



**Perth and Kinross CPC**

**Practitioner's Guidance**

**The Children (Equal Protection from Assault)  
(Scotland) Act 2019**

**Refreshed: 3 November 2021**

## Introduction

The [Children \(Equal Protection from Assault\) \(Scotland\) Act 2019](#) (referred to hereinafter as the Act) will come into force on Saturday 7 November 2020.

This practice guidance has been produced for all practitioners and managers working with children, young people and families across Perth and Kinross.

This practice guidance applies equally to those working in the public, private and third sectors across Perth and Kinross.

This practice guidance applies equally to those working in children's services and adult services.

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 support for practitioners, parents and carers, children and young people to access, which provides advice and support on behaviour management strategies

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.

## What is this Act?

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.

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 has always been problematic.

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.

The Act does not introduce a new offence – it simply removes the previous defence.

**This means that all forms of physical chastisement, punishment and / or discipline of children and young people will be against the law in Scotland from Saturday 7 November 2020.**

## ***Who is covered?***

**Child victims** applies to all children and young people **under the age of 16 years** at the time of the assault.

**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

## ***What does this mean for Practitioners?***

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.

Practitioners have always had flexibility to help and support parents and carers with their behaviour management methods of their children; which included providing them with advice and alternative strategies to smacking. That approach continues.

Practitioners have always been encouraged to use their professional judgement and adopt a common sense approach, when considering whether or not to make a referral to social work, the police or the children’s reporter. That approach continues.

***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 and the previous defence of “reasonable chastisement” is no longer available.***

***Going Forward*** – 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 child protection concerns about the care and protection of a child or young person and is unlawful. The welfare of all children and young people remains paramount.

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*** – Where any practitioner or manager witnesses 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, share that worry or concern with their Line Manager / Supervisor / Designated Child Protection Officer, in line with existing single service and / or multi-agency child protection procedures.

Thereafter, local single service and / or multi-agency child protection procedures must be followed without any unnecessary delay.

Practitioners are reminded that, whilst generally speaking there is no legal duty on members of the public to report crime to Police Scotland, the decision by a practitioner not to report an assault (or any other criminal offence committed against a child or young person) will likely carry an associated risk that rests with the practitioner.

Practitioners can also contact the Perth and Kinross Child Protection and Duty Team on 01738 476768 and / or Police Scotland on 101 (non-emergency) or 999 (in an emergency).

## ***What will the Police do?***

The Act provides the Police with the power to respond to Equal Protection incidents / complaints / reports, which meet the criteria in the Lord Advocate's Guidelines; with the use of Recorded Police Warnings (where applicable) as an alternative to prosecution.

The Lord Advocate has provided the following criteria to assist the Police in making an informed decision as to whether the suspect's actions would warrant consideration under Equal Protection procedures:

- The nature of the offence is a minor physical assault
- There is no evidence of physical injury or adverse effects, including fear or alarm
- There are no obvious risk or safety considerations in relation to the child or young person
- The suspect has not been previously prosecuted in relation to an offence against a child or young person or an offence involving domestic abuse (regardless of whether or not they were convicted)
- The circumstances of the assault do not raise any child protection concerns

This approach has been adopted to emphasise the importance of making justified and informed decisions at the scene and avoiding any unnecessary enforcement action that may not be in the child or young person's best interests.

If the suspect has been previously prosecuted in relation to an offence against a child or young person, or an offence involving domestic abuse (regardless of whether or not they were convicted), then a Recorded Police Warning would not be appropriate and instead could lead to prosecution.

The Lord Advocate made it clear that previously existing prosecutorial guidelines, which take account of the interests of the child or young person, along with other factors, would continue to be applied to decisions about whether to prosecute in any particular case.

## **Police Scotland Guidance**

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 Child Protection Investigation 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 Report (CCR) will always be submitted by Police Scotland and shared appropriately with partner agencies
- 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

### ***Where can practitioners access advice and support?***

If any practitioner or manager witnesses 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, share that worry or concern with their Line Manager / Supervisor / Designated Child Protection Officer. Thereafter, local single service and / or multi-agency child protection procedures must be followed without any unnecessary delay.

**Practitioners can also contact the Perth and Kinross Child Protection and Duty Team and / or Police Scotland:**

Perth and Kinross Child Protection and Duty Team - (24 hours)	01738 476768
Police Scotland Non - Emergency Number - (24 hours)	101
In an Emergency - (24 hours)	Call 999
Crimestoppers Scotland - (24 hours)	0800 555 111

[Perth and Kinross Information and Advice Leaflet: Child Protection and Duty Team](#)

[Perth and Kinross Child Protection Information and Advice Leaflet](#)

[Perth and Kinross Child Protection Website](#)

### ***Where can parents access advice and support?***

[ParentClub](#): Includes hints, tips and advice on [Coping with Being a Parent](#)

[Children1st: Parentline](#) 08000 28 22 33

### ***Where can children and young people access advice and support?***

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

[ChildLine](#) 0800 1111

## ***Related / Additional Guidance***



2. Equal Protection  
Act - FAQs.pdf



3. Equal Protection  
Act - Factsheet.pdf



4. Equal Protection  
Act - Poster for Child



5. Equal Protection  
Act - Q&A for Childr



6. Scottish  
Government Equal Pi



7. Scottish  
Government Letter E

Links to the above Scottish Government's Information & Advice Leaflets etc:

[Children \(Equal Protection from Assault\) \(Scotland\) Act 2019 Frequently asked questions \(pkc.gov.uk\)](https://www.pkc.gov.uk/children/equal-protection-from-assault-scotland-act-2019-frequently-asked-questions)

[Children \(Equal Protection from Assault\) \(Scotland\) Act: Factsheet Easy Read \(pkc.gov.uk\)](https://www.pkc.gov.uk/children/equal-protection-from-assault-scotland-act-factsheet-easy-read)

[PowerPoint Presentation \(pkc.gov.uk\)](https://www.pkc.gov.uk/children/equal-protection-from-assault-scotland-act-powerpoint-presentation)

[PowerPoint Presentation \(pkc.gov.uk\)](https://www.pkc.gov.uk/children/equal-protection-from-assault-scotland-act-powerpoint-presentation)

[Scottish Government Equal Protection Act Framework.pdf \(pkc.gov.uk\)](https://www.pkc.gov.uk/children/equal-protection-from-assault-scotland-act-framework)

[Scottish Government Letter - Equal Protection Act](https://www.pkc.gov.uk/children/equal-protection-from-assault-scotland-act-letter)

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

## Practitioner's Aide-Memoire

### Practitioners must continue to:

- ensure the welfare of all children and young people remains paramount
- keep all children and young people safe and protected from harm, abuse and any physical chastisement, punishment and / or discipline – keeping children safe and protected in *everyone's job*
- be aware that a parent, carer or any other person with parental rights, responsibilities or any other person providing a caring role to children and young people, can no longer argue that physical chastisement or punishment is reasonable
- be aware that all forms of physical chastisement, punishment and / or discipline of a child or young person is an assault and is unlawful – including, but not limited to, *smacking; skelping; spanking, slapping, hitting or pinching*
- be aware that the Law has not changed but the Act has removed the legal defence of “*reasonable chastisement*”
- remain professionally curious and assertive and remember that they continue to have the authority to question and challenge such behaviour
- be alert to recognising and responding quickly to any physical abuse, chastisement or punishment of a child or young person; in particular by a parent or person in charge of them
- follow their own single service and / or multi-agency child protection procedures – local child protection arrangements have not been changed and must be followed
- remember that doing nothing is no longer an option – so act quickly and report any such concern to your Line Manager / Supervisor / Designated Child Protection Officer
- be aware that the Police will respond to and investigate all Equal Protection incidents / complaints / reports, brought to their attention, which meet the criteria and where appropriate, they will deal with it in terms of the Lord Advocate's Guidelines, specified above, and will do in partnership with partner agencies

