

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 If you choose the second or third option, a name is still required, but it will not be published.

NSPCC

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

- NSPCC Scotland enormously welcomes the current proposal to give children equal protection from assault by prohibiting all physical punishment.
- Protecting children fully in the law is at once a fundamental human rights issue and a public health issue.
- Scotland's duty to fulfil children's right to equal protection is absolutely clear given the extensive international evidence linking physical punishment to a range of poor wellbeing outcomes for children; with some lasting into adulthood.

Reforming the law to abolish all physical punishment of children is regarded as an obligation under international law by both European and UN human rights monitoring bodies. Most notably, under the United Nations Convention on the Rights of the Child (UNCRC), all children have the right to a violence-free upbringing, including the right to be protected from all physical punishment. In its review process the committee has repeatedly called on the UK and on the devolved administrations to uphold children's right to legal protection.

Scotland's obligation to uphold children's right to equal protection is best understood not as an obligation to a committee or to a process but rather an obligation to children themselves. In ratifying the convention the government effectively makes a promise to children that it will take the necessary steps to ensure they are able to realise their rights in everyday life. There are arguably fewer areas where legal reform would contribute towards children accessing their rights on a daily basis.

Physical punishment and harm/ public health issue

The consultation rightly points out that attitudes toward physical punishment in Scotland are changing and that fewer children experience physical punishment than in the past. Nevertheless, most recent data available shows that significant numbers of children continue to report experiencing regular physical punishment; parents continue to report using it. Punishing children physically is not a neutral parenting practise. The extensive evidence base linking physical punishment to a range of poor wellbeing outcomes for children in the short and long term; with some lasting into adulthood, is beyond question.

Research commissioned and published in Scotland has contributed significantly to advancing our understanding of the detrimental impacts physical punishment. The Equally Protected study, cited in the consultation paper, is a systematic review of the international research literature published on physical punishment in the last decade. The study, which reviewed 98 pieces of international research on physical punishment, found:

- strong and consistent evidence for a link between physical punishment and childhood aggression, antisocial behaviour and delinquency.
- good evidence for a reciprocal relationship between physical punishment and problem behaviour. Physical punishment exacerbates existing problem behaviour, leading to a vicious circle of cascading conflict.
- Carries a serious risk of escalation into maltreatment and physical abuse

The review also found strong evidence for the harmful effects of childhood physical punishment on adult intimate relationships. Individuals who were physically punished during childhood were more likely to engage in physical and verbal aggression with their spouses, were more controlling and were less able to take their spouse's perspective.

The review has a number of critical strengths that make its findings in relation to physical punishment and detrimental outcomes for children particularly robust. Essentially, it confirms beyond doubt that no more evidence is needed and that 'we know enough now to stop hitting our children'. Crucially, the study also provides Scotland with an up to date review of international evidence on the impact of legal reform on the prevalence of physical punishment and attitudes towards its use, finding clear evidence that legal reform acts as a catalyst for declines in the prevalence of physical punishment and widespread attitudinal change towards its use.

Public Health Expert Sir Michael Marmot, who provided a forward to the report, publically stated that: 'the review provides compelling evidence for preventative legislation'

This Scotland specific evidence reinforces international learning on the long term consequences of physical punishment. 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. 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

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?

outcomes when they discipline their children."

The evidence around physical punishment and detrimental outcomes has not been ignored in Scotland. The Scottish Government has clearly stated that it recognises physical punishment can harm children and that it does not support its use. Nevertheless, it has hesitated in implementing an evidence based, preventative policy measure known to reduce prevalence of physical punishment, effected across Europe and increasingly the world.

In retaining the defence of 'justifiable assault' of a child, Scotland is now out of step with almost all its' European neighbours. It is of huge importance that an elected member of the Scottish Parliament, which represents Scotland's children, had taken this step.

We commend John Finnie for bringing forward this consultation. His ambition to achieve equal protection for children against physical assault by outlawing all physical punishment is shared by a formidable range of expert bodies, organisations and institutions throughout Scotland and the UK which are calling for legal reform and which include Scottish Directors of Public Health, Royal College of Paediatricians, Association of Directors of Social Work, Church of Scotland, 3rd sector organisations, the Scottish Police Violence Reduction Unit, Social Work Scotland, the Scottish Police Federation, Royal College of Nursing Scotland, and Parenting Across Scotland.

NSPCC is proud to be amongst those organisations and institutions calling for legal reform and is fully supportive of the current proposal.

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 aim of the proposal is to 'promote and safeguard the health and wellbeing of children and young people by ensuring they are afforded the same right to protection from assault as adults'. It is clear that fulfilling children's right to equal protection cannot be achieved by anything short of legal reform to outlaw physical punishment. As far as we understand there are no legal provisions in Scot's law which allow any levels of physical violence against adults, other than in the case of self defence. Children's right to the same protection from assault as adults will only be realised when the legal provision which allows some forms of physical punishment of children by their parents is repealed.

In relation to whether there are wider measures that can be implemented to ensure children are equally protected, without introducing a bill to parliament, the evidence would suggest no.

There is no doubt that some evidence based parenting programmes can lead to a reduction in parent's use of physical punishment – as well as reducing other forms of negative parenting. For example, a randomised control trial of the standard 'Incredible Years' programme, which has been partially implemented in some local authority areas in Scotland, coupled with child literacy intervention, found that parents who completed the programme used less physical punishment, were less critical of their children and increased their use of positive discipline, in comparison with parents in the control group.

However, whilst evidence based parenting programmes have an important role to play in family support and improving outcomes for children, these are often highly focussed, secondary prevention interventions to address difficulties which may have already arisen. They do not address the primary prevention of physical punishment at a child population level nor lead to a reduction in prevalence. Given the prevalence of physical punishment and the established range of negative impacts on child wellbeing, primary prevention must be the aspiration.

Public education is a core tool of primary prevention in public health terms and clearly has a role in reducing the use of physical punishment. To date, the Scottish Government has relied on public information to encourage parents at a population level not to use physical punishment. For example, public information literature on physical punishment and the law advised parents not to smack their children as

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follows:

'...smacking is not advisable as a method of disciplining children since it:

- can be dangerous – it is easy to forget how delicate children are, particularly if you are frustrated or angry. What feels to you like a light slap can have the potential to cause real harm to a small child;
- sets children the wrong example – rather than correcting misbehaviour, it can teach children to hit out at people who are doing things they don't like or who don't do what the child wants them to do;
- has effects which last long after the physical pain dies away – young children will not necessarily associate the punishment with their behaviour. It can make them angry and resentful and can be damaging to their confidence and self-esteem. Smacking is not an effective way to teach children discipline.'

This literature was available for parents for well over a decade, from 2003 onwards, including featuring in the 2012 Parenting Strategy as a key resource for parents in managing their child's behaviour (National Parenting Strategy, pg 22). Whilst the available data points to a downward trend in the use of physical punishment in Scotland as well as some shift in public attitudes towards its use, the most recent prevalence studies conducted in Scotland show that significant numbers of children still experience physical punishment, clearly indicating that public information advising against physical punishment is simply not enough.

In contrast, there is strong international evidence from countries which have reformed the law to give children full protection against physical punishment that legislation outlawing all physical punishment provides a vital catalyst to further reducing the use of physical punishment, where downward trends in its use are already apparent.

There is also clear evidence that legal reform accompanied by public awareness campaigns leads to widespread attitudinal change about physical punishment. Indeed, it appears that a combination of law reform and public education is more effective in changing attitudes and behaviours than either strategy alone.

Subsequently, NSPCC enormously welcomes the consultations paper's acknowledgment of the importance of the proposed legislative change being accompanied by a widespread public information campaign and provision of parenting support.

It is of note that the Royal College of Physicians understands abolition of smacking as a national policy initiative which would make parenting easier. This closely reflects the evidence that physical punishment, far from improving children's behaviour, exacerbates 'problematic' behaviour in children and increases child parent conflict. Involving expert bodies increasingly in moving forward will help communicate these messages at a national level.

Most importantly in going forward is engaging with parents and with children themselves, diverse cultural and socio-backgrounds, to communicate core messages around legal reform. Parents in Scotland overwhelmingly understand already that physical punishment does not work and say that they do not like it.

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?

The advantages of giving children equal protection from assault are manifold. Physical punishment is clearly related to a range of detrimental outcomes in childhood as well as in adulthood. Reforming the law to give children full protection against physical punishment will lead to positive outcomes across the child population, as well as the whole of Scottish society.

As well as helping children realise a fundamental right, NSPCC consider the main advantage of prohibiting all physical punishment of children to be prevention. As outlined in the consultation paper and above, the use of physical punishment is clearly related to a range of detrimental outcomes in childhood as well as in adulthood. Legal reform is a clear primary prevention strategy which will contribute significantly to reducing the prevalence of physical punishment across the child population, thus

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preventing detrimental outcomes associated with its use.

Reducing the use of physical punishment across the child population will also mean some children will be protected from serious harm. The Equally Protected review found consistent evidence of an association between the use of 'normative' or legally permissible forms of physical punishment and child maltreatment, in most cases serious physical violence.

This is not to conflate 'smacking' with child abuse - all children who are physical punished will not go on to suffer maltreatment - but rather to accept the strong evidence base that children who are smacked are more likely to suffer significant harm. Applying the evidence based, preventative measure of legal reform, known to reduce prevalence of physical punishment across the population, will mean some children will be protected from serious harm.

Absolute clarity in the law will allow professionals to give consistent, objective (i.e. not based on their own judgment) and sensitive advice about the use of physical punishment across the board and in cases where there is concern, allowing for earlier intervention where necessary. It thus underpins core preventative/ early intervention approaches to child health and wellbeing in Scotland, most notably GIRFEC and the Universal Health Visiting Pathway. Essentially, legal reform will also mean that the 'bar' of evidence is not set higher for children than for adults, in prosecuting individual cases.

The investigation into child abuse and neglect in the Western Isles (published in 2005) is instructive in both these respects. The Social Work Inspection Agency concluded that "...the children were subjected to physical abuse throughout their childhood until their removal from home. Some of the physical injuries to the children were caused by over chastisement by Mr A. Once in England and twice in Eilean Siar he admitted at the time to losing his temper and/or causing an injury. In a later statement to police he said: 'I did have a temper...like anybody I became aggressive, shouting and shaking...if I had to smack them I would smack them, but I'm heavy handed ...on the legs...bruising...'

The Report went on to point out: "We recognise that during the period when these physical injuries to the children occurred, common law entitled someone with parental responsibilities and rights relating to a child and someone with care and control of a child to physically punish the child. It entitled parents to use force to discipline their children provided their actions could be justified in court as 'reasonable chastisement'. Section 51 of the Criminal Justice (Scotland) Act 2003 set out to clarify the law relating to the physical punishment of children. The 2003 Act specifically prohibited blows to the head, shaking and the use of an implement." "However, in all other cases the defence of 'reasonable chastisement' remains and the onus is on the prosecutor to prove that the punishment went beyond this. Mr and Mrs A were, and still would be, legally entitled to physically punish the children and if prosecuted could have claimed a defence of 'reasonable chastisement'. While there is evidence that professionals, particularly in England, did encourage Mr and Mrs A to use more positive methods of discipline they could not legally prevent them from using physical punishment."

Wider strategy and approach

As well as supporting and underpinning national approaches to child health and wellbeing, reforming the law will also make a significant contribution towards national efforts to reduce violence across society. In particular, Equally Safe strategy and delivery plan, which aim to prevent and tackle all forms of violence against women and girls and all children, will not be undermined by the continued legal tolerance of some forms of violence. Fundamentally, the primary preventative impact of legal reform in reducing the prevalence of physical punishment will actively contribute toward preventing violence in adult intimate relationships.

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?

NSPCC does not foresee any disadvantages of giving children equal protection by prohibiting all physical punishment.

However, it is very important that policy makers address fears that may exist around the policy change. Perhaps most importantly, addressing head on the concern that outlawing physical punishment will result in the criminalisation of parents.

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?

The consultation document very helpfully raises this issue, stressing that the intention of legislation is educational rather than punitive – and citing the robust international evidence which indicates that legal reform does not lead to the trivial prosecution of parents.

In Scotland, senior police have commented on this specifically. Brian Docherty, Chairman of the Scottish Police Federation said:

"Whilst the Scottish Police Federation have no desire to see 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'.

Police spokespeople in Wales - where the Government have also recently announced a consultation on removing their legal defence of reasonable chastisement - have also directly addressed fears around criminalisation, helpfully touching on the issue of the frontline professional response.

'Some people may well be concerned that lots of people will be arrested and criminalised as a result (of reform of the law). Can I give them the reassurance that the police service, working with social services, health and education, deal very sensitively and thoughtfully with any allegations of young children as victims. We would look at significant harm, the context of the child, the family and any other persons involved, to sensitively approach and deal with these issues in a way which would support the family and prevent reoccurrence of that violence in the future."

Former Chief Constable of Gwent Police, Carmel Napier

Discussions with police professionals and testimonies from police and health representatives at a recent Scottish parliament event on equal protection chime closely with this reality. Far from a heavy handed approach, where there are concerns about the use of physical punishment engagement with families and support around changing behaviour is fundamental to the response, rather than punitive. Directly addressing fears around criminalisation in the law as well as in guidance should be fully explored in going forward. In Sweden for example, the law clearly states that it will not prosecute unless the crime is serious in nature, highlighting the educational rather than prosecutorial aim of the Swedish legislation.

Working closely with Police Scotland and frontline professionals in health and social services will be imperative in articulating clearly both the intention of reform and the frontline approach.

Page 11: Financial implications

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

Please explain the reasons for your response

In the short term may be some financial cost related to a potential increase in reporting of concerns. In the long term, we would expect the policy change to lead to potential savings, related both to improvements in child health and wellbeing at a population level, early more effective intervention in families where the use of physical punishment continues to be a significant problem and a reduction in violence across society.

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?

We have heard from politicians and others that they do not think that proposals to give children equal protection from assault are "enforceable". However, 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...."

It is for the Scottish Government and partners to establish how the removal of the defence could be supported in practice. Details around practical application must not distract from the key issue of ensuring that Scotland's children's are given equal protection from assault.