



Children (Equal Protection from Assault) (Scotland) Bill Views on the proposed Bill from Barnardo's Scotland August 2017

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.

Barnardo's is the UK's largest children's charity. In Scotland we work with over 26,500 children, young people and their families every year. We work with some of the most vulnerable members of our society and we see day in and day out in our services the damage growing up in a violent home can do.

Through our work with children, young people and families, we know how important positive, healthy attachments are for children. Children's brains develop best when they feel safe and when they are nurtured; we want to see a society and a culture where no violence against children is acceptable.

Alongside colleagues in many other organisations we have campaigned for years for equal protection for children in Scotland. Most recently we jointly commissioned a review of the international evidence on physical punishment along with our colleagues from Children 1st, NSPCC Scotland and the Children and Young People's Commissioner Scotland. This review, '*Equally Protected?*'¹ found strong, consistent evidence from 98 studies that physical punishment is associated with increased aggression, mental ill-health and antisocial behaviour in children –which can last across their adult lives.

It showed a cyclical effect whereby physical punishment increases problematic behaviour, damages family relationships and found links between physical punishment and child maltreatment. Across the eight studies that considered the impact of warm and loving family relationships, the majority found this does not mitigate the detrimental effects of physical punishment.

¹ <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

More recently Gershoff and Grogan-Kaylor's study –*Spanking and Child Outcomes: Old Controversies and Meta-Analyses (2016)*² found that among 79 statistically significant studies 99% indicated an association between “spanking” and a detrimental child outcome.

Some of the biggest issues that the Scottish Parliament and Government are currently trying to address are violence against women and girls and child and adult mental ill-health. Providing equal protection from assault to children is a common sense preventative measure that will help reduce levels of violence across the population.

We know a lot more now than we have ever done about neuroscience and brain development. We know that babies and children learn best and thrive when they feel safe, when they are nurtured and when they have positive attachments. Physical punishment and violence as a means of discipline goes against this huge body of scientific evidence.

The defence of ‘justifiable assault’ of children is out of step with Scotland’s values and ambitions for children; the vast majority of our European neighbours; and international human rights standards. The UK is one of only 4 countries in the EU yet to commit to law reform in this area, despite consistent recommendations from the United Nations³ and other international bodies.

The Scottish Government has taken a progressive, evidence based approach to improving children’s wellbeing through prevention and early intervention. Given the undeniable international evidence on the impact of physical punishment on children, giving children equal protection in law is the next logical step in advancing the Getting It Right For Every Child (GIRFEC) policy.

2- Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)?

No

Please explain the reasons for your response.

No the aims of this proposal could not be delivered better without a Bill in the Scottish Parliament, legislation is absolutely necessary to ensure children have the same protection from assault within the law as adults, as well as sending a very clear message about the society we want to live in. In countries where legal reform has been implemented, the use of physical punishment has reduced much faster than in countries where it has not, legislation helps to bring about and often accelerate culture change and shifts in attitudes.

² <https://www.ncbi.nlm.nih.gov/pubmed/27055181>

³ https://www.upr-info.org/sites/default/files/document/united_kingdom/session_27_-_may_2017/a_hrc_wg.6_27_1.7.pdf

Scotland cannot consider itself the best place in the world to grow up whilst we continue to provide our most vulnerable children with less protection from assault and violence in the law than adults. The law is not simply a tool for criminalising or prosecuting people for wrongdoing, the law plays an important role in shaping our behaviours, acting as a deterrent, making priorities clear, promoting values, constructing boundaries and most of all helping to create the kind of society we all want to see.

Examples of similar changes in the law which sought to bring about cultural change rather than criminalise are visible across Scotland. Smoking in public places; seatbelt legislation; smoking in cars with children; 20mph speed limits; drink driving legislation. The purpose of these legal changes was not to criminalise people but to shape and change people's behaviours based on an increase in our knowledge about what works best at protecting people from harm on a population level.

Scotland banned all corporal punishment in schools in the 80's; what was once thought of as a legitimate form of discipline in the classroom would now force parents to recoil in horror if it were to be reinstated. Teachers since then have been required to respond and adapt their teaching and discipline techniques accordingly. We did this because it was the right thing to do and we as a society know that allowing teachers to hit their pupils to get them to behave is inherently not right and in violation of children's rights.

There are many non-violent ways in which parents and carers can discipline children and young people including positive reinforcement, and verbal responsiveness to the child. ⁴ If the law expects teachers to do this in a non-violent way then it should expect the same of parents. Legal reform can and should drive this change.

Without legal reform, Scotland remains in very real danger of sanctions from international human rights bodies and international treaties. The United Nations has confirmed time and time again that legal defences for violence against children are in contravention of the UNCRC of which the UK is a signatory.

Corporal punishment

1. With reference to its general comment No. 8 and its previous recommendations, the Committee urges the State party, in all devolved administrations, Overseas Territories and Crown Dependencies, to:

⁴ <http://www.psypost.org/2016/09/parents-use-warmth-instead-spanking-foster-greater-social-competence-children-45138>

*(a) Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as "reasonable chastisement";*⁵

The UN Committee on the Rights of the Child, the UN Convention on Economic, Social and Cultural Rights, the UN Human Rights Council, the UN Committee against Torture and the UN Committee on the Elimination of Discrimination against Women have all also made recommendations about this.

In May 2015 Europe's top human rights body, The European Committee of Social Rights, ruled that the Republic of Ireland's laws on corporal punishment were in breach of the European Social Charter.

The European Social Charter is a legally-binding social and economic counterpart to the European Convention on Human Rights and commits signatories to "*protect children and young persons against negligence, violence or exploitation*".⁶ The committee concluded unanimously that Irish domestic law, specifically the existence of the defence of 'reasonable chastisement' violates Article 17 of the European Social Charter (the right of mothers and children to social and economic protection)

As a result of this decision, the Republic of Ireland committed to legal reform and achieved equal protection for children from assault in law in 2015. The UK is a signatory to the Charter but has not yet ratified the revised Charter which came into force in 1999.

Whilst removing the defence of 'justifiable assault' from our statute books is essential, there are other practical, non-legislative steps which should also be taken to ensure that professionals such as Police, Social Work, Health Visitors, as well as the public, are able to respond appropriately to any concerns about violence towards children.

The New Zealand Government set up an independent review group in 2009⁷ to look at whether the change in law to prohibit physical punishment of children in 2007 had had any negative effects, for example on criminalising parents. The review made several recommendations and conclusions which are extremely relevant to the debate in Scotland.

The review made 3 key recommendations which we would support being taken forwards in Scotland alongside legal reform.

⁵ <http://www.crae.org.uk/media/93148/UK-concluding-observations-2016.pdf>

⁶ <http://www.bbc.co.uk/news/world-europe-32887584>

⁷ https://www.beehive.govt.nz/sites/all/files/Sec59_review.pdf

- 1) Greater transparency from social work and police through guidance.
- 2) Better support for parents, e.g. a helpline.
- 3) Monitoring and data collection from key public bodies.

These points are covered further in question 9.

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?

There are many advantages to providing children with equal protection from assault.

Clarity within the law for parents and professionals

The law as it stands is unclear and ambiguous; this was confirmed by Gordon Crossan, President of the Association of Scottish Police Superintendents at the launch of this consultation.

It is not clear what level of violence or physical punishment is acceptable and when that line is crossed, unless the physical punishment involves using an implement, shaking or hitting on the head. Where is the line drawn between 'assault' and 'justifiable assault'?

The current legal position compromises professional staff working with children and families because the lines for what constitutes unacceptable physical punishment are blurred. Too much is left up to discretion and personal judgement, but without clear guidance. This applies to parents and carers when choosing how to discipline their children, social workers and health visitors providing support and advice in the home to parents, Police attending incidences of violence, members of the public witnessing physical punishment, the Crown Office and Procurator Fiscals Service when deciding on whether to prosecute, and the judiciary when deciding whether the physical punishment was 'justifiable' or not.

Parents deserve to know exactly where they stand, and professionals working with families should be able to deliver a clear and unambiguous message to these parents, clear, consistent, positive messages about non-violent forms of positive parenting. The Scottish Government's promotion of positive parenting approaches is seriously undermined when legalised violence against children still exists.

The European Committee of Social Rights ruling which led to the law change in the Republic of Ireland said that:

*"The corporal punishment of children is not prohibited in a sufficiently clear, binding and precise manner under legislation or case-law in either country"*⁸

Scotland should take the lead from the Republic of Ireland and repeal all defences at the earliest opportunity so that we have an unequivocal legal position on violence towards children.

Children's rights

Moreover, the law is certainly not fair for children and impinges many of their human rights, none more so than Article 3 of the European Convention on Human Rights which prohibits torture and *"inhuman or degrading treatment or punishment"*. There are no exceptions or limitations on this right. Article 19 of the United Nations Convention on the Rights of the Child (protection from violence, abuse and neglect) says that Governments must do all they can to ensure that children are protected from **all forms of violence**, abuse, neglect and bad treatment by their parents or anyone else who looks after them.⁹

Overwhelming international evidence (see Q 1) highlights the negative long-term outcomes for children who have been physically punished. In addition to this, the notion that physical punishment works as a deterrent for future bad behaviour is not supported by evidence. We know that children learn by example: using physical punishment simply models aggression for children to mimic, and we cannot expect children to understand and comprehend why it is acceptable for an adult to hit them but not acceptable for them to hit someone else.

Legal reform would send a very clear message to children, no level of violence towards you is acceptable, not from your parents, not from your teachers, not from any adult. The law is there to protect you.

Societal attitudes to violence within the home

Legal reform would help shift societal attitudes on how we respond to and deal with violence within the home, attitudes which have already been shifting in the right direction due to progressive legislation around, for example, domestic abuse. Scotland has made great strides in the arena of domestic abuse, tackling the notion that what goes on in the private sphere and the family home is no-one else's business. We no longer tolerate any partner violence within the home, and we have robust Police procedures to deal with it. Abusive partners use violence as a tool to control and subjugate their partner, the threat of violence itself can be just as bad. We acknowledge the harm caused by living in a climate of fear in relation to

⁸ <http://www.independent.ie/irish-news/news/ireland-violating-childrens-rights-due-to-failure-to-ban-smacking-in-the-home-europe-31257794.html>

⁹ https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_summary-1.pdf?_ga=2.222844509.717867819.1496659913-295784934.1496659913

domestic abuse; why should this be any different for children who know that at any moment, if their behaviour is deemed to be 'bad' the threat of violence is on the cards?

Violence is violence, regardless of the level, and we know from evidence that there are links between physical punishment and child maltreatment. Any level of violence carries the risk of escalating into injurious abuse. Just because this does not happen in every case does not mean we should not do everything we can to prevent it happening to even one child.

Preventative public health measure for violence reduction

Legal reform can be a catalyst for reducing levels of violence across the whole of society. Providing children with equal protection from assault in law is a simple, cost-effective public health measure which is why it is supported by so many public health professionals and bodies, including the Royal College of Paediatrics and Child Health, the Royal Colleges of General Practitioners, Nursing and Psychiatrists, and the Faculty of Public Health.

We know that being a parent is one of the most difficult jobs in the world, and we know from our work with children and families across Scotland how important it is to support parents and families to care for their children. Physical or corporal punishment as a disciplinary tool does not work and is damaging to children. As soon as we accept this evidence and take the option of physical punishment off the table, public health professionals can feel confident in discussing other, non-violent ways of discipline with parents and carers.

Ahead of legal reform in the Republic of Ireland, the Irish Society for the Prevention of Cruelty to Children (ISPCC) stated that:

*"A legal ban would serve the purpose of removing slapping as an option for parents and would steer and support parents to find alternative disciplinary methods,"*¹⁰

In Sweden, education on positive parenting starts in maternity wards, wellbeing centres and preschools, and practitioners and professionals have training to enable them to discuss issues with parents. This universal, early intervention approach fits with the rest of our children's policy in Scotland and should be what we aspire to.

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?

¹⁰ <http://www.bbc.co.uk/news/world-europe-32887584>

If implemented correctly, there should be no disadvantages to giving children equal protection from assault and prohibiting all physical punishment of children.

Some critics have argued that the proposed change will 'criminalise loving parents', increase trivial prosecutions and encourage more state intrusion into family life. Opponents of legal reform often cite New Zealand as an example of where trivial prosecutions and false allegations of abuse have risen due to legal reform. This is not borne out by the evidence. The conclusions of the independent review ¹¹ which looked at several cases found that:

"The New Zealand Police and Child, Youth and Family responded appropriately and proportionately to the child safety concerns that were raised"

This statement from the independent review conducted in New Zealand highlights this:

"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 law did not alter the way they thought about or responded to reports of concerns about child safety and wellbeing. Frontline NZ 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" (P.4)

In the Republic of Ireland, where legal reform was achieved in 2015, anecdotal evidence shows that there has been no increase in prosecutions or criminalisation of parents. But there has been an increase in parents approaching professionals, social work etc. for help and advice and this is to be welcomed. The independent review in New Zealand also found no evidence of increased 'trivial prosecutions'. Between 2008 and 2013 there was 6 monthly reporting from Police in New Zealand and reports show no increase in prosecutions.

It is important to remember that no new offence would be created through this legislative change; it would simply extend the protection that adults enjoy to our children, our most vulnerable citizens by removing the common law defence of 'justifiable assault'. The existing threshold for 'significant harm' would still exist and prosecutions would only proceed when in the public interest and in the best interests of the child.

¹¹ https://www.beehive.govt.nz/sites/all/files/Sec59_review.pdf

5- Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have:

Broadly cost-neutral

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?

We would like to reiterate the points made above about measures and steps that we believe should be taken alongside legal reform to ensure that parents, professionals and the public feel confident and are supported where necessary.

Firstly – A working group should be established as soon as practicably possible, in a similar way to the Minimum Age of Criminal Responsibility advisory group. This group would be comprised of all the key stakeholders including Police, Crown Office and Procurator Fiscal Service (COPFS), Social Work, Health Visitors, parents, third sector and crucially children and young people and those who represent them, with the aim of looking at how the legislation can be implemented as intended by the policy proposal. As part of this, work needs to be done to ensure Police and Social Work are clear and transparent with the public and parents in how they will respond to incidences of physical punishment, providing assurances that trivial matters will not be 'criminalised'.

Strong guidance is needed for all professionals to make them aware of the law change and ensure that frontline responses to physical punishment of children are appropriate and proportionate. This guidance should be developed as part of the working group with essential input from the key agencies involved.

Support for parents and members of the public in how to respond to incidents is essential. In New Zealand, their independent review recommended that a new helpline be established. There is scope to look at current provision which already exists in Scotland such as ParentLine run by Children 1st. It is essential that parents and carers know where to go to look for support, advice and alternative methods of discipline and parenting techniques. Equally, public awareness needs to be raised and the public needs to be signposted to the right places for help and support in dealing with incidences they may witness.

Some critics have suggested that legal reform will result in an increase in prosecutions and criminalising of 'loving parents' – whilst we do not agree with this and evidence from other countries does not support this, we believe introducing a duty to monitor, collect data on and report on any changes should be on the face of the Bill. This data could be from Social Work in relation to statutory interventions, Police Scotland in relation to arrests and charges for parental assault on a child, and from the COPFS in relation to levels of prosecution for parental assault of children. This will ensure constant scrutiny of the implementation of law reform to ensure there are no negative effects.

Final comments

We believe the Scottish Government needs to lead on this issue and we would very much encourage MSPs from all parties to support this Bill. We hope that this consultation will help clarify what public opinion is around this issue, but we would also strongly suggest that legislation should be brought forward even if some parts of the public are yet to be convinced of the need for reform. Evidence suggests that public opinion follows legislative change. To wait for public opinion goes against what has happened in other countries and leaves children at risk of violence. All of the countries around the world who have changed the law on this issue did so against a backdrop of adverse public opinion, but not one has reversed the decision to ban all assault and violence against children.