

ALL WALES PRACTICE GUIDE

Last updated: February 2022

Safeguarding children in relation to the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020

This practice guide is to be used from 21 March 2022, when the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 comes into force.

To be used in conjunction with the Wales Safeguarding Procedures

Who is this practice guide for?

This guide is primarily for practitioners working with children (up to the age of 18), their parents and carers or anyone acting in loco parentis¹. This includes those working in early years, childcare, play provision, social care, education, health, the police, youth offending and youth, community and family support services (including the third sector) and foster care and residential care.

What is this guide for?

Safeguarding children is a responsibility shared by everyone in contact with children.

The Wales Safeguarding Procedures support individuals and agencies across Wales to understand their roles and responsibilities in keeping children and adults safe. They support a consistent approach to safeguarding practice and procedures.

This practice guide provides additional information about safeguarding responses where a child is affected by physical punishment. It should be used in conjunction with the Wales Safeguarding Procedures.

Effective safeguarding arrangements in every local authority area should be underpinned by two key principles:

- safeguarding is everyone's responsibility: for services to be effective each practitioner and organisation must play their full part both individually and in collaboration; **and**
- a child-centred approach: for services to be effective they should be based on a clear understanding of the personal outcomes for the child and what matters to them. The rights of the child should be central to the approach and their best interests should always be paramount.

There are some issues which are common across safeguarding practice guides and some which are specific to the safeguarding issue being considered:

- The United Nations Convention on the Rights of the Child (UNCRC) guarantees every child the right to grow up healthy, happy and safe. This includes to be protected from harm and be appropriately supported to recover from abuse. Practitioners and professionals should adopt [A Children's Rights Approach](#) in line with the duty of due regard to the (UNCRC) and follow [National Participation Standards](#)
- Agencies must work together to provide a joined up response to safeguarding issues as set out in the Wales Safeguarding Procedures.
- There is a statutory Duty to Report Children at Risk on relevant partners under Section 130 of the Social Services and Well-being (Wales) Act 2014. [Social Services and Well-being \(Wales\) Act 2014 Safeguarding Summary](#)
- Information sharing is central to good safeguarding practice. Practitioners must share information in accordance with data protection legislation. Data protection legislation allows for the sharing of information and should not be automatically used as a reason for not doing so. **One of the specific circumstances which provides for information sharing is in order to prevent abuse or serious harm to others.** When information is not shared in a timely and effective way, decisions about how to respond may be ill informed and this can lead to poor safeguarding practice and leave children at risk of harm.

- Our response to safeguarding issues should be proportionate, child centred and based on the individual needs and circumstances of the child. Children need to be meaningfully involved in the planning of their care and support.
- We know that sensory impaired and disabled children are at an increased risk of being abused compared with their non-disabled peers. They are also less likely to receive the protection and support they need when they have been abused. Practitioners should explicitly recognise the increased vulnerability of sensory impaired and disabled children to abuse and physical punishment and the barriers they may face, especially around communication and provide for any additional safeguards needed to protect sensory impaired and disabled children.
- Practitioners should familiarise themselves with the culture and beliefs of those families they work with. Practitioners should not be afraid to ask about particular behaviours and the reasons for them in a sensitive manner and should never overlook potential harmful practices on the basis of cultural sensitivity.
- All practitioners must be alert to the possibility of the child being at risk of harm regardless of the setting they are living in, in foster care, adoptive placements or a children's home. Children in placements or those who are adopted will have relationships that may include foster carers, adoptive parents, birth parents, siblings or other birth relatives. These relationships and any contact may be positive and welcomed or undesired and deemed a risk. Children's past experience of abuse and physical punishment may leave them at risk of having emotional, behavioural and mental health difficulties which may continue to make them vulnerable.
- **Children should be seen and heard.** Evidence from Child Practice Reviews has highlighted the need for children to meet on their own with practitioners, away from parents and carers in an environment where they feel safe, so that the child can speak about the impact that the circumstances which have prompted safeguarding concerns are having on them. There are too many cases where the child was not seen or asked their views or feelings or where this did not happen enough. Providing time and space to listen directly to children supports a system which is child-centred and promotes good safeguarding practice.²
- This practice guide provides additional information about safeguarding responses in relation to the **Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020** (Children Wales Act). It should be used in conjunction with the Wales Safeguarding Procedures.

- **The Children Wales Act does not create a new criminal offence**, it abolishes a defence to the existing criminal offences of assault and battery against a child. In general, there are, therefore, no changes to safeguarding³ and criminal justice processes⁴ due to the defence of reasonable punishment being removed in March 2022 when Section 1 of the Children Wales Act comes into force.
- However, this practice guide provides additional information to practitioners about what the legislation means for their practice.

What is physical punishment?

- It isn't possible to give a set list of what makes up physical punishment because it can be anything where a child is punished using physical force. In law, physically punishing a child is seen as common assault⁵.

What is meant by physical harm under the Social Services and Well-being (Wales) Act 2014

- The removal of the defence of reasonable punishment in the Children Wales Act, has no impact on the meaning of 'physical harm' under the Social Services and Well-being (Wales) Act, or of 'significant harm' under the Wales Safeguarding Procedures.
- The Wales Safeguarding Procedures include information about what is meant by 'significant harm' and about how we define different kinds of harm. In line with statutory guidance⁶ **Physical harm** is defined as 'hitting, slapping, over or misuse of medication, undue restraint, or inappropriate sanctions. This is not an exhaustive list.

What is changing?

The Children Wales Act received Royal Assent on 20 March 2020 and will come into force on Monday 21 March 2022.

Prior to 21 March 2022

Physical punishment has been illegal in schools, children's homes, local authority foster care homes and childcare settings for some time. However if a parent, carer or individual acting in loco parentis in an unregulated setting (e.g. part time places of learning, worship,

play and leisure) was charged with common assault whilst looking after a child in their care, they could try to defend their actions by saying the punishment was reasonable. The defence of reasonable punishment is a defence to the existing common law offences of assault and battery⁷, for parents and those acting in loco parentis⁸ only and is not an absolute defence⁹. It is not available for any level of assault more serious than common assault, such as actual bodily harm.

From 21 March 2022

When Section 1 of the Children Wales Act comes into force, it will remove the defence of reasonable punishment. From this time all physical punishment of children will be illegal in Wales, including by parents, carers and anyone acting in loco parentis in any setting in Wales.

Removing the defence of reasonable punishment, makes it easier for children, parents and carers, practitioners and the public to understand the law. This will improve the ability of practitioners working with families to protect children by removing the current potential for confusion over what is an acceptable level of physical punishment. It will also mean that practitioners can provide clear, unambiguous advice to parents and carers that any level of physical punishment is illegal in Wales.

It will help protect children's rights and send a clear signal that physically punishing children is not tolerated in Wales.

Why is the law changing?

- The overarching aim of the Children Wales Act is to help protect children's rights by prohibiting the physical punishment of children by parents, carers and those acting in loco parentis within Wales, including visitors to Wales. In doing so, children in Wales will have the same legal protection from assault as adults.
- The legislation together with an awareness-raising campaign and support for parents and carers to adopt positive parenting approaches¹⁰, is intended to bring about a further reduction in the use and tolerance of the physical punishment of children in Wales.
- The United Nations Committee on the Rights of the Child recognises that any physical punishment of children, however minor, is incompatible with the human rights of children under the United Nations Convention on the Rights of the Child (UNCRC) Article 19 (the right to protection from all forms of violence), and has called for it to be abolished. The Committee has issued a general comment to highlight that children, like everyone else,

have a right to respect for their human dignity, physical integrity and equal protection under the law.¹¹

Who will the law change apply to?

The Children Wales Act applies to anyone in Wales caring for children (under the age of 18 years) in their care. This may be the:

- Parent, legal guardian or person who has parental rights of the child.
- Person who has responsibility of the child at the time of the incident (for example aunts, uncles, grandparents, friends and babysitters, adults who run clubs or other groups for children, including unregulated places of learning, worship, play, or leisure and au pairs).

As with other laws it will also apply to visitors to Wales.

Physical punishment has been illegal in schools, children's homes, local authority foster care homes and childcare settings for some time. Following this law change, all physical punishment of children in Wales will be illegal in all settings.

What actions by parents would or would not be acceptable once the defence is removed?

- There is a difference between physical punishment and the everyday physical interactions which take place between parents and children. The common law acknowledges that certain physical interventions carried out by parents, in the exercise of parental authority in relation to children are necessary and lawful.
- Adults use physical interventions to keep children safe from harm, such as holding back a child from running into a road or physically holding a child to keep them from injuring themselves or others, or to stop them putting their hand into a fire or onto a hot surface. These types of interventions are all about keeping a child safe. However if a parent saw their child do something dangerous and reacted by physically punishing them this would not be acceptable under the law.
- Parents cuddle, brush hair, brush teeth, play 'rough and tumble', and lift children into car seats on a daily basis. The legislation does not prevent any of these activities – it only seeks to end physical punishment. There may be circumstances where such a physical

intervention could amount to physical punishment. There is, for example, a difference between encouraging and assisting an uncooperative child to brush their teeth to maintain good dental hygiene and aggressive tooth brushing intended to cause a child pain as a punishment for failing to co-operate.

- The circumstances, wider context and the parent or carer's intention should guide decision making on whether the action is likely to be considered physical punishment and therefore unlawful.
- The legislation is supported by advice for parents and carers on alternative ways to encourage positive behaviour in children including through the [Parenting. Give it time campaign](#).

Evidence Base - Impact of physical punishment on children

- A review of evidence published in 2018¹² reported that:
 - the majority of researchers in the field make the judgement that all physical punishment under all conditions is potentially harmful to children;
 - although there is no definitive evidence that 'reasonable' physical punishment causes negative outcomes for children, there is evidence that it is associated with negative outcomes;
 - physical punishment for defiant children is no more effective at changing short-term behaviour than other forms of non-physical discipline; and
 - there is no reliable evidence demonstrating that 'reasonable' physical punishment has long-term developmental benefits, or is more effective at changing short-term behaviour, relative to other, non-physical means.
- An analysis of 20 years' research¹³ found:
 - the physical punishment of children is not effective in improving children's behaviour.
 - a definitive link between physical punishment and behavioural problems such as aggression and antisocial behaviour.
 - no study showing physical punishment reduced problem behaviour or promoted positive outcomes.

Responding to Concerns

Members of the public

In line with the Wales Safeguarding Procedures members of the public have been advised through the [awareness raising campaign](#) that if they have concerns about an incident of assault on a child the report should be made as soon as possible to the Local Authority. If there are immediate concerns about a child's safety they should contact the police.

Practitioners

Practitioners should continue to follow the Wales Safeguarding Procedures as normal.

A proportionate response

- If any agency involved with the child has concerns that the child may have care and support needs that their parent(s)/carer(s) cannot meet without support, they should seek parental consent to refer the child to the home local authority Information, Advice and Assistance service for an assessment of their needs.
- Practitioners should follow the safeguarding policy for the place where they work and discuss any concerns about a child with their manager and/or Designated Safeguarding Person/Lead. However if it is not possible to contact this person for any reason the practitioner should report their concerns directly to their local authority Children's Social Services. If a child is at immediate risk of harm they should contact the Police.
- Relevant partners have a Duty to Report Children at Risk (Section 130) under Part 7 of the Social Services and Well-being (Wales) Act. Section 130(4) defines a "child at risk" as a child who: a) is experiencing or is at risk of abuse, neglect or other kinds of harm; and b) has needs for care and support (whether or not the Local authority is meeting any of those needs).

Children visiting Wales

- Where an offence is committed in Wales the arrangements for responding are the same, no matter where the child ordinarily resides (lives).
- There should be no delay in responding to information about a child at risk because the child is not ordinarily resident in the local authority where the safeguarding issue is identified.

Responding to incidents of assault on a child when they are reported to the police

After the Children Wales Act comes into force in the event of information being shared with the police or it coming to their attention, the police will continue to follow normal safeguarding and criminal justice procedures.

From 21 March 2022, when Section 1 of the Children Wales Act comes into force the police will continue to have responsibility for:

- conducting inquiries into any alleged offence;
- undertaking an initial assessment of whether there is sufficient evidence that an offence has been committed;
- considering whether it is in the public interest to take further action, or whether no further action should be taken. Police public interest deliberations would take account of social services considerations designed to meet the best interests of the child; and
- determining (if further action is taken) whether the offence and the individual committing it is suitable and eligible for an out of court disposal (O OCD) or whether the case should be referred to the CPS for advice.

If the police receive a report that a child has been assaulted, they will decide what action to take, if any, based on the facts and individual circumstances of the case:

- If there is insufficient evidence to proceed, or if it is considered not to be in the public interest to take the case forward then the police may decide to take No Further Action (NFA). In this case they can signpost to early intervention services, such as Families First.
- If the police decide to take further action (e.g. where there is sufficient evidence and it is considered to be in the public interest) then they will determine the most appropriate disposal that is appropriate to the circumstances and proportionate to the offence committed. O OCDs (Community Resolution¹⁴ and Conditional Caution¹⁵) are a way of dealing with less serious offending and provide an alternative to prosecution through the courts. The focus of O OCDs is on rehabilitation and conditions are attached such as attending a course.

Out of Court Parenting Support Scheme

- In cases where the police decide to take further action against a parent who has physically punished their child, there will be the option of offering tailored parenting support in conjunction with an OOC.
- Tailored parenting support will be made available in each local authority. The support will be designed to encourage and support parents/carers in adopting positive parenting techniques while helping parents/carers understand why the physical punishment of children is unacceptable in all circumstances.
- Each police force will be making relevant staff aware of these arrangements and how a referral can be made.

Appendices

Sources of information and support

Further information and background on the change in the law can be found [here](#).

Information for parents and carers

Advice and support is available for parents and carers of children and practitioners should make them aware of their availability.

- [Parenting. Give it time](#) offers positive parenting practical hints, tips and expert advice to encourage good behaviour from children and alternatives to physical punishment.
- Universal parenting support and advice is provided by midwives, health visitors, GPs and [Family Information Services](#).
- Early help programmes such as [Flying Start](#) (if parents live in a Flying Start area) and [Families First](#).
- There are many third sector organisations which support parents, including: [NSPCC](#), [Action for Children](#) and [Family Lives](#).

Information for children and young people

Meic is the helpline service for children and young people up to the age of 25 in Wales. From finding out what's going on in your local area to help dealing with a tricky situation, Meic will listen even when no-one else will. They won't judge you and will help by giving you information, useful advice and the support you need to make a change. You can:

- Chat to someone from Meic on-line: <https://www.meiccymru.org/>
- Call Meic for free and talk to someone: **0808 802 3456**
- Text Meic for free on: 84001

You can contact the [Children's Commissioner for Wales](#) Investigation and Advice service which is free and confidential. It's there as a source of help and support if children and young people or those who care for them feel that a child's been treated unfairly. You or you parent/carer can:

- Call the service for free: **0808 801 1000**
- Email the service: advice@childcomwales.org.uk

Childline is a free, private and confidential service where anyone under 19 can access support and advice. The Childline website www.childline.org.uk has information and advice pages as well as tools to help you work through problems yourself. If you want to talk or chat to Childline you can:

- Call Childline for free: **0800 1111**
- Register on-line to email Childline or chat on-line to a counsellor: www.childline.org.uk/get-support/

If you want to talk to Childline in Welsh see www.childline.org.uk/get-support/

¹ Those acting in loco parentis refers is anyone who has responsibility for a child whilst the parent is absent.

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/175391/Munro-Review.pdf

³ Following the [Wales Safeguarding Procedures \(WSP\)](#). The WSP help practitioners apply the legislation [Social Services and Wellbeing \(Wales\) Act 2014](#) and statutory safeguarding guidance [Working Together to Safeguard People](#).

⁴ Following the [Code for Crown Prosecutors](#) and [Charging Standard on Offences Against the Person](#) which will be revised by the CPS to take account of the change in the law in Wales.

⁵ In the Children Wales Act physical punishment is defined as any battery carried out as punishment and referred to as “corporal punishment”.

⁶ [working-together-to-safeguard-people-volume-5-handling-individual-cases-to-protect-children-at-risk.pdf \(gov.wales\)](#)

⁷ Criminal Justice Act 1988, Section 39.

⁸ In unregulated settings.

⁹ [The CPS charging standard](#) explains the limits on its availability, and makes clear that even within those limits, the offending behaviour must be reasonable and moderate, taking account of factors such as the nature and context of the defendant’s behaviour, duration of the behaviour, physical and mental consequences in respect of the child, age and personal characteristics of the child, and reasons given by the defendant for administering the punishment.

¹⁰ Positive parenting refers to parental behaviour based on the best interests of the child that is nurturing, empowering, non-violent and provides recognition and guidance which involves setting of boundaries to enable the full development of the child (Council of Europe). It is about encouraging parents to make choices about the sort of parents they wish to be and adopting pro-active, positive approaches to managing their child’s behaviour.

¹¹ United Nations Committee on the Rights of the Child (2006): Forty Second Session. General Comment No.8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. Geneva: United Nations.

¹² [Wales Centre for Public Policy - Parental Physical Punishment: Child Outcomes and Attitudes](#)

¹³ [Physical punishment and child outcomes: a narrative review of prospective studies - The Lancet](#)

¹⁴ A Community Resolution does not form part of an individual's criminal record – However it may be disclosed as part of an enhanced DBS check. Acceptance of responsibility is required. Failure to comply with any of the conditions does not result in prosecution for the offence but the police may take this into account if the person offends again.

¹⁵ A Conditional Caution can be offered to a person who has admitted to committing the offence and where the police have sufficient evidence to charge. It forms part of a person's criminal record. Failure to comply with any of the conditions may result in prosecution for the offence.