



Angus Child Protection Committee Updated Briefing for Professionals Children (Equal Protection from Assault) (Scotland) Act 2019

The [Children \(Equal Protection from Assault\) \(Scotland\) Act 2019](#) came into force on 7th November 2020 and practice in Angus has recently been reviewed with amendments to protocol and practice which are updated below.

This briefing is for all professionals who work with children, parents and carers and aims to ensure that all staff:

- remain aware of the change in legislation which gives children the same protection as adults from any assault including what has previously been known as 'reasonable chastisement'.
- are aware of their roles and responsibilities when responding to concerns about Equal Protection.

This guidance does not replace usual child protection procedures and every professional must follow their own agency child protection policy without delay when there is a concern for a child's safety.

What is it?

The Children (Equal Protection from Assault) (Scotland) Act 2019 removed the statutory defence at Court in relation to "justifiable assault" or "reasonable chastisement" in the exercise of "parental rights" or of a right derived from having charge or care of a child.

The **Lord's Advocates Guidance** defines Equal Protection criteria as:

- The nature of the offence is a minor physical assault.
- There is no evidence of physical injury or adverse effects, including fear or alarm.
- There are no obvious risk or safety considerations in relation to the child.
- The suspect has not been previously prosecuted in relation to an offence against a child or an offence involving domestic abuse (regardless of whether or not they were convicted).
- The circumstances of the assault do not raise any Child Protection concerns.

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Who is covered?

Child victims applies to children **under the age of 16 years** at the time of the assault.

Suspects can be anyone who is aged 16 years or over who is alleged to have assaulted the child. This can be the:

- Parent of the child
- Legal guardian
- Person who has parental rights of the child
- Person who has charge or care of the child at the material time

PROFESSIONAL RESPONSIBILITIES

As noted above, where any professional has a concern for the safety or wellbeing of a child or young person, they must report this in line with their child protection and child wellbeing policy.

Prior to the 7th November 2020 parents and carers were able to use reasonable chastisement in the management of their child's behaviour. The boundaries of 'reasonable chastisement' have always been difficult to define and it has always been and continues to be the case that any form of hands-on contact towards a child can be reported under child protection guidance.

The change in legislation put the rights of children not to be assaulted on the same footing as the rights of adults. It removed the defence of what a parent (or other adult) considers might be reasonable to discipline or punish their own children or children in their care.

In this respect the law is clear that any concern that a child or young person has experienced an assault should be reported to Police. If there are concerns regarding a child's welfare, consideration should be given to a referral to the locality social work team as per your agency's child protection policy.

If you believe a child to be at immediate risk, contact the police using Emergency number 999.

Previous practice, whereby professionals may have used their discretion to take no action, is not acceptable. All cases will be shared with Police.

REPORTING AN EQUAL PROTECTION CONCERN

If staff become aware of an Equal Protection Concern, they must contact the child's **Named Person** and, if they have one, their **Lead Professional**.

To ensure that the response is proportionate, it is important to gain an understanding of what the child has experienced. Using open questions such as 'tell me more' the referrer needs to establish:

- Who caused the harm?
- When did the incident take place?
- Where on the body was the child harmed?
- Are there any marks?
- Has this happened before i.e., is this a pattern of behaviour?
- Does the child have any other worries?

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For Equal Protection, there is no requirement for a Child Protection referral or CP1 to be submitted to Social Work, however details of the child, family and concern, including the contextual information from above, should be shared to the Locality team via email. For clarity, please use the Email Header **EP - Child's Initials & DOB**. The referrer must include any other relevant information such as any welfare concerns. This will allow the Social Work Team to assess whether the concern is an Equal protection matter or whether a Social Work response is required.

Parents should be informed by the referrer that their child has raised an Equal Protection concern that has been shared with police and social work. This is an ideal opportunity to check in with the family and remind parents of the Equal Protection Act.

Locality social work teams contact details:

For Montrose, Brechin and surrounding areas please call 01674 907611 or email LocalityMonBre@angus.gov.uk

For the Forfar, Kirmuir and surrounding areas please call 01307 491850 or email LocalityForKir@angus.gov.uk

For the Arbroath, Carnoustie, Monifieth and surrounding areas please call 01241 465595 or email LocalityArb1@angus.gov.uk

If you are not sure where in Angus a child resides please contact the Accessline: 03452 777 778 or email Childrenandfamilies@angus.gov.uk

SOCIAL WORK ROLE

A basic systems check should be carried out on Eclipse to establish if there is any relevant information that should be considered.

For Child Protection and Welfare concerns, and children already being supported by Social Work, Social Workers should follow referral protocol as normal.

For Equal Protection Concerns, the information provided by the referrer will be forwarded on to Police Scotland at TaysideIRD@scotland.police.uk (01382 596012). Please also copy in the School's NP email address for school age children; and TAY.chpartners@nhs.scot for children who do not attend school. The IRD desk will confirm receipt of the email.

There is no further role for Social Work and there is no requirement to record this action on Eclipse.

POLICE ROLE

No new substantive crime has been introduced; Equal Protection offences will be recorded as a common law assault.

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The Act provides Police with the power to respond to investigations which meet the criteria in the **Lord Advocate's Guidelines (below)** with the use of Recorded Police Warnings (where applicable) as an alternative to prosecution.

- The nature of the offence is a minor physical assault.
- There is no evidence of physical injury or adverse effects, including fear or alarm.
- There are no obvious risk or safety considerations in relation to the child.
- The suspect has not been previously prosecuted in relation to an offence against a child or an offence involving domestic abuse (regardless of whether or not they were convicted).
- The circumstances of the assault do not raise any Child Protection concerns.

This approach has been adopted to emphasise the importance of making justified and informed decisions, and avoiding any unnecessary enforcement action that may not be in the child's best interests.

If the suspect has been previously prosecuted in relation to an offence against a child or an offence involving domestic abuse (regardless of whether they were convicted) then a recorded police warning would not be appropriate and instead could lead to prosecution.

Police Scotland Guidance

Police Scotland will make decisions under the Act taking into account the following:

- Equal Protection is for very minor, isolated assaults on children.
- Officers will fully investigate Equal Protection reports.
- Where appropriate, Equal Protection incidents will not require the suspect to be arrested nor the child interviewed.
- The suspect and the child will be allowed to leave the scene at the discretion of the officer where there are no child wellbeing or safety concerns (to include record checks).
- If, having concluded all initial enquiries, the incident remains uncorroborated, an interview of the child may be required to evidence the crime;
- It is vital that the decisions taken are focused on the **best interests of the child**. As such, the advice and guidance of the Child Protection Investigation Unit can help inform such decisions and the justification for the Police approach taken. Where the incident remains uncorroborated, multi-agency discussion will take place to determine the best course of action. Where a joint investigative interview is thought to be required (due to age, additional needs of the child etc) then this is a decision that will be made at an IRD. An IRD is not required if the child is of an age/level of understanding to simply provide a witness statement (in this case, this would most likely be in the presence of another partner agency as is currently undertaken for other minor investigations involving children).
- A Child Concern report will always be submitted by Police Scotland. **It should be clear in the PCCR that Social Work have had sight of the concern.**
- Recorded Police Warnings will be retained for 2 years and will be considered if another crime is committed in that time period. This warning will not be

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automatically included on an enhanced disclosure certificate or Protecting Vulnerable Groups (PVG) scheme record.

NAMED PERSON ROLE

The role of the [Named Person](#) is to promote, support and safeguard the wellbeing of children.

At the time of the incident and/or on receipt of the Police Child Concern Report (PCCR), the Named Person should contact the child's parents to offer them support and remind them of the Equal Protection from Assault Act which removes any justification for hitting/smacking children.

The Named Person should also share any relevant information/outcomes from the PCCR with the referrer.

The details from the PCCR must be added to the child's chronology as per the guidance in the Responding to Child Concern Reports – Good Practice Guide for Angus.

WHERE CAN PARENTS ACCESS ADVICE AND SUPPORT?

[The Parent Club website](#) has tips on coping with being a parent. It also has a search directory of support services.

If talking to someone might help, they can call Children 1st Parentline on 08000 28 22 33. This is a freephone number.

Or they can chat to someone online at <https://www.children1st.org.uk/parentline>

Angus Council Access Line 03452 777 778 or on [Angus Council Website](#)

WHERE CAN CHILDREN ACCESS ADVICE AND SUPPORT?

[Children and Young People's Commissioner Scotland](#)

Children and young people should be encouraged to talk to an adult that they trust. Or they can call Childline for free on 0800 1111

Angus Council Access Line 03452 777 778 or on [Angus Council Website](#)

Child Law Centre

<https://childrenslawcentre.org.uk/for-young-people/>

Should you have any queries on this briefing, please contact ProtectingPeopleAngus ProtectingPeopleAngus@angus.gov.uk

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Equal Protection – Flow Chart

Professional becomes aware of potential equal protection concern for a child.



Share concern with NP or LP if they have one.



Gain an understanding of what the child has experienced.



NP shares concern and any relevant information to Social Work via email.
No CP referral is required for EP.



NP informs parents.



SW carry out basic systems check.



If it remains an EP concern Social Work forward the email to Police at:
TaysideIRD@scotland.police.uk and CC in schools NP email address.
No entry on Eclipse is required.



Police will make decisions under the act, taking account of the Lord Advocate's guidance.



Police child concern report will be generated.



Following receipt of PCCR, NP will have EP conversation with parents (if not already done so) and update chronology with details of PCCR.

Key: EP - Equal Protection, NP – Named Person, LP – Lead Professional, SW – Social Work, CP – Child Protection,
PCCR – Police Child Concern Report

If at any stage there are additional welfare or child protection concerns for the child, the concern will be treated as a referral, not an EP concern.