

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".)

Member of the public

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 If you choose the second or third option, a name is still required, but it will not be published.

David Kennedy

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 opposed

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 proposal makes a wrong equivalence between physical punishment and assault. The intention of assault is to damage a person; the intention of punishment, whether physical or non-physical, is to save a person from damage by checking or altering self-damaging and other-person-damaging behaviour.

Children already have 'equal protection from assault' under the present law (Criminal Justice Act(Scotland) 2003). Mr Finnie's proposal is not needed.

Mr Finnie states (p.6 of the consultation) that 'discipline and physical punishment are not the same'. I agree with this, but physical punishment can be a component part of discipline. It is especially important when the child has not yet reached the age of understanding logical reasoning to distinguish between right and wrong. The language of sensory physical punishment is the appropriate language when a child does not yet comprehend the language of reasoning. Pain is not pleasant, but it is not morally wrong. Adults are subject to the lessons of pain as much as children.

Mr Finnie (page 7) quotes The United Nations Committee on the Rights of the Child definition of corporal or physical punishment, that it is "... any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.' He fails to see the flaw in this definition - that it misrepresents the purpose or intention of physical punishment. The purpose of punishment - physical or non-physical - is not to 'cause some degree of pain or discomfort' but to change unacceptable behaviour. (Equally, the intention of fining motorists for driving in a bus lane is not to get money out of motorists: it is to prevent motorists from clogging up public transport routes and to facilitate traffic flow. Intention is a vital part of the definition of punishment.)

This flaw in identifying the intention and purpose of punishment is carried over into the 'Equally Protected?' report, and Mr Finnie again fails to identify this flaw in the definition of a principle at the heart of his proposal.

Mr Finnie (page 8) refers to the concept of 'reasonable chastisement'. That is a principle which I agree with. It is a principle worth maintaining. And as we apply it to adults (in terms of punishing anti-social behaviour) we can justifiably apply it equally to children.

On page 19, Mr Finnie quotes from the 'Equally Protected?' report, key finding 1.3: "One argument that is brought forward again and again is that physical punishment is not harmful in the context of an otherwise loving and warm family environment.' This is a valid argument. The context of any behaviour is important for an observer to understand it. A deliberate cut to a child in the context of a surgical operation is quite a different activity to a slash with a Stanley knife in a street, though both show the same action of cutting. We need to use the same logic in differentiating between legitimate punishment and common assault.

On page 21, Mr Finnie states that 'The Bill will not create a new criminal offence, as the common law offence of assault will apply (with a modification removing the reasonable chastisement defence).' I believe that to remove the concept of 'reasonable chastisement' is a mistake. 'Reasonable chastisement' is used in the law in relation to adults (e.g. verbal warnings, fines). To remove the defence of 'reasonable chastisement' in relation to children would - equally - require it to be removed in relation to adults.

On page 22, in relation to the impact of the proposal on parents, Mr Finnie states that '...this proposal is likely to impact positively on their parenting skills, as well as bringing benefits in terms of their child's behaviour and health and well-being.' I believe the contrary. The proposal robs parents of a reasonable, if undervalued and rarely used, tool for changing or reinforcing behaviour. The observed tendency is for parents to resort to verbal haranguing, which is more damaging to young children.

Also on page 22, Mr Finnie writes, 'it could be anticipated that a change in the law in Scotland will lead to an increase in child protection referrals and pressure on public services such as the police and social work'. This raises the issue of how the proposal would be policed. Who would make a report on the private behaviour of a parent? This is where the proposal smacks of fascism (though I don't in any sense think that Mr Finnie is a fascist). Mr Finnie acknowledges the difficulty in policing the proposal in his statement on pages 22-23 that 'There may also be impacts, in terms of resources, due to the difficulties in gathering evidence, and in incidents being discovered and/or reported to the authorities.' This highlights the practical unfeasibility of the proposal.

Mr Finnie undermines his own stance on 'equality' on page 25 of his proposal. He states that "Evidence suggests that the frequency and severity of physical punishment may vary depending on different religious

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?

and cultural norms, precedents and beliefs. Therefore removing defences would provide clarity and ensure consistency in the law for children belonging to all cultural and religious groups.' This suggests the totalitarian bias in the proposal. There are different and legitimate cultural norms in child-rearing. To try to eliminate these by legislation is fascistic.

On page 26, Mr Finnie finally recognises that physical punishment is a means of discipline, not abuse. He writes, 'Encouraging parents to move away from physical punishment to more positive and less damaging means of discipline and guidance should therefore help to address basic human needs, such as being safe, feeling loved and part of a family, etc.' This sounds good and is aspirational. I would agree with this sentiment. But it recognises that physical punishment is a means of discipline, not abuse. The logical conclusion is that physical punishment should continue to be a permissible means of discipline within the family unit.

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

Yes (if so, please explain below)

Please explain the reasons for your response

By education. And Mr Finnie acknowledges that this is already happening. A Bill in the Scottish Parliament is not necessary.

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?

This is a rather specious question. It continues the flaw in definition that I've alluded to already, that the proposal's use of 'assault' is wrongly equated with physical punishment.

I don't think there would be any advantages.

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 specious undertones continue in this question. My understanding is that children already have equal protection from 'assault' (that is, from an action intended to cause them harm) as adults do, under the Criminal Justice (Scotland) Act, 2003.

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

Significant increase in cost

Please explain the reasons for your response

Enacting the proposed legislation, policing it, social work involvement, court time.

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?

Negative

Please explain the reasons for your response

Mr Finnie states that 'Evidence suggests that the frequency and severity of physical punishment may vary depending on different religious and cultural norms, precedents and beliefs. Therefore removing defences would provide clarity and ensure consistency in the law for children belonging to all cultural and religious groups.' This is totalitarian. It denies the legitimacy of different religious and cultural norms. It tries to eliminate them by legislation.

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

Yes, by not progressing the proposal.

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?

No

Please explain the reasons for your response:

It would be impossible to police this proposed Bill effectively and justly.

Page 15: General

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

The proposal is an intrusion into family life. It is potentially dangerous. It has fascistic overtones. Fascism is a political ideology that denies right to individuals in relation to the state. It is the right and duty of parents, not the state, to administer discipline and justice within the family unit.