

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 If you choose the second or third option, a name is still required, but it will not be published.

Aberlour Scotland's Children's Charity

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

We are fully supportive of the proposal to provide equal protection to children from assault by prohibiting physical punishment. We believe all physical punishment of children should be prohibited by law, and that children require more, not less, protection from violence than adults. As a society, we now accept without question that it is simply wrong, and indeed against the law, for teachers, foster carers, residential child care workers, and any other person with caring responsibilities, other than those with parental rights, to physically punish children. However, parents are still afforded the right to do so, and we believe this is an anomaly which must be addressed. There is overwhelming international evidence which now highlights that no positive effect results from physically punishing children, and in fact physical punishment has the potential to damage children and risks escalation into physical abuse. Therefore, we see no reasonable basis for retaining the defence of justifiable assault of children within Scots Law, and fully support the aim and intention of this Bill.

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

We do not believe the aim of this proposal could be better delivered in another way. Whilst part 7 of the Criminal Justice (Scotland) Act 2003 does include some protections and limitations as to what constitutes physical punishment of children, we believe it does not go far enough. We recognise that legislation alone will not prevent children from physical harm, however legislation can act as a tool for educating the public in regard to what is and what is not acceptable behaviour. A change in the law can often lead to a shift in public opinion and behaviour, rather than public opinion influencing a change in the law, such as the introduction of legislation by the UK Government in 1983 which made the wearing of seatbelts compulsory. The wearing of seatbelts is now universally accepted and understood to be necessary for the safety and protection of everyone when travelling in vehicles.

Furthermore, it is the responsibility of every government to provide appropriate protection to all its citizens, including children. To this end, the Scottish Government is duty bound to meet its obligations in relation to the European Convention of Human Rights (ECHR), specifically Article 3 which guarantees its citizens "freedom from torture and inhuman or degrading treatment or punishment". We believe the Scottish Government can fulfil these obligations, as well as "secure better and further the effect of UNCRC requirements", as the Children and Young People (Scotland) Act 2014 places a duty upon them to consider to, or even use this opportunity to fully incorporate the UNCRC into Scots Law, by supporting this Bill and introducing a full prohibition on physical punishment of children.

However, we believe the introduction of legislation should not be done in isolation, and should only be seen as one part of a wider strategy of informing and educating the public as to why it is necessary to introduce such a prohibition. It is our opinion that any new legislation should be accompanied by an ongoing information and awareness raising campaign aimed at informing the public of the merits of positive parenting and the harm caused by physical punishment. Furthermore, we also believe that in addition to the introduction of legislation and an accompanying information and awareness raising campaign, to promote a wholesale shift in public opinion and behaviour there also requires substantial statutory investment in interventions which aim to support parents and improve positive parenting. It is our experience that offering parenting programmes which promote positive parenting strategies, such as those we deliver in our own early years and family support services, can help and support parents to develop alternative approaches to physical punishment. It is our belief that such parenting support for those who require it, alongside the universal provision of information and advice through multiple channels, such as GP's, health visitors, schools and the media, will ultimately precipitate the understanding and acceptance amongst the wider population that, as a society, we no longer tolerate physical punishment of children.

One example of a country which has undertaken such a wholesale approach is Sweden, where a ban on physical punishment of children was first introduced in 1979. The evidence over the last thirty years as a result of a similar strategy of legislating against, informing the public on the effects of, and promoting

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positive alternatives to, physical punishment of children, has highlighted a fundamental change in attitudes of parents in relation to believing it is acceptable to physically punish their children, as well as a decline in tolerance amongst the general population of physical punishment of children . This has led to both an increase in reporting of physical abuse of children and a significant decline in the number of incidents of extreme physical abuse of children. Sweden is just one of many countries which can now evidence similar trends as the result of prohibiting physical punishment of children .

In addressing the concerns and conflicting opinions regarding the merits of legislating to prohibit the physical punishment of children in Scotland, we believe it would be worthwhile to look to the recent experience of the Republic of Ireland on this same issue; there the Seanad passed the Children First Act in 2015 removing the existing defence of "reasonable chastisement" of a child . Socially and culturally the Republic of Ireland mirrors attitudes in Scotland in many ways, and many of the arguments against banning physical punishment of children raised during the debate in the Republic of Ireland – such as the right to a private family life and the right of parents to discipline their children – echo those arguments made during the same debate in Scotland. Despite such arguments and objections around legislating to remove the legal defence for the physical punishment of children, the experience of parents, practitioners and services has reportedly been positive since the prohibition was introduced. Previously, professionals working with families had reported a reticence in advising parents not to physically punish their children, as this could be perceived as making a moral judgement whilst reasonable chastisement was still acceptable within Irish Law. With the change in law, services and practitioners have reported they can confidently tell parents, with certainty and without making such judgements, that physically punishing children is against the law. In many cases, parents have also identified they now feel there is more clarity regarding what is acceptable behaviour, and are confident about what the law does and does not permit. We feel, therefore, it is reasonable to anticipate that the experience of parents, practitioners and services in Scotland, once a prohibition of physical punishment of children has been introduced, will be similar regarding clarity of the law and how parents can be supported effectively to use positive alternatives to physical punishment.

However, one issue that was highlighted by agencies across the children's sector in the Republic of Ireland was the lack of an accompanying information and awareness raising campaign to highlight the change in law . This has reportedly resulted in uncertainty amongst some parents as to what the law is regarding physical punishment of children, and amongst children in understanding and knowing their rights. Therefore, we believe, as previously highlighted, in order to avoid such uncertainty occurring as the result of a change in law in Scotland, an accompanying information and awareness raising campaign to inform the general public, particularly parents and children, is essential.

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?

We believe it is necessary to consider the effects of physical punishment on children and what advantage prohibiting physical punishment may bring in relation to a child's physical and emotional wellbeing. As a result of comprehensive international research over the last decade on the effects of physical punishment on children, we can now evidence that physical punishment can provoke multiple negative outcomes, including: an increase in aggression and anti-social behaviour amongst children; exacerbation of existing problem behaviour; the likelihood of triggering adult aggression and anti-social behaviour later in life; and an increased risk of child maltreatment . There are also clear indicators that child maltreatment which begins as physical punishment often leads to physical abuse through a "vicious cycle of cascading conflict". It has also been identified there is a clear link between physical punishment and child mental health problems. Indeed, the most recent evidence has clearly established a link between physical punishment and detrimental outcomes generally, with no evidence at all that physical punishment has any positive effect .

It has also been shown that escalation from mild smacking to serious assaults is an intrinsic feature of physical punishment . Research has evidenced that physical punishment can expose children in such a way that they are more accepting of invasive physical contact, increasing the likelihood of being victims of sexual abuse. In addition, children are unlikely to complain when they believe physical punishment is permitted and justified, even when it is egregious. Furthermore, even the slightest smack sends children the clear message that hitting people is acceptable. Therefore, as evidenced by the experience in Sweden and other countries which have prohibited the physical punishment of children, we believe the introduction of such a prohibition would lead to a decline in the number of cases of physical abuse of

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children in Scotland.

There naturally exists an imbalance of power in adult-child relationships, and as a result it is critical that children are provided with as much protection as possible to mitigate any risk of harm. The Scottish Government has committed to ensuring the wellbeing of children and young people is at the heart of everything it does. Therefore, it is our opinion that one crucial advantage to the prohibition of physical punishment of children would be that such a prohibition would only help to consolidate those parallel Scottish Government policy developments currently being undertaken in relation to child protection; and both clarify and reinforce the message to parents regarding their own children, ensuring it is commensurate with those messages communicated more widely in relation to protecting children from harm. The Scottish Government's Child Protection Improvement Programme (CPIP) includes a commitment to "articulate a national child protection policy including a National Child Abuse Prevention Plan, which creates strong and dynamic cross-government policy connections to keep children and young people safe." In addition, the primary aim of the Scottish Government's Equally Safe Strategy envisions "a strong and flourishing Scotland where all individuals are equally safe and protected, and where women and girls live free from all forms of violence and abuse – and the attitudes that help perpetuate them", stating further, "this plan aims to improve the lives and experiences of all children affected by violence and the ways of thinking that maintain it." Therefore, we believe it is essential parents do not receive confusing and conflicting messages about the legitimacy of hitting their children. It is our opinion that by supporting this Bill the Scottish Government can reinforce their explicit commitment to safeguarding children's wellbeing by continuing to impress that protecting children is the state's primary concern, through introducing a prohibition on physical punishment, and avoid inconsistency or uncertainty in policy or approach around how it aims to protect all children from harm.

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?

We believe there are no disadvantages to giving children equal protection from assault by prohibiting all physical punishment. However, we believe arguments in opposition to this Bill will identify a number of consequences as a result of prohibiting physical punishment of children which propose to be disadvantageous.

One contention is likely to be that a prohibition risks criminalising parents who may continue to physically punish their children after it has been introduced. However, the experience in New Zealand, since the ban on physical punishment of children was introduced in 2007, was that only 8 prosecutions of parents occurred for smacking their children in the first five years after the introduction of the ban, and in most circumstances where physical punishment of children is reported, parents are referred to agencies where they are provided with additional support. Nevertheless, in circumstances where it has been alleged that a parent has hit their child, there could be pressure on police to refer any incident to the Crown Office and Procurator Fiscal Service (COPFS), who will then need to decide if there is a public interest in prosecuting the parent. If the police feel overburdened by the number of incidents of alleged smacking a referral to COPFS could be seen as an expedient option. In such situations, and where an alleged incident of physical punishment is not identified by police as egregious, we believe there should be an option for parents to be referred to agencies which can support them to identify positive alternatives to physical punishment – as is done New Zealand. Therefore, further training and support for police officers would be required to ensure they feel confident in how to deal with matters relating to alleged physical punishment of children appropriately.

We believe it is also likely to be argued that legislating to prohibit the physical punishment of children is incompatible with a parent's right to have their "private and family life" respected with "no interference" by the state, as defined by Article 8 of the ECHR. However, Article 8 continues that exceptions to this right are provided "for the protection of health or morals, or for the protection of the rights and freedoms of others", including those of children. Therefore, we believe that a prohibition of physical punishment of children is compatible with Article 8 of the ECHR, and does not undermine the rights of parents.

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 increase in cost

Please explain the reasons for your response

We believe that any national public information and awareness raising campaign to highlight the change in law will inevitably have associated costs. It is also our opinion that there needs to be statutory investment in services and resources to ensure the availability of parenting support to families who need it most, in order to promote positive parenting alternatives to physical punishment of children. Inevitably, this will mean an initial increase in costs in relation to the provision of services which can provide parenting support. However, we believe such costs are likely, over time, to be mitigated by a reduction in costs and resources associated with the intervention of social work services and/or police, as a result of a decline in the number of instances of physical punishment of children and resultantly a decline in cases of physical abuse – as has been the experience in other countries.

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

Please explain the reasons for your response

We believe the overall impact of this Bill on those with protected characteristics will be 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