

# Children (Equal Protection from Assault) (Scotland) Bill

## Page 2: About you

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

an individual

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".)

Professional with experience in a relevant subject

Please select the category which best describes your organisation

*No Response*

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 If you choose the second or third option, a name is still required, but it will not be published.

Máire McCormack

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**

Please explain the reasons for your response The Scottish Government's position is untenable. It is breaching its international human rights obligations: Each day that the 'justifiable assault' defence remains in the statute book, the Scottish Government cannot and should not claim that their aim is to make Scotland 'the best place for children to grow up.' The Scottish Government has been roundly - and regularly criticised by numerous international human rights bodies, including the United Nations, the Council of Europe and the European Union. It has reached a point where the continued calls are shaming this country, especially as so many others have now stepped up to the mark and taken action. These bodies are unequivocal in their calls for a child's right to protection from violence. Children currently do not have equal protection under the law as adults do and legislation must be enacted to remove the current defence. The Scottish Government has repeatedly stated that it "does not support 'smacking' as a way of disciplining children" and encourages "all parents to avoid physical punishment of children," but has made no move to change the law. John Finnie has taken an important step and this Bill is a great start. I hope that the Scottish Government sit up and take note and take action as a result. I am fully supportive of his proposals.

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**

I believe that legislation is the best way to achieve the aims of the proposal

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?

Legal reform would will help to ensure that our international human rights obligations are met and would bring us into line with other countries which have recognised that it is a breach of children's human rights to use violence as a mode of discipline. 52 states (globally) have completely prohibited physical punishment, including in the family and only four of the current 28 EU states have neither prohibited nor committed themselves to do so. Scotland and the UK as a whole are becoming increasingly out of step and increasingly isolated. Scotland has a great opportunity to lead reform and demonstrate its progressive, rights based approach to children - to recognise that it is both a breach of a child's physical and psychological integrity to be assaulted. How can we justify a reasonable level of violence, particularly on those most vulnerable in society?

2. There is also increased understanding of the impacts of violence towards children. Research commissioned in 2015 by Scotland's Children and Young People's Commissioner, the NSPCC, Children 1st and Barnardos which reviewed the international evidence on physical punishment produced robust findings from 98 international studies that physical punishment is detrimental to both child and adult outcomes and can even increase the risk of child maltreatment and abuse. It also demonstrates clearly the effect on both child, family and wider society.

Indeed the foreword, written by Professor Michael Marmot, (Professor of Epidemiology and Public Health (UCL)) states....

"This review has presented very strong and consistent evidence of the harmful effects of physical punishment on children and their families. The international evidence could not be any clearer – physical punishment has the potential to damage children and carries the risk of escalation into physical abuse..... "A supportive, nurturing and loving family environment is particularly important in early childhood to encourage and enable children to develop and reach their full potential. Wider society has a key role in protecting children through the creation of supportive conditions for families to flourish. Unfortunately in Scotland and across the UK many children do not have the best start in life. For many

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children, physical punishment is still part of their upbringing. This is despite the fact that physical punishment violates children's human rights according to the UN Convention on the Rights of the Child."

Changing the law should also help to bring down levels of violence across Scottish society and ultimately lead to a more accepting and tolerant society, where any violence is not tolerated in any shape of form. It is an important preventative measure

3. A further advantage is the clarity that this would bring to parents and to professionals, such as social workers and the police. I have personally witnessed children being assaulted - most recently on a bus when two of us called the police. It was evident that there was limited understanding about the current law. When I spoke to the police about the defence of 'justifiable assault' and the conditions set by the legislation, they found this hard to fathom and debated amongst themselves what constituted an 'implement.' To listen in to such discussions on the sidelines just highlights how ludicrous and wrong the current law is. Actually debating what level of violence is acceptable when discussing a child is indeed a sad state of affairs. It makes me ashamed to live in a country where this defence is still in place - indeed it shames us all.

For parents, such a change to the law would help to promote more positive approaches to parenting. Contrary to what some people will state, legal change will not criminalise parents (or lead to prosecutions for a minor smack'), but rather help to redefine what is acceptable and what we in turn teach our children about our own behaviour. We also know how this makes children feel - many organisations have spoken to children about how this has impacted on them and how it has remained as a vivid memory over the years - hardly conducive to developing positive nurturing relationships between parent and child

4. All the evidence tells that us that using physical force is not an effective way to discipline a child.

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?

I do not see there being any disadvantages to this proposal and find the question a little bizarre. What would be the disadvantages to giving children equal protection under the law?

I do feel however that alongside work to promote positive parenting approaches with parents and carers, that an information campaign to inform children of their rights (not just in this issue, but more broadly) is essential. This could form part of a national action plan.

## Page 11: Financial implications

Q5. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have?

Broadly cost-neutral

## 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**

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

*No Response*

## 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

**Please explain the reasons for your response:**

It would be useful to undertake further research into the potential savings that this proposal Bill could contribute to. Comparative research could help in this regard in terms of evaluating change and lessons could be learned from campaigns around positive parenting approaches, resilience and attachment etc undertaken in other countries.

## Page 15: General

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

My final comments relate to public opinion and to the Scottish Government's contradictory policy stances.

1. Evidence across other countries which have changed the law, such as Sweden and most recently Ireland, clearly illustrate that once the law is in place, public support quickly follows and social norms change.

The Scottish Government has indicated that it wishes to see a shift in public opinion before it takes action to remove the "justifiable assault" defence. To quote Professor Michael Marmot again (from the foreword to the 2015 report mentioned earlier....)

"Politicians in the Scottish and UK governments need to be bold and provide a lead in this major social and public health issue. As was the case with smoke free legislation, public attitudes and social norms will change once legislation is introduced and the benefits are evident."

It is hard to disagree with this sentiment, especially as the evidence of the harm physical assault causes becomes much more clear and consistent. Indeed there is increasing support for a change in society and from across all walks of society, particularly those professionals who work directly with children and their families - the Royal College of Nursing, the Royal College of Paediatrics and Child Health and the

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

Scottish Directors of the Public Health Group. In May 2016, Commissioners at the General Assembly voted in favour of calling on Scottish Ministers and parliamentarians at Holyrood to acknowledge the recommendations of the United Nations Convention on the Rights of the Child and remove the defence of "justifiable assault" from the Criminal Justice (Scotland) Act 2003. In their report, they noted that "If this defence was to be removed it would not create a new criminal offence. It would simply mean that adults and children had the same legal protection against violence." Their then Convenor of the Church and Society Council, Sally Foster- Fulton, stated

We now add the Church's voice to many other organisations to call upon the Scottish Government to remove the defence of justifiable assault, granting children the same rights that every adult enjoys in this area..... "Bringing up children is one of the most challenging privileges any of us can face, but in performing this privilege we must not negate the rights of the child. As parents, as a Church, as a society we want the best for our children and as a Church we will work with parents and others to support them in doing that."

Social Work Scotland, the Scottish Police Federation and the Violence Reduction Unit have also supported calls for this change in the law (ie removing the legal defence of justifiable assault) and the list continues to grow.

2. The Scottish Government's position is also in direct contradiction to

a) its own stated principles of preventative work and support in the early years, This change to the law is fundamentally a preventative measure which chimes completely with the GIRFEC principles. A failure to address this undermines these stated principles

b) In Equally Safe - Scotland's strategy for preventing and eradicating violence against women and girls, the Government's aim is clearly stated

"The overall aim of the strategy is to prevent and eradicate violence against women and girls, creating a strong and flourishing Scotland where all individuals are equally safe and respected, and where women and girls live free from such abuse - and the attitudes that help perpetuate it. "

One of its four key priorities is that "Scottish society embraces equality and mutual respect, and rejects all forms of violence against women and girls" ....and

"Violence against women and girls, in any form, has no place in our vision for a safe, strong, successful Scotland" ....that (it) damages health and wellbeing, limits freedom and potential, and is a violation of the most fundamental human rights."

Again - retaining this defence only undermines current statements and state aims and begs some serious questions about how serious the Scottish Government really is if it continues to hold out against such changes.