

Ordinance 06 of 2019

Published in Gazette No. 1883 of 05 March 2019

**P O L I C E (D E T A I N E E S A N D V O L U N T E E R S)
(A M E N D M E N T) O R D I N A N C E 2 0 1 9**

An Ordinance to amend the Police (Detainees and Volunteers) Ordinance 2007

J. Illingworth
ADMINISTRATOR

04 March 2019

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

Short title and commencement

1. —(1) This Ordinance may be cited as the Police (Detainees and Volunteers) (Amendment) Ordinance 2019.

(2) It comes into force on 1 May 2019.

Amendment of the Police (Detainees and Volunteers) Ordinance 2007

2. The Police (Detainees and Volunteers) Ordinance 2007(a) is amended as follows.

New section 2B

3. After section 2A insert—

(a) Ordinance 3/2007. It was amended by Ordinance 16/2016.

“Vulnerable persons

2B.—(1) When exercising functions under this Ordinance in relation to a detainee or volunteer who is a vulnerable person, a police officer must have regard to the specific needs of that person which result from the fact that that person is vulnerable.

(2) A person is to be regarded as vulnerable if that person is not able to understand or fully participate in the process because of the person’s age or mental or physical condition, including any disability.”

Amendment of section 3 (no action by police to dissuade from exercising rights)

4. At the end of section 3 insert—

“(3) Where a detainee or volunteer communicates to a police officer (by whatever means) a decision not to exercise a right under this Ordinance, the police officer must inform the detainee or volunteer that such a decision may be reversed at any time.

(4) A police officer must take the steps in subsections (5) and (6) if a detainee or volunteer communicates to the police officer (by whatever means) a decision not to exercise any of the following rights—

- (a) the right to consult and communicate with an advocate (see section 5);
- (b) in the case of a person who is neither a British national nor a citizen of the Republic of Cyprus, the rights under section 10.

(5) Where this subsection applies, a police officer must satisfy him or herself that—

- (a) before communicating the decision, the detainee or volunteer had been given clear information in simple and understandable language about the particular right and the possible consequences of relinquishing it; and
- (b) the relinquishment of the right is unambiguous and voluntary.

(6) Where the police officer is not so satisfied the officer must—

- (a) where the officer is not satisfied as to the requirement in subsection (5)(a), ensure that this is complied with; and
- (b) again establish whether the detainee or volunteer wishes to exercise the right in question.”

Amendment of section 4 (recording of acts in custody record)

5.—(1) Section 4 is amended as follows.

(2) In subsection (1) delete “or volunteer” each time it occurs.

(3) For subsection (2) substitute—

“(2) Where any information is given to a detainee under this Ordinance, the fact that this has been done and the time at which it was done must be recorded on the custody record maintained in respect of that person.”

(4) At the end insert—

“(3) Where a detainee communicates to a police officer (by whatever means) a decision not to exercise a right under this Ordinance, this must be recorded on the custody record, along with any reasons that the person gives for that decision.

(4) Where a detainee communicates to a police officer (by whatever means) a decision not to exercise the right to consult and communicate with an advocate (under section 5(1)), the circumstances in which that decision was taken and communicated which appear to the officer to be relevant must be recorded on the custody record.”

Amendment of section 5 (access to legal advice and assistance)

6.—(1) Section 5 is amended as follows.

(2) After subsection (1) insert—

“(1A) The right in subsection (1) includes a right—

- (a) to meet the advocate in person;
- (b) to have the advocate present at an interview;
- (c) where the detainee or volunteer is entitled to be present during any aspect of an investigation, to have the advocate present with the detainee or volunteer.”

(3) In subsection (2)—

- (a) omit “detainee or”;
- (b) omit “arrest or”.

Amendment of section 7 (delay in compliance with section 5)

7. After section 7(4) insert—

“(4A) A police officer may not authorise a delay any longer than the officer considers is necessary, having regard to the purposes for which a delay may be authorised.”

New section 7A

8. After section 7 insert—

“Delay in compliance with section 5: application to court or Judge

7A.—(1) This section applies where there has been a delay in compliance with a detainee’s request under section 5 to consult or communicate with an advocate privately.

(2) A detainee who appears in court or before a Judge may make an application that the request under section 5 be complied with immediately.

(3) An application under subsection (2) may be made during an appearance pursuant to any of the following provisions of the Criminal Procedure Ordinance 2016(a) if, at the time of the appearance, the request under section 5 has not yet been complied with—

- (a) section 30 (power to remand in police custody, etc);
- (b) section 31 (arrested person’s appeal against remand in police custody);
- (c) section 32 (prosecution appeal against release of arrested person);
- (d) on criminal proceedings being commenced against the detainee, on the detainee’s first appearance in court.

(4) A detainee may make such an application orally and without notice.

(5) If the detainee proves on the balance of probabilities that a request under section 5 has been made, the burden is on the Police Service to prove on the balance of probabilities that—

- (a) the request has been complied with; or
- (b) the delay was lawfully authorised under section 7.

(6) On hearing such an application, the court or Judge, as applicable, may—

- (a) determine that there has been no breach of sections 5 or 7; or
- (b) order that the request under section 5 be complied with immediately.”

Amendment of section 8 (arrested persons to be taken to police station)

9. In section 8 omit the words following “police station” to the end of the section.

(a) Ordinance 9/2016.

New sections 8A, 8B and 8C

10. After section 8 insert—

“Right to information

8A.—(1) A person arrested by a police officer must be informed of—

- (a) the reason for the arrest including any offence which the person is suspected of or charged with having committed;
- (b) the person’s right of access to legal advice and assistance (see section 5);
- (c) the person’s right to advice and assistance under section 6 of the Criminal Legal Services Ordinance 2005(a) and the requirements for applying for it;
- (d) the person’s right to translation and interpretation (see sections 3(2), 8B(3) and 13);
- (e) the person’s right to remain silent when questioned (see section 12 of, and Schedules 1 and 2 to, Criminal Procedure Ordinance 2016(b));
- (f) the person’s right to consult and communicate privately with an advocate of the person’s choice (see section 5);
- (g) the person’s right to have someone informed of the arrest (see section 9);
- (h) where the detainee is a juvenile, the duty to ascertain the identity of, to contact, and to request the attendance of, an appropriate adult (see section 11)
- (i) the right to make a telephone call, to receive and send letters and be provided with writing materials (see section 16)
- (j) The right not to incriminate oneself (see the cautions to be given under the Judges’ Rules (section 14 and Schedule 1 Criminal Procedure Ordinance 2016), and section 4(5) Evidence Ordinance 2010(c));
- (k) the place where it is intended the person will be detained.

(2) A person arrested by a police officer must be given the information referred to in subsection (1)—

- (a) by a police officer;
- (b) as soon as practicable after the arrest; and
- (c) in any event, before the commencement of an interview, and before being brought before a court or Judge.

(3) If, while a person is detained at a police station, there is a material change to the offence which the person is suspected of or charged with having committed, the person must be informed promptly.

(4) The information to be provided under this section must be provided using simple and understandable language.

Right to information in writing

8B.—(1) A person arrested by a police officer must be provided with a list (“list of rights”) explaining—

- (a) the rights referred to in section 8A(1)(b) to (j);
- (b) the right to have access to arrest documents (see section 8C) and, if charged with a criminal offence, to other material relevant to the prosecution (see Criminal Procedure (Disclosure) Ordinance 2007(a));

(a) Ordinance 17/2005.
(b) Ordinance 9/2016.
(c) Ordinance 13/2010.

- (c) the right of detainees who are neither British citizens nor citizens of the Republic of Cyprus to inform an appropriate consular authority (see section 10);
 - (d) the right to clinical assistance (see section 17);
 - (e) the maximum time period for which the person may be detained before being brought before a court or Judge;
 - (f) the right to challenge the legality of the arrest and detention (see Courts (Judicial Review) Ordinance 2009**(b)**); and
 - (g) the right to appeal (under section 31 Criminal Procedure Ordinance 2016) against a remand in custody by a Judge under section 30 of the Criminal Procedure Ordinance 2016.
- (2) A person arrested by a police officer must be provided with the list of rights—
- (a) by a police officer;
 - (b) as soon as practicable after the arrest; and
 - (c) in any event, before the commencement of an interview, and before being brought before a court or Judge.
- (3) Except where subsection (4) applies, the list of rights must be provided in a language which the arrested person can understand.
- (4) Where the arrested person does not understand any of the Greek, Turkish or English languages—
- (a) the list of rights must be explained to the person orally in a language which the person understands; and
 - (b) a translation of the list of rights into a language which the person understands must be provided as soon as is practicable.
- (5) The arrested person may keep a copy of the list of rights for so long as the person remains detained.

Right to arrest warrant and supporting documents

- 8C.**—(1) A person who is arrested may request from the Police Service copies of the following documents—
- (a) any arrest warrant which authorised the person’s arrest;
 - (b) the application for any such arrest warrant;
 - (c) any affidavit or other information which was submitted in support of such an application.
- (2) Where the Police Service receives a request under subsection (1)—
- (a) if the arrest was authorised by a warrant, it must provide the requested documents; or
 - (b) if the arrest was not authorised by a warrant, it must provide in writing an explanation of the legal basis for the person’s arrest, including a description of the factual circumstances which made the arrest lawful.
- (3) The Police Service must provide the information and documents required by subsection (2) as soon as practicable.”

Substitution of section 10 (detainees from a foreign country)

- 11.**—(1) For section 10 substitute—

(a) Ordinance 16/2007, as amended by Ordinance 9/2009.
 (b) Ordinance 10/2004. Amended by Ordinance 19/2005.

“Detainees from a foreign country

10.—(1) A detainee who is neither a British citizen nor a citizen of the Republic of Cyprus has the right, on request—

- (a) to communicate or have communicated, as soon as is practicable, the fact of the arrest, the reasons for it and the detainee’s whereabouts to an appropriate consular authority in the Republic of Cyprus;
- (b) to communicate with the consular authority;
- (c) to correspond with the consular authority;
- (d) to have legal representation arranged by the consular authority;
- (e) to be visited by the consular authority’s staff.

(2) In this section—

- (a) “consular authority” means a High Commission, Embassy or Consulate; and
- (b) “appropriate consular authority” means the consular authority of a country of which the detainee is a national.

(3) If the detainee is a national of two or more countries, the detainee has a choice of appropriate consular authority.”

Amendment of section 16 (right of detainees to make a telephone call and receive or send letters)

12. In section 16—

- (a) in subsection (1) after “a detainee may,” insert “as soon as practicable after the arrest,”;
- (b) omit subsection (3);
- (c) after subsection (5) insert—

“(5A) A police officer may not authorise a delay any longer than the officer considers necessary, having regard to the purposes for which a delay may be authorised.”

New section 16A

13. After section 16 insert—

“Delay in compliance with section 16: application to court or Judge

16A.—(1) This section applies where there has been a delay in compliance with a detainee’s request under section 16—

- (a) to make a telephone call;
- (b) to receive or send letters; or
- (c) to be provided with writing materials.

(2) A detainee who appears in court or before a Judge may make an application that the request under section 16 be complied with immediately.

(3) An application under subsection (2) may be made during any of the following types of appearance if, at the time of the appearance, the request under section 16 has not yet been complied with —

- (a) an appearance before a Judge under section 30 of the Criminal Procedure Ordinance 2016 (power to remand in police custody, etc);
- (b) an appearance under section 31 of the Criminal Procedure Ordinance 2016 (arrested person’s appeal against remand in police custody);
- (c) an appearance under section 32 of the Criminal Procedure Ordinance 2016 (prosecution appeal against release of arrested person);

- (d) on criminal proceedings being commenced against the detainee, on the detainee's first appearance in court.
- (4) A detainee may make such an application orally and without notice.
- (5) If the detainee proves on the balance of probabilities that a request under section 16 has been made, the burden is on the Police Service to prove on the balance of probabilities that—
 - (a) the request has been complied with; or
 - (b) the delay was lawfully authorised under section 16.
- (6) On hearing such an application, the court or Judge, as applicable, may—
 - (a) make a ruling that there has been no breach of section 16; or
 - (b) order that the request under section 16 be complied with immediately.”

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Police (Detainees and Volunteers) (Amendment) Ordinance 2019 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. The note should be read in conjunction with the Ordinance. It is not meant to be a comprehensive description of the Ordinance. Accordingly, not all sections are referred to in the note.
3. The Ordinance amends the Police (Detainees and Volunteers) Ordinance 2007 (“the 2007 Ordinance”) to reflect amendments made to the corresponding Republic law made by Laws 185(I)/2014, 186(I)/2014, 22(I)/2017 and 111(I)/2018. This Ordinance confers new rights on persons who have been arrested by the SBA Police, or who volunteer to assist them with their inquiries. It does this primarily by adding new provisions to the 2007 Ordinance. References in this note to section numbers are to sections in the 2007 Ordinance.
4. New section 7A provides a mechanism to apply for a court order where the right to consult with an advocate has been denied. New section 16A provides a similar mechanism where the rights to make a telephone call, receive or send letters or to be provided with writing materials has been denied.
5. New section 8A provides that a person who has been arrested must be informed of certain rights as soon as practicable after the arrest, and before the person is interviewed. This includes some rights under the 2007 Ordinance, and some other rights under other legislation. The person must also be informed of the place where they are to be detained.
6. New section 8B provides that a person who has been arrested must be given a list of rights as soon as practicable after the arrest. This includes the rights in section 8A as well as other rights.
7. New section 8C gives an arrested person the right to be provided with certain information and documents which authorised the arrest.
8. Other provisions in the Ordinance add new protections for vulnerable persons (new section 2A); provide for active steps which a police officer must take to encourage a detainee or volunteer to exercise their rights (amendment to section 3); requires police officers to record additional information on a custody record (amendments to section 4); and makes additional provisions about the rights to consult with an advocate (amendments to section 5) and to obtain consular assistance (amendments to section 10).

SBA/AG/2/CR PRO/446

Published by the Sovereign Base Areas Administration
The Sovereign Base Areas Gazette may be viewed on the official Sovereign Base Areas
Administration web site: <http://sbaadministration.org/>