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## Multi-Agency Children (Equal Protection from Assault) (Scotland) Act 2019 Guidance

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## Table of Contents

1.	Introduction.....	2
2.	What does this practice guidance aim to do? .....	3
3.	What is this Act?.....	3
4.	Who is covered?.....	4
5.	What does this mean for Practitioners? .....	4
6.	What will the Police do? .....	6
7.	Police Scotland Guidance.....	7
8.	What is a Recorded Police Warning? .....	8
9.	Advice and support for parents.....	9
10.	Advice and support for children & young people.....	9
11.	Advice and support for professionals.....	9
12.	Related Links.....	9

## 1. Introduction

- 1.1 On 7 November 2020, [the Children \(Equal Protection from Assault\) \(Scotland\) Act 2019](#) (from here on referred to as ‘the Act’), was introduced to provide children the same rights as adults against assault by a parent or person with charge or care of them.
- 1.2 The Act repealed [Section 51 of the Criminal Justice \(Scotland\) Act 2003](#), which provides a parent or carer a defence in court allowing them to justify an assault on a child as ‘reasonable chastisement’ or ‘justifiable assault’ in exercising their parental rights.
- 1.3 It is important to understand that this legislation is not about criminalising parents/carers but by reporting such incidents agencies are able to provide appropriate and proportionate support to parents/carers. This change in culture will take some time to embed and attitudes will vary however this Act is a positive step towards shaping Scotland’s future as a place which recognises the value we place on children and emphasises it is never acceptable for violence to be used against a child.
- 1.4 When enacted it was recognised that this new legislation may provide operational and ethical challenges therefore this guidance will be reviewed on a regular basis via the PPC Policies & Procedures Sub-Committee.
- 1.5 This document will act as guidance and highlights the processes that should be followed if you witness an assault on a child by a parent or carer, or if such a matter is reported to you.

- 1.6 First and foremost, when dealing with children for Equal Protection incidents or any other matter, it must be remembered that ensuring their safety, care and wellbeing is critical.
- 1.7 This practitioner's guidance has been produced for all practitioners and managers working with children, young people and families across Dumfries & Galloway. It applies equally to those working in public, private and third sectors and relevant for those working in children's services and adult services.

## 2. What does this practice guidance aim to do?

- 2.1 This practice guidance aims to:
  - raise better awareness and understanding of the change in legislation which gives children and young people the same protection in law as adults from any assault, including what has previously been known as '*reasonable chastisement*' i.e. including but not limited to *smacking; skelping; spanking, slapping, hitting or pinching*.
  - encourage all practitioners to be aware of, and understand, the impact this will have on their day-to-day role and what action they need to take in response to any reports of possible crimes or offences against children and young people.
  - ensure that all concerns about chastisement (punishment) of children and young people are recognised and responded to in a timely and effective manner.
  - signpost practitioners, parents and carers, children and young people to access materials, which provides advice and support on behaviour management strategies.
- 2.2 This practice guidance does not replace existing single service and/ or multi-agency child protection procedures, which all practitioners and managers must continue to follow. On the contrary, this practice guidance should complement, not replace any national guidance, single service and/ or agency guidance.

## 3. What is this Act?

- 3.1 The Act removes the existing defence of '*reasonable chastisement*' in the exercise of '*parental rights*' or of any perceived right derived from having the charge or care of a child or young person.
- 3.2 Previously, parents and carers have been able to use the defence of '*reasonable chastisement*' in the management of their child's behaviour. The boundaries of how to define this have always been problematic.
- 3.3 Removal of this defence clarifies the law and provides children and young people with the same legal protection from assault as adults: particularly by a parent or person in charge of them.
- 3.4 The Act does not introduce a new offence – it simply removes the previous defence.

## 4. Who is covered?

- 4.1 **Child victims** applies to all children and young people **under the age of 16 years** at the time of the assault.
- 4.2 **Suspects** applies to anyone who is **aged 16 years or over** alleged to have assaulted the child or young person. This can be the:
- parent of the child or young person
  - legal guardian of the child or young person
  - person who has parental rights of the child or young person
  - person who has charge or care of the child or young person at the material time.

## 5. What does this mean for Practitioners?

- 5.1 Previously, what was termed '*reasonable chastisement*' by a parent or carer was problematic to define and address. This is no longer the case – that defence is no longer available.
- 5.2 This guidance aims to provide practitioners with advice when they encounter incidents of Equal Protection, previously described as '*reasonable chastisement*', which are now classed as an offence of assault and therefore reportable to Police Scotland.
- 5.3 In this respect, the Law is now very clear. All forms of physical chastisement, punishment and/ or discipline of a child or young person remains unlawful.

### Going Forward.....

- 5.4 It has been, and continues to be the case, that physical chastisement or punishment of a child or young person, constitutes an offence of assault. It raises concerns about the care and welfare of a child or young person and is unlawful. The welfare of all children and young people remains paramount.
- 5.5 Practitioners should continue to ensure all children and young people are safe from physical abuse, chastisement, or punishment. Practitioners should continue to remain professionally curious and assertive. Practitioners have authority to question, challenge and raise concerns about children and young people. Practitioners must continue to be alert to recognising and responding quickly to any physical abuse, chastisement or punishment of a child or young person.

### Taking Action...

- 5.6 Where any practitioner or manager witnesses or is informed of such behaviour, and/ or is worried or concerned about the care and protection of a child or young person, then they must, in the first instance, follow their own agency policy and procedures. This may include sharing that worry or concern or seeking advice from a Line Manager/ Supervisor/ Designated Child or Public Protection Officer/ Advisor. However, this should not delay any referral being made when there are concerns about the safety of a child or young person.

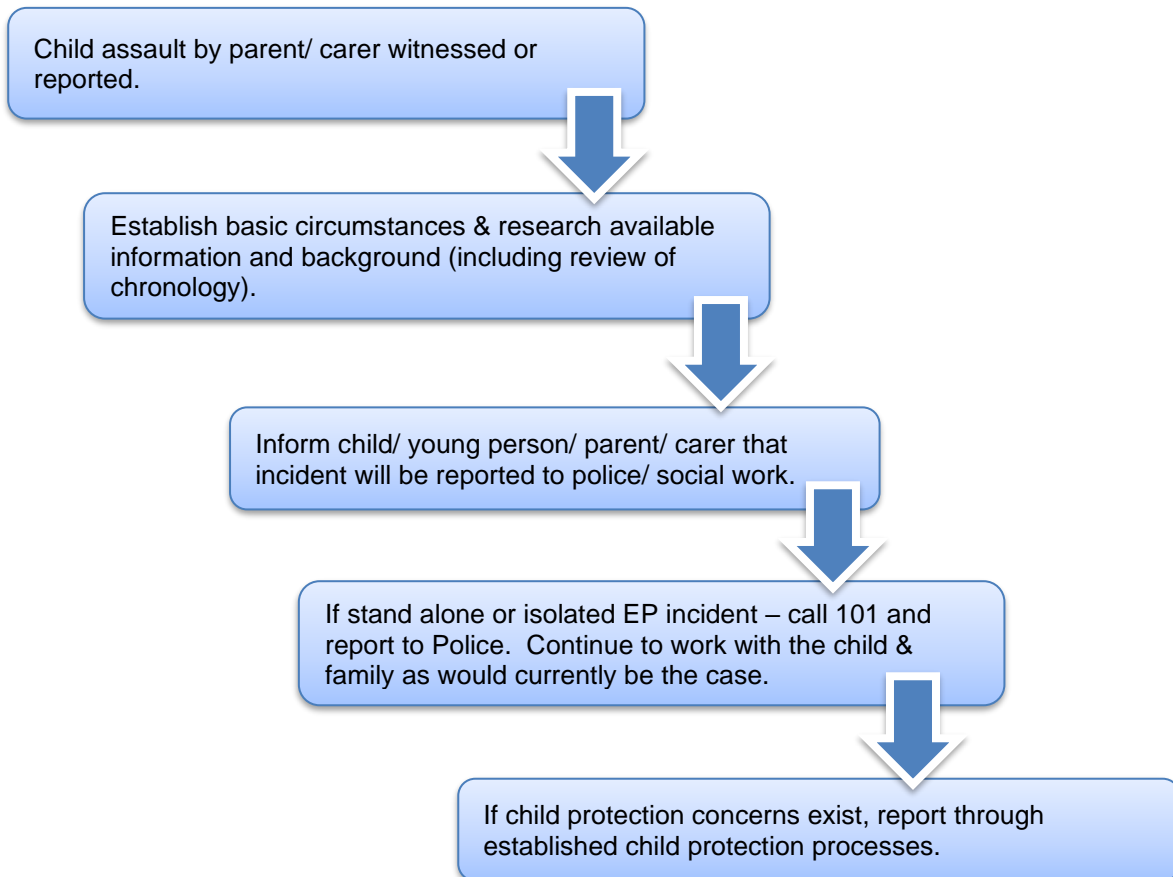
- 5.7 All professionals working with children should have the confidence to speak with the child concerned and ask questions to establish what has happened and the context around it. You should ask open questions (Tell, Explain, Describe) to understand the circumstances and inform your risk assessment and what further action is required.
- 5.8 During this assessment phase there is no standard requirement to check wider than information held by your own agency unless you think it is necessary and proportionate and whilst not an exhaustive list, factors to consider could include:
- Is the nature of the offence a minor physical assault?
  - Is the child injured and requiring medical attention?
  - Is there any evidence of physical injury or adverse effects including fear, alarm or distress?
  - Do the circumstances of the assault (regardless of any injury or distress) raise any concerns?
  - Are there any obvious risks or safety considerations in relation to the child?
  - Has the parent or carer (to your knowledge) previously been investigated/charged/prosecuted for offences against children or offences involving domestic abuse?
  - Does consideration of the full facts and circumstances raise concerns regarding the risk and safety of a child?

N.B In the event of a non-mobile child presenting with injuries (including bruising or suspicious marks) reference should be made to the '**Multi-Agency Injuries to non-mobile children procedure**' which will guide you through this from a child protection perspective.

- 5.9 If following due consideration, you conclude the assault is a stand-alone Equal Protection incident, calls to Police should be made via the 101 number. When reporting the matter to Police you should be prepared to give an informed assessment regarding the circumstances and provide rationale regarding why you consider the assault to be an Equal Protection incident, along with any other relevant information.
- 5.10 If you decide the assault is more significant and/ or there are wider child protection concerns or factors which make this child more vulnerable, established single agency procedures should be followed.
- 5.11 The continuum between what is or is not a child protection matter is one which you and your colleagues assess and make decisions upon regularly. If you are in any doubt, you should consult colleagues, supervisors and/or partners to ensure the most appropriate course of action is taken.
- 5.12 If it is considered that a referral to police and/ or social work is required, it is good practice to keep the child or young person as well as the parent/s/ carer/s informed. The exception to this would be where the practitioner considers that to inform the child or parent/ carer could place the child or young person or the parent/ carer at risk of further harm. Where there are concerns about the

immediate safety of the child, practitioners should discuss their concerns with social work as soon as possible and agree an interim safety plan.

- 5.13 Following discussions with child/ young person/ parent/ carer, if it is decided the circumstances amount to a stand-alone or isolated Equal Protection incident, it is crucial that after it is reported to Police, you and your service should continue to offer the support you consider to be relevant to the family involved as would be the case currently and in line with GIRFEC principles.
- 5.14 Good communication and having 'good conversations' when reporting a concern are essential for maintaining healthy working relationships. Parents/ carers need to know you have a duty to report Equal Protection incidents to the police, or if there are wider concerns, to social work, who will liaise with the police.
- 5.15 Practitioners have always had flexibility to help and support parents and carers with their behaviour management methods of their children, which includes providing them with advice and alternative strategies to smacking. This approach continues.



## 6. What will the Police do?

- 6.1 Police will record a crime and investigate all Equal Protection incidents and where evidence exists, those responsible will be charged and reported in a proportionate manner. The extent of the investigation will be dependent on the

circumstances and will have as its paramount consideration the safety of the child.

- 6.2 When a crime is reported to Police directly, they will conduct checks with the appropriate local authority Social Work to establish if there are underlying child protection considerations.
- 6.3 For all Equal Protection incidents Police will consult with partners to establish if it is safe for the child to remain in the family home.
- 6.4 For all Equal Protection incidents reported to Police, an iVPD report will be created and, where appropriate, shared with partners. If this generates concerns or considerations that may not have been evident during the assessment and investigation phases of the enquiry, these should be highlighted and discussed to ensure the ongoing safety of the child and family involved.
- 6.5 Uniformed response police officers will deal with the majority of Equal Protection incidents and should be the expected default policing response when a partner agency reports an Equal Protection matter to Police Scotland.
- 6.6 The Public Protection Unit (PPU) will continue to deal with complex cases, repeat offenders, serious offences and risk of significant harm. These incidents will likely be referred to PPU from MASH and following the IRD process. For the avoidance of doubt, an IRD is for those children '**at risk of significant harm**' and is not required for incidents identified as being Equal Protection.
- 6.7 A Joint Investigative Interview will only be required where there is a child protection concern, a risk of significant harm or where the child's communication and understanding level are insufficient to allow a standard witness statement to be noted in the presence of a responsible adult. The decision to undertake a Joint Investigative Interview is one taken at IRD and is unlikely to be a proportionate or reasonable response to minor and low-level Equal Protection incidents.
- 6.8 The overriding principles of Equal Protection should be to ensure the safety of the child and conduct a proportionate and reasonable policing response.

## 7. Police Scotland Guidance

- 7.1 Police Scotland will make professional decisions under the Act taking into account the following:
  - Equal Protection is for very minor, isolated assaults on children and young people.
  - Officers will fully investigate all Equal Protection incidents/ complaints/ reports.
  - Where appropriate, Equal Protection incidents/ complaints/ reports will not require the suspect to be arrested, nor the child or young person to be interviewed.
  - The suspect and the child or young person will be allowed to leave the scene at the discretion of the Police Officer, where there are no other child



or young person wellbeing, or safety concerns (to include record checks) identified.

- If, having concluded all initial enquiries, the incident remains uncorroborated, an interview of the child or young person may be required to evidence the crime.
- It is vital that the decisions taken are focused on the best interests of the child or young person. As such, the advice and guidance of the Police Public Protection Unit can help inform such decisions and the justification for the Police approach taken.
- Where the incident/ complaint/ report remains uncorroborated, multi-agency discussions will take place to determine the best course of action. Where a joint investigative interview is thought to be required (due to age, additional needs of the child or young person etc), then this is a decision that will be made at an Initial Referral Discussion (IRD) meeting. An IRD is not required if the child or young person is of an age/ level of understanding to simply provide a witness statement (in this case, this would most likely be in the presence of another partner agency as is currently undertaken for other minor investigations involving children).
- A Child Concern Form (CCF) will always be submitted by Police Scotland and shared appropriately with partner agencies.
- In the majority of cases where there is a sufficiency of evidence to substantiate an Equal Protection charge then a Recorded Police Warning will be issued by the Police.
- Recorded Police Warnings will be retained for 2 years and will be taken into account if another crime or offence is committed in that time period. This Recorded Police Warning will not be automatically included in an Enhanced Disclosure Certificate or Protecting Vulnerable Groups (PVG) Scheme Record.
- However, the Chief Constable can include information about the RPW as 'Other Relevant Information', if they reasonably believe that:
  - It is relevant to the disclosure's purpose.
  - The information should be included on the disclosure certificate – e.g., when someone applies for a post within a childcare setting.

## 8. What is a Recorded Police Warning?

- 8.1 A Recorded Police Warning (RPW) is not a finding of guilt but is an alternative to prosecution i.e. not a conviction. The police have the power to give a recorded police warning if the parent/ carer is 16 or over, the offence is of a minor nature (no other child protection factors), the person meets the criteria for issue and not on a compulsory supervision order.
- 8.2 If this is refused, they can report the case to the Procurator Fiscal – this means the parent/ carer might have to go to court.



- 8.3 Those reported have 28 days to appeal their recorded police warning. They must do this in writing. The appeal may mean that police send a report to the Procurator Fiscal.
- 8.4 If the Procurator Fiscal decides that the case against them should go ahead, they may have to appear in court. If this happens, they will have the chance to challenge the case against them.

## 9. Advice and support for parents

- 9.1 Everyone working alongside children and families can provide advice, information and support as part of their response to an act of physical punishment.
- 9.2 [ParentClub](#): Includes hints, tips and advice on [Coping with Being a Parent](#). Parents and carers can call [Children1st: Parentline](#) 08000 28 22 33.

## 10. Advice and support for children & young people

- 10.1 Children and young people should be encouraged to speak with an adult they trust, i.e. Teacher, Nurse, Police Officer etc.

[ChildLine](#) 0800 1111

[www.gov.scot/publications/physical-punishment-and-discipline-of-children-how-the-law-is-changing/](http://www.gov.scot/publications/physical-punishment-and-discipline-of-children-how-the-law-is-changing/)

## 11. Advice and support for professionals

- 11.1 When undertaking conversations with the child or young person, practitioners should consider the age and stage of development. The following NSPCC guide may be useful. ([NSPCC Having a difficult conversation](#))
- 11.2 The following quick guide on using professional curiosity with parents / carers supports practitioners to have these difficult, but necessary, conversations. ([Professional Curiosity 7-Minute Briefing](#))

## 12. Related Links

[Poster-children-and-young-people person-to-talk-to](#)

[Children and Young People Questions and Answers](#)

[Children \(Equal Protection from Assault\) \(Scotland\) Act 2019 Frequently Asked Questions](#)

[Children \(Equal Protection from Assault\) \(Scotland\) Act 2019 Fact Sheet Easy Read](#)

[Children \(Equal Protection from Assault\) \(Scotland\) Act 2019 Framework for Statutory Bodies](#)