

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 If you choose the second or third option, a name is still required, but it will not be published.

CARE for 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 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

CARE believes that on issues of sensitivity such as the discipline of children that an impartial and reasonable approach should be adopted in public consultations. We are concerned that the consultation document adopts a one-sided approach to the issue of physical chastisement, using emotive language and failing to consider those studies which show the benefit of smacking to society. The consultation reflects an ideological motivation rather than an impartial evidence-based approach. We would have preferred the document to facilitate an open discussion and give a fair hearing to both sides in the debate. We are concerned also that the approach adopted in the document will inhibit members of the public who wish to contribute to the consultation their own experience of the effective use of physical correction. The claim that all physical punishment is unacceptable and a form of assault is highly problematic. Such an approach will deter people from being open about their experiences of discipline within families. CARE believes that the environment in which children learn best is within a secure, loving parental relationship. Children need to know that they are loved unconditionally by their parents and are totally secure in that love. Parental love needs to be effectively communicated to children and for them to feel its benefits. In families where children are sure of this unconditional love, the process of disciplining for life is far more effective than in families where children do not have this security. Within such a context of parental love and affirmation of the individual child, CARE does not believe that the limited use of physical punishment should be made a criminal offence. Rather it is a matter best left to the discretion of individual parents and families, without excessively burdensome state interference. Any proposal to ban smacking is likely to have adverse effects on many loving parents. Many parents would be criminalised by the proposed smacking ban. Even if, as claimed in the consultation document, in most cases there would be no prosecution, investigations would need to occur to determine whether or not it would be in the public interest to pursue charges in any particular case. This would be highly intrusive, stressful and disruptive for the families concerned and undermine parental authority. It would set children and parents against each other. State employees (teachers, social workers and police officers) would find themselves being required to interfere in the domestic lives of ordinary families. In many cases such interference would be disproportionate and unnecessary. Resources would be diverted away from tackling genuine cases of abuse into investigating the activities of loving parents and ordinary families.

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

There is little doubt that an alternative approach which does not seek to criminalise loving parents would be preferable. If the evidence cited in the consultation document is accurate that society is moving away from the use of physical chastisement, then it is reasonable to assume that investment in education programmes would be an effective means to achieve the aim proposed in the consultation of ending the use of smacking. By seeking to impose a particular view of discipline through legislation, the danger is that this approach may well lead to a backlash and civil disobedience as parents refuse to be dictated to by public officials. Recent experience of the public reaction in relation to the Named Person issue shows this to be a real possibility. There is already a strong feeling that there is a tendency for government to enact measures which overly interfering in private family life where there is no proportionate reason for doing so. The proposed Bill would reinforce this perception. We observe with great sadness that too often Social Services are neither adequately funded nor staffed to provide the best service possible to families in crisis. We would be very pleased if the resources that would be invested into pursuing parents who lovingly and caringly discipline their children appropriately were to be used to investigate cases of violence against children and to support the victims of child abuse. We believe that a far more practical and beneficial suggestion would be to invest in families and parents through local, community-based initiatives, such as those that churches provide that will help parents to provide the best for their 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?

No comment

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 proposal in the document threatens the freedom of families and in particular the freedom of parents to raise their children in accordance with their religious and philosophical beliefs. Although there is no one perspective on smacking within the Christian community, many Christians would accept that there is a role for physical chastisement if set within a loving and caring family context in order to raise children to be responsible and well behaved people. The autonomy of family life is an important principle of human rights and the right to private and family life is protected by the European Convention of Human Rights. The state should not interfere with this right or undermine the autonomy of the family unless there are compelling grounds for doing so.

A distinction is often made in legislation as to how children and adults are treated. Children are not fully developed either emotionally or physically and, therefore, are often not treated the same as adults. For example, children who have been convicted of committing a criminal offence may well receive different treatment from an adult in the same situation. This is because as a society we recognise that it is not appropriate to treat children in the same way as adults owing to their emotional and physical immaturity. Children aged under 16 or 17 are not allowed to own a firearms licence, drive a car on the public road or get married. This is because children are dependent upon their parents and need to be taught to distinguish right from wrong behaviour. They are not always familiar with the consequences of certain forms of behaviour nor, especially in the case of very young children, open to reasoned argument. For that reason, smacking within the context of a loving family is an effective way to discipline children, defining important boundaries that help to keep them safe, and enable them to grow to be responsible citizens. The proposed ban would undermine the prospect of doing so and is likely to have negative consequences for society as a whole as a result.

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

The costs of conducting investigations into allegations of smacking.

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

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?

Please explain the reasons for your response

There may be a negative impact on some religious groups.

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

No comment.

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?

Unsure

Page 15: General

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

CARE believes that there should be an appropriate level of physical discipline permitted within the stable, loving family environment. We are of course opposed to child abuse in all its forms. Indeed, in the past CARE has been involved in both counselling and practical caring initiatives that deal with the results of child abuse. We are opposed to child abuse and exploitation and in 2015 were at the forefront of campaigning for legislation to address the problem of human trafficking and for child trafficking guardians to be enshrined in legislation in order to protect the interests of child trafficking victims.

CARE, along with society at large, has been distressed to hear of cases of child abuse meted out on vulnerable children in receipt of services from the state in the form of children's homes, schools or by well known public figures who have been able to access and abuse children as a result of their celebrity status. On occasions those tasked with investigating and prosecuting offenders have failed to fulfil their duties. However, on other occasions allegations have been made which have been found to be spurious and considerable resources have been expended investigating innocent people. The law and those tasked with implementing it must be careful to protect children from abuse whilst striking the right balance so as not to be over intrusive and stigmatise those who have not harmed children. It is a difficult balance to strike.

Acknowledgement should be made of the distinction between a mild physical rebuke, which most parents consider acceptable, and the beating and/or abuse of children. This distinction must continue to be recognised in law. In the overwhelming majority of cases the best outcome for children is provided by them being brought up within the context of a loving family by their natural parents. On too many occasions in the past excessive intervention or inappropriate behaviour by state agencies has either led to abuse of children occurring and being undetected or it being overlooked. Clearly abuse occurs also within families and that must be effectively tackled by government agencies. However, the proposed extension of the definition of assault to include all smacking by ordinary loving parents, thus blurring the distinction between child abuse and parental discipline, is extremely unhelpful in addressing the serious problem of abusive behaviour within society. We have seen no evidence to suggest that the current law is ineffective in tackling child abuse and distinguishing that from reasonable physical chastisement.

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

We note the reference in the consultation document to the UN Convention on the Rights of the Child (UNCRC) and to recent statements made by the UN Committee on the Rights of the Child. It is important to remember that the UN Committee on the Rights of the Child is not a court and its interpretation of the UNCRC is not definitive. Rather member states have the final authority to interpret the provisions of the UNCRC and successive UK and Scottish Governments have been clear that the Convention does not prohibit the use of reasonable physical chastisement of children within the context of ordinary family life. The UNCRC does not refer to the physical punishment of children and we consider it misleading to cite Article 19 of the Convention as doing so when in fact that article refers to physical or mental violence which is clearly different to appropriate physical discipline.

In relation to the case of *A v UK* which is mentioned in the consultation document, we note that the European Court of Human Rights did not prohibit the smacking of children or require a wholesale change in the law within the UK to remove the defence of reasonable chastisement or justifiable assault. Rather the Court's decision was based on the facts of the case before it. The ruling applied to that case only. No general statement was made about the physical punishment of children, although the boy's legal representative had invited the Court to make such a statement.