

**PROPOSED CHILDREN (EQUAL PROTECTION FROM ASSAULT)
(SCOTLAND) BILL**

JOHN FINNIE MSP

SUMMARY OF CONSULTATION RESPONSES

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3. These three sections have been prepared by the Scottish Parliament's Non-Government Bills Unit (NGBU). Section 4 has been prepared by John Finnie MSP and includes his commentary on the results of the consultation.

Where respondents have requested that certain information be treated as confidential, or that the response remain anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

All publishable responses can be seen on the member's website <https://johnfinnie.scot/> together with a table which sets out the sequential number and the name or status of every response, for ease of reference. A list of responses attributable to organisations and individuals can be found at the Annexe.

SECTION 1: INTRODUCTION AND BACKGROUND

John Finnie's draft proposal, lodged on 11 May 2017, is 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.

The proposal was accompanied by a consultation document, prepared with the assistance of NGBU. The consultation exercise was run by John Finnie's parliamentary office. The consultation period ran from 12 May 2017 to 4 August 2017 and the consultation document was published on the Parliament's website, from where it remains accessible—

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/104602.aspx>.

Many organisations were sent copies of the consultation document or links to it by the member, including—

- all 32 local authorities in Scotland;
- 12 charities;
- seven equality organisations;
- 12 police, legal and human rights bodies; and
- 20 medical and care profession organisations.

John Finnie launched his draft consultation on 12 May 2017. The Church of Scotland and the Association of Scottish Police Superintendents spoke at the launch, as did an MSYP on behalf of the Scottish Youth Parliament. The NSPCC, Barnardo's Scotland, Children 1st and the Children and Young People's Commissioner's office all attended the launch. Nicki Wray (formerly of Barnardo's) chaired the event.

John Finnie attended a seminar on the issue on 27 June 2017 which was organised by Children 1st, NSPCC, Barnardo's Scotland, and the Children and Young People's Commissioner Scotland. He also visited a primary six class at Longstone Primary School in Edinburgh on 28 June to discuss the proposal.

These meetings and events were held by the member and his staff and do not constitute part of the formal responses to the consultation and therefore no summary of the content is contained in this summary.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the Parliament's website:

- Standing orders (Chapter 9):
<http://www.scottish.parliament.uk/parliamentarybusiness/26514.aspx>.
- Guidance (Part 3):
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25690.aspx>.

SECTION 2: OVERVIEW OF RESPONSES

In total, 660 responses were received. The majority of responses were submitted directly via Smart Survey (an online survey which allows responses to be completed and submitted online). However, a number of responses were received by email, or in hard copy.

Responses made by organisations

Eighty-four responses (13% of the total number of responses) were from organisations, which identified themselves as follows—

- 20 were from public sector bodies;
- one was from a commercial organisation;
- eight were from representative organisations;
- 52 were from third sector bodies; and
- three were from other organisations (an online blog; a local authority child protection committee; and one anonymous)

A vast majority of the organisational responses were supportive of the proposal. Seventy-eight organisations, 93% of those who responded to the consultation, were supportive (75 were fully supportive, and 3 were partially supportive). This included: children's, family and women's charities and groups; parental organisations; local authorities; human rights organisations; health bodies (including NHS Scotland and regional NHS groups); social work organisations; a church group; police and legal bodies; universities and research groups; equality groups; and a political organisation. Three organisations were partially supportive: NHS Orkney, Orkney Islands Council, and the British Psychological Society.

Six organisations, 7% of those organisations which responded to the consultation, were fully opposed to the proposal (none were partially opposed). Three of these were Christian bodies (the Scottish Christian Party, the Christian Institute, and CARE for Scotland), one was ThisDadDoes.com (a website/blog about fatherhood run by an individual) and two were anonymous.

Of the total of 84 responses from organisations, five, 6%, requested that their response be anonymous. The remaining 79, 94%, were attributed to the relevant organisation.

Responses made by individuals

Five hundred and seventy-six responses (87% of the total number of responses) came from individuals, of which—

- six were from individual politicians (one MSP, one MSYP, two councillors; and two anonymous);
- 117 were from professionals with experience in a relevant subject;
- 21 were from academics with expertise in a relevant subject; and
- 432 were from members of the public.

There were eight responses from a primary six class at East Linton Primary School in East Lothian. These were sent in hard copy and entered into Smart Survey. Six of the children were fully supportive of the proposal and two were fully opposed.

Late and other responses

There were four late responses from—

- the Children and Young People’s Commissioner Scotland (fully supportive);
- the Global Initiative to End All Corporal Punishment of Children (fully supportive); and
- two individuals (one fully supportive and one partially opposed).

These have not been included in the analysis below, but are available on the member’s website.

John Finnie received 90 emails and 36 letters from individuals or organisations expressing a view on the subject of the consultation but not responding to any of the consultation questions. Seventy-four emails were opposed to the proposal and 14 were supportive. Two emails were received which were titled relating to the consultation but did not express any identifiable view. Of the letters, 34 were opposed and two supportive.

The primary six class at Longstone Primary School in Edinburgh visited by John Finnie on 28 June produced a video with their thoughts on the consultation. The video can be accessed at this link:

<https://www.youtube.com/watch?v=iReMsKrwxs&t=4s>.

Organised response campaigns

The member is aware of three organisations which ran campaigns to encourage their members to either respond to the consultation directly, or to indicate to them whether they supported their campaign. They were as follows—

- *Children 1st (fully supportive)*: hosted their own survey (distinct from the formal consultation) on their website and the results were sent to John Finnie after the close of his consultation. A total of 207 people responded. The survey asked respondents what they thought the main advantages of giving children equal protection from assault by prohibiting all physical punishment of children in law were. 98% of respondents supported the statement “children have the same right to protection from assault as adults.” 74.3% of respondents said the proposal would “bring the law into line with the majority of parents’ attitudes in Scotland.” 98% believed equal protection would “prevent children experiencing physical and emotional harm.” 91.1% believed it would “help reduce violence in Scotland.” 88.6% of respondents supported the statement “help parents find more effective ways of

supporting their children’s behaviour.” 88.1% thought it would “bring the law into line with wider policy approaches to children’s health, wellbeing and protection” while 85.6% felt it would “meet Scotland’s international human rights obligations.”

- *Barnardos (fully supportive)*: a postcard-style email campaign expressing support for the proposal – 73 responses were received; and
- *The Christian Institute (fully opposed)*: a letter was sent to members encouraging them to respond to John Finnie’s consultation as fully opposed and offered key phrases to use in response to questions 1, 4 and 9. Due to the nature of how the campaign was structured it is not possible to state with certainty the number of responses that may have been prompted by it.

All three of the organisations behind these campaigns also submitted responses to the consultation on their own behalf. Some respondents to the consultation were clearly aware of one of these campaigns and there is significant repetition of views and similar or identical wording in answer to some questions as a result.

This summary only provides analysis of the responses made to the consultation document questions, whether via Smart Survey or by email or hard copy. People who indicated support for one of the campaigns but did not actually respond to the consultation directly are not counted amongst the data in this summary.

Status of responses

Of the 660 respondents—

- 349 (53%) were content to be named;
- 275 (42%) asked to be anonymous; and
- 36 (5%) asked for their responses to be treated as confidential.

The large number of respondents requesting either anonymity or confidentiality, 47%, may partly be explained by—

- many responses recounting personal experience of physical punishment, either from an adult perspective (situations where physical punishment may have been used/considered) or as recollections from childhood; and
- several responses being made by professionals with relevant experience, but on a personal basis.

Executive summary of responses

A large majority of respondents (493, 75%) were supportive of the proposal. There was strong support for arguments made in the consultation paper, including that: children should have the same rights as adults in being

protected from all assault; physical punishment is not effective and can lead to long-lasting emotional and physical difficulties and damage; a change to the law is required to stimulate and ensure that the required behaviour and societal changes take place; and that the proposal is required to ensure Scotland complies with human rights legislation and obligations and to meet the Scottish Government's ambition for Scotland to be the best country in the world to grow up in.

A minority of respondents (166, 25%) were opposed to the Bill, citing reasons including that: smacking is not the same as assault or abuse and should not be considered as such; the current law is sufficient to protect those at risk; state interference in private family life is not welcome or needed; physical punishment is effective in loving families and environments; and that without this as an option for discipline and guidance, society will suffer negative consequences as a result of unruly children not having learnt right and wrong and boundaries of behaviour. A large majority of those opposed to the proposal cited their belief in the Bible and their Christian faith as part of the reason for their opposition to the proposal.

A detailed summary of the responses to each question can be found below.

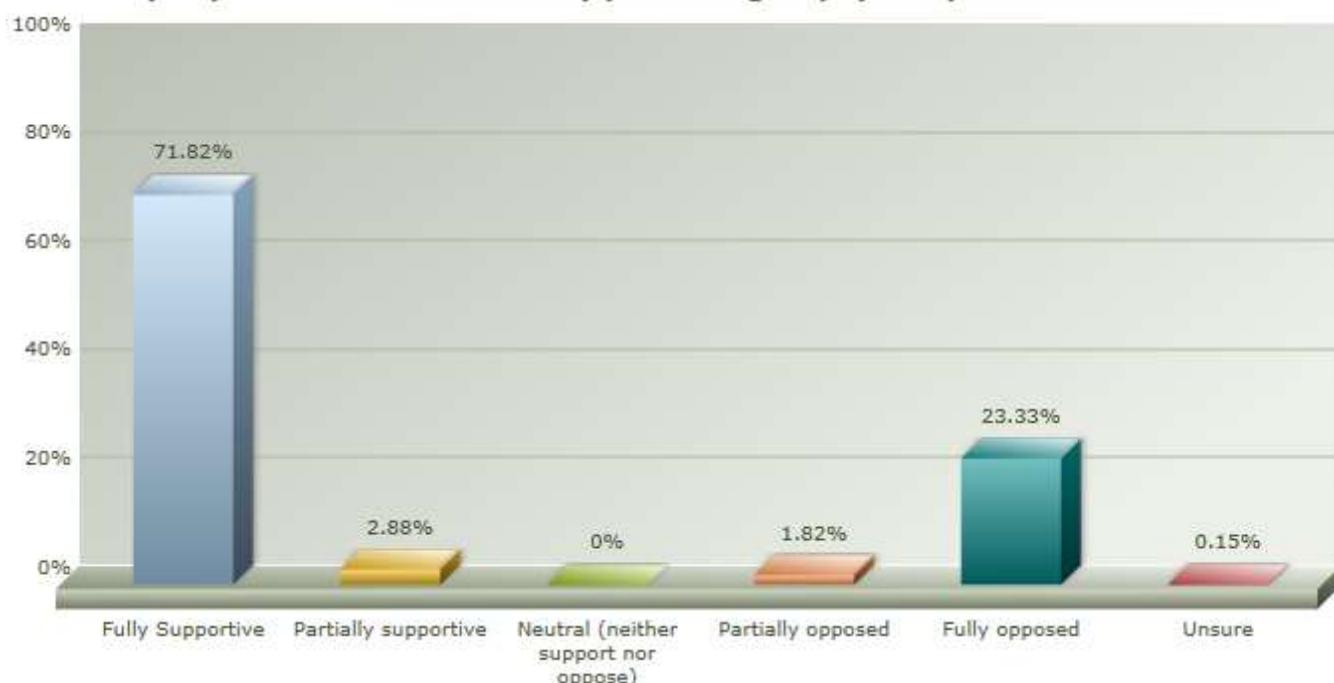
SECTION 3: RESPONSES TO CONSULTATION QUESTIONS

This section sets out a summary of responses to each question in the consultation document.

Overall view of the proposal – Question 1

All 660 respondents answered this question—

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?



Reasons for supporting the proposed Bill

A large majority, 493 respondents (75%), were supportive of the proposal (474, 72% of those who answered the question, were fully supportive and a further 19, 3%, were partially supportive). Of the 84 organisations which responded to the consultation, 78 were supportive (75 fully supportive and 3 partially supportive).

Many of those who explained the reasons for their answer gave personal accounts of being hit as children, or of parenting as adults, and there were also a significant number of responses from people who work with children. Many respondents had very strong opinions on the physical punishment of children, describing it using words such as barbaric and abhorrent.

Reasons given for fully supporting the proposal included that—

- some were not aware that physical punishment was still lawful in certain circumstances and thought it should not be;
- there is no evidence that hitting children can have any positive effects;

- a ban will protect children, who are vulnerable and potentially at risk, from abuse, harm and the long-term effects of physical punishment evidenced in the consultation document;
- children are not able to understand or rationalise why they are being hit by the people who love and care for them;
- it will build on the positive benefits seen in schools following the end of corporal punishment;
- it will drive positive behavioral change among adults and within society;
- whilst physically restraining a child may be required, hitting them for punishment can never be;
- it will follow other cultural shifts underpinned by legislation that have proved successful, such as the ban on smoking in enclosed public places;
- it is easier to enforce and understand than the current partial ban;
- it gives children equal rights to adults and ends the current discrimination based on age;
- it sends a clear message that violence is wrong;
- it will end cycles of violence and children learning and thinking that violence is sometimes acceptable;
- it will improve parenting and encourage gentler forms of discipline and guidance;
- it will improve the standing and reputation of Scotland and the UK, which is far behind many other countries;
- it is in line with relevant Scottish Government policies (such as Getting it Right for Every Child) and the Scottish Government's ambition that Scotland be the best place in the world for children to grow up; and that
- it will improve Scotland's human rights record and compliance with relevant legislation and also ensure adherence to the UN Convention on the Rights of the Child.

There were several fully supportive responses that appeared to be made by parents or carers of children with disabilities and additional support needs regarding physical punishment and restraint their children have experienced in the mainstream education system. These respondents gave examples of their children being inappropriately physically restrained in schools and hoped the proposal would provide a means of confronting such behaviour.

As stated above, 78 of the 84 organisations which responded were supportive of the proposal (75 were fully supportive, and three were partially supportive – see above for details). Of these, there were similarities and some identical text in some of the responses from NHS bodies.

A significant number of those fully supporting the proposal stated that their support was not in order to see parents who smack their children criminalised and prosecuted, but because they wanted a change in the law to act as a catalyst to societal behaviour change. Some respondents were fully supportive of the proposal but caveated that support by saying they did not want parents to be criminalised for occasional smacking.

A large number also stressed the need for a change in the law to be accompanied by a thorough and adequately resourced awareness-raising and information campaign for all involved (including children) and programmes of support and education for all who require it. These issues are explored in more detail in the summaries of other consultation questions below.

Views of children and young people

Six children (of a total of eight who responded) from the primary six class at East Linton Primary School in East Lothian (following a class-led engagement with the consultation) were fully supportive of the proposal. They were the only children, as far as can be determined, who responded to the consultation. Reasons they gave included that—

- it is not pleasant to be hit, it can be frightening and painful and cause emotional and psychological problems;
- children should have rights too;
- it makes children dislike their parents;
- it may not be effective;
- it teaches children that violence is acceptable;
- it may encourage children to use violence or bully people;
- children may not understand why they are being smacked; and
- there are more effective and less damaging punishments.

The Scottish Youth Parliament stated—

“In our Lead the Way (2016-2021) manifesto, we conducted a mass consultation on young people’s views on various issues, securing 72,744 responses. One of our resulting manifesto commitments, the highest level of SYP policy, is: ‘All physical assault against children should be illegal.’ Respondents, who were aged 12-25, were overwhelmingly in support of this statement, receiving 82% agreement of our membership.”

Equal rights for children

Many respondents supported the proposal on the basis that it gave children equal rights to adults in terms of assault and harm. One individual, Linda Morris, stated—

“How can it be acceptable for a parent to smack their child? It promotes physical violence, a physical reprimand. Is it acceptable for a teacher to smack their pupil? No. A child to smack their friend? No. A husband to smack their wife? No. A child to smack their friend in the playground? No. A girl to smack her boyfriend? No. A prison officer to smack a prisoner? No. A man to smack his dog? No. Why then after all these years is it still ok to smack your child?”

Kathleen Marshall, Scotland’s first Commissioner for Children and Young People, and former Director of the Scottish Child Law Centre: “the concept of “justifiable assault” upon a child, which the current law permits, is discriminatory and indefensible”.

Many respondents stated that the current law is an example of age discrimination and that this proposal would correct the current inequality. This is explored in detail in the summary of question 6 below, relating to equalities.

Negative effects and consequences of physical punishment

Many organisations gave detailed views, and pointed to evidence, which they believe demonstrates the negative effects and consequences that physical punishment can have on children who experience it. In its response Children 1st outlines the impact that the trauma of physical punishment can have on people as adults and Homeless Action Scotland stated—

“There are strong links between adverse childhood experiences, including physical abuse and potentially including traumatic physical punishment, and homelessness later in life...”

Several responses gave personal views of the negative effects of physical punishment based on a professional life spent working with children. These included an anonymous individual (response 115), who described themselves as a paediatrician working in child protection, and who stated—

“... I (worryingly frequently) undertake examinations of children of all ages who have been physically abused, most often by a parent or caregiver. I am faced at the end of these consultations with a discussion with colleagues in police and social work regarding how to proceed and whether or not there is adequate evidence to charge the alleged perpetrator with assault or if their actions fall under the category of "reasonable chastisement". This is wrong on so many levels. I support this change to the law not to ensure that such parents will be charged but to begin the slow process of changing attitudes to what kind of behaviour is appropriate in caring for children and in the hope that I will find myself having to undertake such examinations less frequently before the end of my career.”

Another individual, Louise Day, highlighted the long-term damaging effects she believes physical punishment can have on children—

“Neuroscience shows us children who experience physical abuse during childhood are more likely to suffer depression, heart disease, find school difficult and turn to addiction. We need to start taking trauma more seriously as it has devastating effects on society. I believe this bill can be the start of that conversation. I recently viewed a film Resilience: The Biology of Stress and the Science of Hope. This documented the Adverse Childhood Experiences Study and one adverse experience was physical abuse. Smacking is physical abuse. It promotes fear in a child which is toxic to their brain development.”

There were also a significant number of personal accounts provided by individuals. These included an anonymous individual (response 118) who described themselves as an “... adult survivor of emotional and physical child

abuse, the latter mostly comprising smacking...” and recounted their experience of the effects of a childhood of physical punishment—

“In time I became an exceedingly vulnerable young adult with horribly low self-esteem, and I ended up being raped and emotionally abused by my now ex-husband and did not even fully defend myself, because I had learned from my parents that I was worthless, that every mistake I made proved that I was worthless, that I had no right to physical or emotional boundaries, and that so long as hurting me and humiliating me didn't leave a bruise, it was fine for someone who claimed to love me to treat me like that. I know that some adults who have been smacked claim that "it never did them any harm". I admit to some skepticism about that - I would think that thinking it's okay to hurt a child proves that the person in question has at least had their approach to life thoroughly distorted! But even if it is true, those who were smacked and have not suffered long-term psychological harm for it are the lucky ones. And their parents are also lucky. Smacking a child is at best playing Russian roulette with that child's short-term and long-term health and well-being, and I thoroughly endorse proposals to give children the same rights to avoid physical assault as adults have.”

Anticipating that some who opposed the proposal may do so on the basis of a “it didn't do me any harm” point of view, the Royal College of Paediatrics and Child Health stated that this was not a reason to oppose the proposal, noting that there was, in its view, no evidence to show any significant benefits of physical punishment.

Human rights

There were a large number of respondents who supported the proposal on the grounds that it would address failures to comply with various human rights legislation and obligations. The Children's Parliament stated that the current defence of justifiable assault was a violation of children's human rights as outlined in United Nations Convention on the Rights of the Child (UNCRC), the European Convention on Human Rights (ECHR) and other human rights treaties. Other organisations including Clan Childlaw, the Equality and Human Rights Commission, and the Scottish Child Law Centre made detailed comments regarding human rights issues. Clan Childlaw commented that—

“The considerable shift in culture, attitudes and language around physical punishment in the last two decades gives good reason to expect that the European Court of Human Rights (ECtHR) would pronounce physical punishment of children unlawful, were it presented with the opportunity to do so. A legal challenge to the Scots law on physical punishment could thus result in a finding that Scotland is breaching its obligations in this area. Bound by the Human Rights Act 1998 to take into account the judgments of the ECtHR when determining questions which arise in connection with a right under the European Convention on Human Rights (the Convention), the Scottish courts could well find the current legislation unlawful.”

And regarding any suggestion that a ban on physical punishment would be detrimental to anyone's human rights, the Equality and Human Rights Commission, one of a number of respondents who thought children should have more protection than adults rather than less, stated that it believed—

“... that case law shows a general trajectory towards prioritising child welfare over parental rights. It appears highly unlikely that a total ban on all forms of physical punishment of children would be found by a Scottish court or by the European Court of Human Rights to violate anyone's human rights. Challenges, in the domestic courts and Strasbourg, to partial bans (in schools) or total bans abroad, on the basis of the right to respect for private and family life (Article 8 ECHR) and the right to freedom of religion and belief (Article 9) have been unsuccessful.”

Setting an example

Many respondents stated that children learn behaviour from those adults who look after them, and that children who experience physical punishment learn that violence, bullying and demonstrations of power over those who are weaker are acceptable behaviours. The Children's Parliament stated—

“Across our work, children say "we are taking our example from you" - they look to the adults in their lives to set a good example through their actions, words and behaviour and children indicate that when adults shout at or hurt them, it is teaching them that it is okay to do this to other people. In our Pushing the Boundaries project, children aged 7-11 explored relationships, rules, discipline and punishment in the home. Children said that they wanted clear, consistent rules and for parents/carers to talk to them and explain when they have made a mistake or done something wrong.”

And Rape Crisis Scotland stated—

“What inconsistent messages are we giving in our work to end violence against women and girls, if physical assault can be justified by the behaviour of the child and legitimised by the rights of the adult. The Rape Crisis Scotland sexual violence prevention programme operating in secondary schools across Scotland looks at key issues around consent and healthy relationships. The programme explores the messaging around gender, bodily autonomy, boundaries and rights. It also challenges victim blaming, and attributes responsibility with the perpetrators. Removing the right to bodily autonomy, and blaming the child's behaviour, whilst justifying assault as legitimate in certain circumstances are at complete odds with this ethos...”

Likelihood of criminalisation and prosecution

Several respondents who supported the proposal addressed the likelihood of parents being criminalised and prosecuted. The Scottish Police Federation stated that it did “not believe that removing the statutory defence will result in a significant increase in the prosecution of parents and carers.”

Impact on professional support resources

Many of those supportive of the proposal stressed the need for adequate and increased resources for those professional services that would be most directly impacted, such as the police, health, social and legal services. The Scottish Association of Social Work stated that—

“Extra support – both emotional and financial – needs to be provided for those families who have children with learning disabilities and complex needs as this behaviour can at times be particularly challenging. There are resource issues with regards to the people responsible for assessing circumstances and supporting parents (e.g. social workers, health workers) – the ones who will play the most significant part in supporting families through this change. These issues of resourcing and support need to be taken into consideration if pushing forward the reform, to ensure the transition is as smooth as possible and can progress in a fair way.”

Lack of clarity in current legislation

Many responses supported the view that the current legislation, which specifically prohibits certain acts of physical punishment (being struck with an implement, being struck on the head, and being violently shaken), is confusing and that this proposal would bring legal clarity. Some also felt that the current legal position created confusion regarding the use of physical punishment in various situations.

Fiona Duncan, Chair of the Independent Root and Branch Care Review, and who also identifies as an “Unfeartie” (several responses identify this way – and Fiona Duncan states that “Unfearties are individuals who are courageous in discussing children’s issues, seek to make a difference in children’s lives, and who are willing to speak up for, and stand alongside, children”) highlighted an issue with regard to looked-after children—

“specifically in relation to looked-after children and their carers, the current legal framework is unclear and arguably unfair due to some forms of physical punishment being legal in some settings such as the home, but not in others such as foster, residential or kinship care. Children and young people often have several different care placements throughout their journey ... There must be parity as well as clarity within the law for all children and young people and especially those who are looked after, this can be easily remedied through the proposals within this Bill.”

Other views

Several respondents raised the issue of how violence in the home between children would be tackled, and questioned how this proposal would fit into that.

In terms of views from religious groups, the Church and Society Council of the Church of Scotland was fully supportive of the proposal, stating—

“In 2016 the Church of Scotland General Assembly recognised that physical punishment of children is a violent act and that violence is damaging to mental and physical health. The Assembly affirmed that such punishment was contrary to Jesus’ instruction to his followers to “love one another, as I have loved you”. In the context of considering issues from a theological basis and from the perspective of a developing international human rights framework, it was decided that it is right for the church to support measures to enable equal protection for children.”

Reasons for partial support

Nineteen respondents were partially supportive of the proposal, with reasons given including that—

- parents should not be prosecuted for instances where a child’s safety was at risk – for example slapping a child’s hand away from a fire or oven;
- there should be flexibility to allow smacking in certain circumstances (for example in instances of misbehaviour) and/or smacking which was proportionate;
- there could be negative impacts if parents are separated from their children;
- it will be difficult to enforce;
- it is hard to define physical punishment,
- it will require lots of support;
- heat-of-the-moment smacking could lead to shame for parents and possible consequences;
- it could make smacking more secretive;
- smacking may be an involuntary reaction if parents were smacked themselves; and
- restraint may be necessary and therefore needs to be clearly differentiated from punishment (however some schools, particularly when dealing with children with additional support needs, are not using restraint proportionately or appropriately).

One anonymous individual (response 117) cautioned against well-intentioned legislation having a negative effect and gave examples of where trying to stop a child self-harming or restraining a child could be counted as assault if not clearly excluded from the legislation—

“My daughter has an anorexic condition which is reinforced by her use of social media using an ipad. It has assisted the treatment of her condition to (a) physically restrain her from leaving a room until she has eaten a meal and (b) physically remove her ipad from her grasp. I can think of similar situations where a child may need to be restrained by a parent, for instance removing a weapon from a child which is self harming. Some of these and similar actions may constitute ‘assault’ by a parent. They are presumably not the target of the proposed legislation, but could be prohibited unless excluded.”

Reasons for opposing the proposed Bill

A minority of respondents, 166 (25% of those who responded), were opposed to the proposal (154 respondents, 23%, were fully opposed, and 12 respondents, 2%, were partially opposed).

Reasons for full opposition

Reasons given for fully opposing the proposal included that—

- discipline is a family matter, not a matter for state interference;
- smacking is not assault or abuse and children already have equal protection from assault and are protected from abuse;
- loving and caring parents will be criminalised and prosecuted;
- there is no point making a law that cannot be enforced;
- the current legislation was thoroughly debated in 2003 and Parliament reached an appropriate conclusion;
- children need more, not less, discipline and physical punishment can be effective as a tool for discipline and guidance and also be part of a loving family unit with positive outcomes;
- it could place parents/carers under threat from children;
- smacking limits the scope for emotional harm and this will force more parents to use mental and psychological methods of discipline which can be more harmful in the long run;
- children are different from adults, should be treated differently and have different rights in many areas of life;
- without the ability to use physical punishment there could be serious negative consequences for society;
- the Bill attacks the human rights of some religious groups which believe that the physical disciplining of their children is a divinely ordained requirement;
- it will create suspicion of adults and treats children as being at risk from parents and puts parents under greater pressure;
- the focus of any intervention should be on positive/negative parenting and discipline and not the method used;
- it will divert resources away from serious cases of abuse and neglect;
- there is no detail about how support and guidance would be provided and funded;
- the evidence cited ignores all of the successful situations where physical punishment has been used;
- the proposal could criminalise children who hit siblings and other children;
- A ComRes poll in 2014 demonstrated a majority of parents thought smacking was still required in certain circumstances;
- it runs counter to Scottish Government policies, such as Getting it Right for Every Child; and that
- child abuse and violence amongst children has worsened in Sweden after it banned physical punishment.

Many respondents that were fully opposed to the proposal cited belief in the Bible and their Christian faith as part of the reason for their opposition. A significant number of the fully opposed responses appear to have been based on, encouraged or inspired by the Christian Institute campaign referred to earlier in this summary, or have been made by members or associates of the Christian Institute. As such there is a significant similarity in views and some repetition between some responses, including the use of very similar or identical text.

Views of children

Two children from the primary six class at East Linton Primary School in East Lothian were fully opposed to the proposal. One, an anonymous respondent, thought it was ok to smack a child for reasons of discipline or safety, as long as it was not repeated many times and did not involve using implements. The other, Jamie Humphreys, thought a light smack for discipline and punishment was more likely to be effective, compared to other methods such as being grounded or having something removed or banned.

State interference in family life

Many of those opposed to the proposal stated that it was an unwelcome and unwarranted interference in private family matters. As was the case with some of those who were supportive of the proposal, there were some very strong views expressed. One anonymous respondent (response 227) stated—

“This is a disgraceful invasion of family privacy in the mould of the heinous Named Person scheme. To suggest that spanking a child should be made illegal because it's tantamount to abuse is a disgusting and vile lie that has absolutely no genuine scientific evidence to support it.”

The differences and relationships between children and adults

The differences between children and adults and the effect the proposal could have on relationships and families was addressed by some respondents, including Dr Stuart Waiton, who stated that the bill would encourage the incorrect idea that parents are a threat to their children and require regulation and that parenting is best done by experts and professionals, which is not the case. He argued this would confuse parents and cause anxiety about how to discipline their children and erode trust, and further the incorrect notion that parents are to blame for societal problems. Dr Waiton also commented on intrusions into family life and the experiences of the ban on physical punishment in Sweden—

“In Sweden a psychiatrist, David Eberhard, has written a book called 'When Children Took Power', which explains the disastrous impact of the anti-smacking laws in Sweden. This book echoes a number of useful arguments in Furedi's book 'Paranoid Parenting'. For a look at the issue of undermining parental autonomy and authority also see this paper which looks at the Named Person and which I add as part of my submission:

<http://journals.sagepub.com/doi/abs/10.1177/2158244016629525>”

Several respondents noted that there are many other examples of children having different legal rights to adults, such as smoking, marriage, drinking alcohol, and consent for sexual relationships, and that this was right and appropriate. Many such responses also noted that parents (and schools) also seek to discipline children in ways that would not be acceptable between adults, such as by confiscating items, enforcing detentions, groundings, or “time outs”, or by using tools such as the concept of a naughty step. It was argued that such examples demonstrate a societal acceptance that equality of rights between children and adults was not desirable.

Effectiveness of physical punishment

Others were opposed to the Bill because they believed that physical punishment could be required and effective in a loving environment, with significant stress placed on the context of the situation and environment, rather than the act. One anonymous individual (response 113) stated—

“I have often been praised for the behaviour of my 3 children. They have been lovingly disciplined by my wife and myself which from time to time has involved spanking. Excluding a couple of exceptions this has always taken place after the heat of the moment and as part of a conversation allowing the child opportunity to present their case. In my experience, limiting its use and utilising it after the heat of the moment is a very effective form of correction that I would not wish to deprive any parent of.”

Current legislation is sufficient

A further consistent theme across many of those opposed to the proposal was that the current legislation is sufficient to protect children from genuinely abusive and dangerous situations. The Christian Institute states that the current law is clear and is working and the Scottish Christian Party "Proclaiming Christ's Lordship" noted that the current legislation already gives discretion to the courts to judge each case on its own merits. It was also noted that the concept of “justifiable assault” is used in other parts of the law. One individual, David Kennedy, stated—

“I believe that to remove the concept of 'reasonable chastisement' is a mistake. 'Reasonable chastisement' is used in the law in relation to adults (e.g. verbal warnings, fines). To remove the defence of 'reasonable chastisement' in relation to children would – equally – require it to be removed in relation to adults.”

Misleading consultation: smacking is not assault or abuse

A large number of those opposed to the proposal believed that the consultation document used misleading language, terminology, evidence and explanation, all based on the, in their view, incorrect belief that physical punishment such as smacking was a form of assault or abuse. The Christian Institute stated—

“The proposed Bill’s title and the framing of the consultation disingenuously suggest that children are not properly protected in law

from assault. But under the current law, parents who use unreasonable or immoderate physical punishment can already be prosecuted.”

CARE (Christian Action, Research and Education) Scotland was also critical of the consultation document and the approach which has been taken, stating—

“CARE believes that on issues of sensitivity such as the discipline of children that an impartial and reasonable approach should be adopted in public consultations. We are concerned that the consultation document adopts a one-sided approach to the issue of physical chastisement, using emotive language and failing to consider those studies which show the benefit of smacking to society. The consultation reflects an ideological motivation rather than an impartial evidence-based approach. We would have preferred the document to facilitate an open discussion and give a fair hearing to both sides in the debate.”

Human rights

The response from the Christian Institute questioned the view that the current legislation in any way breaches or fails to properly implement human rights responsibilities with regard to children. It stated—

“It is ... important to challenge the claim that smacking is contrary to Article 19 of the UN Convention on the Rights of the Child. It has been interpreted this way by those ideologically opposed to smacking, but Article 19 actually refers to “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”. No parent who lovingly disciplines their child using a range of methods including smacking would consider their actions to be covered by this language.”

Negative consequences of ill disciplined children

Many of those opposed to the proposal were of the view that not being able to physically discipline children would lead to many societal problems, such as increased levels of criminal and anti-social behaviour. One individual, Ian Gillies, stated—

“I am a Christian and believe in the authority of the Bible, which condones physical discipline of children - when used in a controlled manner and from a source of love. I am 22 years old and look around at my generation. One of our biggest issues is a lack of discipline, which this bill would only make worse. If our nation turned back to the teachings of the Bible, as in the days of old, our children would have a much better future. The rejection of this bill is a small yet important step in doing exactly that.”

Reasons for partial opposition

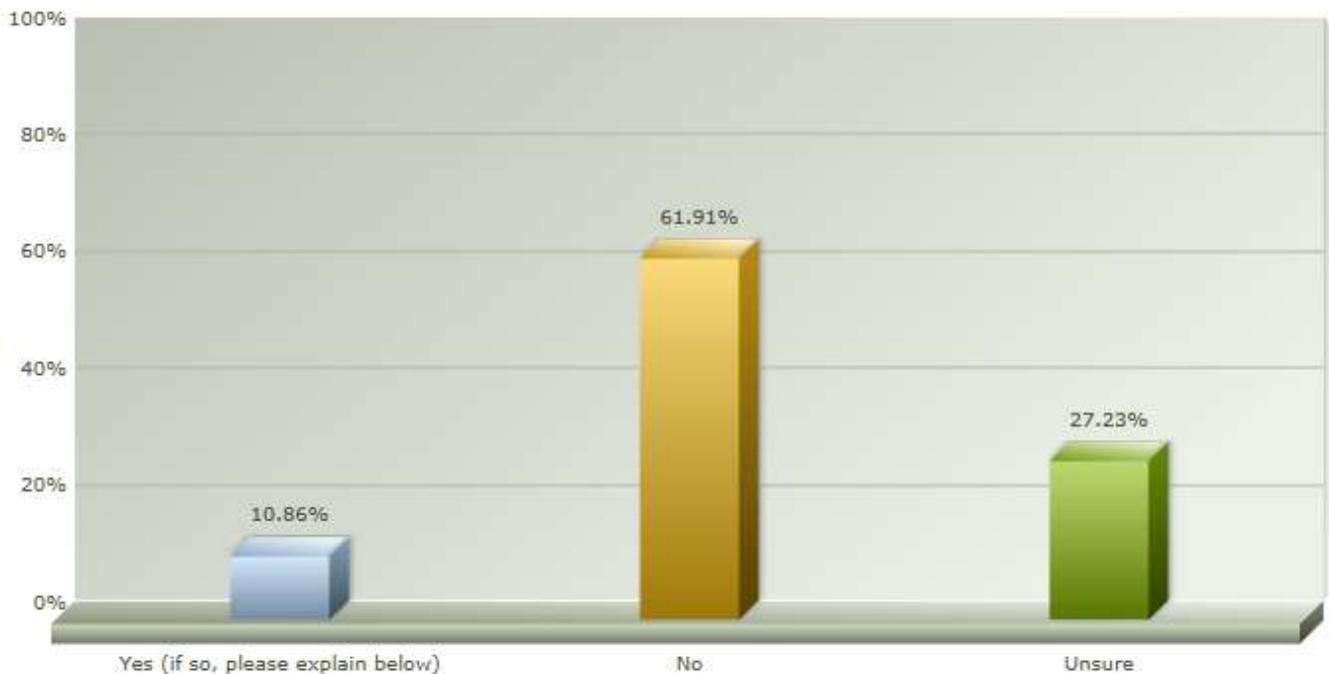
Twelve respondents were partially opposed, with reasons given including that—

- physical punishment is necessary as an option for parents of young children to teach potentially life-saving lessons (such as not running out in front of traffic);
- it can be an effective tool for discipline in certain circumstances;
- the proposal would remove all flexibility and in some cases physical punishment could be acceptable;
- there are already laws in place to prevent child abuse;
- it is not clear how emotional punishment will be dealt with; and
- it will frighten parents.

Alternatives to a Bill – Question 2

The 617 respondents who answered this question were divided as follows—

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



Those who thought the aims could not be better delivered in another way

A majority of respondents who answered this question, 382 respondents, 62%, believed that the aims could not be better delivered in another way (i.e. without a bill in the Scottish Parliament). Most of those who answered this way did so because they supported the proposal, and therefore a bill to deliver it; however, a number of responses thought that the proposal could not be better delivered in another way because they were opposed to the overall policy and did not believe it should be pursued at all.

Reasons given for why a bill was the best way to deliver the policy included that—

- it would be symbolic and send a clear message that violence is unacceptable;
- attitudes are changing anyway but not quickly enough and therefore legislation is required;
- children need equal legal protection to adults;
- the law currently allows a defence of justifiable assault so a legal change is needed to remove this;
- the current legislation is unclear and confusing;
- behaviour change will only follow from a change in the law;
- physical punishment needs to be a criminal offence so people who persist face prosecution;
- legislation is needed to underpin and legitimise education and support to change behaviour;
- a change to the law is required to ensure compliance with human rights legislation, obligations and recommendations; and
- changing the law has been effective in other countries.

Human rights compliance

The Children’s Parliament was one of a number of organisations that supported a Bill as the best way to deliver the policy outcomes because of the need to ensure Scotland complied with human rights legislation and obligations. It stated—

“UNCRC General Comment No. 8 states that any physical punishment of children is incompatible with the UNCRC and that children need safeguards in place, including specific legal protection. The issue of equal protection from assault in Scotland has been raised repeatedly by the UN Committee on the Rights of the Child as well as other UN bodies and we are failing to meet our international obligations and increasingly out of step with the progress in other parts of the world. Additionally, with the duty placed on Scottish Ministers to consider steps to further the UNCRC in the Children and Young People Act (Scotland) 2014, this is not only an opportunity to comply with international human rights obligations but to also fulfil our own legislative duties.”

Other organisations which supported this point of view were Unicef UK and the Scottish Child Law Centre. Unicef UK stated—

“... as part of the Universal Periodic Review at the Human Rights Council, seven recommendations were made to the UK in 2017 regarding banning physical punishment of children. The proposed Bill would bring Scotland in line with international standards, as articulated in the UNCRC and implemented in almost all other European countries. Furthermore, it would enable Scottish Government to address the relevant Concluding Observation from the UN Committee on the Rights of the Child in line with the duty on Scottish Ministers to consider how best to further children's rights in Scotland and to act to do so where appropriate.”

Together (Scottish Alliance for Children's Rights) cited a legal opinion from Janys Scott QC (commissioned by the Children's Rights Strategic Litigation Working Group on Equal Protection and available here: http://www.togetherscotland.org.uk/pdfs/Legal_Opinion_Janys_Scott_QC.pdf) which concluded that there was a strong case for legal reform on this issue. The response states—

“Janys Scott’s opinion affirms that there is a “serious risk” that the defence of “justifiable assault” represents a violation of children’s right to protection from cruel and inhuman treatment.”

And it concludes that—

“If they do not support calls to give children equal protection from assault, it is highly likely that Scottish Ministers may be found to be acting in violation of the ECHR.”

Driving behaviour change

Many of the responses focussed on legislation being required to both underpin and drive the required societal behavioural change. The Highland Children’s Forum was of the view that behaviour change is not happening quickly enough, adding that there is evidence from other policy areas, such as smoking in public places, of legislation supporting behaviour change.

Other issues

CELCIS Centre for Excellence and the Centre for Youth and Criminal Justice, in a joint response, expressed concern about the definition of physical punishment, and also of assault in common law. Its response stated—

“Assault in Common Law refers not only to physical contact, but also includes inducing bodily fear, or being violently menacing. As the debate and consultation focus on actual physical punishment, it is ambiguous as to the intention or otherwise to include inducing fear through threats of physical punishment in the Bill. Parents, professionals and the public must have absolute clarity about what is, and is not, acceptable by law ...”

Children 1st highlighted consequential benefits of introducing a bill due to the legislative processes in the Scottish Parliament, stating that a bill would allow additional supporting measure to be discussed, debated and scrutinised.

Those who thought the aims could be better delivered in another way

A small minority, 67 respondents, 11% of those who answered this question, believed that the aims of the Bill could be better delivered in another way. Some of these were respondents who were sympathetic to the aims of the proposal but thought there could be better ways to deliver it, but others were respondents who were fundamentally opposed to the proposal and stated that the proposal should not be delivered at all. Reasons given for delivering the policy in another way included that—

- no change was needed as sufficient protection for children exists in the current legislation;
- the policy should be delivered by education and support (including calls for increased resources and preventative programmes);
- this should be done across the UK;
- this should target regular physical punishment, not single instances;
- this should target children most at risk rather than all children;
- more research should be undertaken on the pros and cons of the current system, and the proposed system, and the best use of available resources to protect children; and
- a wider debate should be conducted to establish a majority view on what is and is not assault and abuse.

Education and support

The theme of the requirement for education and support for parents and carers was a strong one throughout the consultation responses as a whole, from both supporters and opposers of the proposal (i.e. either to support legislation, or in place of changing the legislation). The website and blog ThisDadDoes.com was one of many responses advocating education and support for parents rather than changing the law, stating—

“... legislation and action should be targeted at those children most at risk of harm. A Bill which will criminalise thousands of parents and members of religious minorities needs to be rethought. Steps such as education campaigns and support from health and social workers should be the initial position of a free, democratic country. This can be done without criminalising Scottish citizens and reducing the liberty of the people.”

And CARE for Scotland argued for a wider targeting of funds—

“We would be very pleased if the resources that would be invested into pursuing parents who lovingly and caringly discipline their children appropriately were to be used to investigate cases of violence against children and to support the victims of child abuse. We believe that a far more practical and beneficial suggestion would be to invest in families and parents through local, community-based initiatives, such as those that churches provide that will help parents to provide the best for their children.”

Those who were unsure

A significant number, 168 respondents, 27% of those who answered the question, were unsure whether the aims could be better delivered in another way or not. However, only 47 of the 168 respondents provided further comments to explain the reasons for their answer. Reasons given included that—

- the respondent was not aware of a better method of delivery or did not feel sufficiently informed/qualified to comment;

- it is not clear how the current law is applied;
- it won't help people become better parents;
- it may encourage more hidden/behind closed doors smacking;
- it won't prevent other forms of punishment such as verbal abuse, or situations such as parental/family bullying;
- education and information would be better to change attitudes rather than changing the law;
- it is unclear how other countries have tackled this and what has been most effective;
- legal measures are open to interpretation;
- the Bill must be written in plain English and be legally watertight;
- children should be taught about the rights of others and kindness;
- legislation is needed but education staff must also be held accountable;
- other measures should be pursued such as putting leaflets in baby boxes;
- perhaps a change could be made to civil law rather than criminal law; and
- there is concern about legally pursuing those who smack in the heat of the moment.

Several respondents were unsure of the current law and the way it was applied, and therefore what effect a change in the law may have.

Some of the responses mirrored reasons given by those who thought the proposal could be delivered in another way, such as via education and support. For example, one anonymous individual (response 57), who was fully supportive of the proposal, stated—

“Much as I support an end to physical chastisement, I'm not sure if legislation is the best way to achieve it. People who disagree will only push back against a ban, rather than listening to the persuasive arguments against smacking children. A widespread information programme would be a better option, with more funding for Early Years support for parents.”

Advantages of the proposal – question 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?

Five hundred and seventy-seven respondents answered this question. Respondents mainly noted advantages to: children; parents/carers; professional services; society and Scotland as a country. There was significant repetition and overlap between this question and reasons given for supporting the proposal in question one. Detailed views on the advantages of the proposal can therefore be found in the summary to question 1. Also, a number of respondents who were opposed to the proposal repeated that

opposition in answering this question by stating there were no advantages, or by listing disadvantages.

Advantages listed in answer to this question included that—

- it will be easier to prosecute offenders;
- children will be better protected and less likely to be physically punished;
- adults will have improved positive relationships with children;
- it will protect children's human rights and help them feel supported and equally valued;
- it will send a clear message that smacking is unacceptable;
- children will learn that violence is never the answer and not acceptable thus ending cycles of violence;
- it will encourage other less damaging forms of discipline;
- it will drive positive behaviour change and reduce violence in society generally;
- it will help children to thrive (such as by removing future mental health issues) by removing threat/fear of, and exposure to, violence;
- it will empower members of the public to become involved in abusive/harmful situations;
- Scotland would become a leader within the UK and could apply pressure on Westminster and other devolved administrations;
- it will reduce impacts on professional services;
- it will ensure greater recognition and strengthening of the UNCRC;
- any schools physically punishing/restraining children will be held accountable;
- it will improve parenting and strengthen family relationships;
- it will reduce domestic violence rates;
- it will help to deliver Scottish Government policy and its ambition for Scotland to be the best place in the world to grow up; and
- it will lessen the risk of physical punishment escalating to physical abuse.

Many of the responses to this question which did not refer directly back to the first question focussed on the advantages the proposal would have on children, stating that the proposal would lead to healthier (mentally and physically) and happier children and, consequently, adults. As such there were many first-hand accounts. One individual, Frank Wallace, stated—

“It would encourage parents to treat their children like people, listen to their views, respect their wishes, and allow them to develop naturally. Children being hit may not seem like a big deal to a parent, but to a child, the people who their entire lives revolve around are causing them pain and emotional damage. There's no way of knowing the long term effects, so removing this problem would improve the mental health of children and help them to grow into strong confident adults who give the respect back that they received as children.”

Several respondents stated that an advantage of the proposal was the removal of any ambiguity about what is or is not acceptable. Stacey Marko stated—

“Having a zero tolerance policy takes away the grey area and protects ALL children from the fear of being hit.”

Several respondents thought an advantage of the proposal would be its positive impact on abusive situations. One anonymous individual (response 118) stated—

“It would take away the plausible deniability of a lot of abusers, who can justify to themselves hurting and scaring their children by claiming it is "only" smacking. It would also strengthen the ability of abused children to recognise that their parents/carers' behaviour is unreasonable and wrong, thus helping them to be not as severely traumatised by it. The combination of these would I think lead to a shift in behaviour, and a general decrease in the amount of physical abuse taking place.”

NHS Health Scotland referred to recent evidence demonstrating the link between physical punishment and negative outcomes, such as increased aggression, antisocial behaviour, mental health problems and low self-esteem, noting—

“Emerging evidence suggests that physical punishment constitutes a source of toxic stress in children that may have an impact on brain development and functioning. This new thinking makes the case that physical punishment qualifying as a toxic stressor in children warrants further investigation. Nonetheless, this new hypothesis offers additional support to legislation banning the use of any corporal punishment.”

Disadvantages of the proposal – question 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?

Five hundred and eighty-six respondents answered this question and many of the disadvantages given repeated answers given to previous questions. There were also a significant number of responses (over half) from those who supported the proposal and who stated that there were no disadvantages to the proposal.

Broadly speaking, those who did list disadvantages were: those who supported the proposal but identified potential disadvantages that would need to be taken into account and/or mitigated; and those who did not support the proposal and listed disadvantages and reasons not to proceed with the overall policy. For a detailed breakdown of the disadvantages of the proposal as

noted by those opposed to the proposal, see the summary that is part of question 1 above.

Those who supported the proposal overall (fully or partially) identified a wide range of potential disadvantages, including that—

- it could separate children from parents, which could be more harmful;
- it will be potentially expensive and increase administrative burdens;
- it could lead to parents getting criminal records which could affect job prospects and a family's financial wellbeing;
- it will be difficult to police and place a strain on professional services;
- it could lead to those who need help and support being afraid to come forward due to fear of prosecution;
- use of physical restraint to avoid harm should be excluded or else it risks unintended consequences;
- some children could use this as a form of power or a threat or to make false allegations against parents;
- parents could be prosecuted for one slip or mistake or lapse in judgement when under stress;
- children will have no knowledge of the proposal and their rights;
- it could lead to increases in verbal and other forms of abuse;
- It will still happen behind closed doors;
- lawyers could take advantage of it;
- children may be afraid to speak up for fear of repercussions on their carers;
- it will add to the suspicion of statutory services created by the named person legislation;
- the threat of smacking, which can be effective, would be taken away; and
- people would have to be spies for the authorities.

Education and support

Many responses noted that there could be disadvantages and negative consequences if the law was changed without appropriate levels of education and support for all affected – children, parents and carers and professional services (police, social work and legal). Stacey Marko stated—

“... some families who may have been brought up with physical punishment may feel that they are unable to deal with the challenging behaviour that the children might display. Support should be offered on alternative methods of behaviour management to empower parents/carers.”

And an anonymous individual (response 9) stated—

“The danger [is that] those in need of help and support become secretive and scared. [It is possible] for issues to be covered up as guilt and frustration increases. Open policies of support need to be the key

message, not one of punishment. This delivery of 'do as I do I will support you', not 'do as I say' needs to start from the top.”

Risks and consequences of prosecution

Many of those who supported the proposal had concerns about parents and carers being criminalised and prosecuted, and the potential negative effects of that, such as children being removed from parents and parents having lives damaged as a result of investigation and prosecution. It was noted that children could be unreliable witnesses and suffer trauma if called on to give views and evidence. There was particular concern regarding parents being prosecuted due to minor incidents or one-off lapses in judgement or responding to particular stress and pressure.

NHS Orkney, which was partially supportive of the proposal, noted that the risk of prosecution and custodial sentences may be disproportionate compared to the level of harm inflicted in some cases, and this could particularly affect those already disadvantaged by poverty and limited education. The Scottish Association of Social Work stated that it was—

“... concerned that parents will be criminalised for smacking their children. Appropriate measures must be put into place to ensure that parents aren’t criminalised; by being educated and supported into learning alternative methods of disciplining through support services and a national awareness raising campaign, to reduce stigma, mitigate potential criminalisation and increase universality.”

One individual, Alicia Boylan, stated—

“I think that we all make mistakes. It would be very unfortunate if an otherwise loving, nurturing and engaged parent slipped up once, realised their mistake, yet faced criminal charges and the stigma that came with these.”

The British Psychological Society response, which was partially supportive of the proposal, gave a detailed account of its concerns about the potential negative impacts of the proposal if cases were managed under criminal law. Its response focussed on criminal and civil law and the courts and also the psychological effects on children. It stated that removal of civil law protection should not be replaced with criminal law provision due to issues such as the levels of proof required, availability of witnesses, and the difficulties involved with children providing evidence. It noted that—

“If the perpetrator continues to smack or physically chastise a child when there is no witness the criminal law will not offer protection. Civil law such as GIRFEC and the aspects of the Children (Scotland) Acts will allow the child to be removed and protected.”

False and malicious allegations

Several respondents highlighted the potential for false and/or malicious allegations to be made. One anonymous individual (response 73) stated—

“There should also be recognition that there is the possibility of malicious allegations. This would be my biggest concern. There needs to be an expectation that some cases will be investigated and the parent(s) genuinely and completely exonerated. Parents need to be supported and treated impartially during any investigation. This is both to protect the parents and the child-parent relationship.”

Those opposed to the proposal

Those who were opposed to the proposal overall largely focused on disadvantages such as—

- the unwelcome intrusion into private family life;
- the negative impacts on family relationships;
- the lack of discipline and guidance children would receive;
- the threat to the safety of toddlers in particular;
- the negative consequences of unruly children without boundaries on society; and
- the negative impact on those with Christian beliefs.

Many of those opposed to the proposal stated that they believed it would have a negative impact on children, parents and families. One individual, Hazel Bell, stated—

“Children would suffer from increased rates of behavioural and emotional problems. A newly published report from New Zealand's Family's First organisation attributes a huge increase (132%) in children diagnosed with emotional and/or behavioural problems to the introduction of an anti-smacking law in 2007 (McCoskrie B, "DEFYING HUMAN NATURE" An Analysis of New Zealand's 2007 Anti-Smacking Law, February 2016).”

And Dr Stuart Waiton summarised the disadvantages the proposal would have, in his view, for families, stating—

“It will help degrade trust between adults and between parents, further undermining spontaneous relationships and creating a framework where parents feel the need to look over their shoulder constantly to see who is watching them. It will further promote the idea that parenting is best and often only done with the say-so of professionals and parenting 'experts' who know best.”

Many of those opposed to the proposal also stated that they believed it would have a negative impact on society. One anonymous individual (response 91) stated—

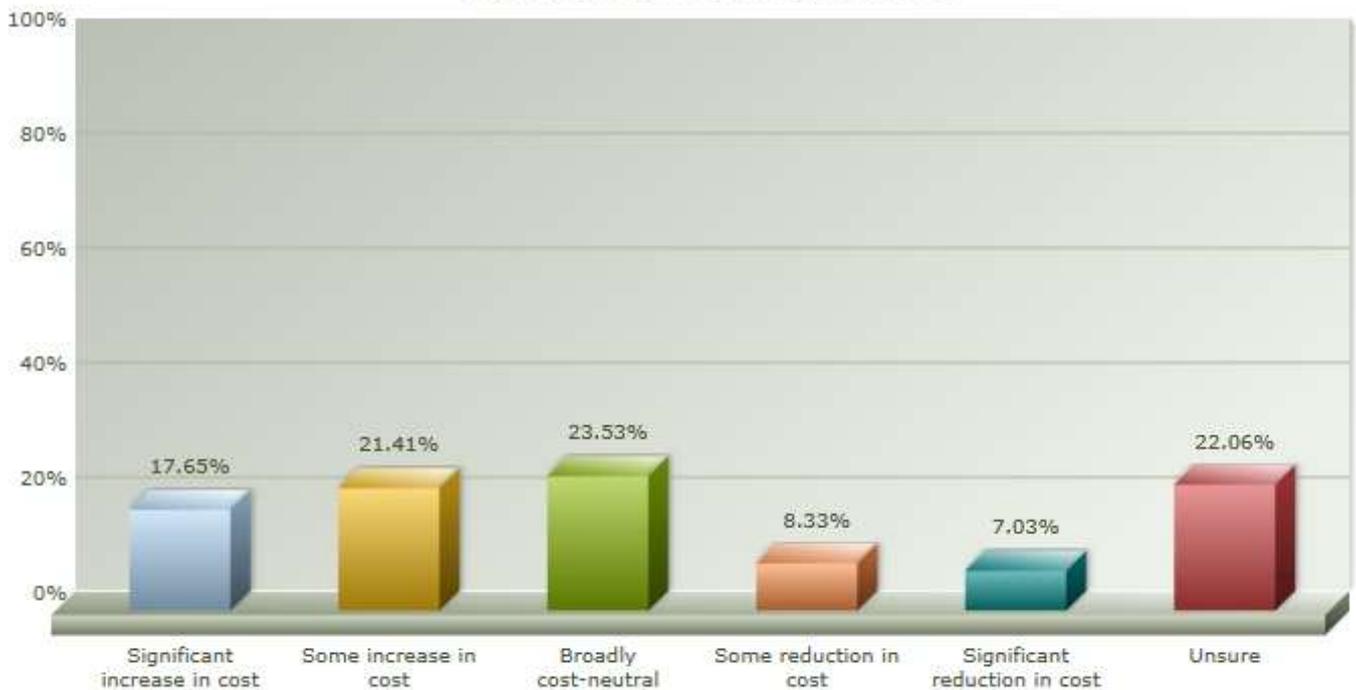
“The disadvantages could be substantial. Many children are already out of control but more could become out of control. There are children who will make threats to their parents saying "we will go to Social Services and say you hit us" even when the parent hasn't and that would rise to the extent that parents are living in fear. A parent will not

be able to give an adequate punishment when their child has done something dangerous.”

Financial implications – Question 5

Six hundred and twelve respondents answered this question as follows—

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



Increase in costs

Two hundred and thirty-nine respondents, 39% of those who answered the questions, thought there would be an increase in costs (108, 18%, thought there would be a significant increase, and 131, 21%, thought there would be some increase).

Many respondents thought there would be a short-term increase in costs due to additional demands on police, social and legal services, which will reduce as attitudes change and instances lessen. Respondents who thought there would be an increase in costs included both those supportive and opposed to the Bill.

Significant increase in costs

Reasons given included that—

- it will increase police, NHS, social work and legal time in terms of investigating and prosecuting cases;
- children may be taken into care with all associated costs;
- money will be needed for awareness raising, education and support;
- unruly children (as a result of lack of discipline) may lead to increased levels of anti-social behaviour and crime leading to societal costs.

The website and blog ThisDadDoes.com stated—

“The proposed Bill will represent an increased cost to the taxpayer through increased monitoring of parents, prosecution of innocent and effective parents and a burden on social care and services where children are removed from parents.”

Some increase

For those who thought there would be some increase in costs, many of the reasons given matched those given as reasons for a significant increase in costs. Additional reasons given included that—

- any change to the law was bound to lead to some increased costs;
- a helpline for children should be set up;
- confusion and lack of confidence amongst parents could lead to an over-reliance on professionals and outside bodies to discipline children;
- there would be a need for more school support for psychologically disturbed children;

Some of the agencies that would be directly involved in investigating alleged cases provided views on the resource implications. The Scottish Association of Social Work stated that campaigns to facilitate the change in the law would be costly, as would the provision of support and education. However, it stressed that this should not be a barrier to pursuing the proposal and that, in the long-term, the proposal would ease the burden on public services and lead to cost reductions.

The Scottish Police Federation, which thought there would be some increase in costs overall, thought that the policing aspects of the bill would be cost neutral as it would not change resources currently deployed to investigate any allegations of assault on a child.

Cost neutral

One hundred and forty-four respondents, 24% of those who answered this question, thought the impact would be broadly cost-neutral. Many of those who responded in this way mirrored the views of many who thought there may be some increase, or some reduction, in costs due to the view that there would be an initial increase in costs that would then reduce when the benefits of the proposal were realised in the long term. Reasons given included that—

- there would be short-term costs but long-term gains, and a reduction in costs as behaviour changes;
- no new infrastructure is required to deliver the proposal;
- the proposal will not lead to a significant increase in prosecutions;
- those found guilty could be fined to recoup costs;
- it is difficult to see any direct financial impact as poor parenting won't be solved by this alone;

- child protection enforcement already happens and services are already in place so no new expenditure is required;
- costs should not be a factor when considering children safety and human rights; and that
- clarifying the law will reduce the need for civil cases.

Reduction in costs

Ninety-four respondents, 15% of those who answered the question, thought there would be a decrease in costs (43, 7%, thought there would be a significant reduction, and 51, 8%, thought there would be some reduction). Again, as with those who answered in other ways to this question, some thought there could be short-term increase in costs due to additional demands on police, health, social and legal services, which will reduce as attitudes change and instances lessen, leading to long-term cost reductions.

Significant reduction

The main reason given for the proposal leading to a significant reduction in costs was that, over the long-term, there would be less pressure on the services that currently deal with instances and effects of physical punishment (including on children and wider society), such as the police, healthcare (including mental health), social services and the judiciary, and a reduction in all of the direct and indirect associated costs.

Some reduction

Of those that thought there would be some reduction in costs, many of the reasons given repeated reasons given for there being a significant reduction in costs. Many of the NHS responses stated that there may be a short-term increase in costs due to increased demand on professional services, but that global experience shows that increased prosecution is unlikely. Those responses also state that evidence from other countries shows that resulting behaviour change leads to cost savings, leading to an overall reduction in costs. One individual, Bethea Robertson, stated—

“Long term, there is likely to be a huge saving. If we as a society parent in a trust based, nurturing way, we will produce adults who have empathy and care for others. This will lower the crime rate and save significant money on criminal justice services and prisons. Less support and services will be needed for children and young people who have been parented using violence which can result in less than optimum development, anti-social behaviour and many other issues.”

A group of respondents who appeared to be parents of disabled children and children with additional support needs at mainstream schools thought there could be reduced costs because of better trained staff leading to lower staff turnover and other costs.

Elaine E Sutherland, a Professor of Child and Family Law, argued that the required education initiatives would not solely be costs associated with the Bill as the Scottish Government is on record as not supporting physical

punishment of children so will already be resourcing the education and support of alternatives.

Unsure

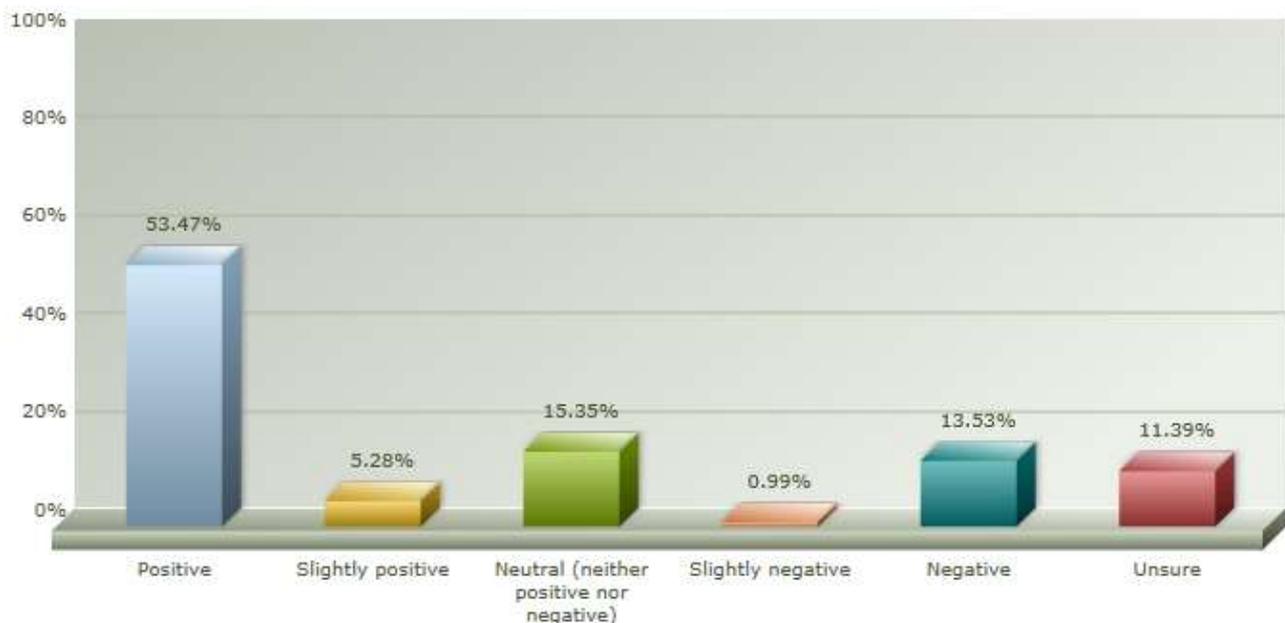
A significant number of respondents (135, 22% of those who answered the question) were unsure what the cost impacts would be. Comments included that—

- costs could increase due to more allegations/investigations but also reduce due to healthier children going on to contribute more to society;
- if the Bill is successful in breaking cycles of violence and links to abuse there could be a reduction in costs of services working in those areas;
- costs of support and education are unclear;
- finances should not be an issue when the safety of children is at stake;
- short term costs but likely long term benefits which are hard to quantify; and
- it is not clear what physical punishment costs the country at present.

Equalities: overall impact – Question 6

What overall impact is the proposed Bill likely to have on the following protected groups (under the Equality Act 2010): race, disability, sex, gender re-assignment, age, religion and belief, sexual orientation, marriage and civil partnership, pregnancy and maternity?

Six hundred and six respondents answered this question as follows—



Positive impact

A majority of respondents (356, 59% of those who answered this question) thought there would be a positive (53%) or slightly positive (5%) overall impact on equalities. Reasons given included that—

- the bill will help protect protected groups who may be more likely to face physical punishment and may be more at risk;
- the proposal will obviously have a positive effect on the “age” protected group;
- it may reduce violence against women and domestic violence;
- it protects against certain beliefs, such as that it is appropriate to physically punish a boy rather than a girl;
- it will increase protection for LGBTQ children;
- it demonstrates the commitment for Scotland to be a fairer country and to equalities issues;
- all people in protected groups start as children;
- it will help reduce inequality in certain religious and faith groups if children are being physically punished
- it could have a positive effect on bullying and verbal abuse which can affect some of these groups in particular;
- disabled children are more likely to face abuse; and
- boys will benefit from not seeing violence as specific to their gender.

Several responses gave detailed accounts of the positive impacts the proposal would have on equality groups, included responses by the Equality and Human Rights Commission, the Scottish Child Law Centre, Unicef UK, Promoting a More Inclusive Society (PAMIS), and the Coalition for Racial Equality and Rights.

The Scottish Child Law Centre stated that the United Nations Committee on the Rights of the Child identified that children who have protected characteristics face increased risk of exposure to violence. The Equality and Human Rights Commission stated that there is a lack of evidence and data from Scotland and the UK about this issue and that more research is needed. It stated that it was important that the equalities impacts of any new legislation should be monitored, particularly regarding race, disability and sexual orientation. Unicef UK stated that there should be a positive impact for those equality groups disproportionality affected by physical punishment, such as young children, children from linguistic, ethnic and sexual minorities, and children with disabilities.

On the issue of racial equality, The Coalition for Racial Equality and Rights stated that the proposal, if enacted with proper consideration, would have positive outcomes for black and ethnic minority (BME) children. However, it warned that for this to be achieved, and for BME children to enjoy the same positive outcomes as white children, the issue of institutional racism and the need for training of practitioners was important. It also stated that the view that there are higher rates of physical punishment among BME families in the UK and Scotland was a stereotype without any supporting evidence. It stated—

“In some cases, white practitioners may hesitate to challenge physical punishment (and even physical abuse and neglect) for fear of being

seen as racist ... there are concerns that social workers are not fully equipped to work with families from BME groups, and are wary of addressing cultural and religious practices and beliefs that may be understood as harmful to children. By maintaining a baseline of what is acceptable parenting and what is harmful to children, the hesitancy to address cultural or religious practices can be more readily addressed. As such, removing the 'justifiable assault' defence and guaranteeing equal protection from assault would provide more clarity to practitioners and better equip them to address harmful practices. High quality training is needed to mitigate the fear of being seen as racist, as this can prohibit the protection of children. It is worth noting that failing to protect BME children due to fear of being perceived as racist is in itself a form of institutional racism."

A group of respondents who appeared to be parents of disabled children and children with additional support needs at mainstream schools believed there would be a positive equalities impact within schools, as well as the home, as did the organisation Promoting a More Inclusive Society (PAMIS), which highlighted potential benefits in relation to children with learning difficulties being unnecessarily restrained and secluded.

Several respondents thought the proposal could have a positive effect on gender issues, including the distinct impacts on boys and girls, the distinct impacts on men and women in their roles as caregivers, and the potential for reduced domestic violence, which affects women predominantly. The Scottish Women's Convention stated—

"There is a real danger that girls who experience physical punishment as youngsters may internalise this as something that is normal. They may, therefore, go on to become victims in abusive relationships at later stages in their life. Given that the vast majority of domestic abuse occurrences, or gendered violence in any form, is against women, this Bill can go some way to acting as a preventative measure to these and tackling the present patriarchal culture. This can also be looked upon as having the potential to have an extensive effect on young boys as well. The Bill has the potential to act as a measure that can stop those who may internalise physical assault carried out upon them as punishment and go on to use it themselves when older as a form of VAWG [Violence Against Women and Girls]"

Slightly positive impact

Thirty-two respondents, 5% of those who answered the question, thought there would be a slightly positive impact. Many of the reasons given repeated reasons given for a positive impact detailed above. Other reasons given included that—

- domestic violence might be more common for LGBTQ children;
- it could help family relationships in general;
- it reinforces the fact that nobody should be discriminated against;
- it would provide better protection of children and their human rights;

- it may help boys, who are more likely to be physically punished;
- it will be helpful for society to recognise social norms that over-ride any religious beliefs; and
- it would have a positive impact on women and children who disproportionately suffer more often from domestic violence.

Neutral impacts

Ninety-three respondents, 15% of those who answered the question, thought that the proposal would have a neutral impact on equalities. Comments made on this included that—

- it would make no difference;
- the impact would be positive for some groups and negative for others;
- protected groups are already protected from hate crime assault by other legislation; and
- the legislation would apply to everyone (including those in protected groups).

Negative impact

Eighty-eight respondents, 14.5% of those who answered the question, thought there would be a negative impact (82, 13.5%, thought there would be a negative impact and six, 1%, thought there would be a slightly negative impact). Reasons given for this included that—

- it will negatively affect all groups as it will undermine and criminalise loving parents of all backgrounds;
- it will have a direct impact on some faith groups as they advocate/believe in physical punishment;
- it will hit the poorest hardest [although note that financial status is not a protected characteristic];
- it could have a bigger impact on boys as more boys are punished so there could be a higher male prison population due to the proposal leading to an unruly society; and
- funding this proposal and its resulting costs will take money away from other services, such as the investigation and prosecution of serious cases of neglect and abuse.

Religion and belief

The main reason why some thought there would be a negative equalities impact was because it was viewed as an attack on those who believed in the Bible and their Christian faith's support for physical punishment; the proposal would therefore reduce equality for those with those religious beliefs. All of the responses by or associated with the Christian Institute stated this view. This view from an anonymous individual (response 198), was shared by many similar responses—

“As a Christian, physical punishment of my children is mandated by the Bible, which is my rule of conduct (in passages such as Proverbs 22:15, 23:13-14, 29:15). This legislation will be directly discriminatory towards me, in preventing me from fulfilling my duty to God to discipline my children as He has commanded.”

There was also some indication that the new law would not be complied with within some parts of the Christian community. One anonymous individual (response 200) stated—

“As a minister, in the event that this legislation were passed, I would advise my congregation that their obligations to obey the teachings of the Bible take priority over their obligations to obey the state.”

Other responses also thought other religions could be negatively affected. One anonymous individual (response 406) stated—

“In particular, the Muslim community is very likely to become intimidated and aggravated and there will be an increased risk of social unrest and upheaval, if Muslim children are targeted (indeed, as they must be, if this legislation is to be applied impartially).

Disability

The Scottish Christian Party "Proclaiming Christ's Lordship" noted that deaf parents could be adversely affected as they use physical means of communication to a greater extent and lack support and access to BSL interpreters. Its view was this could be a particular problem if deaf parents were accused.

Gender

Some also thought it would negatively affect boys more than girls, on the basis that boys require and receive more physical punishment than girls. An individual, Hazel Bell, was of this view and thought the proposal could, as a result, increase the gender attainment gap between boys and girls. She states—

“Research from a country where smacking is banned reports “that the prohibition of all forms of physical correction may inadvertently undermine appropriate parental discipline with the result that a small but increasing percentage of boys may grow up with a dangerous combination of disrespect for their mothers and a lack of self-control.” Research shows that boys are more likely than girls to push against boundaries and defy parental and other authorities, including the class teacher. This leads to an increase in misbehaviour in school and could be a contributing factor in boys not reaching their full potential in literacy and writing.”

Unsure

Sixty-nine respondents, 11% of those who answered the question, were unsure what the equalities impact would be. Reasons given included that—

- the question was poorly worded;
- physical punishment may be embedded deeply in some cultures;
- there could be a disproportionate potential impact on some religious and cultural groups which advocate physical corporal punishment.

The organisation Befriending Networks stated—

“It is impossible to assess the impact on these different protected characteristic groups as one. For children and young people across the characteristics that apply, a broadly positive outcome might be intuited. However, parents and carers across some of these characteristics may feel that their role is being challenged by legislation in this area, so feel a negative outcome.”

Equalities: minimising or avoiding negative impacts – Question 7

Could any negative impact of the proposed Bill on any of these protected groups be minimised or avoided?

Three hundred and thirty-four respondents answered this question. A number of those responses repeated opposition to the overall proposal and therefore stated that negative impacts could not be minimised or avoided or could be avoided by abandoning the proposal. Others repeated support for the proposal and commented that there were no negative impacts that required to be minimised or avoided. Of those that did explain how potential negative impacts on equality could be minimised or avoided, several themes emerged—

Education and support

Again, the need for the bill to be explained, supplemented and delivered via programmes of education and support for all involved was a strong theme amongst respondents. Suggestions included—

- tailored education and support for certain cultures and belief groups;
- training for health visitors;
- consultation with relevant representative charity groups;
- support for anyone subject to domestic abuse, which should be publicised;
- clear guidelines on what forms of restraint are acceptable;
- protection and support for victims;
- easy reporting methods which are followed up;
- linking with the responsible/named person system; and
- specific support for pregnant women and new parents.

Mitigating impacts on different races, religions, beliefs and cultures

Along with several respondents who suggested specific tailored education and support for different cultures and belief groups, there were other suggestions about how to mitigate the potentially disproportionate effect on certain religions, beliefs and cultures. Suggestions included—

- consultation with relevant representative third sector groups; and
- exempting certain religious groups.

The organisation Befriending Networks cautioned against attempting to mitigate negative impacts on equalities by applying the Bill differently to different protected characteristic groups, stating that doing so would dilute the protection of children which is the core principle of the proposal.

The Coalition for Racial Equality and Rights stated—

“Any potential negative or differential impact on BME groups can be addressed by the provision of mandatory intercultural competency training and anti-racism training for practitioners who will likely encounter instances of physical punishment of children.”

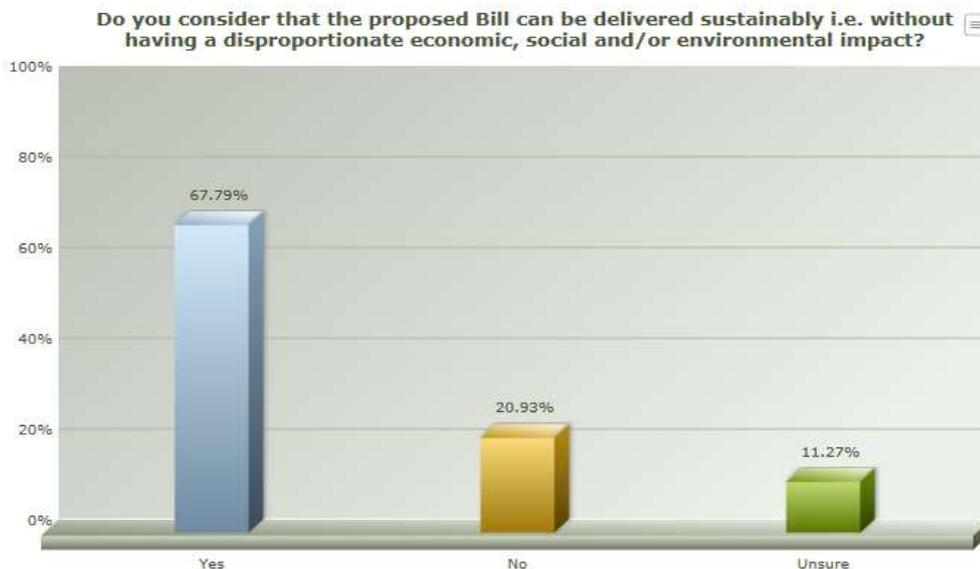
Flexibility

Several respondents believed that any potential negative impacts of the proposal could be minimised or avoided by ensuring that the Bill allowed some flexibility rather than being a blanket ban. Suggestions included that—

- regular smacking should be stopped rather than all smacking;
- physical discipline, rather than punishment, should be permitted; and that
- boys should still be allowed to be physically punished.

Sustainability of the proposal – Question 8

Six hundred and twenty-one respondents answered this question as follows—



Proposal delivered sustainably

A majority of respondents (421, 68% of those who answered this question) thought the proposal could be delivered sustainably. Reasons given for this included that—

- it will change the law to reflect current social norms;
- it will have a positive social impact (reducing violence and crime and improving mental health etc);
- it will help create thriving children which will then benefit the economy and society;
- it will save costly later interventions;
- it doesn't require any infrastructure or investment to maintain;
- any impacts are time limited as it will become the norm as behaviour changes;
- not doing this is unsustainable as it costs billions of pounds in impacts to deal with the consequences; and
- countries that have adopted a similar policy are not reporting disproportionate impacts.

An individual, Cathy McCulloch, stated—

“With proper and effective support, the Bill will enable new discussions that will lead to improved relationships between children and between children and adults. This can only result in improved social and environmental awareness and understanding leading to better behaviour and management of resources.”

And Clan Childlaw stated—

“Evidence from the growing number of countries that have prohibited physical punishment does not indicate any disproportionate economic, social and/or environmental impacts. Indeed, the fact that the number of countries following this path has grown steadily since Sweden took the initiative in 1979 is a testament to the absence of unsustainable consequences.”

Proposal not delivered sustainably

A minority of respondents, 130, 21% of those who answered the question, thought it could not be delivered sustainably. Reasons given for this included that it will—

- lead to increased court cases and associated costs;
- create negative effects on families; and
- lead to a breakdown of society and with significant negative social and economic impacts.

Negative social costs to families and wider society were addressed by several respondents. An anonymous individual (response 78) stated—

“I believe that over-regulation of such things will lead to unforeseen miscarriages of justice, that will harm children psychologically i.e. having a parent that they love removed from their lives due to over-zealous application of these regulations.”

Another anonymous individual (response 171) stated—

“It will breed a generation of unruly children who Scotland will have let down and failed by virtue of not teaching the important principle of consequences of actions from an early age.”

One anonymous individual (response 196) commented on the issue of children with disabilities and additional support needs—

“There are far too many children with additional support needs in mainstream schools and not enough staff or adequate training. This has resulted in hundreds of stories from parents of disabled children reporting incidents of serious physical mishandling in schools across Scotland. Not only would the cost of implementing the Bill have to be taken into account but also training for all staff working with children in Scotland. Otherwise if these kinds of actions are made illegal then there will be huge numbers of school staff being removed!! (And so they should be). However there is already a huge shortage of teachers, teaching assistants, ASL staff and money so to implement such a Bill fully and efficiently, is probably bigger than any budget would allow!”

Unsure of the sustainability of the proposal

Seventy respondents, 11% of those who answered the question, were unsure. Comments made included that—

- it is not clear what education and support might be provided;
- there could be resistance to change and financial costs;
- behaviour change takes time and there could be some negative impacts (such as on children’s behaviour) in the interim;
- it could impact more on low-income families and those struggling financially; and
- it is not clear what a proportionate economic, social and/or environmental impact would be.

The organisation Befriending Networks stated—

“This will to some degree depend on any supporting campaign and guidance. There is a perception in society that lower strata of socio-economic status are where this type of issue abound. It will require tactful and thoughtful handling to ensure that parents/carers in all

socio-economic groups appreciate the change applies to their children and to avoid further stigmatising and alienating any of them.”

General – Question 9

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

Three hundred and ninety-seven respondents answered this question. Many of the comments made in answer to this question reiterated comments made in answer to other questions (either in favour or in opposition to the proposal), or simply stated that the respondent had nothing additional to add. There were also many respondents to this question who stated that a change to the law as proposed in the Bill was long overdue and very welcome, and who wished John Finnie and the proposal every success, or who implored John Finnie not to pursue the proposal. The summary below gathers together the main additional/original themes which emerged in answers to this question.

Awareness raising, education and support

Many of those who responded to this question used this question to re-emphasise the need for awareness raising, education and support, and some additional points which emerged on that issue included that—

- the Bill should set out how education and support will be delivered;
- education and support must be in place before the Bill is enacted;
- a campaign is needed (for example, via television) to ensure public understand the changes and know this is not about criminalising parents;
- the process would benefit from contact and involvement with the victims of child abuse and physical punishment;
- a film, “Resilience: The Biology of Stress and the Science of Hope” should be linked to the Bill and accessible to more people so they can understand the effects of physical punishment;
- there should be increased social and health teaching in schools; and that
- there should have been more public information prior to the consultation.

Several NHS responses, many of which were similar or identical, stated—

“It would be helpful to have further clarity on the investment required to deliver adequate parenting support at a local level to ensure an educative and facilitative rather than punitive approach to achieving positive parental discipline.”

Barnardos stressed that guidance and support was essential and called on the Scottish Government to lead on this issue, stating—

“A working group should be established as soon as practicably possible, in a similar way to the Minimum Age of Criminal Responsibility advisory group. This group would be comprised of all the

key stakeholders including Police, Crown Office and Procurator Fiscal Service (COPFS), Social Work, Health Visitors, parents, third sector and crucially children and young people and those who represent them, with the aim of looking at how the legislation can be implemented as intended by the policy proposal.”

And the Family Fund (Scotland) stated—

“... there is a need for the Scottish Government to coordinate across policy areas to ensure adequate and timely support for families. This may be to access information, advice and support in relation to child development and ways to respond to behaviour which is challenging. For example, signposting to products such as ENABLE Scotland’s booklet called Tricky Moments, which provides practical tips and strategies for managing challenging behaviour from children who have a learning disability.”

Details of the bill and legal issues

Some other respondents commented further on the legal aspects of the proposal, including that—

- names of adults convicted should be made available if needed for the protection of children on the new Police Scotland Sex Offender Community Disclosure Scheme;
- clarity is required on how would this be policed and what evidence would be required for a conviction;
- any adult that is convicted of this offence should have the same restrictions as people convicted of a child sex offence;
- the law should recognise the difference between loving measured discipline and unloving violent discipline;
- clarification of whether the proposal would breach ECHR; and
- the Bill, when enacted, should be reviewed regularly to assess impacts.

Child behaviour

There were a number of comments about the behaviour of children. Comments included that—

- better understanding is required of other issues and their impact on child behaviour, such as poor dietary choices, lack of sleep, technology and associated age inappropriate material;
- family and child benefits (including tax credits) could be made dependent on educational attendance and behaviour;
- repeated resort to physical punishment could be referred to the Children’s Panel; and that
- there seems to be a move against discipline, not just physical discipline.

Law in other countries and level of support

Many respondents commented on the law on physical punishment in other countries, particularly the rest of the UK and Sweden. Those who supported the proposal believed that other countries who had implemented a similar policy had seen many benefits, whereas those who opposed the policy pointed to evidence of negative impacts in some of those countries, such as Sweden and New Zealand. Comments included that—

- Scotland is following a lead set by other parts of the world;
- there have been positive results of similar policies in other countries and these should be emphasised;
- the rest of the UK will hopefully follow Scotland’s lead on this issue; and that
- there has been a negative experience in Sweden after its ban on physical punishment as it has seen increased violence amongst children and increased levels of child abuse.

Unicef UK was one of many organisations and individuals which highlighted positive impacts and progress in other countries, including their view that positive impacts had been seen in Sweden and New Zealand. Several responses noted that the Welsh Government has announced that it intends to consult on proposals to remove the legal defence of ‘reasonable chastisement’ within the next 12 months.

Several respondents (many seemingly encouraged by or based on the Christian Institute campaign) stated that the public strongly oppose a ban on smacking, all citing a ComRes poll in 2014 which, they state, found that 65% of adults think it can be necessary for a parent to smack a child, with 22% disagreeing.

Application in schools

As has been mentioned elsewhere in this summary, there were a number of supportive responses from parents and carers of children with disabilities and additional support needs who attend mainstream schools. These respondents are concerned about how their children are being treated and want the bill to apply in such settings.

Framing of the proposal and consultation

Many of those opposed to the proposal, including the Christian Institute responses, stated that the consultation document was manipulative and misleading, particularly in its portrayal of smacking as assault. Such responses often repeated the view that the proposal would negatively impact some religious beliefs. An anonymous respondent (response 190) stated—

“The portrayal of smacking as assault, in this consultation, is clear bias and will not provide a fair representation of public opinion.”

Further consultation and/or research

Several responses suggested that further consultation and/or research was required before a bill was brought forward. There were several calls for further

consultation with religious and faith communities to better understand current practices and the potential impacts of a bill, and also calls for evidence to be presented regarding the use of the justifiable assault defence up to now, and outcomes of such cases.

Other threats and harm to children

A number of responses highlighted the need to consider other potential threats and harm to children, including some calls for violent films and games to be regulated to prevent children having access to them in the home, and others questioning how other forms of punishment and discipline will be tackled, such as verbal and emotional abuse and bullying.

Framing of the legislation

Several respondents focussed on how the bill that may result from this process would best be drafted, and what considerations should be taken into account when doing so. Kasey Lowe McCall-Smith and Elisenda Casanas Adam, of the University of Edinburgh, stated in a joint submission that, learning from the experiences of other legislatures, it was important that the bill provided clear definitions, limits and explanations. In a detailed submission, they also proposed that—

- consideration be given to defences remaining in common law;
- it be made clear how the repeal relates to other potential defences; and
- clarity be provided on physical acts that do not equate to punishment or assault (citing examples in Acts in the Republic of Ireland Act and New Zealand).

With regard to the latter point, their submission quotes part of the New Zealand Crimes Act 1961 as amended by the Crimes (Substituted Section 59) Amendment Act 2007 (in force from June 2007) which acknowledges that some physical acts are necessary. The Act states that parents and carers can justify using reasonable force in the following circumstances—

- preventing or minimising harm to the child or another person;
- preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence;
- preventing the child from engaging or continuing to engage in offensive or disruptive behaviour;
- performing the normal daily tasks that are incidental to good care and parenting

The Act also confirms that nothing in the Act or in any rule of common law justifies the use of force for the purpose of correction.

The NSPCC also provided detailed comment on the drafting of the bill, and referred to the view of Janys Scott QC who stated that the policy could be achieved by repealing relevant sections of the 2003 Act and substituting a new clarifying provision stating that assault cannot be justified on the grounds of physical punishment.

SECTION 4: MEMBER'S COMMENTARY

I would like, firstly, to thank the many individuals and organisations which have assisted me in the run up to, and during, the consultation on my proposal for a Member's Bill, not least the Scottish Parliament's Non-Government Bills Unit, Barnardo's Scotland, NSPCC, Children 1st, the Children & Young People's Commissioner's office and of course Steven Dehn and Kevin Hamilton from my own office. I am also very grateful to the more than 650 individuals and organisations who took the time to share their views and respond to my proposal.

I am overwhelmed by the huge amount of support my proposal to provide equal protection from assault to children has received. Of the 660 responses received a large majority (75%) were in favour, with 72% fully supportive and a further 3% partially supportive.

87% of the total number of responses came from individuals, and 75% of these individual responses came from ordinary members of the public. This shows an overwhelming level of public support for my proposal for which I am enormously grateful. Responses from a wide range of organisations also show an incredibly high level of support with 78 out of 84 organisations stating their support.

I was very reassured by the support from across many parts of Scottish civic society, with responses from policing organisations, social work organisations, health boards, children's health professionals, and some of Scotland's local authorities.

Many issues were raised in the responses I received, on both sides of the debate and I thank each and every individual and organisation who contributed to this commentary. I would like to extend particular thanks to the many individuals who bravely gave personal accounts of their own experiences and histories in order to contribute to this debate. I have no doubt that everyone who responded to the consultation wants to work towards the same goal, that is, ensuring our children are brought up safe, happy and healthy.

I am aware that there are some concerns about the impact that this legal change would have in practice and the way in which the removal of the defence will be implemented. I am confident that the Bill process will allow the necessary space for debate, discussion and for a clear communication strategy to be put in place so that children and families are provided with factual, evidence-based information about the impact of legal reform in this area.

It is, however I feel, important to highlight that there is no evidence that a change to the law has resulted in increased criminal proceedings in any of the 52 countries where legal reform has already taken place, and I remain steadfast in my belief that there is no such thing as a "loving smack". Violence against a child in the home is never justified.

Not long after the consultation closed the Scottish Government announced as part of its Programme for Government that it would “support John Finnie MSP’s legislative proposals to remove the existing defence for parents and outlaw all forms of physical punishment.” I am very much humbled by this support for my proposal and I look forward to working with the Scottish Government and all interested parties in moving the aims of my proposal forward.

I believe the results of this consultation have provided me with a clear mandate to proceed with my proposal to introduce the Children (Equal Protection from Assault) (Scotland) Bill to the Scottish Parliament and I will be seeking the required support to do that. I hope to be able to pursue the Bill with the support of my colleagues in the Scottish Parliament and the Scottish Government as well as the support of Scottish civic society.

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

John Finnie MSP

Consultation responses

All publishable responses can be seen on the member's website <https://johnfinnie.scot/> together with a table which sets out the sequential number and the name or status of every response, for ease of reference. Below is a list of responses attributable to organisations and individuals.

Organisations

- Aberdeen City Council
- Aberlour Scotland's Children's Charity
- Additional Support Services, Highland Council
- Argyll and Bute Child Protection Committee
- Barnardo's Scotland
- Befriending Networks
- Care and Learning, Highland Council
- CARE for Scotland
- CELCIS Centre for Excellence and CYCJ Centre for Youth and Criminal Justice
- Children 1st
- Children and Young People Public Health Group
- Children in Scotland
- Children's Parliament
- Church and Society Council of the Church of Scotland
- Circle - Supporting Families in Scotland
- Clan Childlaw
- Dumfries and Galloway Council
- East Renfrewshire Child Protection Committee
- Edinburgh Children's Partnership
- Edinburgh Montessori Arts School
- Edinburgh Women's Aid
- Eighteen And Under
- Equality & Human Rights Commission
- Family Fund (Scotland)
- Glasgow Council for the Voluntary Sector
- Highland Children's Forum
- Homeless Action Scotland
- Humanist Society Scotland
- Includem
- LGBT Youth Scotland
- Lloyds TSB Foundation for Scotland
- Lochaber Women's Aid
- Moray Women's Aid
- National Parent Forum of Scotland
- NHS Borders
- NHS Grampian
- NHS Greater Glasgow and Clyde
- NHS Health Scotland
- NHS Lanarkshire
- NHS Orkney
- NHS Tayside
- North Lanarkshire Child Protection Committee
- NSPCC
- One Parent Families Scotland
- Orkney Islands Council
- PAMIS (Promoting a More Inclusive Society)
- Parenting Across Scotland
- Rape Crisis Scotland
- Renfrewshire Council Children's Services
- Royal College of Paediatrics and Child Health

- Royal College of Psychiatrists in Scotland Faculty of Child and Adolescent Psychiatry
- Scottish Association of Social Work
- Scottish Childminding Association
- Scottish Christian Party "Proclaiming Christ's Lordship"
- Scottish Directors of Public Health Group and Scottish Health Promotion Managers Group
- Scottish Independent Advocacy Alliance
- Scottish Out of School Care Network
- Scottish Police Federation
- Scottish Socialist Party
- Scottish Women's Aid
- Scottish Women's Convention
- Scottish Youth Parliament
- Shetland Integrated Children and Young Person's Strategic Planning Group
- Social Work Scotland
- South Lanarkshire Child Protection Committee
- South Lanarkshire Council
- Stepping Stones for Families
- The British Psychological Society
- The Christian Institute
- The Coalition for Racial Equality and Rights
- The Scottish Centre for Crime and Justice Research
- The Scottish Child Law Centre
- ThisDadDoes.com
- Together (Scottish Alliance for Children's Rights)
- Unicef UK
- University of St Andrews, School of Medicine's WHO Collaborative Centre for International Child and Adolescent Health Policy and the Child and Adolescent Health Research Unit
- Upstart Scotland
- Who Cares? Scotland
- YouthLink Scotland

Individuals

- A C Grant
- Abbé Burrell
- Abigail Robertson
- Adele Pashley
- Adrian Sie
- Alasdair Macdonald
- Alastair Pelan
- Ali Kerr
- Alisdair McKay
- Alison P Brown
- Allicia Boylan
- Allyson Stewart
- Amanda Vickery
- Andrea Byrnes (East Linton Primary School)
- Andrea-Maria McGowan
- Andrew M Fraser
- Andrew Turnbull
- Andrew W Symons MA
- Angelika Monteux
- Ann McAlpine
- Ann McGuinness
- Anna Nicholson
- Anne Dale
- Anne McCrossan
- Anne O'Donnell
- Anne Sinclair Taylor

- Anne Thomas
- Annie Beetham
- Ariane Burgess
- Arlene Cleland
- Ashlee Halliday
- Audrey Forrest
- Barbara Srodzinski
- Barry Mitchell
- Ben McKendrick
- Bernie Hughes
- Beth Crozier
- Bethea Robertson
- Bob Leadbetter
- Bogi Vang
- Bolanle Kayode
- Brandi Lee Lough Dennell
- Brian Irvine
- Brian Kerr
- C Hannan
- C.Brian Ross
- Caitlin
- Cara Mccafferty
- Carol Stephens
- Catherine Brassier
- Catherine Cameron
- Cathy McCulloch
- Charlotte H-B (East Linton Primary School)
- Chris Morris
- Christine Campbell
- Claire-Marie Meikl
- Connie Bennett
- Corin Anderson
- D. Gordon Martin
- Daniel Doyle
- Daniel Gilham
- Daryl Tayar
- David Ashford
- David H
- David Howdle
- David Hunter
- David Kennedy
- David Mackenzie
- David Murray
- David Somervell
- Deirdre Henderson
- Deirdre O' Reilly
- Denise Marshall
- Derek Westwood
- Donald Fleming
- Donald George Morrison
- Donald Nicholson
- Doug Sheehan
- Douglas Hamilton
- Dr Charlene Abela-Briffa
- Dr David White
- Dr Gillean McCluskey
- Dr Graham Connelly
- Dr John Gordon
- Dr Jonathan Sher
- Dr Richard Whitecross
- Dr Sarah Little
- Dr Stuart Waiton
- Dr Virginia Paul-Ebhohimhen
- Dr. Guy Johnson
- Eamonn Kelly
- Eileen McCann
- Eilidh Macleod
- Elaine E Sutherland
- Eleanor Murray
- Elizabeth Stewart
- Emily Harle MSYP
- Emma Hagen
- Emma Holmes
- Emma Sinclair
- Euan Bruce
- Euan Macpherson
- Eva Schonveld
- Fergus Cook
- Fiona Black
- Fiona Duncan
- Fiona Graham
- Forrester Cockburn
- Frank Wallace
- George L Livingstone
- Georgette Lock
- Gordon B Drummond
- Gordon Hendry
- Graeme Bell
- Gwen Bell
- Gwen McLaren
- Hannah Hamilton-Smith (East Linton Primary School)

- Hannah Meason
- Hazel Bell
- Heather Bowie
- Heidi Docherty
- Helen
- Helen Carmichael
- Henry Milewski
- Highland Children's Forum
- Homeless Action Scotland
- Howel Jones
- Humanist Society Scotland
- Iain Richardson
- Ian Gillies
- Includem
- Isla Scott
- James MacInnes
- Jamie Humphreys (East Linton Primary School)
- Jane Carmichael
- Jane Carmichael
- Jane Crewe
- Janet Weir
- Jason Stewart
- Jean Fawkes
- Jen Broadhurst
- Jennifer Gibson
- Jennifer Gratwick
- Jennifer Pewsey
- Jenny Oswald
- Jim Walsham
- Jimmy Paul
- Jo Mallett
- Joanna Milewski
- John Hamelink
- John Low
- John MacLeod
- John McCullough
- John McDonald
- John McGurk
- John Paton
- John V Lloyd
- John V Lloyd
- John Wood
- Joshua Walker
- Julie Dynes
- Juliet Robertson
- Justin Ryan
- Karen Keith
- Kasey Lowe McCall-Smith and Elisenda Casanas Adam.
- Kat Robertson
- Kate Duncan
- Kathleen Marshall
- Kathleen Singer
- Kenny Murray
- Kieran Vettraino
- Kirsty Forrester
- Kyle Davidson
- Kyle Slater
- L. Pardoe
- Lachlan Draper
- Laura Galloway
- Laura Mullarkey
- Laura Pasternak
- Leanne Cheyne
- Lesley S Black
- Lewis Douglas
- Liam McMenemie
- Linda Morris
- Linden Ginter
- Lindsay Logie
- Lindsey Robb
- Lizzie Gardiner
- Lorne Finnie
- Louise Day
- Louise McCafferty
- Lynda George
- Maciej Kornobis
- Maggie Moodycliffe
- Magnus Whitson (East Linton Primary School)
- Máire McCormack
- Margaret Murray
- Maria Gavienas
- Marianne Cochrane
- Mark Carroll
- Mark Smith
- Martha Wardrop
- Martine Nadler
- Maureen Lyon
- Mauve Robertson
- Michelle Jones
- Molly Kirby

- Morag Milne
- Mrs M B Kobylarska
- Myra Allan
- N. M. Ross
- Niall Kennedy
- Niall MacLennan
- Nichola Williams
- Nick Dunne
- Olivier Chaligne
- Patricia Lovatt
- Paul Belmonte
- Paul McMillan
- Paul Murray
- Peter E Ross
- Peter Matheson
- Phoebe Mosley (East Linton Primary School)
- Pippa Plevin
- Professor Andrew Rowland
- Professor Brian Boyd
- Professor Colin Davidson
- Professor Kenneth McK. Norrie
- Rachael Mitchell
- Raymond Mitchell
- Rebekah Tarren
- Rev Tim Proudlove
- Rhona Foster
- Rhona Mackay MSP
- Rhuari McGrath Quoiani (East Linton Primary School)
- Rita Brown
- Robert L. Cook MBE
- Robin Waterston
- Ronald Hughes
- Rosemary Hill
- Ross Gibson
- Ross McCallum
- Ruth Forrest
- Sandra Keith
- Sandra Stuart
- Sandy MacDonald
- Sandy Rogerson
- Sandy Ruff
- Sarah Quinn MSYP
- Sarah Whyte
- Scarlett Woods
- Scott Macdonald
- Scott Maciver
- Shirley Young
- Shona Singer
- Sile Murray
- Stacey Marko
- Stephen Carter
- Stephen Rankin
- Steven Mckay
- Stuart Dustan
- Stuart McKay
- Susan FG Forde and Iain WD Forde
- Susan Simpson
- Suzanne Hargreaves
- T Jones
- Thorvald Peterson
- Vivek Majumder
- Vivien M. Stewart
- William Armitage
- William Baird
- William Macleod
- William Samuel Bruce