

Status: This version of this provision is prospective.

Changes to legislation: Children (Care and Justice) (Scotland) Act 2024, Section 15 is up to date with all changes known to be in force on or before 18 June 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



Children (Care and Justice) (Scotland) Act 2024

2024 asp 5

PART 2

CRIMINAL JUSTICE AND PROCEDURE

Safeguards for children involved in criminal proceedings

PROSPECTIVE

15 Custody of children before commencement of proceedings

- (1) The Criminal Justice (Scotland) Act 2016 (“the 2016 Act”) is amended as follows.
- (2) In section 22 (under 18s to be kept in place of safety prior to court), in subsection (1), for paragraph (b) substitute—
 - “(b) a constable believes the person is under 18 years of age.”.
- (3) In section 23 (notice to parent that under 18 to be brought before court)—
 - (a) in subsection (1), for “16 years of age or over and subject to a supervision order or under 16” substitute “under 18”,
 - (b) in subsection (4), the definition of “supervision order” is repealed.
- (4) In section 24 (notice to local authority that under 18 to be brought before court)—
 - (a) in subsection (1), in paragraph (a), for “either subsection (2) or (3)” substitute “subsection (2)”,
 - (b) for subsection (2) substitute—
 - “(2) This subsection applies to a person who is under 18 years of age.”,
 - (c) subsection (3) is repealed.
- (5) In section 33 (consent to interview without solicitor)—
 - (a) in subsection (1), for “Subsections (2) and (3) apply” substitute “Subsection (2) applies”,

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- (b) in subsection (2)—
 - (i) in paragraph (a), for “16” substitute “18”,
 - (ii) paragraph (b) is repealed,
 - (iii) in paragraph (c), for “16” substitute “18”,
 - (c) subsections (3), (4) and (5) are repealed.
- (6) In section 38 (right to have intimation sent to other person), in subsection (7)—
- (a) the words from “to ascertain” to the end become paragraph (a),
 - (b) after that paragraph insert “, or
 - (b) for a local authority to give advice by virtue of section 41(9).”.
- (7) In section 41 (social work involvement in relation to under 18s)—
- (a) in subsection (1)—
 - (i) in paragraph (a), for “the person may be subject to a supervision order” substitute “person to be under 18 years of age”,
 - (ii) paragraph (b) and “or” immediately preceding it are repealed,
 - (b) after that subsection insert—

“(1A) Intimation of the following facts must also be sent to a local authority—

 - (a) where the person in custody declines to exercise the right to have intimation sent under section 38, that fact,
 - (b) where the person in custody requests under section 39(3) (b) that the person to whom intimation is to be sent under section 38 is not asked to attend at the place where the person in custody is being held, that fact,
 - (c) where the person in custody requests under section 39(6)(b) that no further attempt to send intimation under section 38 is made, that fact,
 - (d) where the person to whom intimation is sent under section 38—
 - (i) does not access the person in custody by virtue of the person in custody not wishing that person to have access by virtue of section 40(2), or
 - (ii) is refused access to the person in custody or has such access restricted by virtue of section 40(4),
 that fact.”,
 - (c) in subsection (2)—
 - (i) in the opening words, after “subsection (1)” insert “or (1A)”,
 - (ii) paragraph (a) is repealed,
 - (iii) in paragraph (b)—
 - (A) sub-paragraph (i) and “and” following it are repealed,
 - (B) in sub-paragraph (ii), “(having regard to the effect of subsection (4)(a))” is repealed,
 - (d) in subsection (4), paragraph (a) and “and” following it are repealed,
 - (e) subsections (7) and (8) are repealed,
 - (f) in subsection (9), for “The local authority” substitute “A local authority sent intimation under subsection (1) or (1A)”,

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(g) subsection (10) is repealed.

Commencement Information

II S. 15 not in force at Royal Assent, see [s. 38\(3\)](#)

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

- Act power to modify conferred by 1995 c. 36, s. 33A (as inserted) by [2024 asp 5 s. 30\(2\)](#)
- Act power to modify conferred by 2010 asp 8, s. 190(2A) (as substituted) by [2024 asp 5 s. 29\(2\)\(b\)](#)