



Rights in Criminal Proceedings (s.22)

Section 22 of the *Human Rights Act 2004* says that:

- (1) Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.
- (2) Anyone charged with a criminal offence is entitled to the following minimum guarantees, equally with everyone else:
 - (a) To be told promptly and in detail, in a language that he or she understands, about the nature and reason for the charge;
 - (b) To have adequate time and facilities to prepare his or her defence and to communicate with lawyers or advisors chosen by him or her;
 - (c) To be tried without unreasonable delay;
 - (d) To be tried in person, and to defend himself or herself personally, or through legal assistance chosen by him or her;
 - (e) To be told, if he or she does not have legal assistance, about the right to legal assistance chosen by him or her;
 - (f) To have legal assistance provided to him or her, if the interests of justice require that the assistance be provided, and to have the legal assistance provided without payment if he or she cannot afford to pay for the assistance;
 - (g) To examine prosecution witnesses, or have them examined, and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as prosecution witness;
 - (h) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in court;
 - (i) Not to be compelled to testify against himself or herself or to confess guilt.
- (3) A child who is charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.
- (4) Anyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher court in accordance with law.

Note: Under the Act, all rights may be subject to reasonable limits (section 28). The nature of the right is relevant when considering what is reasonable.

This factsheet is not intended to be a substitute for legal advice.

Scope of the Right

Many of these guarantees are self-explanatory, however, one important consideration is at what stage of the process they operate. Section 22 says anyone 'charged with a criminal offence' can benefit from the rights it contains, which has been interpreted to mean that it applies from the time the police first indicate that charges will be laid.

The rights in criminal proceedings can apply in a number of circumstances, including:

- If a person is charged with an offence but his or her trial is delayed for far longer than usual through no fault of their own, the guarantee against 'unreasonable delay' might stop the trial going ahead
- If the police or other investigatory bodies have powers to compel testimony, they must exercise the powers (if possible) compatibly with the right not to be compelled to incriminate oneself
- A person has the right to choose a lawyer under s 22(2)(d), but this is not an absolute right, and it will be balanced against considerations such as potential delays and availability of reasonable alternatives if the person's first choice of lawyer is unavailable. Additionally, it will not give someone the right to Legal Aid funding for an expensive private lawyer.

Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 22 could be engaged by activities that:

- Impact on the right to be presumed innocent (including amendments to the law relating to self-incrimination);
- Impact on the bringing of disciplinary actions;
- Impact on the treatment of children in complaint and disciplinary proceedings;
- Regulate aspects of criminal trial procedure for investigation and prosecution of offences, for example, establishing time limits on the lodging of complaints or appeals, or affects access of an accused to witnesses, information and evidence, filing and service charges;
- Establish guidelines or procedures for the provision of assistants, translators and interpreters;
- Amend any guidelines or procedures enabling the accused to represent him/herself personally or restricts the right of an accused to choose a support person or advisor of his/her choice;
- Regulate how an accused person may appear in court, for example, security measures associated with their appearance;
- Limit requirements on courts or tribunals to accord fair hearing rights for example, in relation to disclosure of evidence to an accused;
- Restrict access to information and material to be used as evidence;
- Affect the law of evidence governing examination of witnesses;
- Allow special procedures for examination of witnesses, for example, the manner in which they give evidence;
- Create or amend an offence that contains a presumption of fact or law and puts the legal or evidential burden on the accused to rebut the presumption;
- Alter the criteria or conditions under which a person may apply for or be released on bail;
- Amend or alter procedures under which a person is able to appeal against or review a decision
- Amend the eligibility criteria for legal aid;
- Affect the law regarding double jeopardy;

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