

DRAFT NATIONAL GUIDANCE

**UNDER-AGE SEXUAL ACTIVITY –
MEETING THE NEEDS OF CHILDREN AND
YOUNG PEOPLE AND IDENTIFYING CHILD
PROTECTION CONCERNS**

CONSULTATION

**SCOTTISH GOVERNMENT
APRIL 2010**

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HOW TO RESPOND TO THE CONSULTATION

Responding to this consultation paper

We are inviting written responses to this consultation paper by **Friday 23 July 2010**. Please send your response with the completed **Respondent Information Form** (see "Handling your Response" below) to:

ChildProtection@scotland.gsi.gov.uk

or

Laura Holton
Child Protection Team
Safer Children Stronger Families Division
Scottish Government
2B North
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries contact Laura Holton on 0131 244 7583.

We would be grateful if you use the consultation questionnaire provided, and clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government now has an email alert system for consultations (**SEconsult**: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form**, available at **Appendix B**, or as part of the online response form, as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library and on the on the [Scottish Government consultation](#) web pages by October 2010. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the guidance on Under-age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns. We aim to issue a report on this consultation process, together with the finalised guidance, by October 2010.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Name: Laura Holton

Address: Safer Children Stronger Families Division, Scottish Government, 2B North, Victoria Quay, Edinburgh, EH6 6QQ

E-mail: ChildProtection@scotland.gsi.gov.uk

INTRODUCTION

Summary

This draft guidance is aimed at helping practitioners and local services and agencies consider what protocols and policies they need to have in place to effectively meet the needs of children and young people who are engaged in under-age sexual activity.

It has been written from the perspective of how responses should fit with child protection procedures at local level, but also recognises that not all under-age sexual activity above the age of 13 is a child protection issue, and that, therefore, procedures should also be in place at local level to ensure that the needs of the young person are met in whatever way required.

This guidance is a reflective of the current legislative and policy context regarding sexual offences, and children and young people. In particular, it is intended to support practitioners in understanding what the new Sexual Offences (Scotland) Act 2009, due to commence later this year, will mean for how they deal with incidents of under-age sexual activity. The Act maintains the age of consent as 16, and provides that any sexual activity between an adult and a child constitutes a criminal offence. Sexual intercourse and oral sex between children and young people under the age of 16 also remains unlawful.

However, the guidance also recognises that around 25-30% of young people do engage in sexual activity under the age of 16, and that this is often part of typical sexual development. As such, not all under-age sexual activity should be seen to be a child protection issue, although there may be other types of support required by the young person. This guidance seeks to strike a balance between assuring the freedom of young people to make decisions about their own lives, and protecting them from activity which could cause them significant harm. A big part of this for practitioners is being able to recognise situations where there is a suspected or known risk that children or young people are at risk, and for there to be effective local procedures in place to help them to assess this risk, share information, and escalate if required.

This guidance intends to support this process. It is intended to be read in conjunction with the Scottish Government's National Child Protection Guidance, which will be issued for consultation in early summer, and reflects the *Getting it right for every child* approach. This National Child Protection Guidance will address issues such as risk assessment, roles and responsibilities, information-sharing, responding to child protection concerns, and definitions of a child in much more detail, and as such this guidance has been deliberately drafted to have a light touch on these issues.

Purpose of consultation

We want this guidance to be fit for purpose and useful for local services and agencies as they are developing their policies and procedures. It is intended to be generic enough as to be useful for all types of organisations – police, health, social work, education, third sector.

We are also interesting in hearing what young people think about the guidance, as the people that are ultimately going to be affected by it.

There are some specific issues where respondents are asked to take a view, but more generally, we want to know that the guidance is as useful as possible, does not miss out anything important, and is as user-friendly and clear as it can be.

What we do not intend to consult on are the principles set out in the Sexual Offences (Scotland) Act, which are reflected in this guidance. These were consulted on as part of the passage of the Bill, and the Government is committed to the principles reflected in this Act. Similarly, the Government is committed to the principles set out in the UN Convention of the Rights of the Child, and the *Getting it right for every child* approach. The consultation on the National Child Protection guidance will provide further opportunity to comment on the general child protection procedures referenced in this document.

Development of guidance

The guidance was originally developed in 2008 by a short life working group, with representatives from across children's services. A list of the original members is included at **Appendix D**. The draft was put on hold for the passage of the Sexual Offences (Scotland) Bill 2009, and has since been updated and revised to take into account the new legislation, and the changing policy context e.g. the revision of our National Child Protection Guidance, the development of the *Getting it right for every child* approach.

The revised draft reflects comments received from the original working group, Child Protection Committees, lead clinicians, and relevant policy officers from across the Scottish Government, who were all given the opportunity to consider the draft in advance of consultation.

Timescales for consultation

The consultation will run from 26 April 2010 until 23 July 2010. After the consultation closes, responses will be collated and considered, with a view to publishing the finalised document by October 2010.

Alternative formats

Alternative formats of this consultation paper, or translations into community languages can be made available on request. If you wish to make such a request, please contact Laura Holton on 031 244 7583, or at ChildProtection@scotland.gsi.gov.uk at the earliest opportunity.

NATIONAL GUIDANCE

Under-age Sexual Activity – Meeting the Needs of Children and Young People and Identifying Child Protection Concerns

INTRODUCTION

Context

1. The Scottish Government's National Child Protection Guidance¹ and the *Getting it right for every child* (GIRFEC) approach provides a national framework for agencies and practitioners at local level to draw up and agree on their ways of working to promote the welfare and safety of children and young people. However, the guidance recognises that there are specific circumstances in which children and young people may be at risk of harm, and which may require more specific advice, including when children or young people are engaged in under-age sexual activity. As such, this guidance looks at how protocols can be developed to ensure the early identification and support for children and young people who are at risk of significant harm because of this specific activity, and to help ensure that in cases where there may not be a child protection issue, the needs of the child are still met appropriately.

2. This guidance should, therefore, be read with reference to the National Guidance, which provides more detailed information on issues such as roles and responsibilities, information sharing, risk assessment and responding to child protection concerns. 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.

Under-age sexual activity and child protection

3. When anyone working with children or 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 in question, and whether this behaviour is indicative of a wider child protection concern.

4. To do this effectively, practitioners should make a judgement about what information is needed to make this assessment, based on the principles of the GIRFEC practice model, and who is best placed to carry it out in full. This might mean them collecting and sharing information about the child or young person from within their service, or from other agencies; or passing on information to the service best placed to assess the needs of the child. 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 in ensuring that the needs of the child are effectively met.

5. Of course different individual agencies and professionals will have different roles and responsibilities in relation to protecting the wellbeing of the young person involved in under-age sexual activity. For example, some may

¹ Title to be confirmed.

give direct support, while others may simply help the young person access support from another appropriate agency. However, regardless of what agency the young person comes into contact with, there should be a consistent approach to assessing individual cases and agreeing an appropriate response.

What the guidance does

6. This guidance focuses on how agencies and practitioners should respond when they become aware of under-age sexual activity, and they are considering whether there are concerns about the child or young person. It aims to assist services, agencies and practitioners in their decision-making processes by:

- Setting out **principles** upon which practice should be based;
- Providing **criteria** to assist practitioners in making high quality assessments of the needs of, and risks to, the individual young person they are in contact with and whether information should be disclosed to other agencies; and
- Providing advice as to what **action** could be taken on the basis of their assessment.

What the guidance does not do

7. The guidance does not outline what processes should be put in place at a local level. Local areas should, on an inter-agency basis, develop their own protocols outlining how this guidance will be put into practice.

Who does it apply to?

8. This guidance applies to all practitioners who work with, and have a duty of care towards, children and young people. For example: social workers; nurses; police officers; teachers; 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 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.

9. Clearly, the different roles and responsibilities of each profession and service will mean that the responses to situations of under-age sexual activity will differ accordingly. Indeed, advice should not be given, services provided, or assessments made unless staff are appropriately qualified and trained. Young people should be signposted to other services as appropriate, and concerns should be shared with a manager as appropriate.

10. However, what is important is that children and young people are offered a consistent, joined up approach from every service they come into contact with.

11. In this sense, this guidance is applicable to all, but must also be read in the context of local policy and procedure.

Key points for consideration

Engaging in sexual activity under the age of 16 is illegal

12. The [Sexual Offences \(Scotland\) Act 2009](#) maintains the age of consent at 16, and provides that any sexual activity between an adult and a child constitutes a criminal offence. Sexual intercourse and oral sex between children and young people under the age of 16 also remains unlawful. A short summary of the main provisions of the Act can be found on the [Scottish Government website](#).

Early sexual experiences can have a big impact on future relationships

13. The Scottish Government's strategy for sexual health – *Respect and Responsibility: Strategy and Action Plan for Improving Sexual Health* – places particular emphasis on respectful relationships and encouraging young people to delay engaging in sexual activity. The first sexual experiences of young people play a significant part in their future ability to form solid, trusting relationships throughout their lives. While early sexual experiences can be positive if they are within the context of a loving relationship, conversely, they can have a harmful effect on a young person's mental and physical health and development. Therefore, it is important that young people are mature and ready before they engage in sexual activity.

Is not all under-age sexual activity a cause for concern?

14. The age at which the majority of young people today have their first heterosexual sexual intercourse is 16, but almost 30% of young men and 26% of young women report having had intercourse before their 16th birthday.² It is now well established that increasing numbers of young people are engaging in a range of under-age sexual activity, and while this is not condoned, it must be accepted that this is often part of typical adolescent exploratory behaviour.

15. This guidance seeks to strike a balance between assuring the freedom of young people to make decisions about their own lives, and protecting them from activity which could give rise to immediate harm and/or longer term adverse consequences to one or both of them. The law continues to make clear that society does not encourage sexual intercourse in young people under 16, as it can be a cause of concern for the welfare of the child, even where it is, or appears, consensual. **It does not follow that every case has child protection concerns** and it is important to ensure that a proportionate response is made and that appropriate cases are brought to the attention of the police and social work.

16. However, even if there are no child protection concerns, the young person may still have worries or be in need of support in relation to their sexual development and relationships, which will require to be addressed either on a single agency or multi-agency basis.

Information-sharing is critical where there is a child protection concern

17. Practitioners may be concerned that disclosing information about under-age sexual activity may be breaching the confidentiality rights of the young person in question; or equally, that a young person may not be forthcoming with information if they feel that it is going to be shared with

² [Brook Advisory Service](#)

others. However, it is important to remember that if there is a child protection concern of any kind, information about the child 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.

Disclosing information to the Police

18. Information-sharing with all relevant agencies is essential to ensure the best possible decisions are made. The police must be informed if there is suspicion that a crime or offence has been committed or that a child or adult is at risk.

19. When a case is reported to the police the police, they will decide whether there are sufficient grounds to investigate the suspected criminal offence as per their local policies and procedures.

20. If an investigation has been undertaken, once complete, the Police will decide whether:

- There are no further grounds for investigation or referral, retained for information;
- The case should be dealt with through continuation of the child protection measures already underway;
- The case should be reported to the Children's Reporter; and/or
- The case should be reported to the Procurator Fiscal.

21. This decision will be made **on the basis of local policies and procedures**, and it is advisable that practitioners familiarise themselves with their local police forces to gain awareness of their local practice and procedure. Chapter 16 of the [Book of Regulations](#) also provides advice for the Police on when a case should be referred to the Children's Reporter or Procurator Fiscal Service. It makes clear that only the most serious offences committed by children should be reported to the Procurator Fiscal.

22. If a case has been reported to the Procurator Fiscal, the Procurator Fiscal will decide, in the public interest, on a case-by-case basis, what action to take, including criminal prosecution. The Procurator Fiscal will take account of the seriousness of the offence, the age and any vulnerability of the victim of the offence, any relationship between the victim and the person accused and the age and personal circumstances of the accused person. These considerations are more fully detailed in the Crown Office and Procurator Fiscal Service [Prosecution Code](#).

23. Through every stage of police processes, in line with the GIRFEC approach, the assessment of risk and need should be revisited, in the context of local child protection procedures, to ensure the needs of the child or young person are being met.

What about young people aged between 16 and 18?

24. Over the age of 16, sexual activity is legal. However, the activity may not have been consensual, or the young person might have vulnerabilities and related needs. Furthermore, the [Sexual Offences \(Scotland\) Act 2009](#) states that young people under the age of 18 could be subject to a 'sexual abuse of

trust’ – for example, if the young person has had sexual relations with a teacher, hospital staff or residential care unit worker who has caring responsibilities for the child or for children in the institution in which the child is being cared for or taught and is over the age of 18.³

25. It is also worth noting that in cases where young people are involved in prostitution or pornography, Section 9 of the [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005](#) provides that it is an offence for a person to pay for the sexual services (e.g. prostitution) provided by a child under the age of 18, and sections 10-12 provide that it is an offence to cause, incite, control, arrange or facilitate the provision by a child under the age of 18 of sexual services, or their involvement in the making of pornography.

26. There are differing legal definitions of a ‘child’, although generally, in child protection terms, anyone over the age of 16 is normally considered to be an adult. This difference in definitions can lead to those between 16 and 18 potentially falling through the gaps in local services, and it is important that the key priority at all stages is to ensure that the young person is provided with support and protection if there is a concern. These circumstances should be taken into account to ensure that the young person gets the support required, either from child or adult protection services.

³ Sexual Offences (Scotland) Act 2009, Part 5 – Abuse of position of trust

PRINCIPLES

27. Sharing appropriate information is an essential component of child protection and care activity. To secure the best outcomes for children, practitioners need to understand when it is appropriate to seek or share information, how much information to share and what to do with that information. Practitioners also need to consider with whom information can, and should, be sought and/or shared – this applies not only between different agencies but also within agencies. At the same time, children and their families have the right to know when information about them is shared, and where possible, their consent should be sought. However, where there are concerns about the risk of harm to a child, consent is not required prior to information being shared. Further guidance on information sharing procedures is available in the revised National Guidance on Child Protection [link when available].

Getting it right for every child (GIRFEC)

28. *Getting it right for every child (GIRFEC)* should underpin all practice with children and young people. GIRFEC's principles and values are set out at **Annex A**, but essentially GIRFEC:

- Places children'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 wellbeing, health and development.

More information about how GIRFEC should relate to child protection practices and procedures will be set out in the revised national guidance on child protection [link when available]. As GIRFEC continues to be developed, further information about the approach can be found [here](#).

UN Convention on the Rights of the Child

29. The GIRFEC principles and values reflect the principles set out by the UN Convention on the Rights of the Child (UNCRC). More broadly, the Scottish Government is committed to [supporting and promoting children's rights in Scotland](#) and the principles set out in the [UNCRC](#). Practitioners and agencies should bear in mind these principles and values when working with children and young people. Some of the key principles to be aware of are set out below.

The best interests of the child are paramount (Article 3)

30. The founding principle of legislation relating to children and young people clearly states that the child's welfare or 'best interests' is the paramount consideration.

Children and young people should be able to voice their opinions (Article 12)

31. Practitioners should ensure that all children and young people are given a genuine chance to express their views freely on all matters that affect them and to have these views taken into account. To safely and properly exercise this right, practitioners need to listen and to create an environment

based on trust, information sharing and sound guidance that is conducive to children and young people's participation.

Children and young people should be able to access information (Article 17)

32. Practitioners should ensure that all children and young people are provided with, and not denied, accurate and age appropriate information on how to protect their sexual health and well-being and practice healthy sexual behaviour.

Children and young people should be protected from harm (Article 19)

33. Practitioners have an obligation to ensure that all children and young people are protected from all forms of violence, abuse, neglect and exploitation. Under-age sexual activity may not necessarily be a child protection issue but there may still be concerns that result in a young person requiring support.

Children and young people should be protected from sexual abuse (Article 34)

34. Practitioners have an obligation to ensure that all children and young people are protected from sexual abuse.

Children and young people have a right to special support (Article 39)

35. If a young person has been hurt or badly treated they have the right to special support to help them recover and professionals should take this into account when planning an appropriate response to a child's needs.

Children and young people have rights to confidentiality

36. 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, except in certain exceptional circumstances. The exceptional circumstances referred to are where there is the potential of significant harm to themselves or others (please note that some agencies will have a duty or power to provide information in other circumstances because of their statutory functions).

37. If there is a concern that a child or young person may be at risk of harm or significant harm as a result of sexual behaviour and/or relationships, this always overrides the professional requirement to keep confidentiality. In these circumstances, practitioners have a duty to act to make sure that the child or young person is protected from harm.

38. Professionals are required to ensure that children and young people are informed from the outset that confidentiality is not absolute, but that every reasonable attempt will be made to discuss with them beforehand if information needs to be shared. Prior to disclosing information, attempts should be made to gain the child or young person's consent to passing on information. However, in individual cases it may not always be appropriate to seek consent where there is justification to share without it – for example, if not disclosing information might result in harm coming to the child or compromise a subsequent police investigation.

39. It is also crucial that children and young people should be advised in advance of them disclosing information they want kept confidential, how their

personal information may be shared within the team or agency they have contact with and what the limits to that sharing might be. It is essential that agencies have a worked through confidentiality policy which addresses this issue.

Children and young people should have their information rights respected

40. Practitioners should discuss any concerns and relevant information about a young person or their circumstances with those other professionals or agencies with responsibilities for the protection of children when it is in the child's best interests to do so. The needs of each child are the primary consideration when professionals decide upon the relevant and proportionate sharing of information. All decisions and reasons for them should be recorded appropriately. Agencies should actively manage and support the sharing of information recognising that confidentiality does not prevent sharing information where there is the risk of significant harm to the young person or others. Practitioners should take account of each child's (or other relevant individual's) views when deciding when to share information without their consent and should provide reasons and explain to them when they have shared information without consent. However, in individual cases it may not always be appropriate to seek consent where there is justification to share without it, e.g. where it may place someone at further risk of harm.

41. All practitioners recording information or releasing information to other parties and persons have legal and professional duties to ensure that the information recorded is accurate, relevant and sufficient for its purpose, and that any disclosure is lawful – either through the consent of the young person concerned or where there is the potential of significant harm to themselves or others which outweigh lack of consent. The National Child Protection Guidance provides further information.

Children and young people have the right to consent to, or refuse, health interventions

42. Scots law presumes that people aged 16 and over have the capacity to consent to their own medical treatment. For those under 16, there is no presumption of capacity but the provisions of the [Age of Legal Capacity \(Scotland\) Act 1991](#) and specifically section 2(4) will apply.⁴ It should be noted that capacity is not an all or nothing concept and will be judged in terms of the specific treatment proposed, both the procedure itself and the possible consequences of having it. Capacity will be a matter of clinical judgment which, as indicated in the *Good Practice Guide on Consent for Health Professionals in NHS Scotland*, will depend on several things, including: the age of the child; the maturity of the child; and the risks associated with the procedure or treatment. But fundamentally, the medical practitioner will be testing whether (in their opinion) the young person understands the information relevant to the decision (so sufficient information on procedure

⁴ A person under the age of 16 years shall have legal capacity to consent on his own behalf to any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequences of the procedure or treatment.

and consequences has to be provided to allow the young person to make an informed choice) and whether that information is retained.

Parents and carers have the right to be involved in an appropriate way

43. 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.

44. Sexual health services have long recognised that assurances of confidentiality for young people are essential if they are to be encouraged to seek their help and advice. Sexual health practitioners are encouraged to help young people to speak to their parents and involve them in their decision making, but ultimately, the practitioners are not required to inform the young person's parents or carers at any stage of giving them advice or treatment.

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

46. Specifically in relation to child protection matters, the decision to share information with parents or carers should be based on professional judgement using the foregoing principles and agency guidelines. Education authorities have duties towards pupils, first and foremost. This includes respecting their confidentiality where possible.

ASSESSING RISKS AND NEEDS

47. When a practitioner becomes aware that a young person is sexually active or is likely to become sexually active, they should undertake an assessment of risks and needs in line with the [GIRFEC practice model](#) to ensure that the appropriate response is provided. The practitioner has a duty of care to ensure that the young person's health and emotional needs are addressed and to assess whether the sexual activity is of an abusive or exploitative nature.

48. The assessment process may not always be straightforward and will require sensitive handling and the use of professional judgment. Practitioners should seek support and information in line with their inter-agency procedures. This might mean seeking advice or assistance from a colleague or line manager. Where appropriate, practitioners should advise the young person of their intentions to speak with a colleague. In order to make a full assessment, it may sometimes be appropriate to consult and share information with other agencies including the police and social work.

49. Practitioners should also bear in mind that there may be opportunities to discuss concerns relating to under-age sexual activity on an informal, '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 and understanding.

Assessment of risk

50. Assessment of risk can be separated into three stages:

Stage 1: Gathering information

Stage 2: Analysis of information and understanding the impact on the child (including potential impact) and what is required to reduce risks

Stage 3: Management of risk and intervention (child protection plan, or alternative support if no child protection concerns)

Further information on the risk assessment process can be found in the National Child Protection Guidance. However, it may be helpful to consider the following in the circumstances of under-age sexual activity.

Who should do the risk assessment?

51. Regardless of where information about under-age sexual activity has come from e.g. directly from the young person, a third party or direct observation, it is important that the practitioner who takes forward further information gathering, analysis and assessment is the person with the best skills set and professional competencies for the role. This may be a different person on a case by case basis, but every service or agency should have a process in place for allocating roles and responsibilities in these circumstances. Deciding which practitioner should take the lead will depend on a number of factors, including timing, skills, confidence, and level of responsibility and knowledge of the young person.

What factors should be taken into account in making an assessment?

52. All cases should be looked at individually, on their own facts and circumstances. In making assessments, practitioners should take into account:

- The age of the young person. Any sexual activity under the age of 13 should be automatically referred 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 of those groups of young people 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, looked after children and young people and those living away from home, as these individuals may be particularly vulnerable to sexual abuse or exploitation.
- Relevant legislation and policies (see **Annex C** for details).

What are the indicators that would suggest cause for concern?

53. 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;
- The ages of those involved;
- The relationship;
- The circumstances of the sexual activity; and
- The vulnerability of the young person involved.

54. A list of indicators can be found at **Annex B** of the guidance. It is a non-exhaustive list of some of the typical factors that may indicate a child protection concern and help practitioners determine risk and need. It is not intended to be used as a checklist but forms the basis of a risk assessment: depending on the specific situation, not all of the areas identified will require exploration.

55. The presence of one or more factors 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 – e.g. consumption of drugs and/or alcohol that would affect ability to give consent, manipulation, bribery, threats, aggression and/or coercion – that will require an immediate multi-agency response including involvement of the police. The presence of other factors may flag that there should be further exploration of this area.

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

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

57. Practitioners need to be aware that some young people may not identify abusive behaviour as such.

DEVELOPMENT OF LOCAL PROTOCOLS

58. Local areas should develop protocols to underpin the material within this guidance. The protocols should:

- Reflect the principles and criteria outlined in this guidance;
- Ensure that clear processes are in place at local level to ensure that appropriate action to meet the needs of the child or young person;
- Link into local handling relating to data protection, information sharing, confidentiality, recording of decision making;
- Link with other local protocols on related matters such as provision of sexual health services, protection of vulnerable persons, sexual exploitation and child trafficking;
- Include a list of local resources (leaflets etc.) and services (voluntary organisations etc.); and
- Incorporate monitoring procedures to ensure that practice is consistent and appropriate.

Range of responses

59. The protocol should include courses of actions that may be followed and routes through local processes. A flow chart may be helpful. Depending on the outcome of the assessment process, 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 or young person's wellbeing?
- Do I have all the information I need to help this child or young person?
- What can I now do to help this child or young person?
- What can my agency do to help this child or young person?
- What additional help, if any, may be needed from others?

60. The level of response will depend on how practitioners assess the level of risk to the child or young person, based on the matrix provided at **Annex B**. 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 wellbeing of the young person. However, the overriding principle should be that the confidentiality rights of children and young people should be respected unless there is a child protection concern.

61. The following are given as examples but this should be developed on a local basis.

If the young person is not at risk of significant harm

62. If the practitioner has assessed that the sexual behaviour is consensual teenage sexual activity where there are no concerns of abuse 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 appropriate services.

63. If the practitioner has assessed that the sexual behaviour is not abusive or exploitative, but that there are some concerns about the young person's behaviour e.g. their ability to assess risk, their use of alcohol, the environment in which they seek sexual contacts etc, then the practitioner should:

- Uphold the confidentiality rights of the young person; and
- 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 forensic or sexual health services.

In both these scenarios, a single-agency decision making process is normally appropriate.

If there are concerns that the young person might be at risk of significant harm

64. 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 significant harm, the practitioner should:

- Share appropriate information with other practitioners about the young person, seeking their consent if possible;
- Seek guidance from a line-manager in accordance with their agency's guidelines and decide if further action is required;
- If required, seek advice from other services and agencies to assist in this decision making; and
- Share information with the police if there are concerns about the young person's sexual partner.

If the practitioner is aware that the young person is at risk of significant harm

65. If the practitioner is aware that the young person has experienced, or may experience, significant harm as a result of their sexual activity or behaviour, the practitioner should:

- Make a referral using their local child protection procedures, detailing those who are involved, the nature of the concerns etc;
- Where appropriate, speak with the young person prior to making the referral. Every reasonable effort should be made to seek their agreement to the referral; and
- If agreement is not reached, the professional should make the referral and inform the young person that this will be the course of action.

Automatic referrals

66. There are certain circumstances in which practitioners should **automatically** make a child protection referral:

- If the child is, or is believed to be, sexually active and is 12 years or under;
- If the young person is currently 13 or over but sexual activity took place when they were 12 years or under;
- If there is evidence or indication that the young person is involved in pornography or prostitution;
- If the 'other person' is in a position of trust in relation to the young person; and
- If the young person is perceived to be at immediate risk.

In these circumstances, the practitioner should:

- Make a referral using their local child protection procedures, detailing those who are involved, the nature of the concerns etc;
- Where appropriate, speak with the young person prior to making the referral. Every reasonable effort should be made to seek their agreement to the referral; and
- If agreement is not reached, the professional should make the referral and inform the young person that this will be the course of action.

Recording information

67. In **all** circumstances, the practitioner should make a written record of events and decisions, in line with their own agency procedures. The record should contain all essential detail and the reasons behind their action. This should include decisions about whether or not to inform the police.

68. On each occasion that a practitioner has contact with a child or young person or receives information about them, consideration should be given as to whether their circumstances have changed and a different response needed.

69. Further guidance on the recording and analysis of information is provided in the National Child Protection Guidance [[link when available](#)].

GETTING IT RIGHT FOR EVERY CHILD: PRINCIPLES AND VALUES

For all professions, there are legal powers and duties, professional protocols, quality standards and a range of professional guidance. *Getting it right for every child* is relevant to a wide range of professionals and there are some underpinning principles within the approach that have broad application **across relevant agencies**. These principles are described here as values.

Values inform or influence choices and action across a wide range of role and context. Successful evolution in culture, systems and practices across diverse agencies may depend partly upon on a shared philosophy and value base. The summary below is intended to be both practical and relevant to professionals with a part to play in ensuring that each child is: safe, healthy, active, nurtured, achieving, respected, responsible and included.

- **Promoting the well-being of individual children and young people:** this is based on understanding how children and young people develop in their families and communities and addressing their needs at the earliest possible time
- **Keeping children and young people safe:** emotional and physical safety is fundamental and is wider than child protection
- **Putting the child at the centre:** children and young people should have their views listened to and they should be involved in decisions that affect them
- **Taking a whole child approach:** recognising that what is going on in one part of a child or young person's life can affect many other areas of his or her life
- **Building on strengths and promoting resilience:** using a child or young person's existing networks and support where possible
- **Promoting opportunities and valuing diversity:** children and young people should feel valued in all circumstances and practitioners should create opportunities to celebrate diversity
- **Providing additional help that is appropriate, proportionate and timely:** providing help as early as possible and considering short and long-term needs
- **Supporting informed choice:** supporting children, young people and families in understanding what help is possible and what their choices may be
- **Working in partnership with families:** supporting, wherever possible, those who know the child or young person well, know

what they need, what works well for them and what may not be helpful

- **Respecting confidentiality and sharing information:** seeking agreement to share information that is relevant and proportionate while safeguarding children and young people's right to confidentiality
- **Promoting the same values across all working relationships:** recognising respect, patience, honesty, reliability, resilience and integrity are qualities valued by children, young people, their families and colleagues
- **Making the most of bringing together each worker's expertise:** respecting the contribution of others and co-operating with them, recognising that sharing responsibility does not mean acting beyond a worker's competence or responsibilities
- **Co-ordinating help:** recognising that children, young people and their families need practitioners to work together, when appropriate, to provide the best possible help
- **Building a competent workforce to promote children and young people's wellbeing:** committed to continuing individual learning and development and improvement of inter-professional practice.

INDICATORS THAT THERE MAY BE RISKS TO THE CHILD OR YOUNG PERSON

If a professional feels that there are concerns around the young person's sexual behaviour, the indicators set out below may help the practitioners decide on the appropriate response and whether information should be disclosed. What follows is a non-exhaustive list of some of the typical factors that may indicate a child protection concern, and help practitioners determine risk and need. It is not intended to be used as a checklist but forms the basis of a risk assessment: depending on the specific situation, not all of the areas identified will require exploration.

The young person
Is the young person under the age of 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 e.g. 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? (e.g. mental health issues, learning disability etc.)
The relationship
Did a concerning power imbalance exist in the relationship e.g. 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.
Were manipulation, bribery, threats, aggression and/or coercion, involved? e.g. the young person was being isolated from their peer group, the young person was given alcohol or other substances as a dis-inhibitor etc.
The other person
Did the other person use 'grooming' methods to gain the trust and friendship of the young person? e.g. 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 the agency to be or have been involved in concerning behaviour towards other children and young people?
Was the other person in a position of trust? ⁵
Other factors
Was the young person, male or female, frequenting places used for prostitution?
Is there evidence of the young person (under 18) being involved in prostitution or the making of pornography?

⁵ As defined in [Section 5](#) of the Sexual Offences (Scotland) Act 2009

Was the young man frequenting places where men have sex with men in circumstances where additional dangers, e.g. physical assault, might arise?

Were there other concerning factors in the young person's life which may increase their vulnerability e.g. homelessness?

Did the young person deny, minimise or accept the concerns held by practitioners?

RELEVANT POLICY DOCUMENTS AND LEGISLATION

Sexual Offences (Scotland) Act 2009

Summary of Legislation

Part 4 - Children

Part 5 - Abuse of position of trust

Age of Legal Capacity (Scotland) Act 1991

Part 2.4: A person under the age of 16 years shall have legal capacity to consent on his own behalf to any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequences of the procedure or treatment.

National Guidance on Child Protection (to be consulted on in summer)

Getting it right for every child

Overview of approach

Evaluation of early implementation phases

GIRFEC practice model

UN Convention on the Rights of the Child

Crown Office and Procurator Fiscal Service

Prosecution Code

Book of Regulations: Chapter 16 - Children

General Medical Council Confidentiality Guidance 2009

0-18 years guidance: Child Protection

0-18 years guidance: Sexual Activity

Nursing and Midwifery Council Code of Practice 2009

Respect and Responsibility, Strategy and Action Plan for Improving Sexual Health

CONSULTATION QUESTIONS

1. **Do you agree with how this document describes the relationship between under-age sexual activity and child protection?**

Yes, No, In Part, Don't Know

Please provide additional comments.

2. **Is the guidance clear in relation to the scale of response required depending on whether a child or young person is at risk of significant harm, or has other support needs that do not constitute a child protection risk?**

Yes, No, In Part, Don't Know

Please provide additional comments.

3. **How would this guidance add value to your local policies and procedures? How could it be improved to add more value?**

4. **The document deliberately offers limited information about issues discussed in further detail in the National Child Protection guidance. Do you agree with this approach, or would you prefer to see less/more detail about other issues (and if so, which)?**

More, Less, Don't Know

Please provide additional comments including areas for amendment.

5. **Is the terminology and descriptions used throughout the document relevant to your specific agency or service?**

Yes, No, In Part, Don't Know

Please provide additional comments.

6. **Are the processes described in this document relevant for your particular agency or service? What elements of the guidance are not compatible with your current practices?**

7. **Is this guidance targeted at the right people?**

8. **Do you have any additional comments?**



RESPONDENT INFORMATION FORM

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

Postcode	Phone	Email

3. Permissions

I am responding as...



(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses⁶. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: [Scottish Government consultations](http://www.scotland.gov.uk/consultations) (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process,

⁶ <http://www.scotland.gov.uk/consultations>

consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

APPENDIX D**2008 SHORT LIFE WORKING GROUP ON UNDER-AGE SEXUAL ACTIVITY: ORIGINAL MEMBERSHIP**

Maggie Tierney (Chair)	SG Child Protection Team
Julie Duncan	SG Child Protection Team
Scott Wood	SG Child Protection Team
Gordon Currie	SG Curriculum Content Team
Dawn Samson	Crown Office and Procurator Fiscal Service
Gillian Buchanan	Glasgow City Council
Pauline McGough	Greater Glasgow Health Board
Lesley Boal	Lothian and Borders Police
Shirley Fraser	NHS Health Scotland
Helen Hammond	NHS Lothian
Joy Mires	NHS Tayside
Dawn Parker	Who Cares? Scotland
Patrick Down	SG Sexual Offences Bill Team
Dona Milne	SG Public Health and Substance Misuse Team
Gill Short	Scottish Children's Reporter Administration
Marian Flynn	Glasgow City Council

LIST OF CONSULTEES

Child/Adult Protection Sector

Child Protection Committees Chairs
Child Protection Committee Lead Officers
Alcohol and Drug Partnerships
Domestic Abuse (and Sexual Abuse) Forums
The Scottish Children's Reporter Administration
Local Authority Chief Executives
Local Authority Directors of Social Work
Local Authority Directors of Education
Adult Protection Committees
Highland Violence Against Women Partnership

Justice

ACPOS
Association of Scottish Police Superintendants
Scottish Police Federation

Health

NHS Board Lead Clinicians
NHS Sexual Health Strategy Leads
NHS Sexual Health Promotion Leads
Local Authority Sexual Health Leads
NHS Board Directors of Public Health
Caledonia Youth
Fertility Care
Family Planning Association
Gay Men's Health
HIV Scotland
NAT
Positive Steps
Terrence Higgins Trust (THT)
Waverly Care

Third Sector

Children in Scotland
Aberlour
Action for Change – Multi-Agency Violence Against Women Partnership,
Stirling.
Action for Children
ChildLine Scotland
Children 1st
Rape Crisis Centre/Rape Crisis Scotland
Crew2000
Fairbridge Scotland

Fast Forward
CAIR Scotland
Archway Glasgow
Barnardo's Scotland
Brook Centres
Caledonia Youth
Highland Wellbeing Alliance
Glasgow Community and Safety Services
Lifeline Scotland
Pro-Life Feminists International
SAY Women
Scottish Women's Aid
Victim Support Scotland
Women's Support Project
YMCA Scotland
Quarriers
Includem
The Scouts
Community Care Providers Scotland
Voluntary Health Scotland

Religious Groups

The Catholic Parliamentary Office
The Christian Institute
The Church of Scotland
The Evangelical Alliance

Looked After Children

The Fostering Network
Who Cares? Scotland
Scottish Throughcare and Aftercare Forum
British Association for Adoption and Fostering

Youth Work and Young People

Abernethy Trust
Clubs for Young People (CYP)
Boys Brigade
BTCV Scotland
Caledonian Awards
Campaigners
Chess Scotland
Commonwealth Youth Exchange Council
CSV Scotland
The Duke of Edinburgh's Award - Scotland
Fabb Scotland
Fairbridge

Fast Forward
Girls Brigade
Guide Association
IVS GB (International Voluntary Service)
Iona Community
LGBT Youth Scotland
John Muir Trust
Ocean Youth Trust Scotland
Scottish Association of Young Farmers Clubs
Scottish Centres
Urban Saints (prev. Scottish Crusaders)
Scottish National Council of YMCA's
SSC (A Club for the Youth of Scotland)
Scottish Youth Parliament
Scout Association
Venture Scotland
Woodcraft Folk
Young Scot
Youth Scotland
Youthlink Scotland
YWCA
Highland Youth Forum
Scottish Children's Parliament

Equality Organisations

Disability

Inclusion Scotland
Scottish Disability Equality Forum
Capability Scotland
Sense Scotland
RNID Scotland
RNIB Scotland
Scottish Council on Deafness
Deaf Action
Scottish Association of Sign Language Interpreters
Enable
Scottish Deaf Association
CACDP
Mobility and Access Committee for Scotland
Scottish Association for Mental Health
Leonard Cheshire Scotland
Deafblind Scotland
Scottish Consortium for Learning Disability
Communication Impairment Action Group
Scottish Accessible Transport Alliance

Communication Forum Scotland
Glasgow Centre for Inclusive Living
Lothian Centre for Inclusive Living
Glasgow Disability Alliance
National Autistic Society
Scottish Society for Autism
VOX - Scotland
HIV Scotland
PAMIS
Alzheimer Scotland
Update
Guide Dogs for the Blind Association
Long Term Conditions Alliance Scotland

Race and Religion

Glasgow Anti-Racist Alliance
CEMVO Scotland
BEMIS
Scottish Refugee Council
Scottish Interfaith Council
Grampian Race Equality Council
West of Scotland Regional Equality Council
Central Scotland Racial Equality Council Ltd
Edinburgh and Lothian Race Equality Council
Positive Action in Housing Ltd

LGBT

Equality Network
Stonewall Scotland
Scottish Transgender Alliance

Gender

Scottish Women's Convention
Engender
Close the Gap (STUC)
Glasgow Women's Library
Amina, Muslim Women's Resource Centre
Women Onto Work
Women@Work
Scottish Community Foundation

Age

Scottish Older Peoples Advisory Group
Age Concern Scotland and Help The Aged Scotland
Scottish Pensioners' Forum
Better Government for Older People Network (South Lanarkshire)
Scottish Pensions Association
West of Scotland Seniors Forum
WRVS
CoSLA
Black and Minority Ethnic Elders Group
Better Neighbourhood Services Project
A City for All Ages
Scottish Seniors Alliance
National Pensioners Convention of Scotland
Contact a Family Scotland

Parenting Organisations

Consumer Focus Scotland
Scottish Traveller Education Programme
Glasgow Asylum Support Project
Scottish Parent Teacher Council
Scottish Muslim Parents Association
Scottish Catholic Education Service
Enquire
Parenting Across Scotland
Church of Scotland
Royal Caledonia Trust
Scottish Network for Parental Involvement in Children's Learning
National Parent Forum Scotland (c/o SCVO)

General

Scottish Council for Voluntary Organisations
Citizens Advice Scotland
Equality and Human Rights Commission
Scottish Human Rights Commission
STUC
CoSLA