



## **UNDER-AGE SEXUAL ACTIVITY MULTI AGENCY GUIDANCE**

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## **1. UNDER-AGE SEXUAL ACTIVITY (USA)**

The management of cases of unlawful sexual activity and under-age pregnancy has been an area which has been seen as particularly contentious in the past and in response, the Scottish Government has produced national guidance, Under-age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns.

This guidance is for those practitioners who work directly with children and young people and focuses on how agencies and practitioners should respond when they become aware of under-age sexual activity. The aim is to ensure the early identification and support for such children and young people and help ensure that in cases where there may not be a child protection issue, their needs are still met appropriately. This is consistent with the values and principles contained within the Getting it right for every child (GIRFEC) framework.

The national guidelines for Getting it right for every child was published in 2012. The guidelines list 10 core components that local areas should aspire to achieve. Amongst the key components are:

- Cultural Change: building on the skills, knowledge and relationships which exist locally in Dumfries and Galloway
- Systems Change: creating a shared and commonly understood approach that is easily understood and used by children and young people, families and practitioners.
- Practice Change: Influenced by the improving relationships above, the creation of better processes and agreed single systems.

This guidance should, therefore, be read with reference to the National Guidance on USA and the National Child Protection Guidance, which provides more detailed information on issues such as roles and responsibilities, information sharing, risk assessment and responding to child protection concerns. The National Guidance also contains information on how practitioners can find out more about the issues and risk factors associated with child protection. The approach taken to these issues in relation to under-age sexual activity should be no different to other circumstances where practitioners are working to meet the needs of children and young people.

This document has been endorsed by the Chief Officers Group and the Child Protection Committee for immediate use in Dumfries and Galloway as guidance to all staff who are facing dilemmas about reporting under-age sexual activity, including under-age pregnancy.

The practical effectiveness of the guidance will be monitored and evaluated by the Policy & Procedure Sub Committee of the Child Protection Committee.

## **2. INTRODUCTION**

When anyone working with children and young people becomes aware of situations where under-age sexual activity has taken place, they have a duty to consider the impact that this has had on the child or young person and whether this behaviour is indicative of a wider child protection concern.

Child protection concerns arise in those circumstances when there is a strong likelihood or risk of significant harm to a child, arising from abuse or neglect. The concept of 'significant harm' is a complex matter and is subject to professional judgement based on a multi-agency assessment of the circumstances of the child and young person and their family. It can result from a specific incident of abuse or neglect, a series of incidents or an accumulation of concerns over a period of time.

The National Child Protection Guidance provides more detail about the nature of child protection, significant harm and child abuse and neglect.

To act effectively, practitioners should make a judgement about what information is needed to make this assessment, based on the principles of GIRFEC, and who is best placed to carry it out in full. This might mean them collecting and sharing information within their own service or with other agencies, or passing on information to the service best placed to assess their needs. However, in any situation, an initial assessment of risk has to be made by the practitioner to ensure that the correct processes and people are involved so that the needs of the child and young person are effectively met.

## **3. SEXUAL OFFENCES (SCOTLAND) ACT 2009**

The Sexual Offences (Scotland) Act 2009 (the Act) received Royal Assent in July 2009 and came into force on 1 December 2010. The Act replaces a complex patchwork of common law and statutory provision within a single statutory framework that reflects the values of modern society. The Act maintains the age of consent at 16 and redefines sexual offences against and between children. It defines a significant difference between a 'young child'<sup>1</sup> and 'older child'<sup>2</sup>

A short summary of the main provisions of the Act can be found at Scottish Government Website/link

For practitioners working with children and for the purposes of this guidance the relevant sections of the Act are Section 30 (adults engaging in sexual activity with older children) and Section 37 (older children engaging in sexual activity). These sections can be found in full in **APPENDIX A**.

#### **4. APPLICATION OF THE USA GUIDANCE**

This guidance applies to all practitioners who work with, and have a duty of care towards, children and young people. This includes social workers, health professionals, police officers, teachers, voluntary sector workers, residential workers, youth workers; and any practitioner who might work with a young person who is engaged or planning to be engaged in sexual activity with another person.

The child or young person could be under the age of 16, which is the current legal age of consent or could be under the age of 18 and be vulnerable in some way, therefore, requiring a response from child or adult protection services. A 'child' can be defined differently in different legal contexts and these are discussed in detail in the National Child Protection Guidance. However, as the sections on information-sharing below make clear, different responses may be required depending on the age of the child or young person involved.

**If the under-age sexual activity involves children under the age of 13, the concerns must be passed on in accordance with local child protection procedures.**

Where it involves children **aged 13 to age 15**, a range of issues should be considered before a decision is taken, as the guidance discusses in greater detail.

Consequently, while this guidance refers to children and young people overall, a distinction is made at different parts of the guidance between:

- a 'younger child', who is defined in this guidance as meaning someone aged under 13
- an 'older child', who is defined here as someone aged 13 or over and under 16

#### **5. THE SHARING OF INFORMATION**

5.1 Practitioners may be concerned that disclosing information about under-age sexual activity may be breaching the confidentiality rights of the child or young person in question, or equally, that the child or young person may not be forthcoming with information if they feel that it is going to be shared with others. However, it is important to remember that if there is a child protection concern of any kind, information about the child or young person must be shared. Equally, it will usually be essential that further information is sought or shared in order to make a sound assessment of whether there is a child protection concern in the first place.

5.2 When the police are made aware of cases of under-age sexual activity – either directly or through information from another agency – they will consider how to proceed based on the best interests of the child or young person and the nature of the sexual activity, for example, the age of the individual or whether there is information that coercion has taken place.

It is a matter of local discretion as to whether Police decide to pursue an investigation or alternatively to pass information on to the most appropriate partner to progress. Even where an investigation may take place, the Police are not obliged to refer every case for prosecution. Actions taken by the police will be based on the ACPOS Under- Age Sexual Activity National Guidance.

## **6. RESPONDING TO UNDER-AGE SEXUAL ACTIVITY**

6.1 Getting it right for every child (GIRFEC) aims to have in place a network of support to promote wellbeing so that children get the right help at the right time.

GIRFEC principles should underpin all practice with children and young people, but essentially:

- places children's and young people's needs first;
- ensures that they are listened to and involved in decisions that affect them; and
- ensures that they get the co-ordinated help required for their well-being, health and development.

Additional information about how GIRFEC should relate to child protection practices and procedures is set out in the National Guidance on Child Protection and locally within the Dumfries and Galloway's GIRFEC Practice Guidance.

### **6.2 Younger child (under age of 13)**

Where a practitioner becomes aware that a younger child (ie. under the age of 13yrs) is sexually active or is likely to become sexually active, this should be **automatically** shared as a child protection concern. This also applies when it is known that an older child became sexually active when they were a younger child.

### **6.3 Older child (age 13 to 15)**

Where practitioners are aware that an older child (i.e. age 13 - 15) is sexually active or is likely to become sexually active, they should undertake a risk assessment which takes into consideration the indicators under Appendix B.

For universal services, this will take the form of a Child's Assessment Report. Details on how to conduct this assessment are contained in the Dumfries and Galloway GIRFEC Practice Guidance.

Specialist services (e.g. Sexual Health, CAMHS) will conduct the assessment in conjunction with their own assessment tools.

The practitioner has a duty of care to ensure that the young person's health and emotional needs are addressed and assess whether the sexual activity is of an abusive, coercive or exploitative nature. At the same time, such risk assessment must take full account of the issues of confidentiality and information sharing set out previously.

## **7. CONDUCTING AN ASSESSMENT**

7.1 All cases should be considered individually, on the basis of their own facts and circumstances. In making assessments, practitioners should take into account the following.

- The age of the young person. Any sexual activity involving younger children should be automatically treated as a child protection concern. Consensual sexual activity is not unlawful when both parties are aged 16 or over, but there may also be particularly vulnerable young people between the ages of 16-17 who may be placing themselves at risk or who are at risk.
- Particular vulnerabilities. Some groups of young people are more likely to experience discrimination or disadvantage within society such as young people with disabilities, young women, young gay men and women, those affected by poverty, those experiencing homelessness, looked-after children and young people, those living away from home and survivors of sexual abuse, and may be particularly vulnerable to sexual abuse, coercion or exploitation.

A list of adverse risk indicators is contained in APPENDIX B which should form the basis of a risk assessment.

7.2 It is essential to look at the facts of the actual relationship between those involved and to take into account the wider needs of the young person. Crucial elements of this assessment relate to issues of:

- consent and informed choice (free agreement)
- the ages of those involved
- the relationship
- the circumstances of the sexual activity
- the vulnerability of the young person involved

The presence of one or more factors (**see APPENDIX B**) will raise different levels of concern depending on the young person's individual circumstances. For some young people it will be the combination of certain factors which may suggest that further intervention is required. There are some contextual factors – for example, capacity to consent, consumption of drugs and/or alcohol that would affect ability to give consent, manipulation, bribery, threats, aggression and/or coercion, indicators of child sexual exploitation – which will require an immediate, multi-agency response including involvement of the police.

7.3 Practitioners need to be aware that should information come to their attention about past sexual behaviour and/or relationships involving young people, the same consideration should be given as to whether this was abusive or exploitative and the appropriate action which should be taken.

It may be the case that the young person in question is no longer at risk of harm; however, this information may have implications for other children and young people.

7.4 Practitioners need to be aware that some young people may not identify abusive behaviour as such. A range of factors – including embarrassment, coercion and the desire to protect others – may prevent such identification and can increase the vulnerability of these young people. Should the member of staff be doubtful or have other concerns, the matter should be discussed with their line manager or agency adviser.

All decisions taken, together with the reasons for them, should be clearly recorded within the appropriate case file/record.

## **8. SHARING CONCERNS WITH OTHER AGENCIES**

8.1 Practitioners should bear in mind that there is the opportunity to discuss concerns relating to under-age sexual activity on an informal, or 'hypothetical' basis - whether for general advice on procedures and processes, or to ascertain whether information they hold should be shared on a wider basis. These types of discussion can help increase knowledge and skills base, and help promote the development of inter-agency relations. Such sharing of information does not necessarily mean that an investigation will thereafter take place or that the matter will be reported to the Procurator Fiscal or Children's Reporter.

There is no requirement that the initial information or contact with the child be reported to the Police, the Reporter or to the Social Work Department provided that there is reasonable cause to believe that there are no abusive elements in the relationship.



8.2 Sharing concerns with or between the investigating agencies (Social Work and Police) should be based on the assessment undertaken by the agency that has the initial concern, as outlined above. Depending on the outcome of that assessment, there are several courses of action that could be taken. However, in all situations the consideration of the five GIRFEC questions should form the basis of the response:

- What is getting in the way of this child's or young person's well-being?
- Do I have all the information I need to help this child and young person?
- What can I now do to help this child and young person?
- What can my agency do to help this child and young person?
- What additional help, if any, may be needed from others?

The level of response will depend on how practitioners assess the level of risk. The response, and level of information shared, will be different depending on whether there is a child protection concern or whether there are other concerns for the well-being of the young person.

The overriding principle should be that the confidentiality rights of children and young people should be respected unless there is a child protection concern.

8.3 There are certain circumstances in which practitioners should automatically share child protection concerns with the investigating agencies:

- if the child is, or is believed to be, sexually active and is under 13
- if the young person is currently 13 or over but sexual activity took place when they were 12 or under
- if the child is aged between 13 and 15 and has been subject to rape, including non-consensual sexual activity, or a serious sexual assault. An example of non-consensual sexual activity is where the young person is believed to have been intoxicated to the point of being unable to give consent.
- if there is evidence or indication that the young person is involved in pornography or prostitution
- if there is evidence or indication that the young person is involved in child sexual exploitation
- if the 'other person' is in a position of trust in relation to the young person
- if the young person is perceived to be at immediate risk

A list of contacts for partner investigating agencies is included in **APPENDIX C**

8.4 If the practitioner has assessed that the sexual behaviour is consensual teenage sexual activity where there are no concerns of abuse, coercion or exploitation, the practitioner should uphold the confidentiality rights of the young person and provide practical assistance and advice as required. Practitioners not qualified to provide this should signpost young

people to the appropriate local services (e.g. Sexual Health Services, CAHMS, ISSU18). **See APPENDIX C**

8.5 If the practitioner has assessed that the sexual behaviour is not abusive, coercive or exploitative, but there remains concerns about the young person's behaviour e.g. their ability to assess risk, their use of drugs/alcohol, the environment in which they seek sexual contacts etc, then the practitioner should uphold the confidentiality rights of the young person, provide practical assistance and advice as required within their own agency or, with their permission, refer them to the appropriate clinical or support services, including any relevant health service agencies e.g. Sexual Health Services, CAHMS, ISSU18. **See APPENDIX C**

8.6 In the above two scenarios, a single-agency decision-making process is normally appropriate. If there are concerns that the young person might be at risk of harm, if the practitioner is concerned that the young person's behaviour, or the nature of the sexual behaviour and/or relationship, could indicate that the young person is at risk of harm, the practitioner should:

- seek guidance from a line-manager in accordance with their agency's guidelines and decide if further action is required
- inform the young person about the need to speak to other practitioners, where required, and seek their consent if possible
- if required, seek advice from other services and agencies to assist in this decision-making
- share appropriate information with other practitioners about the young person
- share information with the Police if there are concerns about the young person's sexual partner

8.7 If the practitioner is aware that the young person has experienced, or is experiencing, harm as a result of their sexual activity or behaviour, the practitioner should:

- where appropriate, speak with the child and young person prior to passing on the child protection concern – every reasonable effort should be made to seek their agreement;
- share the child protection concern with Police and/or Social Work Services  
**See APPENDIX C**
- if agreement is not reached, the professional should share the child protection concern and inform the child and young person that this will be the course of action.

8.8 On receipt of this information, Social Work and Police will consult and make a decision as to how best proceed in accordance with current child protection procedures.

8.9 If an investigating agency, (Police or Social Work) concludes that there is insufficient information or further assessment is required by that agency (**see Section 7: Conducting an assessment**) they will provide advice and guidance on how the referring agency should proceed.

8.10 In circumstances where the police receive a report of apparent consensual sexual activity from a member of the public, they will carry out a proportionate investigation in accordance with the ACPOS National Guidance on Under -Age Sexual Activity.

The initial phases of this will be centred around information gathering and any early interview of the older child will focus on:

- consent and informed choice (free agreement)
- the ages of those involved
- the relationship
- the circumstances of the sexual activity
- the vulnerability of the young person involved

These interviews will focus on establishing facts around whether the child is the victim of sexual abuse or exploitation, whether there are child protection concerns, and whether there are any adverse risk factors present. It is not for the purposes of obtaining evidence against that older child.

In accordance with the guidance relating to levels of response outlined above, the police will share information with the relevant universal service such as Health or Education Services where the child has consented to this.

## **9. COMMUNICATION WITH PARENTS/CARERS**

9.1 Children and young people have the same right to confidentiality as adults i.e. that personal and private information should not be shared without consent.

9.2 However, practitioners should encourage children and young people to share information with their parents or carers where it is safe to do so. This is in recognition of the responsibilities, rights and duties of parents to direct and guide their children in the exercise of their rights, consistent with their evolving capacities.

9.3 Where a practitioner is not in a position to meet the individual's immediate health needs, having due regard to consent issues, it is within the law, without parental consent or even knowledge, to provide information, make an appointment or accompany the individual to an agency which is able to meet their immediate needs.

9.4 Specifically in relation to child protection matters, the decision to share information with parents or carers should be based on professional judgement and will normally be made at a child protection Strategy Meeting, using the foregoing principles and agency guidelines.

#### **10. RESPONDING TO UNDER- AGE PREGNANCY**

Where practitioners become aware that a young person under the age of 16yrs is pregnant, this should not automatically result in a referral to Social Work Services. It is important to separate out the needs of the young person and the unborn baby and both of these assessments can be undertaken using the guidance provided above. In doing so, unmet or additional support needs can be identified for either, and the relevant services approached for support, in accordance with Dumfries and Galloway's GIRFEC practice model.

Under-age pregnancy in itself is not a reason for referral to Social Work and/or the Police.

#### **11. LOOKED AFTER CHILDREN**

If a young person already subject to a Supervision Requirement becomes pregnant, and continues with the pregnancy, a Pre-Birth Assessment must be undertaken by social work. Under these circumstances, the Social Worker should liaise with the relevant Chairing & Reviewing Officer and arrangements agreed for a review of the young person's plan.

## SEXUAL OFFENCE (SCOTLAND) ACT 2009

**Section 30**, Sexual Offences (Scotland) Act 2009 creates an offence for any person who has attained the age of 16 to engage in sexual activity with or towards an 'older child', specifically:

(1) If a person ("A"), who has attained the age of 16 years, does any of the things mentioned in subsection (2), "B" being in each case a child who—

(a) has attained the age of 13 years, but

(b) has not attained the age of 16 years,

Then A commits an offence, to be known as the offence of engaging in sexual activity with or towards an older child.

(2) Those things are, that A—

(a) penetrates sexually, by any means and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,

(b) intentionally or recklessly touches B sexually,

(c) engages in any other form of sexual activity in which A, intentionally or recklessly, has physical contact (whether bodily contact or contact by means of an implement and whether or not through clothing) with B,

(d) intentionally or recklessly ejaculates semen onto B,

(e) intentionally or recklessly emits urine or saliva onto B sexually.

(3) Without prejudice to the generality of paragraph (a) of subsection (2), the reference in the paragraph to penetration by any means is to be construed as including a reference to penetration with A's penis.

## **SEXUAL OFFENCE (SCOTLAND) ACT 2009**

**Section 37** of the Sexual Offences (Scotland) Act 2009, creates the offence of, 'older children' engaging in sexual conduct with each other, where: -

(1) If a child ("A"), being a child mentioned in subsection (2), does any of the things mentioned in subsection (3), "B" being in each case a child mentioned in subsection (2), then A commits an offence, to be known as the offence of engaging while an older child in sexual conduct with or towards another older child.

(2) The child is a child who—

(a) has attained the age of 13 years, but

(b) has not attained the age of 16 years.

(3) The things are that A—

(a) penetrates sexually, with A's penis and to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of B,

(b) intentionally or recklessly touches the vagina, anus or penis of B sexually with A's mouth.

(4) In the circumstances specified in subsection (1), if B engages by consent in the conduct in question, then B commits an offence, to be known as the offence of engaging in consensual sexual conduct with another older child.

(5) In paragraph (b) of subsection (3), the reference to A's mouth is to be construed as including a reference to A's tongue or teeth.

### ADVERSE RISK INDICATORS

In conducting an assessment, practitioners should **consider** the following questions:

- Is the child under the age of 13 or did the sexual activity take place when the young person was under 13?
- Did the young person understand the sexual behaviour they were involved in?
- Did the young person agree to the sexual behaviour at the time?
- Did the young person's own behaviour – for example, use of alcohol or other substances place them in a position where their ability to make an informed choice about the sexual activity was compromised?
- Was the young person able to give informed consent? (for example, mental health issues, learning disability or any other condition that would heighten the young person's vulnerability)

#### The relationship

- Was there a coercing power or any other relevant imbalance present in the relationship? (for example, differences in size, age, material wealth and/or psychological, social, intellectual and physical development – in addition, gender, race and levels of sexual knowledge can be used to exert power.) It should not automatically be assumed that power imbalances do not exist for two young people similar in age or of the same sex.
- Was manipulation, bribery, threats, aggression and/or coercion, involved? For example, was the young person isolated from their peer group or given alcohol or other substances as a 'dis-inhibitor'.

#### The other person

- Did the other person use grooming methods to gain the trust and friendship of the young person? (for example, by indulging or coercing the young person with gifts, treats, money etc; by befriending the young person's family; by developing a relationship with the young person via the internet)

- Did the other person attempt to secure secrecy beyond what would be considered usual in teenage sexual activity?
- Was the other person known by practitioners to be or have been involved in concerning behaviour towards other children and young people?
- Was the other person in a position of trust?

### **Supplementary Factors**

- Was the young person, male or female, frequenting places used for prostitution?
- Is there evidence of the young person being involved in prostitution or the making of pornography?
- Was the young man frequenting places where men have sex with men in circumstances where additional dangers, for example, physical assault, might arise?
- Were there other concerning factors in the young person's life which may increase their vulnerability? (for example, homelessness)
- Did the young person deny, minimise or accept the concerns held by practitioners?



## **LOCAL RESOURCES AND SERVICES**

### **Local Authority Agency Contacts**

**Social Work/Education Services Senior Child Protection Advisor**

**Tel: 01387 273626**

**Social Work Services Child Protection Advisor**

**Tel: 01387 273626**

**Education Services Child Protection Advisor**

**Tel: 01387 260936**

**Police Public Protection Unit**

**Tel: 101**

**NHS D&G Child Protection Team**

**Tel: 01387 244300**

**Children and Families Social Work Services Area Offices**

**NITHSDALE :**

122 – 124 Irish Street, Dumfries - 01387 273600

**ANNANDALE & ESKDALE:**

Town Hall, High Street, Annan – 01461 203311

**STEWARTRY:**

Council Offices, Daar Road, Kirkcudbright – 01557 339260

**WIGTOWNSHIRE:**

Penninghame Centre, Auchendoon Rd, Newton Stewart – 01671 403164

**STRANRAER:**

Stranraer - 01776 706082

**SOCIAL WORK OUT OF HOURS SERVICE**

**0800 811 505**

### **Sexual Advice Services**

**Sexual Health D&G**

Nithbank

Dumfries

DG1 2SD

Tel: 0845 702 3687

e-mail: [dqsexualhealth@nhs.net](mailto:dqsexualhealth@nhs.net)

[www.c4urself.org.uk](http://www.c4urself.org.uk)

**Lesbian, Gay, Bisexual and Transgender (LGBT)**

88b High Street  
Dumfries  
DG1 7BJ  
Tel: 01387 255058  
[www.lgbtcentredg.co.uk](http://www.lgbtcentredg.co.uk)

**Alcohol and Drug Support****Specialist Drug and Alcohol Services (NHS)**

12 – 28 Lochfield Road Primary Care Centre  
Dumfries, DG2 9BH  
Tel: 01387 244555/244550

**Addaction**

Service for people affected by Drug and Alcohol problems

Dumfries  
79 Buccleuch Street  
Dumfries  
DG1 2AB  
01387 263208

Stranraer  
32 Charlotte Street  
Stranraer  
DG9 7EF  
01776 705907

**Crisis Support Services****South West Rape & Sexual Abuse Crisis**

[www.southwestrapecrisis.org](http://www.southwestrapecrisis.org)

Tel: 01387 253113 or 01776 889331

**Child and Adolescent Mental Health Services (CAMHS)****CAMHS Team (NHS)**

Ladyfield Offices  
Glencaple Road  
Dumfries  
DG1 4TE  
01387 244662/ 244331

**CU thru**

Support In Mind Scotland works to improve the wellbeing and quality of life of people affected by serious mental illness. This includes those who are family members, carers and supporters.

Support In Mind Scotland (Regional Office)  
2 Gordon Street  
DUMFRIES  
DG1 1EG

Tel: 01387 255456  
e-mail: [dumfries@supportinmindscotland.org.uk](mailto:dumfries@supportinmindscotland.org.uk)  
[www.supportinmindscotland.org.uk](http://www.supportinmindscotland.org.uk)

### **Hear 4 U**

Specialist Advocacy Services for Children and Young People  
7 George Street Muse  
Dumfries  
DG1 1HH  
Tel: 01387 264733  
[www.hear4u@barnardos.org.uk](http://www.hear4u@barnardos.org.uk)

### **ISSU18**

Young People's Substance Service is a regional service for Children and Young People aged 0-18, who are experiencing problematic substance misuse (including alcohol) together with multiple complex problems. These problems may include mental health issues such as depression, ADHD or an anxiety disorder.

Young Persons Substance Service (DGC)  
Ladyfield offices  
Glencaple Road  
Dumfries  
DG1 4TE  
Tel: 01387 244327

### **Domestic Abuse Services/Womens Aid**

Dumfriesshire & Stewartry Womens Aid  
12 Whitesands, Dumfries, DG1 2RR  
Tel: 01387 263052 or 07710 152 772

Wigtownshire Womens Aid  
22 Bellevilla Road, Stranraer, DG9 8ED  
Tel: 01776 703 104  
[www.scottishwomensaid.org.uk](http://www.scottishwomensaid.org.uk)

National Domestic Abuse Helpline: 0800 027 1234