

# **Children (Equal Protection from Assault) (Scotland) Bill**

**A proposal for a Bill to give children equal protection from assault by prohibiting the physical punishment of children by parents and others caring for or in charge of children**

**Consultation by John Finnie MSP  
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## FOREWORD



I want Scotland to be among the most progressive, socially just, and equal nations in the world. We all want our children to be happy, healthy and to give them the very best start in life. Yet in 2017, we still afford children less protection from assault than adults. It is an anomaly within Scots law which should now be remedied.

Today, the accepted norms of previous generations are no longer experiences we would wish for our own children and grandchildren. We would no longer consider it acceptable, for example, to allow our children to roam freely in the back of the car when going on a journey. Neither would we dream of taking them to a cinema if they had to watch a film through a fug of cigarette smoke. Yet, if you were a child 30-40 years ago, then that may well have been something that you experienced.

Attitudes towards these and many other fundamental societal issues have dramatically changed in the intervening years. We know now that child restraints can significantly reduce child death and injuries. We know now that passive smoking can cause breathing difficulties and other health issues for children. The knowledge that we've gained has provided the impetus for legislation and, in turn, that legislation has helped keep Scotland's children safer and healthier.

Similarly, a robust body of international evidence now shows the long-term impact that negative experiences in early childhood can have on children in later life. This evidence demonstrates the importance of nurture in the early years, the impact of positive family relationships and attachment on brain development and the long term negative impact of physical punishment on children for families, communities and Scottish society.

Attitudes in Scotland towards physical punishment are changing. Today the majority of parents in Scotland don't like physical punishment and they don't think it works. Children and young people themselves have voiced concerns that physical punishment has the potential to cause them harm.

The international evidence shows they are right. Rather than improving a child's behaviour, in many cases it has the opposite effect. Put simply, physical punishment just does not work.

So our current law, which allows for the physical punishment of children to be justified in some circumstances, is out of step. It is out of step with families, out of step with our ambitions and out of step with our obligations under international law.

Scotland has rightly achieved international recognition for its progressive child policies. These policies have valued children and young people and sought to put their best interests first. Yet, by continuing to give some of our most vulnerable members of society – children – less legal protection from assault than adults we risk undermining the progress we have made in so many other areas of Scottish life.

I am proud that one of the most notable achievements of the Scottish Parliament has been a collective, cross-party recognition of the importance of taking a preventative approach to keep children safe from harm and to give them the best start in life. That's why I'm launching this consultation to outline proposals for a Bill to provide children with equal protection from assault. If – and when – we do so, then I believe that Scotland really can take its place among the most progressive and socially just nations of the world.

A handwritten signature in black ink, appearing to read 'John Finnie', written in a cursive style.

**John Finnie MSP**  
**May 2017**

## HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at—

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

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Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website ([www.parliament.scot](http://www.parliament.scot)) under Parliamentary Business/Bills/Proposals for Members' Bills/Session 5 Proposals: <http://www.parliament.scot/parliamentarybusiness/Bills/12419.aspx>

## **AIM OF THE PROPOSED BILL**

The aim of this proposal is to promote and safeguard the health and well-being of children and young people by ensuring they are afforded the same right to protection from assault as adults; this would be achieved by ending the current legal position that the physical punishment of children can be viewed as justifiable assault.

Today we know more than ever before about child development, the importance of relationships in a child's early years and what this means for the long-term health of individuals, communities and society.

It is clearly important, not just for those bringing up children but for wider society, to ensure that parents set clear boundaries, provide children with consistent and effective guidance, and help them learn acceptable and appropriate behaviours. Physical punishment is often cited as a form of parental discipline. However, discipline and physical punishment are not the same. Discipline can be achieved through a range of techniques, which do not require the physical punishment of a child. Indeed the majority of parents in Scotland don't like the idea of physical punishment and doubt it works<sup>1</sup>.

A robust body of international evidence shows that they are right.<sup>2</sup> Rather than showing children the right way to behave, physical punishment can instead make children's problem behaviour worse and can lead to a vicious circle of escalating conflict. The evidence shows that this has consequences both for individual families and for Scotland's public health as a whole. Physical punishment damages children's well-being and results in increased levels of violence in our communities.

This consultation document sets out the case for strengthening the law in Scotland, to prohibit all forms of physical punishment of children, and seeks views on that proposal.

## **BACKGROUND**

Internationally, the use of physical punishment is increasingly regarded as unacceptable. The United Nations (UN) is clear that legal provisions which allow any level of violent punishment of children are not compatible with the UN Convention on the Rights of the Child and ought to be repealed. The UN is leading a global move to ban the physical punishment of children in an effort to change attitudes and cultural norms across the world. There are now 52 countries where physical punishment is

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<sup>1</sup> See, for example, Lunkenheimer, E. (2006) The Intergenerational Transmission of Physical Punishment, *Jnl of Family Violence*; Dpt of Schools, Families and Children, Section 58 of the Children Act 2004 Review (2007); Sherbert Research, A study into children's views of physical discipline and punishment, (2007); Ipsos MORI A study into the views of parents on the physical punishment of children (2007); Ipsos MORI Exploring public attitudes to a complete ban on smacking children, (2008) CAU Alliance, In two minds?, *Children & Society*, (2010); A M Halpenny, et al, Parents' Perspectives on Parenting Styles & Disciplining Children (2010).

<sup>2</sup> Equally Protected? A review of the evidence on the physical punishment of children (November 2015). Anja Heilmann, Yvonne Kelly and Richard G Watt. Available at: <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>.

unlawful; one of the most recent being the Republic of Ireland, where the law was changed in 2015.

In 1979, Sweden became the first country in the world to change the law and since then a vast body of international evidence has been published which clearly demonstrates the long-lasting damage which physical punishment of children can cause. Furthermore, rather than being an effective method of discipline, there is very strong evidence that physical punishment exacerbates problem behaviour in children and undermines the child/parent relationship.

The Criminal Justice (Scotland) Act 2003 prohibited certain forms of physical punishment of children in Scotland (blows to the head, shaking, hitting with an implement), and clarified the issues which should be considered in any case of alleged assault on a child which stemmed from physical punishment. The 2003 Act left room for parents and others caring for or in charge of children to plead a defence of justifiable assault under the existing common law. As such, Scots law does not prohibit all forms of physical punishment of children by parents and others caring for or in charge of children, neither does it offer children the same protection from assault as adults.

The sections below: define what is meant by physical punishment; explain the current law in Scotland and rest of the UK; give an international perspective; and outline the body of evidence that exists to support the case for removing the defence of justifiable assault.

## **Definitions**

### *Physical punishment*

The United Nations Committee on the Rights of the Child defines corporal or physical punishment as—

“... any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading.”<sup>3</sup>

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<sup>3</sup> The United Nations Committee on the Rights of the Child. Forty-second session, Geneva, 15 May-2 June 2006 - general comment no. 8 (2006). Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqlkirKQZLK2M58RF%2f5F0vF1b6rTFNjw4eY3W5adlOuDFzP1GdKUZ8oRYHJyiPeOS%2bcQ90I8KHM75DD7B5IIMbhIZPgDtB5J7OmNi%2boP0erF>.

This definition was also used for a research study published in November 2015, commissioned by the NSPCC Scotland, Children 1<sup>st</sup>, Barnardo's Scotland, and the Children and Young People's Commissioner Scotland, entitled *Equally Protected? A review of the evidence on the physical punishment of children*<sup>4</sup> (referred to in this document as the Equally Protected Report).

In this consultation the terms "corporal punishment" and "physical punishment" are used in accordance with this definition.

### *Parents*

Also, in this consultation, the word "parent" is used to mean parents and others caring for or in charge of children.

## **Law in Scotland**

In Scotland some forms of physical punishment of children by their parents are legal. Children therefore do not have the same legal protection from being physically struck as adults do.

The common law in Scotland allows parents to use some forms of physical punishment. The common law, in other words, identifies an exception to the laws on assault on another person whereby, if a parent and/or another caring for or in charge of a child strikes a child as a means of punishment, and if that punishment is reasonable, then it would not constitute an assault. In determining whether or not the punishment is "reasonable" the courts were likely to have regard to (a) the nature of the punishment inflicted; (b) the effect on the child; and (c) the age of the child.<sup>5</sup> This defence to a charge of assault is sometimes known as "reasonable chastisement". If a parent's conduct exceeds what is reasonable, then the defence would not apply and the offending conduct would constitute an assault.

Until 2003, section 12 of the Children and Young Persons (Scotland) Act 1937<sup>6</sup> made it an offence for a person with parental responsibilities for a child or young person under the age of 16 to "wilfully assault" that child or young person "in a manner likely to cause him unnecessary suffering or injury to health". However, the section 12 offence was expressly stated not to affect the rights of parents to administer punishment.

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<sup>4</sup> Equally Protected? A review of the evidence on the physical punishment of children (November 2015). Anja Heilmann, Yvonne Kelly and Richard G Watt. Available at:

<https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>.

<sup>5</sup> Scottish Parliament Justice 1 Committee. 8th Report 2002. Stage 1 Report on the Criminal Justice (Scotland) Bill

Volume 1: Report. Available at:

<http://archive.scottish.parliament.uk/business/committees/historic/justice2/reports-02/j2r02-08-vol01-02.htm#2>.

<sup>6</sup> Children and Young Persons (Scotland) Act 1937 (c 37). Section 12. Available at:

<http://www.legislation.gov.uk/ukpga/Edw8and1Geo6/1/37/contents>.



In 1994, the stepfather of a 9-year old boy (A) was prosecuted in England for repeatedly beating him with a cane.<sup>7</sup> At the end of the trial, the stepfather was acquitted on the basis that the jury found the punishment to have been reasonable. However, A appealed to the European Court of Human Rights, which found the child's human rights had been breached and found the UK was responsible for this and had failed to adequately protect the child. This ruling led to changes being made in all parts of the UK to strengthen the law on the physical punishment of children. In Scotland, where there had also been court cases concerning the physical punishment of children which had resulted in prosecutions in cases where punishment was not judged to have been reasonable, those changes were made in the Criminal Justice (Scotland) Act 2003<sup>8</sup>.

The criteria which the 2003 Act set, to guide what may constitute a "justifiable assault", reflect the ruling in the A v the UK case in 1998. The UK, as a signatory to the European Convention on Human Rights, was obliged to amend its law into line with the ruling.

Section 51 of the 2003 Act<sup>9</sup> altered the legal position in Scotland by prohibiting hitting a child with an implement, hitting them on the head, or shaking them. It also put into statute law common law principles about the factors a court must have regard to when considering whether an assault on a child, in exercise of a parental right or a right derived from having charge or care of a child, was justifiable. These are—

- the nature of what was done, the reason for it and the circumstances in which it took place;
- its duration and frequency;
- any effect (whether physical or mental) which it has been shown to have had on the child;
- the child's age; and
- the child's personal characteristics (including, in particular, sex and state of health) at the time the thing was done).

It's worth noting that the concept of "justifiable assault" referred to in section 51 of the 2003 Act did not involve the creation of any new defence to a charge of assault. Under the existing common law assault was, and still is, capable of justification in certain circumstances, including the reasonable chastisement of children by their parents. What section 51 does do is to require the courts to have regard to the criteria set out above in considering whether conduct amounts to assault or is in fact justifiable on the basis that it was reasonable physical punishment applied in exercise of a parental right (or an equivalent in the case of a person taking care or charge of a child). Any prosecutions would continue to be under the common-law offence of assault. The limits set by the

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<sup>7</sup> A. v. the United Kingdom (application no. 25599/94; Details available at: [http://www.cirp.org/library/legal/A\\_v\\_UK1998/](http://www.cirp.org/library/legal/A_v_UK1998/).

<sup>8</sup> The Criminal Justice (Scotland) Act 2003 (asp 7). Section 51. Available at: <http://www.legislation.gov.uk/asp/2003/7/section/51>.

<sup>9</sup> The Criminal Justice (Scotland) Act 2003 (asp 7). Section 51. Available at: <http://www.legislation.gov.uk/asp/2003/7/section/51>.

2003 Act on what may qualify as a “justifiable assault” apply in the context of the physical punishment of a child by a parent.

Section 51 doesn’t deal with the situation where an “assault” on children and adults alike may be justified in other settings, e.g. the situation where physical force is required in administering emergency medical treatment or surgery and this proposal does not affect such situations.

Statute law has prohibited the use of a justifiable assault defence in certain, limited settings, e.g. section 16 of the Standards in Scotland’s Schools etc. Act 2000 excludes its use relative to school education. Legislation has outlawed the use of corporal punishment in certain contexts other than at school, e.g. a prohibition on corporal punishment forms part of foster care and kinship care agreements further to the Looked After Children (Scotland) Regulations 2009 (S.S.I . 2009/210) and also in respect of a “provider of day care of children, child minding or a child care agency” within the meaning of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011(S.S.I. 2011/210).

### **Law in the rest of the UK**

In other parts of the UK, as is the case in Scotland, whilst there are restrictions on the physical punishment of children (largely by the 1998 ECHR ruling), there is no outright ban.

In England and Wales there is a defence of “reasonable punishment” which can be used in any allegations of assault, which has the effect of legalising some forms of physical punishment. Section 58<sup>10</sup> of the Children Act 2004<sup>11</sup> restricted this defence in cases relating to the statutory offences of wounding and grievous bodily harm, actual bodily harm or cruelty to persons under 16, stating that battery of a child cannot be justified on the grounds of reasonable punishment. It also states that battery of a child causing actual bodily harm cannot be justified as reasonable punishment in civil proceedings. The Crown Prosecution Service amended its Charging Standard on offences against the person as a result. A review of section 58 published in 2007 by the UK Government’s Department for Children, Schools and Families states—

“... any injury sustained by a child which is serious enough to warrant a charge of assault occasioning actual bodily harm cannot be considered to be as the result of reasonable punishment. Section 58 and the amended Charging Standard mean that for any injury to a child caused by a parent or person acting in loco parentis which amounts to more than a temporary reddening of the skin, and

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<sup>10</sup> Children Act 2004 (c 31). Section 58. Available at: <http://www.legislation.gov.uk/ukpga/2004/31/section/58>

<sup>11</sup> Children Act 2004 (c 31). Available at: <http://www.legislation.gov.uk/ukpga/2004/31>.

where the injury is more [than] transient and trifling, the defence of reasonable punishment is not available.”<sup>12</sup>

However, the Welsh Government’s Programme for Government 2016 stated its intention to “seek cross party support for legislation to end the defence of “Reasonable Punishment””<sup>13</sup>.

In Northern Ireland there are very similar provisions to those in England and Wales. The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006<sup>14</sup> effectively enacted section 58 of the Children Act 2004 in Northern Ireland.

As has been stated there are currently restrictions on the physical punishment of children in all parts of the UK, but some degree of physical punishment can still be justified where it is carried out by parents. Therefore, children do not have the same rights and protections as adults.

The legal position in both Scotland and the UK as a whole has been widely criticised by international human rights bodies. In 2016 the UN Committee on the Rights of the Child called on all administrations in the UK to prohibit the use of corporal punishment as a matter of priority. This was the fourth time that the UK was called upon to do so, previous recommendations having been made by the UN Committee on the Rights of the Child in 1995, 2002 and 2008.

### **Law in other parts of Europe and the world**

The UK is now one of only 6 EU Member States<sup>15</sup>, out of 28, not to have changed the law. When the 2003 Act was passed, only 13 countries in the world had a ban on physical punishment of children. Since then, a further 38 countries have implemented a change in the law, clearly illustrating that a global shift in approach and attitude is taking place.

Sweden was the first country to ban the physical punishment of children, in 1979. In the 37 years since, many other countries have followed Sweden’s lead, and now 52 countries across the world have banned corporal punishment. Along with 21 members of the EU, and other European countries such as Norway and Iceland, there are countries from Africa, Asia, South America and Central America, and New Zealand also

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<sup>12</sup> Department for Children, Schools and Families (2007). Review of Section 58 of the Children Act 2004. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/344503/Review\\_of\\_Section\\_58\\_of\\_the\\_Children\\_Act\\_2004.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344503/Review_of_Section_58_of_the_Children_Act_2004.pdf).

<sup>13</sup> Welsh Government (2016). Taking Wales Forward 2016 - 2021. Available at: <http://gov.wales/docs/strategies/160920-taking-wales-forward-en.pdf>.

<sup>14</sup> The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006. Available at: <http://origin-www.legislation.gov.uk/nisi/2006/1945/made>.

<sup>15</sup> EU countries without a full prohibition on the physical punishment of children are: Belgium, Czech Republic, France, Italy, Slovakia and the UK.

has a full ban. The most recent countries to introduce a full ban are Greenland, Peru, the Republic of Ireland, Paraguay and Slovenia.

The Global Initiative to End All Corporal Punishment of Children<sup>16</sup> (an organisation launched in 2001) states on its website that at least a further 54 countries have expressed a commitment to a full prohibition being introduced, including countries such as India, Pakistan, Mexico, Thailand, South Africa, Afghanistan and Turkey.

Along with the UK, other countries that don't have a full ban in place, and haven't committed to a full ban, include the USA, Canada, Australia, Italy, Russia and China.

Only 9 countries/states in the world have no prohibition on the physical punishment of children in any setting (Guyana, Mauritania, Nigeria, Botswana, Tanzania, Somalia, Saudi Arabia, Malaysia and the State of Palestine).

The Global Initiative to End All Corporal Punishment of Children states on its website that only 10% of the world's children are fully protected from physical punishment, with 10% not protected at all, and the remaining 80%, the vast majority, protected in some settings (such as schools) but not all (such as at home).

The developmental psychologist Elizabeth Gershoff, of the University of Texas at Austin, has published several reports and articles on this issue over the past 15 years. In 2008 she published the report: *Physical Punishment in the United States: What Research Tells Us About Its Effect on Children*<sup>17</sup>. Part of that report looked at countries which have changed the law noted—

“In most of these countries, these laws appear in the civil law, not the criminal law; the two exceptions are New Zealand and Portugal, both of which have passed the bans under criminal law. While there is no criminal defence for the use of physical punishment in the [in 2008] 24 countries with full bans, the bans did not create a new crime of “spanking.” Rather, all assaults of people are treated similarly, whether of children or adults. These laws are not aimed at prosecuting parents, but at setting a clear standard of caregiving. Discretion is applied when decisions are made regarding charging and prosecution, just as it is in the case of assaults against adults; the best interests of the child are a primary consideration in such decisions. The primary purpose of these bans is to protect children by sending an unambiguous message that hitting them is not allowed.”

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<sup>16</sup> The Global Initiative to End All Corporal Punishment of Children. Details available at: <http://www.endcorporalpunishment.org/>.

<sup>17</sup> Report on Physical Punishment in the United States: What Research Tells Us About Its Effect on Children (2008). Elizabeth Gershoff, PH.D. Available at: <http://www.endcorporalpunishment.org/assets/pdfs/reference-documents/Gershoff-US-report-2008.pdf>.

## Other relevant European and global policy and commentary

In addition to the 1998 *A vs UK* ECHR ruling, there is clear guidance from organisations such as the United Nations and the Council of Europe that the physical punishment of children contravenes children’s rights and is inextricably linked to other forms of violence.

The United Nations Convention on the Rights of the Child (UNCRC)<sup>18</sup> was ratified by the UK in 1991 and states in Article 19—

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

The implementation of the UNCRC is monitored by the UN Committee on the Rights of the Child<sup>19</sup>, which is a scrutiny body of international experts. The Committee holds countries that have ratified the Convention to account. It examines the record of individual countries in promoting and safeguarding children’s rights. It also produces General Comments, which are documents designed to aid the interpretation of the UN Convention on the Rights of the Child. General Comment number 8<sup>20</sup> (published in 2006) concerns “*The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*” and states—

“There is no ambiguity: “all forms of physical or mental violence” does not leave room for any level of legalised violence against children.”

And also states—

“The Committee is issuing this general comment to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take.

Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an

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<sup>18</sup> The United Nations Convention on the Rights of the Child (1990). Available at: [http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC\\_PRESS200910web.pdf](http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC_PRESS200910web.pdf).

<sup>19</sup> Committee on the Rights of the Child. Details available at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>.

<sup>20</sup> United Nations Convention on the Rights of the Child. Forty-second session, Geneva, 15 May-2 June 2006, general comment no. 8 (2006). Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsglKirKQZLK2M58RF%2f5F0vF1b6rTFNjw4eY3W5adlOuDFzP1GdKUZ8oRYHJyiPeOS%2bcQ90I8KHM75DD7B5IIMbHIZPgDtB5J7OmNi%2boP0erF>.

obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies.”

The UN Secretary-General’s Study on Violence against Children<sup>21</sup> recommended full prohibition of all corporal punishment of children, in all settings, in all states. Also, in 2015, the UN Human Rights Committee published a report<sup>22</sup> on the UK’s performance in relation to the International Covenant on Civil and Political Rights, in which it stated—

“The Committee remains concerned that corporal punishment is still not fully outlawed in the home and certain educational and alternative care facilities in the United Kingdom and in almost all British Crown dependencies and overseas territories. It is also concerned about the lack of an explicit prohibition on corporal punishment in the home and about the existing legal defences of “reasonable punishment” in England, Wales and Northern Ireland and “justifiable assault” in Scotland (Articles 7 and 24).

The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings, including the home, throughout United Kingdom and all Crown dependencies and overseas territories, and should repeal all existing legal defences across the State party’s jurisdiction. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.”

The Parliamentary Assembly of the Council of Europe<sup>23</sup> stated<sup>24</sup> in 2005—

“The Assembly considers that any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended. ... the Assembly now calls on the Organisation to work ... to make Europe, as soon as possible, a corporal punishment-free zone for children.”

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<sup>21</sup> United Nations Secretary-General’s Study on Violence against Children. Available at: [http://www.unicef.org/violencestudy/reports/SG\\_violencestudy\\_en.pdf](http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf).

<sup>22</sup> United Nations Human Rights Committee (2015). Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en).

<sup>23</sup> The Council of Europe was founded in 1949 and has 47 members (including the UK, a founder member). It is an international organisation which promotes human rights and democracy.

<sup>24</sup> The Parliamentary Assembly of the Council of Europe (2005). Europe-wide ban on corporal punishment of children. Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17235&lang=en>.

## Scottish policy context

The Scottish Parliament debated this issue during the passage of the 2003 Act<sup>25</sup>. At that time the Parliament did not favour an outright ban on the physical punishment of children. Instead, the Parliament supported the option of prohibiting certain activities, and setting criteria to follow in all other instances of alleged assault where a parental physical punishment defence was used.

In the 14 years since the 2003 Act was enacted, the Scottish Government's policies on children have been further developed and strengthened.

For example, the current Scottish Government's work in this area is underpinned by its *Getting It Right for Every Child (GIRFEC)*<sup>26</sup> policy, key parts of which were translated into law via the Children and Young People (Scotland) Act 2014<sup>27</sup>. GIRFEC features 8 indicators of wellbeing, one of which is: "Safe: Protected from abuse, neglect or harm at home, at school and in the community." GIRFEC states—

"Every child and young person has the right to be, and feel, safe and protected from any avoidable situation or acts of commission or omission by others that might affect their wellbeing. Such as:

- being physically, sexually or emotionally harmed in any way
- being put at risk of physical, sexual or emotional harm, abuse or exploitation."<sup>28</sup>

In 2016, Aileen Campbell MSP, the then Minister for Children and Young People in the Scottish Government, answered Parliamentary Questions (PQs) on this topic, and made a number of telling statements, including that the Scottish Government—

- does not support the physical punishment of children and does not consider that physical punishment of children is effective<sup>29</sup>;
- agrees that the physical punishment of children in any form can damage their wellbeing and is likely to be detrimental either physically or emotionally<sup>30</sup>; and

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<sup>25</sup> Scottish Parliament Justice 2 Committee (2002) Stage 1 Report on the Criminal Justice (Scotland) Bill – Volume 1: Report. Available at:

<http://archive.scottish.parliament.uk/business/committees/historic/justice2/reports-02/j2r02-08-vol01-01.htm>. Scottish Parliament. Official Report, 18 September 2002. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=4393&i=31037>. Scottish Parliament. Official Report, 19 February 2003. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=4429&i=31721>.

<sup>26</sup> Scottish Government. Getting it right for every child (GIRFEC). Details available at:

<http://www.gov.scot/Topics/People/Young-People/gettingitright>.

<sup>27</sup> Children and Young People (Scotland) Act 2014. Available at:

<http://www.legislation.gov.uk/asp/2014/8/contents/enacted>.

<sup>28</sup> <http://www.gov.scot/Topics/People/Young-People/gettingitright/wellbeing/safe>.

<sup>29</sup> Scottish Government answer to Question S4W-29200 (10 February 2016). Available at:

[http://www.scottish.parliament.uk/S4\\_ChamberDesk/WA20160210.pdf](http://www.scottish.parliament.uk/S4_ChamberDesk/WA20160210.pdf).

- recognises that there are differing views on whether to change the law on physical punishment of children and would want to consult widely on any proposal to change the law<sup>31</sup>.

In November, 2016, the Minister for Childcare and Early Years, Mark McDonald MSP, stated that—

“The Scottish Government does not support the physical punishment of children. We recognise that physical punishment of children can set the wrong example and is not an effective way to teach children discipline.”<sup>32</sup>

The Ministers’ statements signal recognition by the Scottish Government that physical punishment has the potential to harm children and young people and that it is ineffective as a means of modifying a child’s behaviour. However, to date, no proposals by the Scottish Government to legislate on the issue have been forthcoming.

As such, the current law in relation to physical punishment appears in stark contrast to the policy direction the Scottish Government has taken in recent years towards children and young people. To date, there have been many positive developments, including the introduction of Children’s Rights and Well-being Impact Assessments and the announcement<sup>33</sup> in December 2016 that the minimum age of criminal responsibility in Scotland will rise from 8 to 12 years. Providing children and young people with equal protection from assault would be a further example of Scotland embracing children and young people as citizens in their own right and upholding the principles of the UN Convention on the Rights of the Child.

### **Evidence of a cultural shift**

In November 2015, NSPCC Scotland, Barnardo’s Scotland, Children 1<sup>st</sup> and the Children and Young People’s Commissioner Scotland published the Equally Protected report.<sup>34</sup> This report brought together the findings of a wide range of international studies relating to the prevalence and impact of physical punishment on children and young people’s well-being since 2005. The report states that although evidence about the extent of physical punishment in the UK is scarce, there is reason to believe that physical punishment of children is still used by some parents in Scotland. The report identifies two key evidence sources for Scottish data on this issue: the Growing up in Scotland (GUS)<sup>35</sup> study, and the Millennium Cohort Study<sup>36</sup> (MCS). These longitudinal

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<sup>30</sup> Scottish Government answer to Question S4W-29203 (10 February 2016). Available at: [http://www.scottish.parliament.uk/S4\\_ChamberDesk/WA20160210.pdf](http://www.scottish.parliament.uk/S4_ChamberDesk/WA20160210.pdf).

<sup>31</sup> Scottish Government answer to Question S4W-29202 (10 February 2016). Available at: [http://www.scottish.parliament.uk/S4\\_ChamberDesk/WA20160210.pdf](http://www.scottish.parliament.uk/S4_ChamberDesk/WA20160210.pdf).

<sup>32</sup> Add ref.

<sup>33</sup> <http://www.gov.scot/Topics/People/Young-People/families/child-rights-wellbeing-impact-assessment>.

<sup>34</sup> Equally Protected? A review of the evidence on the physical punishment of children (November 2015). Anja Heilmann, Yvonne Kelly and Richard G Watt. Available at: <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>.

<sup>35</sup> Growing up in Scotland study. Details available at: <http://growingupinScotland.org.uk/>.



studies have provided several sets of data on the use of physical punishment in Scotland between 2005 and 2013. Some of the notable statistics from these reports include—

- 58% of parents said they smacked children aged 5, and 48% of parents said they smacked children aged 7 (GUS, 2012-13);
- 56% of children aged 7 said they were smacked by their parents when they did something wrong (MCS, 2006-08);
- 34% of the responding parents of children aged 4 said they had ever used smacking (GUS, 2006-07);
- 16% of the responding parents of children aged 2 said they had ever used smacking (GUS 2007-07);
- 84% of the responding parents of children aged 4 said that smacking was not very, or not at all, useful (GUS 2007-08);
- 87% of the responding parents of children aged 2 said that smacking was not very, or not at all, useful (GUS 2007-08); and
- 42% of parents of 3-4 year olds, and 30% of parents of 1-2 year olds agreed with the statement “it may not be a good thing to smack, but sometimes it is the only thing that will work” (GUS, 2005-06).

The Equally Protected report compared this data with a 2002 representative survey of 6,982 parents in Scotland which showed that 77% had used physical punishment in the previous year. It found that the use of physical punishment in Scotland appears to be decreasing, and that public opinion on the issue, which has historically shown a majority against a ban on physical punishment, is also shifting.

Data collected on a UK wide basis show a decline in the use of physical punishment. The NSPCC conducted two surveys, one in 1998 and one in 2009, which show the use of all forms of physical punishment decreasing. For example, in 1998, 61% of young adults aged 18-24 reflecting on childhood experiences reported being smacked on the leg, arm or hand, compared with 43% of those asked in 2009; and regular physical punishment was reported by 10% in 1998 and only 3% in 2009.

However, whilst it is encouraging to see some trends which suggest a decline in the use of corporal punishment in the home, all of these data sets suggest that there is still significant use of physical punishment in Scotland and across the rest of the UK.

### **Children and young people’s views of physical punishment**

The Children and Young People’s Commissioner Scotland commissioned questions on physical punishment in the 2016 Ipsos MORI Young People in Scotland survey<sup>37</sup>. This survey sought the views of over 1,500 secondary school pupils across Scotland. Key findings included—

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<sup>36</sup> Millennium Cohort Study. Details available at: <http://www.cls.ioe.ac.uk/page.aspx?siteid=851>.

<sup>37</sup> Ipsos MORI, Results from Young People in Scotland survey (2016) (unpublished).

- over half of pupils felt it was not OK for parents to physically punish children;
- younger pupils were more likely to say it was not OK for parents to physically punish children;
- 62% of pupils felt that physical punishment could be harmful to children; and
- 65% of pupils think that there should be help for parents to find alternatives to physical punishment.

In 2016, the Scottish Youth Parliament consulted with 72,744 young people across Scotland to inform their future work priorities. Eighty-two percent (82%) of young people responding agreed with the statement ‘All physical assault against children should be illegal’<sup>38</sup>.

### **The case for legislative change in Scotland**

The case for giving children equal protection from assault is demonstrated by—

- the overwhelming published evidence which shows that physical punishment is likely to be physically and/or emotionally damaging to children;
- the overwhelming published evidence which shows that physical punishment is an ineffective means of improving children’s behaviour;
- the fact that Scotland is one of only a handful of European countries which still permits some physical punishment of children
- the increasing number of countries around the world which have introduced, or announced plans to introduce, a full ban;
- the UK’s need to meet its obligations as set out in the UN Convention on the Rights of the Child and other European and global organisations;
- the growing consensus amongst parents and children and young people that children are entitled to expect equal protection from assault; and
- by continuing to allow children to be subjected to physical punishment, and not offering the same protection as adults, Scotland is not complying with the terms of the UN Convention on the Rights of the Child and is at odds with policy and recommendations by the UN and the Council of Europe.

Again, the case for change in Scotland is well articulated by the Equally Protected report<sup>39</sup>. The Foreword of the report, written by Professor Sir Michael Marmot, of the University College London, summarises the case for change in Scotland—

“A positive start in life provides the foundations for good health and wellbeing. A supportive, nurturing and loving family environment is particularly important in

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<sup>38</sup> Scottish Youth Party Manifesto 2016-2021. Available at: [https://d3n8a8pro7vhmx.cloudfront.net/scottishyouthparliament/pages/283/attachments/original/1457781662/Lead\\_The\\_Way\\_Manifesto.pdf?1457781662](https://d3n8a8pro7vhmx.cloudfront.net/scottishyouthparliament/pages/283/attachments/original/1457781662/Lead_The_Way_Manifesto.pdf?1457781662).

<sup>39</sup> Equally Protected? A review of the evidence on the physical punishment of children (November 2015). Anja Heilmann, Yvonne Kelly and Richard G Watt. Available at: <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>.

early childhood to encourage and enable children to develop and reach their full potential. Wider society has a key role in protecting children through the creation of supportive conditions for families to flourish. Unfortunately, in Scotland and across the UK many children do not have the best start in life. For many children, physical punishment is still part of their upbringing. This is despite the fact that physical punishment violates children's human rights according to the UN Convention on the Rights of the Child."

And he goes on to make two clear and unequivocal statements—

- "The international evidence could not be any clearer – physical punishment has the potential to damage children and carries the risk of escalation into physical abuse"; and
- "There is an urgent need for Scotland and the rest of the UK to comply with international human rights law and to prohibit all forms of physical punishment."

The Report also outlines the growing evidence which shows that physical punishment is detrimental to both childhood and adult outcomes, and is related to an increased risk of maltreatment of children. It identifies 74 studies and two articles on the subject, published since 2005 and states—

"There is strong and consistent evidence from good-quality research that physical punishment is associated with increased childhood aggression and antisocial behaviour ... Moreover, there is fairly consistent evidence for a link between childhood physical punishment and adult aggression or antisocial behaviour, suggesting that the effects of increased aggression among children who were subjected to physical punishment carry over into adulthood ... Physical punishment also affects children's emotional and mental health. There is good evidence that the experience of physical punishment is related to depressive symptoms and anxiety among children ... Other negative outcomes of physical punishment include parent-child conflict, adult mental illness and adult substance abuse ... 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 – the 'loving smack' might be a myth."

In relation to an increased risk of maltreatment, the Report states—

"A link between physical punishment and child maltreatment was consistently supported in the reviewed literature. Physical punishment carries a worrying and serious risk of escalation into injurious abuse and maltreatment. The evidence supports the notion that physical punishment and physical abuse are part of a continuum of violence, differing only by severity or degree."

There are also a growing number of organisations and professional bodies calling for a ban. Along with the Equally Protected report commissioning organisations (NSPCC Scotland, Barnardo's Scotland, Children 1<sup>st</sup>, Children and Young People's Commissioner Scotland), in 2016 the General Assembly of the Church of Scotland voted in favour of a ban on the physical punishment of children. Interestingly, the Church of Scotland had previously opposed such a ban, during the passage of the 2003 Act. A ban is also supported by the Scottish Directors of Public Health<sup>40</sup>, the Royal College of Paediatrics and Child Health<sup>41</sup>, and a wide coalition of non-Government organisations (as part of the Children are Unbeatable Alliance<sup>42</sup>).

## Why legislate?

Parental attitudes towards physical punishment are changing, but they are doing so slowly. At the same time, evidence of the harmful effects of physical punishment is growing and becoming more compelling. It is now acknowledged that any form of physical punishment has the potential to be damaging to children. If any form of physical punishment continues to be legal in Scotland, then we are knowingly exposing children to harm.

The evidence from countries where physical punishment is no longer permitted suggests that it is legislative change that has proved to be the catalyst for wider changes in both societal attitudes and behaviours.

In Scotland, there are several recent examples of where legislation has been used as a means of facilitating attitudinal change. The ban in smoking in public places, for example, has ensured that children (and adults) are protected from the harmful effects of passive smoking outside the home. A primary intention behind the legislation was to improve public health and to bring about a change in behaviour.

Similarly, the primary intention of this proposal will be to provide children with the same protection as adults in relation to assault, and to provide clarity under the law. If the current legal defences available to a parent (or a person in charge of or who cares for a child) administering physical punishment are removed, then any cases of assault brought forward and heard by the courts would be likely to be subject to the same – or broadly similar – considerations as an alleged assault on an adult.

While there is some evidence that changes to the law in countries that no longer permit the use of physical punishment has led to increases in reporting of alleged offences, there is no evidence that this has led to significant numbers of prosecutions or parents

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<sup>40</sup> Scottish Directors of Public Health Group (2012). Comments on the proposed Children's Services Bill Edinburgh: Scottish Directors of Public Health. Available at: <http://www.gov.scot/Resource/0040/00406557.pdf>.

<sup>41</sup> Royal College of Paediatrics and Child Health (2009). Position Statement on corporal punishment. Available from: [http://www.rcpch.ac.uk/sites/default/files/asset\\_library/Policy\\_and\\_Standards/Policy\\_Documents/Corporal\\_Punishment\\_Policy\\_Nov09.pdf](http://www.rcpch.ac.uk/sites/default/files/asset_library/Policy_and_Standards/Policy_Documents/Corporal_Punishment_Policy_Nov09.pdf).

<sup>42</sup> Children are Unbeatable Alliance. Details available at: <http://www.childrenareunbeatable.org.uk/#>.

being convicted of an offence<sup>43</sup>. The same evidence sources indicate that changing the law has led to an increased awareness of the need to support parents in finding suitable alternatives to physical punishment.

Parents have already indicated that they would welcome support to move away from the use of physical punishment<sup>44</sup> and it is acknowledged that any legislative change in Scotland would need to be accompanied by a widespread public information campaign and the provision of family support.

## **DETAIL OF THE PROPOSED BILL**

### **Contents of the Bill**

As previously stated, the Bill will prohibit the physical punishment of children by ending the existing common-law position that physical punishment by parents can be defended as reasonable chastisement and therefore be lawful. The Bill would also need to include, as consequential provision, the amendment or repeal of relevant parts of s.51 of the 2003 Act. The Bill will not create a new criminal offence, as the common law offence of assault will apply (with a modification removing the reasonable chastisement defence).

### **Potential impacts of the Bill**

The Bill would predominantly affect children and parents. It may also have an impact upon agencies supporting and working with children and families; those working in the field of child protection; members of the public; and on Scotland's international reputation. All of these are explored in more detail below.

#### *Impact on children*

The Bill would have a positive impact on children as it would afford them the same legal rights and protections from assault as adults.

Legislative change would also seek to counteract the negative consequences resulting from physical punishment, as identified by a range of research studies, including trying

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<sup>43</sup> Boyson R, Thorpe L (2002): Equal protection for children. An overview of the experience of countries that accord children full legal protection from physical punishment. London: National Society for the Prevention of Cruelty to Children. Available at:

[http://www.respectworks.eu/fileadmin/website/downloads/equalprotectionforchildren\\_wdf48095.pdf](http://www.respectworks.eu/fileadmin/website/downloads/equalprotectionforchildren_wdf48095.pdf);

Council of Europe (2007): Abolishing corporal punishment of children - Questions and answers. Available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046d05e>;

Government Offices of Sweden and Save the Children Sweden (2009): Never Violence – Thirty Years on from Sweden's Abolition of Corporal Punishment. Available at:

<http://www.government.se/contentassets/6bfb214c582448b6ace4d32978361577/never-violence---thirty-years-on-from-swedens-abolition-of-corporal-punishment>.

<sup>44</sup> Growing up in Scotland study. Details available at: <http://growingupinScotland.org.uk/>.

to break any cycles of violence. This could potentially lead to better outcomes for children and young people, including improvements in mental health, better educational attainment and a reduction in anti-social behaviours.

It is not anticipated that this proposal will lead to any direct negative impacts on children and young people. However, there is the potential for indirect negative impacts, for example, where a negative impact on a parent also has consequences for the child.

A Children's Rights and Well-being Impact Assessment will be carried out before the Bill is introduced. This will help ensure that the impact of the legislation is fully explored and that measures are put in place to mitigate any negative impacts the Bill may have upon children.

#### *Impact on parents*

The proposal would have no impact on those parents who currently do not use or support physical punishment of children.

For those who currently do use physical punishment, I fully expect that support and advice will be made available to them via existing routes. This will hopefully include information about a range of alternative options available to them, to help them manage the behaviour of their child/children. As a result, this proposal is likely to impact positively on their parenting skills, as well as bringing benefits in terms of their child's behaviour and health and well-being.

A negative impact could be anticipated in terms of parents being criminalised by the removal of the defence of 'justifiable assault'. However, the evidence cited in the "Why legislate?" section above shows that, while there is some evidence that changes to the law in countries that no longer permit the use of physical punishment has led to increases in reporting of alleged offences, there is no evidence that this has led to significant numbers of prosecutions or parents being convicted of an offence. That evidence shows that in many of the countries examined where a change in the law has been introduced, it has been done with the purpose of altering behaviour, and challenging the acceptance of certain behaviours in society, rather than being based upon a desire to make an example of parents using physical punishment.

#### *Impact on public services*

Similarly, it could be anticipated that a change in the law in Scotland will lead to an increase in child protection referrals and pressure on public services such as the police and social work. Also, the intended impact of the Bill is to deliver a significant change, over time, of behaviour and attitudes towards the physical punishment of children. This is a change that will require the support and assistance of all those support and professional services involved.

Making this change to the law may initially result in some increase in the reporting of alleged instances of physical punishment which would impact on the services which would be required to investigate cases brought to their attention. There may also be

impacts, in terms of resources, due to the difficulties in gathering evidence, and in incidents being discovered and/or reported to the authorities.

There could also be an impact on judicial and support services if any of these additionally reported cases are prosecuted. However, as has been stated elsewhere in this consultation, there is no evidence from other countries that this is likely to lead to increased prosecutions. This Bill is intended as a catalyst for changing attitudes and behaviour and ensuring that children in Scotland have the same rights and protection as adults and it is therefore expected that any possible impact on services will diminish over time as attitudes and behaviours change.

As previously stated, a Children's Rights and Well-being Impact Assessment will help ensure that the child's best interests remain central to any decision-making processes developed and/or altered as a result of this proposal.

#### *Impact on members of the public*

Legislative change would also provide clarity to members of the public. Currently, they can find it difficult to know whether to intervene if they see a child being physically punished in public. Should legislation be passed, then they will be in no doubt that such behaviour towards a child is unacceptable.

#### *Impact on Scotland's international reputation*

The very existence of a defence of 'justifiable assault' against a child provides tacit approval of physical punishment and allows for continued acceptance of a practice, which is regarded as internationally unacceptable. This proposal would therefore have a positive effect on Scotland's reputation in this area.

### **Resource implications**

As previously stated, evidence from countries where physical punishment is no longer permitted suggests that the number of reports of alleged incidents may increase (although it is unlikely that the proposal would result in a large number of additional prosecutions). There may therefore be a financial impact on those required to investigate and manage any additionally reported cases.

Should the Scottish Government and related services provide resources and public information to help parents move away from the use of physical punishment, as would be expected, there would also be cost implications. Family support, health and social work services may also require additional resources to help support parents and manage the transition to any new arrangements.

Potential costs could therefore include—

- Scotland-wide information campaign to raise awareness of the change in the law (estimated as moderate);

- educational materials aimed at supporting parents and changing public attitudes towards physical punishment (estimated as moderate).
- additional parenting support (estimated as moderate)
- additional costs associated with investigating alleged assaults on children and any proceedings arising from these investigations, assuming there is an initial rise in reporting (estimated as minimal);
- the consequences of any criminal convictions (estimated as minimal).

These costs would fall on the Scottish Government, bodies such as social work services, Police Scotland and judicial services, and on local authorities.

## **Equalities**

This Bill will affect several of the identified characteristics protected in law by the Equality Act 2010<sup>45</sup>. The following characteristics have been identified as being particularly affected, but views on all protected characteristics are welcomed.

### *Age*

Ensuring that children have the same rights and protection as adults is at the heart of this Bill. Currently, a defence exists which means that some forms of physical punishment against a child by an adult are permitted. The same actions, were they to be carried out by an adult on another adult, would be regarded as an assault. Bringing an end to the reasonable chastisement and justifiable assault defences will end the inequality which currently exists in law in Scotland. There is evidence<sup>46</sup> to suggest that incidences of parental physical punishment are more prevalent amongst younger children, and diminish as children get older. Introducing a ban would therefore redress this inequality, and ensure that all children had equal protection under the law.

As stated above, a Children’s Rights and Well-being Impact Assessment will be carried out before the Bill is introduced. This will help ensure that the impact of the legislation is fully explored and that measures are put in place to mitigate any negative impacts the Bill may have upon children.

### *Gender*

Physical punishment can have different impacts for boys and girls. As well as being painful and upsetting, corporal punishment can also be degrading and humiliating, and lead to potential emotional difficulties. Evidence<sup>47</sup> indicates that boys are now more

<sup>45</sup> Equality Act 2010. Available at: <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

<sup>46</sup> Equally Protected? A review of the evidence on the physical punishment of children (November 2015). Anja Heilmann, Yvonne Kelly and Richard G Watt. Section 3.3.1. Available at: <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>.

<sup>47</sup> Equally Protected? A review of the evidence on the physical punishment of children (November 2015). Anja Heilmann, Yvonne Kelly and Richard G Watt. Section 3.3.1. Available at: <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>. The ‘Smacking Debate’ in Northern Ireland – Messages from Research (2008). Lisa Bunting, Mary Anne Webb, and Julie Healy. Page 44. Available at: <https://www.nspcc.org.uk/globalassets/documents/research-reports/smacking-debate-northern-ireland-report.pdf>.



likely to be physically punished than girls, so changing the law would redress gender inequalities in this regard. Section 51(1)(e) of the Criminal Justice (Scotland) Act 2003 suggests that a child's gender should be taken into account when assessing whether an assault is 'justifiable'. This may lead to an unconscious bias (e.g. that it is worse to physically punish a girl than a boy).

#### *Religion or belief*

Evidence suggests that the frequency and severity of physical punishment may vary depending on different religious and cultural norms, precedents and beliefs<sup>48</sup>. Therefore removing defences would provide clarity and ensure consistency in the law for children belonging to all cultural and religious groups.

#### *Race*

A review of the global evidence on the physical punishment of children conducted in Northern Ireland, and which resulted in the publication of the report "The 'Smacking Debate' in Northern Ireland" also identified ethnicity as another factor in the prevalence and instances of corporal punishment in studies conducted in the USA.<sup>49</sup>

### **Sustainability of the proposal**

Well-being and future proofing are central parts of sustainable development and this Bill should both improve the well-being of children and lead to positive outcomes for children, parents, families and Scottish society as a whole.

A fundamental aspect of sustainable development is ensuring that economic, cultural and political systems do not favour some people while harming others. Continuing to allow the physical punishment of children would tacitly encourage a form of discipline which can harm children physically and emotionally and which is not equal, as there is no legal justifiable assault on adults.

The proposal seeks to meet a range of United Nations Sustainable Development Goals (SDG)<sup>50</sup>, including—

- SDG 3 Good health and well-being;
- SDG 5 Gender equality;
- SDG 10 Reduced inequalities; and
- SDG 16 Peace, Justice and Strong Institutions.

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<sup>48</sup> Petts RJ, Kysar-Moon AE (2012): Child Discipline and Conservative Protestantism: Why the Relationship Between Corporal Punishment and Child Behavior Problems May Vary by Religious Context. *Review of Religious Research*, 54(4), 445-468.

<sup>49</sup> The 'Smacking Debate' in Northern Ireland – Messages from Research (2008). Lisa Bunting, Mary Anne Webb, and Julie Healy. Page 50. Available at: <https://www.nspcc.org.uk/globalassets/documents/research-reports/smacking-debate-northern-ireland-report.pdf>.

<sup>50</sup> United Nations Sustainable Development Goals. Available at: <https://sustainabledevelopment.un.org/?menu=1300>.

Children growing up with less physical and emotional trauma should have a positive overall benefit on society. As such this Bill should make a very positive contribution to the sustainable development of Scottish society in the years ahead.

Encouraging parents to move away from physical punishment to more positive and less damaging means of discipline and guidance should therefore help to address basic human needs, such as being safe, feeling loved and part of a family, and having high levels of esteem (both self-esteem and esteem for others), and also improve the well-being of children, parents, and family units, addressing issues such as physical and mental health and having good, respectful relationships between family members.

## QUESTIONS

### SECTION 1 - ABOUT YOU

**1. Are you responding as:**

- an individual – in which case go to Q2A  
 on behalf of an organisation? – in which case go to Q2B

**2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)**

- Politician (MSP/MP/Peer/MEP/Councillor)  
 Professional with experience in a relevant subject  
 Academic with expertise in a relevant subject  
 Member of the public

**2B. Please select the category which best describes your organisation:**

- Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)  
 Commercial organisation (company, business)  
 Representative organisation (trade union, professional association)  
 Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)  
 Other (e.g. club, local group, group of individuals, etc.)

**3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.**

- I am content for this response to be attributed to me or my organisation  
 I would like this response to be anonymous (the response may be published, but no name)  
 I would like this response to be confidential (no part of the response to be published)

Name/organisation:

**4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)**

Contact details:

## **SECTION 2 - YOUR VIEWS ON THE PROPOSAL**

### **Aim and approach**

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

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

**Please explain the reasons for your response.**

2. Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)?

- Yes (if so, please explain below)
- No
- Unsure

**Please explain the reasons for your response.**

3. 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?
4. What do you think would be the main disadvantages, if any, of giving children equal protection from assault by prohibiting all physical punishment of children?

### **Financial implications**

5. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have:

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

**Please explain the reasons for your response.**

**Equalities**

**6. 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)?**

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

**Please explain the reasons for your response (if you are of the view that there will be different overall impacts for different groups please specify in your comments)**

**7. If you believe there is a negative impact in what ways could any negative impact of the Bill on any of the protected groups be minimised or avoided?**

**Sustainability of the proposal**

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

- Yes
- No
- Unsure

**General**

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

## HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

### **Format of responses**

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

#### *Online survey*

To respond via Smart Survey, please follow this link:

<http://www.smartsurvey.co.uk/s/ChildrenEqualProtectionAssault/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the Data Protection Act 1998. Any information you send in response to this consultation (including personal data and sensitive personal data) will be seen by the MSP progressing the Bill and by specified staff in NGBU, and may be added manually to Smart Survey.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or directly from this link:

<https://www.smartsurvey.co.uk/privacy-policy>

#### *Electronic or hard copy submissions*

If possible, please submit your response electronically – preferably in MS Word document. Please keep formatting of this document to a minimum, and avoid including any personal data other than your name (or the name of the group or organisation on whose behalf you are responding).

Any additional personal data (e.g. contact details) should be provided in the covering e-mail (or a covering letter).

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain the role of that organisation and how the view expressed in the response was arrived at (for example, whether it reflects an established policy or was voted on by members).

## Where to send responses

Responses prepared electronically should be sent by e-mail to:

[John.Finnie.msp@parliament.scot](mailto:John.Finnie.msp@parliament.scot)

Responses prepared in hard copy should be sent by post to:

John Finnie MSP  
Room MG.16  
Scottish Parliament  
Edinburgh EH99 1SP

You may also contact John Finnie's office by telephone on (0131) 348 6899.

## Deadline for responses

All responses should be received no later than **Friday 4 August 2017**.

## How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received on my website <https://johnfinnie.scot/>. As published, responses will normally include the name of the respondent, but other personal data (signatures, addresses and contact details) will not be included.

Copies of all responses will be provided to the Scottish Parliament's Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member's Bill). NGBU will treat responses in accordance with the Data Protection Act 1998. The summary may cite, or quote from, your response and may name you as a respondent to the consultation – unless your response is to be anonymous or confidential (see below).

I am also obliged to provide copies of all responses to the Scottish Parliament's Information Centre (SPICe). SPICe may make responses (other than confidential responses) available to MSPs or staff on request.

## Requests for anonymity or confidentiality

If you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly. You still need to supply your name, but any response treated as anonymous will be published without the name (attributed only to "Anonymous"), and only the anonymised version will be provided to SPICe. If you request anonymity, please note it is your responsibility to ensure that the content of your response does not allow you to be identified.

If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly. If the response is treated as confidential (in whole or in part), it (or the relevant part) will not be published. However, I would still be obliged to provide a complete copy of the response to NGBU, and a copy of any non-confidential parts (i.e. a redacted copy) to SPICe when lodging my final proposal. As the Scottish Parliament is subject to the Freedom of Information (Scotland) Act 2002 (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Scottish Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

In summarising the results of this consultation, NGBU will aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published (or published only in part).

### **Other exceptions to publication**

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory statements or material. If I think your response contains such material, it may be returned to you with an invitation to provide a justification for the comments or remove them. If the issue is not resolved to my satisfaction, I may then disregard the response and destroy it.

### **Data Protection Act 1998**

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or confidentiality. I will not publish your signature or personal contact information, or any other information which could identify you and be defined as personal data.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties, you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.



Further information about the Data Protection Act can be found at: [www.ico.gov.uk](http://www.ico.gov.uk).

### **Freedom of Information (Scotland) Act 2002**

As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the FOISA. So if the information you send me is requested by third parties the Scottish Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, potentially even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI. Further information about Freedom of Information can be found at: [www.itspublicknowledge.info](http://www.itspublicknowledge.info).