

## **Response to John Finnie MSP's Consultation on the Proposed Children (Equal Protection from Assault) (Scotland) Bill**

The role of the Children and Young People's Commissioner Scotland is to promote and safeguard the rights of children and young people in Scotland with a particular emphasis on the United Nations Convention on the Rights of the Child (UNCRC) and other relevant international instruments.

### **1. 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**

#### **Introduction**

Since the establishment of the Children and Young People's Commissioner's office in 2004, we have consistently called upon the Scottish Government to act to protect children from physical punishment.

Assaulting a child for the purpose of punishment should never be lawful. There is no such thing as a reasonable level of violence. Legalised violence against children in one context risks tolerance of violence against children generally. The United Nations, the Council of Europe, and the European Union have repeatedly called on Scotland to honour its international human rights commitments to provide children with protection from assault, but successive Scottish Governments have failed to do so. The European Court of Human Rights (ECtHR) has progressively condemned corporal punishment of children in a series of judgments against the UK since the 1970s.<sup>1</sup> On each occasion the law has been amended only to meet the minimum requirement of the judgment rather than to properly respect the rights of children.

Recent statements made by the Minister for Early Years and Childcare, Mark McDonald MSP, have clarified that the Scottish Government '*does not support the use of physical punishment*'<sup>2</sup> and has encouraged the use of non-violent alternatives, yet the Scottish Government has refused to commit to legal reform.

We therefore fully support this proposal to legislate to provide children and young people in Scotland with equal protection from assault.

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<sup>1</sup> *Tyrer v United Kingdom*, Judgment of 25 April 1978, Series A, No. 26; 2 EHRR 1; *Campbell & Cosans v UK* (1982) 4 EHRR 293; *Costello-Roberts v UK* (1993) 19 EHRR 112; *A v UK* [1998] 2 FLR 959; (1999) 27 EHRR 61.

<sup>2</sup> <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10610&i=97574&c=1945105&s=physical%2520punishment>

## **International Human Rights Framework**

### **United Nations**

The 2006 report of the UN Secretary-General's Study on Violence against Children calls on all countries to prohibit all violence against children, including all corporal punishment, including in the home, as a matter of priority. Professor Paulo Sérgio Pinheiro, the Independent Expert appointed by the UN Secretary-General to lead the Study, wrote:

“The Study should mark a turning point – an end to adult justification of violence against children, whether accepted as ‘tradition’ or disguised as ‘discipline’. There can be no compromise in challenging violence against children. Children’s uniqueness – their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection.”<sup>3</sup>

Successive UN High Commissioners for Human Rights have also made significant comments:

Mary Robinson (1997-2002):

“I am particularly sensitive to the protection of the human rights of children, and the issue of corporal punishment is one of great importance to child rights... The recourse to physical punishment by adults reflects a denial of the recognition, by the Convention on the Rights of the Child, of the child as a subject of human rights.

If we want to remain faithful to the spirit of the Convention, strongly based on the dignity of the child as a full-fledged bearer of rights, then any act of violence against him or her must be banned,... in addition to legal prohibition, sensitization of all actors of society - in particular parents and teachers - to the negative impact of physical violence is a key aspect of the process leading to a non-violent society. Violence should never be legitimized.”<sup>4</sup>

Louise Arbour (2004-2008):

“Violence against children is a violation of their human rights, a disturbing reality of our societies... No such thing as a ‘reasonable’ level of violence is acceptable. Legalised violence against children in one context risks tolerance of violence against children generally.”<sup>5</sup>

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<sup>3</sup> <http://www.unviolencestudy.org/>

<sup>4</sup> Statement of the High Commissioner for Human Rights, Mrs Mary Robinson, on the occasion of the launch of the “Global Initiative to End All Corporal Punishment of Children”.

<sup>5</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/ViolenceAgainstChildren.aspx>

UN Deputy High Commissioner for Human Rights Kyung-wha Kang (2007-2013)

“Violence against children, including corporal punishment, is a violation of the rights of the child. It conflicts with the child’s human dignity and the right of the child to physical integrity. It also prevents children from reaching their full potential, by putting at risk their right to health, survival and development. The best interests of the child can never be used to justify such practice.”<sup>6</sup>

### ***United Nations Convention on the Rights of the Child (UNCRC)***

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 and care, 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 from any person who has the care of the child. Article 37 requires protection from torture or other cruel, inhuman or degrading treatment or punishment, which reflects protections in ECHR and other international treaties. Various other articles reinforce the child’s right to physical integrity and protection of their human dignity.

Article 19 states:

*‘States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child’.*

Article 37 states:

*‘No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment’.*

In 2006, the UN Committee on the Rights of the Child issued *General Comment No 8 – The Right of the Child to be Protected from Corporal Punishment and Other Cruel or Degrading Forms of Punishment*. General Comments are an authoritative interpretation of the rights contained in the UNCRC. They are based on the UN Committee on the Rights of the Child’s experience of monitoring reports from States parties and the systematic violations, misunderstood provisions or emerging issues relevant to the UNCRC. They constitute an authoritative interpretation as to what is expected of States parties as they implement the obligations contained in the UNCRC.

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<sup>6</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/CorporalPunishment.aspx>

The Committee stressed that it regarded any form of physical punishment as being in breach of the UNCRC, defining 'corporal' or 'physical punishment' as *'any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light'*. It is the fact that the child is being physically punished that leads to the assault upon the child's dignity and physical integrity, not the severity of the punishment.

The General Comment highlights that the UNCRC and other international human rights treaties *'recognize the right of the child to respect for the child's human dignity and physical integrity and equal protection under the law'*<sup>7</sup> and clearly outlines the Committee's recognition that physical punishment and other forms of violence are inter-dependent, and that tackling physical punishment is *'a key strategy for reducing and preventing all forms of violence in societies'*.

The UK and devolved Governments are subject to a state examination by the UN Committee on the Rights of the Child every 5 to 8 years. This State Examination allows the Committee to assess a government's performance in implementing the UNCRC. The issue of physical punishment has consistently featured in the Committee's Concluding Observations on the UK, calling for legal reform to prohibit physical punishment in the home in 1995, 2002, 2008 and 2016. All parts of the UK, including Scotland, have failed to comply.

The Children and Young People (Scotland) Act 2014 was created to support the existing commitments in the UNCRC which are the responsibility of Scottish Ministers under the Scotland Act 1998. The 2014 Act reiterates that Scottish Ministers and public bodies must consider the United Nations Convention on the Rights of the Child when creating policy and legislation. Section 1(1) of the Act states that Scottish Ministers must:

*'(a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and  
(b) if they consider it appropriate to do so, take any of the steps identified by that consideration'*.

Section 1(2) of the Act requires Scottish Ministers to *'take such account as they consider appropriate of any relevant views of children of which the Scottish Ministers are aware'*. Under section 1(4) Scottish Ministers must lay a report before the Scottish Parliament every three years outlining *'what steps they have taken in that period to secure better or further effect in Scotland of the UNCRC requirements'*.

It is difficult to reconcile the Scottish Government's continued approach towards physical punishment, in breach of both Article 19 and 37 of the Convention, with the spirit of the 2014 Act.

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<sup>7</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)

### ***Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)***

Recognising that physical punishment fits within the wider context of violence prevention, the Convention on the Elimination of All Forms of Discrimination Against Women specifically highlights the need for legal reform in relation to physical punishment. In its 2013 Concluding Observations, the Committee recommended that the UK and devolved governments should: *'revise its legislation to prohibit corporal punishment of children in the home'*.<sup>8</sup>

### ***Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment***

The United Nations Committee Against Torture has highlighted that the 'justifiable assault' defence is insufficient to protect children and young people from cruel, inhuman and degrading treatment or punishment. In the Committee's 2013 Concluding Observations, they expressed concern that *'some forms of corporal punishment are still legally permissible in the home by parents and those in loco parentis'*<sup>9</sup> and recommended that the State Party should *'prohibit corporal punishment of children in all settings'*<sup>10</sup> and *'repeal all legal defences currently in place'*.<sup>11</sup>

### ***International Covenant on Civil and Political Rights***

Physical punishment has been highlighted by the UN Human Rights Committee in relation to the International Covenant on Civil and Political Rights. In 2015, the Committee told the UK and devolved governments that they were *'concerned about the lack of an explicit prohibition on corporal punishment in the home and about the existing legal defences of "reasonable punishment" in England, Wales and Northern Ireland and "justifiable assault" in Scotland (arts. 7 and 24)'*.<sup>12</sup> The Committee went on to recommend that the UK should *'put an end to corporal punishment in all settings, including the home'*.<sup>13</sup>

### ***Universal Periodic Review***

In the 2017 Universal Periodic Review, where their human rights record of the UK was scrutinised by other UN states at the Human Rights Council, the issue of physical punishment, and specifically the lack of legal reform, was highlighted by other nations as an issue of concern and one requiring urgent attention. The UN states recommended that the UK and devolved governments:

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<sup>8</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GBR/CO/7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GBR/CO/7&Lang=en)

<sup>9</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en)

<sup>10</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en)

<sup>11</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en)

<sup>12</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en)

<sup>13</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en)

*134.195. Prohibit corporal punishment in all settings, including the family (Ireland);*

*134.196. Reconsider its position on the legality of corporal punishment of children (Mongolia);*

*134.197. Ban corporal punishment of children to ensure the full protection and freedom from violence for all children (Sweden);*

*134.198. Consider prohibiting corporal punishment against children and ensure that it is explicitly prohibited in all schools and educational institutions, and all other institutions and forms of alternative care (Croatia)*

*134.199. Take further actions in protecting the rights of the child by prohibiting all corporal punishment of children as required by the convention of the Rights of Child (Estonia);'*

Scotland, through the UK delegation to the United Nations will be required to formally respond to these recommendations at the Human Rights Council in September 2017.

The rights implications of continuing to allow physical punishment to take place are clear. The 'justifiable assault' defence is specifically referenced by the UN as being deficient, and incapable of safeguarding children's rights.

## **Council of Europe**

The Council of Europe which covers 47 countries and 820 million people, was established to promote co-operation between all countries of Europe in the areas of legal standards, human rights, democratic development, the rule of law and cultural co-operation. It was founded in 1949.

In 2004 the Parliamentary Assembly of the Council of Europe adopted a resolution saying:

"The Assembly considers that any corporal punishment of children is in breach of their fundamental rights to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended."<sup>14</sup>

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".

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<sup>14</sup> Parliamentary Assembly Recommendation 1666 (2004) on a Europe-wide ban on corporal punishment of children.

In 2008, the Commissioner for Human Rights of the Council of Europe, following his visits to the UK in February and March/April 2008, stated in a formal Memorandum to the UK Government:

“The Commissioner is very concerned about [the laws in the UK] which reflects the availability of the ‘reasonable punishment’ defence for parents charged with common assault, removing use of the defence from those charged with more serious assaults. The Commissioner emphasises that laws allowing ... ‘reasonable punishments’ on children are not compliant with international human rights standards. That children, uniquely, should have less protection under the criminal law from assault is additionally discriminatory and unimaginable, given children’s obvious special vulnerability.”<sup>15</sup>

In the same year the Commissioner produced an issues paper on Children and corporal punishment *The right not to be hit, also a children’s right* which stated:

“Corporal punishment of children often becomes inhuman or degrading, and it always violates their physical integrity, demonstrates disrespect for human dignity and undermines self-esteem. Furthermore, the existence of special exceptions for violence against children in otherwise universally applicable laws against assault breaches the principle of equal protection under the law.

The invention of concepts such as ‘reasonable chastisement’ and ‘lawful correction’ in the law arises from the perception of children as the property of their parents. This is the modern equivalent of laws in force a century or two ago allowing masters to beat their slaves or servants, and husbands to beat their wives. Such ‘rights’ are based on the power of the stronger over the weaker and are upheld by means of violence and humiliation.

Children have had to wait until last to be given equal legal protection from deliberate assaults – a protection the rest of us take for granted. It is extraordinary that children, whose developmental state and small size is acknowledged to make them particularly vulnerable to physical and psychological injury, should be singled out for less protection from assaults on their fragile bodies, minds and dignity.”<sup>16</sup>

### ***European Social Charter***

In 2005 and again in 2012, the European Committee of Social Rights reviewing compliance with Article 17 of the European Social Charter, found that the UK was in breach because it had not prohibited all corporal punishment in the family.

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<sup>15</sup> <http://www.repeal43.org/docs/EU%20Commissioner%20Memo%20on%20UK%20Oct%202008.pdf>

<sup>16</sup> <https://rm.coe.int/16806da87b>

## ***European Convention on Human Rights***

Article 3 of the European Convention on Human Rights (ECHR) <sup>17</sup> safeguards the child's right to protection against torture, cruel, inhuman and degrading treatment. Article 8 of the Convention provides for the right to respect for private and family life.

It is an issue of great shame that the leading cases on this issue come from the UK. The ECtHR first examined the issue of physical punishment in 1978 in *Tyrer v UK*<sup>18</sup> finding that judicial birching of a teenage boy breached his Article 3 rights under the Convention.

In 1982, *Campbell and Cosans v UK*<sup>19</sup> led to the ECtHR's consideration of the rights implications of corporal punishment in UK state schools, and a subsequent prohibition of corporal punishment in state schools. *Costello-Roberts v UK*<sup>20</sup> in 1993 then led to corporal punishment being prohibited in independent schools.

*A v UK*<sup>21</sup> in 1998 led to the most recent revision of Scots Law in relation to physical punishment. This case related to the repeated beating of a boy by his stepfather with a garden cane. The stepfather had successfully argued a defence of 'reasonable chastisement' as provided for by the law at that time, but the ECtHR overturned that decision and found the boy's treatment violated his Article 3 rights under the ECHR to be protected from cruel, inhuman and degrading treatment or punishment. Whilst the case originated in England, the judgment was against the UK and therefore amendments were necessary to the law in Scotland as well resulting in the Criminal Justice (Scotland) Act 2003

In every case before it concerning the physical punishment of children, the ECtHR has applied its usual test under Article 3: that is, before finding a violation of Article 3, it must be persuaded that the "minimum level of severity" has been attained. However, the ECtHR has repeatedly stressed that the Convention is a living instrument and that in interpreting its provisions, it must have regard to the changing conditions within the respondent state and within Contracting States generally and respond to any evolving convergence as to the standards to be achieved. In this respect, the ratification of the UNCRC by all member states of the Council of Europe (including the United Kingdom), which requires states to protect children from all forms of physical or mental violence (Art. 19) as well as the ratification by the majority of these same states of the European Social Charter, Article 17 of which requires states to prohibit the corporal punishment of children and the evolution reflected by other instruments, documents and initiatives within the Organisation and at UN level suggest an evolving convergence.

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<sup>17</sup> [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>18</sup> Judgment of 25 April 1978, Series A, No. 26; 2 EHRR 1.

<sup>19</sup> (1982) 4 EHRR 293.

<sup>20</sup> (1993) 19 EHRR 112.

<sup>21</sup> [1998] 2 FLR 959;(1999) 27 EHRR 61.

Inhuman or degrading treatment violates human dignity and there is therefore sometimes an overlap between Article 3 and Article 8 (the right to respect for private and family life). Even where ill-treatment fails to meet the level of severity required for Article 3, a violation of Article 8 may have occurred as Article 8 protects a person's physical integrity as an aspect of private life.

This protection includes a prohibition upon any unjustified interference with the right to pursue the development and fulfillment of personality, mental stability and relationships with others. The concept of "private life" is a broad term and covers the physical and psychological integrity of a person. The effect on the mental health and personal development of children that physical punishment brings means that Article 8 is clearly engaged. In interpreting Article 8 rights, the court is entitled to refer to the UNCRF.

Article 8 not only imposes a negative obligation on the state not to interfere with person's privacy, family life and home. It imposes a positive obligation upon the State to ensure that steps are taken to prevent undue interference with that right.

Article 8 is a qualified right. This means that an interference with the right can be justified in certain circumstances. For an interference to be justified it must:

Be 'in accordance with the law' - this means that there has to be clear legal basis for the interference and that the law should be readily accessible.

Pursue a legitimate aim - there are six legitimate aims set out in Article 8(2), including 'the prevention of disorder or crime' and 'the protection of the rights and freedoms of others'. A public authority which intends to interfere with a person's rights under Article 8 must be able to show that what they are doing pursues one of these six legitimate aims.

Be 'necessary in a democratic society' - there must be a good reason for the interference with the right and the interference must be proportionate to the aim which means that it should be no more than is necessary. If there is an alternative, less intrusive, way of achieving the same aim then the alternative measure should be used.

It is important that the starting point is that a child has the same right as anyone else not to be assaulted; the defence of justifiable assault is an exception to that right. In our opinion it is very difficult to argue that the breach of a child's Article 8 rights is justified as a pressing social need, as there are effective alternative methods of correction and discipline which do not breach Article 8. Equally, the degradation and humiliation of children can in those circumstances never be a proportionate response.

Given the mounting evidence of harm caused by physical punishment of any kind, and the repeated calls by international human rights bodies to amend the law to protect children, then it is likely that a challenge could also be advanced to the Court on that

basis. The Scottish Government has so far failed to put in place adequate measures to protect children from the negative outcomes associated with all forms of physical punishment.

It should not require a child to take a legal case to receive protection from assault. While the previous cases all required intervention from the ECtHR it should be noted that Scottish Courts are bound to interpret section 51 of the Criminal Justice (Scotland) Act 2003 in accordance with the case law of the European Court. The Human Rights Act 1998 obliges the domestic courts to take into account any judgments of the European Court when determining questions which arise in connection with right guaranteed by the Convention. The Scotland Act 1998 provides further that any provision in an Act of the Scottish Parliament that is found to be incompatible with a right protected by the Convention has to be interpreted narrowly in the light of the Convention and that if such a reading is possible, the provision is to have effect accordingly. If such a reading is not possible and the provision is found to be incompatible with a Convention right the provision is null and void (Section 29 (2)(d) and Section 101 of the Scotland Act).

## European Union

The European Union's attention to children's human rights has accelerated rapidly with the explicit obligations in the Lisbon Treaty and the binding Charter of Fundamental Rights, the EU Agenda for Children's Rights and the EU Guidelines.

Since 2009, the EU Treaty has required protection of the rights of the child. Reflecting the core international human rights instruments – the EU's Charter of Fundamental Rights insists that human dignity is "inviolable", that "everyone" has the right to respect for their physical and mental integrity and to equality before the law.

The EU Charter of Fundamental Rights sets out the common values of the European Union<sup>22</sup>. Article 3 of the Charter states that '*Everyone has the right to respect for his or her physical and mental integrity*'. Article 20 states that '*Everyone is equal before the law*' and Article 21 reaffirms the right to non-discrimination, by stating '*Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited*'.

The Scotland Act 1998 makes clear that the implementation of international obligations, including human rights obligations, are not reserved to Westminster. The Scottish Government and Scottish Parliament are required to comply with the obligations set out above.

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<sup>22</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>

## **Criminal Justice (Scotland) Act 2003**

As set out above, the defence of justifiable assault as contained in the Criminal Justice (Scotland) Act 2003 was a response to the 1998 ECtHR judgment in *A v United Kingdom*.

It took until September 2009 for the Council of Europe's Committee of Ministers, responsible for supervising the execution of judgments of the ECtHR, to accept that the UK's action in response to the particular case was adequate.<sup>23</sup> It is important to consider that the assessment of general measures was strictly in relation to the facts of the case. So, while the law had gone far enough to ensure that A and others in the same situation had been protected – assault with an implement was banned - that is not to say that the legislation adequately protected children in terms of their ECHR rights. Concerns were raised during the execution of judgment process that the law change did not go far enough to meet with international human rights law.<sup>24</sup>

## **Scottish Executive Consultation**

The public consultation accompanying the Criminal Justice (Scotland) Bill in 2002 pointed to a reluctance by the Scottish Executive to completely prohibit the use of physical punishment, and set the tone for the subsequent debate:

*'The harmful and degrading treatment of children can never be justified. The Scottish Executive is inclined to the view that the right way forward is not to make unlawful all smacking and other forms of physical rebuke. Whilst other forms of exercising discipline are available and usually preferable, many parents find on occasion that a mild physical rebuke has a place. However, there is a common sense distinction to be made between the sort of mild physical rebuke which is normal in families, and which most loving parents consider acceptable, and the beating of children. The law needs to be clarified to make sure that it properly reflects this common sense distinction.'*<sup>25</sup>

The Scottish Executive's differentiation between the use of physical punishment and 'harmful and degrading treatment of children', coupled with their assertion that physical punishment 'is normal in families' served only to reinforce the message that physical punishment could continue to be used in Scottish homes.

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<sup>23</sup> Final Resolution CM/ResDH(2009)75 Adopted by the Committee of Ministers on 16 September 2009.

<sup>24</sup> CM/Inf/DH(2008)34 28 August 2008.

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<http://x.iriss.org.uk/sites/default/files/resources/052.%20The%20Physical%20Punishment%20of%20Children%20in%20Scotland%20-%20A%20Consultation.pdf>

## **Scottish Parliament Debate**

A similar distinction was made by MSPs on the Justice 2 Committee of the Scottish Parliament as they debated the physical punishment provisions in the Criminal Justice (Scotland) Bill in 2002. Instead of seeking to outlaw physical punishment, MSPs focused on defining the 'most serious' forms of physical punishment. This led to discussions about whether it was more harmful to be physically punished with a slipper, a wooden spoon or a hand. Again, there was tacit acceptance that children would be subject to physical punishment at some point in their lives, and that it was a necessary part of parenting.

Discussions in 2002 focused around the scenarios in which it would be 'appropriate' to physically punish a child, for example, if a child appeared to be putting themselves in danger. MSPs' views were also influenced by a lack of evidence pointing to harm caused to children by 'low level' physical punishment. What this discussion did was draw away from the core issue of the legalised assault of children.

## **Views of Children and Young People**

### **Younger Children**

Physical punishment is generally administered to younger children. The Children Are Unbeatable Alliance states that its use declines sharply after the age of 7.<sup>26</sup> The views of children in the 1-7 years age group are not regularly sought on this issue. However, there have been some studies carried out with younger children.

One study, carried out with children aged between 5 and 7 found that *'Unlike many parents, these children overwhelmingly identified smacking as hitting that is physically painful. Almost every child disapproved of smacking, and saw it as something that adults often regretted, and which made the children upset, angry and sometimes wanting to smack someone else.'*<sup>27</sup>

The Children are Unbeatable Alliance also carried out a small-scale study<sup>28</sup> to seek the views of children aged under 5 years, which found that *'smacking was "bad" and "nasty" and made the children sad, or aggressive.'*

More recently, Primary 6 pupils at Longstone Primary School in Edinburgh created a video setting out their views on physical punishment.<sup>29</sup> The vast majority of pupils felt that the law should be changed to make physical punishment illegal. Their reasons were varied.

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<sup>26</sup> <http://www.childrenareunbeatable.org.uk/current-position/childrens-views.html>

<sup>27</sup> C Willow and T Hyder *It hurts you inside – children talking about smacking* (1998), National Children's Bureau and Save the Children; <http://www.childrenareunbeatable.org.uk/current-position/childrens-views.html>

<sup>28</sup> <http://www.childrenareunbeatable.org.uk/current-position/childrens-views.html>

<sup>29</sup> <https://www.youtube.com/watch?v=iReMsKrwxs&feature=youtu.be>

Some children felt that using physical punishment risked damaging their relationship with their parents:

*'I don't think it's ok that parents get to hit children because they won't be able to look up to their parents because they will be scared of them.'*

*'Kids look up to their parents. Hitting kids is not setting a good example.'*

Others focused on the inequity and unfairness of the current legal situation, and suggested non-violent alternatives:

*'Children shouldn't be smacked because adults aren't allowed to hit other adults but they're allowed to hit children. If I was hit then I wouldn't think to not do it again I would think why would my parents hurt me?'*

*'It hurts sometimes and it is wrong to hit a child that is younger and is smaller than you – and they are just learning.'*

*'If an adult can't hit an adult, why should an adult hit a child?'*

*'It should be illegal to hit a kid... instead you should send them to their room or just ground them rather than hitting them.'*

Other children highlighted the impact of physical punishment and expressed doubt that it works as a means of disciplining children:

*'...it makes children sad and hurts them. If you can stop this happening please do it. I don't like it happening.'*

*'I don't think it keeps kids from misbehaving. If they get hit they might do it to their kids.'*

The pupils commented on how they felt physical punishment made parents feel. These comments were split, with some children perceiving parents might feel 'satisfied', 'happy' or 'justified' after administering physical punishment and others focusing on negative outcomes, saying parents would feel 'regretful', 'guilty' and 'ashamed'.

They discussed how bystanders might feel if they witnessed an incident of physical punishment in public. Answers from the children included: 'shy', 'uncomfortable', 'upset', 'useless', 'awkward', 'sympathetic' and 'relieved it's not them'. This reinforces the feeling of powerlessness that arises from the current law allowing for some forms of physical punishment, but not others. It makes it harder for people to know when, or even if, to intervene to safeguard a child.

## Young People

In 2016, we commissioned a series of questions on physical punishment in the Ipsos MORI Scotland's 'Young People in Scotland' survey. The survey reached 1,550 pupils from 50 secondary schools throughout Scotland, aged between 11 and 18 years old.<sup>30</sup>

The majority of young people surveyed said that they thought smacking was harmful (62%), and a higher proportion (65%) felt that parents should be helped to find alternatives to physical punishment.

When asked, only 23% of young people surveyed thought it was '*ok for parents to smack their children if they have misbehaved*'. Only 18% of those surveyed thought physical punishment was a good way to teach children how to behave.

The findings of this survey correlate with a consultation with over 72,000 young people carried out by the Scottish Youth Parliament in 2015 and early 2016. In their Lead the Way manifesto<sup>31</sup>, the Scottish Youth Parliament states that 82% of respondents to the consultation agreed with the statement that '*All physical assault against children should be illegal*'.

If one of the key requirements of the Children and Young People (Scotland) Act 2014 is to listen to the views of children and young people, then the message in relation to physical punishment could not be clearer. Children and young people recognise that physical punishment does not work, hurts them and causes confusion (i.e. where a child doesn't understand why their parent who loves them might choose to hit them).

## **Relevant Research**

In 2015, we jointly commissioned research on physical punishment with NSPCC Scotland, Children 1st and Barnardo's Scotland, culminating in the Equally Protected report.<sup>32</sup> The research examined the findings of 98 scholarly articles, including 74 longitudinal studies published between 2005 and 2015. It looked at the prevalence of physical punishment; the health and development outcomes for children experiencing physical punishment and potential links between physical punishment and child maltreatment.<sup>33</sup>

The research found that there was a clear link between the use of physical punishment and increased childhood aggression and anti-social behaviour, and that rather than improving a child's behaviour physical punishment was more likely to make it worse.<sup>34</sup>

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<sup>30</sup> <https://www.cypcs.org.uk/ufiles/Summary-findings-physical-punishment-June-2017-.pdf>

<sup>31</sup>

[https://d3n8a8pro7vhmx.cloudfront.net/scottishyouthparliament/pages/283/attachments/original/1457781662/Lead\\_The\\_Way\\_Manifesto.pdf?1457781662](https://d3n8a8pro7vhmx.cloudfront.net/scottishyouthparliament/pages/283/attachments/original/1457781662/Lead_The_Way_Manifesto.pdf?1457781662)

<sup>32</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

<sup>33</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

<sup>34</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

It states: *'Several studies showed that the relationship between physical punishment and problem behaviour is reciprocal: physical punishment exacerbates existing problem behaviour, leading to a vicious circle of cascading conflict. In other words, parents who are using physical punishment in response to perceived problem behaviour are likely to make it worse.'*

The research examined and challenged the perception that physical punishment could exist as part of a loving parental relationship: *'One argument that is brought forward again and again is that physical punishment is not harmful in the context of an otherwise loving and warm family environment. However, the majority of studies that tested this hypothesis found that the harmful effects of physical punishment were the same even when levels of maternal warmth were high – the 'loving smack' might be a myth.'*<sup>35</sup>

The research found a link between physical punishment and damage to children's mental health, stating that *'there is good evidence that the experience of physical punishment is related to depressive symptoms and anxiety among children. Links with depressive symptoms and reduced self-esteem in later life were also reported, but were less consistent.'*

The Equally Protected report also found a worrying link between physical punishment and more severe forms of abuse, stating *'Physical punishment carries a worrying and 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.'*<sup>36</sup>

Professor Sir Michael Marmot of the University College London provided a foreword to the report and emphasised: *'On the issue of physical punishment, Scotland is out of step with Europe and increasingly the world. There is an urgent need for Scotland and the rest of the UK to comply with international human rights law and to prohibit all forms of physical punishment.'*<sup>37</sup>

There is a comprehensive evidence base which highlights the harm caused to children by its use. The Equally Protected research is clear that not all children will suffer these ill effects from physical punishment. However, it is also impossible to predict who will or will not be harmed, how severe that harm might be and when that harm might occur.<sup>38</sup> For those reasons, the defence of 'justifiable assault' must be removed and action taken to promote positive and non-violent alternatives to physical punishment.

## **2. Could the aims of this proposal be better delivered (without a Bill in the Scottish Parliament)**

No. We believe that legislation is the best way to deliver the aims of this proposal.

<sup>35</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

<sup>36</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

<sup>37</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

<sup>38</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

## Please explain the reasons for your response

There is clear evidence from countries where physical punishment has already been prohibited that it is legal change that has acted as the catalyst for changes in parental behaviour.

Prof Sir Michael Marmot of the University College London states *'The intention of legal change is not to criminalise parents but to help redefine what is acceptable in how we treat our children – and each other – and what we teach them through our own behaviour.'*<sup>39</sup>

The Global Initiative to End All Corporal Punishment of Children explains why children and young people have traditionally found it difficult to achieve equal protection without law reform: *'The struggle to achieve equal protection results from deep rooted negative attitudes towards children as somehow not fully human, as needing to experience pain in order to learn and become acceptable members of society, as possessions rather than individual people and rights-holders.'*<sup>40</sup>

They go on to state: *'Prohibition must be enacted in legislation. Only when corporal punishment is prohibited in law can it be properly implemented and enforced. Government circulars and policy advice not to use corporal punishment are positive but do not amount to prohibition and are inevitably undermined by laws which allow corporal punishment.'*<sup>41</sup>

The Scottish Government has frequently defended its decision not to legislate on the issue: *'The Scottish Government does not support physical punishment of children. We take an approach that is about positive parenting and about ensuring that parents feel confident and empowered to take other approaches to disciplining their children'*<sup>42</sup>. Mark McDonald MSP, Minister for Early Years and Childcare has also stated that the Scottish Government does not *'...wish to see parents unnecessarily or unreasonably criminalised'*.<sup>43</sup>

This proposal does not suggest creating a new law, rather it proposes providing equity and fairness to children by applying the same law to them as currently applies to adults. Neither is the intention of this proposal to criminalise parents, but rather to alter behaviour and cultural attitudes towards physical punishment.

There are recent examples of other legislation in Scotland being used in such a way. For example, the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016

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<sup>39</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

<sup>40</sup> <http://www.endcorporalpunishment.org/assets/pdfs/reports-technical/Learning%20from%20states%20which%20have%20prohibited.pdf>

<sup>41</sup> <http://www.endcorporalpunishment.org/assets/pdfs/reports-technical/Learning%20from%20states%20which%20have%20prohibited.pdf>

<sup>42</sup> <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10889&i=99635&c=1990700&s=physical%2520punishment>

<sup>43</sup> <http://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-03999>

was clearly designed to alter behaviour at a whole population level and emphasise the public health risks of second hand smoke, rather than seeking to target individuals.

The Scottish Government's implied suggestion that legal reform on physical punishment would automatically lead to 'unnecessary' and 'unreasonable' prosecutions fails to recognise and learn from the experiences of the countries where physical punishment is already prohibited. It does not take account of the fact that a clear, well-established framework for assessing whether an assault should be prosecuted is already in existence and that Police, Social Work and Prosecutors are already proficient in assessing whether behaviour meets the threshold for further action. There is clear guidance in relation to the provision of family support where there is no public interest in pursuing a case or where it is considered that the matter can be dealt with through other means.

In a recent article reflecting on Finland's experience of the legal reform process in the 1980s, a clear link was drawn between the existence of a defence in law and the continued use of physical punishment in society:

*'Analysis of the problem representation suggests that, at this time, the problem was not the use of disciplinary violence as such, but explicit permission to use violence as laid out in the Criminal Act.'*<sup>44</sup>

In the case of Finland the very existence of a defence was recognised as legitimising the use of physical punishment. If the defence were to be removed in Scotland, not only would children have equal protection from assault, but the societal expectation would be altered so that physical punishment would become socially unacceptable.

The Equally Protected research found that: *'Legal bans have been implemented in many countries without a majority of public support and there is convincing evidence that the passage of legislation in combination with public awareness campaigns leads to a change in public attitudes'*.<sup>45</sup>

There is evidence that attitudes towards physical punishment in Scotland are changing, but doing so slowly: *'One survey carried out in 1998 found that 61% of young adults reported that they had been smacked in childhood.'*<sup>46</sup> However, by 2009 that figure had declined to 43%.<sup>47</sup> This decline in prevalence appeared to be linked to changing attitudes towards physical punishment, with between 80 and 90% of parents participating in the Growing Up in Scotland study (GUS) saying that smacking was 'not very' or 'not at all' useful'.<sup>48</sup>

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<sup>44</sup> Kotanen, Riikka, Department of Social Research, University of Helsinki, *Establishing Laws and Policies on Parent to Child Violence in Finland 1965-1983* (2017).

<sup>45</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

<sup>46</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

<sup>47</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

<sup>48</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

One argument that has been advanced against legal reform is that changes in public opinion over time will eventually lead to physical punishment disappearing 'naturally', without the need to legislate. However, if change in Scotland continues to happen at similar rates to now, then it may take another 30-50 years for the use of physical punishment to be eradicated. Given what is now known about the harm caused by physical punishment, then if such an approach were to be taken by the Scottish Government (as has appeared to be the case to date), then they would be knowingly allowing children to be exposed to harm.

In May 2014 Staffan Janson, a Swedish expert on child well-being presented at the Scottish Parliament's Cross Party Group on Children and Young People on Sweden's experience of changing physical punishment law. He emphasised the importance of legal reform in changing societal attitudes:

*"Scandinavian parents have learned in one generation to completely refrain from spanking their children. They have changed their attitudes and behaviour towards children completely. Corporal punishment was once seen as normal: now, parents are committed to giving their children a peaceful upbringing. Today, more than 90 per cent of all Swedish parents would consider the very idea of hitting their children as disgusting. Changing the law was key to making this happen."<sup>49</sup>*

Staffan Janson talks of changes to 'attitudes and behaviour towards children', which suggests that the benefits of legal reform in Sweden have extended beyond punishment to other areas of children's lives. Changing the law on physical punishment in Scotland would bring positive changes to broader societal attitudes towards children, emphasise their value as citizens and recognise their status as independent rights holders.

Physical punishment is an area in which the Scottish Government has repeatedly refused to act, despite international human rights obligations requiring them to do so. Scotland is now significantly behind its European and international counterparts and one of only a very small minority of European states yet to commit to legal reform.<sup>50</sup>

Repeated Ministerial statements have acknowledged that physical punishment is ineffective as a parenting tool, and that it should not be used by parents, but the Scottish Government has shied away from legislative change.

International human rights bodies have been clear that while positive parenting education is important, legal reform, and specifically the removal of the defence of 'justifiable assault', accompanied by the modification of common law, is the only way to assure children and young people's human rights are protected.

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<sup>49</sup> <https://www.children1st.org.uk/what-we-do/news/swedish-expert-calls-on-scottish-government-to-outlaw-physical-punishment/>

<sup>50</sup> At present, the UK is one of only 4 EU states and one of 7 Council of Europe states yet to commit to legal reform in relation to physical punishment.

**3. 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?**

**Equity and Fairness**

Children and young people deserve the same protection from assault as adults. The fact that in 2017 they are still unable to enjoy this protection is in direct contravention of their rights. This is an issue of equity and fairness, not a case of pitting children's rights against those of their parents. Equal protection would redress the balance and send a clear message to children and young people about the value which we place upon them in Scottish society. Children and young people themselves have said that they believe it is wrong that children have lesser protections than adults, and have taken their concerns directly to the Scottish Government at a Children and Young People's Cabinet, held in February, 2017.<sup>51</sup> Changing the law would show that they have been listened to and their views have been valued.

**Meeting Human Rights Obligations**

As previously stated, the UK and devolved governments' attitude towards physical punishment is completely out of step with the rest of Europe. For over 20 years, the United Nations has been calling on the UK and devolved governments to prohibit physical punishment. More recently, those recommendations have focused on the need to remove the legal defence of 'justifiable assault' which serves to legitimise the use of physical punishment in Scotland. Providing equal protection from assault would help meet the Scotland's human rights obligations.

**Breaking the Cycle of Physical Punishment**

Legislative change has the potential to break the inter-generational cycle of physical punishment and remove the expectation that physical punishment should be used to punish and instil discipline in children now and in the future.

Gershoff, in a study of parental use of physical punishment in the United States suggests that:

*'Parents, after all, learn most of their lessons about how to be a parent from their own parents. It is thus not surprising that adults' support for corporal punishment is significantly related to whether they believe their own parents were supportive of the practice and whether they themselves were physically punished as children. Indeed, children and adolescents who are spanked themselves tend to*

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<sup>51</sup> <https://blogs.gov.scot/engage-for-education/2017/03/10/children-and-young-peoples-cabinet-meeting/>

*be more supportive of corporal punishment than children who have not been spanked.’<sup>52</sup>*

## **Clarity for Children and Young People, Parents & Professionals**

As the Equally Protected research identifies, physical punishment sits on the same continuum of violence as other forms of punishment which are perceived to be ‘more severe’<sup>53</sup>. This causes confusion to children, parents and professionals, and makes it more difficult for positive non-violent alternatives to be promoted and for cases where children are being mistreated to be accurately identified.

An Ipsos MORI poll carried out for Parenting Across Scotland in 2008 found that parents believed that physical punishment was the least effective way of modifying their child’s behaviour.<sup>54</sup> Parents instead favoured ‘*discussing issues calmly (55%) and stopping children from going out or taking away something they value (47%)*. The methods that are least commonly thought of as effective are using a ‘naughty step’ (8%), shouting or yelling (7%), threatening to smack (3%) and smacking (1%).’

Rather than narrowing parental choice, removing physical punishment is likely to broaden the options open to parents. Given that physical punishment itself has been shown to be ineffective in modifying a child’s behaviour, then this will mean that parents are able to find alternatives that both work for them and their child.

## **Reduction in Violence Against Children**

There is clear evidence that the use of physical punishment can lead to an escalating cycle of violence.<sup>55</sup> This arises when a parent, who may use what they believe to be ‘low level’ physical punishment, then becomes frustrated this is not working and gradually increases the intensity of the physical punishment each time the child behaves the same way. This runs the risk of escalating into injurious abuse.<sup>56</sup> Providing equal protection would emphasise to parents that physical punishment is ineffective as a parenting technique and encourage them to use non-violent alternatives, thereby preventing this escalating cycle of violence occurring.

## **Promote Consistency**

The current approach towards physical punishment in Scotland is not only out of step with our international legal obligations, but also sits in direct contrast with other Scottish Government initiatives which seek to put children and young people and their best interests at the centre of decision-making.

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<sup>52</sup> Gershoff, Elizabeth T, *More Harm than Good: A Summary of Scientific Research on the Intended and Unintended Effects of Corporal Punishment on Children* (2010).

<sup>53</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

<sup>54</sup> <http://www.parentingacrossscotland.org/media/1126/morireportfull2008.pdf>

<sup>55</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

<sup>56</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>

Children's rights and the UN Convention on the Rights of the Child are now regularly cited by MSPs in the Scottish Parliament, as well as in Scottish Government publications and strategies. Children's rights and well-being assessments are now used routinely by the Scottish Government to assess the impact of policies and legislation on children and young people.

The refusal to legislate to provide children equal protection from assault appears completely at odds with the Scottish Government's stated aim of making Scotland 'the best place to grow up'; the principles behind the Scottish Government's GIRFEC approach (Getting It Right for Every Child)<sup>57</sup> and the Scottish Government's own wellbeing indicators, known by their acronym of SHANARRI.<sup>58</sup>

The Scottish Government's policy on physical punishment is inconsistent with, and risks undermining, many other Scottish Government policies and initiatives. These include, for example, the Early Years Strategy, Parenting Strategy, Equally Safe, National Child Protection Guidance, Mental Health Strategy and Justice in Scotland Strategy.

### **Reduce Pressure on Services**

Increasingly there is recognition in Scotland of the impact Adverse Childhood Experiences can have on long-term outcomes for children and young people. Providing equal protection to children from assault, and making physical punishment socially unacceptable, is likely to reduce the violence that children are exposed to in home environments, contribute to a reduction in Adverse Childhood Experiences and potentially prevent a wide range of difficulties for children in future.

This proposal has already received widespread support from a wide range of professionals, including those working in social work, child health, child psychology and violence reduction. There is a clear recognition by professionals that physical punishment is damaging the children they are working with. Changing the law would reflect their concerns, and also mean they are able to focus limited resources on helping those most in need of support.

### **Recognise Physical Punishment as a form of Violence Against Children**

Currently there are several terms used in Scotland to describe physical punishment. Many of those terms seek to trivialise the impact of physical punishment on children. These include, for example, a 'light smack', 'light tap' or even a 'loving smack'. In each of those examples, there is no recognition of the power imbalance that exists between a child and an adult, or of the child's right to be protected from violence. Changing the law will redefine all physical punishment as violence against children and no longer allow for it to be excused by some as a 'normal' part of family life.

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<sup>57</sup> <http://www.gov.scot/Topics/People/Young-People/gettingitright/what-is-girfec/children-and-young-people>

<sup>58</sup> <http://www.gov.scot/Topics/People/Young-People/gettingitright/wellbeing>

**4. 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 do not believe there to be any disadvantages in providing children with equal protection from assault under the law.

**5. 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**

Initial costs associated with this proposal may arise from the provision of information and support to children and young people, parents and professionals, both to help them understand the implications of legal reform and to explore non-violent alternatives to physical punishment. This information should be tailored appeal to a broad range of parents, including, for example, those with children with additional support needs and/or in kinship care arrangements.

Messaging around non-violent parenting is already contained in publications that are routinely distributed to parents via midwives and health visitors, such as Ready Steady Baby and Ready Steady Toddler, and via existing online resources.<sup>59</sup> These will need to be amended to reflect legislative change.

There may also be some training costs for professionals, but again we would anticipate these could be absorbed into general training costs over time.

One issue that has been consistently raised by those opposed to a change in the law is that there may be additional pressure placed upon social work and Police services. However, in 2009 New Zealand carried out a review of their Police and Child, Youth and Family Policies and Procedures relating to the Crimes (Substituted Section 59) Amendment Act, the legislation that prohibited the use of physical punishment there. The review found that *'The Section 59 Amendment Act did not alter the threshold for agencies taking action in response to reports of suspected child abuse, harm or neglect under the CYPF Act. One of the consistent messages from police officers and social workers, spoken to as part of the review, was that the change in the law did not alter the way they thought about or responded to reports of concerns about child safety and wellbeing. Frontline New Zealand Police and Child, Youth and Family staff said that they had not been asked to deal with smacking allegations differently as a result of the Section 59 Amendment Act.'*<sup>60</sup>

<sup>59</sup> <http://www.readysteadybaby.org.uk/>; <http://www.readysteadytoddler.org.uk/>

<sup>60</sup> Broad, Howard; Hughes, Peter & Latta, Nigel, *Review of New Zealand Police and Child, Youth and Family Policies and Procedures relating to the Crimes (Substituted Section 59) Amendment Act.* [https://www.beehive.govt.nz/sites/all/files/Sec59\\_review.pdf](https://www.beehive.govt.nz/sites/all/files/Sec59_review.pdf)

Implementing this proposal is unlikely to have significant cost implications and indeed is likely to save money and reduce pressure on services in the medium to long term. As such, we would recommend that a cost-benefit analysis is carried out to model how changing the law might do this.

**6. What overall impact is the proposed Bill likely to have for the following protected groups (under the Equality Act): race, disability, sex, gender reassignment, age, religion and belief, sexual orientation, marriage and civil partnership, pregnancy and maternity?**

Positive

**Please explain the reasons for your response (if you are of the view that there will be different overall impacts for different groups please specify in your comments).**

This proposal will safeguard the rights of all children. It will impact most positively on younger children, who are most likely to be physically punished at present. It is also likely to benefit more boys than girls, as boys have also been shown to be statistically more likely to be physically punished.<sup>61</sup>

A Children's Rights and Wellbeing Impact Assessment should be carried out, in addition to an Equalities Impact Assessment, to ensure that the impact of this proposal upon children generally, and specific groups of children, is fully explored.

**7. If you believe there is a negative impact, in what ways could any negative impact of the Bill on any of the protected groups be minimised or avoided?**

I do not believe that there will be any negative impact from this proposal.

**8. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?**

Yes

**9. Do you have any other comments or suggestions on the proposal?**

No

Office of the Children and Young People's Commissioner Scotland  
4/8/17

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<sup>61</sup> <https://www.cypcs.org.uk/ufiles/Equally-Protected.pdf>