

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 If you choose the second or third option, a name is still required, but it will not be published.

The Christian Institute

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

We strongly contest the premise and the language of this proposal (and indeed of question 1 itself). The proposed Bill's title and the framing of the consultation disingenuously suggest that children are not properly protected in law from assault. But under the current law, parents who use unreasonable or immoderate physical punishment can already be prosecuted. Those who support the use of smacking as one means of discipline used by loving parents are opposed to all cruelty towards children. Any treatment of a child which the ordinary person would regard as deserving of criminal sanction is already liable to prosecution. The law on this is clear. That is why those promoting this Bill have been unable to document any cases where the reasonable chastisement defence has been successfully used by a parent to defend unreasonable punishment. Nor are good parents who merely use reasonable chastisement being prosecuted. This shows the current law is working. The overwhelming majority of people know there is a vast difference between child abuse and smacking, and the current law rightly recognises and respects this difference.

For many parents, smacking is simply one form of loving discipline that can be used with young children when, for example, verbal warnings and other methods have been ignored or cannot be understood due to a child not having yet reached a sufficient level of understanding. To describe this use of smacking as assault is therefore misleading.

Children cannot be treated identically to adults

The proposed Bill is falsely presented as a remedy to inequality. Children, unlike adults, are dependent on their parents to protect them, to teach them good behaviour, and to train them to become responsible adults. The current law rightly recognises this unique relationship of love, dependence, responsibility, authority, affection and trust.

Other areas of the law demonstrate that children cannot be treated identically to adults with respect to personal and bodily autonomy. The Children (Scotland) Act 1995, for example, is predicated on the basis that there is such a thing as parental responsibility and rights, allowing parents (and, in rare cases, other adults) routinely to make decisions on behalf of children in every area of their lives. This is clearly not true of adults except under very narrow, specific circumstances. But for children it is good, right and essential that this obvious necessity should be recognised in law.

The uniqueness of the parent-child relationship is also respected by the state in countless other areas of practice. For example, it is perfectly acceptable to fasten an uncooperative child into a pushchair or car seat, or to order a child to remain in his or her room, or to remove property from a child in order to punish them or protect them from harm. Of course, if an adult were to be treated in such ways, these actions could be deemed to amount to assault, false imprisonment or theft. Common sense means no parent would ever be prosecuted for these things. But the insistence of activists on wilfully labelling smacking as abuse and assault confirms the need for a legal provision to prevent parents being prosecuted for smacking.

In many other ways the law acknowledges and respects the need for children to be treated differently from adults, for example:

- age of criminal responsibility
- driving
- firearms
- compulsory education
- employment law
- consent to sexual activity
- age-rated video content, and
- access to prescription drugs.

It is therefore profoundly misguided to assert that parental smacking should be outlawed on the grounds that children must be treated identically to adults in law.

Lack of evidence

This proposal is being pursued for philosophical reasons and without a sound evidence base.

The consultation paper argues that physical punishment is likely to be damaging to children. In doing so, it places great reliance on an alleged "vast body of international evidence", including NSPCC Scotland's Equally Protected report. However, research claiming to show that smacking causes harm to children is strongly contested and limited in what it can really demonstrate. A major meta-analysis published in 2016 by leading opponents of smacking conceded that "causal links between spanking and child outcomes cannot be established by these meta-analyses". One meta-analysis cited in Equally Protected was conducted by psychologist Christopher Ferguson. Yet Ferguson himself has asserted that it is "irresponsible to make exclusive statements one way or another" in terms of concluding from studies that smacking itself is dangerous.

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?

Public opinion

The consultation document's assessment of current parental attitudes seems to be wide of the mark. In 2014 a ComRes poll found that 65% of adults in Britain said it is sometimes necessary for a parent to smack a child. Only 22% disagreed. In a 2017 ComRes poll in Wales, 76% said parental smacking of children should not be a criminal offence and 68% said it is sometimes necessary to smack a naughty child. These results suggest that supporters of a smacking ban are at best out of touch with the general public on this issue or at worst do not care what the public think.

The fact is that polls show that more than 80% of adults were smacked as children. Overwhelmingly, they endorse their parents' actions. They know that their parents should not have been criminalised. They know that they were not turned into violent offenders as a result of being smacked. Therefore the arguments made in support of a smacking ban lack plausibility. Criminalising smacking will bring the law into disrepute.

The UN Convention on the Rights of the Child

It is also important to challenge the claim that smacking is contrary to Article 19 of the UN Convention on the Rights of the Child. It has been interpreted this way by those ideologically opposed to smacking, but Article 19 actually refers to "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse".

No parent who lovingly disciplines their child using a range of methods including smacking would consider their actions to be covered by this language. The motive for smacking is the child's long-term benefit. It is to equip them for adult life and set clear boundaries – in short, to help them understand how to behave as a positive member of society. It has its basis in the unique relationship between parents and their children. Smacking is a demonstration of love, and is not "violence" any more than telling a child to sit on the naughty step is "maltreatment".

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?

This question uses the same disingenuous language we objected to under question 1. However, we do believe there are many far-reaching disadvantages to this proposal.

Criminalising, undermining and patronising parents

If the proposed Bill became law, thousands of loving mothers and fathers would be rendered law-breakers overnight. Good laws depend on the consent of the governed. This proposal fails that test.

It would have far-reaching and damaging consequences on ordinary family life. It could easily lead to the breakup of families where children are removed from their parents because the parents would be deemed 'child abusers' by the criminal law.

Of course, having a criminal record can also destroy livelihoods, making it impossible for people to keep or obtain jobs, plunging them into poverty and causing real hardship for their families.

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?

This measure is clearly a misguided response to what is a common, widely-supported, respected, valued and time-honoured parental practice. Turning parents into criminals will be detrimental for children and cannot be argued to be in their best interests. A well-adjusted child whose mother occasionally taps him on the back of the hand is not better off if his mother is made vulnerable to being reported to police and social services for that tap on the hand.

It is in society's interest that parents should be encouraged and empowered to take full responsibility for their children, not punished for doing so. Yet if this proposal were to be enacted parents would be greatly undermined. Fear would be instilled in parents over concerns that passers-by could report them to the police for disciplining their children in public, and some children may take advantage of the fact that their parents are restricted in this way. Criminalising smacking would represent a fundamental shift in the legal relationship between parents and children and the reach of the state into the minutiae of parenting decisions.

On this point, psychiatrist David Eberhard has published a critique of the Swedish attitude to parenting. In his view, an emphasis on a permissive approach, starting with the 1979 smacking ban, has left parents unable to correct their children in any way. Eberhard cited several consequences for Swedish society, including breakdown of discipline in schools, plummeting grades and a rise in anxiety disorders among teens, including suicide attempts.

Furthermore, such a move would indicate distrust of parents and constitute mammoth state-overreach into the private sphere of family life. Parents are best-placed to decide whether and when smacking is an effective disciplinary method for their child and nobody cares more than them about the best interests of their own children. The consultation refers to providing parents with 'support' to adopt different parenting techniques. At best this is a patronising suggestion, and at worst a sinister one – raising a red flag to parents already wary of state interference. It is totally inappropriate for the state to dictate to parents how they should raise their children – let alone on pain of criminal sanction.

Campaigners make much of changes to the law on parental smacking made in other jurisdictions. We would urge far greater caution in making comparisons between the effects in changes to the law overseas and the effects of these particular proposals here in Scotland.

There are huge differences in culture and jurisprudence between countries. The proposal here is to amend the criminal law. Many other countries alleged to have 'banned' smacking have not changed their criminal law at all.

For example, banner headlines last year declared that France had "banned smacking". The reality was very different. The law passed in France simply required mayors officiating at civil weddings to read a statement to the couple getting married, advising them to raise their children in a manner "excluding any cruel, degrading or humiliating treatment, including any recourse to bodily violence". It was merely declaratory, with no criminal or other penalty attached.

The line was added on to an existing statement read out to the couple getting married which outlines parental authority and responsibility. Other statements in the French civil code include: "A child, at any age, owes honour and respect to his father and mother". Like the statement about smacking, there was no suggestion that such a principle was going to be legally enforced on either child or parent. In any event, even that minor change to the law was struck down by the French Constitutional Council.

It is vital to recognise that the rule of law is firmly upheld in Scotland, something which cannot be said of many other places where smacking has been restricted. We can expect any change to the law made here to be strictly enforced, like the rest of our criminal law – otherwise, why make the change at all?

Counterproductive impact

Opponents of smacking argue that it teaches children that violence is acceptable. Yet the vast majority of people were smacked themselves as children and are now law-abiding citizens, not violent abusers. Smacking is unjustly characterised as something parents do when lashing out in anger. This is to completely misunderstand what smacking is and how loving parents use it. When good parenting includes the occasional use of reasonable chastisement, it will not be done in a flash of anger but in a controlled way, with an accompanying explanation as appropriate. It will also be part of a loving, warm relationship between parent and child, used alongside other methods according to the particular child and the particular circumstances.

If the assertion that smacking teaches children that violence is acceptable was true, we could expect the figures from a country such as Sweden – where smacking has been banned for many years – to show reduced violence among children after the ban. However, child-on-child violence (criminal assaults by under 15s on 7-14 year olds) increased by 1791% between 1984 and 2010. A study commented that the

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?

implementation of the ban: "may have increased criminal assaults in that country, in contrast to its intended effect of decreasing violence".

Wasting resources

Another serious disadvantage is that key resources will be diverted away from tackling genuine cases of child abuse. This is recognised in the consultation paper, on pages 22-23:

"Similarly, it could be anticipated that a change in the law in Scotland will lead to an increase in child protection referrals and pressure on public services such as the police and social work... Making this change to the law may initially result in some increase in the reporting of alleged instances of physical punishment which would impact on the services which would be required to investigate cases brought to their attention. There may also be impacts, in terms of resources, due to the difficulties in gathering evidence, and in incidents being discovered and/or reported to the authorities." [emphasis added]
The police and social services are stretched enough as it is, without having to investigate trivial reports of smacking. Such a policy move therefore has the potential to endanger the lives of genuinely at-risk children, completely the opposite result to that sought by the proposed legislation. Real abusers will be more likely to slip through the net.

Everyone accepts that the state must intervene to protect children in danger of abuse. If that is to be done effectively, however, the limited resources available need to be focused on identifying and helping those at risk, not investigating loving parents of well-cared for and well-adjusted children.

Causing confusion

The consultation paper suggests that the proposed Bill would provide "clarity" on the law in this area. In doing so, it only draws attention to the fact that in reality it will inevitably confuse matters.

As observed above, the current law is clear. That is why those promoting this Bill have been unable to document any cases where the reasonable chastisement defence has been successfully used by a parent to defend unreasonable punishment. Neither are good parents who merely use reasonable chastisement being prosecuted. This shows the current law is clear and working well in practice. The only objection to the law is a philosophical one, not a practical one.

If this proposal were enacted, prosecutors would have a much harder task when it comes to assessing which smacking cases should be taken to court. The consultation paper provides little insight on this matter. It advocates criminalising smacking, but repeatedly attempts to assure the reader that it will not result in many prosecutions.

However, why turn smacking into a criminal offence if it is never going to be enforced? Proponents of the Bill cannot have it both ways – a law that allows parents to be prosecuted for caring discipline of their children will result in that very outcome.

Page 11: Financial implications

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