

## **Equal Protection**

### **Stage 1 Briefing for MSPs**

**May 2019**

Assaulting a child for the purposes of punishment should always be against the law. Scotland's current law is untenable in international human rights law terms.

**The Commissioner fully supports the Children (Equal Protection from Assault) (Scotland) Bill which will ensure children's right to be protected from all forms of physical violence.**

Scots law protects adults from all forms of physical violence, and this bill will provide the same protection to children by removing the legal defence that an assault against a child was physical punishment carried out in exercise of a parental right<sup>1</sup>.

The preamble to the United Nations Convention of the Rights of the Child affirms that precisely because of their physical and mental immaturity, children need special safeguards, including appropriate legal protection. Article 19 requires legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence by any person having care. Article 37 requires protection from torture or other cruel, inhuman or degrading treatment or punishment, reflecting the ECHR and other international treaties. Other articles reinforce the child's right to physical integrity and protection of their human dignity.

The UN Committee on the Rights of the Child is unequivocal – children's right to protection from violence and to equal protection under the law means that states must enact legislation which prohibits, without exception, all forms of corporal punishment of children in all settings.<sup>2</sup> Campaigns to raise awareness of its negative effects and encourage positive, non-violent parenting should complement, not replace legislation.

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<sup>1</sup> <https://www.legislation.gov.uk/asp/2003/7/section/51>

<sup>2</sup> <https://www.cypcs.org.uk/rights/uncrcarticles/article-37>

In the UN Committee's review of the UK in 2016, it called on the governments of the United Kingdom 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".<sup>3</sup>*

In 2004 the Parliamentary Assembly of the Council of Europe ruled that social and legal acceptance of corporal punishment of children must end. In 2008, the Council of Europe launched a Europe-wide campaign for prohibition of all physical punishment and the promotion of positive, non-violent parenting, to create a continent free of corporal punishment. Forty-two of the 47 member states have now provided equal protection for children or committed to do so. The European Committee of Social Rights has repeatedly found the UK in breach of article 17 of the European Social Charter.

The European Court of Human Rights has stressed that the ECHR is a living instrument. Given the convergence across Europe and the significant evidence of the effect of violence on children, we consider the failure to provide children with equal protection from assault is a breach of the ECHR. Assaults justified under the present law are a breach of the right to respect for physical and psychological integrity protected by ECHR Article 8.

Most forms of physical assault against children are already against the law— this change would make it clear that assaulting a child is always wrong, giving children in Scotland equal protection to adults. Experience in other jurisdictions, including Ireland and New Zealand, shows that providing children with equal protection against assault by removing defences relating to physical punishment fosters cultural change around and facilitates support for positive parenting, improving outcomes for children. It has not, in either case, resulted in increasing criminalisation of parents – indeed as former Irish Senator Jillian van Turnhout explained in her evidence to the EHRC, in Ireland there has been one single prosecution<sup>4</sup>.

Research commissioned jointly by this office and Barnado's, the NSPCC and Children First, which analysed 74 studies over 10 years, showed a clear link between children experiencing physical punishment and increased childhood

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[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en)

<sup>4</sup> <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12019>

aggression and anti-social behaviour<sup>5</sup>. This was confirmed by both written and oral evidence to the Committee from a range of internationally renowned academics.

In evidence to the Equality and Human Rights Committee the Commissioner made clear that:

*Assaulting a child for the purpose of punishment should never be legal. It is at odds with the values that we hold in Scotland. The United Nations Convention on the Rights of the Child is clear that children should grow up in a family environment of happiness, love and understanding, and that, although parents have the responsibility to ensure that children grow up in that environment, the state has an obligation to put in place clear protections.*

*Article 19 of the convention says clearly that the state must put in place legislative protections to ensure that children are protected from all forms of violence and, alongside that, all the guidance, support and education to allow parents to fulfil that role.*

As the committee is aware, the issue has been a regular feature of concern about Scotland from the international community—the United Nations, the Council of Europe and the European Union. I welcome John Finnie’s human rights leadership on the matter and the committee’s role as a human rights guarantor to ensure that children in Scotland have their rights respected in relation to their physical integrity.

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<sup>5</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>