



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1450 of 9th March 2007
LEGISLATION

ORDINANCE 3 OF 2007

POLICE (DETAINEES AND VOLUNTEERS) ORDINANCE 2007

An Ordinance to provide for the rights of persons who are detained or attend voluntarily
at a police station

R. H. LACEY
ADMINISTRATOR

6th March 2007.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Part 1
Preliminary

1. Short title

This Ordinance may be cited as the Police (Detainees and Volunteers) Ordinance 2007.

2. Interpretation

(1) In this Ordinance –

“appropriate adult” means, subject to subsection (2) –

- (a) a parent, guardian or some other person responsible for the relevant person’s welfare, care or custody;
- (b) someone experienced in dealing with mentally disabled people or with juveniles (as appropriate) but who is not a police officer or employed by the police;
- (c) failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police;

“detainee” means a person arrested and detained by a police officer;

“interview” means being questioned by a police officer under caution or providing a written statement to such person under caution in relation to an investigation into a criminal offence;

“juvenile” means a person under the age of 18;

“police officer” has the meaning given to that term by the Police Ordinance 1967(a);
“relevant Republican Law” means the Rights of Persons who are Arrested and Detained Law 2005 of the Republic(b) as may be amended from time to time;

“volunteer” means a person who, for the purpose of assisting with an investigation into a criminal offence, attends voluntarily at a police station or any other place where a police officer is present or accompanies a police officer to a police station without having been arrested.

- (2) A person may not act as an appropriate adult if he –
 - (a) is suspected of involvement in the offence;
 - (b) is the victim;
 - (c) is a witness;
 - (d) is involved in the investigation;
 - (e) has received admissions from the detainee or volunteer prior to attending to act as the appropriate adult;
 - (f) is an advocate present at the police station in that capacity.

3. No action by police to dissuade from exercising rights

- (1) A police officer must not do or say anything to a detainee or volunteer with the intention of dissuading that person from exercising any right conferred on him by this Ordinance.
- (2) A police officer must ensure that any action to be taken under this Ordinance takes place in a language the detainee or volunteer understands including, where appropriate, through the use of an interpreter.

4. Recording of acts in custody record

- (1) The following information must be recorded on the custody record maintained in respect of a detainee or volunteer –
 - (a) a request made under this Ordinance by the detainee or volunteer or as the case may be, a decision by that person not to exercise a right conferred on him by this Ordinance,
 - (b) the time of it, and
 - (c) any other decision or action taken in accordance with that right.
- (2) Where a provision of this Ordinance requires a detainee or volunteer to be informed of a particular right, the fact that this has been done and the time of it must be recorded in writing on the custody record maintained in respect of that person.

Part 2

Right of access to legal advice and assistance

5. Access to legal advice and assistance

- (1) A detainee or volunteer is entitled, if he so requests, to consult and communicate with an advocate privately at any time during his detention or whilst he is assisting as a volunteer, whether in person, in writing or by telephone.
- (2) A detainee or volunteer must be informed of the right set out in subsection (1) and of the right to advice and assistance under section 6 of the Criminal Legal Services Ordinance 2005(c) as soon as is practicable after his arrest or agreement to assist as a volunteer and in any event before the commencement of an interview.
- (3) Where the detainee or volunteer is a juvenile, the appropriate adult who attends the police station in accordance with section 11 must, where the juvenile so requests, be permitted to be present during any consultation or communication with the advocate acting for the juvenile.
- (4) Where a request is made under subsection (1) –
 - (a) the detainee or volunteer must be permitted to consult an advocate as soon as

is practicable except to the extent that delay is permitted by section 7;

- (b) the detainee or volunteer must not be interviewed or continue to be interviewed until he has received advice and assistance unless section 7(3) applies; and
 - (c) where the detainee or volunteer has consulted an advocate, he is entitled on request to have that advocate present when he is interviewed.
- (5) A detainee or volunteer must, on request, be provided with a copy of the Register of Practising Advocates compiled by the Cyprus Bar Association under the relevant Republican Law.
- (6) Where the detainee or volunteer is a member of a Force of the United Kingdom, or a member of a civilian component of such a Force or a dependent of any member of such a Force or civilian component as those terms are defined by paragraph 1(a)(i), (b) and (d) respectively of Section 1 of Annex C to the Treaty of Establishment, then he must, on request, be provided with a list of advocates compiled by the Force and supplied to the Chief Constable.

6. Presence of advocate in interview

- (1) An advocate who is present during an interview may only be required to leave that interview if his conduct is such that the interviewer is unable properly to put questions to the volunteer or detainee.
- (2) Where the interviewer believes that the advocate should be required to leave the interview he must stop that interview and consult a police officer not below the rank of Inspector.
- (3) If the Inspector decides that the interview should continue in the absence of that advocate the detainee or volunteer must be given the opportunity to make a further request under section 5(1) and where he does so, the remaining provisions of section 5, of this section and of section 7 apply.
- (4) Where an advocate is required to leave an interview –
 - (a) the detainee or volunteer and the advocate must be told the reason for the decision; and
 - (b) the reason must be noted on the custody record.

7. Delay in compliance with section 5

- (1) A police officer may authorise delay in compliance with a request made under section 5 in the case of a detainee who is being held in connection with an offence referred to in subsection (4).
- (2) A police officer may only authorise delay under subsection (1) where he has reasonable grounds for believing that the exercise of the right conferred by section 5 at the time when the detainee desires to exercise it –
 - (a) will lead to interference with or harm to evidence connected with an offence referred to in subsection (4) or interference with or physical injury to other persons; or
 - (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
 - (c) will hinder the recovery of any property obtained as a result of such an offence.
- (3) A detainee who has requested advice and assistance from an advocate may be interviewed before he receives that advice and assistance only where –
 - (a) subsections (1) and (2) apply; or
 - (b) the advocate nominated by the detainee has been contacted and has agreed to attend but awaiting his arrival would cause unreasonable delay to the process of investigation; or
 - (c) the advocate nominated by the detainee cannot or does not wish to attend and the detainee does not nominate any other advocate who would be willing to attend; or

- (d) the detainee withdraws his request for advice and assistance.
- (4) The offences referred to in subsections (1) and (2) are –
 - (a) treason, murder, manslaughter or kidnapping;
 - (b) an offence which has led to or is intended to lead to any of the following consequences –
 - (i) serious harm to the security of the Areas or to public order;
 - (ii) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
 - (iii) the death of any person;
 - (iv) serious injury to any person;
 - (v) substantial financial gain to any person; or
 - (vi) serious financial loss to any person.
- (5) If a delay is authorised –
 - (a) the detainee must be told the reason for it; and
 - (b) the reason must be noted on his custody record.
- (6) A detainee whose access to an advocate is delayed must in any case be permitted to consult an advocate within 24 hours from the time of his arrest.
- (7) For the purposes of this section –
 - “loss” is serious if, having regard to all the circumstances, it is serious for the person who suffers it;
 - “police officer” means a police officer of at least the rank of Chief Inspector.

Part 3

General rights

8. Arrested persons to be taken to police station

A person who is arrested, whether with or without a warrant, at any place other than a police station must be taken as soon as practicable following such arrest to a police station and must, without delay, be informed of the charge against him.

9. Right to have someone informed when arrested

- (1) A detainee is entitled, if he so requests, to have one friend, relative or other person who is known to him or is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained at the relevant police station.
- (2) A detainee must be informed of the right set out in subsection (1) as soon as is practicable after his detention at a police station.
- (3) Delay in compliance with the right under subsection (1) is only permitted –
 - (a) in the case of a detainee who is being held in connection with an offence referred to in section 7(4); and
 - (b) where a police officer of at least the rank of Chief Inspector authorises it.
- (4) A police officer may only authorise delay under subsection (3) where he has reasonable grounds for believing that telling the named person of the arrest –
 - (a) will lead to interference with or harm to evidence connected with an offence referred to in section 7(4) or interference with or physical injury to other persons; or
 - (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
 - (c) will hinder the recovery of any property obtained as a result of such an offence.

- (5) If a delay is authorised –
 - (a) the detainee must be told the reason for it; and
 - (b) the reason must be noted on his custody record.
- (6) The rights conferred by this section are exercisable whenever a detainee is transferred from one place to another for the purpose of being detained.
- (7) Where the exercise of a right under subsection (1) is delayed, the detainee must in any case be permitted to exercise the right within 24 hours from the time of his arrest.

10. Detainees from foreign country

- (1) In addition to the right set out in section 9, a detainee who is neither a British Citizen nor a citizen of the Republic of Cyprus, has the right, on request, to communicate or have communicated, as soon as is practicable, the fact of his arrest, the reasons for it and his whereabouts to the appropriate High Commission, Embassy or Consulate in the Republic of Cyprus.
- (2) A detainee must be informed of the right set out in subsection (1) as soon as is practicable after his detention at a police station.

11. Juveniles

- (1) Where a juvenile is detained or agrees to assist as a volunteer such steps as are practicable must be taken to ascertain the identity of an appropriate adult.
- (2) If it is practicable to ascertain the identity of an appropriate adult that person must be informed, unless it is not practicable to do so, of the fact of the juvenile's arrest, or his agreement to assist as a volunteer, the reasons for it and his whereabouts.
- (3) The appropriate adult contacted under subsection (2) must be asked to attend the police station in order to communicate with and assist the juvenile and, where he does so attend, such person may be present during an interview.
- (4) The duties under this section must be performed as soon as practicable following the juvenile's detention or attendance at a police station and in any event before the commencement of an interview.

12. Detainees and volunteers suffering from mental disability

- (1) Where a detainee or volunteer is, or appears to be suffering from a mental disability, such steps as are practicable must be taken to ascertain the identity of an appropriate adult.
- (2) If it is practicable to ascertain the identity of an appropriate adult that person must be informed, unless it is not practicable to do so, of the fact of the detainee's arrest, or his agreement to assist as a volunteer, the reasons for it and his whereabouts.
- (3) The appropriate adult contacted under subsection (2) must be asked to attend the police station in order to communicate with and assist the detainee or volunteer and, where he does so attend, such person may be present during an interview.
- (4) The duties under this section must be performed as soon as practicable following the detainee's detention or volunteer's attendance at a police station and in any event before the commencement of an interview.

13. Use of interpreters for certain detainees or volunteers

- (1) If a detainee or volunteer appears deaf or there is any doubt about their hearing or speaking ability or ability to understand the language spoken by any police officer concerned with his case, then as soon as practicable an interpreter must be called to attend the police station and provide such assistance as may be necessary to enable effective communication to take place.
- (2) The provision of assistance under subsection (1) must in particular include assistance in the exercising of any right conferred by this Ordinance.
- (3) The duty under subsection (1) must be performed as soon as practicable following the detainee's detention or volunteer's attendance at a police station and in any event before the commencement of an interview.

14. No interview until rights exercised

A detainee or volunteer must not be interviewed until he has been informed of his rights under this Part and, except where delay is permitted by section 9(3) and (4), any appropriate action has been taken.

15. Providing list of rights

The police officer in charge of the police station must ensure that a list of the rights established by this Ordinance is displayed in the custody area in Greek, Turkish and English.

Part 4

Rights on detention

16. Right of detainees to make a telephone call and receive or send letters

- (1) In addition to a telephone call made under Part 3 but except to the extent that delay is permitted by this section, a detainee may, on request, telephone one person for a reasonable period of time.
- (2) A detainee is entitled, except to the extent that delay is permitted by this section, to receive and send letters and must, for this purpose, be provided with writing materials on request.
- (3) A detainee must be informed of the rights set out in subsections (1) and (2) as soon as is practicable after his detention.
- (4) Delay in compliance with the rights under subsections (1) and (2) is only permitted—
 - (a) in the case of a detainee who is being held in connection with an offence referred to in section 7(4); and
 - (b) where a police officer of at least the rank of Chief Inspector authorises it.
- (5) A police officer may only authorise delay where he has reasonable grounds for believing that allowing the communication to take place –
 - (a) will lead to interference with or harm to evidence connected with an offence referred to in section 7(4) or interference with or physical injury to other persons; or
 - (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
 - (c) will hinder the recovery of any property obtained as a result of such an offence.
- (6) If a delay is authorised –
 - (a) the detainee must be told the reason for it; and
 - (b) the reason must be noted on his custody record.
- (7) Where the exercise of a right under subsection (1) or (2) is delayed, the detainee must in any case be permitted to exercise the right within 24 hours from the time of his arrest.
- (8) Before a telephone call is made or letter sent or received the detainee must be informed—
 - (a) that the contents of a telephone call or letter (other than one with his advocate) may be listened to or read; and
 - (b) that a telephone call may be terminated by a police officer where there is reason to believe the right is being abused.

17. Right to clinical assistance

- (1) A detainee is entitled to receive appropriate clinical attention as soon as is reasonably practicable if he—
 - (a) appears to be suffering from a physical illness;
 - (b) is injured;

- (c) appears to be suffering from a mental disorder; or
 - (d) appears to need clinical attention.
- (2) The right under subsection (1) applies even if the detainee has not made any request for clinical assistance.
 - (3) The detainee may, at his own expense, elect to be examined by an appropriate healthcare professional of his own choice.
 - (4) If the detainee does not exercise his right under subsection (3) the examination will take place by such healthcare professional as may be nominated by a police officer dealing with his case.
 - (5) Any examination or assistance carried out under this section must, except where subsection (6) applies, take place in a private area where a police officer can neither see nor hear the examination.
 - (6) A police officer of the same sex as the detainee may be present during a clinical examination if he has reasonable cause to believe that without his presence, the safety of the healthcare professional would be at risk.
 - (7) The healthcare professional must record in the custody record his findings and any clinical directions and advice given to the police officer dealing with the detainee as a result of the examination.
 - (8) A detainee must be informed of the rights set out in this section as soon as is practicable after his detention.

18. Detention of juveniles and detainees of opposite sex

Where it is practicable to do so –

- (a) a juvenile detainee must be held in a cell which is separate to any cell in which an adult detainee is being held; and
- (b) a female detainee must be held in a cell which is separate to any cell in which a male detainee is being held.

19. Arrangements for breast feeding

Where it is practicable to do so, a police officer must, on request, make such arrangements as may be necessary to enable a female detainee who is breast feeding to continue with such feeding during the period of her detention.

Part 5

Miscellaneous

20. Repeal

Section 13 (arrested persons to be taken to police station or place for reception of arrested person) of the Criminal Procedure Ordinance(**d**) is repealed.

21. Commencement

This Ordinance comes into force on a date to be fixed by the Administrator by an Order published in the Gazette.

Notes

- (a) Ordinance 9/67.
- (b) Law No 163(I)/2005, Republic of Cyprus.
- (c) Ordinance 17/05.
- (d) Cap 155, Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Laws (Adaptation and Interpretation) (Consolidation and Extension) Ordinance 1968 (5/68).

EXPLANATORY NOTE

(This note is not part of the Ordinance)

Introduction

1. These explanatory notes relate to the Police (Detainees and Volunteers) Ordinance 2007. They have been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. They do not form part of the Ordinance.

2. The notes need to be read together with the Ordinance. They are not, and are not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

The Ordinance

3. In summary, the Ordinance sets out the statutory rights of persons who are detained at a police station or who attend voluntarily to assist the police. It is intended broadly to replicate the main effects of Republican Law 163(I)/2005.

Part 1

4. Section 3 prohibits a police officer from doing anything which might have the effect of dissuading any person from exercising his rights under the Ordinance. It also requires that any action is taken in a language the person understands – using interpreters if necessary. Section 4 requires every action taken to be recorded in the custody record.

Part 2

5. This provides a statutory right of access to legal advice and assistance prior to, and during, an interview for both volunteers and detainees. It links with the Criminal Legal Services Ordinance 2005 (Ordinance 17/05) in which the right to free legal advice and assistance at a police station is provided for. The circumstances in which the police can lawfully restrict the rights provided by this Part are limited to the circumstances set out in section 7.

Part 3

6. Section 9 establishes the right to have someone, such as a friend or relative, informed of the fact of arrest. The exercise of this right may only be delayed by the police in the circumstances set out in that section. There are additional rights (in sections 10 – 12) for persons who are not British citizens or citizens of the Republic of Cyprus, for juveniles and for persons suffering from a mental disability. For juveniles and persons suffering from a mental disability, there is a duty on the police to take such steps as are practicable to identify an appropriate adult and to request that person to attend the police station to communicate with and assist the detainee or volunteer. An appropriate adult who attends the police station in response to such a request has the right to be present during an interview. A person may not be interviewed until he has been informed of his rights under this Part and, where relevant, has exercised those rights.

Part 4

7. This Part provides for certain additional rights on detention such as the right to make a telephone call and receive or send letters (section 16) and the right to clinical assistance (section 17).

Part 5

8. Section 21 provides for the Ordinance to be commenced on a date to be fixed by the Administrator by an Order published in the Gazette.
