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Copy: As per Annex A.

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Dear Colleague

CHILDREN (EQUAL PROTECTION FROM ASSAULT) (SCOTLAND) ACT 2019

Introduction

1. The purpose of this letter is to draw your attention to the Children (Equal Protection from Assault (Scotland) Act 2019 ("the 2019 Act")¹, which comes fully into force on 7 November 2020.

2. This letter is being sent to a number of bodies providing statutory services and is being copied to others. It is also being published on the Scottish Government's website. Please feel free to copy to others who may have an interest and to suggest changes to our distribution list. Local authority Chief Executives may wish to ensure that Directors of Education and Chief Social Work Officers see this letter.

3. Any inquiries about this letter should be addressed to Sarah Meanley. In line with most Scottish Government employees at the moment, Sarah is working from home so please email her on sarah.meanley@gov.scot

The 2019 Act

4. The Bill² which led to the 2019 Act was a member's Bill by John Finnie MSP³. The Act provides children with the same protection from assault as adults.

¹ <https://www.legislation.gov.uk/asp/2019/16/contents>

² The Explanatory Notes to the 2019 Act are at <https://www.legislation.gov.uk/asp/2019/16/notes/contents>

5. The 2019 Act does not create a new criminal offence: instead, it removes an existing defence of “reasonable chastisement” to a charge of assault. Before 7 November, this defence, depending on the circumstances, may be available to parents and carers charged with assaulting a child.

6. The change in law means that children will have the same – or equal – protection from assault as adults.

7. The Scottish Government supports the removal of the defence. This is consistent with the growing body of international evidence showing that physical punishment of children is not effective and can lead to long-term negative outcomes.

Other legislation relating to physical punishment

8. Section 51 of the Criminal Justice (Scotland) Act 2003 will be repealed on 7 November 2020.

9. There is other legislation prohibiting the use of physical or corporal punishment in specific settings (e.g. care and education). This legislation will remain in force. A summary of this other legislation is at Annex B.

Support for parents

10. Information about this change to the law is available on the Scottish Government website⁴. ParentClub provides information on coping with being a parent⁵. Parent Club also contains the Family Support Directory⁶ which provides information about organisations, benefits and information that support parents and carers, no matter the family’s situation or stage a child is at.

11. The Scottish Government will continue work to provide information to parents both on the change to the law and on support available to parents more generally. The Scottish Government will also continue work to provide information to those working in statutory services.

12. [Children 1st](#) provides practical and emotional support for families in Scotland. Parents and carers can call [Children 1st Parentline](#) on 08000 28 22 23, and web chat is also available. These are free services available every day of the year.

Child protection

13. The Scottish Government’s approach is that the welfare and wellbeing of children must be paramount. That is in line with the approach taken in domestic legislation and practice. It is also in line with the United Nations Convention on the Rights of the Child

³ Information on the Parliamentary passage of the Bill can be found at:

<https://beta.parliament.scot/bills/children-equal-protection-from-assault-scotland-bill> The consultation carried out by Mr Finnie before the Bill was introduced into Parliament is at

<https://www.parliament.scot/parliamentarybusiness/Bills/104602.aspx>

⁴ <https://www.gov.scot/publications/physical-punishment-and-discipline-of-children-how-the-law-is-changing/>

⁵ <https://www.parentclub.scot/articles/coping-with-being-a-parent>

⁶ <https://www.parentclub.scot/family-support-directory?topic=230>

(UNCRC)⁷: there is currently a Bill in the Scottish Parliament to incorporate the UNCRC into Scots law⁸.

14. Article 3(1) of the UNCRC provides that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

15. On 21 October 2020, the Scottish Government issued a consultation⁹ on updating the non-statutory guidance for child protection. Paragraphs 124 to 128 of Part 4 of the draft guidance attached to the consultation specifically consider the 2019 Act. In particular, this draft guidance says that:

- In relation to child protection processes the general considerations in the draft Guidance on assessment and on steps in child protection processes, apply;
- When concerns fall short of the significant harm threshold, this must not stop the provision of proportionate co-ordinated support for children and families;
- Where there is an apparent need for compulsory measures, consideration will be given to referral to the Children’s Reporter.

16. The consultation on the draft guidance on child protection closes on 17 January 2021.

What to do if a statutory body has concerns about a child

17. Existing procedures for dealing with concerns about a child apply. The change made by the 2019 Act does not involve the creation of a new criminal offence. Instead, what the 2019 Act does is remove the defence of “reasonable chastisement” to a charge of assault. Therefore, officials in statutory bodies can follow existing arrangements in place in their area when they have concerns about how a child has been treated and/or consider that a criminal offence has been committed against a child.

18. Statutory bodies can also, where appropriate and in line with existing procedures, consider the Getting it right for every child (GIRFEC) policy. This Scottish Government approach to support for children and young people is about making sure they can receive the right help, at the right time, from the right people.

Framework

19. A framework on the 2019 Act is attached.

Further guidance

20. The Scottish Government will consider if any further guidance should be issued for specific sectors.

⁷ The UNCRC is at <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

⁸ The Bill to incorporate the UNCRC is at <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/115977.aspx>

⁹ <https://consult.gov.scot/child-protection/consultation-on-the-revised-national-guidance/>

Conclusion

21. As indicated in paragraph 3, any inquiries about this letter should be addressed to Sarah Meanley. In line with most Scottish Government employees at the moment, Sarah is working from home so please email her on sarah.meanley@gov.scot

Yours faithfully

SIMON STOCKWELL

ANNEX A: LIST OF RECIPIENTS

Association of Directors of Education in Scotland
Boarding Schools Association
British Medical Association Scotland
Centre for Excellence for Children's Care and Protection
Children 1st
Chief Allied Health Professions Officer
Chief Medical Officer
Chief Midwifery Officer
Chief Nursing Officer
CONNECT
Convention of Scottish Local Authorities
Educational Institute of Scotland
Education Scotland
National Parent Forum of Scotland
Police Scotland
Royal College of General Practitioners Scotland
Royal College of Paediatrics and Child Health
Royal College of Nursing Scotland
Social Work Scotland
Scottish Council of Independent Schools

ANNEX B: OTHER LEGISLATION ON PHYSICAL PUNISHMENT IN CERTAIN SETTINGS WHICH REMAINS IN FORCE

School education

- Section 16 of the Standards in Scotland's Schools etc Act 2000¹⁰ makes provision to ban corporal punishment in schools.

Residential care

- Regulation 10 of the Residential Establishments – Child Care (Scotland) Regulations 1996¹¹ prohibits corporal punishment in residential care.

Looked after children and foster carers and kinship carers

- The Looked after Children (Scotland) Regulations 2009 provide that agreements between the local authority and foster carers¹² and the local authority and kinship carers¹³ must include the kinship carer's or foster carer's obligation not to administer corporal punishment to any child placed with them.

Registered child minders, day carers and child carers

- Persons who provide a child minding service or a child care agency service or day care of children have to be registered with the Care Inspectorate. The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011¹⁴ provide that:

“A provider of day care of children, child minding or a child care agency must not administer, or permit any person employed in the provision of the service to administer, physical chastisement or punishment to any child who is looked after or cared for by the service”.

¹⁰ <https://www.legislation.gov.uk/asp/2000/6/section/16>

¹¹ <http://www.legislation.gov.uk/ksi/1996/3256/regulation/10/made>

¹² <https://www.legislation.gov.uk/ssi/2009/210/schedule/6/made>

¹³ <https://www.legislation.gov.uk/ssi/2009/210/schedule/5/made>

¹⁴ <https://www.legislation.gov.uk/ssi/2011/210/regulation/4/made>