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POILEAS ALBA

Appropriate Adults

Standard Operating Procedure

Notice:

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This SOP provides clear direction and procedural instruction to provide a consistency of response in accordance with force policy, however it is recognised that policing is a dynamic profession and the standard response may not be appropriate in every circumstance. In every situation, your decisions and actions should be supported by the National Decision Model and based on the values and ethics of Police Scotland. You may be expected to provide a clear and reasonable rationale for any decision or action which you take.

Owning Department:	Specialist Crime Division
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1. Purpose

The purpose of this Standard Operating Procedure (SOP) is to ensure that whenever an adult, aged 16 years of age or over, with a mental disorder is involved with any police processes whether as a victim, witness, suspect or accused, that they are suitably provided with the services of an Appropriate Adult. This SOP should be read in conjunction with the Scottish Government Guidance relating to Appropriate Adults.

2. Legislation & Definitions

The primary legislation in respect of the duties relating to Appropriate Adult support is Section 42 of the Criminal Justice (Scotland) Act 2016 (hereafter referred to as the 2016 Act) – Support for vulnerable persons in police custody.

Section 42(1) applies where:

- a person is in police custody;
- a constable believes that the person is aged 16 or over, and owing to a mental disorder, the person appears to the constable to be unable to:
 - understand sufficiently what is happening, or
 - communicate effectively with the police.

The meaning of mental disorder is taken from Section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and includes any:

- mental illness;
- personality disorder; or
- learning disability,

however caused or manifested.

Although not included in the above legislation, this also includes:

- Autistic Spectrum Disorder;
- Dementia;
- Attention Deficit Hyperactivity Disorder (ADHD);

A person is not mentally disordered by reason only of any of the following:

- sexual orientation;
- sexual deviancy;
- transsexualism;
- transvestism;
- alcohol / drug dependant; or

- showing behaviour that causes, or is likely to cause, harassment, alarm or distress to any other person
- acting as no prudent person would.

Definition of an Appropriate Adult

The 2016 Act and the supporting 2019 Regulations define support for vulnerable persons as being to:

- help the person understand what is happening, and
- facilitate effective communication between the person and the police;
- an Appropriate Adult is a person who has undertaken specialist training for the role and has prior experience of working with adults who have a mental health issue, learning disability, autistic spectrum disorder, dementia and/or acquired brain injury in relation to overcoming communication issues.

The presence of an Appropriate Adult during any police procedure with a person who has a mental disorder is necessary and it may prove detrimental to a case if an Appropriate Adult is not present.

3. Criteria for requesting an Appropriate Adult

A person in custody or victim/witness who is unable to understand sufficiently what is happening or communicate with the police because of a mental disorder.

In circumstances where a Mental Disorder diagnosis cannot be confirmed but it is clear that the individual cannot understand procedures or communicate effectively, then Appropriate Adult support should be requested.

Mental health can be fluid and change relative to circumstances, so an individual who requires an Appropriate Adult on one occasion may not require such support if they come into contact with the police again.

Similarly, an individual who has a mental disorder may not experience any communication or comprehension difficulties during the course of their contact with the police, so an Appropriate Adult may not be required.

If assessed as required in the circumstances and the person declines this assistance, an Appropriate Adult should still be requested and given the opportunity to explain their role to the person. If, after meeting the Appropriate Adult, the person still refuses this service it is for the police to decide how to proceed.

In all cases where consideration has been given to an Appropriate Adult but one is not used, the reason for this should be recorded by the police.

Appropriate Adults do not provide support for children aged under 16, but should be used for 16 and 17 year olds who are deemed by certain legislation to be children while under the age of 18 (for example, under the Human Trafficking and Exploitation

(Scotland) Act 2015), or are subject to Compulsory Supervision Orders, if they meet the definition of a “vulnerable person” as set out in the 2016 Act.

The Adults with Incapacity (Scotland) Act 2000 addresses the needs of individuals who are incapable of making decisions, communicating decisions, understanding decisions or retaining the memory of decisions. ‘Capacity’ can differ for different people across a different spectrum of subject matter i.e. health, finances, criminal responsibility etc. and consideration should be taken on a case by case basis as to the use of Appropriate Adults when dealing with individuals who may fall into this category.

4. Responsibilities and Procedures

Police:

- Decision to request Appropriate Adult lies with Police;
- Requesting an Appropriate Adult via Appropriate Adult Coordinators;
- Police should be present with the Appropriate Adult at all times when dealing with suspect / witness;
- A person in custody who requires an Appropriate Adult, cannot consent to being interviewed without having a solicitor present. Any issues in relation to this provision must be fully justified and recorded;
- Statement must be noted from Appropriate Adult upon completion of interaction
Sample Statement.
- Seizure of any notes taken by Appropriate Adult if relevant for investigation.

Police Procedures may include:

- Obtaining a statement from a victim/witness;
- Conducting an interview with an accused;
- Arrest procedures;
- Solicitor Access procedures;
- Caution and Charge;
- Release on undertaking;
- Fingerprinting, photographing and obtaining DNA;
- Viper;
- Strip search;
- Medical Examination;
- Intoximeter proceedings;

- House search or other procedures under warrant;
- Carrying out any other legislative procedures under statute, e.g. enforcing child protection orders, assessment orders etc.

Appropriate Adults:

- help the person understand what is happening;
- facilitate effective communication between the person and the police;
- identify how the person's communication needs may impact on their understanding of proceedings;
- actively raise any concerns about the person's communication needs or welfare with the police or other relevant individual(s);
- ensure, as far as possible, that the person understands their rights;
- remain independent and objective at all times;
- have an awareness of police procedures;
- where applicable, ensure, as far as possible, that the person is able to give informed consent to procedures.

Appropriate Adults should not:

- provide legal advice or advise the person how, or whether to answer questions;
- object to or intervene in any questions being asked by police except for the purposes of facilitating communication and assisting in understanding;
- be an employee of Police Scotland or a police officer;
- be a family member;
- have a conflict of interest i.e. have a current or on going professional or personal relationship with the individual;
- be used to assist with a victim/witness and also the accused in the same case;
- be left alone with the person or their friends and family members without police being present;
- be present during the discussion between the solicitor and the person in custody.

5. Submission of Standard Police Reports

When a Standard Prosecution Report (SPR) has to be submitted to the Procurator Fiscal / Reporter to the Children's Panel, the Remarks section of the SPR **must** be marked as follows:

'This report involves an accused / witness who has a mental disorder – and required the services of an appropriate adult'

The SPR should also contain information to highlight to the PF that an Appropriate Adult was not utilised in circumstances where:

- the person refused the services of a solicitor;
- the person refused to engage with an Appropriate Adult;
- the person referred to utilised the services of an Appropriate Adult previously but they were not required on this occasion.

6. Complaints Process

Should a Local Authority not be in a position to provide the services of an Appropriate Adult or any issues relating to obtaining one, then contact your local Divisional SPOCS who will address the issue with the local Appropriate Adult Co-ordinator.

Compliance Record

Equality and Human Rights Impact Assessment (EqHRIA) Date Completed / Reviewed	24/09/2020
Information Management Compliant:	Yes
Health and Safety Compliant:	Yes
Publication Scheme Compliant	Yes

Version Control Table

Version Number	History of Amendments	Approval Date
1.00	Initial authorised version	02/04/2013
1.01	Change of contact details in Appendix 'F'	25/04/2013
1.02	Updated to reflect changes made by Victims and Witnesses (Scotland) Act 2014, section 8	15/08/2014
2.00	Document full revised / updated. Sample statement wording has been added as Appendix 'N'	09/04/2015
3.00	Under the direction of DCC Johnny Gwynne the amendments noted in this SOP are in relation to grammatical changes only from the wording 'police office' to 'police station'.	06/07/2017
4.00	SOP amended in line with the Criminal Justice (Scotland) Act 2016. Changes throughout to provide clarity throughout, updated geographical appendices with contact details and refreshed good practice guide for interviews	17/01/2018
5.00	Changes to out of hours contact details for N Division is Appendix 'G'. GPMS marking updated to GSC 'Official' marking.	18/01/2019
6.00	Content fully revised and rationalised in line with new SOP review principles also amended regarding the new statutory Service	24/09/2020