

SUBMITTING EVIDENCE TO A SCOTTISH PARLIAMENT COMMITTEE

DATA PROTECTION FORM

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Organisation: (if required)	Barnardo's Scotland, NSPCC Scotland and Children 1st
Topic of submission:	Children (Equal Protection From Assault) (Scotland) Bill

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- ☒ I am happy for my name, or that of my organisation, to be on the submission, for it to be published on the Scottish Parliament website, mentioned in any Committee report and form part of the public record.
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REF NO.

EQUALITIES AND HUMAN RIGHTS COMMITTEE

CHILDREN (EQUAL PROTECTION FROM ASSAULT) (SCOTLAND) BILL

SUBMISSION FROM BARNARDO'S SCOTLAND, CHILDREN 1ST AND NSPCC SCOTLAND

- ***Do you support the Bill's aim to end the physical punishment of children by parents or carers? It will do this by abolishing the defence of reasonable chastisement. Please provide an explanation for your response. What groups would be impacted by the change (for example, parents, children, public services, the legal profession, etc)?***

Barnardo's Scotland, Children 1st and NSPCC Scotland fully support the aims of the Children (Equal Protection from Assault) (Scotland) Bill. The current defence against a charge of assault of a child, of justifiable assault, is no longer defensible in a modern, progressive Scotland committed to valuing and upholding all our human rights. It is at odds with the Scottish Government's rights based approach to children's policy and its stated aspirations to further children's rights, including through incorporation of UNCRC. It undermines the collective ambition to make Scotland the best place in the world to grow up; where everyone is equally safe. The proposals in the Bill will not create a new offence, but will bring this area of Scots law into line with the wider agenda of the Scottish Parliament and Government. As we will set out, there is no evidence to suggest that the removal of the existing legal defence will create a rise in prosecutions of parents or carers, but it will help engender a wider shift in culture and behaviour.

Context for our support –the vital role of legislation in behavioural change

We believe that Scotland cannot consider itself the best place in the world to grow up whilst we continue to give our children less protection from assault under the law than adults. Classically, the ambition of legal regulation is to change behaviours. Legal regulation can accomplish its goals directly, through fear of sanctions. But it also does so indirectly, by changing public attitudes about the regulated behaviours¹. Recent examples of legal regulation in Scotland aimed at changing public attitudes about the regulated behaviour include the smoking in public places and compulsory seatbelt wearing in cars. The primary aim of these reforms was not to bring prosecutions but rather to shape and change people's attitudes, based on evidence about what works best at protecting people from harm on a population level.

Corporal punishment was outlawed in state schools in the 1980s. What was once regarded as a legitimate form of discipline is now understood as a breach of children's human rights and teachers have adapted their discipline techniques accordingly. There are many ways for adults to respond to children's difficult behaviour, including positive re-enforcement and verbal responsiveness. The message to all adults, and to children, must be a universal one: violence is a violation of our human rights. Legal reform can and must drive this

change in the home as in the classroom and should be accompanied by support for parents and carers to do so.

To date, the Scottish Government has arguably relied on public information to change attitudes towards physical punishment and reduce its use in the home. Public information literature from 2003 on physical punishment¹ and the law advised parents and carers not to smack their children in the following way:

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

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

Whilst available data indicates a downward trend in the use of physical punishment in Scotland, the most recent prevalence studies show that significant numbers of children still experience physical punishment, indicating that public information alone will *not* create the cultural shift required to ensure physical punishment is regarded as an outmoded and detrimental practice. In contrast, there is strong international evidence from countries which have reformed the law to give children equal protection from assault that legislation provides a vital catalyst to reducing the use of physical punishment, where downward trends in its use are already apparent. There is also clear evidence that legal reform accompanied by public awareness campaigns has an especial impact on severe corporal punishment against children; leads to widespread attitudinal change about physical punishment; and improves understanding of what constitutes physical punishment.² Best evidence confirms that a combination of law reform, public engagement and education is more effective in changing attitudes and behaviours than any of these strategies in isolation.

The evidence base on the impact of physical punishment of children

¹ <https://lx.iriss.org.uk/sites/default/files/resources/0025077.pdf>. Scottish Government (2003) “Children, physical punishment and the law: a guide for parents in Scotland. Scottish Executive.

² Forston, et al. (2016) *Preventing Child Abuse and Neglect: A Technical Package for Policy, Norm and Programmatic Activities*. Division of Violence Prevention, CDC, pages 18-19.

Barnardo's Scotland, Children 1st and NSPCC Scotland, together with the Children and Young People's Commissioner for Scotland, jointly commissioned 'Equally Protected', a review of the international evidence on physical punishment³. Published in 2015, this systematic review of 98 international research papers on physical punishment in the last previous decade found:

- Strong and consistent evidence for a link between physical punishment and childhood aggression, and antisocial behaviour;
- Good evidence of a reciprocal relationship between physical punishment and children's problem behaviour, where use of physical punishment exacerbates existing problem behaviour, leading to a vicious circle of cascading conflict;
- Use of physical punishment carries a serious risk of escalation into maltreatment and physical abuse. Six individual, longitudinal studies conducted with representative population samples all identify a link between physical punishment and an increased *risk* of physical abuse including: parental use of severe physical violence, injury requiring medical attention, and household involvement with Child Protective Services⁷.

In addition, there was strong evidence for the harmful effects of childhood physical punishment on adult attitudes and behaviours. For example, individuals who were physically punished during childhood were more likely to engage in physical and verbal aggression with their spouses, were more controlling and were less able to take their spouse's perspective.

More recently, Gershoff and Grogan-Kaylor's landmark study⁴, a meta-analysis of 50 years of research including 160,000 children, strongly indicated that there was an association between "spanking" and a wide variety of undesired and detrimental outcomes in children.

Impact of providing children with equal protection from assault

Barnardo's Scotland, Children 1st and NSPCC Scotland documented a wide range of positive impacts of legal reform in our responses to John Finnie's summer 2017 consultation on the proposed Children (Equal Protection from Assault) (Scotland) Bill⁵. These advantages can be summarised as follows:

- i) *Fewer children will suffer the negative impacts of physical punishment*

As stated above, there is strong and consistent evidence that physical punishment is harmful and can damage children's wellbeing. Professor Sir Michael Marmot, Director of the

³ <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

⁴ Gershoff and Grogan-Kaylor (2016) Spanking and child outcomes: old controversies and new meta-analyses. *J Family Psychology*, 30(4); 453-69

⁵ <https://www.children1st.org.uk/media/6134/children1stconsultationresponseequalprotection260717.pdf>, http://www.barnardos.org.uk/equal_protection_bill_response.pdf, <https://johnfinniemsp.files.wordpress.com/2017/05/response-0657-publication.pdf>

UCL Institute of Health Equity clearly stated, in his foreword to *Equally Protected?*, “*The international evidence could not be any clearer- physical punishment has the potential to damage children and carries the risk of escalation into further abuse.*” A study of 1,600 children in Scotland found that children who had been subjected to physical punishment during their first two years were more than twice as likely to display emotional and behavioural problems at age 4 than children who had not been physically punished (allowing for other factors such as educational attainment and changes in family structure)⁶.

Providing children with equal protection from assault in law is a simple, cost-effective public health measure to reduce harm across the child population and improve child wellbeing, hence the breadth of support for reform across public health and child health bodies. .

ii) *Impact on family life*

Parenting can be extremely challenging, particularly where parents or carers are experiencing multiple difficulties such as poverty, overcrowded housing and ill-health. We know from our work with vulnerable children and families across Scotland that support for families is often critical to good outcomes for children. Best evidence confirms that physical punishment does not work as a disciplinary tool to address children’s difficult behaviour. Rather, it has been shown to worsen bad behaviour, increase aggression and can lead to escalating conflict between parent and child, undermining the crucial parent/ child relationship. Parents and carers need unambiguous, unequivocal messages about physical punishment being unhelpful and harmful to children.

By embracing this incontrovertible evidence at a population level and taking the option of physical punishment off the table, professionals can feel confident in discussing non-violent ways of responding to children’s behaviour. In Sweden, education on positive parenting starts in maternity wards, wellbeing centres and preschools, and practitioners are trained in discussing issues with parents and carers. This universal, early intervention approach fits with the rest of the children’s policy landscape in Scotland and should be what we aspire to.

iii) *Impact on Scottish society*

Not all children who are punished physically as a child will suffer ill effects that they are aware of—some people’s own experience is that “it never did me any harm.” However, the evidence tells us that adults who experience physical punishment in childhood are more likely to engage in physical and verbal aggression in their intimate relationships. Research also shows an association between childhood physical punishment, adult aggression, mental health problems and antisocial behaviour. Adults who experience physical punishment in childhood are also more likely to support physical punishment of their own

⁶ Scott S, Lewsey J, Thompson L, Wilson P (2014): Early parental physical punishment and emotional and behavioural outcomes in preschool children. *Child Care Health and Development*, 40(3), 337-345.

children in the long-term, indicating that attitudes towards childhood punishment can be passed from generation to generation.³

The relationship between physical punishment in childhood and adult behaviour has profound implications for society as a whole. The Equally Safe strategy takes an evidence based, public health approach to addressing violence against women, girls and all children in Scotland. It has been repeatedly emphasised, including at the Scottish Government's Expert Justice Working Group that the ambitious aims of the Strategy cannot be achieved while there is a contradictory approach towards violence in the law. Equally Safe's central message - zero tolerance of violence in the home - is seriously undermined whilst the law permits 'reasonable' forms of physical violence against children; the most vulnerable members of the family.

Bruce Adamson, the Children and Young People's Commissioner for Scotland has stated that "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."⁷

iv) *Impact on professionals and practitioners*

The law as it stands is unclear and ambiguous. As well as being confusing to parents and carers, it risks compromising practitioners working with children and families because the line around what constitutes 'justifiable' physical punishment is blurred. The question of when an assault on a child goes beyond what can be justified is left to individual judgment, without clear guidance. This applies to parents when responding to their child's difficult behaviour; health and social care practitioners providing support and advice to parents and carers; police attending incidents of violence; members of the public witnessing physical punishment; the Crown Office and Procurator Fiscal Service when deciding on whether to prosecute; and the judiciary when deciding whether the physical punishment was within the bounds of what is 'justifiable'.

In the words of Gordon Crossan, former President of the Association of Scottish Police Superintendents at the launch of the John Finnie's original 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'?*"

v) *Impact on Scotland's Children's Rights agenda and international obligations*

Law reform to abolish all physical punishment of children is an obligation under international law by both European and United Nations human rights monitoring bodies. Article 19 of the United Nations Convention on the Rights of the Child (UNCRC) sets out the States

⁷ Adamson, B., *Children's Rights and Physical Punishment*, *The Journal of the Law Society of Scotland*, 17th July 2017

obligation to protect children from violence, while assaults justified under Scots Law at present are a breach of the right to respect for physical and psychological integrity protected by Article 8 of the European Convention on Human Rights (ECHR).

The UK has come under repeated criticism from UN human rights treaty bodies, the Council of Europe and the European Union for not honouring its international human rights commitments to provide children with protection from assault. The European Court of Human Rights has repeatedly condemned corporal punishment in a series of judgments against the UK since the 1970s⁸. Most recently in 2016 the UN Committee concluded that the UK (including Scotland) should “*prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences.*”⁹ In 2015 the European Committee of Social Rights ruled that a lack of prohibition of all corporal punishment of children is a violation of the European Social Charter (Art. 17), stating: “*there is now a wide consensus both at European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law.*” This has been followed in 2017 by seven recommendations to the UK through the Universal Periodic Review at the Human Rights Council.

vi) *Respect for the views of children and young people*

There is extensive information available that children and young people across Scotland do not think physical punishment is appropriate or helpful, and support the law change. For example the Scottish Youth Parliament, as part of its campaigning for legal reform, found that 82% of young people responding to a consultation that they commissioned agreed that “*All physical punishment against children should be illegal*”¹⁰. This is in line with a number of other surveys and on consultations that have been carried out.

Potential unintended impacts

Those who have concerns about the proposed abolition of the defence of ‘justifiable assault’ have highlighted a number of potential negative consequences of the proposed legislation. Whilst our organisations believe that these concerns can be addressed through effective implementation and consultation as the change in the law is made, it is important to acknowledge these concerns. Those raised include:

i) *Large numbers of parents will be criminalised for “smacking”.*

Some organisations and individuals have expressed concern that the proposed change will ‘criminalise loving parents’ and increase trivial prosecutions. However, there is no evidence that a change to the law results in substantially increased criminal proceedings in any of the

⁸ Adamson, B., *Children’s Rights and Physical Punishment*, *The Journal of the Law Society of Scotland*, 17th July 2017

⁹ https://www.togetherscotland.org.uk/pdfs/Concluding_Observations_2016_FINAL.pdf

¹⁰ *Children’s Parliament (2012). How does your garden grow? A report for children on a consultation for the Scottish Government on the Children and Young People Bill.*

52 countries where reform has taken place. Conversely, the evidence suggests that legal reform has been instrumental in reducing the use of physical punishment across the population, with no corresponding increase in prosecutions.

In the Republic of Ireland, where legal reform was achieved in 2015, anecdotal evidence suggests no increase in prosecutions or 'criminalisation' of parents or carers. However, there has been a reported increase in parents approaching professionals such as social work services, 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, 6-monthly reports from Police in New Zealand showed no increase in prosecutions.¹¹

The importance of monitoring the impact of legal reform is, however, a critical aspect of progressive policy making. Our organisations would support an obligation to monitor and report, on the face of the Bill, to ensure any unintended consequences can be addressed.

- ii) *Police and Social work will be overburdened with trivial cases, causing them to intervene in more families' lives; and for resources to be diverted from serious child protection cases.*

With regard to police and social work, it is important to note that people already report physical punishment or violence against children on a regular basis. Child protection services are accustomed to dealing with reported concerns about children and have procedures and processes in place when responding.

Child protection services have a statutory duty to investigate all allegations of child abuse, with any intervention being determined on an individual, case by case basis, depending on the level of risk to a child. These statutory duties will, in all likelihood, remain the same following legal reform. However, it is important to acknowledge and prepare for a potential rise in reported concerns to child protection services, in the short term, in order not to increase the burden on stretched child protection services. This preparation could include the development of clear professional guidance in assessing individual cases, effective diversion services and provision of clear public information. In the longer term, we consider this legislation will significantly reduce the prevalence of physical punishment in Scotland, leading to a reduction in cases requiring intervention.

Elaine Torrance, former President of Social Work Scotland has stated that, "*Social Work Scotland... fully supports the proposed change to remove the legal defence of 'justifiable assault.'... From our members' significant experience of working with families, we are encouraged that increasingly, parents recognise that physical punishment does not work and that there are safer and more effective ways to manage children's behaviour. Children in Scotland should not only be nurtured, but without doubt given more, not less, protection from violence.*"

¹¹ http://img.scoop.co.nz/media/pdfs/0911/20091110_Chief_Executives_Monitoring_Report_on_s59.pdf - Hughes P (2009) Report to the Minister for Social Development and Employment pursuant to Section 7(2) of the Crimes (substituted Section 59) Amendment Act. MSD, Wellington

iii) Legal reform is unworkable in practice.

Some elected members and commentators have suggested that legal reform to protect children fully against physical assault is ‘pointless’ as it is neither workable or enforceable. This is both to ignore the educative and aspirational aspect of legal reform, as well as the experiences of the 52 countries around the world which have found it entirely possible to make legal reform work. Senator Jillian van Turnhout, the member of the Irish Senate who successfully brought forward legislation removing the defence of “reasonable chastisement” in Irish law, has spoken repeatedly about the experience in Ireland, stating: *“once we had law change we had cultural change.”*

However, it is important to note the conclusions of the independent review group set up in 2009 by the New Zealand government, to look at whether the 2007 legal reform prohibiting the physical punishment of children had had any negative effects¹². The review made 3 key recommendations which our organisations would support being taken forwards in Scotland alongside legal reform:

1. Greater clarity for social work and police, through guidance.
2. Better support for parents
3. Monitoring and data collection from key public bodies.

As previously stated, we consider clear professional guidance a fundamental aspect of legal reform, to raise awareness of legal change and ensure frontline responses to physical punishment of children are appropriate and proportionate. This guidance should be developed as part of the Scottish Government implementation group with essential input from the key agencies involved.

Support for parents and members of the public in how to respond to incidents is important. As part of this, work needs to be done to ensure Police and Social Work are clear how they will respond to incidences of physical punishment, providing assurances that trivial matters will not be ‘criminalised’.

In New Zealand, the 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. However whichever methods of parent support are prioritised, through consultation, it is essential that parents know where to look for support, advice and alternative methods of discipline. The learning from international examples of public awareness raising campaigns on equal protection could also very helpfully be used in the development of a Scotland-specific information and campaign materials. Because the proposed legislation will change the legal basis for parental discipline of children, it is crucial that the change in the law is highlighted alongside messages on positive parenting.

¹² <https://yesvote.org.nz/files/2009/12/s59-report-to-prime-minister.pdf>

- ***Do you see any additional impact on groups with protected characteristics?***

The proposed abolition of the defence of justifiable assault will remove existing age-related discrimination in Scots Law, by removing a legal defence that is only applicable when an assault has been carried out against a child. In addition, as described above, we believe that the promotion of a clear and unambiguous message that physical violence is never appropriate in the home will contribute to the wider zero tolerance approach to violence against women, girls and all children.

In terms of the impact on people with particular religious or philosophical beliefs, we note the support for the proposals from the Church of Scotland. The General Assembly of the Church of Scotland in 2016 called on the Church to support the recommendations of the United Nations Convention on the Rights of the Child which would remove the defence of "justifiable assault" from the Criminal Justice (Scotland) Act 2003. More recently welcoming the launch of the proposed Bill in Parliament Richard Frazer, Convener of the Church and Society Council, said:

"I want to be part of a society in which children and adults have the same rights and protections to live free from violence. How we treat, love, nurture and discipline our children, is at the heart of family life. It undoubtedly has profound and far-reaching implications for how our children will live behave and relate to others in society as children and as adults. "Now is the time to move on from the idea that violence against children can be justified"

Throughout history there have been times when, after deep and considered reflection, it has been decided that some of the behaviours once deemed acceptable in the past are deemed unacceptable. Such shifts are important as we seek to live in a way that encourages life in all its fullness and values everyone. This is not just about a piece of legislation but it is also about a cultural shift in attitudes.

- ***Are there any equalities and human rights issues raised by the approach taken in the Bill that should be considered?***

We do not expect that the abolition of the defence of justifiable assault will immediately lead to a transformation in outcomes, but look forward to it contributing to the ongoing cultural shift around the appropriateness of physical punishment. Through this Bill, Scotland will become compliant with its human rights obligations and help make real children's right to live free from violence. Effective implementation of the Bill should mean parents and families are provided with evidence based, up to date information about positive parenting and responding to their children's difficult behaviour.

Scotland's obligation to uphold children's right to equal protection is best understood not as an obligation to a committee or to a process but rather an obligation to children themselves. In ratifying the UNCRC the government effectively makes a promise to children that it will

take the necessary steps to ensure they are able to realise their rights in everyday life. There are arguably fewer areas where legal reform would contribute more towards children accessing their rights on a daily basis.

This legal reform is not reducing the rights of a parent; parental rights are inextricably linked to and derived from their responsibilities towards children. Rather, it is about affording deserved, equal rights and protections to the child, which in turn will consolidate the rights of Scottish families as a whole. This falls in line with the Scottish Government's aims to support positive parenting and healthy family relationships, and ultimately upholds the rights of the child in line with the UNCRC and the EU.

- ***Will the Bill result in any resource implications for your organisation or you as an individual? If so, please explain and provide any supporting information.***

In the longer term, we believe that the removal of the legal defence alongside an effective public engagement and awareness-raising campaign, investment in early prevention and intervention, and systemic family support will ease the burden on public services and will eventually lead to a reduction in cost given there will be less need for expensive crisis management and intervention. This is supported by the consultation response from the Scottish Directors of Public Health Group.

- ***Please tell us about any other comments you feel are relevant to the Bill.***

In conclusion, our organisations do not ask for this change on a whim or on impulse. We ask because we believe it is what is best for children based on our collective depth and breadth of professional experience working with families.