

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

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 39 – Right to have intimation sent: under 18s

126. Under this section, if a constable believes that a person in police custody is under 18 years of age, the person sent intimation under section 38 must be asked to attend at the police station or other place where the person is being held (subsection (2)). For those under 16 years this means a parent of the person and for those aged 16 and 17 years, an adult named by them (section 38(3)). The requirement in subsection (2) does not apply if a constable believes that the person in police custody is 16 or 17 years of age and has requested that the person notified under section 38 should not be asked to attend (subsection (3)).
127. If a constable believes that a person in police custody is under 18 years of age and finds that the person to whom intimation is to be sent is not contactable within a reasonable time or claims to be unable or unwilling to attend in a reasonable time, or a local authority has advised against sending intimation to that person, then intimation must be sent to another appropriate person. An “appropriate person” for these purposes might be a parent or guardian or carer or a duty social worker from the local authority.
128. Where the person in police custody is believed to be under 16, attempts to send intimation must continue until an “appropriate person” is contacted and agrees to attend at the police station or other place the person is being held within a reasonable time. For these purposes, an “appropriate person” means a person the police consider appropriate having regard to the views of the person in police custody.
129. Where the person in police custody is believed to be 16 or 17 years of age, attempts to send intimation must continue until an “appropriate person” is contacted and agrees to attend at the police station or other place the person is being held within a reasonable time or the person in custody requests that, for the time being, no further attempts be made. For these purposes an “appropriate person” means an adult who is named by the person in custody and to whom a constable is willing to send intimation without delay.
130. Subsection (8) provides that, where the police delay sending intimation by virtue of section 38(5)(a) or (b) (which allows the police to delay sending intimation where the person to be contacted is someone the police fear will compromise the investigation or the apprehension of offenders), they must endeavour to contact another appropriate person in accordance with subsection (4)(a).