

# 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 would like this response to be anonymous (the response may be published, but no name)

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 If you choose the second or third option, a name is still required, but it will not be published.

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**

In my view the continuing legality of certain assaults on children by their parents or those for the time being in charge of their care is an affront to the dignity and rights of all children in Scotland. It belongs to a bygone era (although it was not right then either) when parental rights or even the total power of the parent (read: father) were the starting point for the child-parent relationship in our law. We have moved on to a more children's rights-based approach, if at present a far from perfect one, via the Children (Scotland) Act 1995 and subsequent reforms. The continuing legality of parental assault on children also illogical and unjustifiable: on the level of broad principle it makes no sense to afford less protection from assault to those who are otherwise universally recognised as more vulnerable due to their young age and lack of (any kind of) power; if anything one would have thought that these are reasons to afford stronger protections. The idea that it is the nature of the parent-child relationship that should justify the current position, typified by the picture of the "loving smack" allegedly administered for the good of the child, is in my view deeply disturbing; with the exceptions of few at the margins Scottish society has moved on from the view that violence or coercion can have any place in any relationship described as loving. It is not at all clear to me why this should not equally apply to children. That it should be those who are charged with caring for children who are provided with a special defence to a charge of assault on the child strikes me as particularly troubling: this seems to suggest that the concept of care is capable of accommodating assault on the person being cared for. In any event, the evidence that corporal punishment of children causes real harm and is an ineffective parenting technique is mounting, and the consultation document and studies cited therein illustrate that very clearly. If Scotland is to stand a chance to become "the best place in the world for children to grown up", that oft-repeated mantra of Scottish Government ministers and officials which is no doubt widely shared across party lines, it cannot be tolerated that assault on children continues to be lawful. That phrase is fairly vague in terms of content, but one would have thought that freedom from violence, by whoever, is a basic part of that vision. One idea that I think may be worth exploring further is whether it would be beneficial to complement the repeal of the defence of justifiable assault with a positive civil law right of the child to a non-violent upbringing. This would in my view set the right context for the reform of the criminal law in this area and look at the matter from the child's perspective. I understand that this is the approach that Germany took some years ago (the civil right will be in the family chapters of the BGB, the civil code, with the criminal law reform in the criminal code, the StGB).

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**

As already suggested, it may be worth exploring whether other legal reforms may be required or beneficial, but in my view legislation is required and urgently so.

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?

In short, a full prohibition of physical punishment of children would in my view have the following advantages:

- it would make clear that no violence against children is acceptable;
- it would clarify the law and remove current ambiguities;
- it would remove the unhelpful suggestion that there is spectrum of violence against children, some of which is legal and socially acceptable, muddying the waters in terms of public awareness of physical abuse of children;
- it will speed up the pace of change in terms of attitudes and use of violence in parenting, with the attendant positive impacts of: reducing adverse childhood experiences that lead to worse outcomes, better parent-child relationships (see the Swedish research on positive effects on family relationships

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?

throughout life), giving parents more confidence to parent effectively and in a manner which they themselves support (linked to the evidence that even most parents who do use physical punishment do not support it or think it works);  
- improve Scotland's standing in the world as a place where children's human rights are protected effectively.

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?

A short- to medium-term increase in demand for policing and COPFS resources, as an increase of reporting of assaults on children and onward reporting is to be expected, although I would agree with the analysis in the consultation paper that this is unlikely to translate into any significant increase in the number of prosecutions and convictions. There will be a training need across Police Scotland and COPFS, as well as social work and other statutory and non-statutory services.

These are not in my view real disadvantages though. Rather they are the implementation costs of an overall greatly beneficial legal and social reform.

## Page 11: Financial implications

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

Some reduction in cost

**Please explain the reasons for your response**

As already stated I would expect a short- to medium-term increase in costs. However, due to the likely benefits towards which the overwhelming amount of research points, there will be savings in the long-term as damaging effects of physical punishment that have high social and financial costs will decrease. The bill is an investment.

## 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**

I would broadly concur with the analysis in the consultation paper.

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

I think that it will be important that everyone affected in Scotland will be reached with a clear explanation that the law is about to change and why, so as to avoid any avoidable negative effects.

## 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:**

In my view this bill will have positive social and economic impacts as it will help reduce the costs of the current position.

## Page 15: General

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

One thing I have not mentioned yet is that I consider it absolutely necessary that children, parents and the general public are properly informed about this reform, which I hope will come to pass in early course. Alternatives to physical punishment must be highlighted to parents in a way that gets through to all and is non-patronising and non-stigmatising. This will be a significant effort with associated costs, but this is essential given the intention to change practice on the ground rather than 'only' reform the criminal law. The leaflet published by the Scottish Executive to communicate the changes made by the 2003 Act is not a great example in that respect. The legal change and its practical implications should be communicated clearly and using all available methods, and needs to be backed up by political and public leadership. This is perhaps where the greater challenge lies...