

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 If you choose the second or third option, a name is still required, but it will not be published.

Fiona Duncan

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

I am submitting this response in support of the above Bill as both an Unfeartie and Chair of the Independent Root and Branch Care Review (www.carereview.scot).

Unfearties are individuals who are courageous in discussing children's issues, seek to make a difference in children's lives, and who are willing to speak up for, and stand alongside, children. These values are reflected in my role as Chair of the Independent Care Review where I have made a commitment to be directly accountable to the children and young people of Scotland who will be involved in the Review.

As an Unfeartie and Chair of the Independent Care Review I have made a commitment to listen to children, to view children as capable and an asset to their communities, to strive to ensure children's voices are heard, to promote greater awareness and understanding of children's rights and to challenge infringements of children's human dignity.

For me, the issue of Equal Protection for children is simply one of children's rights, children's right to be free from the threat of violence, free from the fear of physical pain, free to live happy, healthy lives where their dignity is not infringed by corporal punishment, physical 'discipline' or indeed 'justifiable assault', and most of all children's right to have the same legal protection from violence within the law as we in the rest of society enjoy.

The Independent Care Review aims to leave a legacy that will transform the life chances and wellbeing of children and young people in care. Central to this vision is that the voices of children and young people remain at the heart of the Review. In 2016 the Scottish Youth Parliament published their Manifesto for 2016-2021. During the development of this strategy they engaged with over 70,000 children and young people across Scotland. They asked participants whether 'all physical assault against children should be illegal' and 82% agreed, with only 6% disagreeing. These are views directly from children and young people in Scotland and should be heard loud and clear throughout the process of this Bill.

Children's Rights

Advances in policy and legislation in Scotland in relation to children's rights over the last few years are to be commended, in particular the use of Children's Rights Impact Assessments (CRIAs) on legislation since 2015, duties on Ministers in Part 1 of the Children and Young People (Scotland) Act 2014 to "keep under consideration whether there are steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements", and the placing of GIRFEC on a statutory footing in order to create a more consistent national approach to improving outcomes for children and young people.

However the existence of the defence of 'justifiable assault' of children is an anomaly to the rest of this progressive legislation. Scotland and indeed the rest of the UK are out of step with our European neighbours and the rest of the world. Globally 52 states have legally prohibited the physical punishment of children in all settings, the UK is one of only 4 EU Member States to have not prohibited physical punishment or committed to legal reform.

The current law in Scotland around physical punishment of children is incompatible with a number of Human Rights treaties including the United Nations Convention on the Rights of the Child (UNCRC). As noted in a recent article by the new Children and Young People's Commissioner for Scotland Bruce Adamson:

"The United Nations, the Council of Europe, and the European Union have repeatedly called on Scotland to honour its international human rights commitments to provide children with protection from assault, but successive Governments have failed to do so"

This Bill provides the perfect opportunity to remedy this and finally ensure that we are fulfilling our human rights obligations towards our children.

Looked after children

Looked after children have particular challenges and vulnerabilities. They will have often experienced chaotic family backgrounds where they may have been exposed to substance misuse, domestic abuse, neglect, violence and other issues from a very young age. These experiences can be extremely traumatic

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and have a lasting impact on a child or young person's future life chances.

There is no apparent logical reason for Scotland to continue to sanction violence against children in a domestic context. Huge strides have been made in relation to domestic abuse over the last few years and we have seen a very positive culture shift in the way services and the public respond to domestic abuse. The 'Safe and Together' model of combating domestic abuse has been piloted in some areas across Scotland and centres on the core principle that it is in the best interests of the child to keep them safe and together with the non-offending parent, thus reducing the risk of being taken into a formal care arrangement.

Reducing levels of violence within the home whether that be towards a partner or a child is imperative. Evidence shows that any level of violence in the home, however low level carries a serious risk of escalation into injurious abuse and maltreatment. We need to do everything we can to protect children within the home and prevent abuse occurring, removing the last remnants of sanctioned violence within the home therefore seems a very logical step. This necessary step becomes even more apparent when we take into account that 80% of 'main abusers' recorded at child protection case conferences in 2016 were parents or step parents.

In addition, specifically in relation to looked after children and their carers, the current legal framework is unclear and arguably unfair due to some forms of physical punishment being legal in some settings such as the home, but not in others such as foster, residential or kinship care. Children and young people often have several different care placements throughout their journey. In a system that is already confusing and complex the ambiguity around when they are or aren't allowed to be physically punished by their carers is unhelpful and unnecessary. Foster carers, kinship carers and residential workers are the parental figures for many children and young people, the message the law sends out at the moment is that sometimes it is okay for your carer to hit you but only in certain settings and environments.

There must be parity as well as clarity within the law for all children and young people and especially those who are looked after, this can be easily remedied through the proposals within this Bill. Now is the time we give children in Scotland equal protection from assault and I offer my full support to John Finnie MSP for his proposal.

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

No Response

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 Response

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?

No Response

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

No Response

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?

No Response

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

No Response

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 Response

Page 15: General

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

No Response