

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 41 – Social work involvement in relation to under 18s

134. **Section 41** makes provision for a local authority to be notified of the fact that a person is in police custody (and where the person is being held), where a constable believes that the person may be subject to a supervision order or has delayed intimation by virtue of section 38(5)(c). Following intimation under subsection (1), a local authority may arrange for someone to visit the person in custody if that person is subject to a supervision order or the local authority believes the person to be under 16 years of age and arranging a visit would best safeguard and promote the person's wellbeing. The local authority must be satisfied the visit will be made within a reasonable time before arranging the visit (subsection (3)).
135. Where a local authority arranges for someone to visit the person in custody, sections 38 and 40 cease to have effect (subsection(4)(a)) until such time as the local authority confirms that the person in custody is over 16 years and subject to a supervision order. Sections 38 and 40 will then apply as if a constable believes the person to be under 16 years of age (subsection (7)). The person who the local authority arranges to visit the person in custody must be permitted access to that person (subsection (4)(b)) unless, in exceptional circumstances, such access would affect the investigation or prevention of crime, the apprehension of offenders or the wellbeing of the person in custody (subsection (5)).
136. Where a local authority choose not to arrange a visit or could not do so within a reasonable time, the authority may advise a constable that the person to whom intimation is to be sent under section 38(3) should not be sent intimation if the authority has grounds to believe that such intimation may be detrimental to the person in custody and may give advice as to who might be an appropriate person to a constable who is considering the matter under section 39(7). The constable must have regard to any such advice (section 41(9)). 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.