

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

Tystiolaeth i'r <b>Pwyllgor Plant, Pobl Ifanc ac Addysg</b> ar gyfer craffu Cyfnod 1 (Saesneg yn unig)	Evidence submitted to the <b>Children, Young People and Education Committee</b> for Stage 1 scrutiny
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**Organisation:** Equal Protection Network Cymru

## 1 The Bill's general principles

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

Yes.

### 1.2 Please outline your reasons for your answer to question 1.1

We support the Bill and believe that it will achieve the stated aim of abolishing the defence of 'reasonable punishment' with the intended effect of prohibiting the physical punishment of children in Wales. This will improve child safeguarding and protect children's rights. The 'reasonable punishment' defence contained in Section 58 of the Children Act 2004 is a breach of the universal human right to protection from violence. We agree that removing this defence, which only applies in cases of assaults against children, would not create a new offence but would extend to children the protection the law already gives adults, giving them equal protection from physical punishment. We welcome the clarity in Section 1 of the Bill as introduced.

We believe that removing the defence of 'reasonable punishment' available to parents and some others acting in loco parentis charged with assault of a child is a necessary step because:

- 1 All adults are protected from physical punishment by the law. The existence of the 'reasonable punishment' defence in the Children Act 2004 is an anachronistic anomaly which fails to respect children's human rights and leaves vulnerable children at risk.

Removal of a defence that has no place in 21<sup>st</sup> Century Wales is the logical next step.

- 2 Extensive research evidence shows that not only is physical punishment ineffective in managing children's behaviour, but it can cause considerable harm (see for example Heilmann, A., Kelly, Y. and Watt, R.G. (2015) *Equally protected?: a review of the evidence on the physical punishment of children*. London: NSPCC. <https://learning.nspcc.org.uk/research-resources/2015/equally-protected/> and Gershoff, E. T., & Grogan-Kaylor, A. (2016). Spanking and child outcomes: Old controversies and new meta-analyses. *Journal of Family Psychology*, 30(4), 453-469. [https://www.researchgate.net/publication/299992592\\_Spanking\\_and\\_Child\\_Outcomes\\_Old\\_Controversies\\_and\\_New\\_Meta-Analyses](https://www.researchgate.net/publication/299992592_Spanking_and_Child_Outcomes_Old_Controversies_and_New_Meta-Analyses)).

The more than 250 studies covered by the Global Initiative to End All Corporal Punishment of Children's review of research (<https://endcorporalpunishment.org/resources/research/>) on the impact of such punishment show a wide range of negative outcomes for children, parents, families and wider society.

- 3 Professionals working with families – such as health visitors and family centre staff - sometimes see parenting behaviour they are concerned about. At the moment it's hard to give a clear, unequivocal message to the people they are supporting because the law is unclear. Where children are at risk of abuse delaying due to uncertainty could have devastating consequences. All the main child abuse cases that have caused public outrage in recent years – such as Victoria Climbié, Baby Peter Connolly and Daniel Pelka in England, and Yaseen Ali in Cardiff - have had physical punishment as a factor and in many cases neighbours, members of the public, the wider family, or professionals had concerns but felt unable to act.
- 4 It is misleading and unfair to both children and their parents to retain a legal defence that may be seen to condone something potentially harmful, that makes family life more stressful and benefits no-one.
- 5 There is a significant and growing body of evidence to inform our parenting, particularly in the early years. Evidence from psychology and neuroscience has contributed to our understanding that children learn best and thrive within safe, nurturing relationships. Physical punishment as a means of discipline goes against this body of scientific knowledge.

- 6 Physical punishment of children is already banned in schools, in day care and for children looked after in foster care or children homes. This reform will close the loophole that currently allows adults acting in loco parentis in “non-educational settings” (such as Sunday Schools and Madrassas) to use the ‘reasonable punishment’ defence.
- 7 Under the UN Convention on the Rights of the Child (UNCRC), to which the UK government is a signatory, children in Wales have a right to be protected from abuse (Article 19) and to be protected from torture or other cruel, inhuman or degrading treatment or punishment (Article 37). The UN Committee on the Rights of the Child has repeatedly called on the UK to enact legal reform to remove the defence of reasonable punishment and afford children the same protection from assault as adults. This legislative reform will fulfil our government’s obligations under these UNCRC Articles, which state that governments ‘must ensure’ and ‘take all appropriate legislative, administrative, social and educational measures’ to protect the child.
- 8 The UNCRC states that the Convention rights apply to every child without discrimination, whatever their ethnicity, gender, religion, language, abilities or family background (Article 2). Articles 3 and 4 state that the best interests of the child must be the priority for governments and that they must do all they can to ensure that every child’s rights are respected, by passing laws to promote and protect those rights. This reform will give all children in Wales the same level of protection.
- 9 Articles 8 and 9 of the European Convention on Human Rights (ECHR) are qualified rights. Any limitations removal of the ‘reasonable punishment’ defence place upon individual enjoyment of those rights are necessary in order to protect an absolute right of others (Article 3, ECHR) and for the wider good and are lawful, necessary and proportionate.
- 10 Removal of the defence of ‘reasonable punishment’ will raise the status of children and will contribute positively to how they are viewed and treated in society. It will help promote children’s rights in Wales and is consistent with the ‘due regard’ duty in the Rights of Children and Young Persons (Wales) Measure 2011.

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

Yes, we believe that legislation is necessary because:

(a) Physical punishment of children is a public health issue

The law has a role in setting standards of behaviour and this applies not only in relation to criminality, but also to tackling key public health issues as already seen with the laws to ban smoking in public places and to make the wearing of seat belts in cars compulsory. There is strong evidence that not only does physical punishment of children have no benefits, but it has the potential to cause long-term harm (see responses to Question 1.2 above and Question 4.1 below), which may have consequences into adulthood.

This makes it a public health - not a private - matter on which governments need to lead rather than be led by public opinion. This has been the case in the 54 countries that have already legislated. Removing the 'reasonable punishment' defence will help professionals working with children and their families to give an unequivocal message, it will support cultural change and give a clear message that physical punishment is not acceptable.

(b) Legal clarity is needed to support public education and professionals working with families

International experience shows that public education alone does not achieve the desired change in behaviour. While Welsh Government's own research and the experience of Equal Protection Network Cymru member organisations is that parenting behaviour is changing significantly, reform is needed in order to reach the parents who are most resistant to positive parenting messages, to encourage parents who may use physical punishments only under stress to recognise that they need to take steps to address what is happening, and to allow earlier intervention where a child is at risk of abuse.

(c) The current law fails to protect vulnerable children who are at risk

The vulnerability of children makes it even more vital that the law protects them if they are subject to physical abuse, making the existing anomaly of giving them less legal protection illogical. The existence of the 'reasonable punishment' defence undermines child protection and fails to protect children because:

- Research shows that, because it is ineffective in changing long-term behaviour, some parents escalate from 'mild' smacking to serious assaults.
- It permits an arbitrary level of violence which invades children's physical integrity, making it a potential pathway to more serious physical or sexual abuse.
- Professionals working with families are unable to deliver clear messages that hitting and hurting children is not allowed.
- Children don't report something they are told is permitted by the law or can be justified.

- Those witnessing violence to children have little confidence in either intervening themselves or reporting it to the authorities.
- Parents receive confusing messages about the legitimacy of hurting their children.
- It fails to protect children from painful, dangerous, humiliating or frequent assaults and sends them the message that hitting people is acceptable.
- It undermines initiatives to reduce domestic abuse and tolerance of violence in society in general because it is inconsistent with the message that it is never acceptable to try and control another person's behaviour by hitting or hurting them, and that they have a right to 'Live Fear Free'. It establishes a narrative that sometimes people 'deserve' to be hit or hurt.

(d) The existence of the 'reasonable punishment' defence is a breach of children's human rights

The human rights imperative to legislate is clear. Protection from physical violence is a universal human right.

In 2006, the UN Committee on the Rights of the Child adopted General Comment No. 8 (**General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)** (CRC/C/GC/8)) on the right of the child to protection from physical punishment and other cruel or degrading forms of punishment: addressing corporal punishment of children is, the Committee states, "a key strategy for reducing and preventing all forms of violence in societies" and children should have at least the same level of protection as adults. If punishing an adult physically is prohibited, it is unacceptable that the law apparently condones such punishment of a child.

The UN Committee on the Rights of the Child has made it clear that all physical punishment, however light, constitutes violence against children. It has specifically addressed the issue of 'reasonable punishment' and similar legal defences, emphasising that "the Convention requires the removal of any provisions (in statute or common - case law) that allow some degree of violence against children (e.g. "reasonable" or "moderate" chastisement or correction), in their homes/families or in any other setting".

The UK as the State Party has been told repeatedly by international human rights treaty bodies that it must remove the defence of 'reasonable punishment.' Such recommendations come from bodies including:

- UN Committee on the Rights of the Child (four times: 1995, 2002, 2008 and 2016).
- UN Human Rights Committee (2015).

- UN Committee on Economic, Social and Cultural Rights (twice: 2002 and 2009).
- UN Committee Against Torture (2013).
- UN Committee on the Elimination of Discrimination against Women (twice: 2008 and 2013).
- European Committee of Social Rights (three times: 2005, 2012 and 2015).

The UK has also received repeated recommendations from other states to prohibit all corporal punishment in the Universal Periodic Review by the Human Rights Council in Geneva (three times: 2008, 2012 and a record seven recommendations in 2017).

International human rights bodies are unequivocal in stating that children have the same right to legal protection from assault as adults. The right applies no matter where a child is born, what culture they are raised in or what religion they or their family follow – all children have the right to protection from violence (UNCRC, Articles 2, 3, 4).

The research evidence showing the damaging impacts of physical punishment is compelling and demonstrates the strength of the public health, parenting and child protection case for reform. The fundamental issue, however, is one of the human rights of children.

## **2 The Bill's implementation**

### **2.1 Do you have any comments about any potential barriers to implementing the Bill?**

We do not foresee any potential barriers to implementing the Bill, although we recognise that there are a number of issues which will need to be specifically addressed in order to facilitate its effective implementation. Experience from other countries that have introduced similar reforms, as well as experience in Wales when legislation has been introduced – for example on smoking in public places or in cars carrying children – is encouraging. It is likely that the decreasing percentage of parents who still occasionally smack will be guided by the law and that use of physical punishment will become even less prevalent. Adequate information and support will be needed as well as training for professionals and practitioners who may have anxieties about the change. The focus should remain on positive approaches to raising children, not on alternative punishments.

The key issues which we believe need to be adequately addressed are:

#### 1 Effective public education

We recognise that Welsh Government has taken significant action over a period of many years to promote positive parenting messages, however we are concerned that the reach of the key mechanisms identified in the Explanatory Memorandum for promotion of the messages in relation to implementation of the legislation is limited. Great emphasis needs to be placed on integrating the message into the public education messages across governmental departments. While we welcome the Welsh Government's Parenting. Give it time. initiative, its reach is limited.

#### 2 Engagement with universal services

The percentage of parents who access Flying Start or programmes funded through Families First is small, so engagement with the services which engage with virtually all parents and families, such as health and education professionals is essential. Midwives, health visitors, and GPs, as well as childcare providers, teachers and other staff working in schools and education are key communicators with parents - including those who are hard to reach - and need to be engaged and skilled up to provide clear support and advice to parents. Research tells us that universal services are best placed to reach out to families who live on the margins with, for example, a trusted health visitor delivering key messages about the parenting of children.

#### 3 Reassuring families and countering misleading information

In Wales as in many other countries there has been some anxiety about how the change in the law would work in practice and what this means for ordinary families, some of whom may currently use physical punishment in the mistaken belief that it is an effective form of discipline. We are encouraged that Welsh Government is looking at this as part of its communications strategy, but remain concerned that some parents will become unnecessarily worried about the impact of the change in the law because of misleading information from some who argue against this reform.

We agree with the Welsh Government's statement in the Explanatory Memorandum that the removal of the defence will not prevent parents from intervening in order to keep their child safe, to move them from danger or to prevent their child from causing harm to another person or property. Such physical interventions are not punishments. Normal parenting behaviour would not be affected by removal of the defence.

#### 4 Reaching those who are 'hard to reach'

During the implementation period, promoting information about the change in legislation through professional groups and organisations working with parents and

carers will be important. This is particularly the case for families whose material circumstances or health needs, or their language or culture, mean that they do not routinely access mainstream sources of information and services.

Clear guidelines need to be in place for professionals to convey the information appropriately and effectively and the part played by face-to-face interactions in informing parents, the wider family and communities should not be ignored. In the lead up to implementation specific efforts need to be made to reach those who are receiving, or require, support and challenge in relation to their child management behaviours. They may be the most vulnerable to prosecution if they currently use physical punishment and are therefore a key cohort to be supported to understand the meaning of the change. The removal of the ambiguity engendered by the current legal position will help staff to provide a clear message that there is no reason to physically punish children. It's likely that a clear message will also be helpful for those parents and carers receiving services.

## 5 Tracking progress

Given Welsh Government's commitment to prohibiting the physical punishment of children there needs to be a way of measuring the impact of the change in the law and any associated public education initiatives. Few of the countries who have changed the law have ensured that mechanisms for tracking progress are in place from the outset. Part of the remit of the Equal Protection Network Cymru is to consider how this can be achieved in the longer term. However, through a baseline study on prevalence followed by regular follow-up studies the impact of public education work can be monitored and any priority areas identified or gaps addressed during the period before the reform comes into force.

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

Yes, to the extent that any short Bill can. The Explanatory Memorandum together with the Welsh Government's 2018 consultation document Legislative Proposal to Remove the Defence of Reasonable Punishment evidences the breadth of issues considered as part of the process of developing the legislation. Members of the Equal Protection Network Cymru have been involved in a wide range of work in related areas since devolution. Wales is in a fortunate position in comparison to many other countries that consider reform. Often there is little time to consider preparatory work in advance, or the reform comes – as was the case in Lithuania – following the tragic death of a young child. As stressed in response to the

previous question, public education and adequate support for professionals, as well as families, to accompany reform is a key mechanism for overcoming barriers.

### **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**

No. The Explanatory Memorandum evidences detailed discussions between Welsh Government and the public bodies that will be affected and the Regulatory Impact Assessment forecasts potential costs. Both the Explanatory Memorandum and the public consultation document and process demonstrated the consideration given to wide range of possibly unforeseen impacts and potential pitfalls. International experience of introducing similar reforms is overwhelmingly positive.

In each of the 54 states legislation was enacted ahead of public opinion, with governments and legislatures showing strong leadership. It is worth noting that in not one of those countries has reform been reversed, even after a change of government or when campaigns to undermine or repeal the law are ongoing. Neither have concerns about mass prosecutions or increasing numbers of unruly children been shown to have been valid once the law was in place. Parents are still be able to keep their children safe and teach them right from wrong.

Fears that there will be huge increases in inappropriate convictions for 'trivial smacks' haven't been borne out. The main purpose of changing the law is to stop children being hit or hurt in the first place, to change behaviour and help families get support; not to prosecute parents after the event. Public education and parenting programmes have a significant part to play, and we have already made a lot of progress on this in Wales.

International experience shows that after changing the law, fewer and fewer parents use physical punishments and attitudes change. We know that attitudes are already changing in Wales. The vast majority of parents will be guided by the law.

### **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)?**

The assessment of the financial implications of the Bill appears comprehensive, however we believe that some of the long-term potential cost savings of earlier intervention may offset some of the costs identified.

In response to Question 1.2 we reference the growing body of research evidence on the potential negative effects on a child of experiencing physical punishment. The effects which currently result in a demand for a range of services and resources include:

- Direct physical harm.
- Indirect physical harm - unintended accidents and injuries as a result of misjudged smacks (e.g. a child falling or moving away from a smack).
- Increased aggression in children.
- Poor moral internalisation and increased antisocial behaviour.
- Perpetration and experience of violent, antisocial and criminal behaviour in adults.
- Normalisation of casual violence as an appropriate way of controlling the behaviour of others, particularly family members.
- Psychological harm and long-term impacts on self-esteem, well-being and mental health.
- Impaired cognitive development.
- Damage to the parent child relationship.

The services currently dealing with the consequences of the effects of physical punishment include:

- Schools and teachers
- Midwives and health visitors
- GPs
- Hospitals, ambulance and other emergency services
- Services for pupils with additional learning needs
- Child and adolescent mental health services (CAMHS)
- Adult mental health services
- Drug and substance misuse services
- The Police and criminal justice
- Local authority children's services, child protection and the Family Court
- Domestic abuse services
- Family support services
- Housing and community support services

Removing the 'reasonable punishment' defence would have a positive impact on the effective delivery of the above services and a consequent reduction in demands on resources.

While some of the consequences listed above result from persistent or serious use of hitting and smacking as a form of punishment, and an associated negative parenting style, it is important not to fall into the trap of an 'it never did me any harm' argument. Laws need to apply across the population.

This legislative change will enable earlier intervention in the lives of children experiencing physical abuse and will reduce the cost of late intervention services.

Figures obtained by the NSPCC from the Early Intervention Foundation found that the overall financial cost of late intervention with children and young people to Wales was £1.15bn in 2014/15.

There is no such thing as a safe smack and no one can predict what the threshold for causing psychological and emotional harm will be for an individual child or which parents do or don't know when they have crossed the line or can make that judgement under extreme pressure. Lessons learnt in childhood, including the lesson that deliberately hurting or hitting another person can be an appropriate way of expressing displeasure or controlling their behaviour, can last a lifetime.

Wales' first Adverse Childhood Experiences (ACEs) survey interviewed approximately 2,000 people (aged 18-69 years) from across Wales at their homes. The report published in 2015 (<http://www.wales.nhs.uk/sitesplus/888/page/88504>) identified that substantial proportions of the Welsh population suffered ACEs during their childhood with almost half of those surveyed (47%) reporting having experienced at least one ACE and 14% experiencing four or more ACEs. One of the ACEs is physical abuse and the research found that 17% of adults in Wales experienced physical abuse during their childhoods. It also shows that ACEs increase individuals' risks of developing health-harming behaviours – compared with people with no ACEs, those with 4+ ACEs are 15 times more likely to have committed violence against another person in the last 12 months, 16 times more likely to have used crack cocaine or heroin and 20 times more likely to have been incarcerated at any point in their lifetime. We believe that this legislative change will lessen parent's use of physical punishment and also reduce the number of children experiencing physical abuse.

## **5 Other considerations**

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

We welcome this legislation and believe that it will make a significant difference to the lives of children and families in Wales. We hope that there will not be a prolonged delay before its provisions come into force.

#### Information about Equal Protection Network Cymru

The Children's Equal Protection Against Physical Punishment Network Cymru – known as Equal Protection Network Cymru or Rhwydwaith Amddiffyniad Cyfartal Cymru - is a newly formed network of organisations, professional associations, practitioners and academics working to support the effective introduction, implementation and longer term evaluation of legislation to give children and young people in Wales the same level of protection from physical punishment as is currently enjoyed by adults.

Equal Protection Network Cymru is in many respects a successor organisation to the 'Sdim Curo Plant/Children are Unbeatable Cymru (CAU Cymru) alliance, although there will be differences in its membership and remit. The principal aim of the CAU Cymru alliance was achieved when Welsh Government made the commitment to legislate and their public consultation exercise was concluded in April 2018, after which funding for the policy advocacy work of CAU Cymru ceased. CAU Cymru continues as a volunteer-led social media campaign supportive of the Children Wales Bill and of positive approaches to raising children. The new Equal Protection Network Cymru will ensure that the multi-disciplinary, evidence-based, co-ordinated and collaborative model which worked successfully during the campaign for legislation is replicated and built upon during the next stage in achieving this important milestone for children's rights and protection from violence and abuse.