

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 If you choose the second or third option, a name is still required, but it will not be published.

Scottish Christian Party "Proclaiming Christ's Lordship"

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

Current legislation is sufficient to protect children from abuse. The consultation paper details the progress already made in a relatively short period of time, but it complains that it is not fast enough. Impatience is not a justifiable reason for introducing this proposed legislation. A wide discretion already exists as the Criminal Justice (Scotland) Act 2003 section 51 states: "this subsection is without prejudice to the power of the court so to determine on whatever other grounds it thinks fit." "All physical punishment of children" is too poorly defined to justify legislation on this basis. The consultation paper conflates smacking, assault, punishment, violence and abuse into one topic to be banned outright. Smacking may be contentious, but criminalizing it is more contentious, causing untold damage to conscientious parents and the parent-child relationship. No distinction is made between physical correction and physical punishment. The consultation paper gives no consideration to physical restraint and how this differs from assault.

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

Public education is working. The consultation paper details recent improvement in societal attitudes. Criminalizing parents is not the way to deal with unacceptable parenting. The consultation paper accepts this, but this legislation will do this very thing, by changing the definition of assault to include parental smacking. We believe this proposal is ideologically driven, based upon 1. a mistaken concept of equality of parents and children; 2. a failure to balance parental and children's rights; 3. a failure to assess the abuse of children's rights by children themselves, swinging the balance towards children in an unequal manner; 4. a failure to distinguish discipline from abuse; 5. an indiscriminate conflation of parental smacking with violent abuse and 6. a failure to distinguish poor parenting from abuse by parents.

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?

None.

Like the consultation paper itself, this question makes too many assumptions about 'all physical punishment of children', especially that all physical correction and restraint of children is 'punishment'.

The questions in this survey seem designed simply to obtain statistics for easy processing rather than promoting serious discussion about complex matters concerning behaviour. Previous experience, such as the Scottish Government's consultation about redefining of marriage, demonstrates that a free text section in a questionnaire or consultation can be overlooked or even ignored compared to the statistics gathered from pre-determined questions.

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?

It will introduce more chaos into the domestic situation than it is supposed to correct.

This Bill is a disproportionate response and interference with family life. The criminal process is likely to damage children and the family more than a parental smack.

The criminal process is not the means to correct poor parenting. It will criminalize parents who on a solitary occasion may use physical restraint or correction of their children's behaviour.

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?

It is a snoopers' charter encouraging a surveillance society, vindictive neighbours and malicious relatives.

Even where there is no prosecution, parents accused of smacking may find themselves subject to long-term social services supervision over their family life, put on a social work smacking offenders' watch list or register, interfering with family life and extending the surveillance society.

A criminal conviction for assault will have wide implications on employment, credit ratings, insurance, working or volunteering with children or vulnerable adults, and possibly many other unintended consequences.

It removes discretion from policing and diverts limited resources.

Page 11: Financial implications

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

The broad scope of the proposed Bill will increase unnecessary investigation into parental smacking and will require increased resources to investigate it. It will divert scarce resources from already overstretched services and interfere with the ability to focus on known at-risk cases. The psychological effects of domestic surveillance are likely to be more costly than the financial ones. Family discord and stress from surveillance may lead to more drain on the police, social services, mental health resources and the criminal justice system. Middle-income earners will not get Legal Aid to defend themselves against false accusations, which is unequal and contrary to natural justice. There will be an increased drain upon the Legal Aid budget.

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

The secular attitude that children and their welfare are the responsibility of the state rather than primarily of their parents runs counter to Christian and many other beliefs. Legislation should reflect the primary role of parents in parenting. Respect for freedom of conscience is at a premium and one-sided in current debate, but it is not even addressed in the consultation paper but it is simply assumed that physical interaction with children is abuse. The proposed Bill has profound implications for equality. 1. Children are not little adults and cannot be treated as if they are equal to adults. Adults have autonomy that children do not have because of their immaturity. 2. Access to justice is currently financially unequal, and this proposed Bill will introduce many more people to the justice system in an unequal manner as some will have to pay for their own defence while others will rely upon the Legal Aid budget. Middle-income earners will not get Legal Aid to defend themselves against false accusations, which is unequal and contrary to natural justice. 3. Deaf parents make use of physical communication to a greater extent than most, and currently there are not

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enough support workers and British Sign Language interpreters in some areas of Scotland for the current justice system to cope, and this Bill will exacerbate the situation, especially if a deaf parent is accused.

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

Yes, by not proceeding along the legislative route. Education is having its intended effect and the law already covers physical abuse of children.

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:

No; economically and socially for the reasons stated in answer to questions 4, 5 and 6.

Page 15: General

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

The language used in this debate does not help to arrive at the correct balance, neither in debate nor in implementing a solution. Emotive terminology has developed around the discipline of children. Emotive terms such as violence and assault are used and even conflated with 'justifiable assault' in Scottish legislation and 'reasonable punishment' in English legislation. The subject is emotional and emotive terms can be legitimately used in this discussion but they ought not to be abused. The authority of respected bodies cannot replace the injudicious use of language, and the prejudicial terms such as assault, 'invariably degrading', punishment and equality, together with the confusing and conflating of matters that are not the same – parents and carers, responsible parents and dysfunctional parents, equality of adults and children, reasonable chastisement and corporal punishment with physical restraint and correction – does not help the debate.

Much of what is said in the consultation paper about physical pain can be said of emotional pain, and the consultation paper does not give any criteria for distinguishing these.

Children are not little adults, and to suggest that they are only confuses debate. There are aspects about children's understanding and behaviour which are more closely related to animal comprehension and behaviour than adults, and various forms of physical correction are regularly employed to train and restrain animals. The consultation paper does not even mention physical restraint, whether it falls into the category of violent assault or if it is a degrading mental form of punishment.

The claim that 'the physical punishment of children ... is inextricably linked to other forms of violence' p. 13 lacks credibility when measured against the large number of caring parents who have raised well-balanced children despite physical correction. Such over-the-top statements do not clarify debate but deliberately prejudice debate. As 'a key strategy for reducing and preventing all forms of violence in

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societies' p. 14 it is an unproven strategy in a world of increasing violence, and it may rather send out the wrong message to trouble-makers.

The consultation paper quotes many campaigning groups and influential organisations but there has been no attempt to understand the position of multitudes of caring parents who have raised well-balanced children, who nevertheless believe in the ultimate sanction of physical correction of unruly children, or more probably children in a dangerous situation where immediate action and an immediate response is necessary. This is correction of dangerous or unacceptable behaviour rather than chastisement for wrong behaviour, and this may be the appropriate measure to protect the child from injury and/or immediately repeating dangerous behaviour, which is required by Article 19 on the United Nations Convention on the Rights of the Child (UNCRC) p. 11. The consultation paper refers to medical emergencies p. 10 but fails to consider similar domestic emergencies. The consultation paper simply assumes that all physical interaction is wrong, and assumes that parents have all the time in the world to correct every conceivable activity that children may engage in. This discretion, permitted in current legislation, is removed by the 'blanket ban' in this proposed Bill.

Corporal punishment is grouped along with 'other cruel or degrading forms of punishment' p. 13. Grouping it with violence p. 13 and mental violence uses emotional language that leaves many caring and law-abiding parents aghast that their parenting should be described as violence. Correction is not punishment.

The consultation paper says nothing about parental ownership and responsibility towards their own children and operates on the assumption that the state has first duty towards children, and indeed that the state has a greater regard for the welfare of children than parents. While there are dysfunctional families with inadequate parenting, these at-risk situations are already identified and covered by current legislation, rather than using a sledgehammer to break the proverbial nut. Most parents adequately raise their children, and this legislation will interfere with domestic roles by putting accusing children in control of domestic affairs.

The determination whether the law has been broken in any given circumstance should remain the prerogative of the courts instead of social workers, who have neither the prosecuting nor judicial skills to make such determinations.

The law should distinguish parents from carers and reasonable chastisement from assault. Reasonable correction should replace the terms 'justifiable assault', reasonable punishment and physical punishment.

The consultation paper makes no mention of female genital mutilation, the most degrading form of assault upon children that has not brought a sufficient response from Government. On 23/7/2012, BBC Newsnight reported on the silence about female genital mutilation. The Newsnight reporter could find no-one from among midwives, social workers nor head teachers to discuss the subject. This consultation paper adds to this list.

The Scottish Parliament debated criminalizing parental smacking in 2002, and rejected it as unworkable. Nothing has changed to make it any more workable.