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POILEAS ALBA

**Child Protection – Under Age Sexual Activity
Standard Operating Procedure**

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1. Introduction

- 1.1 This Standard Operating Procedure (SOP) supports the Police Scotland Child Protection Policy and Child Protection SOP with regard to under age sexual activity.
- 1.2 It outlines circumstances when Police Scotland officers and staff must automatically refer to child protection procedures and commence a criminal investigation.
- 1.3 It also outlines circumstances when the application of a proportionate, tiered and consistent approach to consensual under age sexual activity involving 'older children', with the overall intention being to ensure their safety and well-being without their unnecessary inclusion in the criminal justice system.

2. Background

- 2.1 The Sexual Offences (Scotland) Act 2009 (the Act) received Royal Assent in July 2009 and came into force on 1 December 2010. The act defines a "young child" as a child who has not attained the age of 13 years and "older child" as a child who has attained 13 years but not reached the age of 16 years (see Appendix A for links to relevant legislation).
- 2.2 The Act provides that any sexual activity between an adult and any child constitutes a criminal offence and that sexual intercourse and oral sex between children under the age of 16 years also remains unlawful.
- 2.3 While the law is clear that sexual intercourse between young people under 16 is unlawful it is acknowledged that the reality is that increasing numbers of young people are engaging in sexual activity. Research indicates that almost 30% of young men and 26% of young women reporting having had intercourse before their 16th birthday.
- 2.4 Notwithstanding, all police officers and staff who receive a report of apparent consensual underage sexual activity involving older children **must** be sensitive to the possibility of sexual abuse as a result of exploitation, commonly referred to as Child Sexual Exploitation (CSE).

3. Guiding Principles

- 3.1 The principles and values underlying these procedures reflect the principles set out by the United Nations Convention on the Rights of the Child, the most relevant elements being:
 - The child or young person's welfare or 'best interests' is the paramount consideration (Article 3);
 - Children and young people should be able to voice their opinions (Article 12);

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- Children and young people should be protected from harm (Article 19);
- Children and young people should be protected from sexual abuse (Article 34), which includes all forms of sexual exploitation involving inducement or coercion.

3.2 In addition, a 'Getting it Right for Every Child' (GIRFEC) approach, which is underpinned by values and principles reflected in legislation, standards, procedures and professional expertise, promotes the well-being and safety of children and young people.

4. Legislation and Relevant Guidance

4.1 The sections of the Sexual Offences (Scotland) Act 2009 pertinent to offences against 'young children' and 'older children' are listed at Appendix A to this SOP along with contextual relevance of certain sections of the Act.

4.2 A list of associated reference documents are contained in Appendix B to this SOP. This includes: -

- The National Guidance for Child Protection in Scotland 2014. The Guidance includes reference to the increasing number of young people are engaging in a range of sexual activity before the age of 16, highlighting that on occasions the activity will be wholly consensual, and in others it will happen in response to peer pressure or will be the result of abuse or exploitation.
- The National Guidance - Under-age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns (Scottish Government, 2010). The guidance seeks to ensure an appropriate and proportionate response by professionals while ensuring that children's needs are fully met. The Adverse Risk Indicators outlined in the Guidance are contained in Appendix C.
- The Lord Advocate's Guidelines to Chief Constables – Reporting to Procurators Fiscal of Offences Alleged to Have Been Committed by Children (Crown Office and Procurators Fiscal Service (COPFS) 2014) provides guidance on the categories of offences that require to be jointly reported to COPFS and to the Children's Reporter and the expected responses of police in relation to the reporting of various crimes and offences **committed by children**, including offences contrary to SO(S)A 2009.
- COPFS Legal Guidance on: Factors relevant to the Victim, Factors relevant to the accused and Circumstances of the Offence to be considered during investigation and when completing a SPR2 (Appendix D)

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4.3 In order to comply with the General Data Protection Regulations and the Data Protection Act 2018, the following should be borne in mind when considering sharing information:

- With statutory agencies, consideration must be given to seeking views of parent / guardian of child(ren) under 12 years of age and seeking views of those over 12 years of age. This should be recorded accordingly. It should be noted that exemptions can apply as per GDPR guidance.
- With third sector organisations, explicit consent **MUST** be sought from parent/guardian of child(ren) under 12 years of age and directly from those over 12 years of age and recorded accordingly.

Further information can found in the Data Protection Act 2018.

5. Police Response to Under Age Sexual Activity (all children)

5.1 Police Scotland's response will ensure that our interface with partner agencies reflect common standards of practice and shared language and understanding. Therefore, **all** enquiries or reports of under age sexual activity **will be immediately brought** to the attention of the designated Inter-Agency Referral Discussions (IRD) Detective Sergeant, within the Divisional Public Protection Unit (PPU) or, if out of hours, a supervisory officer within the Divisional Criminal Investigation Department who will be responsible for assessing the level of risk to the child or any other children.

Note: As in all cases, where there is any information to suggest that a child may be at risk of significant harm, child protection procedures must be followed. In addition, 'emergency powers' outlined in Sections 37-39, 55 and 56 of the Children's Hearing (Scotland) Act 2011 should be considered on occasions where it is assessed a child is at immediate risk of significant harm and there is no alternative to protect them.

5.2 It is important that officers conducting enquiries relating to under age sexual activity, whether apparently consensual or otherwise, have appropriate skills and are professionally competent to carry out, what can be, very sensitive inquiries. As such, only officers who are both Joint Investigative Interview (JII) trained and have completed Sexual Offences Liaison Officer (SOLO) training should be tasked with interviewing any child.

5.3 Officers should seek appropriate advice / guidance when any individual involved in an underage sexual activity investigation has membership of any of the protected groups. Where necessary, reference should be made to the Police Scotland Diversity Booklet-A Practical Guide and/or consultation undertaken with Equality and Diversity Advisors within Safer Communities Department.

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6. Sexual Activity Involving a 'Young Child'

- 6.1 The Law, Scottish Government Guidance and Lord Advocate's Guidance clearly state that a 'young child' (under 13 years of age) **cannot** consent to any form of sexual activity.
- 6.2 **All** reports of sexual activity involving a child who, at the time of the activity is, or was a 'young child' is a child protection matter and **must** be treated as such with an IRD being convened without delay (see appendix E – IRD).
- 6.3 In addition to an IRD being convened, the following actions **must** also be undertaken: -
- A Crime Report must be submitted in line with the Scottish Crime Recording Standards;
 - A Child Protection Concern Form must be raised on the Interim Vulnerable Persons Database for all children involved;
 - The appropriate STORM incident must be fully updated;
 - An Intelligence Report must be submitted on the Scottish Intelligence Database (SID). Where it is identified that a named suspect is employed or engaged in activities involving access to children or vulnerable adults, the SID Log should be marked 'PVG relevant';
 - Where it is identified that the suspect poses a risk to any other children and / or vulnerable adults as a result of his / her employment or involvement in voluntary activities, consideration should also be given to the need for a public interest disclosure in the form of a self-disclosure or Chief Officer's Disclosure.
- 6.4 Consideration must be given to seeking views of parent / guardian or if applicable, child(ren), when sharing information with statutory agencies, however, exemptions may apply.

7. Sexual Activity Involving an 'Older Child'

7.1 Sources of Reports / Information

- 7.1.1 Reports can be received by Police from a variety of sources, the most likely being:
- A partner agency / local support service
 - A parent / carer, e.g. having discovered text communications or comments on social network sites
 - The 'older child' themselves, e.g. following a Return Home Welfare Interview following a 'missing person' episode

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7.2 Automatic Child Protection / Criminal Investigation

7.2.1 On all occasions where it is reported or there is information to suggest that:

- Any 'older child' may have been; is being or is likely to be forced or enticed to take part in sexual activities (sexual abuse including child sexual exploitation);
- Any 'older child' of whom there are indecent images taken or held which suggest abusive or exploitative behaviour;
- The 'other person' is in a position of trust in relation to an 'older child';
or
- As a result of the reported sexual activity concerns are raised that the 'older child' (or another child) has, is or is likely to be at risk of significant harm

must be referred to the Designated IRD Detective Sergeant or, if out of hours, a supervisory officer within the Divisional Criminal Investigation Department with an IRD being convened without delay and actions outlined in paragraph 6.3 completed.

7.2.2 Consideration must be given to seeking views of the older child(ren) or if applicable, the parent/guardian, when sharing information with statutory agencies, however, exemptions may apply.

7.3 Concerns Raised by Statutory Agencies / 3rd Sector Organisations

7.3.1 It must be recognised that partner statutory agencies and 3rd sector organisations assist 'older children' in various ways where it is clear they are engaging in consensual sexual activity.

7.3.2 All young people who are, or who are planning to be, sexually active have the right to access information and services to meet their immediate health needs, emotional support, contraception / protection, etc. For those professionals in settings where such provisions can be offered reference should be made to the Age of Legal Capacity (Scotland) Act 1991.

7.3.3 When such professionals become aware that an 'older child' is, or is likely to become sexually active, the professional has a responsibility to make an initial assessment as to whether the sexual behaviour and / or relationship may be abusive or exploitative. Scottish Government Guidance on Under Age Sexual Activity outlines that it is essential for professionals to look at the facts of the actual relationship between those involved and to take into account the wider needs of the young person, taking cognisance that 'older children' may not identify abusive or exploitative behaviour as such. Where a single agency has little or no knowledge of either party involved, information sharing must be encouraged to ensure an accurate assessment occurs.

7.3.4 There may be occasions when, having received information that an 'older child' is engaging in apparent consensual sexual activity and having undertaken an assessment of risk, a partner statutory agency or 3rd sector organisation has concerns that the 'older child' **could** be at risk of harm.

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7.3.5 When a partner statutory agency or 3rd sector organisation contacts Police Scotland raising concerns that an 'older child' engaging in apparent consensual sexual activity could be at risk of harm, this will immediately be referred to the designated Inter-Agency Referral Discussions (IRD) Detective Sergeant or, if out of hours, a supervisory officer within the Divisional Criminal Investigation Department. This should not be interpreted to mean a full criminal investigation will commence on every occasion. It will, however, ensure that appropriate research and relevant information sharing with appropriate statutory agencies takes place and further assessment is undertaken by specialist officers who are fully conversant with these procedures, national guidance and local inter-agency child protection procedures and any required further action is proportionate and undertaken sensitively.

7.3.6 The designated IRD Detective Sergeant, or out of office hours, the nominated officer will ensure national and local police information / intelligence databases are researched in relation to the 'older child', the reported sexual partner and their family backgrounds. The minimum checks to be carried out by Police Scotland are:

- Police National Computer (PNC);
- Criminal History System (CHS);
- Scottish Intelligence Database (SID);
- Violent and Sexual Offenders Register (ViSOR);
- STORM (or equivalent) Command and Control System;
- Crime Management System (CMS);
- Vulnerable Persons Database (iVPD);
- Police National Database (PND)

7.3.7 In addition historical intelligence databases and legacy force Family / Public Protection Unit records, juvenile liaison / offender records, domestic abuse records, missing person records may also provide valuable information.

7.3.8 To allow for more informed decision making, an information sharing request should be made to appropriate statutory agencies in relation to the 'older child', reported sexual partner and their family backgrounds which thereafter should be jointly assessed to inform the decision making process.

7.4 Concerns Raised Direct To Police Scotland

7.4.1 On occasions where a report or disclosure is made direct to Police Scotland, initial contact by response officers must **not** be for the purpose of obtaining evidence against the older child for possible contravention of any consensual sexual activity offences under Section 37 of the Act.

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7.4.2 Initial contact will be for the purposes of establishing if the older child (and any other child) is safe and sensitively establishing from any 3rd party reporting e.g. parent/carer, teacher etc. their understanding of the circumstances. Initial contact will focus on:

- Details of those involved;
- Ages of those involved;
- The relationship;
- Circumstances of the sexual relationship;
- Whether there are any concerns as to consent and informed choice; and
- Whether the older child has/is experiencing some form of adversity/situational vulnerability

7.4.3 The standards expected when a child witness is interviewed will be maintained during any contact with the older child following initial report. As such, only officers who are both Joint Investigative Interview (JII) trained and have completed Sexual Offences Liaison Officer (SOLO) training should be so tasked.

7.4.4 All officers must be sensitive to the fact that some 'older children' may not identify abusive behaviour as such. A range of factors such as embarrassment, coercion and the desire to protect others may prevent such identification and can increase the risk to their safety/wellbeing. The outcome of contact with the older child must be shared with relevant statutory partners to allow further joint assessment.

7.5 Outcome of Inquiry into Apparent Consensual Under Age Sexual Activity between an Older Child and Adult

7.5.1 The Lord Advocates Guidelines provide no discretion in terms of reporting adults who are engaged in sexual activity with an 'older child'. Where a report or information is received that provides that an 'older child' is engaged in apparent sexual activity with an adult the procedures outlined in Section 6.3 will be followed.

7.5.2 Notwithstanding, if during the course of such an investigation it is established the sexual activity is between a 16 or 17 year old adult and 'older child' **and** there is no evidence of any behaviour that is abusive or exploitative, discussion should take place between a divisional Public Protection Unit supervisor and the Procurator Fiscal (PF) at the earliest opportunity.

7.5.3 Details of such discussion including divisional representative and PF must be recorded. If instructed to do so, a SPR2 or advice and direction report must be submitted. Where the PF instruction is not to submit a SPR2 or advice and direction report, this and their rationale should also be recorded, to ensure clear and auditable record of the discussion.

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7.6 Outcome of Inquiry / Joint Assessment of Apparent Consensual Underage Sexual Activity between Older Children

- 7.6.1 Where, following a joint assessment of all information available, it is assessed that the sexual behaviour or the relationship is not abusive or exploitative, the full circumstances must be reported in an auditable manner to the divisional Child Protection Detective Inspector for review and sign off.
- 7.6.2 While no report will require to be submitted to COPFS, to comply with Scottish Crime Recording Standards a crime report will be raised detailing a Section 37 offence. In this instance the Procurator Fiscal will be listed as the complainer and both older children will be listed as witnesses with reference to child wellbeing concerns shared with relevant statutory agencies and, if assessed necessary, the Children's Reporter.
- 7.6.3 Notwithstanding, the health and wellbeing of children, whatever age, is of central importance. As such, the Divisional Public Protection 'assessing' or 'enquiry' officer must complete a Child Wellbeing Concern Form for each known 'older child'.
- 7.6.4 While partner statutory agencies will be aware as a result of information sharing and joint assessment, the Divisional Concern Hub will ensure that relevant information is shared with relevant statutory agencies who have a legal obligation to provide information and services to meet the older child's immediate sexual health needs; emotional support; contraception provision etc. The reasons why relevant information will be shared should be communicated openly and honestly with the older child and their views sought.
- 7.6.5 An intelligence log **must** be submitted for inclusion on the Scottish Intelligence Database. The log should include known details of the parties involved; that information suggested they were involved in consensual sexual activity; that a Child Wellbeing Concern Form(s) was submitted on the iVPD and that the circumstances were not reported to COPFS. All reports should be recorded under the heading "Child Protection – Under Age Sexual Activity".

8. Conclusion

- 8.1 Police Scotland is committed to ensuring the safety and well-being of children and young persons across Scotland. This guidance ensures that Police Scotland responds to reports of apparent underage sexual activity in a way that is compatible with the National Guidance for Child Protection in Scotland 2014 and the principles of 'Getting it Right for Every Child' (GIRFEC).

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List of Associated Legislation

- Sexual Offences (Scotland) Act 2009 - Part 4 - Children (Young Child) - (Sections 18 to 27 inclusive)

Section 18 of the Act, creates an offence for any person to penetrate to any extent, either intending to do so or reckless as to whether there is penetration, the vagina, anus or mouth of a 'young child' with their penis. This offence is known as rape of a young child.

- Sexual Offences (Scotland) Act 2009 - Part 4 - Children (Older Children) - (Sections 28 to 39 inclusive)

Section 30 of the Act creates an offence for a person who has attained the age of 16 (A) to engage in sexual activity with or towards an 'older child' (B).

Section 37 of the Act deals with 'older children' engaged in consensual sexual contact with each other and creates an offence for either 'older child' where there is consensual penetrative or oral sexual intercourse.

Section 39 of the Act provides a possible defence in relation to Section 30 where:

- 'A' reasonably believes 'B' to be aged 16 years or over;
- or
- There is a maximum age gap of two years between 'A' and 'B' (not applicable where offence involves penile or oral penetration)

Note: This allows for some leniency and helps ensure that young people aged 16 and 17 years are not disproportionately criminalised for engaging in consensual sexual activity.

Section 39 of the Act provides a possible defence for the consenting older child in relation to Section 37 where they reasonably believe the other party to be aged 16 years or over.

- Children's Hearings (Scotland) Act 2011
- Victims and Witnesses (Scotland) Act 2014 - (Section 8)
a person who is, or appears to be, the victim of specific offences, which include Sections 18, 30, 37 and 38 of the Act **must** be afforded the opportunity to specify the gender of the interviewing officer (deemed to be the officer noting a full statement / conducting the JII). A full list of offences relevant to can be found at Sexual Offences Act 2003
- Age of Legal Capacity (Scotland) Act 1991
- Data Protection Act 2018

List of Associated Reference Documents

Policy

- Child Protection Policy

Standard Operating Procedures

- Child Protection SOP

Guidance

- Scottish Government National Child Protection Guidance 2014
- United Nations Convention on the Rights of the Child
- 'Getting it Right for Every Child' (GIRFEC)
- The Lord Advocate's Guidelines to Chief Constables – Reporting to Procurators Fiscal of Offences Alleged to Have Been Committed by Children
- Police Scotland Diversity Booklet-A Practical Guide
- Scottish Crime Recording Standards
- Scottish Government Guidance on Under Age Sexual Activity

Adverse Risk Indicators

The following information is extracted from the Scottish Government's National Guidance - Under-age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns. It is included herein as a 'quick reference' only.

The Child and Young Person:

- 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;
- Were manipulation, bribery, threats, aggression and/or coercion, involved? (For example, was the young person isolated from their peer group or was the young person 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? (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)

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- 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?

Other 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? (see Note below);
- 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?

Note: Police Scotland does not support the use of the terms:

- 'child pornography' - this is images depicting child sexual abuse or indecent images of children;
- or
- 'child prostitution' - this is Child Sexual Exploitation.

**Crown Office and Procurators Fiscal Service (COPFS)
Legal Guidance on: Factors relevant to the Victim, Factors relevant
to the accused and Circumstances of the Offence**

Consideration of these factors during investigation and within a Standard Prosecution Report greatly assist COPFS decision making

• **Factors relevant to the Victim:**

- Age
- Capacity and understanding (including whether the victim has a learning disability)
- Development, both physical and emotional
- Impact on the victim
- Views/attitude of the victim and family in relation to proceedings
- Prior association with the accused
- Whether misuse of substances were involved so that he/she is unable to make informed decision regarding risk

• **Factors Relevant to accused:**

- Risk to the public of sexual offending, in particular the police report should provide information as to any risk posed by the accused
- Whether there has been any further offending since the date of the offence and any breach of any orders of the court relating to the offence
- Age
- Any power imbalance between the parties, including attempts to secure secrecy, overt aggression, manipulation, coercion or bribery
- Any evidence suggestive of grooming
- Whether the accused accepts, denies or attempts to minimise actions
- Prior association with the victim
- Capacity and understanding (including whether the accused has a learning disability)
- Background of the accused including whether he/she has been subject to any exploitation, coercion, threat, deception, grooming or manipulation by another
- Development, both physical and emotional
- Accused's knowledge and belief as regards the age of victim
- Accused knowledge of victim's personal circumstances

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- The best interests of the accused
- **Circumstances of the offence:**
 - Proximity of age between the accused and the victim
 - The nature of the act
 - Any evidence of the use of force, exploitation, coercion, threat, deception, grooming or manipulation
 - Nature and duration of relationship
 - Any element of exploitation or coercion
 - Any evidence of drink or drugs

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Inter-Agency Referral Discussion (IRD)

What are Inter-Agency Referral Discussions?

An Inter-agency Referral Discussion (IRD) is the first stage in the process of joint information sharing, assessment and decision making about risk to children and, as such, is the central mechanism to co-ordinate inter agency child protection processes up until the point a child protection case conference is held or a decision made that a child protection case conference is not required.

An IRD is not a single event, but takes the form of a process or series of meetings or discussions involving the 'core agencies' where relevant information held by them and other key services, such as the Named Person Service where established or education is shared, resulting in the 'core agencies' agreeing a co-ordinated response.

An IRD will take place **before** any agency proceeds with an investigation, **except** where emergency measures are taken, **and before** either a JII, JPFME or other single or joint enquiries commence.

An IRD may be reconvened several times as enquiries progress to review strategies and evaluate outcomes.

While it is desirable to have complete information on which to base joint decisions, there may be occasions where 'core agencies' need to make decisions on the information available to them at the time

'Inter-agency Referral Discussion' is a police term, therefore other core agencies may refer to this process by another name, for example 'Tri-Partite Discussion'. The 'core agencies' are health, police and social work. In all cases, all three 'core agencies' must participate in the IRD. Information gathering, however, can involve other key services including the Named Person Service where established or education, third sector and adult services.

There is an expectation on the part of the 'core agencies' that each will thoroughly research the information systems available to them and thereafter share information with their partners to enable effective decision making. These systems will include single agency and shared information systems, both paper based and electronically stored.