

Response to the Scottish Government Consultation:

Equal Protection from Assault Bill Consultation

1. Are you responding as?

An individual – in which case go to Q2A

on behalf of an organization? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)

Politician (MSP/MP/Peer/MEP/Councillor)

Professional with experience in a relevant subject

Academic with expertise in a relevant subject

Member of the public

2B. Please select the category which best describes your organisation:

Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)

Commercial organisation (company, business)

Representative organisation (trade union, professional association)

Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)

Other (e.g. club, local group, group of individuals, etc.)

3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.

I am content for this response to be attributed to me or my _____ organisation

I would like this response to be anonymous (the response may be published, but no name)

I would like this response to be confidential (no part of the response to be published)

Name/organisation: Social Work Scotland

4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)

Contact details: Belinda.mcewan@socialworkscotland.org

SECTION 2 - YOUR VIEWS ON THE PROPOSAL

Aim and approach

- 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

Partially supportive

Neutral (neither support nor oppose)

Partially opposed

Fully opposed

Unsure

Please explain the reasons for your response.

Social Work Scotland is of the view that physical assault as a form of chastisement harms a child and there is compelling evidence to indicate that this cultural legacy should be addressed. Our understanding of the impact of this has significantly moved on since this issue was last reviewed. In 2002, a meta-analysis highlighted the many negative outcomes of physical assault as chastisement¹ including poor mental health and increased aggression in childhood and adulthood. Since this time, evidence has continued to highlight the risks between physical assault as chastisement and a range of poor outcomes for children². One Scottish study found that smacked children were twice as likely to have emotional and behavioural problems at age 46 months³. A further meta-analysis of research in 2016 reinforced that there is no real evidence that there is any benefit to the use of physical assault as chastisement⁴.

Studies have also shown that whilst this issue does not relate to class and is evident across society, the issue disproportionately affects some children more than others⁵. Children who are younger and male children are more likely to be subject to physical assault as a form of chastisement. We note in particular that the higher incidence of younger children experiencing this is at odds with the limited cognitive ability of the young child to understand and make sense of the experience.

As professionals, many of whom are also parents, we recognize that the times when a child is subject to physical assault as chastisement are likely to be the times when parents are most stressed. Most often, parents are reacting to a frightening situation and/or desperately attempting to get a child to cease a behavior. As such, there is always the potential for a loss of control and for the situation to escalate, which no parent would want to happen.

From our experience, most parents know and regret that in those moments, beyond it being a frightening experience, they also give a message to children that it is okay to use hitting and violence to respond to a situation. Additionally, parents are increasingly aware that hitting or smacking doesn't work⁶. Negative reinforcement isn't effective as a long term strategy as it isn't successful in internalizing those values and behaviours which the parent is trying to encourage. We are also aware of the growing body of research which highlights the long term implications of adverse childhood experiences⁷.

¹ Gershoff ET. Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review. *Psychological Bulletin*. 2002; 128:539-79.

<http://www.childrenareunbeatable.org.uk/the-case-for-reform/whats-wrong-with-a-mild-smack.html%20-%20ftn4>

² <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

³ http://www.gla.ac.uk/media/media_295964_en.pdf

⁴ <https://www.ncbi.nlm.nih.gov/pubmed/27055181>

⁵ <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

⁶ <http://www.gov.scot/Resource/Doc/212225/0056476.pdf>

⁷ <http://www.cph.org.uk/case-study/adverse-childhood-experiences-aces/>

Parents require positive, clear and consistent messaging and support with regards to managing children's behavior. A change in the law would help provide clarity for parents which in our experience many would welcome. Currently social workers and other professionals working with families are limited to giving general advice based on the 2003 Criminal Justice (Scotland) Act, which can leave parents feeling unsure not only as to what's legal but what they should do. This position is not consistent with statements made in recent Scottish Government policy including the National Performance Framework Outcomes⁸ which states

"our children have the best start in life and are ready to succeed";

the Equally Safe⁹ Strategy which promotes

"creating a strong and flourishing Scotland where all individuals are equally safe and respected"; and

the current National Parenting Strategy¹⁰ which endorses

"providing a positive role model, setting appropriate boundaries and applying them consistently, all of which is integral to a secure, safe and nurturing home environment. This also helps children learn what's acceptable behaviour and what's not, how to get along with people and how to resolve differences in an appropriate way..".

Children themselves tell us that they believe that it shouldn't be acceptable for a child to be subject to physical assault as a form of chastisement. The Scottish Youth Parliament note that children and young people aged 12 – 25 overwhelmingly support a change in legislation. The current Scottish position contravenes the rights of children and young people to be protected from avoidable pain¹¹. This is in direct opposition to Articles 3 and 8 of the UNCRC, which most recently, the Scottish Government in the Children and Young People (Scotland) Act 2014 committed public bodies to take steps "to secure better or further effect within its areas of responsibility on the UNCRC requirements".

There is good evidence from those countries who have already experienced a change in the law, that legislating to ban the use of physical assault as a form of chastisement by parents to discipline children is accepted by society and does not result in the increased prosecution of parents¹², but could potentially result in a decrease in incidence of violent crime¹³ and child abuse in the long term⁴.

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

Yes (if so, please explain below)

No

Unsure

Please explain the reasons for your response.

⁸ <http://www.gov.scot/About/Performance/scotPerforms/outcome>

⁹ <http://www.gov.scot/Resource/0045/00454152.pdf>

¹⁰ <http://www.gov.scot/Resource/0040/00403769.pdf>

¹¹ United Nations Committee on the Rights of the Child (2008): Consideration of reports submitted by States parties under Article 44 of the Convention. Concluding observations: United Kingdom Of Great Britain And Northern Ireland. United Nations. Available <http://www.refworld.org/docid/4906d1d72.html>

¹² Boyson R, Thrope L. (2002) Equal Protection for children: An overview of the experience of countries that accord children full legal protection from physical punishment. NSPCC. <https://resourcecentre.savethechildren.net/library/equal-protection-children-overview-experience-countries-accord-children-full-legal>.

¹³ The Economist. *Spanking and Crime Rates*. <http://www.economist.com/blogs/charlemagne/2013/07/spanking-and-crime-rates?fsrc=scn/tw/te/bl/spankingandcrimerates>

Although the rates of the use of physical assault as a form of chastisement have been falling, 56% of Scottish 7 year olds were still reporting experience of smacking in 2012.¹⁴

We are aware that, as we have seen with other public health issues such as wearing seatbelts, drink driving and smoking in public places, legislation is required to help institute the whole population attitudinal change that is required. Our goal however should not be to criminalise parents, but to raise awareness and educate all those with child care responsibilities in the benefits of positive parenting. We should learn from the experiences in Ireland which introduced legislation in 2015 with regards to the need for public education, but also take from this reassurance that legislation can be introduced which does not result in the criminalization of parents¹⁵.

In finalizing the drafting of any Bill, particular attention should be paid to ensuring that thresholds are appropriately defined and terminology is consistent.

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?

- Eradication of a cultural legacy which reflects outdated patriarchal societal notions of children as property
- Improved outcomes for children as a result of violence free homes
- Reduction over time in the levels of violence and aggressions in society.
- Increasing societal awareness and recognition of children rights
- Reductions over time of the need for statutory protection services and increases in the early support and help for families
- Less stressed parents who are supported to use positive parenting techniques

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?

None.

If this were to be properly resourced, in instituting equal protection, we would not be taking anything away from parents, rather we would be giving them clarity about the legal position and a range of positive parenting supports. However, we note that there are resourcing implications which need to be addressed in order to successfully change culture.

Financial implications

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

Significant increase in cost

Some increase in cost

Broadly cost-neutral

Some reduction in cost

Significant reduction in cost

Unsure

¹⁴ Parkes A, Sweeting H, Wight D (2014): Growing Up in Scotland: Family and school influences on children's social and emotional well-being. Edinburgh: Scottish Government.

¹⁵ <http://www.irishexaminer.com/lifestyle/features/ban-smacks-of-needing-more-work-432730.html>

Please explain the reasons for your response.

We anticipate that in the short term, an increase in resourcing would be required to highlight the change in law, invest in promoting and reaffirming positive parenting supports for parents and in the provision of good quality family support.

However, with sufficient early resourcing, in the longer term the reductions in violence overall coupled with parents feeling more confident in using positive parenting techniques and more aware of supports (should they need them) may mean some reduction in the need for statutory protection services.

Equalities

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

Positive

Slightly positive

Neutral (neither positive nor negative)

Slightly negative

Negative

Unsure

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)

The Bill would address the current age based prejudicial position of children and young people. It would in particular offer better protection for those children who (as previously noted) are younger and/ or male and who are more likely to experience physical punishment.

- 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?**

Care would need to be taken to ensure that a change in legislation does not stigmatise parents, particularly those with little or no access to resources and for whom parenting already feels like a struggle. In addition, any awareness raising needs to target and ensure that this reflects the needs of not only female, but male parents and others with caring responsibilities for children.

In taking forward any Bill, there requires to be an overall presumption of support rather than criminalizing parents. It is extremely important that a supportive rather than punitive approach is taken.

Sustainability of the 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

No

Unsure

Investing in children and families helps address both economic and social issues.

General

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

We welcome this proposed Bill, recognizing that Scotland is not only out of step with countries around the world, but increasingly (and noting the recent announcement in Wales of the intention to bring forward legislation) is in the minority of countries in Europe who are continuing to allow archaic rights to prevail over the robust body of evidence which indicates that physical punishment is harmful to children.

In taking forward this Bill, we note the importance of ensuring that there is cognizance of the separate but relevant work being undertaken in other areas including the Domestic Abuse Bill and the proposed review of Section 12 of the Children and Young Persons (Scotland) 1937 Act.

Any action to strengthen the protection of children also needs to take into consideration the context of recent decision making regarding the role of the state in intervening in the lives of children and families which may impact on the current direction of policy¹⁶.

¹⁶ <https://www.supremecourt.uk/cases/docs/uksc-2016-0220-judgment.pdf>