

# CRIMINAL JUSTICE (SCOTLAND) ACT 2016

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## EXPLANATORY NOTES

### OVERVIEW OF THE ACT

#### **Part 1 – Arrest and Custody**

#### *Chapter 5 – Rights of suspects in police custody*

#### **Intimation and access to another person**

#### *Section 38 – Right to have intimation sent to other person*

123. *Section 38* affords a person in police custody the right to have someone else informed that the person is in police custody and where they are being held in custody.
124. This intimation must be sent as soon as reasonably practicable after the person arrives at a police station unless a delay is considered necessary in the interests of the investigation or prevention of crime, the apprehension of offenders or safeguarding and promoting the wellbeing of the person (subsection (5)). Authorisation to delay intimation must be given by a constable of the rank of sergeant or above who has not been involved in the investigation in connection with which the person is in custody. Where such a delay is required, it should be for no longer than necessary (subsection (4)(b)). The sending of intimation may be delayed by virtue of subsection (5)(c) only for so long as necessary to ascertain whether a local authority will arrange for someone to visit the person in custody under section 41(2).
125. If a constable believes that the person in police custody is under 16 years of age, under subsections (2)(a) and (3)(a), a parent must be informed, regardless of whether the person requests that intimation be sent. The definition of a parent for this section and section 39 includes a guardian and any other person who has the care of the person (subsection (8)).