

# 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 <b>Bil Plant (Diddymu Amddiffyniad Cosb Resymol)</b> (Cymru)	Evidence submitted to the <b>Children, Young People and Education Committee</b> for Stage 1 scrutiny of the <b>Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill</b>
CADRP-572	CADRP-572

## About you

Organisation: 'Sdim Curo Plant / Children are Unbeatable 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 would be grateful if you could keep your answer to around 1000 words)*

Children are Unbeatable Cymru (CAU Cymru) has pressed for a change in the law to give children the same legal protection from physical punishment as is already available to adults for nearly 20 years. While the formal work of the CAU Cymru alliance has now come to an end, we continue to work on an informal basis to amplify this message and to promote positive, non-violent approaches to raising children and managing their behaviour. Our group includes former chairs, co-ordinators and active members of CAU Cymru, whose professional experience includes working directly with children, young people and families from the perinatal stage until early adulthood. We are trained social workers, educators, playleaders, researchers and child rights advocates. We are also parents and grandparents with experience of raising families.

The current legal position in England and Wales, as embodied in Section 58 of the Children Act 2004 is an anachronistic anomaly. The legal defence of 'reasonable punishment' is a relic of a time when it was also considered justifiable to physically admonish servants, employees and even for men to 'reasonably' hit their wives. It has no place in 21st century Wales. It does not reflect children's status as independent holders of human rights; gives mixed messages to parents and to children; undermines the work of professionals and practitioners supporting parents and safeguarding children; and places vulnerable children at risk.

Most would agree that as the most vulnerable members of Welsh society, children deserve at least the same level of protection as adults. At the moment they have less. Section 58 of the Children Act 2004 includes a defence which may be used by parents, some carers and other adults if they face a charge of common assault against a child. Calling it a 'smacking ban' trivialises the issue and ignores the fact that it is also about protecting children from damaging and potentially harmful punishments which are of benefit to no one.

The 'reasonable punishment' defence is a legal defence to a charge of assault and battery and is not available someone charged with common assault against an adult. Changing the law to remove it wouldn't create a new offence, but it would remove an anomaly that fails to respect children's human rights and leaves vulnerable children at risk. The existence of the defence also means that those working to support parents and families can't give a clear, unequivocal message about not using physical punishment. The research evidence shows that it doesn't work, fewer and fewer current parents use it (as is confirmed by Welsh Government's research) and that it has the potential to cause harm.

The evidence is clear. Using physical punishment is ineffective and can cause considerable harm. We disagree with the cautious conclusions of the review commissioned by Welsh Government from the Public Policy Institute Wales (Parental Physical Punishment: Child Outcomes and Attitudes (2018)) and believe that there is a significant robust evidence base of research by experts in relevant disciplines to support this legislation. For example, Equally Protected?: a review of the evidence on the physical punishment of children (Heilmann, A et al 2015 <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>) and the 2016 metanalysis of the literature by Gershoff & Grogan-Kaylor ([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)) provide a clear analysis of the short and long term outcomes of physical punishment for health, development and wellbeing, and of the relationship between physical punishment and increased risk of child maltreatment. The more than 250 studies covered by the Global Initiative to End All Corporal Punishment of Children's review of research (<http://endcorporalpunishment.org/research/impact-corporal-punishment.html>) on the impact of such punishment show a wide range of negative outcomes for children, parents, families and wider society.

Physical punishments are often used at times of emotional stress, when it may be difficult to know where to 'draw the line'. It is far better not to bring physical punishment into parenting at all. The existence of the current defence undermines child protection and fails to protect children because:

- It is ineffective in changing long-term behaviour, so 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.
- A stressed parent who has lashed out when overwhelmed or under pressure is less likely to recognise that they are struggling and need to seek help and support.
- Those witnessing violence to children have little confidence in either intervening themselves or reporting it to the authorities.
- It fails to protect children from painful, dangerous, humiliating treatment or frequent 'mild' 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. It establishes a narrative that sometimes people 'deserve' to be hit or hurt.

### **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 1000 words)*

Yes, we believe that legislation is necessary in order to achieve cultural change and a further shift in parenting practices. Experience from other countries has shown that this cannot be achieved through awareness raising and positive parenting education alone. In addition, there is a human rights imperative to legislate and a strong public health and child protection case. We cannot say that physical punishment is 'unacceptable' while the law says that it can sometimes be 'reasonable'.

1Human Rights: The existence of the 'reasonable punishment' defence is a breach of the universal human right to protection from violence.

International Treaty Bodies have repeatedly called for the UK to legislate to remove the 'reasonable punishment' defence, including recommendations from the UN Committee on the Rights of the Child which repeated this call for the fourth time in June 2016.

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).

Abolition of the defence of 'reasonable punishment' in Wales will help promote and protect children's rights consistent with the 'due regard' duty in the Rights of Children and Young

Persons (Wales) Measure 2011. Protection from assault is a universal human right, and Wales's good name on children's rights is due partly to the stance of successive Welsh Governments and the National Assembly on the physical punishment of children, which has been distinct from the UK Government position. In 2009, Welsh Government stated, "We accept the UN Committee's recommendation that the reasonable punishment defence ought to be removed so that children and young people can enjoy the same level of protection in law as adults do." (<http://www.cynulliad.cymru/Laid%20Documents/GEN-LD7719%20-%20Welsh%20Assembly%20Government%20response%20to%20the%20Children%20and%20Young%20People%20Committee's%20report%20on%20their%20in-30092009-144579/gen-ld7719-e-English.pdf>)

Welsh Government is to be commended for framing the Bill in terms of protecting and promoting children's rights. The wealth of research evidence shows the damaging impacts of physical punishment. But the fundamental issue is one of the human rights of children. We do not need research studies on the effectiveness or otherwise of torture or the impact of violence against women on relationships, for example, to prohibit these things: they are a part of human rights.

While attitudes to children in Welsh society have changed, resistance to the concept of children as independent holders of human rights, and not the property of their parents, can persist and is a reason why physical punishment isn't recognised as a human rights issue. There are also barriers to acceptance that such child-rearing practices are unjust and ineffective because they have been part of our culture for so long or because a small but vocal minority regard it to be part of their religion. (Note: European Convention on Human Rights (ECHR), Article 8 and Article 9 are sometimes cited as being relevant. But these are qualified rights, while Article 3 of the ECHR is an absolute right).

The basis for physically punishing children is cultural rather than religious. Nevertheless, some religious groups consider physical punishment to be part of their belief system. People have a right to practice their religion and cultural traditions should be respected – but not when they disregard or breach the human rights of others. Human rights are universal.

Removing the 'reasonable punishment' defence will still allow parents to guide their children through life, to encourage good behaviour and self-control, to set boundaries and be a good role model, to practice their religion if they have one, and to teach them right from wrong – to provide discipline in the true sense of the word. Physical punishment is not a necessary part of discipline nor of an authoritative parenting style.

The UN Committee on the Rights of the Child has made it clear in General Comment No. 8 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 human rights imperative is therefore clear. Some may argue that children are different to adults because they are not yet competent and need parental guidance and control. But some older people and other adults have cognitive impairments that mean that their behaviour needs to be managed and controlled by a carer or family member; yet no-one says that a carer has a right to slap or hit them. This is because we recognise that, however impaired his or her capacities, an adult has human rights. If we see such practices as acceptable when used against children, we are failing to see them as human beings.

## 2 Public health and child protection

The vulnerability of children makes it even more vital that the law protects them, making the existing anomaly of giving them less legal protection illogical. The 'reasonable punishment' defence fails to protect children's human rights and undermines child protection. It inhibits professionals (doctors, health visitors, social workers, family support workers, teachers etc) working with children and families. The long-term costs – financial and otherwise - of not being able to intervene early, supportively and sensitively are considerable.

The law has a role in setting standards of what is acceptable and has already been used to address key public health issues, such as to ban smoking in public places and in cars with children present. 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.

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 may be at risk of abuse this delay could have devastating consequences. All the main child abuse cases in the media have had physical punishment as a factor and in many cases neighbours, members of the public, the wider family, or professionals have had concerns but felt unable to act.

## 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 1000 words)*

We do not believe that there are any significant potential barriers to implementing the Bill and hope that its provisions will come into force before the end of the current Assembly term

(i.e. before the next National Assembly elections). Having campaigned for this legislation for 19 years we are aware that a generation of children has already waited long enough for this reform.

We are encouraged by the proposals Welsh Government have to establish an Implementation Group and to undertake a programme of awareness raising during the period before full implementation. We believe that 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.

CAU Cymru agrees with Welsh Government's statement in the Explanatory Memorandum that the removal of the defence will not prevent parents from intervening 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 and would be covered by existing common law defences which would be unaffected. Normal parenting physical interactions would not be affected by removal of the defence.

We accept that most parents in the small overall percentage still using physical punishments do so because they think it is the right thing to do, unaware of the overwhelming evidence that it has no benefit as a way of managing behaviour and teaching children self-discipline. It is therefore important that awareness raising and parental education uses an approach which does not alienate those parents and reaches out to families and communities who may have difficulties accessing information.

While we welcome the work Welsh Government undertakes on parenting and family support, it only reaches a minority of parents. Thought needs to be given to how the information reaches the mainstream. Unfortunately, parents may already be aware of misinformation regarding the change due to media coverage in England-based tabloids. We would recommend that Welsh Government liaises with Scottish Government since programmes of awareness raising are likely to run concurrently and there may be savings and improvements to be made from working together on elements of any campaigns.

Welsh Government's strategy for delivering public education, information and support in relation to the change should consider the contribution that may be made across Ministerial portfolios, by different policy areas including Health, Social Services, Education, Local Government and Public Services as well as Children and Social Care. The strategy will need to address any concerns that the public have, particularly in the light of campaigns which attempt to misrepresent or catastrophise the results of removal of the 'reasonable punishment' for the lives of families in Wales.

Key health professionals - including midwives, health visitors, children's nurses, General Practitioners and paediatricians – have an important role to play in delivering a clear and consistent message to parents and should be supported to do so. The role of universal services which reach virtually all parents is particularly important given that the use of physical punishment is fairly evenly spread across all socio-economic groups (see Heilmann et al (2015)).

The stresses faced by individual parents may differ according to social and economic circumstances, but all children have the same right to be protected. Information should be delivered in tandem with focused parenting support where needed, through education and information services in the voluntary and statutory sectors including schools. Private and third sector childcare providers have a role to play too.

## **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 1000 words)*

The Explanatory Memorandum outlines the range of work Welsh Government has engaged with in relation to implementation, including addressing barriers. This is reassuring and the work of the Implementation Group will no doubt contribute significantly to addressing any perceived 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**

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

We know from the experience of countries such as Sweden, Finland, Germany, Ireland and New Zealand, that the likelihood of unintended or adverse consequences from a so-called 'smacking ban' as this reform is sometimes described, is virtually nil. On the contrary, following removal of the 'reasonable punishment' defence we can be confident that Wales will be a place where children in general are safer, happier, better behaved, and more able to fulfil their potential.

Organisations delivering parenting support in Wales confirm that changing from negative to positive parenting creates a win/win situation. Parents set clearer boundaries, children behave better, family relationships improve and the need to punish diminishes.

Experience in other countries does not support the claims that there will be huge increases in prosecutions or that good parents will be criminalised. 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. Some of the anxieties are due

to misunderstanding how social services and the police currently deal with reports of children being slapped or hit. Public education and parenting programmes have a significant part to play in changing behaviour, and also in clarifying the law. We've already made a lot of progress on this in Wales and it is encouraging that Welsh Government is already engaging with the next step.

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

To most people the word 'criminalised' means being charged, prosecuted or convicted, not the theoretical commission of an offence. The chances of this happening to parents for 'trivial' smacks are remote. Police and the CPS operate under the legal principle that they shouldn't pursue trivial matters (the de minimis principle). And no prosecution of child assault goes ahead unless it is considered to be both in the public interest and in the best interest of the child. Prosecuting parents for a 'trivial' smack is unlikely to be either of these.

Police and social services already receive reports from people who are concerned about seeing a child being hit or hurt and know how to respond appropriately. In many respects assumptions are being made about the legality of hitting your child currently. In evidence to the Committee, the ADSS clarified that they would currently encourage members of the public to report incidents. Professionals are under a duty to report. Under the All Wales Child Protection Procedures police treat such cases as child protection matters and only act in consultation with social services. This would still be the case and the 'significant harm' threshold used by professionals would not change. One of the reasons for changing the law is that there will regrettably be circumstances where it is entirely appropriate to prosecute, and this could potentially save lives as well as prevent serious child abuse.

A parent's use of reasonable force to stop a child from hurting the parent, or hurting another child, or damaging property, or committing a crime, or from harming themselves (such as stopping a child running into a road) is covered by existing common law defences which would be unaffected.

The general common law defences available in cases of using force (or violence) against adults are equally applicable to offences against children. The most relevant defences arising from what is said to be 'normal parenting', or physical interventions that may be necessary due to a child's additional needs, are the so-called 'private defences': self-defence; defence of another; defence of property; and prevention of crime.

The claim that removal of the 'reasonable punishment' defence will leave parents open to prosecution for normal physical interactions in the course of caring for their child, or for protecting their child, is simply incorrect.



Opponents of reform sometimes claim it will mean that parents will use other more damaging punishments in its place. Public information needs to clarify that the legislative proposal is not concerned with outlawing specified actions. Some other punishments could conceivably be as bad, or worse, than the euphemistic 'smack'. Some countries have introduced laws banning humiliating treatment and physical punishment at the same time. But in the UK ill-treatment, emotional abuse and neglect of children is already unlawful. It is only where common assault is concerned that parents can use the defence of "reasonable punishment".

## **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 1000 words)*

The assessment of the financial implications of the Bill appears comprehensive and acknowledges that there are many costs which are difficult to quantify. It is also the case that for many services the additional costs will be negligible because they will be absorbed into the process of delivering existing services in a more effective way. This is not a change in the law that would be 'policed' as if it was a new, separate offence. Training costs, for example, arise on a continuing basis and any changes to the content of the training should be possible to deliver within existing budgets. Abolition of the defence of 'reasonable punishment' may result in a change in work content, but in most cases implementation will take effect within existing programmes and services (for example, there are already out of hours services).

CAU Cymru believes that the legislative change will enable earlier intervention in the lives of children who would otherwise experience physical abuse. Changing the law will therefore 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.

## **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)*

We welcome the fact that the Bill as introduced is clear and unambiguous and simply removes the 'reasonable punishment' defence in Wales.

We would caution against overcomplicating the legislation by introducing unnecessary amendments.

In some other countries, such as New Zealand, the legislation includes exceptions or reassurances about how the change in the law should be implemented. We don't believe that this is helpful since existing legislation, common law and prosecution guidelines include the necessary safeguards. While such clauses may seem innocuous, they can undermine the effectiveness of the law, fetter the discretion of professionals and weaken the message that physically punishing a child is unacceptable. Equal protection should mean just that.

Accurate information, public education and support for parents to accompany the legislation is essential; particularly in the face of misinformation from objectors. Professionals also need to be clear about how the reform will affect their work.

There is no such thing as a 'loving smack' and all physical punishment is potentially harmful. The use of such terms attempts to excuse behaviour that would be unacceptable against anyone else. When calling for an end to violence against women, or elder abuse, nobody suggests that 'loving smacks' should be allowed. Why should it be any different for children? Any kind of slap or hit or more unusual physical punishment violates a child's human rights.

"One argument that is brought forward again and again is that physical punishment is not harmful in the context of an otherwise loving and warm family environment. However, the majority of studies that tested this hypothesis found that the harmful effects of physical punishment were the same even when levels of maternal warmth were high"

Heilmann et al (2015)

We wholeheartedly welcome this legislation and believe that it will make a significant difference to the lives of children and families in Wales.

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References in this submission:

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/>

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)).

Global Initiative to End All Corporal Punishment of Children's review of over 250 research studies: <https://endcorporalpunishment.org/resources/research/>

Useful FAQs: <https://endcorporalpunishment.org/faqs/en/>

A series of publications on implementing a change in the law:

<https://endcorporalpunishment.org/resources/implementing-prohibition/>