

The Church in Wales

CONSULTATION ON STAGE 1:

SOCIAL SERVICES AND WELL-BEING (WALES) BILL

The Archbishop of Wales has requested that a response be submitted on the Social Services and Well-Being (Wales) Bill, to particularly highlight the importance of including in any such legislation, provision to protect children from physical punishment in the form of common assault (often referred to as ‘smacking’).

There has been a long-term public commitment by successive Welsh Governments to do this, and a commitment was also made to the UN Committee on the Rights of the Child. The Committee on the Rights of the Child has consistently interpreted Article 19 as requiring the prohibition and elimination of all physical punishment of children, including in the detailed guidance provided in its General Comment No. 8.

The First Minister confirmed in October 2011, having taken legal advice, that the National Assembly now has the power to legislate to abolish the physical punishment of children by removing the anomalous defence of “reasonable punishment”. The October 2011 debate and vote in the Assembly showed a strong cross-party majority of AMs encouraging the Government to introduce the necessary legislation.

Given the overall context and aims of the Bill, there is now every opportunity and justification for a clause to be added that will abolish the physical punishment of children by removing the “reasonable punishment” justification for assault on children in Wales. The issue is fundamental to children’s status in society as well as to their well-being, safety and protection. Children’s right to respect for their human dignity and physical integrity, and to have equal protection under the law with other members of society, requires the removal of the “reasonable punishment” defence.

The use of physical punishment on children teaches them that violence is a useful and acceptable solution to situations of conflict or tension, especially where there is a power imbalance between people who disagree. The WG’s White Paper on Domestic Violence highlights the risk of harm for children who witness violence between adults, and there is strong evidence of linkage between the experience of violence through physical punishment in childhood, and the incidence of domestic violence in adult life.¹ Continuing to allow the physical punishment of children is at odds with the belief that domestic or partner violence is never acceptable, and with other efforts to promote children’s health and wellbeing.

The Bill focuses on ‘well-being’ because those concerned about the care of the most vulnerable members of society believe that promoting their interests must be about more than simply providing services. The Bill recognises, in particular, the importance of the following elements²:

a) physical and mental health and emotional well-being;

¹ The Archbishop of Wales included reference to the need to outlaw the physical punishment of children in his response to the Domestic Violence White Paper.

² para. 190 and clause 2 of the Bill

- b) protection from abuse and neglect;
- c) education, training and recreation;
- d) domestic, family and personal relationships;
- e) the contribution made to society;
- f) securing rights and entitlements; and
- g) social and economic well-being;

In relation to a child, 'well-being' also includes:

- (a) physical, intellectual, emotional, social and behavioural development
- (b) "welfare" as that word is interpreted for the purposes of the Children Act 1989.

Furthermore, as cited in the the Explanatory Memorandum (para. 191): *"The Rights of Children and Young People Measure 2011 requires the Welsh Ministers to give due regard to the United Nations Convention on the Rights of the Child in the development of all legislation and policy"*. In Article 19, the Convention notes that: *"Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else who looks after them"*. The Memorandum goes on to note a number of provisions in the Bill relevant to observance of children's Article 19 rights. It is incompatible with this intention to omit from the Bill any the prohibition of physical punishment of children, through the removal of the "reasonable punishment" defence.

It is therefore extremely surprising that the draft Bill contains no provision to remove the "reasonable punishment" defence and thus provide children with equal legal protection from common assault. There are many ways to discipline a child and teach them how to behave which do not involve using physical violence, and which instil positive values, and efforts should be made to educate parents in these techniques and so promote family well-being and appropriate conflict resolution which cannot but benefit all areas of society.

This response urges the Health and Social Care Committee and the Children and Young People Committee to recommend in the Stage 1 Report inclusion in the Bill of the necessary provision to remove the unique and anomalous "reasonable punishment" defence and so end the use of physical punishment of children in Wales.

The Church in Wales would be pleased to send a representative to give evidence to committee in furtherance of its engagement with this consultation.

On behalf of:

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