

# 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

Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)

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 If you choose the second or third option, a name is still required, but it will not be published.

Equality & Human Riights Commission

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**

The EHRC has considered and discussed the issue of physical punishment of children and agreed that "the Commission considers that children should be afforded more protection from violence than adults, not less...". In reaching this conclusion the Commission considered evidence that all the relevant UN treaty bodies, including the Committee on the Rights of the Child (UNCRC), have found physical punishment to be a breach of children's rights, and stressed that a child's best interests must be interpreted consistently with the whole Convention, "including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity." In 2016 the UNCRC called on the UK and devolved governments to: a. prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as "reasonable chastisement"; b. ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care; c. strengthen its efforts to promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing. The Commission further believes that case law shows a general trajectory towards prioritising child welfare over parental rights. It appears highly unlikely that a total ban on all forms of physical punishment of children would be found by a Scottish court or by the European Court of Human Rights to violate anyone's human rights. Challenges, in the domestic courts and Strasbourg, to partial bans (in schools) or total bans abroad, on the basis of the right to respect for private and family life (Article 8 ECHR) and the right to freedom of religion and belief (Article 9) have been unsuccessful.

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?

We believe that outlawing the physical punishment of children is in both their long term interests and the long term interests of Scottish society. It is likely that children who are subjected to parental violence, even if it is low-level violence, learn that using physical force is an acceptable form of dealing with frustration. 42 out of 55 studies found that physical punishment predicted increases in behavioural problems, including aggression and conduct problems; increases in delinquency and antisocial behaviour; lower trustworthiness. 10 out of 19 studies found evidence of detrimental effects of physical punishment on depression, emotional problems and anxiety. This includes a Scottish Government commissioned study of 1,600 Scottish children that found children who had been smacked during their first two years were more than twice as likely to display emotional and behavioural problems at age four as children who had not been smacked. The evidence also shows that physical punishment exacerbates existing problem behaviour, leading to a vicious cycle of cascading conflict. There is fairly consistent evidence of a link between childhood physical punishment and adult aggression or antisocial behaviour, including aggression and sexual violence within intimate partner relationships

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?

Some people have expressed concerns that removing the "justifiable assault" defence might lead to the blanket criminalisation of parents who physically chastise their children. However, this is unlikely to be the case because prosecutors will need to consider whether a prosecution is in the public interest, with each case to be considered on its own facts and merits. In evidence to the Joint Committee on Human Rights, the then Director of Public Prosecutions for England and Wales said "the reality is that, just as most minor assaults against adults are not prosecuted, I suspect most minor assaults against children would not be

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either, although it is not an entirely accurate analogy because children are much more vulnerable than adults." In addition, where children have been protected equally against assault in the law, such as Sweden, where corporal punishment was banned 37 years ago, it has not led to the prosecution of parents for "trivial smacking".

## Page 11: Financial implications

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

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

We agree with the consultation document that the Bill is likely to have a positive impact on children. We are particularly concerned about Criminal Justice (S) Act 2003, Section 51(1) (e) which allows for a child's gender or other characteristic, for example disability to be taken into account when assessing whether or not an assault is justifiable. We see no justification for this provision and it appears incompatible with children's Convention rights. We further note that section 51 of the Criminal Justice (S) Act 2003 provides a defence of 'justifiable assault', 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'. In this regard we do not believe that the a parent has any right derived from having charge or care of a child should be interpreted as having a "right" to physically punish the child. Whilst we note the comments about race, religion and belief and physical punishment we note that the consultation relies on American research for its evidence. There is little hard evidence from UK research or administrative data sources (which is itself of a concern if child protection issues regarding over chastisement are not being ethnically monitored) but Owen and Statham reported in 2009 that "Concerns about physical abuse or over chastisement were recorded less frequently for Black Caribbean mothers but at an above average rate for Black African and South Asian mothers. However, the numbers in the minority ethnic samples are too small to draw definite conclusions." (University of London The Prevalence of Black and Minority Ethnic Children within the 'Looked After' and 'Children in Need' Populations and on Child Protection Registers in England). Similar findings were reported by a JRF study published in 2006 "Whilst the popular myths and stereotypes are that some cultural groups mete out harsher punishment, this study documents no real differences between ethnic groups with regard to physical punishment of children. Less than two-fifths of the parents in the study reported that they had used physical punishment (mostly occasionally) in disciplining their children" (Joseph Rowntree, 2006 "Parenting in multi-racial Britain"). The most recent study published in Scotland on the issue (Anja Heilmann, Yvonne Kelly and Richard G Watt Equally Protected? 2015 "A review of the evidence on the physical punishment of children") did not look at issues of equality or diversity in its report other than in passing. In this case we believe that a child's right not to be subject to physical punishment overrides other considerations, however we would urge that greater research needs to be conducted on this issue in Scotland and that any system put in place to monitor the use of the new Act includes ethnic monitoring. We note that there is no discussion of disability in the paper which is regrettable. As with race there is little or no research or data that we could identify when preparing this response about the prevalence of physical punishment on disabled children in Scotland What

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evidence there is tends to relate to institutional or formal settings rather than familial setting. As with race we would recommend that greater research and monitoring of this issue is conducted. Whilst there may be circumstances where a disabled child's challenging behaviour associated with autism or mental health issues could "explain" resorting to physical punishment as with the race and religion section above we believe that a child's convention rights to protection from physical punishment override concerns about equality. Similarly we are not aware of any research in Scotland on the physical punishment of LGBTI children.

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

We do not believe there is a negative impact of the Bill, though this should be monitored .

## 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*