



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

INFORMATION FOR PARTNER AGENCIES

INTRODUCTION

The Children (Equal Protection from Assault) (Scotland) Act 2019 (EP Act) received Royal Assent on 7 November 2019 and will be implemented on 7 November 2020. The purpose of the legislation is to assist in ending the physical punishment of children by parents, carers or the person who has charge of them. It removes the statutory defence of 'justifiable assault' under Section 51 of the Criminal Justice (Scotland) Act 2003.

This is new legislation and key statutory partners have been involved alongside Police Scotland in working with the Scottish Government in the run up to going live. Police Scotland's position nationally with partners and with Scottish Government has been that persons or agencies who become aware of criminality should report it to police. It is perhaps helpful to think of this question the other way round - why would colleagues in partner agencies not report to police an assault on a child. This is about societal change and just as with seatbelts, drink driving and certain domestic incidents, matters previously considered socially acceptable are now against the law and are now, rightly, pursued by the police and through criminal courts.

It is important partners are aware we will investigate all reported allegations of criminality. However, it is also important to emphasise that we have sought to be proportionate in the manner in which we will respond to such reports, this is facilitated through the new Lord Advocates Guidelines.

It is important to emphasise that the change in the law does not change well established local and national Child Protection procedures. Those procedures will continue to be instigated as and when required by our officers, in accordance with Police Scotland's policy. We recognise that this may be something that your staff and the families you work with may raise with you,. The change in the law only removes a statutory defence at court, it does not directly change criminal law in Scotland. The definition of an assault has not changed and will continue to be applied by officers across Scotland.

Where police officers dealing with a report that may meet the criteria for Equal Protection identify additional concerns about a child's welfare, they will continue to seek support and advice from trained colleagues in Public Protection. That support will ensure that we continue to identify any instances which require additional investigation or where there is a need to consider the needs of the child through an Inter-Agency Referral Discussion. This is no different from current practice.

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POLICE PROCEDURE

Officers are following the new procedures and giving effect to the new Lord Advocate's Guidelines. This includes continuing to record reports of assault as crimes consistent with the Scottish Crime Recording Standard.

Police Scotland's Equal Protection policy clearly sets out that the change in the law only relates to those instances which may previously have been characterised as 'physical chastisement' of a child by their parent or the person caring for them at that time. Equally, the policy makes clear officers and staff must take cognisance of all the circumstances present in each individual incident. Officers are making assessments using their wider training, along with specific guidance which has been developed to ensure they ask themselves pertinent questions to inform their decisions about the nature of each incident and how they should respond. The best interests of the child are a primary consideration in that assessment.

The Equal Protection (E-Learning) package instilled the message that any form of physical assault on a child will no longer be acceptable and will direct officers to continue to investigate crime in a victim centred manner, with the primary objective being the welfare of the child. The training has helped officers to think about the factors they may encounter at such incidents and how to respond proportionately and justifiably to all the circumstances they encounter. In-keeping with this approach, officers have also been encouraged to consider any wider support that may be required by the child, their parent(s) or the person with care of them at that time.

A concern form will be submitted by officers for all incidents of Equal Protection to ensure the appropriate holistic wellbeing assessment of the child is carried out by Divisional Concern Hub staff. The concern form will be triaged, researched, assessed and information shared where appropriate to do so and in line with current guidance.

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