

# Report

Report to:	<b>Social Work Resources Committee</b>
Date of Meeting:	<b>20 January 2021</b>
Report by:	<b>Director, Health and Social Care</b>

Subject:	<b>Children (Equal Protection from Assault) (Scotland) Act 2019: Implemented 7 November 2020</b>
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## 1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ advise the Committee of the implementation of the Children (Equal Protection from Assault) (Scotland) Act 2019 which came into force on 7 November 2020

## 2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the contents of the report be noted.

## 3. Background

- 3.1. In 2015 the report, Equally Protected? provided a review of the evidence commissioned by NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner Scotland, that highlighted the negative consequences of physical punishment, including increased levels of aggression and antisocial behaviour from children and a strong detrimental effect on children's emotional and mental health.
- 3.2. On 3 October 2019, the Children (Equal Protection from Assault) (Scotland) Act 2019 was passed by the Scottish Parliament, meaning children in Scotland now have the same protections against assault as adults.
- 3.3. While Scots law protects adults from all forms of physical violence, the Criminal Justice (Scotland) Act 2003 had provided a defence of justifiable assault of a child, which could be exercised where it was claimed a violent act against a child was for the purpose of physical punishment, often referred to as the use of reasonable physical chastisement. The application of justifiable assault threshold was often challenging for professionals and was seen as counterintuitive to the values and principles of children's human rights.
- 3.4. The Children (Equal Protection from Assault) (Scotland) Act 2019 has now legislated for the removal of any such statutory defences from Scots Law. The passing of this Bill by members was a positive step forward for children's rights in Scotland. Children now have the same right as adults not to be assaulted and Scotland is the first country in the UK to pass such legislation. The impact of similar legislation in other countries has been positive and these countries have usually seen a decrease in the use of physical violence against children and an increase in child wellbeing.

- 3.5. On 7 November 2020 the Children (Equal Protection from Assault) (Scotland) Act 2019 became the law in Scotland.

#### **4. National Implementation of Equal Protection**

- 4.1. Despite the impact and uncertainty of the COVID-19 pandemic the Scottish Government decided not to delay the implementation plan and the legislation became law in November 2020 as anticipated. There have been questions raised about the timing of law and the readiness of parents and children's services to fully understand its implications. South Lanarkshire Child Protection Committee (CPC) has worked to ensure information for children, young people, adults and professionals was widely shared ahead of implementation.
- 4.2. The Scottish Government Expert Reference Group on Equal Protection has four key implementation tasks, Public Awareness Raising, Information to Organisations, Guidance and Training for Practitioners and Data & Monitoring. A positive parenting digital marketing campaign was scheduled to be launched in October 2020 with a number of press releases and news campaigns close to the Bill becoming Law. These have been significantly delayed with some information reaching local authorities at close of business on 5 November 2020.
- 4.3. CPCs received some information from the Scottish Government on 6 October 2020 for local use including leaflets and posters. Further information from the Scottish Government can be viewed here [Physical Punishment and Discipline of Children - How the Law is changing!](#)

#### **5. Role of Partner Agencies**

- 5.1. Evidence demonstrates that hitting children damages their health and wellbeing and that violence does not work as a strategy for improving a child's behaviour. The changes in law should not require any fundamental change in practice for children's services given the implementation of Getting it Right for Every Child (GIRFEC). However, we need to appreciate the introduction of the new law takes place at a point where parents may be facing huge COVID-19 pressures, the impact of economic hardship and the possibility of further lockdown restrictions. Education and Health Services have a crucial role in first point of contact discussions and observations with children and their parents.
- 5.2. In some circumstances, having made an assessment, Police Scotland may refer the incident to its Public Protection Unit for further investigation and possible notification to the Crown Office and Procurator Fiscal Service/Scottish Children's Reporter Administration.
- 5.3. Responding to Concerns: If, and when agencies hear or see a parent physically assaulting a child (referred to in the Scottish Government information leaflet for parents and carers as including smacking, skelping, spanking and slapping) the first response should be to engage with the parent or carer in a participative manner to explore what were the factors, pressures or cultural ideals were that resulted in the incident taking place and to offer advice and alternative approaches as appropriate. As part of that conversation, staff must give a clear message that physically hitting/assaulting a child is against the law. The priority should be to de-escalate conflict to help the parents avoid repeating their behaviour and to improve the relationship they have with their child. A Child's right to be heard must always be upheld.

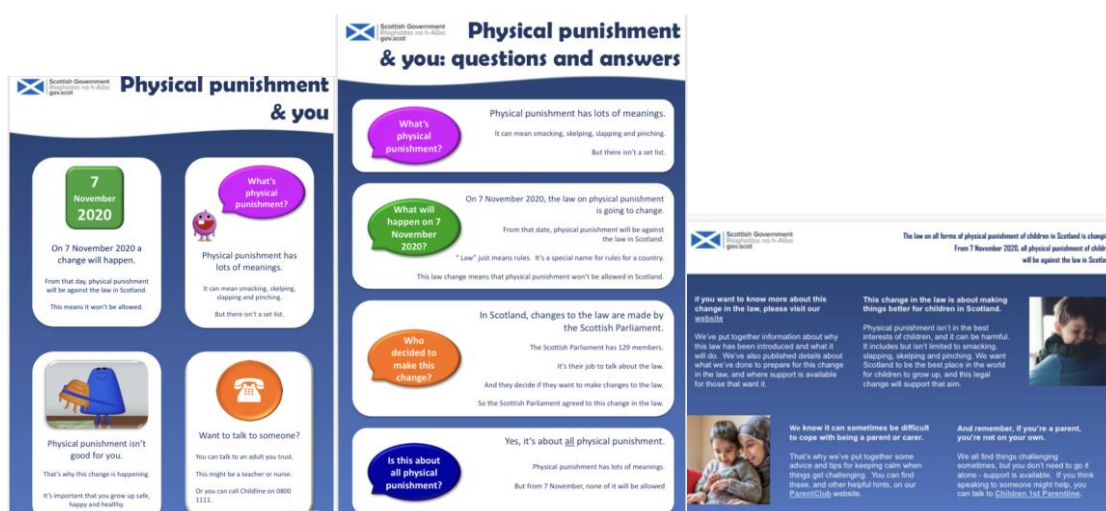
- 5.4. We have added key information to our website here: Equal Protection Information for Families about changes to the Law.

## 6. Child Protection

- 6.1. Child Protection refers to the processes involved in the consideration, assessment and planning of further required action where there are concerns that a child may be at risk of harm. Child Protection procedures will apply when Police, Social Work, Health and in some cases Education, determine that a child may have been abused or is at risk of significant harm. Services must refer to their Child Protection procedures for more information in the first instance.
- 6.2. Frontline practitioners/staff will be supported by managers from their service to confidently apply professional judgement when considering whether to raise a notification of concern to either Police Scotland or Children and Families Social Work. In all cases of risk of significant harm or significant harm having taken place, Child Protection procedures will apply as appropriate.

## 7. Conclusion

- 7.1. The implementation of the Children (Equal Protection from Assault) (Scotland) Act 2019 for children and young people into law will offer children in Scotland the same human rights and lawful protection from violence that adults are currently afforded. Just as it is unlawful to hit an adult, it is welcomed that it will no longer be lawful for parents or carers to hit a child. This is more than a ban on smacking as reported widely in the media.
- 7.2. While the change in legislation for children is fully welcomed and embraced, the timing of it during the current COVID-19 pandemic may cause challenges for children's services initial response to concerns.
- 7.3. Further practitioner guidance/training/briefings will be required to be developed across services with a recommended shared responsibility to preparing key information for the workforce ahead of enforcement. Work has started locally but can only be made available once the associated Scottish Government guidance is published. The short time scale has been acknowledged by the Government.
- 7.4. National Awareness Raising campaigns are expected imminently. Materials include the graphics as shown;



## **8. Implications**

- 8.1. Evidence demonstrates that hitting children damages their health and wellbeing and that violence does not work as a strategy for improving a child's behaviour. The changes in law should not require any fundamental change in practice for children's services given the implementation of GIRFEC. Importantly, Education and Health Services will ordinarily be the first point of contact and subsequent discussions with children and their parents. There is also an uncertainty over how effective the information and marketing strategy will be both in the actual advertised Government message and how well parents will become aware of a change in the law. Additional support to manage change may be required.
- 8.2. If Partner agencies are not clear of their role to engage parents in a participatory manner to discuss the context of their behaviour in the first instance and maintain thresholds of Child Protection, Children and Family Social Work Services could receive a higher number of referrals, bringing children and families into the attention of services that would not ordinarily be known.

## **9. Employee Implications**

- 9.1. There are no employee implications associated with this report.

## **10. Financial Implications**

- 10.1. Campaigns and public information is being funded by Scottish Government. Training costs will be met by the SLCPC. Individual services will make necessary changes and meet costs. Partners contribute as requested in relation to specific tasks applying to the work of SLCPC.

## **11. Climate Change, Sustainability and Environmental Implications**

- 11.1. There are no implications for climate change, sustainability and environmental implications in terms of the information contained in this report.

## **12. Other Implications**

- 12.1. There are no risk implications associated with this report.
- 12.2. There are no sustainable development issues associated with this report.
- 12.3. There are no other issues associated with this report.

## **13. Equality Impact Assessment and Consultation Arrangements**

- 13.1. This report does not introduce a new policy function or strategy, nor does it recommend a change to existing policy, function or strategy, therefore, no impact assessment is required
- 13.2. There is no requirement for consultation in respect of this report.

**Val de Souza**  
**Director, Health and Social Care**

24 November 2020

**Link(s) to Council Values/Ambitions/Objectives**

- ◆ focused on people and their needs
- ◆ working with and respecting others
- ◆ Deliver better health and social care outcomes for all

**Previous References**

- none

**List of Background Papers**

- none

**Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:-

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