

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 a solicitor

Section 43 – Right to have intimation sent to solicitor

141. **Section 43** affords a person in police custody the right to have a solicitor informed, as soon as reasonably practicable after a request is made by the person in police custody, that the person is being held in police custody, where they are being held and that the professional assistance of a solicitor is required. If the person has been officially accused of an offence (i.e. charged with the offence by the police or where a prosecutor has started proceedings in relation to the offence), the person has the right to have a solicitor informed whether they are to be released from custody or, if not, of the court before which the person is to be brought and the day on which the person will be brought before court.

Section 44 – Right to consultation with solicitor

142. **Section 44** provides for the right of a person in police custody to have a private consultation with a solicitor at any time. For the purposes of this section, a consultation is defined by subsection (4) as a consultation by such means as considered appropriate, for example, by telephone.
143. Under subsection (2) the police can delay the exercise of this right only so far as necessary in the interest of the investigation or prevention of crime, or the apprehension of offenders. Authorisation to delay the right to consultation 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.