

Key Messages for Young People on Healthy Relationships and Consent

A resource for professionals
working with young people

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Scottish Government
Riaghaltas na h-Alba
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1. PURPOSE OF THE KEY MESSAGES

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The key messages on healthy relationships and consent have been developed as part of the Scottish Government's work on supporting positive relationships and sexual wellbeing in young people. The messages set out that relationships should be mutually respectful, consensual, positive, healthy and enjoyable. They are applicable to all romantic relationships – from those that are about holding hands to those where young people are sexually active, regardless of whether they are in same sex or mixed sex relationships.

The messages are intended for **professionals** who work with young people (described here as being **secondary age to young adult**) using their own professional judgement to determine when the messages are age and stage appropriate for the young person or people with whom they are working.

An age and stage appropriate resource aimed at professionals working with younger children is being developed separately.

For some young people, these messages will communicate information that will be of use to them in the future. For others, the information will be pertinent right now, to help them negotiate their relationships and identify when their own, or others', behaviour is non-consensual, abusive or unhealthy.

The intention is that this resource can be used by any professional or organisation to ensure that communication with young people on the topics of healthy relationships and consent is consistent.

The messages can be incorporated into any work with young people. For example, education about relationships, sexual health and parenthood (RSHP), information campaigns, one-to-one or group work, or into general discussions with young people. They can be used as part of structured sessions or opportunistically/at teachable moments. In doing so, the intention is that a positive understanding of healthy relationships and consent will be consolidated over time.

2. WHY DISCUSSING HEALTHY RELATIONSHIPS AND CONSENT WITH YOUNG PEOPLE IS IMPORTANT

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These key messages on healthy relationships and consent are intended to support professionals communicate with young people, helping them to understand the importance of healthy, respectful, consensual and safe relationships. Whilst many of the messages are focused on relationships of a sexual nature, the basic principles of respect and consent are applicable to all relationships in young people's lives.

All children and young people have a right to learn about their growing bodies, relationships, sexuality, sexual health and parenthood in ways that are appropriate to their age and stage of development.

Evidence¹ has consistently shown that children and young people who are taught about these issues are more likely to delay the onset of sexual activity and experience positive outcomes when they do enter into sexual relationships.

The presence of healthy relationships in the lives of young people is vital to their health and wellbeing. Having good quality relationships can help us to live longer and happier lives and contributes to positive mental health and wellbeing. The presence of close, positive relationships in their lives can give young people a purpose and sense of belonging².

1 <http://www.sexeducationforum.org.uk/media/28306/SRE-the-evidence-March-2015.pdf>

2 <https://www.mentalhealth.org.uk/publications/relationships-21st-century-forgotten-foundation-mental-health-and-wellbeing>

Why is learning about healthy relationships and consent important?

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- An increased awareness of child sexual abuse and exploitation has emphasised the need to support young people to understand what constitutes a 'healthy relationship'. Many young people want to know more about consent in sexual relationships and their right to provide or withhold consent in a range of situations.

- Children and young people are now increasingly conducting friendships and relationships online. Factors that young people have to manage in their day-to-day lives and in their relationships include self-presentation on social media, the sharing of intimate images/messaging and the potential for online bullying and grooming.
- Children and young people, regardless of intention to access it, now also have unprecedented free access to pornography, some of which features sexual acts which are violent and extreme.
- Aspects of popular culture, including pornography, promote unrealistic body image standards and sexual expectations as well as perpetuating gender stereotypes.

The key messages are intended to help professionals provide a supportive response to these challenges and communicate with young people a view of sexual activity that is framed as a mutually respectful, consensual and enjoyable experience.

This work links to many Scottish Government policies that support children and young people. More information can be found in **Section 5**.

3. THINGS TO BEAR IN MIND WHEN YOU'RE USING THE KEY MESSAGES

The law regarding the age of consent in Scotland

- The age of consent in Scotland is 16. This is the case whether you're straight, lesbian, gay, bisexual and/or transgender. If both young people are over the age of 16 and both want to have sex – it's legal.
- It is an offence for someone aged 18 or over to engage in sexual activity with someone aged 16 or 17 if the older person is in a position of trust. This is known as the offence of sexual abuse of trust. The 'positions of trust' are set out here <https://www.legislation.gov.uk/asp/2009/9/section/43>
- In Scotland, most young people wait until they are over 16 to have sex. In 2014, 27.4% of girls and 24.4% of boys aged 15 reported ever having sex³.
- If one party is under the age of 16 then the other is breaking the law. If both are aged 13, 14 or 15 and having sex then both young people are breaking the law.
- However, the [National Guidance on Under Age Sexual Activity](#) states that:
"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 their welfare. 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 only appropriate cases are brought to the attention of social work and the police."

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 multiagency basis".

- As set out in the national guidance, if there are no child protection concerns about the young people in the relationship and professionals are confident that the sexual activity is taking place/has taken place within a safe and mutually respectful relationship, then their confidentiality should be maintained.
- Each local authority area has its own under-age sexual activity protocol in place. You can speak to your local Lead Officer for Child Protection for more information.

The messages refer to any type of sexual activity

- The term 'sex' is often used to refer to penetrative sex only. However, these messages refer to all types of sexual activity (anything from kissing to sexual touching to oral, vaginal and anal sexual intercourse.) This may also include online aspects of relationships and sexual activity. Therefore it is worth exploring or clarifying what someone means when they talk about sex.
- The following definitions may be helpful
 - Sex = oral, vaginal or anal intercourse
 - Sexual activity = anything from kissing to sexual touching to oral, vaginal and anal intercourse (sex) as well as online activity.

3 http://www.cahru.org/content/03-publications/03-briefing-papers-and-factsheets/bp20_final.pdf

Ensuring young people's understanding

- When talking with young people about healthy relationships and consent, it's important to check that what you think you have communicated is the same as they have understood. Reflect back to the young person what they are saying to check their understanding. This will also help the young person feel listened to.

Young people's relationships

- It is important to begin conversations about healthy, mutually consenting sexual relationships early in order that young people are equipped to cope with these situations when they occur.
- Take into account the many different relationships young people may be in, such as same sex relationships, whilst being mindful of avoiding stereotypes.

Using positive language

- Support the development of a positive culture around relationships and sexual health in which young people are supported to build healthy, respectful, consensual and enjoyable relationships.

Consideration of language usage

- Seek feedback from young people in your area on the terms they use to describe sexual activity and use if appropriate. For example, understand the terms they use for sharing an intimate photo – young people are unlikely to use the term 'sexting'.

Being mindful of victim blaming/perceptions of victim blaming

- Be clear that young people are not responsible for the behaviour of others and if they have experienced any type of sexual abuse, it is not their fault.

Preventing perpetration, not only protection from other people's abuse

- We must acknowledge that some young people we are in contact with may have the potential to perpetrate sexual abuse/violence now or in the future.
- It's important that we address our messages with this in mind and tackle the attitudes and values which excuse, enable or motivate sexual harassment and abuse and do not presume that our work is only to protect young people from other people's abuse.

Recognising the impact discussing these issues may have, on both young people and professionals

- Young people may talk about their own experiences as a way to understand difficult issues. Plan for this eventuality in group discussion and ensure that additional and confidential emotional support is available, both for young people and professionals.
- Some of the young people you are working with may have experienced sexual assault or sexual harassment – and may not have disclosed. Ensure there is information available to young people on where they can access support, should they wish to.
- It's important to have support in place in case of a disclosure. Be aware of local child protection processes and if you need more information or advice on how to support young people who have experienced or perpetrated non-consensual sexual activity contact your Lead Officer for Child Protection.

Being clear that consent must be mutual

- Consent is not a case of one person seeking and the other providing. Consent should be a mutual process which doesn't only mean asking for and relying upon verbally obtained consent, but being aware of body language and non-verbal responses, as an ongoing process. Consent can be withdrawn at any time. Consent is required every time sexual activity takes place, even if a person has consented before.
- A person is not able to give their consent if they are incapable because of the influence of alcohol and/or drugs or because they are asleep or unconscious. Any sexual activity in these circumstances is sexual assault or rape.

Linking messages to local services and information

- Help young people access the information, advice and support they need by being aware of and signposting young people to local services and people they can talk to. You can help young people feel confident in doing so by making sure they understand that these services are provided in confidence, unless the young person is deemed to be at risk and that in such cases, child protection procedures will be implemented.

The impact of gender on consent

“If a boy sleeps with someone it’s like yeah they’ve pulled, but if a girl sleeps with someone she’s a slut.”

“If you get pressured [to have sex] you’re obviously not going to enjoy it ‘cause you’re just doing it because you’re scared. Sometimes you do it because you’re scared to lose someone as well. And you do it, not because you want to, but because you’re scared or show them like that you love them so you do it too fast. I think it’s a problem with a lot of girls”

Status of Young Women in Scotland, 2016. YWCA Scotland⁴

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Evidence from research and recorded crime is clear that the vast majority of sexual violence (defined as any sexual activity which someone does not consent to) is perpetrated by men, predominantly against women and girls, but also against men and boys. The Scottish Government, with reference to the United Nations Declaration on the Elimination of Violence Against Women, understands that sexual violence and other forms of gender-based violence are a function of gender inequality and are related to women’s and girls’ subordinate status in society⁵.

Young women experience high levels of gender-based harassment and violence against them, even in spaces where they should feel safe.

Sexual violence can be perpetrated by people of any gender and can happen in same-sex relationships. Other forms of power imbalance can also play a role, for example adult-child power relations, racism and abuse towards disabled or transgender people.

4 Status of Young Women in Scotland, 2016. YWCA Scotland. <http://www.ywscotland.org/wp-content/uploads/2017/02/SYWS-2016.pdf>

5 Equally Safe Delivery Plan <http://www.gov.scot/Publications/2017/11/5647/2>

Respondents (aged 11-21) to the [Girls' Attitudes Survey 2017](#) reported that in the last week:

- 39% had their bra strap pulled by boys; and
- 27% experienced their skirts being pulled up by boys at school.

And in the last year:

- 24% of respondents aged 13-21 reported seeing unwanted sexually explicit pictures or videos.

In the 2014/15 Scottish Crime and Justice Survey⁶:

- A higher proportion of women than men had experienced at least one form of serious sexual assault⁷ since the age of 16, at 4.6% and 0.6% respectively.
- Men perpetrated the majority of serious sexual assaults: 94.0% of those who had experienced serious sexual assault since the age of 16 said the offender was male. This proportion was higher for female victims than male victims, at 98.0% and 63.6% respectively.
- Looking at those who experienced at least one type of serious sexual assault since the age of 16, 88.6% were female, and 11.4% were male.

The ways we understand issues of consent are shaped by gender roles, norms and stereotypes and so it's important to help young people unpick these, to enable them to build healthy and equal ways of relating. You can do this by:

- Asking open questions which enable young people to identify and deconstruct the messages they receive about gender roles, and in particular as they relate to sexual behaviour. For example, young people often talk about the expectations that boys and young men feel to be sexually experienced and knowledgeable, including influences from pornography which emphasise sexual dominance and aggression by men. Young women often identify pressures and expectations to appear sexually available and submissive and to minimise or stay silent about the harassment and abusive behaviour they experience.
- Engaging with boys and men positively as potential allies in tackling sexual violence, being clear that they are not responsible for other men's violence. However, be ready to challenge sexism and problematic attitudes towards consent. Research has indicated that taking a bystander approach⁸ improves engagement on topics such as gender-based and sexual violence, particularly with boys and men. A bystander approach engages everyone as potential allies rather than as potential victims or perpetrators of violence or abuse. This approach is based on the perspective that everyone in a peer culture plays some role in acts of harassment, abuse or violence, including people who were not present for specific incidents. It is helpful to emphasise the role everyone can play in challenging problematic attitudes towards consent and sexism and to demonstrate this through recognising and questioning such attitudes within work with young people.

6 Scottish Crime and Justice Survey 2014/15 <https://www.gov.scot/Publications/2016/05/6129/328515>

7 Forced to have sexual intercourse, attempted forced sexual intercourse, forced to take part in another sexual activity, attempted forced to take part in another sexual activity.

8 <https://www.mvpstrat.com/the-bystander-approach/> / [https://education.gov.scot/improvement/practice-exemplars/Mentors%20for%20Violence%20Prevention%20\(MVP\)%20-%20An%20overview](https://education.gov.scot/improvement/practice-exemplars/Mentors%20for%20Violence%20Prevention%20(MVP)%20-%20An%20overview)

- Working with young people to help them stay safe. In doing so, it is important to ensure that safety messages don't unintentionally convey the message that girls and young women are responsible for abuse they experience on the basis of their clothing, alcohol consumption, behaviour or being in a sexual image which has been shared without their consent. This is likely to increase their sense of self-blame and reduce their likelihood of seeking help and, importantly, shift the focus away from the responsibility of those perpetrating abuse.
- Ensuring that your language and any materials you develop include lesbian, gay and bisexual people and relationships, as well as heterosexual people, transgender people, disabled people and people from different ethnicities and cultures.
- It's also important to acknowledge that some young people identify as having a different gender other than 'boy' or 'girl'; they might identify as 'non-binary gender' or 'gender queer' or a range of other gender identities. So, if you're not using an example or scenario for which it's relevant to specify the genders of the people involved, it might be best to use the pronoun 'they' rather than 'he/she', as this is more inclusive.

The impact of power imbalance on young people's relationships

When people interact with one another there are many factors that can affect who has more, or less, power in that interaction. Differences in power can cause an imbalance, either in particular situations or in whole relationships.

Factors that can create power imbalances include gender, age, social class, economic and sexual identity difference, differences between disabled and non-disabled people – evidence suggests that “one in four disabled boys and one in two disabled girls experience some form of sexual abuse before their 18th birthday”⁹ – and differences arising from trans or cis (someone whose gender corresponds to their assigned sex) gender identities.

Power imbalances can be hard to pick up on and might be felt in subtle ways such as feeling snubbed or ignored. They can also be expressed in behaviour such as who is listened to more or seen as more knowledgeable. Power imbalances can also lead to more obvious differences such as who initiates sexual activity, who decides what sexual activity takes place or who achieves enjoyment from sexual activity.

Power imbalances can also be created through a difference in knowledge. For example, if someone does not know about a topic being discussed or does not know how to do something others appear to be familiar with, they have less power in that situation.

Power imbalances are not automatically bad, however they can lead to situations in which people are not comfortable stating their honest opinions or desires which is problematic for healthy relationships.

It is important to be aware of power imbalances and acknowledge that someone's social position (i.e. their age, sexual identity, gender, disability etc.) may impact on their behaviour in any situation and therefore whether they truly gave consent.

9 https://www.researchgate.net/publication/277288801_Shah_Tsitsou_Woodin_2016_Hidden_Voices_Disabled_Women's_experience_of_Violence_over_the_life_course_Violence_Against_Women

4. THE KEY MESSAGES ON HEALTHY RELATIONSHIPS AND CONSENT

Healthy Relationships

Information for professionals:

Research has shown that digital technologies are integral to each stage of young people's romantic relationships¹⁰. Many of the messages below are equally applicable to the online element of relationships as they are to face-to-face – using a core principle of respect.

Child Sexual Exploitation

Any child or young person under the age of 18 can be vulnerable to child sexual exploitation.

Child sexual exploitation is a form of child sexual abuse in which a person(s), of any age, takes advantage of a power imbalance to force or entice a child into engaging in sexual activity in return for something received by the child and/or those perpetrating or facilitating the abuse.

As with other forms of child sexual abuse, the presence of perceived consent does not undermine the abusive nature of the act. Further information for practitioners on identifying and responding to child sexual exploitation can be found here: <http://www.gov.scot/Resource/0050/00508567.pdf>

The [National Guidance for Child Protection \(2014\)](#) outlines information on the types of abuse that require a child protection response.

¹⁰ https://www.brook.org.uk/data/DR_REPORT_FINAL.pdf

Key Messages for Young People on Healthy Relationships:

- In healthy relationships:
 - people feel safe, equal, respected and happy, they care about what each other want;
 - people don't put pressure on anyone else and it's as easy to say no as to say yes; and
 - people don't do things that make others feel uncomfortable, anxious or scared.
- As with all relationships in your life, healthy intimate or sexual relationships are supposed to feel mutually respectful, safe, happy and positive. This includes anything from one-off to long-term relationships.
- You might feel like you want to spend a lot of time with someone, but it's important to have some time away from each other, too. In a healthy relationship everyone is free to hang out with friends, of any gender, or family without having to 'get permission'.
- It's ok to want to spend time by yourself or do something for yourself. Healthy relationships mean being able to say when you want or need to do things on your own instead of feeling like you have to spend all of your time with someone.
- If you are in a relationship that you are not enjoying, you might want to end that relationship. It's ok to say if you want to break up but if it feels difficult or it feels unsafe it's important to get help or to speak to someone you trust. Try to respect the other person's feelings but remember, you don't have to stay in a relationship because the other person wants you to.
- In relationships, if one person tells another that their needs are stupid, is aggressive towards them or goes against what they're comfortable with, then they are not showing them the respect they deserve.
- In relationships, no one should ask, or expect, anyone to do anything sexual in return for giving them something, giving affection or for saying 'I love you'.
- Seeking or requiring sexual activity from someone in exchange for anything - including drugs/alcohol, a place to stay, being part of a group, protection from violence - is sexual exploitation, regardless of whether the other person agrees or is thought to have agreed.
- In a healthy relationship, no-one will pressure anyone to do anything they don't want to, even if it is something they have done before.
- In healthy relationships, no one will pressure anyone to send, receive or view a sexual, nude or intimate image or message.
- Anyone can experience relationship abuse. It can happen in relationships with a same sex partner or with a partner of a different sex.
- Abuse within a relationship can be emotional, verbal, psychological, financial, sexual or physical. It can include coercive and controlling behaviours. Abuse is never okay. If somebody does this to you it is never your fault and is nothing to feel ashamed of.

Consent

Information for professionals:

When discussing consent, it should be noted that these messages refer to any sexual activity/experience (anything from sexual comments, kissing, sexual touching to oral, vaginal and anal sexual intercourse). This may also include online relationships and sexual activity.

This should be made clear when communicating with young people so that young people who haven't had sex understand the relevance to their own experience.

Key Messages for Young People on Consent:

- Positive sexual experiences are mutually consensual, respectful and enjoyable.
- Consensual sexual activity means feeling safe and happy.
- You need consent every time you engage in sexual activity whether you're with someone you have just met, or in a relationship.
- If someone changes their mind and no longer gives consent you must stop what you are doing immediately.
- No one can ever give consent for somebody else.
- Consent is freely given, not as a result of pestering, wearing someone down or making someone feel like they 'owe' something. Never try to persuade, pressure or encourage someone into doing things they do not want to do.
- If someone says the word "yes" when they have been pressured, talked into it or feel they can't say no, then they are not giving consent.
- You need consent every time you have sex, even in a relationship and even if the person has consented before.
- If you have consented to something sexual before, you can decide not to do it again, and so can the other person.
- You can always change your mind when you are doing something sexual. Sometimes in the moment you want to change your mind. It is never too late to stop.
- If the person you're with doesn't consent, or changes their mind, you might feel disappointment, but you do not have the right to make them feel bad or try to persuade them to do something they don't want to.
- A person is not able to give their consent if they are incapable because of the influence of alcohol and/or drugs or because they are asleep or unconscious. Any sexual activity in these circumstances is sexual assault or rape. If you're not sure, you do not have consent.

- Consent can be expressed verbally or non-verbally (known as body language). It's important that you both continue to pay attention to each other and ensure you are still happy, comfortable and enjoying the sexual activity you're having. If you are not sure that the other person is happy and comfortable, you do not have consent.
- Pay attention to the person you're with. People will use both verbal and non-verbal cues (body language) to indicate consent. Examples might include; pulling someone closer, direct eye contact, smiling, actively touching someone, nodding yes, saying things like 'that feels good' or 'I still want to'. Good communication is part of good sex.
- If you think the person you are having sex with is not sure or is unhappy or worried or frightened, or that they want to stop, then you **must** stop. The other person does not have to say 'no' or 'stop' because they can say what they feel with their body or actions. So pay attention. If you are not sure, you **do not** have consent.

Intimate Images and Consent

Information for professionals:

The law around sharing intimate/sexual images or communications in Scotland is set out in three different Acts, as below.

Abusive Behaviour and Sexual Harm (Scotland) Act 2016

<http://www.legislation.gov.uk/asp/2016/22/contents/enacted>

The law against the disclosure, or threat of disclosure, of an intimate photograph or film is set out in the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

<http://www.legislation.gov.uk/asp/2016/22/part/1/crossheading/disclosure-of-an-intimate-photograph-or-film/enacted>

For the purposes of section 2 [of the Act], a person is in an intimate situation if;

- (a) the person is engaging or participating in, or present during, an act which—
 - (i) a reasonable person would consider to be a sexual act, and
 - (ii) is not of a kind ordinarily done in public, or
- (b) the person's genitals, buttocks or breasts are exposed or covered only with underwear.

<http://www.legislation.gov.uk/asp/2016/22/section/2/enacted>

Sexual Offences (Scotland) Act 2009

<https://www.legislation.gov.uk/asp/2009/9/contents>

The Sexual Offences Act sets out in law that it is an offence to force a person to look at a sexual image, or sexual written or verbal communication without their consent, where this is done for the purpose of obtaining sexual gratification, or for the purpose of causing humiliation, alarm or distress to the person at whom it is directed. <https://www.legislation.gov.uk/asp/2009/9/section/7>

Section 9 of the Act makes 'upskirting' an offence (upskirting is the act of taking a photograph of underneath a person's skirt without their consent, typically with the intention of viewing their genitals or buttocks).

<https://www.legislation.gov.uk/asp/2009/9/section/9>

Civic Government (Scotland) Act 1982

<http://www.legislation.gov.uk/ukpga/1982/45/contents>

It is against the law for anyone to take, have or share an 'indecent' image of anyone aged under 18. This means taking, sending and sharing indecent images is illegal under the age of 18. <http://www.legislation.gov.uk/ukpga/1982/45/section/52>

There is an exception to this offence where;

- the young person depicted in the image is at least 16
- the two parties were partners in an established relationship and;
- the young person consented to the image being taken/made/in the other's possession and;
- any sharing was only with each other.

As such, it is not a crime for an 18 year old man to have a nude photo of his 17 year old girlfriend which was taken with her consent, or for them to swap such images with each other. However, it would be an offence to share such an image.

<http://www.legislation.gov.uk/asp/2005/9/section/16>

Key Messages for Young People on Intimate Images and Consent:

- We all have a responsibility to respect each other's privacy and consent.
- It is important to be aware that it is **illegal** to take, share or have indecent images of people under the age of 18, even if they gave permission. The only exception is when it's between two people who are in an established relationship (like a long-term relationship), and they only share the image with each other. Also, the person in the image must be over 16 and have consented to the image being taken.
- An intimate image is an image of an act that would be considered to be sexual, something that would not normally be done in public, or where the person is nude or only in their underwear.
- Taking intimate/sexual pictures and videos without 'free agreement' is non-consensual and unlawful.
- Think very carefully before you ask someone to send you an intimate/sexual image. You should never pressure anyone to send, receive or view a sexual, nude or intimate image or message. If you share the image with others, you are breaking the law.
- Think very carefully before sharing intimate/sexual images. Once an image is shared you no longer have full control over it.
- If you share an intimate/sexual image of yourself with another person you have a responsibility to make sure that you are happy to send it and you know the other person is happy to receive it.
- If an intimate/sexual image of you is shared without your consent, the person who did this has committed a crime and you have the right to report the matter to the police or tell another adult who you trust. You might feel embarrassed, but the sooner you take action the greater chance you have of restricting the sharing of it.
- If you receive an intimate/sexual image privately, do not share it.
- It is illegal for someone to send an intimate/sexual image to you that wasn't meant for you. The person in the image did not intend it for you and did not consent to share it with you. Respect the person whose image it is.
 - Do not show anyone.
 - Do not forward it on – you will be breaking the law.
 - Do not use it for revenge or to hurt someone you are angry with.
 - Don't feel you have to respond – you can ignore it.
 - You can speak to a trusted adult to try and limit it being shared any further.

Messages continued overleaf

- If an intimate/sexual image, message or email is sent to you without your consent, the person who did this has committed a crime and you have the right to report the matter to the police or tell another adult who you trust. If the person sending you things is older or putting pressure on you to send images, it is important that you talk to an adult you trust.
- If you receive a photo or an image you did not ask for and that you should not have, you can decide to delete the message. But you might think it is best to tell someone about it. If someone is using the message to harass or hurt you, or somebody else, then it is important to talk to an adult you trust.

Consent and the Law: The Age of Consent

Information for professionals:

The first sexual experiences of young people play a significant part in their future ability to form solid, trusting relationships throughout their lives. While such sexual experiences can be positive, conversely, they can have a harmful effect on a young person's mental and physical health and development. It is therefore important that young people are mature and ready before they engage in sexual activity¹¹.

Whilst many young people will have an understanding of the age of consent being relevant to penetrative sex, they may not realise that oral sex is also illegal if you are aged under 16.

Sexual Offences (Scotland) Act 2009

<https://www.legislation.gov.uk/asp/2009/9/contents>

In Scotland, sexual intercourse with a child **under the age of 13** is rape. A child under the age of 13 is deemed to lack the capacity to consent to sexual activity, therefore any form of sexual activity with a child under the age of 13 is an offence.

<https://www.legislation.gov.uk/asp/2009/9/part/4/crossheading/young-children>

The Sexual Offences (Scotland) Act 2009 maintains the age of consent at 16.

<https://www.legislation.gov.uk/asp/2009/9/part/4/crossheading/older-children>

Any sexual activity between an adult (aged over 18) and a child (aged under 16) constitutes a criminal offence.

Sexual intercourse and oral sex between young people aged 16 or 17 and a person aged under 16 constitutes a criminal offence. Other consensual sexual activity (e.g. sexual touching, excluding sexual intercourse and oral sex) is only lawful when the age difference between a person aged 16 or 17 and a person aged under 16 does not exceed 2 years. Sexual intercourse and oral sex between children and young people under the age of 16 constitutes a criminal offence.

National Guidance on Under-age Sexual Activity

According to the [National Guidance on Under-age Sexual Activity](#), "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 their welfare. 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 only appropriate cases are brought to the attention of social work and the police.

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 multiagency basis"¹².

If there are no child protection concerns about the young people in the relationship, and professionals are confident that the sexual activity is taking place/has taken place within a safe and mutually respectful relationship, then it is important that confidentiality is maintained. Each local authority area has its own under-age sexual activity protocol in place. You can speak to your local Lead Officer for Child Protection for more information.

11 <http://www.gov.scot/resource/doc/333495/0108880.pdf>

12 <http://www.gov.scot/resource/doc/333495/0108880.pdf>

Key Messages for Young People on The Age of Consent:

- The law talks about the 'age of consent'. This means the age someone needs to be before they can agree to have sex (this means vaginal, anal and oral sex).
- The 'age of consent' in Scotland for young people is 16. This is the case whether you're straight, lesbian, gay, bisexual and/or transgender. So, if you're both over 16, and both want to have sex, then it's legal. If one of you is under 16, then the other is breaking the law.
- To help protect young people, it is an offence for someone aged 18 or over, to engage in sexual activity with someone aged 16 or 17 if the older person is in a position of trust. A position of trust is someone who looks after you for example, in a school or a care home.
- If you are under the age of 13, the law says you are too young to give consent to any sexual activity.
- Most people wait until they are 16 or older to have sex. More than 70% of young people in Scotland wait until they are 16 or older to have sex for the first time.
- If you are both aged 13, 14 or 15 and having sex, then you are both breaking the law. If you speak to a professional person (e.g. teacher, youth worker) then they need to be sure you are both safe and happy and that one person is not coercing, manipulating or forcing the other to have sex. If there is a concern about your safety, the person you speak to may have to share information in order to protect you, but they will always speak to you about this first unless it is absolutely necessary to share the information urgently to protect you from harm.
- If you are 13, 14 or 15 and your partner is 16 or older then the person aged over 16 is breaking the law. If you speak to a professional person then they need to be sure you are safe and happy with this person. If they are much older than you they will be concerned about your safety. If there is a concern about your safety, the person you speak to may have to share information in order to protect you, but they will always speak to you about this first unless it is absolutely necessary to share the information urgently to protect you from harm.
- Remember, it is always wrong and against the law to coerce, manipulate or force someone into having sex, no matter what age you or they are.
- Seeking or requiring sexual activity from someone in exchange for anything – including drugs/alcohol, a place to stay, being part of a group, protection from violence – is sexual exploitation, regardless of whether the other person agrees or is thought to have agreed.
- Young people aged 13 and over have the right to expect medical confidentiality, including the right to access contraception and condoms in confidence. If there is a concern about your safety, the person you speak to may have to share information in order to protect you, but they will always speak to you about this first unless it is absolutely necessary to share the information urgently to protect you from harm.

The Law and Consent

Information for professionals:

According to the Sexual Offences Act, consent means free agreement. <https://www.legislation.gov.uk/asp/2009/9/section/12>

'Free agreement' is: willing, freely chosen, active, positive participation. It must be actively given at the time and not presumed. It can be withdrawn at any time, by anyone. For example, just because someone agreed to sex the last time, does not mean they have agreed to sex every time.

<https://www.legislation.gov.uk/asp/2009/9/section/15>

Examples of where there is no free agreement include:

- Where a person is incapable because of the effect of alcohol, or any other substance, of consenting to sexual activity.
- Where a person is asleep, or unconscious.
- Where a person has been the subject of violence or the threat of violence, against themselves or another person.
- Where a person has been kept against their will.
- Where a person is deceived into sexual activity because they are told it is for a different purpose, for example a medical examination.
- Where someone else provides consent on a person's behalf.

<https://www.legislation.gov.uk/asp/2009/9/section/13>

<https://www.legislation.gov.uk/asp/2009/9/notes/division/3/2/2>

The law expects that when engaging in sexual activity there should be 'reasonable belief' that the person has given their consent <https://www.legislation.gov.uk/asp/2009/9/section/16>.

This means being fully confident that the other person has freely given their consent. For example, by paying attention to body language.

Messages continued overleaf

Key Messages for Young People on The Law and Consent:

- The laws on consent and sexual activity are there to protect people from being coerced into sexual activity.
- If you're not sure, you do not have consent.
- If anyone proceeds, or continues, in any sexual activity without consent then this is a criminal offence.
- If anyone continues with sexual activity without consent, this is not just illegal but violates the other person's rights and is likely to have a very significant impact on their emotional, mental and physical health and wellbeing.
- The law is clear that a person must have consent before engaging in, and for the duration of, any sexual activity.
- A person is not able to give their consent if they are incapable because of the effect of alcohol and/or drugs, or because they are asleep or unconscious. Any sexual activity in these circumstances is sexual assault or rape.
- The law is very clear that giving consent to sexual activity does not mean consent has been given to any and all sexual activity. It is also clear that a person can say no, change their mind or withdraw their consent at any point.
- To help protect young people, it is an offence for someone aged 18 or over to engage in sexual activity with someone aged 16 or 17 if the older person is in a position of trust. A position of trust is someone who looks after you for example, in a school or a care home.
- Seeking or requiring sexual activity from someone in exchange for anything – including drugs/alcohol, a place to stay, being part of a group, protection from violence – is sexual exploitation, regardless of whether the other person agrees or is thought to have agreed.

Protecting yourself from Sexually Transmitted Infections (STIs) and Unintended Pregnancy

Information for professionals:

The key messages in this section are intended to help support young people who are sexually active to stay safe and to access the services they require.

As with all the messages throughout this resource, it is for the professional to determine if these messages are age and stage appropriate for the young person or people they are working with.

Access to services

Young people under the age of 16 years can have the legal capacity to make a decision about a health intervention (The Age of Legal Capacity (Scotland) Act 1991) <https://www.legislation.gov.uk/ukpga/1991/50/contents>).

This can include decisions on contraception, abortion and treatment of sexually transmitted infections. A young person can make this decision provided they are, in the opinion of a medical practitioner, capable of understanding the nature and possible consequences of the procedure or treatment. This is a matter of clinical judgment and will depend on the age and maturity of the young person, the complexity of the proposed intervention, the likely outcome and the risks associated with it. This applies to all health interventions, including assessment, treatment and counselling.

Information on local sexual health services can be accessed via <https://www.sexualhealthscotland.co.uk/get-help/sexual-health-service-finder>

Key Messages for Young People on Protecting Yourself from STIs and Unintended Pregnancy:

- Everyone is responsible for ensuring they are protecting themselves and their partner from sexually transmitted infections (STIs) and unintended pregnancy. Your right to protect yourself should always be respected.
- Condoms (for oral, vaginal and anal sex) and femidoms (for vaginal sex) are the most effective ways to protect yourself from a sexually transmitted infection (STI). Non-barrier methods of contraception, like the pill or the implant, do not protect against STIs.
- Free condoms are available in many places such as local sexual health clinics and local free condom schemes. They are just as effective as those you can buy.
- Effective contraception, including condoms, can be accessed from a sexual health clinic or a doctor.

Messages continued overleaf

- If you have unprotected sex or a condom breaks, you are at risk of a sexually transmitted infection (STI) or a pregnancy. STI testing and emergency contraception are accessible from a sexual health clinic or your doctor. Emergency contraception is also available free of charge from most pharmacies.
- The coil (or 'IUD') can also be implanted soon after unprotected sex to provide emergency protection against pregnancy. You can make an appointment to have one fitted at your local sexual health clinic.
- If you think you have been at risk of a sexually transmitted infection (STI), it is responsible and respectful to yourself and your partner(s) to visit your sexual health clinic or doctor for a test.
- If you think you might be pregnant, it's important to talk to someone that you trust as soon as possible. It's good to get a pregnancy test done as soon as you can.
- Deliberately removing or damaging a condom without the knowledge and consent of the person you are having sex with (sometimes known as 'stealthing') is a serious betrayal of trust and in addition you could be charged with a criminal offence.
- Young people aged 13 and over have the right to expect medical confidentiality, including the right to access contraception and condoms in confidence. If there is a concern about your safety, the person you speak to may have to share information in order to protect you, but they will always speak to you about this first unless it is absolutely necessary to share the information urgently to protect you from harm.

5. RELATED POLICIES, INITIATIVES AND STANDARDS

This Key Messages on Healthy Relationships and Consent resource links to numerous Scottish Government policies and initiatives that support our children and young people.

Related policies include;

- The [National Action Plan on Internet Safety for Children and Young People](#)
- Policy to eradicate [Violence Against Women and Girls, including Equally Safe](#)
- [Respect for All: The National Approach to Anti-bullying for Scotland's Children and Young People](#)
- The [National Action Plan to Prevent and Tackle Child Sexual Exploitation](#)
- The [Mental Health Strategy 2017 - 2027](#)
- The [National Youth Work Strategy](#)
- The [Pregnancy and Parenthood in Young People Strategy](#)
- The [Sexual Health and Blood Borne Virus Framework Update](#)

Related initiatives include;

- Getting It Right for Every Child – supporting the wellbeing of children and young people <https://www2.gov.scot/Topics/People/Young-People/gettingitright>.
- The [Scottish Attainment Challenge](#) – recognising the importance of ensuring every child has the same opportunity to succeed.
- [The Child Protection Improvement Programme](#) – aiming to ensure that Scotland's child protection system puts children's wellbeing first and keeps them safe from abuse and neglect.
- [The Expert Group on Preventing Sexual Offending involving Children and Young People](#) – aiming to take a preventative approach to offending that involves children and young people.
- [Curriculum for Excellence](#) (for ages 3-18) – helping children and young people gain the knowledge, skills and attributes needed for life in the 21st century, including skills for learning, life and work. This includes Relationships, Sexual Health and Relationships (RSHP) education.
- [Conduct of Relationships, Sexual Health and Parenthood Education in Schools](#).
- The [review of PSE](#) in schools which specifically addresses the issue of consent.

Other initiatives;

The development of a [national RSHP resource](#).

The **Curriculum for Excellence Experiences and Outcomes** are a set of clear and concise statements about children's learning and progression in each curriculum area. They are used to help plan learning and to assess progress.

The key messages link into a number of the Experiences and Outcomes/Benchmarks for Third and Fourth levels. These are set out below:

Experiences and Outcomes	Benchmarks
Healthy Relationships	
<p>I understand the importance of being cared for and caring for others in relationships, and can explain why.</p> <p style="text-align: right;">HWB 3-44a/4-44a</p>	<ul style="list-style-type: none"> • Explains why commitment, trust and respect are central to being cared for and caring for others. HWB 3-44a • Justifies why commitment, trust and respect are central to being cared for and caring for others. HWB 4-44a
<p>I understand and can explain the importance of, and need for, commitment, trust and respect in loving and sexual relationships. I understand the different contexts of such relationships, including marriage.</p> <p style="text-align: right;">HWB 3-44c/4-44c</p>	<ul style="list-style-type: none"> • Demonstrates respect and understanding of the diversity of loving and sexual relationships, for example, LGBTI relationships, marriage, living together, co-parenting. HWB 3-44c
<p>I recognise that power can exist within relationships and can be used positively as well as negatively.</p> <p style="text-align: right;">HWB 3-45a/4-45a</p>	<ul style="list-style-type: none"> • Explains the importance of shared values and goals in sustaining a loving and sexual relationships, for example, mutual respect, agreement on sex. HWB 4-44c
<p>I recognise that power can exist within relationships and can be used positively as well as negatively.</p> <p style="text-align: right;">HWB 3-45a/4-45a</p>	<ul style="list-style-type: none"> • Explains the impact an imbalance of power can have on relationships, including sexual relationships, for example, consent, coercion, responsibility for actions and decisions. HWB 3-45a • Distinguishes between a balance of power and abuse of power in relationships, for example, respect, trust, coercion, consent. HWB 4-45a
<p>I am developing skills for making decisions about my relationships and sexual behaviour. I am able to apply these to situations that may be challenging or difficult.</p> <p style="text-align: right;">HWB 3-46c/4-46c</p>	<ul style="list-style-type: none"> • Demonstrates the skills needed to challenge stereotypical images in the media, including social media, for example, confidence, judgement. HWB 3-46c
	<ul style="list-style-type: none"> • Demonstrates the skills needed to manage challenging situations within relationships, including sexual relationships, for example, compromise, empathy, decisiveness. HWB 4-46c

Experiences and Outcomes	Benchmarks
Consent	
<p>I am developing skills for making decisions about my relationships and sexual behaviour. I am able to apply these to situations that may be challenging or difficult.</p> <p style="text-align: right;">HWB 3-46c/4-46c</p>	<ul style="list-style-type: none"> • Demonstrates the skills needed to challenge stereotypical images in the media, including social media, for example, confidence, judgement. HWB 3-46c
<p>Using what I have learned I am able to make informed decisions and choices that promote and protect my own and others' sexual health and wellbeing.</p> <p style="text-align: right;">HWB 3-47b/HWB 4-47b</p>	<ul style="list-style-type: none"> • Demonstrates the skills needed to manage challenging situations within relationships, including sexual relationships, for example, compromise, empathy, decisiveness. HWB 4-46c
<p>Using what I have learned I am able to make informed decisions and choices that promote and protect my own and others' sexual health and wellbeing.</p> <p style="text-align: right;">HWB 3-47b/HWB 4-47b</p>	<ul style="list-style-type: none"> • Identifies and demonstrates the skills required to make positive choices in challenging situations, for example, assertiveness, empathy. HWB 3-47b
<p>Using what I have learned I am able to make informed decisions and choices that promote and protect my own and others' sexual health and wellbeing.</p> <p style="text-align: right;">HWB 3-47b/HWB 4-47b</p>	<ul style="list-style-type: none"> • Demonstrates the skills needed to manage challenging situations within relationships, including sexual relationships, for example, compromise, empathy, decisiveness. HWB 4-47b
<p>I know how to manage situations concerning my sexual health and wellbeing and am learning to understand what appropriate sexual behaviour is.</p> <p style="text-align: right;">HWB 3-49a/HWB 4-49a</p>	<ul style="list-style-type: none"> • Identifies negotiation skills required to have safe and enjoyable sex, for example, knowing when the time is right, mutual responsibility to prevent unintended pregnancy, use of contraceptives, confidence to refuse unwanted sexual contact. HWB 3-49a
<p>I know how to manage situations concerning my sexual health and wellbeing and am learning to understand what appropriate sexual behaviour is.</p> <p style="text-align: right;">HWB 3-49a/HWB 4-49a</p>	<ul style="list-style-type: none"> • Demonstrates an understanding of support available and current legislation related to a range of types of abuse, for example, female genital mutilation, domestic abuse, grooming, child sexual exploitation. HWB 4-49a

Experiences and Outcomes	Benchmarks
Intimate Images and Consent	
<p>I am developing skills for making decisions about my relationships and sexual behaviour. I am able to apply these to situations that may be challenging or difficult.</p> <p style="text-align: right;">HWB 3-46c/HWB 4-46c</p> <p>I know where to get support and help with situations involving abuse and I understand that there are laws which protect me from different kinds of abuse.</p> <p style="text-align: right;">HWB 3-49b/HWB 4-49b</p>	<ul style="list-style-type: none"> <li data-bbox="807 176 1497 309">• Demonstrates the skills needed to challenge stereotypical images in the media, including social media, for example, confidence, judgement. HWB 3-46c <li data-bbox="807 338 1497 506">• Demonstrates the skills needed to manage challenging situations within relationships, including sexual relationships, for example, compromise, empathy, decisiveness. HWB 4-46c <li data-bbox="807 535 1497 703">• Identifies how to take action in a situation involving abusive or inappropriate sexual behaviour, for example, ending unhealthy relationships, local support, police. HWB 3-49b <li data-bbox="807 732 1497 931">• Demonstrates an understanding of support available and current legislation related to a range of types of abuse, for example, female genital mutilation, domestic abuse, grooming, child sexual exploitation. HWB 4-49b

Experiences and Outcomes	Benchmarks
The Law and Consent	
<p>I know that the use of alcohol and drugs can affect behaviour and the decisions that people make about relationships and sexual health.</p> <p style="text-align: right;">HWB 3-41b</p>	<ul style="list-style-type: none"> Explains how substance misuse can affect judgement and impair ability to make responsible decisions, for example, unwanted sexual experiences. <p style="text-align: right;">HWB 3-41b</p>
<p>I am developing skills for making decisions about my relationships and sexual behaviour. I am able to apply these to situations that may be challenging or difficult.</p> <p style="text-align: right;">HWB 3-46c/HWB 4-46c</p>	<ul style="list-style-type: none"> Explains the impact and potential consequences substance misuse can have on decision making, for example, drinking and driving, non-consensual sex. <p style="text-align: right;">HWB 4-41b</p>
<p>I know where to get support and help with situations involving abuse and I understand that there are laws which protect me from different kinds of abuse.</p> <p style="text-align: right;">HWB 3-49b/HWB 4-49b</p>	<ul style="list-style-type: none"> Demonstrates the skills needed to challenge stereotypical images in the media, including social media, for example, confidence, judgement. <p style="text-align: right;">HWB 3-46c</p>
<p>I know where to get support and help with situations involving abuse and I understand that there are laws which protect me from different kinds of abuse.</p> <p style="text-align: right;">HWB 3-49b/HWB 4-49b</p>	<ul style="list-style-type: none"> Demonstrates the skills needed to manage challenging situations within relationships, including sexual relationships, for example, compromise, empathy, decisiveness. <p style="text-align: right;">HWB 4-46c</p>
<p>I know where to get support and help with situations involving abuse and I understand that there are laws which protect me from different kinds of abuse.</p> <p style="text-align: right;">HWB 3-49b/HWB 4-49b</p>	<ul style="list-style-type: none"> Identifies how to take action in a situation involving abusive or inappropriate sexual behaviour, for example, ending unhealthy relationships, local support, police. <p style="text-align: right;">HWB 3-49b</p>
<p>I know where to get support and help with situations involving abuse and I understand that there are laws which protect me from different kinds of abuse.</p> <p style="text-align: right;">HWB 3-49b/HWB 4-49b</p>	<ul style="list-style-type: none"> Demonstrates an understanding of support available and current legislation related to a range of types of abuse, for example, female genital mutilation, domestic abuse, grooming, child sexual exploitation. <p style="text-align: right;">HWB 4-49b</p>

Experiences and Outcomes	Benchmarks
Protecting yourself from STIs and unintended pregnancy	
<p>I know how to access services, information and support if my sexual health and wellbeing is at risk. I am aware of my rights in relation to sexual health including my right to confidentiality, and my responsibilities, including those under the law.</p> <p style="text-align: right;">HWB 3-48a/HWB 4-48a</p>	<ul style="list-style-type: none"> <li data-bbox="807 176 1495 280">• Knows how to access confidential information, guidance and help. HWB 3-48a <li data-bbox="807 304 1495 443">• Gives examples of laws in relation to sexual health, for example, age of consent, right to confidentiality, consent, coercion, grooming. HWB 3-48a <li data-bbox="807 468 1495 571">• Understands the rights and responsibilities required for safe and enjoyable sex. HWB 4-48a <li data-bbox="807 595 1495 698">• Explains how to access both local and national information, guidance and help. HWB 4-48a

The [Health and Social Care Standards](#) are based on the principles of dignity, respect, compassion, inclusion, responsive care and support and wellbeing. They are relevant to all health, social care and social work services and link to aims of the messages to support the wellbeing of our young people.

Relevant standards that relate to the messages include:

- 2.18** I am supported to manage my relationships with my family, friends or partner in a way that suits my wellbeing.
- 2.25** I am helped to understand the impact and consequences of risky and unsafe behaviour and decisions.
- 2.26** I know how different organisations can support my health and wellbeing and I am helped to contact them if I wish.
- 3.1** I experience people speaking and listening to me in a way that is courteous and respectful with my care and support being the main focus of people’s attention.
- 3.3** As a child or young person, I am helped to develop a positive view of myself and to form and sustain trusting and secure relationships.
- 4.11** I experience high quality care and support based on relevant evidence, guidance and best practice.
- 4.27** I experience high quality care and support because people have the necessary information and resources.



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Edinburgh
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