

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Part 1 – Arrest and Custody

Chapter 5 – Rights of suspects in police custody

Vulnerable persons

Section 42 – Support for vulnerable persons

137. *Section 42* makes provision to identify vulnerable adults in police custody and to provide them with support to assist communication between them and the police. In practice, this support is provided by an appropriate adult though this term is not used in the Act.
138. To ensure support is provided as soon as is reasonably practicable, subsections (1), (2) and (4) provide that, where a police constable (who may have been advised that a person is vulnerable following an initial assessment by the police custody and security officer, who is a uniformed non-warranted officer, whose duties include attending to the wellbeing of a person in their custody) considers that a person in police custody is age 16 or over and is unable, because of a mental disorder, to understand what is happening or to communicate effectively, they must make sure that an appropriate adult is told where the person is being held, (this is not always at the police station and could be, for example, at a hospital) and that they require the support of an appropriate adult.
139. Subsection (3) provides that the role of the appropriate adult is to assist a vulnerable person to understand what is happening and to facilitate effective communication between the vulnerable person and the police.
140. Subsection (5) explains that “mental disorder” is as defined in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (i.e. “any mental illness, personality disorder, learning disability however caused or manifested”). It also explains that references to the police are to constables or members of police staff as provided for in section 99 of the Police and Fire Reform (Scotland) Act 2012. This ensures that a constable can delegate certain tasks, such as intimation to an appropriate adult, to a civilian member of police staff.