



West Dunbartonshire
**Child Protection
Committee**

West Dunbartonshire Child Protection Committee

Child (Equal Protection from Assault) Guidance 2023

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Lead Officer	Natasha Macpherson, Child Protection Lead Officer
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CHILDREN (EQUAL PROTECTION FROM ASSAULT) (SCOTLAND) ACT 2019 WEST DUNBARTONSHIRE MULTI-AGENCY OPERATIONAL GUIDANCE

On 7 November 2020, the Children (Equal Protection from Assault) (Scotland) Act 2019, was introduced providing children with the same rights as adults against assault by a parent or person with charge or care of them.

The Act will repeal 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.

This is a significant change and you, along with every individual involved in working with children in any capacity across West Dunbartonshire will have a crucial role to play in successfully implementing the Act. West Dunbartonshire's Child Protection Committee and the extensive children's services partnership welcomes this legislative change.

The requirements of this legislation are relevant to, and will be incorporated across, all our multi-agency training in the months to come. 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.

First and foremost, when dealing with children for Equal Protection (EP) incidents or any other matter, it must be remembered that ensuring their safety, care and wellbeing is critical. Whilst investigating EP incidents will be the remit of the Police, the duty of care towards children and families involved has not changed and will remain part of your duties, as it is currently.

CHILDREN'S RIGHTS

The UN Committee on the Rights of the Child is unequivocal— children's right to protection from violence and to equal protection under the law means that states must enact legislation which prohibits – without exception – all forms of corporal punishment of children in all settings. That's why in its 2016 Concluding Observations, the Committee urged all areas of the UK – including Scotland – to prohibit corporal punishment as a matter of priority, and to repeal all legal defences of its use.

It also urged all areas of the UK to promote both:

- positive and non-violent forms of child discipline, and
- respect for children's right – held equally with adults – to human dignity and physical integrity.

It will be for all services to decide how best to spread this message widely during day-to-day dealings with parents, carers, and children. The more informed and educated individuals are regarding the new legislation, the less likely offences are to occur.

ASSESSMENT

This document is intended to provide guidance for practitioners who encounter instances of equal protection which were previously deemed 'reasonable chastisement'. These instances of reasonable chastisement will now be classed as an offence of assault and will be reported to Police.

If such an assault is witnessed by you or reported to you by any means, an immediate assessment must be made regarding the circumstances in which the assault has occurred, and the relevant system checks should be carried out to ascertain if the incident is considered to be an isolated minor incident or if it forms part of wider child protection concerns. There is no requirement to carry out checks wider than your own service unless there is information to suggest child protection concerns need to be considered. On receipt of an EP report Police will carry out an investigation.

Whilst not an exhaustive list, factors to be considered in making an immediate assessment should include.

- Is 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 or alarm?
- Do the circumstances of the assault raise Child Protection concerns?
- Are there any other risk or safety considerations in relation to children?
- Has the person responsible for the assault previously been investigated (to your knowledge) for offences against children?
- Does consideration of the full facts and circumstances raise concerns regarding the risk and safety of a child?

It should be noted the child protection guidance remains that any hit to the head, use of excessive force or use of any implement should be deemed an assault and child protection guidelines followed.

REPORTING

Should the assessment of the circumstances conclude the assault is an isolated Equal Protection incident you should report this to **Police via the 101 number**. When making the report you should provide details of the circumstances of the assault, the informed assessment as to why it is considered to be an equal protection matter and any other information you feel is relevant. Recording of such incidents must be made within your own departmental systems.

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, follow child protection guidelines and consult line managers and/or partners to ensure the most appropriate course of action is taken.

Should the decision be made the circumstances amount to an isolated Equal Protection incident, it is crucial that after it is reported to Police, you and your service continue to offer the support you consider to be relevant to the family involved as would be the case currently.

INVESTIGATION

Police Scotland's position nationally with partners and with the 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 do 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.

Police will record a crime and investigate all reported incidents of Equal Protection. Police will carry out necessary checks. For all Equal Protection incidents reported to Police, an iVPD will be created and, where appropriate, shared with partners. It is also important to emphasise that Police have sought to be proportionate in the manner in which they will respond to such reports, this is facilitated through the new Lord Advocates Guidelines.

FUTURE CONSIDERATIONS

The impact of the EP legislation will be subject to ongoing monitoring by both individual services and the wider CPC and may be subject to review moving forward.

It should be noted this advice is aimed at services within the wider CPC partnership and there may be nuances or partner specific queries that should be dealt with through service leads. Any partnership issues, improvements or points requiring clarity on this guidance should be reported through the same service leads for the consideration of the CPC.

Flow Chart

