

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 If you choose the second or third option, a name is still required, but it will not be published.

Parenting Across Scotland

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

Please explain the reasons for your response

We are fully supportive of this proposal to give children and young people equal protection from assault as we are fully in agreement with the Scottish Government's aspiration to make Scotland the best place to grow up: obviously Scotland cannot be the best place to grow up while children do not have the same protection from assault as adults and where assault on children and young people can be defended as being justifiable. We firmly believe that our most vulnerable citizens are entitled to the same degree of protection under the law as every other citizen.

PAS supports the Equal Protection from Assault for Children Bill for the following reasons:

1. Currently Scotland is not meeting its obligations under human rights and children's rights legislation
2. There is robust international evidence that physical punishment of children is harmful
3. Evidence around parenting is that warm authoritative parenting is most effective and that physical punishment of children is not effective
4. Parents themselves do not believe that physical punishment is effective, and, at least, as importantly nor do children
5. Informed support from professional bodies

1. Currently Scotland is not meeting its obligations under human rights and children's rights legislation Scotland is increasingly out of step with other countries in its approach to physical punishment of children. Throughout the world, 52 countries have banned physical punishment of children. The vast majority of the 28 EU states have also imposed a ban - only four, including the UK, have not either done so or committed to doing so.

The UNCRC is unequivocal in its attitude to equal protection (UNCRC article 19(1) and UNCRC Article 37(a)). The UN Committee on the Rights of the Child General Comment no 8 clearly states that any form of violence is incompatible with the UNCRC and that children need specific legal The Scottish legal provision for a defence of justifiable assault has been roundly criticised by the United Nations, Council of Europe and the European Union.

2. There is robust international evidence that physical punishment of children is harmful A 2015 review of the international evidence on physical punishment of children, 'Equally Protected', commissioned by NSPPC, Children 1st, Barnardo's and CYPCS, examined 98 international studies, finding that physical punishment is harmful to both children's and adults' outcomes. As well as being related to an increased risk of child maltreatment and abuse, it increases aggression, antisocial behaviour, depression and anxiety in children. Sir Michael Marmot, Professor of Epidemiology and Public Health states in the introduction:

"This review has presented very strong and consistent evidence of the harmful effects of physical punishment on children and their families. The international evidence could not be any clearer - physical punishment has the potential to damage children and carries the potential to damage children and carries the risk of escalation into physical abuse..."

3. Evidence around parenting is that warm authoritative parenting is most effective and that physical punishment of children is not effective

Children are individuals with their own rights; parents have the responsibility to support and nurture them, and should be supported in this role by the state (<http://www.togetherscotland.org.uk/pdfs/Parenting%20and%20the%20UNCRC%20v2.pdf>).

In the preamble of the UNCRC, it says that states that have ratified the UNCRC are:

"...convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community"

and that the states recognise...

" that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding"

The Scottish Government has responsibility under the UNCRC provide the legislative protections that are needed to enable their children to grow up "in an atmosphere of happiness, love and understanding."

It also says that:

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?

"the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth".

The state has a clear duty both to protect children and support parents to give their children the best start in life. Given that research increasingly shows that physical punishment is harmful to children in the long term and can have detrimental effects on their outcomes in later life, it is necessary that the Scottish Government provides children with equal protection, and that it shares the evidence with parents through a public information campaign about the impact of physical punishment.

Physical punishment is not about parenting styles or about parental choice it is about protecting children. Nonetheless, evidence around parenting shows that the best outcomes for children are achieved by warm, authoritative parenting (<https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/parenting-outcomes.pdf>) rather than by authoritarian and punitive parenting.

Parenting styles theory is based on research that suggests children's behaviour is directly related to their parent's child-rearing practices. Parents who combine high levels of parental warmth with high levels of supervision are more likely to have children who are more confident, more autonomous and more socially responsible. This parenting style is often referred to as an authoritative style of parenting, as it recognises the child as an individual in his or her own right and promotes personal responsibility. High levels of parental warmth rather than physical punishment are what parenting research from numerous studies show to be effective (<http://pediatrics.aappublications.org/content/pediatrics/101/4/723.full.pdf>). The Scottish Government is already promoting this through the National Parenting Strategy as well as other policy initiatives; it is anomalous and puzzling that this can sit in any way with affording children with less protection than adults.

4. Parents themselves do not believe that physical punishment is effective, and at least, equally important nor do children

An Ipsos MORi poll of parents in Scotland carried out for Parenting Across Scotland in 2008 (<http://www.parentingacrossscotland.org/media/1126/morireportfull2008.pdf>) found that only 1% of parents thought that smacking was effective.

A Growing Up In Scotland report (<http://www.gov.scot/Publications/2008/02/12135003/8>) found that relatively few parents had ever smacked their child and that parents did not view smacking as effective: "In spite of the fact that around one in eight parents in the birth cohort and a third in the child cohort report smacking the sample child, the vast majority of parents in both cohorts believe that smacking is either 'not very' or 'not at all useful' as an approach for dealing with children of that age (Table 7.4). In fact, although main carers of children aged 46.5 months were more than twice as likely as those of toddlers aged 22.5 months to report having smacked them (34% compared with 16%), they were equally likely to say they thought smacking was not a useful approach (84% and 87% respectively)."

A principle of the law is that it needs to be clear and accessible to its users; currently this is not true around physical punishment of children and as a result parents are not themselves protected under the law as it stands. As per Janis Scott QC's legal opinion (Opinion of Senior Counsel re the Legality of Scots Law on the Physical Punishment of Children), she states:

"It is also possible to look at the issue from the other direction and argue that the law as presently framed may constitute an interference with family life as it leaves parents uncertain about their rights. Section 51 does not validate smacking or any other assault, it simply points to a series of factors that are relevant to a defence. The Human Rights Act 1998, section 3, requires subordinate legislation to be "read and given effect in a way which is compatible with Convention Rights". The Criminal Justice Act 2003 is subordinate legislation by virtue of section 21 (2) of the Human Rights Act 1998. It must be accordingly read in such a way as to comply with both article 3 and article 8 of ECHR. This could materially restrict the availability of the defence. ...it could be argued that section 51 contravenes article 7 and potentially article 5 of ECHR as there would be uncertainty about what constitutes a defence and accordingly when a parent would be committing an offence."

An unpublished report for PAS by TNS-BRMB (2012) (A copy of the report has been sent separately to John Finnie) found a high degree of confusion among parents in Scotland over what the law actually is in relation to physical punishment: whether physical punishment was actually illegal, whether hitting a child with an implement was illegal, whether hitting a child around the head was actually illegal. It follows that parents' human rights on having clarity under the law are also potentially being breached.

A Scottish Youth Parliament consultation with young people found that 83% of the respondents agreed

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?

that "All physical assault against children should be illegal". In research into children's experience of smacking (Woillow and Hyder (1998) "It hurts you inside - children talking about smacking" National Children's Bureau and Save the Children), children stated that it makes them 'angry' and 'upset' and 'sometimes they want to smack someone else'

Where countries have changed the law on physical protection and accompanied it with public awareness campaigns, public acceptance has followed on from legislative change. Just as the smoking ban was initially resisted but has since achieved public acceptance and culture change as well as significant public health benefits, so this proposed legislation has the potential to achieve similar outcomes.

Our most vulnerable citizens are entitled to the same degree of protection under the law as every other citizen.

5. Informed support from professional bodies

As well as children's organisations, a growing number of informed professional organisations have added their voices to the call for legislative change. It is supported by the Royal College of Paediatrics and Child Health, the Royal College of Nursing, the Scottish Police Federation, Social Work Scotland, the Scottish Police Violence Reduction Unit - all bodies who see the impact of physical punishment in their work and who have concluded that physical punishment of children can no longer be tolerated in our society.

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

Legislation is necessary both to meet Scotland's international obligations and to send a message to achieve culture change. Evidence from countries which have introduced legal reform along with public awareness campaigns have shown that both prevalence and public attitudes to physical punishment declined in the wake of reform. Above all, legal reform is needed to ensure that all children have equal protection under the law and are not subject to physical punishment which evidence shows is detrimental to their long term outcomes. .

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?

The main advantages are that this would afford children the same protection under the law as adults, that fewer children would be physically punished, and that it would send a message that violence towards children is not acceptable. Combined with an effective public awareness campaign and adequate family support, a change in legislation would enable a long term change in care of children.

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?

We do not see any disadvantages in this approach - it is both necessary and desirable.

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

Broadly cost-neutral

Please explain the reasons for your response

Given that this legislation does not carry duties or powers and therefore promote actions, but rather removes a defence, we see it as being broadly cost neutral. However, we would support a public awareness campaign around this so that parents are aware of the new law and the rationale behind it. A more thorough and accessible system of family support would also be desirable to assist families. However, it is likely that while both of these have expenditure implications, concomitant savings would be achieved through prevention of more negative outcomes for families.

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

Many of the protected groups are more likely to suffer violence. This legislation would have a positive impact in terms of providing these groups with increased protection from violence.

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

We do not foresee any negative impacts.

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:

It would be useful to undertake further research on potential savings which may be achieved by implementation of the Act. Evaluating change and impact could be achieved by comparative research, and lessons learnt by an evidence review of learning from implementation of comparable legislation internationally, ascertaining what works in other countries and how Scotland can provide parents and families with the optimal support so that the Scottish Government achieves its aspiration to become the best place in the world to bring up children.

Page 15: General

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

No Response