

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 If you choose the second or third option, a name is still required, but it will not be published.

Children 1st

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

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**

Children 1st strongly and passionately supports the proposal to give children equal protection from assault by prohibiting all physical punishment of children. From the outset we are clear that this proposal is the removal of an out-dated legal defence that sits at odds with the progressive, rights-based policy of a Scottish Government whose ambition is for a Scotland that is the best place in the world to grow up and where everyone is equally safe. It is not the creation of a new offence and there is no evidence that in removing the existing legal defence parents will face a rise in prosecutions or that there will be a subsequent increase in referrals to social work.

Children 1st is Scotland's National Children's Charity. Our support for this proposal is rooted in over 130 years of experience working alongside families to provide support when they need it and to help children and families to recover from the trauma associated with adverse childhood experiences. At Children 1st we put strength-based, relational and restorative approaches at the heart of our work and we speak out about the things that the children and families that we work with tell us will make a difference. Equal protection is one of those things that will make a difference.

Most of the distress we see in our work with families across Scotland is caused by the impact of material and relational poverty and unresolved childhood adversity and trauma. Many of the parents that we work with grew up in households where violence was the "norm" and they tell us that this has had a significant impact on their lives as adults. We do not expect the removal of this legal defence to immediately solve these problems, but we believe it will herald the beginning of a culture change whereby parents and families are provided with the most accurate and up to date information about the parenting choices they make; Scotland complies with its human rights obligations and makes real children's right to live free from violence; children and young people will not be given mixed messages about violence; there is no risk that physical punishment will escalate into physical abuse; and the law is clear that physical punishment does not work and is harmful.

In addition to the Children 1st's own experience of working with families, we highlight the following:

1. The extensive and unequivocal international evidence. It has been demonstrated beyond doubt that physical punishment is harmful, damages children's wellbeing and is linked to poorer outcomes in childhood and adulthood. In 2015, an international literature review on the impact of physical punishment on children commissioned by Children 1st and partners found that:

i,§ Physical punishment damages children's wellbeing and carries the risk of escalation into physical abuse.

ii,§ Prevalence of physical punishment is decreasing and attitudes towards its use are changing. According to Growing Up in Scotland data just over half of Scottish parents report that they have used physical punishment with their children but over 80% said they don't believe it is useful.

A study of 1,600 children in Scotland found that children who had been subjected to physical punishment during their first two years were more than twice as likely to display emotional and behavioural problems at age 4 than children who had not been physically punished (allowing for other factors such as educational attainment and changes in family structure).

i,§ Four out of five studies showed an association between childhood physical punishment and adult aggression and antisocial behaviour.

ii,§ There is strong and consistent evidence that physical punishment increases aggression, antisocial behaviour, depression and anxiety in children, which may continue into their adult lives.

iii,§ Physical punishment carries with it the risk of escalation into physical abuse.

Research recently published in the American Journal of Family Psychology concluded that "spanking" children for bad behaviour has similar effects to physical abuse, after looking at studies over a 50-year period encompassing more than 160,000 children.<sup>ii</sup> The study's lead author, Dr Elizabeth Gershoff said: "We found that spanking was associated with unintended detrimental outcomes and was not associated with more immediate or long-term compliance, which are parents' intended outcomes when they discipline their children."

Given the overwhelming evidence about physical punishment it is clear that this proposed legal reform is long overdue. Children 1st believe that it is the Scottish Government's duty to fulfil its legal obligation to propose laws to protect its most vulnerable citizens based on the information and evidence available, in the same way as other public health measures such as the seatbelt legislation and the smoking ban. We acknowledge that the Scottish Government has taken into account this evidence by clearly stating that it "does not support physical punishment of children." Indeed Minister for Childcare and Early Years Mark McDonald said: "We continue to support positive parenting and we recognise that physical punishment can set children the wrong example and is not an effective way to teach children discipline... Evidence from the

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growing up in Scotland longitudinal study that the Government is carrying out demonstrates among parents in Scotland a significant shift in the attitude to physical punishment," but we find it confusing and anomalous that it does not plan to legislate for the removal of a defence that it does not agree with. We know that children and families find this confusing too.

In consistently ignoring the vast and growing body of evidence and in clearly contravening international human rights law the Scottish Government is being negligent in its duty to protect its most vulnerable citizens and is failing in its duty to "keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements" as set out in Part 1 of the Children and Young People (Scotland) Act 2014.

The extensive professional support for legal reform. Children 1st have a long history of campaigning for legal change in this area, together with colleagues in the children's sector. Our voice has often been ignored—but we do not believe that the significant and rising number of other professional organisations and bodies that work with children and families on a daily basis should be ignored. Supporters of equal protection for children include those in social work, health, education, parenting organisations and the police, for example: the Scottish Police Violence Reduction Unit, the Church of Scotland, Social Work Scotland, the Scottish Police Federation, Royal College of Nursing Scotland, Royal College of Paediatrics and Child Health, Scottish Directors of Public Health, Police Scotland, Parenting Across Scotland and Dad's Rock.

A letter to the Scotsman in February 2016 from the Children and Young People's Commissioner in Scotland, Barnardo's Scotland, Children in Scotland, NSPCC Scotland, Royal College of Paediatrics and Child Health, Royal College of Nursing Scotland, Social Work Scotland, Children 1st, Together (Scottish Alliance for Children's Rights), Aberlour, the Scottish Police Violence Reduction Unit, Scottish Police Federation, Scottish Women's Aid and Parenting Across Scotland said: "Far from being solely an academic or legal debate, the physical punishment of children is a real, live issue for those working with children and families across Scotland... Despite growing evidence that physical punishment is harmful to children, despite signs that public attitudes towards physical punishment are changing, and despite repeated criticism from numerous international human rights bodies, protecting children fully against physical assault in the law remains unaddressed."

Given the collective expertise of the bodies working closely with many of our most vulnerable children and families, it is increasingly hard to understand why their views are not being taken into account—alongside the voices of the children and young people of Scotland whom the Scottish Government represent. Our increasing understanding of the impact of trauma and adverse childhood experiences on adult life—and the material and financial cost of failing to work alongside people early enough—demonstrates that measures to ensure children are growing up in safe, healthy and happy homes with strong and supportive attachments are vital. Removing the legal defence is one way of striving towards this ambition.

Our organisations do not ask for this change on a whim or on impulse. We ask because we believe it is what is best for children based on our collective depth and breadth of professional experience working with families.

Children 1st's support for this proposal is therefore firmly rooted in our own experience of what we know about families, the extensive evidence that has been amassed, the knowledge and expertise of dedicated and informed professionals, the recommendations of a significant number of human rights bodies and the voices of the children and families that we work with. Given the weight of support for this issue we question what alternative there is to immediate legal reform.

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**

Legal reform is the only way to achieve rapid and comprehensive cultural change to end the use of physical punishment in Scotland. And it must happen now.

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

We are aware that the Scottish Government has stated that public opinion is changing anyway and that they are currently producing materials that support positive parenting, including through the Parenting Strategy. Children 1st wholeheartedly support the view that legal reform must be accompanied by support for parents about alternative, positive and more effective disciplining techniques, should they wish to seek this information. Indeed, we are concerned that the investment in early intervention and prevention that was recommended as part of the Christie Commission's findings in 2011 has not been prioritised. This means that early help and support is not being provided to families to build resilience, encourage strong attachments and relationships and to develop the essential skills to prevent crisis and to prevent cycles of deprivation and chaos from repeating themselves. We believe that there is a lot of work to do in order to ensure that families are supported early enough to prevent multiple adversities and to ensure that problems do not escalate into a crisis. Part of this is working alongside some families in a relational way to empower them to choose alternative, more effective parenting approaches.

However, we are clear: the approach outlined by the Scottish Government is not enough in the absence of legal reform. We must not let the need for investment in early intervention and in awareness raising campaigns delay legislative reform. Without legal reform some children will have less protection from violence and assault than others, depending on whether their parents use physical punishment. Given the irrefutable evidence that physical punishment is harmful, it is not acceptable to wait for every parent's approach to catch up with the evidence, before introducing legal reform. This is particularly important because in the absence of clear messaging from the Scottish Government some parents may not even be aware of the evidence.

There is strong evidence from other countries that the passage of legislation, in combination with public awareness and education campaigns, heralds a further change in public attitudes. Studies have shown that public support for, and prevalence of, physical punishment declined before the introduction of legal bans and continued to decline afterwards. As most recently the smoking ban in Scotland has demonstrated, it is legislative change most often that is the catalyst for cultural change:

A 2010 review of countries that have reformed the law in this area found that public acceptance of equal protection follows on from legal change, alongside a decline in severe physical abuse.

¶,§

Prior to legal change in Sweden in 1979, polling indicated that over 50% of the public were supportive of physical punishment. Following legal change public support for physical punishment steadily decreased and in 2000 data suggested that just a "few per cent" of parents used physical punishment. The Swedish Government reported 30 years on that the "abolition of corporal punishment, along with the debate that preceded it and the publicity campaigns that followed, has had a major impact on children's lives." The report went on to state that there has been a sharp decline in the more serious forms of physical punishment, with the potential to cause serious injury.

¶,§ A report on preventing child abuse and neglect from the American National Centre for Injury Prevention and Control found that legislative approaches to reduce physical punishment "can help establish norms around safe, more effective discipline strategies to reduce the harms of harsh physical punishment, particularly if paired with engagement and education campaigns.

Evidence from Sweden and Finland suggests that legislative approaches can impact the use of severe corporal punishment against children, the understanding of what constitutes violent punishment, and attitudes towards the use of such punishment.

¶,§ Findings from a multi-country study<sup>xii</sup> and a systematic review of the literature<sup>xiii</sup> showed that legislative restrictions on corporal punishment in other countries have been closely associated with decreases in support of and use of corporal punishment as a child discipline technique.

¶,§ A comparison of five European countries, three of which had bans on corporal punishment and two without, found that bans were successful in decreasing overall rates of corporal punishment. Countries wherein corporal punishment was lawful had higher rates of all forms of corporal punishment than countries with bans in place.

The passage of the Bill through the Scottish Parliament would allow additional measures such as improved early intervention programmes, family support through Police Scotland, NHS Scotland and schools and a comprehensive awareness raising campaign to be discussed and the proposals to be properly scrutinised. Non-legislative measures such as a new Strategy or Action Plan or a Governmental Working Group would not achieve the culture change that follows legislative change and would not future proof against changes

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in administrations. We must not delay legal reform while discussing these plans- they can be discussed in the context of the Bill.

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?

Children 1st wish to highlight the following advantages of prohibiting physical punishment—we do not consider there to be any other option than to proceed with the legal change, given the facts and evidence.

1. Children will not be physically punished and as a result there will be no long-term ill effects

As stated above, there is strong and consistent evidence that physical punishment is harmful and damages children's wellbeing. Professor Sir Michael Marmot, Director of the UCL Institute of Health Equity has said, "The international evidence could not be any clearer- physical punishment has the potential to damage children and carries the risk of escalation into further abuse." A study of 1,600 children in Scotland found that children who had been subjected to smacking during their first two years were more than twice as likely to display emotional and behavioural problems at age 4 than children who had not been smacked (allowing for other factors such as educational attainment and changes in family structure). xv A change in the law would encourage parents to use alternative methods of discipline and would send a clear signal that physical punishment is ineffective. The evidence from other countries tells us that the prevalence of physical punishment would reduce and children will have the same protection from assault as adults in the law.

2. Children will be given clear and consistent messages about violence not being tolerated

It is clear that not all children who are punished physically as a child will suffer significant ill effects that they are aware of—some people tell us "it never did me any harm." However, the evidence tells us that individuals who experience physical punishment as a child are more likely to engage in physical and verbal aggression with their spouses, are more likely to be "controlling" and are less able to take their spouse's perspective. Studies have also shown an association between childhood physical punishment and adult aggression and antisocial behaviour.

We are concerned that the contradictory message that we are currently telling our children about violence—whereby it is ok for Mummy or Daddy to hit me, but it is not ok for Mummy and Daddy to hit each other or for me to hit my friends—is confusing for children. If an acceptable way to resolve an argument or to make a point is to respond with violence to a child, then a child may replicate the behaviour at nursery or school and then find themselves being punished in that setting for unacceptable behaviour. This contradiction is impossible for children to make sense of.

It has been repeatedly emphasised, including at the Scottish Government's Justice Working Group as part of the implementation of Equally Safe (the Strategy to Prevent Violence Against Women and Girls), that the ambitious aims of the Strategy cannot be achieved while there is a contradictory approach towards violence in the law. It is not possible to give a clear message of zero tolerance to violence in the home while there is an outdated law that provides a legal defence for assaulting children. Removing the defence of 'justifiable assault' in Scotland will send a clear message that violence in the home is unacceptable, in whatever form. Organisations like Zero Tolerance, have told us of concerns that tolerating physical punishment of children "undermines attempts to tackle domestic and sexual abuse across our society, because it tells children that violence is sometimes okay."

Additionally, Karyn McCluskey, former director of the Scottish Violence Reduction Unit said: "Taking action to support parents to raise their children using positive discipline can, I believe, help reduce violence across Scotland." Dr Peter Fowlie, Officer for Scotland for the Royal College of Paediatrics and Child Health said: "We know that a child who is smacked is more likely to suffer with aggression and mental health issues. We also know that they are more likely to physically punish their own children and approve of hitting a spouse." A key advantage of legal reform is ensuring that there is a zero tolerance approach to all types of violence in Scotland that begins as a child and continues throughout your adult life.

3. There will be no risk of physical punishment escalating to physical abuse

Six individual studies have identified a link between physical punishment and an increased risk of physical abuse including: parental use of severe physical violence, injury requiring medical attention, and household involvement with Child Protective Services.xvii Of course, many families that use physical

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punishment as part of a 'suite of disciplining tools' may do so without it escalating further. But for some families, a light smack can escalate into physical abuse and neglect. Bruce Adamson, the Children and Young People's Commissioner for Scotland writes: "There is no such thing as a reasonable level of violence. Legalised violence against children in one context risks tolerance of violence against children generally."xviii

A UK House of Commons Health Committee report 'The Victoria Climbié Inquiry Report' stated: "What happened to Victoria involved the apparent escalation of discipline and punishment. Carl Manning told the Inquiry that the abuse had begun with little smacks." The Committee's recommendation having reviewed the evidence was that the UK Government should remove the "increasingly anomalous reasonable chastisement defence from parents and carers in order fully to protect children from injury and death."xix

A number of Serious and Significant Case Reviews in the UK have specifically referenced physical punishment. In addition to Victoria Climbié, examples include:

i. § Heidi Koseda (1984) Four year-old beaten and starved to death by mother's boyfriend, who was punishing her for "being greedy".

i. § Kimberley Carlile (1986) Four year-old imprisoned and beaten by her stepfather for "being naughty" and refusing to accept him as her new father.

i. § Liam Johnson (1987) Three year old beaten to death by his father, Robert Johnson. Johnson's girlfriend later said, "He was so powerful that when he smacked his sons he sometimes knocked them off their feet."

i. § Leanne White (1992) Three year-old beaten to death by her mother and her boyfriend. A neighbour reported Leanne's screams and the boyfriend saying, "If you do that again, I'll thrash you."

i. § Lauren Wright (2000) Six year-old beaten to death by her stepmother. People in her village had seen her being hit, but felt powerless to intervene.

i. § Carla Nicole Bone (2002) 13 month-old murdered by her mother's boyfriend, who was "disciplining" her for refusing to walk. He told the police it started with "not-excessive smacks... It was the way I was brought up. It never did me any harm."

i. § Kieran Edwards (2007) 21-month year-old who died after being shaken and struck by his step-father because he was "messaging about and struggling".xx

Crucially, in speaking about their own legal reform 30 years on the Swedish Government has stated: "Violence that was once a family secret is more likely to be reported today because we are less likely to excuse or minimise instances of physical abuse of children by parents or others close to them." xxi

4. Children's views will have been taken into account.

There is extensive information available that children and young people across Scotland do not agree with physical punishment, and support the law change. The Scottish Youth Parliament has begun actively campaigning for legal reform and 82% of young people responding to a consultation that they commissioned agree that "All physical punishment against children should be illegal"xxii In addition to that:

i. § Four studies have been conducted across the UK into the views of young children, beginning with a study of 76 children in England between five and seven years old. xxiii These children overwhelmingly identified smacking as hitting that is physically painful. Almost every child disapproved of the use of physical punishment and saw it as something that adults often regretted, and which made the children upset, angry and sometimes wanting to smack someone else. Children said "It feels like someone banged you with a hammer" (Girl, aged 5); "It hurts and it's painful inside – it's like breaking your bones" (Girl, aged 7); "Like someone's punched you or kicked you or something" (Boy, aged 6).

i. § A UK Government review reported: "Most (children) felt that smacking was out of place in modern childhood, and that other punishments were more effective in bringing about reflection, changing behaviour and supporting... close relationships with parents. Whilst smacking was the most feared form of punishment, it was the emotional distress and humiliation that can be caused by smacking, rather than any physical pain, which children feared. Some children associated smacking with feelings of fear, shame and anger. These children were often not only dealing with parental disapproval and disappointment, but with parents losing control and their temper.... Children who experienced smacking appeared to be more emotionally distant from their parents."

In 2016, a survey of over 1,500 secondary school pupils across Scotland found that over half of pupils felt it was "not OK" for parents to physically punish children and that younger pupils were more likely to say it was "not OK" for parents to physically punish children. 62% of pupils felt that physical punishment could be harmful to children.xxv

i. § Children 1st and the Children's Parliament worked with children and young people to ascertain their views about family life, including physical punishment in a series of films called 'Pushing the Boundaries': <http://www.childrensparliament.org.uk/our-work/past-work/pushing-the-boundaries/>. Children told us: "We're the future parents so respect us and we'll respect you"

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"Let me tell my side of what happened"

"Hitting makes me feel bad in my heart."

"It's upsetting and it teaches you to hit your own kids."

"Do not skelp me for being cheeky. It makes me feel embarrassed. I have thought about this and I don't want to do this to my own children."

"Don't swear at me, don't hurt me, don't call me names."

"You do need discipline to know what is right and wrong. You need to learn to know when you are grown up."

"Parents are a good influence."

i,§ Children Are Unbeatable undertook a small survey of the views of children under the age of five, in 2009, which found similar attitudes: smacking was "bad" and "nasty" and made the children sad, or aggressive.

In 2006, the UN Secretary-General's Study on Violence against Children, stated: "Children have consistently expressed the urgent need to stop all this violence. Children testify to the hurt – not only physical but 'the hurt inside' – which this violence causes them, compounded by adult acceptance, even approval of it. Governments need to accept that this is indeed an emergency, although it is not a new emergency."xxvii

i,§ Longstone Primary School in Edinburgh produced a film where they strongly supported legal reform in the area, and have submitted it as part of their consultation response to this proposal. The film can be watched here:

<https://www.youtube.com/watch?v=iReMsKrxgs&feature=youtu.be>.

5. There will be clarity over the law regarding physical punishment and families will be better supported. Legal reform, accompanied by clear public messaging, would ensure that everyone in Scotland is clear that physical punishment does not work and that there is no legal defence of 'justifiable assault.' Children 1st believes that this clarity would help the Police to develop clear and consistent responses when they are called out to a report of assault on a child.

We know anecdotally from our Parentline service, the national helpline, email and webchat service providing advice and support for anyone concerned about a child, that there is a lot of confusion. Many people believe that physical punishment is already against the law—and many don't understand what is and is not within the confines of the law. Callers have told us that they have not contacted the Police when genuine physical abuse was occurring because they were not aware of what was legal and what was not and they were not sure what to do. We have also spoken to a caller who contacted social work having repeatedly witnessed a child being physically assaulted who told us that they were informed that "it was not illegal."

This does not mean that Children 1st are advocating a punitive approach whereby all people who use physical punishment are criminalised. Rather, we think it is preferable that everyone is clear what the law is to enable services to offer collaborative, constructive, appropriate and effective parenting support. It is unsurprising that parents are confused. The Scottish Government has clearly stated that it does not support physical punishment and NHS Health Scotland's Toddler and Baby booklet says that "Praise and attention work far better than criticism or punishment." The law, at present, does not reflect the policies and rhetoric. Our experience is that families often resort to physical punishment due to a momentary loss of control—and feel guilty afterwards. Legislative change should be accompanied by support services and information for parents that conveys warm messages about positive parenting and alternatives to physical punishment instead of introducing a 'blame' culture for parents who have punished their children on occasion. Children 1st are clear that we know much more than we did twenty, ten or even five years ago and the evidence that is now available should be presented clearly to parents—without judging parents who have previously used physical punishment harshly, given that the information was not readily available and the Scottish Government's position is ambiguous.

6. Equal protection for children is in line with the general direction of Scottish policy

The current law relating to physical punishment sits at odds with many recent forward-thinking policies relating to GIRFEC and children's rights. The last decade has seen a major child protection reform programme and the development of a preventative approach to policy which enshrines all children's rights to be nurtured, kept safe from harm and have the best start in life. We have also seen a growing body of evidence confirming the vital importance of nurture in the early years and the impact of positive relationships and attachment on brain development. The Scottish Government has repeatedly spoken about prevention and early intervention and trauma prevention—legislation in this area fits with each of these policy areas and will advance the ambitious aims of our Parliament.

Legislation in this area provides Scotland with an opportunity to turn its rhetoric into reality. It is the first test of the commitment in the Children and Young People (Scotland) Act 2014 that Ministers must "keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements" and provides an opportunity to remove

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the statutory endorsement of this unjustifiable risk to children's healthy development and wellbeing, and put in place improved support mechanisms for children and parents, coupled with initiatives promoting positive, non-violent parenting. Removing the defence of justifiable assault would be a low-cost, effective public health measure in the prevention of domestic violence, mental illness and antisocial behaviours and would further the rights and wellbeing of Scotland's children in line with GIRFEC.

It is even more vital to support this change in light of the progressive legislation on domestic abuse, currently going through the Scottish Parliament. A clear acknowledgement of the impact of coercive control and the implementation of Equally Safe, which aims to keep women and girls safe from all forms of violence and to reduce the impact of violence against women and girls on children, sits at odds with a legal defence of 'justifiable assault'. Similarly, the Scottish Government is currently undertaking consultations on whether or not Scotland should introduce a form of emotional neglect into the Children and Young Persons (Scotland) Act 1937. It seems anomalous to Children 1st to be discussing the issue of emotional abuse while it is lawful for a child to be physically punished at home.

At one point it was legal for a husband to physically punish their wife or for schools to use corporal punishment. It is important to remember that this legal defence dates back to an archaic notion that children are property. As Thomas Hammarberg, former Commissioner for Human Rights at the Council of Europe says: "There could not be a more symbolic reflection of children's persisting low status as property than adults' assumption of their "right" and even "duty" to hit children."xxviii

The evidence, information and collective expertise that is now available tells us that this is a watershed moment for children whereby we must move forward to remove the legal defence in line with the general direction of travel of a progressive Scotland.

7. The UK will be complying with its international human rights obligations.

Law reform to abolish all physical punishment of children is an obligation under international law by both European and United Nations human rights monitoring bodies. Article 19 of the United Nations Convention on the Rights of the Child (UNCRC) sets out the States obligation to protect children from violence while assaults justified under Scots Law at present are a breach of the right to respect for physical and psychological integrity protected by Article 8 of the European Convention on Human Rights (ECHR).

The UK has come under repeated criticism from UN human rights treaty bodies, the Council of Europe and the European Union for not honouring its international human rights commitments to provide children with protection from assault. The European Court of Human Rights has progressively condemned corporal punishment in a series of judgments against the UK since the 1970s.xxx Most recently in 2016 the UN Committee concluded that the UK (including Scotland) should "prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences."xxxi In 2015 the European Committee of Social Rights ruled that a lack of prohibition of all corporal punishment of children is a violation of the European Social Charter (Art. 17), stating: "there is now a wide consensus both at European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law." This has been followed in 2017 by seven recommendations to the UK through the Universal Periodic Review at the Human Rights Council.

As a result, Scotland is breaching its human rights obligations and is left vulnerable to challenge in the European Courts due to its apparent contravention of European and international law. Indeed, Janys Scott QC in her legal opinion "The legality of Scots Law on the physical punishment of children" (2017) on behalf of the Children's Rights Strategic Litigation Working Group on Equal Protection states: "there are strong legal reasons to support further consideration of the law relating to physical punishment of children, given the position under articles 3 and 8 of the ECHR, the influence of UNCRC and the legislative commitment to keeping under consideration steps which would secure better or further effect in Scotland of the UNCRC requirements." Bruce Adamson, the Children and Young People's Commissioner for Scotland states that, "as consensus builds internationally, the position in Scotland is becoming increasingly untenable."

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?

Children 1st does not believe there are any disadvantages to giving children equal protection from assault by prohibiting all physical punishment. Naturally, there are some concerns about the impact that this legal change would have and the way in which the removal of the defence will be implemented. We expect that the Bill process will explore some of these concerns, allowing space for debate and discussion, and that a clear communication strategy will be in place so that children and families are provided with factual information regarding the next steps. Children 1st consider it important to ensure that clear information is

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provided specifically about the following three concerns:

1. Large numbers of parents will be criminalised for "smacking".

There is no evidence that a change to the law results in increased criminal proceedings in any of the 52 countries where this reform has already taken place.<sup>xxxii</sup> The law has had enormous value in further reducing the use of physical punishment but there have been no corresponding rise in prosecutions. Indeed, there is no evidence of negative consequences for parents, families or children from the countries that have already made these legal changes and experienced its practical results.

Brian Docherty, former Chairman of the Scottish Police Federation, on publication of our joint research said:

"Whilst the Scottish Police Federation have no desire to see vast numbers of parents prosecuted for physically punishing their children, evidence supports that with proper controls within the Criminal Justice system this would not be the effect of removing the statutory defence. Rather than a statutory defence for everyone the test should be 'were the actions reasonable and proportionate in each set of circumstances.' Statutory defences for crimes should be given serious consideration and constantly reviewed to ensure that their intended purpose is still being delivered. In this case it seems that in offering protection to parents/ carers, the law is in fact in some cases making our children more vulnerable. The law is intended to protect all members of our society and this includes our children who deserve equal protection within it."

Children 1st expect Police Scotland and bodies representing the Police to respond to this consultation and contribute to the ongoing discussion, but we understand that the removal of the legal defence will not significantly impact on the way in which investigations are carried out once a report has been made. There may be a rise in people reporting that an assault on a child is taking place, and we encourage Police Scotland and others to discuss their capacity to take a measured and appropriate response to any increase. However we want to be clear that an increase in reporting in other countries has not led to a subsequent increase in prosecution.

In New Zealand the overall conclusion from an evaluation was that the new law had had a "minimal impact" on police work while 2009 data showed that although there had been a rise in the reporting of violence generally, parents had not been prosecuted for "light smacking."<sup>xxxiii</sup> The tests and balances that exist currently in Scots Law for adults accused of assault will remain in place when the legal defence of 'justifiable assault' is removed: prosecutions will only go forward if they are in the public interest. The Procurator Fiscal's 'Prosecution Code' sets out a number of factors for deciding whether criminal proceedings should take place. These include:

i,§ Seriousness of the offence

i,§ Length of time since the offence took place

i,§ Interests of the victim and other witnesses

i,§ Age of the offender, any previous convictions and other relevant factors

i,§ Local community interests or general public concern

i,§ Any other factors at his or her discretion, according to the facts and circumstances of the case.

The code also outlines a number of alternatives to prosecution.<sup>xxxiv</sup>

2. Social work will be overburdened with trivial cases and will (1) intervene in more families lives and (2) resources will be diverted from serious child protection cases.

In 2008, when legal reform was under debate in Westminster, a joint statement was agreed by the Association of Directors of Children's Services; British Association for the Study and Prevention of Child Abuse and Neglect; British Association of Social Workers; Community Practitioners' and Health Visitors' Association; the NSPCC; Parenting UK; Royal College of Nursing; Royal College of Paediatrics and Child Health. It said:

"If it is accompanied by appropriate guidance prepared following full consultation with ourselves and other parties, we are confident that:

i,§ its implementation in children's best interests can be assured;

i,§ there will be no change to the 'significant harm' threshold for formal investigation; and

i,§ parents will not be prosecuted for 'minor assaults', as this would not be in children's best interests.

Currently social services have to investigate all allegations of child abuse, but they only intervene if they believe the child is suffering or at risk of significant harm. These duties would remain exactly the same following legal reform. Elaine Torrance, President of Social Work Scotland is clear that "Social Work Scotland... fully supports the proposed change to remove the legal defence of 'justifiable assault.'... From our members' significant experience of working with families, we are encouraged that increasingly, parents recognise that physical punishment does not work and that there are safer and more effective ways to manage children's behaviour. Children in Scotland should not only be nurtured, but without doubt given more, not less, protection from violence."

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?

Although those who express concern with a law change state that it would mean increased social work involvement in families, the research clearly demonstrates that children physically assaulted at home (within the scope of the law) are more likely to have child protective involvement,xxxv while families who used physical punishment are eleven times more likely to use severe punishment.xxxvi Although it is clear that not every episode of physical punishment will escalate into a child protection concern, the evidence demonstrates that in the UK almost all of the Significant Case Reviews into child deaths by assault have included an element of physical punishment.

In Sweden, where legal reform happened in 1979, a Save the Children report states that there has been no increase of children being removed from parents through the intervention of social workers.xxxvii With regard to both the Police and Social Work it is important to remember that people already make calls reporting smacking or violence against children on a regular basis- they are accustomed to dealing with this and already have clear procedures and processes in place.

3. Legal reform is unworkable in practice.

Finally, politicians and others have previously stated that they do not think that proposals to give children equal protection from assault are "enforceable" or "workable." Children 1st considers the smoking ban to provide an excellent precedent for a public health measure that has both been enforced and worked which relies on public information and awareness-raising and discretion from the Police and judiciary. Given that the UK is one of only four European Union nations that has not committed to legal reform and 52 other countries have undertaken legal reform it is clear that other countries have found it possible to implement such legislation. Senator Jillian van Turnhout, the Irish Senator that brought forward legal reform to remove the Irish defence of "reasonable chastisement" has spoken repeatedly about the experience in Ireland, stating: "once we had law change we had cultural change." The Welsh Government have also recently announced a consultation on removing their legal defence of reasonable chastisement."

Janys Scott QC states: "It would be relatively straightforward to prohibit corporal punishment of children in Scotland altogether, by repealing the first three subsections of section 51 of the Criminal Justice (Scotland) Act 2003 and substituting a provision such as:

"Assault of a child cannot be justified on the grounds that such an assault constituted a physical punishment, where by a person claiming to be exercising a parental right or a right derived from having charge or care of the child, or by any other person."

It may be considered appropriate to make an exception similar to that found in section 16 of the Standards in Scotland's Schools etc Act 2000...."

Although there are clearly discussions to be had about how the removal of the defence could be supported in practice Children 1st does not consider any challenges to be insurmountable and does not think they should distract from the key issue of ensuring that Scotland's children's are given equal protection from assault.

## 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 reduction in cost

### **Please explain the reasons for your response**

Children 1st believe that there will be an initial cost in regard to communicating this change to parents, and that there is a requirement to invest more substantially in systemic and early support for those families that need it, in line with the recommendations of the Christie Commission in 2011. The initial cost in terms of investment in positive parenting and awareness raising should not be a barrier to doing the right thing for children. Indeed, the Scottish Government has been clear that it is already doing much of the work that is required in terms of promoting alternative parenting approaches—legal reform would actually bring legislation in line with what they already say. However, in the long term we believe that the removal of the legal defence alongside a public awareness- raising campaign and investment in early intervention and systemic family support will ease the burden on public services and will eventually lead to a reduction in

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

cost given there will be less need for expensive crisis management and intervention. This is supported by the consultation response from the Scottish Directors of Public Health Group.

## 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

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?

Yes

## Page 15: General

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

*No Response*