

# Children in Scotland

every child - every childhood

---

Children in Scotland is the collective voice for children, young people and families in Scotland as well as the organisations and businesses that have a significant impact on children's lives throughout the country. It is a membership organisation, comprised of more than 500 representatives from the voluntary, public and private sectors.

We aim to identify and promote the interests of children and their families, influencing the development of policy and services in order to ensure that they are of the best possible quality, capable of meeting the needs of children and young people living in Scotland.

Children in Scotland's work is underpinned by the United Nations Convention on the Rights of the Child (UNCRC).

We are pleased to be able to respond to the consultation on the proposed Children (Equal Protection from Assault) (Scotland) Bill and we are strongly supportive of its aims.

In this response, we have drawn from a well established evidence base on the impact of physical punishment on children and young people. This includes literature reviews and meta analysis, as well as children and young people's voices from our own research and engagement work.

## **Which of the following best expresses your view on the proposal giving children equal protection from assault by prohibiting all physical punishment of children?**

Children in Scotland is fully supportive of the proposal to give children and young people equal protection from assault by prohibiting all physical punishment of children. We support this proposal for the following reasons, and will outline the evidence for each in turn:

1. Physical punishment is an infringement of children and young people's rights
2. Physical punishment is not an effective tool for disciplining children (it does not work)
3. Physical punishment has a negative impact on children and young people's health and wellbeing (it does harm)
4. Countries that have outlawed physical punishment have seen rates reduce, with no increases in parental convictions (the law works without criminalising parents)

## 1. Physical punishment is an infringement of children and young people's rights

Children and young people across Scotland regularly articulate the importance of having access to the same rights and protections as adults:

*"It is important all of us are treated the same and have the same opportunities."*<sup>1</sup>

This includes the right to protection from harm, as outlined in article 19 of the UNCRC, which states that governments must:

*"take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."*<sup>2</sup>

Currently, children and young people in Scotland are denied protection from assault, through a defence of 'reasonable chastisement'; i.e. if it is deemed that the physical punishment was carried out for disciplinary purposes. The UN Committee on the Rights of the Child has noted that the current legal framework in Scotland is incompatible with the UNCRC and should be altered as a matter of priority<sup>3</sup>. It has also been noted that the current legal situation in Scotland does not uphold the right to protection from cruel and inhumane treatment under the European Convention on Human Rights (ECHR).<sup>4</sup>

Research by the Children and Young People's Commissioner Scotland found that only 25% of children and young people feel physical punishment should be legal, while a consultation by Scottish Youth Parliament found up that 82% of young people felt all forms of physical punishment should be illegal<sup>5</sup>.

We do not believe it is acceptable on a child rights basis alone that a defence that would not be available for an assault on an adult would be admissible because a child is involved. The proposed new Bill would address this injustice, and go some way to meeting our commitments under the UNCRC and ECHR.

## 2. Physical punishment is not an effective tool for disciplining children

---

<sup>1</sup> Together, Child Rights Manifesto

<sup>2</sup> <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

<sup>3</sup> UN Committee on the Rights of the Child (2006). [General Comment no.8.](#)

<sup>4</sup> Commissioned by the Children's Rights Strategic Litigation Working Group on Equal Protection

<sup>5</sup> Ipsos MORI (2016). Results from Young People in Scotland survey (unpublished)

<sup>6</sup> Scottish Youth Parliament (2016). ['Lead The Way' Scottish Youth Party Manifesto 2016 - 2021.](#)

Heilmann et al in their systematic review of the evidence of physical punishment concluded that:

*'There is little evidence that corporal punishment works. It is not effective in achieving parenting goals of increasing children's moral internalisation and decreasing their aggressive and antisocial behaviour.'*<sup>7</sup>

If the evidence is not present to show that physical punishment works as a disciplinary tool, then the reasoning behind having this as a defence within the law simply is not there. There is no good reason to undertake physical punishment of a child.

### *3. Physical punishment has a negative impact on children and young people's health and wellbeing*

Children and young people have identified that they feel physical punishment such as smacking is harmful to them both physically and mentally.

*"It hurts and it's painful inside – it's like breaking your bones."*<sup>8</sup>

This view is clearly backed up by the academic evidence on the subject, which indicates that physical punishment negatively impacts on the health and wellbeing of children and young people in a number of ways<sup>9,10,11</sup>. In the short term, this includes increased prevalence of mental health problems such as depression, anxiety, as well as physical complaints. It was also found to damage parent / child relationships through weakening attachments and increasing conflict. In the longer term, experiencing physical punishment in childhood was linked to adulthood aggression and antisocial behaviour<sup>12</sup>.

This suggests that the atmosphere that physical punishment creates is in itself highly damaging for children and young people and undermines their need for a nurturing and supportive home environment that encourages healthy child development.

Our work with children and young people identifies the importance they place upon positive relationships with parents to feel healthy, happy and safe.

---

<sup>7</sup> Heilmann, A., Kelly, Y., and Watt, R.G. (2015). [Equally Protected?](#) A review of the evidence on the physical punishment of children. Commissioned by NSPCC Scotland, Children 1st, Barnardo's Scotland and CYPCS.

<sup>8</sup> C Willow and T Hyder *It hurts you inside – children talking about smacking* (1998) National Children's Bureau and Save the Children.

<sup>9</sup> Ipsos MORI (2016). Results from Young People in Scotland survey (unpublished)

<sup>10</sup> Heilmann, A., Kelly, Y., and Watt, R.G. (2015). [Equally Protected?](#) A review of the evidence on the physical punishment of children. Commissioned by NSPCC Scotland, Children 1st, Barnardo's Scotland and CYPCS.

<sup>11</sup> <http://www.endcorporalpunishment.org/assets/pdfs/research-summaries/Summary-research-effects-corporal%20punishment-June-2016.pdf>

<sup>12</sup> Heilmann, A., Kelly, Y., and Watt, R.G. (2015). [Equally Protected?](#) A review of the evidence on the physical punishment of children. Commissioned by NSPCC Scotland, Children 1st, Barnardo's Scotland and CYPCS.

[on what makes children feel safe] *“Giving my mum a hug.”* (Child, School 2) *“When I am with my family.”* (Child, School 1) <sup>13</sup>

We strongly believe that providing equal protection from assault for children and young people will support health and wellbeing and positive relationships between parents and children. It is a vital part of the Scottish Government’s commitment to making Scotland ‘the best place in the world to grow up.’<sup>14</sup>

#### *4. Changing the law will make a difference*

International evidence clearly shows that in countries where equal protection from assault has been introduced, decreases in the prevalence of physical punishment have followed. Furthermore, this has been achieved without an associated increase in the criminalisation of parents<sup>15</sup>. Legislation works in this case.

#### **Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)**

No. We feel for the reasons outlined above that change in law is absolutely essential to give children and young people equal protection from assault. While social behaviour may change over time, and physical punishment may be regarded as less and less acceptable by the public, having the defence of ‘justifiable assault’ within Scots law is an unacceptable breach of child rights that will not change until the law changes. And it will leave Scotland increasingly out of step with other countries within Europe and beyond.

#### **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?**

As outlined in Q1, we feel that the main advantages will be in the areas of child rights and health and wellbeing. The proposed Bill would give children and young people equal legal status with adults in terms of protection from assault and this would uphold their rights to a far greater extent than the current situation.

As outlined above we also expect the Bill to reduce the prevalence of physical punishment and in turn have a range of positive impacts on children and young people’s health and wellbeing. The evidence we have highlighted shows that there is strong evidence that physical punishment affects child development, physical health,

---

<sup>13</sup> Children in Scotland, 2016, Mental Health Strategy, Report on Consultation ...

<sup>14</sup> As articulated at the [Commencement of the Children and Young People \(Scotland\) Act 2014](#).

<sup>15</sup> <http://www.endcorporalpunishment.org/assets/pdfs/research-summaries/Summary-research-effects-corporal%20punishment-June-2016.pdf>.

mental health and also their relationships with their parents and so it should be seen as a vital social policy measure for the Scottish Government to uphold and strengthen other policies in place such as GIRFEC.

**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)?**

We would expect the Bill to have a positive impact for the listed protected groups as it would give children and young people within these groups the same protection from physical assault as adults.

There is limited Scottish evidence about how experiences of physical punishment vary by protected group, and there would be value in research that explored this to see if any patterns or trends emerge. This should not in our opinion influence the progress of the Bill, indeed the universality of the proposals are key to its success as it ensures that all Scotland's citizens, regardless of age, sex, religion etc. have equal legal protection from physical punishment.

**Do you consider that the proposed bill can be delivered sustainably i.e. without having likely future disproportionate economic, social and/or environmental costs?**

There is no evidence that we can see that would mean disproportionate economic, social or environmental costs as a result of this bill.

A common criticism of banning physical punishment has been the social and economic costs that would go alongside increased numbers of criminal prosecutions for parents. Children in Scotland would however point once more to evidence that clearly shows that a ban on physical punishment leads to a decrease in its prevalence and is unlikely to contribute to increased prosecutions or the costs associated with this<sup>16</sup>.

We would also suggest that further research should be undertaken into the potential preventative spend that the proposed Bill could contribute to, in terms of, for example, the social and financial costs associated with poor mental health in childhood and adulthood resulting from experiences of physical punishment.

One area in which Children in Scotland would expect, and indeed wish, to see economic investment associated with the proposed legislation, would be in relation to campaigns and activities to support the Bill's aims. This could include awareness raising campaigns and parental support and advice programmes to support parents to develop positive parenting skills and good attachments. However we view such

---

<sup>16</sup> <http://www.endcorporalpunishment.org/assets/pdfs/research-summaries/Summary-research-effects-corporal%20punishment-june-2016.pdf>

investment in parenting skills as essential in and of itself, and it is of wider societal value than just as an adjunct to this Bill.

### **Do you have any other comments or suggestions on the proposal?**

As we have highlighted throughout this response we feel that the Children (Equal Protection From Assault) (Scotland) Bill is vitally important for improving the lives of children and young people across Scotland.

The Bill can mark a starting point for progress on child rights in Scotland; it would ensure that legal mechanisms are being utilised to protect children and young people from violence.

Children in Scotland would however highlight the importance of increasing knowledge and information about child rights for children and young people. We know that children and young people currently feel they do not know enough about their rights and it is imperative that the government does more to improve this knowledge:

*“We’re taught about rights in other countries, but never our own context.”<sup>17</sup>*

The evidence also shows that the proposed Bill would have a profound impact on the already changing social norms and attitudes in Scotland in relation to physical punishment. International evidence highlighted earlier in this response identifies that there was a decrease in the prevalence of physical punishment once the law was changed in other countries<sup>1819</sup>.

To support the legislative change the Scottish Government should identify successful campaigns that support parents in identifying more effective parenting techniques, and should also pursue awareness raising campaigns. Similar approaches were used in Sweden and were highly effective in supporting a reduction in physical punishment against children. We would point the Scottish Government towards the Give It Time campaign in Wales as a possible model that could be used to support parents.

We would also take this opportunity to highlight the timing of the Bill in relation to the current progress of the Equally Safe delivery plan. Providing all of Scotland’s children and young people with equal protection from physical punishment is clearly in line with the aims of the Equally Safe Delivery Plan and is a vital action for

---

<sup>17</sup> Scottish Youth Parliament, 2016, Our Generations Epidemic

<sup>18</sup> Heilmann, A., Kelly, Y., and Watt, R.G. (2015). [Equally Protected?](#) A review of the evidence on the physical punishment of children. Commissioned by NSPCC Scotland, Children 1st, Barnardo’s Scotland and CYPCS.

<sup>19</sup> <http://www.endcorporalpunishment.org/assets/pdfs/research-summaries/Summary-research-effects-corporal%20punishment-June-2016.pdf>

ensuring that the Scottish Government meets many of the ambitious objectives it has set itself on gender-based violence going forward.