

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 would like this response to be anonymous (the response may be published, but no name)

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 If you choose the second or third option, a name is still required, but it will not be published.

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

I am opposed to this measure because it conflates the loving and reasonable and proportionate physical chastisement of children by their parents with assault. There is a presumption that supra-national institutions, legislators and parliaments ought to have primacy in determining the interests of children. The family unit is the fundamental and basic unit of government and the State ought to have no locus in preventing parents from employing reasonable and proportionate physical chastisement with their children. Only parents have a holistic knowledge of their children. Only parents have ultimate responsibility for their children and their best interests as their highest priority. This can never be true of the State, its agencies or those employed by these agencies. Were the Scottish Parliament to legislate to redefine reasonable physical chastisement as assault and intrude into family life it would represent nothing short of an act of tyranny on the part of the State, an act that would itself be ultimately destructive of the fabric of society.

The consultation document itself is shot through with assumptions and contingent language. There is no causal connection proved between reasonable and proportionate physical chastisement and adult violence. The Western Isles was a culture which, until recently, was characterised by the use of physical chastisement. And yet levels of adult violence are low in this area. Anecdotally, most of my peer group were physically chastised as children and this has not had the fearful consequences predicted in the consultation document. It is impossible to isolate out one element in the upbringing of children and identify this as the cause of violence in later life. The proposal seems on the face of it to be more ideological than rooted in meaningful empirical evidence. Certainly, no such decisive evidence is cited in the consultation document. "Physical punishment damages children's well-being and results in increased levels of violence in our communities." That is a categorical statement that is not empirically verifiable and is bordering on the disingenuous. That is simply and demonstrably not true of my own community when compared to other communities.

Any legislation emerging out of this consultation would criminalise parents who are only acting in the best interests of their children for their protection and development. Committees of experts and politicians cannot know what is in the best interests of the individual child in its individual circumstances in any individual situation. Any legislation would outlaw parenting approaches that have the sanction of the law of God and are biblically mandated. The notion of a Higher Authority than the State is of course deeply objectionable to many today. Nevertheless, parliaments and politicians are themselves accountable to God and His law and must frame legislation and policy with respect to that law. The Bible states that to withhold physical chastisement will "spoil the child." Really, the evidence for that is there if we will only open our eyes to it. I was physically chastised as a child by a parent who loved me. I have never employed violence as an adult. I have never reflected back on the physical chastisement I received as a child to justify any aggression in later life. Rather, at the time of the chastisement, I understood both that I deserved it for wrong done and that the parent administering loved and cared for me. I did not want it but that did not make it wrong. I recognised its justice. It did not normalise assault or physical violence with intent to harm in any way for I did not receive the chastisement as having any intent to harm or damage me but rather to correct. It was actually a means that helped keep me from violence by boundarising my behaviour and teaching me that wrong actions have consequences. We do not live in a society that meaningfully recognises this principle and this consultation is a symptom of that particular problem.

If children have rights and protections commensurate with adults then it logically follows that they possess the same duties and responsibilities as adults. You cannot argue for one dimension of the equation without accepting the other.

Page 13:

The United Nations Convention on the Rights of the Child (UNCRC) was ratified by the UK in 1991 and states in Article 19—

"States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

It is pernicious to imply that loving and reasonable and proportionate physical chastisement of children should be categorised in this way. A smack is the very antithesis of these things and the end in view is utterly opposed to the intentionality of any guilty of contravening Article 19. In any case, why limit the scope of the consultation to physical violence. What of mental violence? I have witnessed parents acting out against their children in public places with an almost total loss of rationality. Is this mental violence to be protected from the prohibitions of legislation? Is this not emotionally damaging to the child in terms of

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mental distress and public embarrassment? Will such behaviour not lead to antisocial behaviour in adulthood on the part of the child? How can there be a causal nexus requiring legislation for the physical and not mental abuse of this kind? The fact that there is a narrow focus can be viewed as betraying the ideological spirit of this proposal. Any legislation that does not include the mental violence prohibited in Article 19 cannot be fit for its stated purpose but is rather partial and partisan.

There is an appeal to experts, examples from other legislatures and the court of public opinion. None of these have any higher authority than the parent to prevent or prohibit what is reasonable and proportionate in the chastisement of children. None of these institutions know the child or love the child or understand what is in the holistic interests of the child.

It is tyrannous for the State to arrogate to itself the right to correct, train and teach children in the correct way to discipline their children. It would be tyrannous of the State to coerce parents into using State approved child-rearing techniques. Think about that last statement and realise that these proposals are redolent of the tyranny that was so destructive of human freedom and flourishing that human rights documents were designed to preserve. This consultation proposes using human rights instruments to justify the intrusion of the State into the very heart of family life in its governing and coercive power to impose arbitrary prohibitions based on spurious evidence.

16% of the responding parents of children aged 2 said they had ever used smacking (GUS 2007-07);

87% of the responding parents of children aged 2 said that smacking was not very, or not at all, useful (GUS 2007-08); Page 17.

Assuming that only those who had actually employed smacking could meaningfully comment on its utility then, then this statistics proves nothing other than that those who never use smacking don't think it is useful. This is a statement of the overwhelmingly obvious. The statistics also suggest that the majority of those who employed smacking found it positive or neutral in its utility. So the statistics actually bear out the utility of smacking.

Page 18:

The case for legislative change in Scotland

The case for giving children equal protection from assault is demonstrated by—

i. the overwhelming published evidence which shows that physical punishment is likely to be physically and/or emotionally damaging to children;

There is no doubt that excessive force could be damaging to children. It is not true that reasonable and proportionate physical chastisement leads to physical or emotional damage. That is a value judgement and an assumption. There are simply too many variables and families and children too unique for this to be scientifically demonstrable in any meaningful sense.

i. the overwhelming published evidence which shows that physical punishment is an ineffective means of improving children's behaviour;

How can this be proved empirically? You would need to punish the same child at exactly the same time by physical chastisement and another method for this to have an evidentiary value. This can only be the crudest metric and certainly not sufficient to base a radically policy shift like this one.

i. the fact that Scotland is one of only a handful of European countries which still permits some physical punishment of children

This is irrelevant to the case. What other parliaments have legislated is not meaningful to the needs of the parent and child in the specific situation regarding corrective punishment. What a Swedish MP thinks is really of little consequence in that moment.

i. the increasing number of countries around the world which have introduced, or announced plans to introduce, a full ban;

See previous answer.

i. the UK's need to meet its obligations as set out in the UN Convention on the Rights of the Child and other European and global organisations;

The parent must meet his or her obligations before God in rearing of children. UN Conventions are merely the aggregate wisdom of experts on narrow fields of specialism. They know nothing of the needs of the individual child.

i. the growing consensus amongst parents and children and young people that

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children are entitled to expect equal protection from assault; and
Smacking, or the reasonable and proportionate use of physical punishment to correct behaviour, is not and never can be assault. Assault is intent to harm. Chastisement is always in love and always with a view to the betterment and wellbeing of the child. It is pernicious and misleading to conflate these concepts.

by continuing to allow children to be subjected to physical punishment, and not offering the same protection as adults, Scotland is not complying with the terms of the UN Convention on the Rights of the Child and is at odds with policy and recommendations by the UN and the Council of Europe.

Is it not beyond the bounds of possibility that the UN can be wrong in any area or to apply the terms of this Charter in this way would actually be to harm children and not to promote their wellbeing?

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

Children are protected from assault in Scottish law as it is. The law permits parents to use reasonable and proportionate physical chastisement - smacking. A smack is not an assault. Assault requires intent to harm. Smacking is with a view to the protection of the child and with a view to their healthy development. Framing smacking as assault is a misnomer and a category error.

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?

Smacking is not assault. Children who are assaulted by their parents will not be protected by this legislation.

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?

Parents will be denied the freedom to discipline their children according to the exigencies of the individual situation and according to the individual needs of their children.

Children will not receive the discipline that is necessary to the exigencies of a particular situation which is may negatively impact their development.

Parents who know their children better than anyone and love them more than any other can will be criminalised for expressing their love and concern for the wellbeing of children through reasonable and proportionate physical chastisement. This may have profounder consequences for the children involved than any smack.

The freedoms of the individual will be further undermined by the incipient statism that increasingly characterises the Scottish body politic. The State will further assert itself as the ultimate parent which will be destructive of family life and society. Children will be removed from their parents as a result of this legislation.

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

Costs to social social services, the judiciary, the care system.

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

This legislation will be utterly destructive of religious liberty and criminalise the right of parents to rear their children in accordance with biblical principle.

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

The answer to the previous question cannot be minimised or avoided as the Bill currently stands.

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:

The removal of children from parents which is the ultimate outcome of this legislation will have catastrophic social consequences.

Page 15: General

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

This proposal is based on value judgements and assumptions. It does not properly account for social or religious context. It extrapolates from the case study to propose universal measures. It imposes the value base of NGOs, parliaments and experts on the whole of society when there can be no absolute certainty

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

that smacking was the cause of aggression or violence in later life. It is simply not possible to prove this without taking twins and smacking one of them and not the other. Otherwise its just guesswork masquerading as sociology. The proposal is couched in vague terms. There is nowhere proof given that smacking causally produces violent children and adults. I am proof myself that it does not. And I know many, many others of whom that is true also. So there is no direct causal link between smacking and violence in the child smacked. You would have to rule out any other source of direct or indirect violence in the development of the child to make such an with any degree of certainty.