

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 If you choose the second or third option, a name is still required, but it will not be published.

CELCIS Centre for Excellence and CYCJ Centre for youth and criminal justice

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's rights, the incongruity of the current legal position ('justifiable assault') with the prevailing policy and societal context of nurture and wellbeing, and the robust evidence base in relation to the harmful effects of physical punishment on children, together constitute the main reasons for our support.

Children's rights

Amending the law to prohibit the physical punishment of children is an essential step to uphold children's rights in Scotland. Current legal provisions allowing for the justification of violence against children are incompatible with a number of human and children's rights treaties, including the UNCRC, ratified by the UK in 1991. The UN Committee on the Rights of the Child General Comment 8 (2006) is explicit that children have the right to protection from corporal punishment. Echoing previous concerns raised in all prior reporting periods, in their 2016 concluding observations to the UK, the UN again urged the state and devolved governments to:

- Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as "reasonable chastisement" (41(a)); and
- Strengthen efforts to promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing (41(c)).

We unequivocally support the Bill, to secure the rights of all children in Scotland. The children and young people who are the focus of CELCIS and CYCJ's work have all experienced major difficulties in their lives, and are acutely vulnerable. Our work focuses on improving the experiences and life chances of children and young people whose rights are often challenged, and already less likely to be fully realised. Ensuring equal protection from assault not only safeguards the rights of all children, it also sends a message for care experienced children and young people, and young people interacting with the criminal justice system: that it is never acceptable for violence to be used against a child, and that children's rights are paramount.

Prevailing context

In the global context, 52 states have legally prohibited the physical punishment of children. The UK is one of six European Union Member States without its full prohibition in legislation, and one of only four without any commitment to law reform. With certain qualifications, current legal provisions in Scotland (namely, Section 51 of the Criminal Justice (Scotland) Act 2003) allow for the legal defence that the physical punishment of a child (under 16) is a 'justifiable assault' by someone with parental rights, or having care of the child. In alternative settings, such as in schools, foster care, residential care, and kinship care (where the child/young person is formally 'looked after'), physical punishment is not permissible, and would be regarded by many as wholly unacceptable. We support the proposal for equal protection because we share the Scottish Government's ambition for Scotland to be the best place in the world for children to grow up. Such ambition cannot be realised until all children in Scotland have the same legal rights to be free from assault as adults do, regardless of the setting they are in.

The progressive, rights-based policy and legislative advancements in Scotland over recent years are a laudable. Scottish Government has used Children's Rights and Wellbeing Impact Assessments routinely since 2015, and in 2016 the Minimum Age of Criminal Responsibility was raised from 8 years to 12. The Getting It Right For Every Child (GIRFEC) national approach to improving outcomes and supporting children's wellbeing explicitly places children's rights at the heart of services that support them. Addressing violence against women and girls through the Equally Safe strategy, and the introduction of the Domestic Abuse (Scotland) Bill to Parliament, highlight the importance of human rights and violence reduction to this government. Part 1 (Rights of children) of the Children and Young People (Scotland) Act 2014 requires Scottish Ministers (and others) to keep under consideration whether there are any steps which they could take which would (or might) secure better (or further effect) in Scotland the UNCRC requirements; and to take such steps if they consider them appropriate. Removing the legal defence of justifiable assault from our statute is the next appropriate and logical step in modernising our legislative framework so that it is compatible with the current social and policy context.

Evidence summarised from the Growing Up in Scotland Study and the Millennium Cohort Study suggests that, in line with political and legislative progress, societal attitudes to the physical punishment of children are also changing, with a downward trend in the prevalence of 'smacking', as well as a shift in attitudes regarding its acceptability. The Children and Young People's Commissioner Scotland (CYPCS) report findings from Ipsos MORI Scotland's 'Young People in Scotland Survey 2016' which surveyed 1,550 11-18 year olds, of whom 62% thought smacking was harmful to children. Additionally, the Scottish Youth

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Parliament engaged with over 70,000 children and young people to inform their 2016-2021 manifesto, and found that 82% of respondents felt physical assault of children should be illegal.

The Bill presents an ideal opportunity to update legislation, in line with public opinion, children and young people's views, and the broader Scottish policy and legislative context.

Robust evidence

A comprehensive review on the physical punishment of children was published in Northern Ireland in 2008. In 2015, a further review commissioned by NSPCC Scotland, Children 1st, Barnardo's Scotland and CYPCS, summarised the evidence made available in the intervening years. Messages from the evidence are clear and robust. Crucially, we note:

- Strong and consistent evidence that physical punishment is associated with detrimental childhood and adult outcomes, including increased childhood and adult aggression and antisocial behaviour.
- The relationship between physical punishment and problem behaviour is reciprocal: physical punishment exacerbates existing problem behaviour. Parents who are using physical punishment in response to perceived problem behaviour are likely to make it worse.
- Experience of physical punishment is related to depressive symptoms and anxiety among children, and reduced self-esteem in later life
- The harmful effects of physical punishment were the same even when levels of maternal warmth were high – the innocuous 'loving smack' could be a myth.
- Physical punishment carries a serious risk of escalation into injurious abuse and maltreatment. The evidence supports the notion that physical punishment and physical abuse are part of a continuum of violence, differing only by severity or degree. As of July 2016, 80% of 'main abusers' recorded at child protection case conferences in Scotland were parents or step-parents, and 551 children were placed on the Child Protection Register due to concerns including the risk of physical abuse.

Further recent evidence from a 2016 meta-analysis found no evidence that 'spanking' is associated with improved child behaviour, and rather found it is associated with increased risk of a range of detrimental outcomes including antisocial behaviour, aggression, lower cognitive ability, lower self-esteem, and a greater risk of experiencing physical abuse. No evidence to support the contention that spanking is only associated with detrimental outcomes when combined with abusive methods was found. The authors recommend:

"parents who use spanking, practitioners who recommend it, and policymakers who allow it might reconsider doing so given that there is no evidence that spanking does any good for children and all evidence points to the risk of it doing harm." (Gershoff & Grogen-Kaylor, 2016, p465)

All available evidence informs us that the physical punishment of children is at best an ineffective parenting strategy, and at worst detrimental to children (and the parent-child relationship).

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

The aims of this proposal cannot be delivered without legislative change, this is fundamentally necessary to ensure children have equal protection from assault in law.

In spite of the clear research evidence and conclusive arguments that support the proposal, we acknowledge that any legislative change in this area is difficult. Indeed, we assume this is why Scotland lags behind equivalent European countries in not having made these legislative changes sooner. The proposed change in the law will doubtless be unpopular to some in society; primarily, those who hold strong personal views about the efficacy of 'traditional' parenting approaches, and those who have political views about the extent to which the state should 'interfere' in parents decisions and actions towards their children. But in our collective, Scottish Government-led, determination to make children's rights real, and our commitment to evidence-based policy, the views of a vocal minority must not prevent the Bill from

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becoming law. Those views must be listened to sensitively, and then appropriate steps put in place to readdress their concerns, such as the provision of information and guidance on alternative, more effective parenting strategies, and accessible public information campaigns about the negative effects of physical punishment (and, through these campaigns, providing parents with clarity about what constitutes 'physical punishment'). Ultimately though, as the evidence presented above shows (from the Growing Up in Scotland study and other sources), prevailing social attitudes and behaviour are now ahead of current legislation. This Bill presents the opportunity to align our legislation with the attitudes and expectations of most parents, carers, and child-care professionals.

Changes to legislation can also accelerate wider societal and cultural change in attitudes and behaviour, one example being with the introduction of legislation on the use of seatbelts. When seatbelt wearing became compulsory for all rear-seat occupants in 1991, there was an immediate increase from 10% to 40% in observed seat belt wearing rates. International examples involving amendments to legislation to prohibit physical punishment provide reassurance that acceleration in behavioural and attitudinal change are likely in the case of equal protection. For example, a 2009 study of three European countries where physical punishment was prohibited, and two where it was not, demonstrated the impact of prohibition on reducing instances of physical punishment. The study also demonstrated indirect impacts of legal change across societal definitions of violence, and attitudes toward physical punishment.

However, alongside the absolute necessity of legislative change, this alone is insufficient to deliver the aims of the proposal. As noted in a number of paragraphs above, it is necessary to have both legislation and implementation support to ensure socially significant change is achieved. To achieve this, consideration must be given to:

- Definitions of physical punishment – The consultation document (p7) cites the UN Committee on the Rights of the Child definition of corporal or physical punishment. Whilst seemingly robust, we are concerned that this definition still leaves scope for confusion as it uses some subjective terms, e.g. causing 'discomfort'. The definition begins with the phrase '...any punishment', this could be open to debate and interpretation, for example if parents or carers view their actions as 'discipline' and 'boundary setting', rather than 'punishment'. Currently, section 51 refers to 'justifiable assault'. Assault in Common Law refers not only to physical contact, but also includes inducing bodily fear, or being violently menacing. As the debate and consultation focus on actual physical punishment, it is ambiguous as to the intention or otherwise to include inducing fear through threats of physical punishment in the Bill. Parents, professionals and the public must have absolute clarity about what is, and is not, acceptable by law. Amendments to existing legislation must provide this.
- Clarity of approach by those implementing the law – Professionals from a range of disciplines (such as police, Crown Office and Procurator Fiscal Service, social work) responding to reports of physical punishment must be consistent and appropriate in their response. This necessitates clear guidance for professionals from a range of disciplines (including all Named Persons), and training and ongoing coaching to ensure guidance is used as intended. A clear and shared vision of how the public and all services should respond, and what the implications are for parents and carers who use physical punishment, at various stages of the implementation of the Bill, is necessary.
- Awareness raising – A comprehensive media and information campaign will be necessary to raise public awareness about changes to the law and its implications (including the dispelling of myths).
- Alternative parenting strategies – Accessible, non-judgemental, individualised support must be available for parents and families who have previously utilised physical punishment as a parenting strategy. In line with the GIRFEC approach, families require the right help, at the right time, delivered in the right way. The use of physical punishment often occurs when parents have reached crisis point and have no other parenting strategies at their disposal. Support for parents to learn and implement alternatives which are appropriate the developmental needs of the individual child, and to use more effective strategies to prevent escalating behaviours, are necessary to the success 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?

Advantages such as the alignment of legislation with the best evidence and prevailing social attitudes, as well as advancing children's rights in Scotland, and eradicating a harmful and ineffective parenting strategy, are the main advantages. Additional advantages include:

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- Clarity for parents, carers and families – the law in its current form is ambiguous. Whilst physically punishing children by hitting on the head, shaking, or hitting with an implement is explicitly illegal, other punishments may be justifiable depending on the circumstances. Despite statements from Scottish Government opposing the use of physical punishment, existing guidance has not provided sufficient clarity, which leaves children vulnerable and parents unsupported. In 2012, Scottish Government's National Parenting Strategy committed to build on information provided in the leaflet Children, Physical Punishment and the Law (updated in 2003) to provide additional clarity. This remains forthcoming.
- Clarity for professionals – the ambiguity of current legal arrangements can prevent professionals from responding confidently and consistently to instances of physical punishment. By removing the legal defence of justifiable assault, professionals will no longer need to rely on personal judgement, but can respond consistently with the clear message that physical punishment is unacceptable.
- Promotion of effective parenting strategies – the National Parenting Strategy aims to empower parents to be the best they can be. Given robust evidence demonstrates physical punishment is ineffective and harmful to children (and to parent-child relationship), its use is incompatible with this aim. By removing the option of resorting to physical punishment, there is a necessity to support parents and families to use alternative, effective parenting strategies.

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?

If due consideration is paid to the issues outlined in this response (and doubtless numerous others), there should be no disadvantages to giving children equal protection from assault. We are aware of a number of concerns raised in relation to the Bill. It is right that there is full acknowledgement of concerns, in order that they can be appropriately considered and addressed.

This topic can cause individuals to reflect on their own histories of being parented, and bring about emotive reactions to an issue very personal to many. Concerns have been raised relating to the undue interference of the state in private family life. It is important to understand these concerns, and to articulate for members of the public what the reality of the Bill would be like in day-to-day life (if passed into law). Fears of undue interference in family life can be allayed by making clear that the responsibility of the state is, primarily, to protect children from harm, and that under existing Scottish, UK and EU legislation, the state has both the power and obligation to intervene where it identifies concerns about a child's welfare. The Bill, as proposed, does not increase those powers, but rather removes ambiguity about what would constitute a concern. The potential clarity afforded by the Bill's proposed amendments could actually, in time, reduce the tension between 'state' and 'parents', making clearer the boundaries within which children's behaviour can be managed. Indeed, given the weight of today's evidence suggesting physical punishment is harmful to children, and ineffective as a behaviour management strategy, there is a responsibility for the state to respond accordingly.

Understandably, the potential for parents to be unnecessarily criminalised is a concern. Again therefore, creating clarity for the public about what will be different if the law is reformed should be a priority. Currently, if police are involved in handling an incident, reasonability tests and the specific circumstances are considered before the decision is made to charge an individual with assault. The case must also have sufficient evidence to progress to a prosecution, which in turn must be in the public interest. This will remain the case if the law is reformed. Similarly, social services regularly respond to situations involving allegations of children subject to physical punishment. Currently, in line with a GIRFEC approach, such responses are based on comprehensive assessment of needs and circumstances, and consider the holistic needs of the child within the family. This too will not change in the case of legal reform. The experience internationally has not been that legal reform results in increased unnecessary prosecutions. The Republic of Ireland achieved legal reform in 2015, and anecdotal evidence suggests there have been no changes in their rates of prosecution. In New Zealand's case, the 2009 independent review Police, and Child Youth and Family Policies and Procedures Relating to the Crimes (Substituted Section 59) Amendment Act found legal reform there did not alter agencies existing thresholds for taking action relating to physical punishment. Whilst concerns about unnecessary criminalisation are understandable, the reality is that they are likely to be unwarranted.

There are also concerns that public services (such as police and social work) will be overwhelmed by allegations of physical punishment, and this will impact on the other important work they carry out. It is sensible to expect an initial increase in reports to public services, in line with increased public awareness of the issue from the media and campaigns. However, there is no evidence suggesting that legal reform

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is likely to lead to services becoming overwhelmed. Anecdotally, the Republic of Ireland's children and families agency (TUSLA) reported initial slight increases in concerns coming to their attention, but they were easier to respond to in light of the new legal context. Additionally, evidence suggests that legal reform accelerates the decline in use of physical punishment, further decreasing the risk that services will be overwhelmed as physical punishment becomes less prevalent. Legal reform (and accompanying guidance) should strengthen and clarify the service response, and enable more families to receive support early with alternative, effective parenting strategies.

Page 11: Financial implications

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

Broadly cost-neutral

Please explain the reasons for your response

The proposed Bill will be broadly cost neutral in the long term, though an initial increase in financial resources should be anticipated. Funds will be necessary to support its implementation through activities such as an awareness raising campaign, creation of robust guidance, provision of training and coaching for professionals, and ensuring effective, accessible supports for parents are available. Potential cost savings in the long-term relate to spending on some child and family services, as referrals reduce following effective public information campaigns on behaviour management, and in light of greater clarity among the public about what is acceptable and unacceptable parenting behaviour.

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