

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 If you choose the second or third option, a name is still required, but it will not be published.

Kathleen Marshall

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

My response to this consultation arises out of my experience as Scotland's first Commissioner for Children and Young People, and as a former Director of the Scottish Child Law Centre. I joined the campaign to end physical punishment of children (EPOCH) when it was launched in 1989. I was the newly appointed Director of the Scottish Child Law Centre, having re-entered employment after an eleven-year gap to bring up my three children. I was initially sceptical about the proposal to ban physical punishment but was won over by the arguments and the evidence. Others will submit more detailed evidence. The arguments have been well-rehearsed and developed since 1989. I would like to make three points - that ending physical punishment by making it illegal is: • The right thing to do; • Consistent with the approach taken by the Scottish Parliament to another child-related issue; and • An issue whose time has come. It is the right thing to do because the concept of "justifiable assault" upon a child, which the current law permits, is discriminatory and indefensible. It is consistent with the approach taken to under-age sex between children aged 13 to 15 set out in section 37 of the Sexual Offences (Scotland) Act 2009. Parliament wanted to send out a clear message that under-age sex was wrong. It was argued that prosecution would rarely, if ever, be resorted to, but the force of the criminal law was required to set the appropriate standard. It is interesting to compare this approach taken by the Scottish Parliament with the arguments traditionally advanced against a legal ban on physical punishment of children: Parliament's approach to consensual sexual activity between 13-15-year-olds: • Criminalising it sends out an important message. • We won't be criminalising young people because the law is unlikely to be enforced against them. Traditional arguments against banning physical punishment: • One should not contemplate criminalising ordinary, loving parents. • One should not enact a law that one does not intend to apply. Why is it alright to contemplate criminalising children whilst shrinking from the same approach to adults? Both issues relate to child protection. Ending physical punishment is an issue whose time has come. It is right to protect children from assault and the law should offer them protection that is at least equivalent to that afforded to adults. The public has had plenty of time to acclimatise to the idea of a ban on physical punishment. The arguments have been well rehearsed. It is now time for the Scottish Parliament to do the right thing.

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

Many children are still subjected to physical punishment despite campaigns to persuade them otherwise. The law needs to send out a clear message that hitting children is wrong.

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?

It would make it clear to all that hitting and hurting children is wrong and it would make it easier for others to intervene when they witnessed it.

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

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

Unsure

Please explain the reasons for your response

The long term benefits in terms of cost may be substantial but are difficult to estimate. But, as this is a human rights issue, the cost should not be relevant.

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

A society is debased when it justifies violence on any vulnerable person.

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 must, of course, be accompanied by support for, and understanding of, parents under stress.