

To: Education and Children's Services Policy Board

On: 18 March 2021

Report by: Director of Children's Services

Heading: Children (Equal Protection from Assault) (Scotland) Act 2019

1. Summary

- 1.1 The Children (Equal Protection from Assault) (Scotland) Act 2019 was passed by the Scottish Parliament in October 2019 and removed the common law defence of "reasonable chastisement" from the law of Scotland on 7 November 2020.
 - 1.2 The Act makes it illegal to use any physical punishment towards a child in Scotland. The Act requires Scottish Ministers to take steps to raise public awareness and understanding about the effect of the removal of the defence of reasonable chastisement. The Scottish Government is committed to providing support to parents and carers in Scotland to ensure that they have alternatives to physical chastisement.
 - 1.3 Prior to 7th November 2020 a parent was able to use '*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.
 - 1.4 This legislative change has required statutory agencies to consider their current procedural guidance and training in relation to the physical chastisement of children and provide updated advice to practitioners on how to respond if they become aware a child has been assaulted by a caregiver. This report provides information on how services in Renfrewshire have responded to the new legislation.
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2. Recommendations

- 2.1 Elected members are asked to note:
 - a) the Children (Equal Protection from Assault) (Scotland) Act 2019 came into force on 7 November 2020; and

- b) the work undertaken to provide updated guidance and training to Council and Renfrewshire Child Protection Committee partner agency staff on the change of legislation.
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3. Background

- 3.1 On 3 October 2019, the Children (Equal Protection from Assault) (Scotland) Act was passed by the Scottish Parliament. The Bill which became the Act was introduced to the Scottish Parliament by John Finnie MSP in 2017.
- 3.2 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 so long as it did not involve excessive force, hitting or smacking the child on the head or the use of an implement.
- 3.3 The intentions behind the Act are broadly three-fold:
- to promote and protect the safety and wellbeing of children by providing them with the same protection from assault as adults, reflecting the body of evidence showing that physical punishment is harmful and is not an effective disciplinary tool;
 - to drive a change in attitudes towards the use of physical punishment; and
 - to clarify the law and make it clear that no form of physical punishment will be permitted.
- 3.4 This Act addresses longstanding concerns that children have not had the same equal protection (afforded to adults) in law from physical assault. As it removes the common law defence of 'reasonable chastisement' or 'justifiable assault' currently available to parents and carers to defend themselves against criminal charges, where there has been evidence of physical harm towards children in their care.
- 3.5 This defence ceased in Scotland on 7 November 2020 and is no longer available to a parent or carer to explain or rationalise their actions. Scotland is the first part of the United Kingdom to pass a law like this. The Welsh Assembly passed legislation in early 2020 which will make a similar change to the law in Wales. Other countries have passed legislation with similar effect, including Ireland and New Zealand, along with Scandinavian countries like Denmark and Sweden.
- 3.6 The Children (Equal Protection from Assault) (Scotland) Act 2019 applies to children under the age of 16 years at the time of the assault. Assaults on young people over the age of 16 years, will follow existing police processes and be investigated under the crime of common law assault.
- 3.7 Regarding an alleged perpetrator, the Act applies to anyone aged 16 years or over, who is suspected or alleged to have assaulted a child or young person in their care.

This may 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; and
- person who has charge or care of the child or young person at the time of the incident.

- 3.8 Given such a significant change to legislation, Renfrewshire Child Protection Committee convened a meeting of senior officers from its partner agencies in November to discuss how this would impact upon practice locally. It was agreed that a short life working group would be established in order to take forward the development of guidance for staff working in the partnership in relation to the legislation.
- 3.9 The group was led by the Social Work Children's Services Manager and had representation from a wider range of statutory agencies such as Police Scotland, Health, Housing and the Scottish Children's Reporter's Administration.
- 3.10 This group has produced updated guidance for staff working in the Renfrewshire Child Protection Committee partnership. The new guidance provides information about the changes brought about because of the legislation but also reminds staff they must continue to recognise and respond quickly to any possible physical harm, abuse, chastisement or punishment of a child or young person. Furthermore, an online briefing and training course has been developed and was made available to staff in February. This will be incorporated into the RCPC interagency calendar going forward.
- 3.11 The Group which developed the guidance and training will continue to meet on a regular basis in the coming months. This is in order to provide a forum to discuss and consider the impact the change in legislation has on front line practice. All of the statutory agencies will be represented in this forum and will allow us to adapt the guidance and training as required.
- 3.12 The Social Work Children's Services Manager from Renfrewshire Council has been invited by the Welsh Government to participate in a "Learning from Scotland" session in relation to their implementation of the Welsh Equal Protection from Assault Legislation.

Implications of this report

- 1. Financial**
None.
- 2. HR and Organisational Development**
None.
- 3. Community/Council Planning**

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| Our Renfrewshire is fair | - This legislation means all residents of Renfrewshire have equal protection from assault and physical harm. |
| Building strong, safe and resilient communities | - This legislation and the professional guidance which accompanies ensures our communities are safe and supportive places for children to grow up in. |
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4. **Legal**
None.

 5. **Property/Assets**
None.

 6. **Information Technology**
None.

 7. **Equality and Human Rights**

(Please select the statement applicable to the recommendations contained within this board report and delete remaining statements)

 (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because for example it is for noting only. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website. (Report author to arrange this).

 8. **Health and Safety**
None.

 9. **Procurement**
None.

 10. **Risk**
None.

 11. **Privacy Impact**
None.

 12. **Cosla Policy Position**
None.

13. Climate Risk
None.

List of Background Papers

(a) Background Paper 1: None.

Children's Services
JT/MMcC/KO
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