

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 If you choose the second or third option, a name is still required, but it will not be published.

Anne Dale

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

I hope it's acceptable for me to share this as the reasons for my response.

<http://www.bacaph.org.uk/>

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The need for equal protection from violence for children in Scottish criminal law:

It is shocking to realize that we live in a country that condones violence against children. Scots law permits an assault on a child to be justified if it occurs in the context of punishment by a parent or carer: the 'justifiable assault' defence.

The Council of Europe's Commissioner for human rights summed it up well:

The invention of concepts such as 'reasonable chastisement' and 'lawful correction' in the law arises from the perception of children as the property of their parents. This is the modern equivalent of laws in force a century or two ago allowing masters to beat their slaves or servants, and husbands to beat their wives. Such 'rights' are based on the power of the stronger over the weaker and are upheld by means of violence and humiliation.

Children have had to wait until last to be given equal legal protection from deliberate assaults – a protection the rest of us take for granted. It is extraordinary that children, whose developmental state and small size is acknowledged to make them particularly vulnerable to physical and psychological injury, should be singled out for less protection from assaults on their fragile bodies, minds and dignity."

Scotland's provision for a "justifiable assault" defence has been the subject of many criticisms at the United Nations, the Council of Europe and the European Union. This, along with the one of the lowest ages of criminal responsibility in the world at just 8, paints a shameful picture of how we view children in Scotland.

A Council of Europe initiative to create "a continent free of corporal punishment" has been running since 2008 and a similar European Union initiative has resulted in 17 out of 28 member states already amending their laws. A growing number of UN member states have also made commitments to do so. The UK is one of a dwindling number of States which argue that children do not deserve equal protection.

As the consensus on equal protection builds across Europe and the world, the position in Scotland becomes increasingly untenable. The European Court of Human Rights has progressively condemned corporal punishment of children in a series of judgments against the UK since the 1970s. The prohibition on inhuman or degrading treatment or punishment set out in Article 3 of the European Convention on Human Rights, and the protections for a person's physical integrity as an aspect of the respect for private life in Article 8 are not consistent with the use of parental violence as a punishment for children.

The protection against State interference with the respect for family life is an important one, but it is the source of a great deal of misinformation. The debate around equal protection for children is often focused around a perceived parental "right" to discipline their children. However, the concept of the right to respect for family life does not extend to the use of violence - whether it be against a spouse or a child. The protection of respect for private life under article 8 recognises that a person's body is an intimate aspect of his or her private life. Article 8 requires more than just refraining from actively breaching the right through action by the State (ie. police, teachers, health professionals), it also requires the State to take positive actions to protect people from private individuals. So, the right to respect for private and family life does not mean that a parent can do whatever they want behind closed doors – it means that the State has to protect everybody to ensure they can enjoy their family and private life by being protected from violence – even by family members.

Article 8 is not an absolute right. In order to allow the assault of children to be justified, the State would need to show that violence as part of parental punishment is in some way a necessary and proportionate way to address a pressing social need such as the prevention of disorder or the protection of morals. Given there are effective alternative methods of correction and discipline which do not breach a child's personal integrity, and the growing consensus against parental assault of children, this argument is difficult

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?

to substantiate. The degradation and humiliation of children can never be a proportionate response, no matter how challenging their behaviour is.

Discussion on this topic is often controversial and plays out in extreme forms in politics and the media. Public opinion in the UK, and everywhere else, is informed by memories of our own childhoods and ideas about tradition and discipline. It is important to remember that compliance with international standards and human rights does not mean creating a new criminal offence of smacking but rather removing the option of arguing "justifiable assault" as a defence to assault. Lessons learned from other countries show us that public tolerance for smacking drops significantly as a result of changes in the law. Moreover, in countries such as my home country of New Zealand which have changed their laws in recent years, the fears about scores of well-meaning parents being dragged before the courts have proven to be completely unfounded. Social workers, health professionals, police, prosecutors and courts are very skilled in determining which behaviour is criminal, and which families need additional support.

Removing the defence of justified assault for parental punishment from law will give children throughout the Scotland the same protection from assault as adults and give us the chance to catch up with countries across the world that are protecting their children.

We have signalled our support for the rights of children through ratifying the United Nations Convention on the Rights of the Child, it is now time to show a commitment to the equal protection of children from violence.

Bruce Adamson

Bruce writes in a personal capacity. He is the Chair of the Board of Trustees of the Scottish Child Law Centre, and has been a member of the Children's Panel since 2004. He is a human rights lawyer who has acted as a representative at the United Nations and an expert for the Council of Europe and the European Union. He has worked in a number of countries across Europe, particularly in new democracies. He is currently the Legal Officer at the Scottish Human Rights Commission, having previously worked for Scotland's first Commissioner for Children and Young People.

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

No

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?

The article I shared previously covers all this.

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?

No Response

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

Unsure

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

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

Page 15: General

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

No Response