



# Criminal Justice (Scotland) Act 2003

## 2003 asp 7

### PART 7

#### CHILDREN

#### 51 Physical punishment of children

- (1) Where a person claims that something done to a child was a physical punishment carried out in exercise of a parental right or of a right derived from having charge or care of the child, then in determining any question as to whether what was done was, by virtue of being in such exercise, a justifiable assault a court must have regard to the following factors—
  - (a) the nature of what was done, the reason for it and the circumstances in which it took place;
  - (b) its duration and frequency;
  - (c) any effect (whether physical or mental) which it has been shown to have had on the child;
  - (d) the child's age; and
  - (e) the child's personal characteristics (including, without prejudice to the generality of this paragraph, sex and state of health) at the time the thing was done.
- (2) The court may also have regard to such other factors as it considers appropriate in the circumstances of the case.
- (3) If what was done included or consisted of—
  - (a) a blow to the head;
  - (b) shaking; or
  - (c) the use of an implement,the court must determine that it was not something which, by virtue of being in exercise of a parental right or of a right derived as is mentioned in subsection (1), was a justifiable assault; but this subsection is without prejudice to the power of the court so to determine on whatever other grounds it thinks fit.
- (4) In subsection (1), “child” means a person who had not, at the time the thing was done, attained the age of sixteen years.

---

*Status: This is the original version (as it was originally enacted).*

---

- (5) In section 12 of the Children and Young Persons (Scotland) Act 1937 (c. 37) (cruelty to persons under sixteen)—
- (a) in subsection (1), the words “assaults,” and “assaulted,” are repealed; and
  - (b) subsection (7) is repealed.