

Children (Equal Protection from Assault) (Scotland) Bill

Page 2: About you

Are you responding as an individual or on behalf of an organisation?

on behalf of an organisation

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

No Response

Please select the category which best describes your organisation

Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)

Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.

I am content for this response to be attributed to me or my organisation

Please insert your name or the name of your organisation. If you choose the first option above, this should be the name as you wish it to be published. If you choose the second or third option, a name is still required, but it will not be published.

Unicef UK

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

Page 7: Your views on the proposal

Q1. Which of the following best expresses your view of the proposal of giving children equal protection from assault by prohibiting all physical punishment of children?

Fully Supportive

Q1. Which of the following best expresses your view of the proposal of giving children equal protection from assault by prohibiting all physical punishment of children?

Please explain the reasons for your response

Children have the right to equal protection from assault, both in law and practice. Unicef UK is strongly in favour of the law being changed in Scotland, and across the UK, to ban the physical punishment of children in all settings, including the home. Currently, children in Scotland do not enjoy the same legal protection from assault as adults. A defence is available which enables parents who have been charged with assaulting their child to argue that they were using physical punishment justifiably. Assault of a child is never justified and no line can be drawn between "acceptable" and "unacceptable" violence against children. Allowing physical punishment of children in law is unjust, violates international child rights law and risks a tolerance of violence against children more widely. The continued failure to legislate contravenes Scotland's international human rights obligations. The UN Convention on the Rights of the Child (UNCRC) is unambiguous that children have a right to equal protection, and requires that state parties take appropriate legislative measures to protect children "from all forms of physical or mental violence, injury or abuse..." (Article 19) and that children need a range of safeguards, including specific legal protection (General Comment No. 817). The UN Committee on the Rights of the Child has repeatedly raised concerns about the failure of the UK State Party, including Scotland, to prohibit all physical punishment in the family, most recently in its 2016 examination [1]. Similarly, as part of the Universal Periodic Review at the Human Rights Council, seven recommendations were made to the UK in 2017 regarding banning physical punishment of children. The proposed Bill would bring Scotland in line with international standards, as articulated in the UNCRC and implemented in almost all other European countries. Furthermore, it would enable Scottish Government to address the relevant Concluding Observation from the UN Committee on the Rights of the Child in line with the duty on Scottish Ministers to consider how best to further children's rights in Scotland and to act to do so where appropriate [2]. [1] Committee on the Rights of the Child, 'Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland', 2016.

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En

[2] Section 1, Children and Young People (Scotland) Act 2015

<http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

Q2. Could the aims of the proposal be better delivered in another way (without a Bill in the Scottish Parliament)?

No

Please explain the reasons for your response

See answer to question 1

Q3. What do you think would be the main advantages, if any, of giving children equal protection from assault by prohibiting all physical punishment of children?

There are many important advantages for giving children equal protection from assault and prohibiting physical punishment; and indeed a moral and legal imperative to do so. As outlined in the previous question, children have a right to legal protection from physical punishment in all settings. This right is recognised under international treaties, including the UN Convention on the Rights of the Child (UNCRC).

A legal ban, combined with a public awareness campaign, sends a powerful message across society that no violence against children is justifiable. Reforming laws to ensure children can no longer be lawfully assaulted and subjected to violent punishment marks a turning point in society's relationship with children. It signals a recognition of children as rights holders and in enhancing their position in society, advances all their rights.

A large body of research on the harmful impacts of physical punishment reveals how prohibiting physical punishment is essential not only for children's right to protection from violence, but also for their rights to health, development and education. Moreover, research findings suggest that even mild forms of physical discipline can be harmful to children. The consequences of violent discipline range from immediate effects to long-term damage that children carry well into adulthood. The negative impacts of physical

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punishment include:

- direct physical harm
- longer term negative impacts on mental and physical health
- impaired cognitive development
- negative behavioural outcomes including increased antisocial behaviour, aggression as children, and violent and criminal behaviour as adults
- reduced educational attainment
- increased acceptance and use of other forms of violence
- broken family relationships.

A ban on physical punishment combined with a government led awareness campaign would also have positive impacts on parenting. Research has shown that physical punishment as a means for disciplining a child is ineffective for improving children's behaviour. Physical discipline is often used as a result of parental anger and frustration, or lack of familiarity with non-violent responses. UNICEF promotes strategies such as helping parents, caregivers and families better understand their child's early development and teaching them about positive parent-child interactions, including non-violent discipline.

Importantly, both children and parents in Scotland have spoken out on the negative impact of physical punishment of children. A consultation organised by the Scottish Youth Parliament found that 82% of young people agree that "all physical assault against children should be illegal". Over 80% of parents in Scotland agree that physical punishment is not effective and are in favour of alternative parenting strategies. Amongst those who support a change in the law in Scotland are: the Police Violence Reduction Unit, the Church of Scotland, Social Work Scotland, Scottish Police Federation, the Royal College of Nursing, the Royal College of Paediatrics and Child Health, and the Scottish Directors of the Public Health Group.

Q4. What do you think would be the main disadvantages, if any, of giving children equal protection from assault by prohibiting all physical punishment of children?

None

Page 11: Financial implications

Account of both costs and potential savings, what financial impact would you expect the proposed Bill to have?

neutral

in the reasons for your response

ould expect equal protection from assault to be largely cost-neutral, and in the longer-term provide a positive financial impact. While some immediate costs through public information campaigns and parenting support, these costs will be outweighed by the positive impact on children's well-being and anticipated economic gains. The direct economic costs of violence against children, and particularly physical punishment, include: i) Health care systems treating the short-term impact of injuries ii) Health care systems treating psychological and behavioural problems among adults that arise from the experience of violence in childhood. Health care systems incur costs in monitoring, preventing, protecting and responding to violence against children. Indirectly, physical punishment of children can lead to future economic costs, related to productivity losses arising from the way violence can impede child development. Toxic stress as a result of early experience has been found to inhibit optimal brain development of children with irreversible effects. Similarly for older children, physical violence can lead to short or long-term negative impact on employment and consequent loss of earnings in adulthood. Cumulatively, these losses equate to an economic cost to society. To estimate the cost of physical punishment, the Overseas Development Institute estimated that US\$7 trillion is lost due to violence against children each year, equivalent to 1.5% of global GDP [1]. [1] P. Pereznieta, A. Montes, S. Routier, L. Langston (2014) 'The costs and economic impact of violence against children', Overseas Development Institute, <https://www.odi.org.uk/publications/2014/06/the-costs-and-economic-impact-of-violence-against-children>

Page 12: Equalities

Q6. What overall impact is the proposed Bill likely to have on the following protected groups (under the Equality Act 2010): race, disability, sex, gender re-assignment, age, religion and belief, sexual orientation, marriage and civil partnership, pregnancy and maternity?

Positive

Please explain the reasons for your response

The proposed Bill will have a positive impact on protected groups under the Equality Act, as all children will receive the same legal protection from assault, regardless of their race, disability, sex, gender reassignment, age, religion and belief, and sexual orientation. This legislation should result in a reduction of physical punishment of children in practice over time, including for groups of children who may be disproportionately impacted. For example, research has shown that children with disabilities are especially likely to experience violence from adults, including violent punishment by their parents, teachers, carers and others. A study [1] published in 2013, which used UNICEF data on more than 45,000 2-9 year olds from 17 countries, found that children with disabilities were more likely to be physically punished and more likely to experience severe physical punishment than children without disabilities. Caregivers of children with disabilities were more likely to believe that they needed to use physical punishment than caregivers of children without disabilities. In addition to children with disabilities, young children are especially vulnerable to physical punishment. Children from minority groups, including linguistic, ethnic and sexual minorities, may be more likely to experience physical punishment than others, and physical punishment may have a gender dimension, with girls and boys experiencing different types or frequencies of violent punishment. [1] Source: Hendricks, C. et al (2014), "Associations between Child Disabilities and Caregiver Discipline and Violence in Low- and Middle-Income Countries")

Q7. Could any negative impact of the proposed Bill on any of these protected groups be minimised or avoided?

n/a

Page 14: Sustainability of the proposal

Q8. Do you consider that the proposed Bill can be delivered sustainably i.e. without having a disproportionate economic, social and/or environmental impact?

Yes

Page 15: General

Q9. Do you have any other comments or suggestions on the proposal?

It is worth considering the proposed Bill in Scotland in the light of international progress towards banning physical punishment of children worldwide, looking at the experience of other countries since enacting similar legislation. As of July 2017, 52 countries have prohibited all physical punishment in all settings, including the home. 55 more states have expressed a commitment to full prohibition [1]. The UK remains one of only four countries (UK, Italy, Switzerland, Czech Republic) in Europe where physical punishment remains a legal way of disciplining children, following France's ban in January 2017. Notably, Ireland reformed the law to provide for equal protection in October 2015. According to testimony by a former independent member of the Irish Senate, this had a positive impact across social work and policing by

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clarifying acceptable standards.

There have also been some promising developments in other parts of the UK, with the Welsh government seeking cross-party support for legislation to remove the defence of reasonable chastisement. In June 2017 the Welsh Government announced it will consult on proposals to remove the legal defence of 'reasonable chastisement' within the next 12 months.

Sweden was the first country to prohibit parents from using physical violence or emotionally abusive treatment as a means of child-rearing through legislation in 1979. The law banning physical punishment was accompanied by a large-scale national education and awareness raising campaign. The law itself does not contain penalties, but actions that meet the legal criteria of assault are subject to Chapter 3, Section 5 of the Penal Code. Effectively, children are given the same rights as adults to protect them from violent and other humiliating treatment.

The impact of the law has been significant and has made a measurable difference in children's lives, resulting in lowering the number of children hit by adults from 90 per cent to about 10 per cent over a 35-year period. Among parents, public support for physical punishment also decreased from over half to barely 10 per cent. Only two per cent of today's middle school pupils, aged 13 to 15, report experiencing physical punishment every other week, and 78 per cent report that they have never experienced physical punishment.

In New Zealand physical punishment was made unlawful in 2007 through repeal of the legal defence for the use of reasonable force "by way of correction". Legal reform was accompanied by promotion of positive parenting, including through government programmes and services promoting positive, non-violent child discipline. A recent study on long-term attitude change in New Zealand on physical punishment looked at public opinion surveys over the last three decades, and found a significant decline in approval of physical punishment from 89% in 1981, 58% in 2008, to 40% in 2013[2]. The steepest declines coincided with legal reform in the 1990s, when physical punishment was banned in schools and the start of public education campaigns, and in 2007.

Studies have shown that prevalence is decreasing and attitudes to physical punishment are changing in many countries, including Scotland and the rest of the UK. Increasingly, physical punishment is becoming less acceptable in the UK, and many parents express ambivalent and negative feelings regarding its use.

- In 1998, 61% of young adults reported that they had been physically punished in their childhood, while in 2009 this was true for just 43%. [3]
- In 1998 10% of young adults reported physical punishment 'on a regular basis' during childhood, while in 2009 this was only 3%. [3]
- In Scotland, 58% of mothers reported any use of 'smacking' with their 5-year-old children in 2006 (Millennium Cohort Study) [4]
- The Growing Up in Scotland study found that between 80 and 90% of participating Scottish parents said that smacking is 'not very' or 'not at all' useful. [5]

UNICEF's strategies for preventing violence against children, also supported by the World Health Organisation, have highlighted that social norm change can be accelerated by changes to laws and policies that make violent behaviour an offence send a message to society that it is not acceptable. Experience from other countries, such as New Zealand and Sweden, have shown that legislation in combination with public awareness campaigns can result in changes to public attitudes. Other examples of successful legal reform combined with public-awareness campaigns include compulsory seatbelt use introduced in the UK in 1983. Soon after the rules came into effect, 90% of car drivers and front-seat passengers were observed to be wearing seat belts, and these rates have been sustained since. According to road casualty statistics, between 1983 and 2012 there was a 60% reduction of fatalities and 67% reduction in serious injuries.

Regarding concerns over criminalisation of parents, the intention of legal reform is not to criminalise parents but rather to provide children with the same protections afforded to adults. International evidence has shown that protecting children fully in the law does not lead to trivial prosecution, and parents will be at no more risk of prosecution than they are for assaults of other adults. A 2002 study on the experience of countries with full legal protection from physical punishment, found that in Sweden, "...The ban on physical punishment has not led to parents being prosecuted in droves for 'trivial' incidents of assault...As with adult cases of assault, prosecutors exercise restraint and would not generally pursue a case that was to all extents and purposes considered petty." [6]

Q9. Do you have any other comments or suggestions on the proposal?

Given the many advantages for children's wellbeing, experience from other countries and consideration of children as rights-holders, Unicef UK strongly urges Scottish Parliament to support the intention of this Bill to provide children with equal protection from assault and recommends that the Scottish Government take steps to amend the law on physical punishment as a matter of urgency.

[1] <http://www.endcorporalpunishment.org/>

[2] D'Souza, A. J., et al (2016), 'Attitudes to physical punishment of children are changing', Archives of Diseases in Childhood.

[3] Radford L, Corral S, Bradley C, Fisher HL, Bassett C, Howat N, Collishaw S (2011), 'Child abuse and neglect in the UK today', London: NSPCC.

[4] Hansen K, Joshi H (2008), 'Millennium Cohort Study Third Survey: A User's Guide to Initial Findings', London: Centre for Longitudinal Studies, University of London.

[5] Bradshaw P, Cunningham-Burley S, Dobbie F, MacGregor A, Marryat L, Ormston R, Wasoff F (2008): Growing Up In Scotland: Sweep 2 Overview Report. Edinburgh: Scottish Government.

[6] Boyson R, Thorpe L (2002), 'Equal protection for children. An overview of the experience of countries that accord children full legal protection from physical punishment', London: National Society for the Prevention of Cruelty to Children.