

Consultation on the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

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Organisation: Be Reasonable

1 The Bill's general principles

1.1 Do you support the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill?

No

1.2 Please outline your reasons for your answer to question 1.1

(we would be grateful if you could keep your answer to around 1000 words)

Be Reasonable does not support the principles of the bill since it will mean criminalising parents, undermining child protection and bringing the law into disrepute. It will have a negative effect on parents, children, public services and public trust.

Making smacking a criminal offence will distract child protection authorities from identifying families where parents are guilty of real abuse and neglect. The new law will have to be enforced and this will drain already overstretched resources, putting abused children at increased risk of being overlooked. It also devalues the language of child abuse by applying it to behaviour which everyone knows is not abusive.

Making smacking criminal will likely impact teaching, healthcare, childcare, social work and other sectors. As NHS bodies have confirmed, public sector staff accused of using a mild smack will be treated as abusers if the law is changed [<https://www.bereasonable.wales/cwm-taf-foi-response/>].

Safeguarding procedures may mean accused parents are banned from working with children while the matter is resolved. If they are convicted, they will be permanently barred. Staffing

levels at schools, hospitals, youth centres and social work departments may be affected. This turmoil would be incredibly detrimental to family life, and to children.

Out of step

Supporters of this legislation are out of step with public opinion which shows that three-quarters oppose a smacking ban, and two thirds support smacking in some circumstances [<https://www.bereasonable.wales/en-home/public-opinion>]. But the Government fails to admit this. Instead, it uses a small, unrepresentative poll to support the misplaced view that the public is on side [see <https://gov.wales/wales-takes-next-step-end-physical-punishment-children> and <http://bit.ly/welshsmackingpublicopinion>]. Politicians should not impose their will on the public over the minutiae of parenting – and the majority of Welsh adults oppose attempts to do so.

Criminalising ordinary parenting choices.

Be Reasonable does not exist to advocate smacking. It simply argues that parents should not be criminalised for using mild physical discipline. Yet, many parents do believe there is a positive case to be made for the occasional use of mild smacking in the context of a warm, loving parental relationship, accompanied by careful explanation, consistency, and alongside many other positive and negative instruction and reinforcement options. Removing reasonable chastisement will leave these parents open to criminal sanctions.

Deputy Minister for Health and Social Care Julie Morgan has admitted that “by removing the defence, some parents who physically punish their children and are subsequently reported to the police or social services may be charged with a criminal offence in circumstances where that would not happen now because there is a defence they can call on” [<http://record.assembly.wales/Plenary/5571>].

Laws are meant to be obeyed. But some loving parents will ignore a ban because they conscientiously believe a mild smack on the back of the hand or legs to be necessary for certain instances of severe misbehaviour. They will likely argue that criminalising smacking breaches their Article 8 and 9 rights.

Some parents will continue to use mild parental discipline because they are unaware of the new law. Others may be confused by the rhetoric of anti-smacking campaigners who downplay the reach of the law to persuade AMs to back it. All these parents will be at risk of prosecution (or other means of enforcement – see below.)

Chen Palmer, a leading public law firm in New Zealand, has detailed actual cases in which the smacking law there has devastated families [<https://www.bereasonable.wales/wp-content/uploads/2018/02/Chen-Palmer-Opinion-s59-Crimes-Act-January-2018.pdf>]. It contrasts

this with the promises of politicians who said during the passage of the bill that this would not happen.

The current law is clear. Don't confuse it.

The current law is so clear that the reasonable chastisement defence is hardly used. In England and Wales the CPS says in cases where parents were charged it was used just three times in nine years, and none of these cases were in Wales

[<https://www.bereasonable.wales/cps-foi-response/>]. Clearly parents, police, prosecutors and courts are very clear on what is reasonable chastisement and what is unreasonable. If it were confusing, we would expect to see the defence being frequently tested in court by either (a) innocent parents wrongly prosecuted for a mild smack, or (b) guilty parents properly prosecuted for abuse. If lots of cases existed anti-smacking campaigners would highlight them.

Supporters of this bill often cite examples of parental chastisement that is unreasonable to get an emotional response. But such actions are, by definition, already illegal. The CPS Charging Standard for England and Wales says the defence is not available if the chastisement was anything more than "transient and trifling and amounted to no more than temporary reddening of the skin" [<https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard>].

If the law is changed, the consequences for parents will be considerable. Anyone accused or convicted of assaulting a child – under the new definition – will be subject to long-term social services involvement in their family and social stigma. The effect on the children themselves will be devastating – especially if they are made to feel responsible by having to give evidence against their parents. This bill will ruin happy childhoods.

Research has not proved smacking is harmful.

AMs should not rely on claims that mild physical discipline damages children's well-being and results in increased levels of violence. Indeed, last year the Welsh Government's own consultation paper acknowledged that "there is unlikely to be any research evidence which specifically shows the effects of a light and infrequent smack as being harmful to children" [<https://gov.wales/sites/default/files/consultations/2018-02/180109-legislation-consultation-en.pdf> p17].

Consultant child psychologist and former president of the British Psychological Association Professor Tommy MacKay recently told a committee of the Scottish parliament:

"I have surveyed all of the studies relevant to smacking or physical punishment published in peer-reviewed journals in the last 15 years... I cannot avoid feeling that often people start with a particular viewpoint or ideological position, and then seek evidence which they believe

supports it. The evidence base is very much more complex than that in a field of this nature” [https://www.parliament.scot/S5_Equal_Opps/equal%20protection%203/CEPFA_238_PROF_TOMMY_MACKAY.pdf].

Over 80% of adults were smacked themselves as children.

Anti-smacking campaigners criticise people who say that they were smacked and it did them no harm. But this is a vital source of real world, long-term, first-hand evidence of the effects of smacking. [<https://www.comresglobal.com/polls/be-reasonable-wales-survey/>].

AMs must not choose to listen to anti-smacking academics while ignoring the voices of tens of thousands of their own constituents. They know their parents were motivated by love and that smacking either did them no harm or did them good. Their assessment of their own experience is not invalid just because they don't have a PhD.

1.3 Do you think there is a need for legislation to deliver what this Bill is trying to achieve?

(we would be grateful if you could keep your answer to around 500 words)

No. Changing the public's attitude towards smacking could be approached via an educational campaign. The Welsh Government has already sought to influence parenting techniques under its 'Parenting. Give it time.' campaign [<https://giveittime.gov.wales/?lang=en>]. However, this approach – lecturing parents on the minutiae of parenting – tends not to be welcomed by the public. It also costs taxpayers money.

Proponents of this legislation state that it is about furthering protections for children. But removing reasonable chastisement would place a burden on already overworked child protection professionals, which would spread the net more widely and could lead to children who are at risk of abuse being missed. With tragic irony, it could actually result in protections for children being diminished.

The best way to help vulnerable children is to invest in and improve the current structures.

2 The Bill's implementation

2.1 Do you have any comments about any potential barriers to implementing the Bill? If no, go to question 3.1

(we would be grateful if you could keep your answer to around 500 words)

This bill is unworkable. Removing reasonable chastisement will make mild physical discipline an assault under law and require the authorities to pursue reports of smacking. Parents will be reported, arrested, prosecuted and convicted for actions which have, for many years, been considered a "reasonable" part of family life. Those who do not face prosecution will still have

to face investigation, and potential social services intervention. This will create great stress in homes and between parents and their children.

In Scotland, where similar legislation is being scrutinised, the experts are clear about the burden this will place on the police and the courts. Police Scotland stated that the repeal of justifiable assault, “will result in an increase in reporting” with “potential cost/resource implications for Police Scotland and partner agencies”

[https://www.parliament.scot/S5_Equal_Opps/equal%20protection%202/CEPFA_116_POLICE_SCOTLAND.pdf].

The police also concede: “On occasions, it may be assessed that the harm is not, nor is likely to be significant following a report of what is commonly referred to as ‘chastisement’.

Notwithstanding, there would be a duty on the Police to investigate any assault on a child and, if a sufficiency of evidence exists, report the circumstances to Crown Office and Procurator Fiscal Service.”

Expert child protection officers on the ground feel that this would be a dangerous, and unnecessary, distraction. As one anonymous officer put it in a response to Holyrood’s Equalities Committee consultation:

“I am a police officer with Police Scotland, and have 29 years experience, mainly as a detective. I have spent the last 10 years working in Child Protection departments as a Detective Sergeant, and therefore have a significant amount of operational experience in relation to the nature and investigation of child protection concerns. I have worked within the Public Protection Unit in the Edinburgh division, and for the past three years I have worked in the National Child Abuse Investigation Unit. It’s fair to say that I have dedicated a significant proportion of my life to protecting children from abuse, and am passionate about continuing that. As a starting point, it’s probably important to stress that in all this time, I have never come across a case where I have felt the law as it stands is inadequate for any investigation into child abuse. Conversations with similarly experienced detectives suggests this is a universal view. I have found no appetite amongst my operational colleagues for any legislative changes” [see submission 349

https://www.parliament.scot/S5_Equal_Opps/equal%20protection%204/344-358.pdf].

Holyrood’s Equalities Committee received submissions from the Crown Office, the Secretary to the Scottish Law Agents Society, and law professor Pamela Ferguson which emphasised that smacking will become a criminal offence if the defence of reasonable chastisement is removed – something that is denied by supporters of this bill.

The Crown Office and Procurator Fiscal stated: “The practical effect of [changing the law] would be that some acts carried out as physical punishment, which may be commonly referred to as ‘smacking’, would no longer benefit from the defence of reasonable chastisement and would fall to be considered in terms of the law of assault as it applies

generally”

[https://www.parliament.scot/S5_Equal_Opps/equal%20protection%207/COPFS_submission.pdf].

And Michael Sheridan, of the Scottish Law Agents Society, told the Committee: “I would not agree that it is appropriate to remove the existing defence which is a wholly appropriate mechanism for restricting unnecessary law enforcement from the private, domestic household where such enforcement would be entirely disproportionate to any possible level of offending created by the bill and which enforcement could destroy family relations and trust”

[https://www.parliament.scot/S5_Equal_Opps/equal%20protection%207/MichaelSheridan.pdf].

As stated above, making smacking criminal will also impact teaching, healthcare, childcare and other public sector professions. Public sector staff accused of using a mild smack will be treated as abusers if the law is changed, leading to job losses and potential staff shortages [<https://www.bereasonable.wales/cwm-taf-foi-response/>]

In New Zealand there has been great confusion following a change in the law, resulting in perfectly innocent parents facing harsh sanctions and unjustified interference in family life [<https://www.bereasonable.wales/wp-content/uploads/2018/02/Chen-Palmer-Opinion-s59-Crimes-Act-January-2018.pdf>].

2.2 Do you think the Bill takes account of these potential barriers?

(we would be grateful if you could keep your answer to around 500 words)

No. It is wholly unrealistic to think that removing reasonable chastisement will not criminalise good parents. Yet supporters of the bill persist in this view.

3 Unintended consequences

3.1 Do you think there are there any unintended consequences arising from the Bill? If no, go to question 4.1

(we would be grateful if you could keep your answer to around 500 words)

As well as the consequences outlined in the previous answers, it is likely that the implementation of this bill will result in a negative culture change in Wales. Removing reasonable chastisement will encourage the reporting of mild physical discipline, creating an atmosphere of suspicion about parents, and a fear amongst parents that they will fall foul of the law for the most trivial of actions.

In January 2015, former Children’s Minister Leighton Andrews told the Welsh Assembly that: “The effect of amendments [to remove the reasonable chastisement defence] is not only to criminalise smacking, but also any other touching of a child in Wales by a parent for the purpose of administering discipline. The offence of a battery is committed where a person

intentionally or recklessly inflicts unlawful violence on another. Any touching of another person, however slight, may amount to a battery. For example, a parent who forcibly lifts a misbehaving child would be guilty of battery" [National Assembly for Wales, The Communities, Equality and Local Government Committee, 22 January 2015, Page 63].

The Government should be affirming parents in the hugely important task of raising and disciplining their children, whilst recognising that each family takes a different approach. A breakdown in trust between parents and the state, and a breakdown in discipline in Welsh homes will have effects which are felt across society.

David Eberhard, a prominent Swedish psychiatrist, has warned that the Swedish attitude to parenting, which started with a ban on reasonable chastisement in 1979, has led to growing truancy rates, a rise in anxiety disorders amongst teenagers, and a declining performance in international educational league tables.

[<https://www.telegraph.co.uk/news/worldnews/europe/sweden/10421246/Swedish-parenting-has-created-nation-of-brats.html>].

4 Financial implications

4.1 Do you have any comments on the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)? If no, go to question 5.1

(we would be grateful if you could keep your answer to around 500 words)

The Welsh Government's explanatory memorandum on this legislation predicts that the costs for the police and the courts in Wales during the initial period of implementation will surpass £3 million [<http://www.assembly.wales/laid%20documents/pri-ld12454-em/pri-ld12454-em-e.pdf> P30].

The memorandum also lists a number of "Unquantified costs" including costs to: "Social services as a result of a potential increase in referrals"; "Family courts and Children and Family Court Advisory and Support Service (Cafcass) Cymru as a result of a potential increase in allegations of common assault against a child or children of parents involved in a family court case"; "CPS, as a result of a potentially higher volume of requests, for charging advice from the police"; and a review of "training and guidance offered by organisations involved in safeguarding of children, to ensure they are up to date"

[<http://www.assembly.wales/laid%20documents/pri-ld12454-em/pri-ld12454-em-e.pdf> P32].

This is a significant burden to be placed on services which are already struggling to perform vital tasks. The memorandum also lists "Disbenefits" to the legislation including "the potential impact on a parent charged with the offence of common assault following removal of the defence" and "the potential impact on the child of a parent arrested or charged in this way" [<http://www.assembly.wales/laid%20documents/pri-ld12454-em/pri-ld12454-em-e.pdf> P32].

The true human costs of this legislation are not quantifiable.

5 Other considerations

5.1 Do you have any other points you wish to raise about this Bill?

(we would be grateful if you could keep your answer to around 1000 words)

There is much misinformation about the law and practice in other countries. Smacking is legal in three-quarters of the 193 states recognised by the UN. What happens in states where laws on smacking have changed sheds little light on what would happen if Wales passed this bill. As the leading anti-smacking academic Elizabeth Gershoff stated in 2008, in most countries where 'bans' have been passed, "these laws appear in the civil law, not the criminal law" [[https://www.parliament.scot/S5_Bills/Children%20\(Equal%20Protection%20from%20Assault\)%20\(Scotland\)%20Bill/SPBill38PMS052018.pdf](https://www.parliament.scot/S5_Bills/Children%20(Equal%20Protection%20from%20Assault)%20(Scotland)%20Bill/SPBill38PMS052018.pdf) Paragraph 29]. But Wales is proposing to use the criminal law.

It is simply incorrect to say that approximately 50 countries around the world have already made this change. The legal changes most have made are not the same as the Welsh Government's bill proposes. For example, the French approach is to simply require marriage registrars to read a line discouraging parents from using "corporal punishment". It has no enforcement provision [<https://www.bereasonablescotland.org/press-releases/a-smacking-ban-in-france-au-contraire/>].

In 2007, Spain brought forward an amendment to its Civil Code on smacking which was "primarily educational" and carries no penal authority [Goicoechea, P H, "Spain: Banning Physical and Humiliating Punishment in the Home", in Durrant, J E and Smith, A B (Eds), "Global Pathways to Abolishing Physical Punishment: Realizing Children's Rights", Routledge, 2013, page 238].

The UNCRC commends Hungary for legislating against smacking but "regrets that the prohibition is not implemented"

[<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsnHFwMhaZ6UbKzjXRlmgYBUerx14%2FpljDwTZuM1h%2BdsZQ8cUZpbv04sds%2BJj6dXLS%2B0j2Oa%2BqeLHjiq0RMqhWno0UuJ2FfrAAINgTqz7YrQ>]. Poland is likewise ordered to "Ensure that the prohibition of corporal punishment is adequately monitored and enforced in all settings" [<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsnHFwMhaZ6UbKzjXRlmgYBUerx14%2FpljDwTZuM1h%2BdsZQ8cUZpbv04sds%2BJj6dXLS%2B0j2Oa%2BqeLHjiq0RMqhWno0UuJ2FfrAAINgTqz7YrQ>]. These countries are applauded for having 'smacking bans' in place, but the reality on the ground suggests otherwise.

Some support the bill because it aims to drive behaviour change. Germany banned smacking in 2000 but in 2012 a survey found four in ten parents still used it

[<https://www.dw.com/en/nearly-half-of-german-parents-hit-their-children/a-15806121>]. New Zealand passed a ban in 2007 [<https://endcorporalpunishment.org/reports-on-every-state-and-territory/new-zealand/>]. In a 2009 referendum 87.4% voted against the ban [https://www.electionresults.govt.nz/2009_citizens_referendum/2009_referendum_results.html]. (Politicians have so far ignored the result.) Polling in 2016 showed 65% would ignore the law [<https://www.familyfirst.org.nz/wp-content/uploads/2017/01/Anti-smacking-Law-Results-2016.pdf>].