, at the request of that body, declare that these regulations will apply to it.

Support for victims.

13.(1) Victim support services as referred to in regulation 12 shall provide-

- (a) information, advice and support relevant to the rights of victims including on accessing compensation schemes for criminal injuries, and on the victim's role in criminal proceedings including preparation for attendance at the trial;
- (b) information about or direct referral to any relevant specialist services in place;
- (c) emotional and, where available, psychological support;
- (d) advice relating to financial and practical issues arising from the crime; and
- (e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

(2) A person with responsibility for victims shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

(3) The specialist support services referred to in regulation 12 shall, in the absence of the following services, provide-

- (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an immediate risk of secondary and repeat victimisation, of intimidation and of retaliation;
- (b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

Participation in Criminal Proceedings

Rights following a decision not to prosecute.

14.(1) This regulation applies to a case where the victim is the victim of an offence which is punishable by a maximum of at least 5 years imprisonment and a decision has been taken either not to charge the suspect or where the suspect has been charged with the commission of the offence, not to prosecute that person.

(2) Where subregulation (1) applies the competent authority must ensure that the victim is informed of the right to be provided with sufficient information in order to decide whether to request a review of the decision not to charge or prosecute that person.

(3) Where a person has not been charged with the commission of an offence the victim may by notice in writing request the Attorney-General review the decision.

(4) Upon conducting such review the Attorney-General shall inform the victim and the competent authority of his decision, and where the Attorney-General considers that the suspect should be charged and prosecuted the competent authority shall act accordingly.

(5) Where a person has been charged with the commission of an offence falling within the description in subregulation (1) and not less than 21 days before the date of the trial the prosecutor decides not to continue with the prosecution the victim shall be informed of the decision and shall be informed of the right and be provided with sufficient information to decide whether to request a review of the decision not to prosecute.

(6) An application for a review under subregulation (5) shall be made in writing to the Attorney-General and where after conducting the review he is of the view that the prosecution should continue he shall instruct the prosecutor accordingly.

Safeguards in restorative justice services.

15.(1) If a person provides restorative justice services he shall, during the provision of those services, take measures to safeguard a victim from secondary and repeat victimisation, from intimidation and from retaliation.

(2) The measures referred to in subregulation (1) shall ensure safe and competent restorative justice services including the following conditions-

- (a) the restorative justice services are used only if they are in the interests of the victim, subject to any safety considerations, and are based on the victim's free and informed consent;
- (b) prior to agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about the process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;
- (c) the offender has acknowledged the basic facts of the case;
- (d) where an agreement is arrived at voluntarily it may be taken into account in further criminal proceedings;
- (e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by law due to an overriding public interest.

(3) A victim may withdraw his consent to a restorative justice process at any time until an agreement is concluded.

(4) A person with responsibility for victims shall seek to promote restorative justice services in criminal cases for offences which are considered to be appropriate.

(5) The Minister may establish procedures or guidelines on the conditions for referral to a restorative justice process, referred to in subregulation (4), by publication of such procedures or guidelines in the Gazette.

Victims' expenses with respect to criminal proceedings.

16.(1) A victim who incurs an expense arising from his participation in criminal proceedings may apply to the Registrar for reimbursement and in such a case the Registrar shall consider the application as though the victim were a person upon whom a witness summons had been issued pursuant to section 302 of the Criminal Procedure and Evidence Act 2011.

(2) A victim whose costs have been paid pursuant to this regulation shall repay those costs to the Registrar if he is awarded any sum, whether by way of compensation or otherwise, in the criminal.

(3) Where the sum received by the victim is less than the costs paid out under this regulation, the victim shall only be liable to repay the sum equal to the sum received as compensation or otherwise.

Encouraging compensation from offender.

17. A person with responsibility for victims shall promote measures to encourage offenders to provide adequate compensation to victims.

Offences committed overseas against Gibraltar resident.

18.(1) Where a resident of Gibraltar is the victim of an offence in a Member State the matter may be reported to the Royal Gibraltar Police, if the victim—

- (a) was unable to make the complaint in the Member State where the offence was committed; or
- (b) did not wish to make a complaint and the matter involved a serious offence under the law of the Member State.

(2) Where subregulation (1) applies the Royal Gibraltar Police shall transmit the complaint without delay to a competent authority in the territory in which the offence was committed.

Receipt of complaints.

19. The Commissioner of the Royal Gibraltar Police shall receive a complaint made through the competent authority in a Member State pursuant to Article 17 of the Directive.

Victim resident outside Gibraltar.

20. A complaint received under regulation 19 shall for all purposes be treated as though the complainant had made the complaint in Gibraltar.

*Protection of Victims***Right to protection.**

21.(1) Without prejudice to the rights of the defendant, it shall be the duty of competent authorities to ensure that measures are available to protect a victim and his family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of the victim during questioning and when testifying.

(2) The measures referred to in subregulation (1) shall also include the procedures established for the physical protection of victims and their family members.

Right to protection during investigation.

22. Without prejudice to the rights of the defendant and in accordance with the rules on judicial discretion, it shall be the duty of competent authorities to ensure that during criminal investigations-

- (a) interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority;
- (b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;
- (c) victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary;

- (d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

Right to protection of privacy.

23. In criminal proceedings the court may, on an application by a party to the proceedings or on its own initiative, make an order-

- (a) to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under regulation 24, and images of victims and of their family members; and
- (b) to prevent public dissemination of any information that could lead to the identification of a child victim.

Individual victim assessment.

24.(1) A competent authority shall ensure that an individual victim assessment is carried out in a timely manner to identify specific protection needs and to determine whether and to what extent a victim would benefit from special measures in the course of criminal proceedings with particular regard to the victim's vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

(2) The individual assessment referred to in subregulation (1) shall include-

- (a) the personal characteristics of the victim;
- (b) the type or nature of the crime; and
- (c) the circumstances of the crime,

and particular attention shall be paid to-

- (d) a victim who has suffered considerable harm due to the severity of the crime;
- (e) a victim who has suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to his personal characteristics;
- (f) a victim whose relationship to and dependence on the offender makes him particularly vulnerable; or
- (g) a victim as described in subregulation (3).

(3) Victims with disabilities in addition to victims of the following types of crimes shall be duly considered by a competent authority under subregulation (2)(g)-

- (a) terrorism;
- (b) organised crime;
- (c) human trafficking;
- (d) gender-based violence;
- (e) violence in a close relationship;
- (f) sexual violence;
- (g) exploitation or hate crime.

(4) A child victim shall be presumed to have specific protection needs and an individual assessment shall be carried out by a competent authority for a child victim under subregulation (1).

(5) A competent authority may adapt the individual assessment according to the severity of the crime and the degree of apparent harm suffered by the victim.

(6) In carrying out the individual assessment competent authority shall closely involve the victim and take into account the victim's wishes including a choice not to benefit from special measures.

(7) Where the elements that form the basis of the individual assessment change significantly during the criminal proceedings, a competent authority shall ensure that the individual assessment is updated accordingly.

Special measures.

25.(1) Subject to subregulation (2) and without prejudice to the rights of the defendant and in accordance with the rules of judicial discretion, it shall be the duty of competent authorities to ensure that special measures, of the type referred to in subregulation (3) and (4), are available for a victim who has been assessed as requiring the special measures under regulation 24.

(2) A special measure shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview a victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

(3) In interviews, the following special measures shall be available for victims assessed as requiring special measures under regulation 24-

- (a) interviews with a victim are to be carried out in premises designed or adapted for that purpose;
- (b) interviews with a victim are to be carried out by or through professionals trained for that purpose;
- (c) interviews with a victim are to be conducted by the same persons unless this is contrary to the good administration of justice; and
- (d) interviews with a victim are to be conducted by a person of the same gender as the victim, if the victim so wishes, where the victim is a victim of sexual violence, gender-based violence or violence in close relationship, unless conducted by a prosecutor or a judge and provided that the course of the criminal proceedings will not be prejudiced.

(4) Where pursuant to an assessment made under regulation 24, a victim has been assessed as requiring specific protection needs, a court may, in addition to any orders it may make under Part 19 of the Act, take-

- (a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;
- (b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;
- (c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and
- (d) measures allowing a hearing to take place without the presence of the public.

(5) Where the age of the victim is uncertain and there are reasons to believe the victim is a child, the victim shall for the purposes of these Regulations, be presumed to be a child.

Miscellaneous

Training.

26.(1) A person with responsibility for victims shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist

training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.

(2) The training referred to in subregulation (1) shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner in accordance with the duties involved, and the nature and level of contact the practitioner has with victims.

Directions for cooperation and coordination of services.

27.(1) The Minister may issue Directions for the purposes set out in this regulation.

(2) A person to whom a Direction is made shall comply with the terms of that Direction.

(3) A Direction may be issued-

- (a) in order to facilitate cooperation between Gibraltar and Member States to improve the access of victims to the rights set out in these Regulations and the Directive;
- (b) for the purposes of, and to the extent required by, Article 26(2) of the Directive.

(4) The cooperation referred to in subregulation (3)(a) shall be aimed at least at-

- (a) the exchange of best practices;
- (b) consultation in individual cases; and
- (c) assistance to European networks working on matters directly relevant to victims' rights.

(5) The Minister may at any time issue further Directions and may amend or revoke any Direction made by him.

Repeal and savings.

28.(1) The Standing of Victims in Criminal Proceedings Regulations 2014 are repealed, subject to subregulation (2).

(2) A direction given or action taken by a person under the Standing of Victims in Criminal Proceedings Regulations 2014 which could be given or taken by an equivalent person under these Regulations continues to have effect as if given or taken under these Regulations.