

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

Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)

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 If you choose the second or third option, a name is still required, but it will not be published.

The Scottish Child Law Centre

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 Scottish Child Law Centre welcome the proposal of giving children equal protection from assault and encourage the swift and necessary implementation of legislation banning all physical punishment of children. If Scotland is to meet international standards of Human Rights and children's rights outlined both in the European Convention of Human Rights and United Nations Convention on the Rights of the Child and to achieve its aim to be a nation which promotes the best possible start for children in life then it is of crucial importance that any acts of violence against children are prohibited. The current domestic legislation is inadequate in reaching international standards of Human Rights and international obligations under the ECHR and UNCRC. The Criminal Justice (Scotland) Act 2003 went only as far as restricting the former "reasonable chastisement" defence and, instead, stipulates the ways in which children cannot be physically punished and provides a defence against physical punishment out with these prohibited acts known as "justifiable assault". The result is that children are the only category of persons in Scotland against whom violence is explicitly permitted. Isolation of children in this way is, in itself, a breach of Article 14 of the ECHR which provides that all rights and freedoms are to be implemented without discrimination. The current legislative position in Scotland is, therefore, contrary to the requirement of non-discrimination. Children in Scotland are not offered the protection guaranteed by Article 3 of the ECHR which ensures the prohibition of torture and protection from inhumane or degrading treatment or punishment. The position of the Scottish Child Law Centre is in line with that taken by the United Nations Committee on the Rights of the Child which is that the physical punishment of children amounts to "inhumane or degrading treatment or punishment". Children in Scotland are autonomous individuals and holders of rights, yet their rights are not protected. The current legislative landscape in Scotland therefore creates a breach of human rights for children living here. It is the view of the Scottish Child Law Centre that the law must guarantee children in Scotland at least the same amount of protection from violence as it does for adults.

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

In Scotland the societal attitude to using physical punishment against children is changing but physical punishment continues to have a presence in the lives of many children residing in Scotland. Children living in poverty, in socio-economic disadvantaged households and those experiencing domestic difficulties, such as residing with a parent with alcohol and drug abuse issues and those children living with domestic abuse, are amongst the groups of children who the UNCRC have identified as most likely to be exposed to violence (UNCRC/C/GC/13 (2011) at pg 27). The current legislative position, therefore fails to adequately protect the most vulnerable children in Scotland and legislative reform is required to rectify this. The UNCRC requires all state parties to take all appropriate legislative steps to protect children from all forms of physical violence or injury as outlined in Article 19 of the Convention. The current lack of legislative prohibition of physical punishment of children is a failing of a Convention obligation by the United Kingdom. The Scottish legislature are urged alter Scotland's position to meet the obligations as set out in the Convention. Legislative change together with information/media campaigns, promoting a positive message against the use of non-violent forms of discipline and punishment would assist in ensuring successful shift in attitude from those who currently advocate or support physical punishment of children.

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?

Giving children equal protection from assault by prohibiting all forms of physical violence against them promotes a culture of support and respect of children. Children will be empowered in the knowledge that they deserve a minimum standard of treatment and legislative reform is essential to ensure children live a dignified existence and grow up in Scotland protected by the rule of law. It is imperative that a minimum standard of treatment of children is clear and unambiguous and a prohibition against all forms of physical punishment is necessary to achieve this. A clear and defined position prohibiting any use of physical

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punishment against children sends a clear message to all parents, guardians and care-givers that any level of physical punishment is unacceptable.

Prohibiting the use of physical punishment of children would bring Scottish legislation in line with the provisions of the UNCRC and meet the repeated urgent calls for legislative reform made in the Committee on the Rights of The Child's General Comments in 2006, 2011 and repeated in 2016 (UNCRC, CRC/C/GC/8 (2006), UNCRC, CRC/C/GC/13 (2011), UNCRC CRC/C/GC/20 (2016), respectively) and ensure that children in Scotland are awarded the same level of protection and treated with the same level of respect as adults.

We echo here the comment made by the Committee on the Rights of the Child over a decade ago where it stated the following:

"Article 37 of the Convention requires States to ensure that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". This is complemented and extended by article 19, which requires States to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical; or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s),. Legal guardians(s) or any other person who has the care of the child". There is no ambiguity: "all forms of physical or mental violence" does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and State must take all appropriate legislative, administrative, social and educational measures to eliminate them."

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?

The Scottish Child Law Centre is of the view that there are limited disadvantages to giving children equal protection from assault by prohibiting all physical punishment of children.

In line with the recommendations of the United Nations Committee on the Rights of the Child (CRC/C/GC/13 (2011)) the Scottish Child Law Centre is of the view that a National Coordinating Framework on violence against children is needed to ensure that new legislation would be in line with and carried out to the standard of the UNCRC requirements.

The greatest single disadvantage we can envisage if legal reform is not supported by the necessary coordinated frame work would be children are given rights in law that are not actuated in reality.

Any potential difficulties associated with implementing legislation to prohibit physical punishment of children would be outweighed by the overall benefit of providing children in Scotland with equal protection from all forms of violence.

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 increase in cost

Please explain the reasons for your response

We anticipate that there may be, at least initially, an increase in reporting of use of physical punishment against children. Additional resources may be required to meet the need for investigation of those reported incidents, potential involvement of the Social Work Service, as well as reporting of such incidents to the SCRA. We believe other agencies may be best placed to make further comment regarding costs associated with implementation of the Bill. In our view, parents/carers should be able to have access to local services allowing them to improve their communication, discipline and general caring skills, whether they have been identified by external agencies as being in need of such services or on a self-assessment and self-referral basis. A comparative could be drawn to the availability of pre-natal services to soon-to-be parents. We would encourage there to be a provision within the Bill that would address the issue of

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resources, costs and availability of such parental improvement services to anyone needing or identifying themselves as being in need of them. We believe that additional costs associated with implementation of the Bill will benefit the children in Scotland and the society as a whole. Extensive research and publications on this subject matter (as summarised in par 5.2.2. "Equally Protected? A review of the evidence on the physical punishment of children" (November 2015) links the childhood physical punishment and adult aggression or antisocial behavior. It is further suggested in research that the children who experience physical punishment could carry that in to their adulthood repeating this cycle of behavior. Further research confirms that the passing of legislation in combination with public awareness leads to change in public attitudes, which would reduce children's exposure to physical punishment. We support and would encourage the implementation of further changes in law on this subject matter to be accompanied by media campaigns through multimedia strategies and messages promoting positive, non-violent practices as an alternative to physical punishment, and use of direct outreach programs with children.

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

The legislative change would ensure that all children in Scotland, regardless of their sex, age, religion etc. have equal protection under the law and that protection is equal to the protection currently offered to adults. The proposed Bill would provide crucial protection to children in Scotland who already face an increased likelihood of exposure to violence due to living in potentially vulnerable situations. The United Nations Committee on the Rights of the Child identified that children who have protected characteristics face increased risk of exposure to violence. These are detailed as including (but not limited to) children with physical disabilities, sensory disabilities, learning disabilities, psychosocial disabilities, children from ethnic minorities, minority religious and minority linguistic groups, children who are lesbian, gay, transgender or transsexual, children in early marriage or civil partnership and those in forced marriage and children of parents who themselves are under 18. (United Nations Committee on the Rights of The Child General Comment No.13 (2011) at pg. 27) The overall impact of the proposed Bill on the protected groups under the Equality Act 2010 would see Scotland striving to ensure children with those protected characteristics have the highest level of protection from all forms of violence as possible.

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

The Scottish Child Law Centre suggest that any potential difficulties faced by the protected groups mentioned above could be minimized or avoided through the provision of robust support and information on reporting and through raising awareness of avenues to redress where a breach of legislation occurs. We are of the view that prevention of the use of physical punishment and any difficulties associated with consequences of when the breach of legislation takes place could be avoided by appropriate and child friendly education to children on their rights, options available and avenues for support and redress. In addition, we would support the introduction of education for adults on positive child rearing for parents and caregivers and the provision of accurate and accessible information on legislative changes and the reasons for these.

The Scottish Child Law Centre does not envisage any inherent negative impact of the proposed Bill on any of these protected groups and that any a negative impact experienced by the above mentioned groups would be outweighed by the benefit of a clear and unambiguous legal position prohibiting all

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

physical violence against all children.

The Scottish Child Law Centre is in a position to offer confidential free legal advice and training to children, parents, caregivers and professional working with them to educate and promote the proposed changes in law.

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:

Parents who do not agree with the use of and do not exercise physical punishment of their children will not be affected by the changes proposed by the Bill. Those parents who do use physical punishment against their children would benefit from information and training on how to discipline and implement boundaries for their children using non- violent methods. The Scottish Child Law Centre believes that positive education could be delivered through the early intervention channels already in place. It is envisaged that additional funding may be required to develop a public information program and a specific and targeted public awareness campaign. Initial training may need to be provided to certain professionals (teachers, nursery staff, medical staff and those other professionals in close contact with children) in order that those individuals feel confident in their knowledge of the legislative changes, reporting duties and legal repercussions. We believe that other agencies may be best placed to provide further comments on this subject matter.

Page 15: General

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

The Scottish Child Law Centre welcomes the proposal to give all children in Scotland legal protection from all forms violence by prohibiting all forms of physical punishment. The move would see the youngest, smallest and most vulnerable members of our society being offered the same protections currently enjoyed by adults. The Scottish Child Law Centre views the move for reform as wholly positive and also necessary in order to ensure compliance with the European Convention on Human Rights and international obligations to have all legislation in Scotland compliant with the provisions of the United Nations Convention on the Rights of The Child.