

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 40 – Right of under 18s to have access to other person

131. **Section 40** provides for children under 18 years of age in police custody to have access to another person.
132. Under subsection (1) all children under 16 years of age in police custody must have access, in the first instance, to any parent (defined in subsection (6) to include guardians and carers) to provide support. Subsection (1)(b) ensures that where a parent is not available, the child has access to another appropriate adult sent intimation under section 38, subject to the caveats in section 40(4).
133. Subsection (2) provides similar rights of access for those aged 16 or 17 years. However, in this case the adult granted access to the 16 or 17 year old does not have to be their parent (in line with section 38, which allows this age group to request that intimation be sent under that section to an adult other than their parent). As explained in section 39, intimation may be sent to more than one person. Subsection (3) provides that access need not be permitted to more than one person, subject to the caveats in section 40(4). Authorisation to restrict access under this section may only 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.