



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 1

ARREST AND CUSTODY

CHAPTER 5

RIGHTS OF SUSPECTS IN POLICE CUSTODY

Intimation and access to another person

38 Right to have intimation sent to other person

- (1) A person in police custody has the right to have intimation sent to another person of—
 - (a) the fact that the person is in custody,
 - (b) the place where the person is in custody.
- (2) Intimation under subsection (1) must be sent—
 - (a) where a constable believes that the person in custody is under 16 years of age, regardless of whether the person requests that it be sent,
 - (b) in any other case, if the person requests that it be sent.
- (3) The person to whom intimation is to be sent under subsection (1) is—
 - (a) where a constable believes that the person in custody is under 16 years of age, a parent of the person,
 - (b) in any other case, an adult reasonably named by the person in custody.
- (4) Intimation under subsection (1) must be sent—
 - (a) as soon as reasonably practicable, or
 - (b) if subsection (5) applies, with no more delay than is necessary.
- (5) This subsection applies where an appropriate constable considers some delay to be necessary in the interests of—
 - (a) the investigation or prevention of crime,
 - (b) the apprehension of offenders, or

Changes to legislation: *Criminal Justice (Scotland) Act 2016, Section 38 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (c) safeguarding and promoting the wellbeing of the person in custody, where a constable believes that person to be under 18 years of age.
- (6) In subsection (5), “an appropriate constable” means a constable who—
 - (a) is of the rank of sergeant or above, and
 - (b) has not been involved in the investigation in connection with which the person is in custody.
- (7) The sending of intimation may be delayed by virtue of subsection (5)(c) only for so long as is necessary to ascertain whether a local authority will arrange for someone to visit the person in custody under section 41(2).
- (8) In this section and section 39—
 - “adult” means person who is at least 18 years of age,
 - “parent” includes guardian and any person who has the care of the person in custody.

Commencement Information

II S. 38 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#) (with art. 4)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act expiry of affecting provision 2022 asp 8, sch. para. 15 by [S.S.I. 2023/360 reg. 2\(a\)](#)