

## Equality Impact Assessment

<b>Children (Equal Protection from Assault) (Scotland) Bill</b>	
<b>(1) Aims of the Policy</b>	
What is the purpose of the proposed policy?	<p>The purpose of the policy is to help bring an end to the physical punishment of children by removing the current available defences of justifiable assault and reasonable chastisement (in both statute and common law).</p> <p>Currently, the common and criminal law in Scotland allows parents to use some forms of physical punishment (defendable in court as “justifiable assault” and/or “reasonable chastisement”).</p>
What are the anticipated outcomes of the policy?	<p>Parents, and those who have a caring role or are in charge of children, will no longer have an available legal defence in law (common, criminal or civil) with regards to the physical punishment of a child.</p> <p>The Bill is intended to drive behaviour change in Scotland. It is expected that the Bill will prompt parents and others caring for or in charge of children who use physical punishment to join other parents in using other, less harmful, methods of parenting, and help to redefine what is acceptable in terms of the punishment of children.</p>
Who will be affected by the policy?	<p>The policy will primarily affect children, and parents and those who have a caring role or are in charge of children. Various professional services will also be affected (police, social work, health, legal).</p> <p>The Bill will help to protect all children from physical punishment, including any child punished because of identified characteristics protected in law by the Equality Act 2010.</p>
<b>(2) What is known about the diverse needs of those who will be affected by the policy</b>	
Gender* (including transgender, maternity and pregnancy)	<p>All children, regardless of gender, and including those who identify as transgender, should have equal protection from assault, and be supported in not experiencing physical punishment. This also includes children who become</p>

	<p>pregnant and/or parents.</p> <p>All parents and those in care or charge of a child, regardless of gender, should be equally supported in not using physical punishment and using other forms of punishment and guidance.</p>
Religion and Belief	<p>All children, regardless of religion and belief, should have equal protection from assault, and be supported in not experiencing physical punishment.</p> <p>All parents and those in care or charge of a child, regardless of religion and belief, should be equally supported in not using physical punishment and using other forms of punishment and guidance.</p> <p>There may be particular support needs amongst any Christian denominations which specifically sanction physical punishment and see it as having scriptural authority.</p>
Age*	<p>All children, regardless of age, should have equal protection from assault, and be supported in not experiencing physical punishment.</p> <p>All parents and those in care or charge of a child, regardless of age, should be equally supported in not using physical punishment and using other forms of punishment and guidance. There may be generational issues, with some older people continuing to use or support the use of physical punishment, and it is important that those support needs are understood.</p>
Disability*	<p>Children with disabilities should have equal protection from assault, and be supported in not experiencing physical punishment.</p> <p>Parents of children with disabilities, and those in care or charge of a child with a disability, should be equally supported in not using physical punishment and using other forms of punishment and guidance.</p> <p>Some children and parents with a disability may require, in certain circumstances, additional information and support in terms of the way the Bill changes the law and the behaviour change being sought.</p>

<p>Ethnicity and Race</p>	<p>All children, regardless of ethnicity and race, should have equal protection from assault, and be supported in not experiencing physical punishment.</p> <p>All parents and those in care or charge of a child, regardless of ethnicity and race, should be equally supported in not using physical punishment and using other forms of punishment and guidance.</p> <p>Information and support will need to be available in required languages and awareness raised within all communities.</p>
<p>Sexual Orientation</p>	<p>All children, regardless of sexual orientation, should have equal protection from assault, and be supported in not experiencing physical punishment. This may be a particular issue for any older children that face punishment by a parent who disapproves of their emerging sexual orientation.</p> <p>All parents and those in care or charge of a child, regardless of sexual orientation, should be equally supported in not using physical punishment and using other forms of punishment and guidance.</p>
<p>Marriage and Civil Partnership</p>	<p>Families, including parents who are married or in a civil partnership, may need information and/or support as a family group, and/or to deal with issues which can increase risk of physical punishment, such as marital conflict. However, this applies to all parents and families, regardless of whether parents are married or in a civil partnership.</p>
<p><b>(3) Is there enough information to help understand the needs and/or experiences of those affected by the policy</b></p>	
<p>Gender* (including transgender, maternity and pregnancy)</p>	<p>The study <i>“Equally protected? A review of the evidence on the physical punishment of children”</i> provides evidence sources.</p> <p>There is also relevant information in the following recent strategy— Equally Safe: Scotland’s strategy for preventing and eradicating violence against women and girls (Scottish Government and COSLA)</p>
<p>Religion and Belief</p>	<p>The study <i>“Equally protected? A review of the evidence on the physical punishment of children”</i> provides evidence sources.</p> <p>There was a significant response to the member’s</p>

	consultation from Christian organisations, including The Christian Institute, the Scottish Christian Party “Proclaiming Christ’s Lordship”, and the Church and Society Council of the Church of Scotland.
Age*	<p>The study <i>“Equally protected? A review of the evidence on the physical punishment of children”</i> provides evidence sources.</p> <p>Several responses to the member’s consultation (for example, Unicef UK) commented and provided evidence on age related issues.</p> <p>A Child Rights and Wellbeing Impact Assessment has been carried out by Dr Susan Elsley and is attached at the Annexe.</p>
Disability*	<p>Several responses to the member’s consultation (for example, Unicef UK) commented and provided evidence on disability related issues.</p> <p>Unicef research study (2014): Associations between Child Disabilities and Caregiver Discipline and Violence in Low- and Middle-Income Countries</p> <p>The Equality and Human Rights Commissioner in response to the Members’ consultation 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.</p>
Ethnicity and Race	<p>Several responses to the member’s consultation (for example, Unicef UK, the Commission for Racial Equality and the Coalition for Racial Equality and Rights) commented and provided evidence on race related issues.</p> <p>The Equality and Human Rights Commissioner in response to the Members’ consultation 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.</p>
Sexual Orientation	The Equality and Human Rights Commissioner in response to the Member’s consultation 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.
Marriage and Civil Partnership	Research was carried out under the report 'Equally Protected? A review of the evidence on the physical punishment of children' and part of this covered this protected group. The report stated: "Family risk factors were a higher number of siblings, single parenthood, marital conflict, low levels of social support, lower socio-economic status and high work stress".
If not, what other information is required	N/A
<b>(4) What does the information given say about how the policy might impact positively and negatively on different groups</b>	
Gender* (including transgender, maternity and pregnancy)	<p>Physical punishment may have different impacts for boys and girls. Some evidence suggests that girls are more likely to experience emotional difficulties because of corporal punishment and that boys are more likely to be physically chastised.</p> <p>The Bill will therefore reduce any existing inequalities relating to the gender of a child.</p> <p>Children who identify as transgender may be subject to physical punishment as a direct result of that characteristic.</p> <p>The Bill could have a positive impact on helping to reduce instances of domestic abuse, and cycles of violence in the home, by reducing instances, and acceptance, of violence in the home. This may particularly have a positive effect on women and girls, who disproportionately suffer from domestic violence.</p>
Religion and Belief	<p>In some of the studies and evidence gathered on this issue it seems that physical punishment may vary in its use depending on the different religious and cultural norms, precedents and beliefs. Therefore, ending physical punishment of children may have a different impact on differing religious and cultural groups. Removing the defence would therefore provide clarity and ensure consistency in the law for children belonging to all cultural and religious groups.</p> <p>In response to the Members' consultation a view was</p>

	<p>expressed that the Bill could have a negative impact on some faith groups. Several respondents associated with the Christian Institute thought that there would be a negative equalities impact because it was viewed as an attack on those who believed in the Bible and their Christian faith's support for physical punishment and the proposal would therefore discriminate against those with religious beliefs.</p> <p>The House of Lords considered a case where the ban on corporal punishment in schools was challenged because it interfered with article 9 of ECHR, the right to manifest that religion in practice. The case was dismissed.</p>
Age*	<p>The Bill will ensure that those aged under 16 have the same protections from assault as adults. The law currently permits the physical punishment of children in certain circumstances so the Bill will end that current inequality.</p> <p>There is evidence to suggest that incidences of corporal punishment are more prevalent amongst younger children, and diminish as children get older. The Bill will ensure all children are protected from physical punishment regardless of age and therefore also remove this inequality.</p> <p>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.</p>
Disability*	<p>There should be a positive impact for any equality groups affected by physical punishment, including children with disabilities.</p> <p>There might be certain circumstances when a parent or other person caring for a child with a disability has to physically restrain them, however the Bill does not affect this, as the current legal defences are in relation to the physical punishment of children, rather than restraint or preventing harm. Any allegations of excessive use of force or abuse would be investigated as per the current laws on assault.</p> <p>A group of respondents to the Members' consultation (who appeared to be parents of disabled children and those with additional support needs at mainstream schools) believed that there would be a positive equalities impact within schools, as well as the home, as did the organisation</p>

	<p>Promoting a More Inclusive Society (PAMIS), which highlighted the potential benefits in relation to children with learning difficulties being unnecessarily restrained and secluded.</p> <p>It is important to avoid negative consequence of the Bill by ensuring that appropriate information and support is provided to children and parents with disabilities as required.</p>
Ethnicity and Race	<p>As with other characteristics, the removal of the current available defences would provide clarity and ensure consistency in the law for children of all races.</p> <p>The Coalition for Racial Equality and Rights noted that there is no evidence to suggest that rates of physical punishment are higher in black and ethnic minority (BME) families in Scotland. It also stated that the proposal, if enacted with proper consideration, would have positive outcomes for 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 (presumptions about the prevalence of physical punishment amongst different ethnic groups) and the need for training of practitioners was important. It stated: “any potential negative or different 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”.</p>
Sexual Orientation	<p>Children who identify as lesbian, gay or bisexual may face physical punishment from parents who do not accept or understand that identification. The Bill could therefore have a positive impact for those children.</p>
Marriage and Civil Partnership	<p>The evidence suggests that the Bill is likely to impact on parents and families, regardless of whether they are married or in a civil partnership or not.</p>

**Completed by the Non-Government Bills Unit: September 2018**

\*Although not a protected characteristic, carers should be given specific consideration in this category (e.g. the potential impact on those who care for older people).

<b>Member’s Comment on NGBU’s Equalities Impact Assessment</b>	
Evidence gaps identified	<p>There is no specific data that captures the extent of physical punishment in Scotland and its impact on certain protected characteristics. However, there is significant evidence about</p>

	the impact of physical punishment on children generally, and anecdotal and third sector evidence and views on potential impacts on certain protected characteristics.
<b>Member's comment:</b> No comments.	
Adverse impacts identified	The Bill could be considered to have an adverse impact on anyone who considers that their religious belief allows/encourages them to administer physical punishment on children in their care.
<b>Member's comment:</b> I would like to thank NGBU for compiling the Equalities Impact Assessment on my Member's Bill. Whilst I accept that some may view the Bill as negatively impacting on their rights, this is not a view which I share. I strongly believe that a child's right to be protected from physical punishment is a fundamental right, currently enjoyed by all adults, without caveats and therefore the Bill's provisions should be, I believe, regarded as proportionate measures.	
<b>Completed by John Finnie MSP:</b> 31 October 2018	



**Child Rights and Wellbeing Impact Assessment  
(CRWIA)**

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

**2018**

## CRWIA

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

Date of publication: 6 September 2018

#### 1. Background to the Bill

The current legislation in Scotland relating to the physical punishment of children, the Criminal Justice (Scotland) Act 2003, includes a defence of “justifiable assault” which parents and carers can use, taking into account factors such as age, duration, nature of what was done and effect on a child.<sup>1</sup>

The position that children do not have the same legal protection from assault as adults in Scotland has been much criticised by international human rights treaty bodies including the UN Committee on the Rights of the Child<sup>2</sup> as well as by the Children and Young People’s Commissioner Scotland and organisations in Scotland including major NGOs, public bodies and professional associations<sup>3</sup>.

- John Finnie MSP’s draft proposal for a bill to give children equal protection from assault by prohibiting the physical punishment of children by parents and others caring for or in charge of children was published on 11 May 2017.<sup>4</sup> The draft proposal was accompanied by a consultation document, prepared with the assistance of the Scottish Parliament’s Non-Governmental Bills Unit (NGBU). A consultation exercise was run by John Finnie’s parliamentary office from 12 May 2017 to 4 August 2017. The consultation document and the summary of consultation responses are available on the Parliament’s website.<sup>5</sup>

The Scottish Government stated its support for the proposals in the Member’s Bill to introduce a legislative ban on the physical punishment of children in the Government’s Programme for Scotland: 2017-2018<sup>6</sup> and reiterated in the 2018-2019 Programme for Government<sup>7</sup>.

The proposal 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 was lodged on 24 October 2017.

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<sup>1</sup> Scottish Government <http://www.gov.scot/Topics/Justice/law/17867/fm-children-root/fm-children-punishment>

<sup>2</sup> CRC/C/GBR/CO/5

<sup>3</sup> See Summary of consultation responses to Children (Equal Protection from Assault) (Scotland) Bill to

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

<sup>4</sup> <http://www.parliament.scot/parliamentarybusiness/Bills/104602.aspx>

<sup>5</sup> <http://www.parliament.scot/parliamentarybusiness/Bills/104602.aspx>

<sup>6</sup> Scottish Government (2017) A Nation with Ambition: The Government’s Programme for Scotland: 2017-2018

<http://www.gov.scot/Publications/2017/09/8468/3>

<sup>7</sup> <https://beta.gov.scot/binaries/content/documents/govscot/publications/publication/2018/09/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/documents/00539972-pdf/00539972-pdf/govscot:document>

The Bill was published on 6 September 2018. The Policy Memorandum is published alongside the Bill on the Scottish Parliament website.<sup>8</sup>

## 2. Scope of the CRWIA

The CRWIA considers whether any of the Bill's provisions impact on the rights and wellbeing of children and young people in Scotland. The CRWIA has been undertaken by Mr John Finnie's office as it is a Member's Bill, it was produced by [Dr Susan Elsley](#).

The CRWIA should be read in conjunction with the Equality Impact Assessment, carried out by the Scottish Parliament's Non-Governmental Bill Unit, conducted for the Bill.

## 3. Children and young people's views and experiences

Evidence from children and young people indicates that they believe there should be better protection for children and that physical punishment is harmful to the wellbeing of children.

The Scottish Youth Parliament undertook a consultation with young people aged 12 to 25 to develop its 'Lead the Way (2016-21)' manifesto and received 72,744 responses.<sup>9</sup> The majority of respondents, 82% of the Scottish Youth Parliament membership, were in agreement that physical assault against children should be illegal. This has become one of the Scottish Youth Parliament's manifesto commitments.

A 2016 survey of young people's views from a Scottish-wide survey, further analysed by the office of the Children and Young People's Commissioner Scotland, identified that the majority of young people surveyed thought that alternatives should be found to 'smacking' or hitting of children and that physical punishment was harmful to children.<sup>10</sup>

Children and young people spoke to Cabinet Ministers about physical punishment at the Scottish Government's Cabinet meeting with children and young people in February 2017. Children and young people urged the Scottish Government to support a change in the law. The Scottish Government, in its report to young people from this meeting, said that they supported a change in the law.<sup>11</sup>

Children 1<sup>st</sup> and the Children's Parliament have produced videos about children's views on family life.<sup>12</sup> Children talk about the importance of activities with their parents and the importance of respect. Children did not like parents shouting, swearing calling them names or hitting them. They did see that discipline was necessary.

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<sup>8</sup> <http://www.parliament.scot/parliamentarybusiness/Bills/109156.aspx>

<sup>9</sup> Scottish Youth Parliament, Lead the Way Scottish Youth Parliament Manifesto 2016-21 [https://d3n8a8pro7vhmx.cloudfront.net/scottishyouthparliament/pages/283/attachments/original/1457781662/Lead\\_The\\_Way\\_Manifesto.pdf?1457781662](https://d3n8a8pro7vhmx.cloudfront.net/scottishyouthparliament/pages/283/attachments/original/1457781662/Lead_The_Way_Manifesto.pdf?1457781662)

<sup>10</sup> Children and Young People's Commissioner Scotland (2017) Young People's Views on Physical Punishment: Summary findings from the Young People in Scotland Survey 2016 <https://www.cypcs.org.uk/ufiles/Summary-findings-physical-punishment-June-2017-.pdf>

<sup>11</sup> Actions agreed at the Cabinet Meeting with Young People 28. February.17 Progress Report Children and Young People's Summary <http://www.gov.scot/Resource/0053/00531253.pdf>

<sup>12</sup> Children's Parliament/Children 1<sup>st</sup> <https://www.childrensparliament.org.uk/our-work/past-work/pushing-the-boundaries/>

## 4. Key findings

The Bill will ensure that all children and young people have equal protection from assault under the law as adults and therefore they will be better protected, their rights respected, and their wellbeing supported. The Bill and the ensuing legislation will have a positive impact on societal attitudes to the physical punishment of children and young people.

### International obligations on children's rights

The United Nations Committee on the Rights of the Child has consistently stated that all forms of violence against children are unacceptable.<sup>13</sup> The Committee is unequivocal that the physical or corporal punishment of children violates children's rights as outlined in the United Nations Convention on the Rights of the Child (UNCRC).<sup>14</sup>

Changing the law would ensure that Scotland meets the UNCRC's international standards in relation to corporal or physical punishment, specifically UNCRC articles 19 and 37 which focus on protecting children from violence and protection from torture or other cruel, inhuman or degrading treatment or punishment.<sup>15</sup> In addition, articles relating to the general principles of the UNCRC, best interests of the child (article 3), the child's right to life, survival and maximum development (article 6) and the child's right to be heard (article 12) underpin the Bill as does article 5 on parental guidance.

A legal opinion written by a senior legal solicitor and advocate, Janys Scott QC, has highlighted the legal reasons to support consideration of the law on physical punishment, taking into account Articles 3 and 8 of the European Convention on Human Rights and the UNCRC.<sup>16</sup>

The UK is one of only six states in the European Union which retains the physical punishment of children.<sup>17</sup> Fifty-three countries across the world have prohibited physical punishment of children with another 56 stating a commitment to full prohibition according to the Global Initiative to End All Corporal Punishment of Children.<sup>18</sup>

### Wellbeing indicators

The Bill will impact across the range of wellbeing indicators, specifically:

- Safe: protected from abuse, neglect or harm at home, at school and in the community
- Healthy: having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make health and safe choices
- Achieving: being supported and guided in learning and in the development of skills, confidence and self-esteem, at home, in school and in the community.

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<sup>13</sup> CRC/C/GC/13

<sup>14</sup> CRC/C/GC/8

<sup>15</sup> Convention on the Rights of the Child <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>16</sup> Scott, J (2017) Opinion of Senior Counsel re the Legality of Scots Law on the Physical Punishment of Children [http://www.togetherscotland.org.uk/pdfs/Legal\\_Opinion\\_Janys\\_Scott\\_QC.pdf](http://www.togetherscotland.org.uk/pdfs/Legal_Opinion_Janys_Scott_QC.pdf)

<sup>17</sup> EU countries without a full prohibition on the physical punishment of children: Belgium, Czech Republic, France, Italy, Slovakia and the UK

<sup>18</sup> Global Initiative to End All Corporal Punishment of Children <http://www.endcorporalpunishment.org/>

- Nurtured: having a nurturing place to live in a family setting, with additional help if needed, or, where this is not possible, in a suitable care setting.
- Respected: having the opportunity, along with carers to be heard and involved in decisions that affect them.

### **Review of international evidence**

A 2015 review, 'Equally Protected? A review of the evidence on the physical punishment of children', commissioned by NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner Scotland, analysed evidence from 98 international studies.<sup>19</sup> The review found that the prevalence of the use of physical punishment was in decline and that physical punishment was now less acceptable, drawing on Scottish and UK data.

This, along with a previous review on the physical punishment of children published in Northern Ireland in 2008<sup>20</sup>, identified the following key messages related to physical punishment:

- reliable evidence that physical punishment was associated with negative outcomes including an increased risk in childhood aggression and antisocial behaviour
- physical punishment had an effect on children's emotional and mental health, including symptoms of depression and anxiety and contributing to reduced self-esteem in later life
- physical punishment was related to an increased risk of children experiencing child maltreatment and abuse
- the majority of studies in the review that considered the impact of warm, loving family relationships identified that this did not mitigate the negative effects of physical punishment.

### **Consultation with stakeholders' groups**

A consultation exercise on the proposal for the Bill was run by John Finnie's parliamentary office in 2017. The consultation document and the summary of consultation responses are available on the Parliament's website.<sup>21</sup> In total, 660 responses were received. A majority of those who responded (organisations and individuals), 493 or 75% were supportive. A minority of respondents, 166 or 25%, including six organisations, were opposed to the Bill.

### **Organisations and professional bodies**

The current and previous Children and Young People's Commissioners in Scotland have consistently spoken out about the lack of protection for children in Scotland.<sup>22</sup> <sup>23</sup> Leading non-governmental organisations, including Children 1st, NSPCC Scotland, Barnardo's Scotland and Children 1st have also spoken out against the current legal position.<sup>24</sup> Professional bodies

<sup>19</sup> Heilmann, A., Kelly, Y. and Watt, R.G. (2015) Equally protected? a review of the evidence on the physical punishment of children. London: NSPCC <https://learning.nspcc.org.uk/media/1117/equally-protected.pdf>

<sup>20</sup> Bunting, L., Webb M. A. and Healy, J. (2008) The 'smacking debate in Northern Ireland' – Messages from Research [http://dera.ioe.ac.uk/11059/1/SmackingDebateNISummary\\_wdf63282.pdf](http://dera.ioe.ac.uk/11059/1/SmackingDebateNISummary_wdf63282.pdf)

<sup>21</sup> Proposed Equal Protection from Assault (Scotland) Bill <http://www.parliament.scot/parliamentarybusiness/Bills/104602.aspx>

<sup>22</sup> Commissioner criticises Scottish attitudes to smacking (July 2017) <https://www.bbc.co.uk/news/uk-scotland-40618330>

<sup>23</sup> Children's Commissioner Tam Baillie calls for smacking ban <https://www.bbc.co.uk/news/uk-scotland-39608086>

<sup>24</sup> See consultation responses to the Proposed Equal Protection from Assault (Scotland) Bill <http://www.parliament.scot/parliamentarybusiness/Bills/104602.aspx>

including the Scottish Directors of Public Health<sup>25</sup> and the Police Federation support a change in the law. Other organisations which have indicated support for a change in the law including the Police Violence Reduction Unit, the Church of Scotland, Social Work Scotland and the Royal College of Nursing.<sup>26</sup>

## 5. Conclusions and recommendations

The Children (Equal Protection from Assault) (Scotland) Bill will have a positive impact on all children and young people under the age of 16.

It will advance the realisation of children's rights and wellbeing in Scotland by giving children equal protection from assault by abolishing the common law right of parents (or others caring for or in charge of children) to use physical force to discipline a child. A person charged with assault of a child will no longer have the defence that the use of force constituted "reasonable punishment" or "justifiable assault".

The Bill remedies Scotland's current violation of the UNCRC and ensures compatibility in relation to physical punishment. It makes changes recommended by the UN Committee on the Rights of the Child in its concluding observations for 2016.<sup>27</sup>

It will comply with the observations and recommendations of other human rights bodies<sup>28</sup> which have criticised the UK and the devolved nations on the current position on physical punishment including:

- the Universal Periodic Review of Human Rights undertaken by the UN Human Rights Council (2017)<sup>29</sup>
- the Human Rights Committee of the International Covenant on Civil and Political Rights (2015)<sup>30</sup>
- the Committee for the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (2013)<sup>31</sup>
- Committee for the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)<sup>32</sup>.

The Bill supports the Scottish Government's commitment to making Scotland "the best place to grow up" through its programme of legislation and policy measures such as the Children and Young People (Scotland) Act 2014<sup>33</sup>, Getting it Right for Every Child<sup>34</sup> and Equally Safe: A

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<sup>25</sup> Scottish Directors of Public Health [https://www.scotphn.net/wp-content/uploads/2017/08/2017\\_05\\_17-Physical-Punishment-of-Children-Smacking.pdf](https://www.scotphn.net/wp-content/uploads/2017/08/2017_05_17-Physical-Punishment-of-Children-Smacking.pdf)

<sup>26</sup> See consultation responses to the Proposed Equal Protection from Assault (Scotland) Bill <http://www.parliament.scot/parliamentarybusiness/Bills/104602.aspx>

<sup>27</sup> CRC/C/GBR/CO/5

<sup>28</sup> See Appendix 2 for summary of international recommendations, Together (2017) Equal Protection from Assault for Children Briefing - July 2017 <http://www.togetherscotland.org.uk/pdfs/Member%20briefing%20on%20Equal%20Protection.pdf>

<sup>29</sup> A/HRC/WG.6/27/L.7

<sup>30</sup> CCPR/C/GBR/CO/7

<sup>31</sup> CEDAW/C/GBR/CO/7

<sup>32</sup> CAT/C/GBR/CO/5

<sup>33</sup> Children and Young People (Scotland) Act 2014 <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

<sup>34</sup> Getting it Right for Every Child <http://www.gov.scot/Publications/2017/09/8468/9>

Delivery Plan for Scotland's Strategy to Prevent Violence Against Women and Girls<sup>35</sup> which is focused on prevention and challenging the notion that violence is every acceptable.

### **Stages of the Bill**

Evidence from children and young people should be sought by the lead Scottish Parliament committee during the stages of the Bill. It should take account of the evidence provided by children and young people and the organisations that support them (for example, the Scottish Youth Parliament and Children's Parliament) and by other organisations working with children and young people.

Evidence should be also sought from organisations and experts who can contribute their views and expertise.

### **Implementation of the Bill**

- It is recommended that there is a commitment to promoting public understanding and awareness of the Bill through an appropriate information and awareness campaign.
- Children and young people should be consulted on the implementation of the legislation and the content of resources produced to raise awareness and provide information for the public.
- A working group or similar should be established to bring together key stakeholders such as Police, Crown Office and Procurator Fiscal Services (COPFS), Social Work, Health Visitors, NGOs and representation from parents and children and young people to consider how the legislation will be implemented.
- Support for parents and carers and members of the public should be publicised and be in place in order to provide advice and information on parenting and how to respond to incidents. This should take into account the capacity of current provision such as ParentLine.<sup>36</sup>

## **6. Monitoring and review**

Monitoring, gathering data and reporting on the impact of the legislation

- Consideration should be given as to what monitoring, data and reporting will be helpful including, for example, data from Social Work in relation to their statutory interventions, Police Scotland in relation to arrests and charges for parental assault on a child and from the Crown Office and Procurator Fiscal Service (COPFS) in relation to levels of prosecution for parental assault of children.
- Monitoring should include processes which gather children and young people's views and experiences as well as those of parents and carers.

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<sup>35</sup> Equally Safe- A Delivery Plan for Scotland's Strategy to Prevent Violence Against Women and Girls (2017) <http://www.gov.scot/Publications/2017/11/5647>

<sup>36</sup> ParentLine <https://www.children1st.org.uk/help-for-families/parentline-scotland/>

- International human rights bodies will undertake monitoring as part of their duties, reporting in their judgements, rulings and reports. The Scottish Government will contribute to UK reports.

Arrangements and processes for evaluation should be put in place at the time of enactment in order to measure the impact of the changes in legislation.

## 7. Bill

Bill clause	Aims of measure	Likely to impact on...	Compliance with UNCRC requirements	Contribution to wellbeing indicators
1. Abolition of defence of reasonable chastisement	The Bill gives children equal protection from assault by abolishing the common law right of parents (or others caring for or in charge of children) to use physical force to discipline a child. A person charged with assault of a child will no longer have the defence that the use of force constituted "reasonable punishment" or "justifiable assault".	All children and young people under the age of 16 years across Scotland who experience physical punishment.	Articles 3, 5, 6, 12, 19, 37	Safe Healthy Achieving Nurtured Respected
2. Duty of Scottish Ministers to raise awareness	There is wide public awareness so that parents and carers, children and young people, professionals who come into contact with children and young people and their	All children and young people as above	Article 3, 5, 6, 12, 19, 28(2), 37	Safe Healthy Achieving Nurtured Respected



	families and the public generally are aware of the change in law.			
3.Transitional and saving provision (1) Section 1 does not apply to anything done before the day on which that section comes into force				

## **CRWIA front sheet**

### **1. Policy/measure**

#### **Description of policy/measure**

The following is taken from the Policy Memorandum for the Children (Equal Protection from Assault) (Scotland) Bill.<sup>37</sup>

“The objective of the Children (Equal Protection from Assault) (Scotland) Bill is to end the physical punishment of children by parents and others caring for or in charge of children.

The Bill gives children equal protection from assault by abolishing the common law right of parents (or others caring for or in charge of children) to use physical force to discipline a child. A person charged with assault of a child will no longer have the defence that the use of force constituted “reasonable punishment” or “justifiable assault.”

A further objective of making this change to the law is to drive behaviour change in Scotland, which is currently out of step with most of Europe and many other parts of the world on this issue. It is expected that the Bill will prompt parents and others caring for or in charge of children who use physical punishment to join other parents in using other, less harmful, methods of parenting and help to redefine what is acceptable in terms of the punishment of children.”

### **2. Project initiation document**

The Bill is available here:

[http://www.parliament.scot/Children%20\(Equal%20Protection%20from%20Assault\)%20\(Scotland\)%20Bill/SPBill38S052018.pdf](http://www.parliament.scot/Children%20(Equal%20Protection%20from%20Assault)%20(Scotland)%20Bill/SPBill38S052018.pdf)

Bill documents: <http://www.parliament.scot/parliamentarybusiness/Bills/109156.aspx>

### **3. Initiating department**

Mr John Finnie MSP

Member’s Bill

### **4. Policy aims**

#### **What the Bill is trying to achieve**

The Bill aims to end the physical punishment of children by parents and others caring for or in charge of children.

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<sup>37</sup> <http://www.parliament.scot/parliamentarybusiness/Bills/109156.aspx>

Legislation will give children equal protection from assault by abolishing the common law right of parents or others caring for or in charge of children to use physical force to discipline a child.<sup>38</sup>

A person charged with assault of a child will no longer have the defence that the use of force constituted “reasonable punishment” or “justifiable assault.”

### **What are the expected outcomes**

A change to the law will ensure that all children and young people have equal right to protection from assault as adults, thereby promoting and safeguarding children’s health and wellbeing and realising their human rights.

It is anticipated that the change to the law will drive behaviour change in Scotland, bringing it into line with practice elsewhere in Europe and across the world.

It is expected that the Bill will prompt parents and others in using other, less harmful, methods of parenting and help to redefine what is acceptable in terms of punishment of children.

### **Timetable**

Not known.

**Date 25/09/2018**

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

**Signature**

**John Finnie MSP**

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<sup>38</sup> Common law provides adults with protection from assault, whether or not actual injury is inflicted. There must be criminal intent (an accidental injury does not amount to assault). An assault can be direct or indirect and could include threatening gestures that induce fear.

## CRWIA Stage 1

### Screening: key questions

#### **1. What aspects of the policy/measure will affect children and young people up to the age of 18?**

The Bill will ensure that all children and young people under the age of 16 have equal protection from assault under the law as adults.

The Bill takes into account that the articles of the United Nations Convention on the Rights of the Child (UNCRC) and the Getting it Right for Every Child (GIRFEC) wellbeing indicators<sup>39</sup> apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

#### **2. What likely impact - direct or indirect - will the policy/measure have on children and young people?**

The Bill will ensure that all children and young people have equal protection from assault under the law as adults and therefore they will be better protected, their rights respected and their wellbeing supported.

The Bill and the ensuing legislation will have a positive impact on societal attitudes to the physical punishment of children and young people.

#### **3. Are there particular groups of children and young people who are more likely to be affected than others?**

The Bill will affect the rights and wellbeing of all children and young people under the age of 16 in Scotland – from the youngest children to those aged 15 years. Evidence from Scotland and internationally has identified that younger children and boys have an increased risk of physical punishment.<sup>40 41</sup>

The Bill would eliminate age discrimination in terms of children having equal protection under the law as adults and would protect all children including those with protected characteristics as outlined in the Equality Act 2010 (race, disability, sex, gender re-assignment, age, religion, belief and sexual orientation).

#### **4. Who else have you involved in your deliberations?**

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<sup>39</sup> Scottish Government. <http://www.gov.scot/Topics/People/Young-People/gettingitright/wellbeing>

<sup>40</sup> Heilmann, A., Kelly, Y. and Watt, R.G. (2015) Equally protected? a review of the evidence on the physical punishment of children. London: NSPCC

<sup>41</sup> Treanor, M (2017) SUII seminar 4: Measuring the progress of children's rights in Scotland <https://togetherscotland.wordpress.com/2017/05/31/suii-seminar-4-measuring-the-progress-of-childrens-rights-in-scotland/>

John Finnie MSP's draft proposal, for a bill to give children equal protection from assault was lodged on the 11 May 2017 and was accompanied by a consultation document, prepared with the assistance of the NGBU. The consultation exercise was run by John Finnie's parliamentary office and ran from 12 May 2017 to 4 August 2017. The consultation document and the summary of consultation responses are available on the Parliament's website.<sup>42</sup> In total 660 responses to the consultation were received.

The CRWIA was developed using the documents produced for the draft proposal for the bill to give children equal protection from assault, including responses to the consultation undertaken in 2017. It also draws on a wide range of evidence produced on children's equal protection from assault and physical punishment from Scotland, the UK and internationally.

#### **5. Will this require a CRWIA?**

It was identified that it would be beneficial to have a CRWIA although this is a Member's Bill.

This CRWIA has therefore been undertaken by the office of John Finnie MSP as a Member's Bill which directly impacts on the rights and wellbeing of children and young people.

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<sup>42</sup> Proposed Children (Equal Protection from Assault Bill  
<http://www.parliament.scot/parliamentarybusiness/Bills/104602.aspx>

## CRWIA Stage 2 Scoping - key questions

### 1. What children's rights are likely to be affected by the Bill

The United Nations Committee on the Rights of the Child has consistently stated that all forms of violence against children are unacceptable.<sup>43</sup> The Committee is unequivocal that the physical or corporal punishment of children violates children's rights as outlined in the United Nations Convention on the Rights of the Child (UNCRC).<sup>44</sup>

Changing the law would ensure that Scotland meets the UNCRC's international standards, specifically UNCRC articles 19 and 37 which focus on protecting children from violence and protection from torture or other cruel, inhuman or degrading treatment or punishment. In addition, articles relating to the general principles of the UNCRC -- best interests of the child (article 3), the child's right to life, survival and maximum development (article 6) and the child's right to be heard (article 12) underpin the Bill as does article 5 on parental guidance.

This is not an exhaustive list as all human rights, including UNCRC rights, are 'indivisible, interdependent and interrelated' – and the enjoyment of one right depends on the fulfilment of other rights.<sup>45</sup>

#### Parents as defenders of children's rights

The UNCRC has a strong emphasis on the role of parents, recognising that parents and carers have a major role as defenders of children's rights.<sup>46</sup> This is reflected in the Preamble to the UNCRC and in its articles, specifically, the role of state parties in ensuring the protection and care of a child's wellbeing, taking into account the rights and duties of parents and carers (article 3(2)) and article 5 on parental guidance.

The UN Committee on the Rights of the Child's General Comment no.8 highlights that state parties should respect the responsibilities, rights and duties of parents (article 5) but this "leaves no room for justification of violent or other cruel or degrading forms of discipline".<sup>47</sup>

#### Relevant articles<sup>48</sup>

##### Article 19: Protection from violence, abuse and neglect

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

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<sup>43</sup> CRC/C/GC/13

<sup>44</sup> CRC/C/GC/8

<sup>45</sup> UNICEF [https://www.unicef.org/crc/index\\_30196.html](https://www.unicef.org/crc/index_30196.html)

<sup>46</sup> Together (2018) Parenting and the United Nations Convention on the Rights of the Child [http://www.parentingacrossscotland.org/media/1402/uncrc\\_parenting\\_23-04-2018\\_final.pdf](http://www.parentingacrossscotland.org/media/1402/uncrc_parenting_23-04-2018_final.pdf)

<sup>47</sup> CRC/C/GC/8: Para 28

<sup>48</sup> Convention on the Rights of the Child <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

**Article 37: Protection from inhuman and degrading treatment**

“(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. “

**Article 3: Best interests of the child**

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.”

**Article 5: Parental guidance**

“States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”

**Article 6: Survival and development**

“1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.”

**Article 12: Right to be heard**

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

**General Comments**

The UN Committee on the Rights of the Child has produced general comments which set out best practice, exploring areas of children’s rights in more depth.

There are two which are directly relevant to the Bill, General Comments 8 and 13:

- **General Comment 8:** The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment<sup>49</sup>

The UN Committee issued this general comment to:

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<sup>49</sup> CRC/C/GC/8

“highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take.” (para 2)

- **General Comment 13:** The right of the child to freedom from all forms of violence<sup>50</sup>

“This general comment is based on fundamental assumptions and observations including:

(a) No violence against children is justifiable; all violence against children is preventable” (Report of the independent expert for the United Nations study on violence against children (A/61/299), para. 1.)

(b) A child rights-based approach to child caregiving and protection requires a paradigm shift towards respecting and promoting the human dignity and the physical and psychological integrity of children as rights-bearing individuals rather than perceiving them primarily as “victims”;

(c) The concept of dignity requires that every child is recognized, respected and protected as a rights holder and as a unique and valuable human being with an individual personality, distinct needs, interests and privacy;

(d) The principle of the rule of law should apply fully to children as it does to adults;

(e) Children’s rights to be heard and to have their views given due weight must be respected systematically in all decision-making processes, and their empowerment and participation should be central to child caregiving and protection strategies and programmes.” (para 3).

## **European Convention on Human Rights (ECHR)**

The European Convention on Human Rights is also relevant, specifically:

### **Article 3: Prohibition of torture**

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

### **Article 8: Right to respect for private and family life**

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”<sup>51</sup>

A legal opinion written by a senior legal solicitor and advocate, Janys Scott QC, and commissioned by Clan ChildLaw, an advocacy and legal service for children, on behalf of the Children Rights Strategic Litigation Working Group on Equal Protection, has highlighted the

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<sup>50</sup> CRC/C/GC/13

<sup>51</sup> European Convention on Human Rights [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)



legal reasons to support consideration of the law on physical punishment, taking into account Articles 3 and 8 of the European Convention on Human Rights and the UNCRC.<sup>52</sup>

## **2. How will the Bill affect children’s wellbeing as defined by the wellbeing indicators?**

Eight wellbeing indicators underpin the Scottish Government’s Getting it Right for Every Child (GIRFEC) approach: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included.<sup>53</sup>

The Bill will impact across the range of wellbeing indicators, specifically:

- Safe: protected from abuse, neglect or harm at home, at school and in the community
- Healthy: having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make health and safe choices
- Achieving: being supported and guided in learning and in the development of skills, confidence and self-esteem, at home, in school and in the community.
- Nurtured: having a nurturing place to live in a family setting, with additional help if needed, or, where this is not possible, in a suitable care setting.
- Respected: having the opportunity, along with carers to be heard and involved in decisions that affect them.

These wellbeing indicators are relevant when considering the evidence from a 2015 review of international evidence, commissioned by NSPCC Scotland, Children 1st, Barnardo’s Scotland and the Children and Young People’s Commissioner Scotland, which drew attention to findings from 98 international studies which identified the detrimental consequences of physical punishment.<sup>54</sup>

## **3. How many children and young people are likely to be affected by the policy**

All children and young people under the age of 16 years in Scotland will be directly affected by the Bill.

Although the UNCRC applies to all children under the age of 18 years, the defence of reasonable chastisement under Section 51 of the Criminal Justice (Scotland) Act 2003 is applicable to children and young people under the age of 16 years.

It is not known precisely how many children and young people currently experience any form of physical punishment in Scotland and are therefore likely to be directly and immediately affected

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<sup>52</sup> Scott, J (2017) Opinion of Senior Counsel re the Legality of Scots Law on the Physical Punishment of Children [http://www.togetherscotland.org.uk/pdfs/Legal\\_Opinion\\_Janys\\_Scott\\_QC.pdf](http://www.togetherscotland.org.uk/pdfs/Legal_Opinion_Janys_Scott_QC.pdf)

<sup>53</sup> Getting it Right for Every Child <http://www.gov.scot/Topics/People/Young-People/gettingitright/wellbeing>

<sup>54</sup> Heilmann, A., Kelly, Y. and Watt, R.G. (2015) Equally protected? a review of the evidence on the physical punishment of children. London: NSPCC

by the legislation (see research evidence below). The Bill has the benefit of giving clarity to the current situation so that all children and young people will be equally protected.

#### **4. What research evidence is available?**

A review of international evidence shows that the use of physical punishment has decreased in many countries, including Scotland and across the UK. Physical punishment has become less acceptable with the majority of parents expressing 'highly ambivalent and negative feelings about its use' (2015:7).<sup>55</sup>

Two major surveys of children and childhood have considered the use of physical punishment in Scotland, the Growing up in Scotland (GUS) study and the Millennium Cohort Study.

In the most recent 2012-2013 data from GUS, over half of all children aged 7 and 8 years who were surveyed reported that they were smacked.<sup>56</sup>

The GUS data identified that:

- 58% of parents stated that they used physical punishment with children aged 5 and 48% stated that they used physical punishment with children aged 7.<sup>57</sup>

A UK wide survey, the Millennium Cohort Study, in its 2006 survey of 1,814 families in Scotland, found that:

- Smacking was not commonly used as punishment with 43% of mothers stating that "they never smack their children when naughty, and a further 45% said that they do so rarely".
- Those who reported smacking their children when naughty at least some of the time was "lower in Scotland (57%) than in Northern Ireland (65%), but higher than in Wales (51%)".<sup>58</sup>

#### **5. Have there been any public or stakeholder consultations on the policy measure?**

John Finnie MSP's draft proposal for a bill to give children equal protection from assault was lodged on the 11 May 2017.

The draft proposal was accompanied by a consultation document, prepared with the assistance of the NGBU. The consultation exercise was run by John Finnie's parliamentary office. The consultation period ran from 12 May 2017 to 4 August 2017. The consultation document and the

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<sup>55</sup> Heilmann, A., Kelly, Y. and Watt, R.G. (2015) Equally protected? a review of the evidence on the physical punishment of children. London: NSPCC

<sup>56</sup> Treanor, M (2017) SUII seminar 4: Measuring the progress of children's rights in Scotland <https://togetherscotland.wordpress.com/2017/05/31/suii-seminar-4-measuring-the-progress-of-childrens-rights-in-scotland/>

<sup>57</sup> Growing up in Scotland <https://growingupinScotland.org.uk/publications>

<sup>58</sup> Sullivan, A and Dex, S (2009) Millennium Cohort Study Sweep 3 Scotland <http://www.gov.scot/Publications/2009/12/08092310/7> (see 4.10)

summary of consultation responses are available on the Parliament's website.<sup>59</sup> In total, 660 responses were received.

### **Organisational responses**

- There were 84 responses received from organisations (13%)
- 78 (93%) were in favour of legal reform (3 of these organisations were partially supportive of the proposal)
- 6 (7%) were fully opposed to the proposal.

### **Individual responses**

- There were 576 individual responses:
- 493 (75%) responses were supportive of the proposal
- 166 (25%) responses were opposed to the proposal.

### **Views of children and young people**

The Scottish Youth Parliament undertook a consultation with young people aged 12 to 25 in the development of its 'Lead the Way (2016-21)' manifesto and secured 72,744 responses. As a result, one of its resulting manifesto commitments is that "All physical assault against children should be illegal". The majority of respondents, 82% of the Scottish Youth Parliament membership, were in agreement.

### **Responses from schools**

Eight responses were received from a school in East Lothian with six out of a total of eight pupils supporting the proposal and two opposed. A class from a school in Edinburgh produced a video highlighting the views of children.<sup>60</sup>

## **6. Has there been any estimate of the resource implications of the policy/measure**

See Financial Memorandum.

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<sup>59</sup> Proposed Equal Protection from Assault (Scotland) Bill  
<http://www.parliament.scot/parliamentarybusiness/Bills/104602.aspx>

<sup>60</sup> <https://www.youtube.com/watch?v=iReMsKrwxs&t=>

## **CRWIA Stage 3: Data collection, evidence gathering, involvement of/consultation with stakeholder groups**

### **1. What does the evidence tell you?**

#### **Consultation document on proposal for a Bill**

The consultation document produced for the Scottish Parliament consultation on equal protection for children drew on a review of international evidence as well as a range of other evidence and current policy.<sup>61</sup> The consultation document highlights that attitudes and social norms in Scotland have changed significantly over the last thirty or forty years. It summarises the case for legislative change, identifying the relevance of international evidence, the minority status of Scotland in not banning physical punishment, international obligations that Scotland should be meeting, including the UNCRC, and the increasing consensus by parents, children and young people that children have the right to equal protection.

#### **Reviews of international evidence**

A 2015 review of international evidence, 'Equally Protected? A review of the evidence on the physical punishment of children', commissioned by NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner Scotland, analysed evidence from 98 international studies.<sup>62</sup> The review found that the prevalence of the use of physical punishment was in decline and that physical punishment was now less acceptable, drawing on Scottish and UK data.

This, along with a previous review on the physical punishment of children published in Northern Ireland in 2008<sup>63</sup>, identified the following key messages related to physical punishment:

- reliable evidence that physical punishment was associated with negative outcomes including an increased risk in childhood aggression and antisocial behaviour
- physical punishment had an effect on children's emotional and mental health, including symptoms of depression and anxiety and contributing to reduced self-esteem in later life
- physical punishment was related to an increased risk of children experiencing child maltreatment and abuse
- the majority of studies in the review that considered the impact of warm, loving family relationships identified that this did not mitigate the negative effects of physical punishment.

A further recent study by Gershoff and Grogan-Taylor found that there was a relationship between physical punishment and poor behaviour.<sup>64</sup> The study found that parents who use physical punishment were likely to make problem behaviour worse. Overall, the study found that

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<sup>61</sup> Children (Equal Protection from Assault) Scotland Bill (May 2017)

[http://www.parliament.scot/S5MembersBills/John\\_Finnie\\_Final\\_Consultation\\_Document\\_pdf.pdf](http://www.parliament.scot/S5MembersBills/John_Finnie_Final_Consultation_Document_pdf.pdf)

<sup>62</sup> Heilmann, A., Kelly, Y. and Watt, R.G. (2015) Equally protected? a review of the evidence on the physical punishment of children. London: NSPCC

<sup>63</sup> Bunting, L., Webb M. A. and Healy, J. (2008) The 'smacking debate in Northern Ireland' – Messages from Research [http://dera.ioe.ac.uk/11059/1/SmackingDebateNISummary\\_wdf63282.pdf](http://dera.ioe.ac.uk/11059/1/SmackingDebateNISummary_wdf63282.pdf)

<sup>64</sup> Gershoff and Grogan-Kaylor (2016) Spanking and Child Outcomes: Old Controversies and Meta-Analysis

there was no evidence that physical punishment had a positive impact on children with evidence indicating that it does harm to children and young people.

### **Children and young people's views**

There is evidence from children and young people that they believe there should be better protection for children and that physical punishment is harmful to the wellbeing of children.

The Scottish Youth Parliament undertook a consultation with young people aged 12 to 25 to develop its 'Lead the Way (2016-21)' manifesto with 72,744 responses.<sup>65</sup> The majority of respondents, 82%, were in agreement that physical assault against children should be illegal and this has become one of its manifesto commitments.

A 2016 survey of young people's views from a Scottish-wide survey, further analysed by the Children and Young People's Commissioner Scotland, identified that the majority of young people surveyed thought that alternatives should be found to 'smacking' or hitting of children and that physical punishment was harmful to children.<sup>66</sup>

Children and young people spoke to Cabinet Ministers about physical punishment at the Scottish Government's Cabinet meeting with children and young people in February 2017. They urged the Scottish Government to support a change in the law. The Scottish Government in its report to young people from this meeting said that they supported a change in the law.<sup>67</sup>

Children 1<sup>st</sup> and the Children's Parliament produced videos about children's views on family life.<sup>68</sup> Children talk about the importance of activities with their parents and the importance of respect. Children did not like parents shouting, swearing calling them names or hitting them. They did see that discipline was necessary.

### **Consultation with stakeholders' groups**

A consultation exercise on the proposal for the Bill was run by John Finnie's parliamentary office in 2017. The consultation document and the summary of consultation responses are available on the Parliament's website.<sup>69</sup> In total, 660 responses were received. A majority of those who responded (organisations and individuals), 493 or 75% were supportive. A minority of respondents, 166 or 25%, including six organisations, were opposed to the Bill.

### **Organisational responses**

- There were 84 responses received from organisations (13%).

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<sup>65</sup> Scottish Youth Parliament, Lead the Way Scottish Youth Parliament Manifesto 2016-21 [https://d3n8a8pro7vhmx.cloudfront.net/scottishyouthparliament/pages/283/attachments/original/1457781662/Lead\\_The\\_Way\\_Manifesto.pdf?1457781662](https://d3n8a8pro7vhmx.cloudfront.net/scottishyouthparliament/pages/283/attachments/original/1457781662/Lead_The_Way_Manifesto.pdf?1457781662)

<sup>66</sup> Children and Young People's Commissioner Scotland (2017) Young People's Views on Physical Punishment: Summary findings from the Young People in Scotland Survey 2016 <https://www.cypcs.org.uk/ufiles/Summary-findings-physical-punishment-June-2017-.pdf>

<sup>67</sup> Actions agreed at the Cabinet Meeting with Young People 28. February.17 Progress Report Children and Young People's Summary <http://www.gov.scot/Resource/0053/00531253.pdf>

<sup>68</sup> Children's Parliament/Children 1<sup>st</sup> <https://www.childrensparliament.org.uk/our-work/past-work/pushing-the-boundaries/>

<sup>69</sup> Proposed Equal Protection from Assault (Scotland) Bill <http://www.parliament.scot/parliamentarybusiness/Bills/104602.aspx>

Of these organisational responses:

- 78 (93%) were in favour of legal reform (3 of these organisations were partially supportive of the proposal)
- 6 (7%) were fully opposed to the proposal.

The organisations that were fully supportive included: voluntary organisations, parenting groups, local authorities, human rights organisations, health bodies including NHS Scotland, universities, police and legal groups and equality groups.

### **Individual responses**

There were 576 individual responses:

- 493 (75%) responses were supportive of the proposal
- 166 (25%) responses were opposed to the proposal.

### **Organisations and professional bodies**

The current and previous Children and Young People's Commissioners in Scotland have consistently spoken out about the lack of protection for children in Scotland.<sup>70 71</sup>

Leading non-governmental organisations, including Children 1<sup>st</sup>, NSPCC Scotland, Barnardo's Scotland and Children 1<sup>st</sup> have spoken out against the current legal position.<sup>72</sup> Professional bodies including the Scottish Directors of Public Health Group and the Royal College of Paediatrics and Child Health support a change in the law. Other organisations which are supportive of a change in the law including the Police Violence Reduction Unit, the Church of Scotland, Social Work Scotland and the Royal College of Nursing.

The Scottish NGO children's rights membership organisation, Together (the Scottish Alliance for Children's Rights), which has over 380 voluntary sector members, has consistently stated that the continuing legality of physical punishment is one which Scotland needs to address if it is to fully realise children's rights. Together has profiled the lack of equal protection in all its annual State of Children's Rights reports.<sup>73</sup>

Developed by a group of 23 public and civil society organisations, Scotland's National Action Plan for Human Rights (SNAP) for the period 2013- 2017, states that violence against children should be a priority for change and that the defence of "justifiable assault" should be repealed.<sup>74</sup>

In addition, individual testimonies have been published by adults reflecting on childhood experiences and the negative impact of physical punishment on their lives.<sup>75 76</sup>

### **Evidence from elsewhere on impact of change in law**

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<sup>70</sup> Commissioner criticises Scottish attitudes to smacking (July 2017) <https://www.bbc.co.uk/news/uk-scotland-40618330>

<sup>71</sup> Children's Commissioner Tam Baillie calls for smacking ban <https://www.bbc.co.uk/news/uk-scotland-39608086>

<sup>72</sup> See consultation responses to the Proposed Equal Protection from Assault (Scotland) Bill <http://www.parliament.scot/parliamentarybusiness/Bills/104602.aspx>

<sup>73</sup> Together, State of Children's Rights Reports <http://www.togetherscotland.org.uk/resources-and-networks/state-of-childrens-rights-reports/>

<sup>74</sup> Scottish Human Rights Commission (2013) Scotland's National Action Plan for Human Rights <http://www.snaprights.info/>

<sup>75</sup> See for example <https://bellacaledonia.org.uk/2017/10/10/justifiable-assault/>

<sup>76</sup> <https://www.holyrood.com/articles/comment/smacking-was-part-continuum-violence-me>

Evidence from other countries shows that there is no indication that a change in the law to ban physical punishment has led to any significant rise in prosecutions or convictions.<sup>77</sup> These studies indicate that there is some evidence that these changes led to increased reporting of alleged offences, highlighting the need to support parents and carers in finding alternatives to using physical punishment.

The New Zealand Police authority has reviewed relevant police activity in New Zealand following the enactment of the Crime (Substituted Section 59) Amendment Act 2007 which removed the legal defence of "reasonable force" for parents prosecuted for assault on their children. The final review, which covered the period from December 2011 to June 2012, found that results for the eleventh review since enactment were consistent with previous reviews.<sup>78</sup> There was a decrease in events attended by police in this period and of the events involving 'smacking' none resulted in prosecution. Overall, there were a total of ten prosecutions for 'smacking' in the period between enactment and 2012.

## **2. What further data or evidence is required?**

No further data or evidence is required to progress the Bill. Further data and evidence will be required to monitor and review implementation of the legislation.

## **3. Has there been any consultation on the development of the proposal?**

A public consultation exercise was run by John Finnie's parliamentary office. The consultation period ran from 12 May 2017 to 4 August 2017. In total, 660 responses were received. The consultation document and the summary of consultation responses are available on the Parliament's website.<sup>79</sup>

## **4. Should children and young people be further involved in the development of the policy? Are there particular groups of children and young people whose views should be sought?**

Evidence from children and young people should be sought by the lead Scottish Parliament committee during the stages of the Bill. It should take account of the evidence provided by children and young people and the organisations that support them during the consultation on

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<sup>77</sup> Boyson, R., Thorpe, L (ed) (2002) Equal Protection for Children: An overview of the experience of countries that accord children full legal protection from physical punishment. London: National Society for the Prevention of Cruelty to Children

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

Council of Europe (2007) Abolishing corporal punishment of children: Questions and Answers

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

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

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

<sup>78</sup> New Zealand Police (2013) Final review of the Crimes (Substituted Section 59) Amendment Act 2007

<http://www.police.govt.nz/sites/default/files/resources/other-reports/11th-review-section-59.pdf>

<sup>79</sup> Proposed Equal Protection from Assault (Scotland) Bill

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

the Bill's proposal (for example, the Scottish Youth Parliament and Children's Parliament) and by other organisations working with children and young people.

Children and young people should be consulted on the implementation of the legislation and the content of resources produced to raise awareness and provide information for the public.

**5. Should other stakeholders and experts be further involved in the development of this policy?**

As part of the progress of the Bill, evidence should be sought from organisations and experts who can contribute their views and expertise.

Prior to enactment, a working group or similar should be established to bring together key stakeholders such as Police, Crown Office and Procurator Fiscal Services (COPFS), Social Work, Health Visitors, NGOs and representation from parents and children and young people to consider how the legislation will be implemented.



## **CRWIA Stage 4: Assessing the impact and presenting options – key questions**

### **1. What likely impact will the policy have on children’s rights?**

#### **Positive impact on children’s rights**

The Bill will have a positive impact on children’s rights and will advance the realisation of children’s rights in Scotland.

The Bill complies with the provisions of the UNCRC and other human rights obligations to abolish all forms of physical punishment. It makes changes recommended by the UN Committee on the Rights of the Child in its concluding observations for 2016<sup>80</sup>.

It also will comply with the observations and recommendations of other human rights bodies<sup>81</sup> which have criticised the UK and the devolved nations on the current position on physical punishment including:

- the Universal Periodic Review of Human Rights undertaken by the UN Human Rights Council (2017)<sup>82</sup>
- the Human Rights Committee of the International Covenant on Civil and Political Rights (2015)<sup>83</sup>
- the Committee for the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (2013)<sup>84</sup>
- Committee for the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)<sup>85</sup>

#### **Negative or neutral impact on children’s rights**

There is not a negative or neutral impact on children’s rights. The Bill will not reverse the existing rights of children or require mitigating measures to be put in place. It contributes to policies and measures being taken forward by the Scottish Government to promote children’s rights and wellbeing including the government’s duties in the Children and Young People (Scotland) Act 2014.

### **2. How will the policy/measure contribute to the wellbeing of children and young people?**

#### **Scottish Government approach to wellbeing**

Approaches to securing children’s wellbeing are at the centre of current Scottish Government strategies. The Scottish Government’s approach to the wellbeing of children and young people

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<sup>80</sup> CRC/C/GBR/CO/5

<sup>81</sup> See Appendix 2 for summary of international recommendations, Together (2017) Equal Protection from Assault for Children Briefing - July 2017

<http://www.togetherscotland.org.uk/pdfs/Member%20briefing%20on%20Equal%20Protection.pdf>

<sup>82</sup> A/HRC/WG.6/27/L.7

<sup>83</sup> CCPR/C/GBR/CO/7

<sup>84</sup> CEDAW/C/GBR/CO/7

<sup>85</sup> CAT/C/GBR/CO/5

is underpinned by Getting it Right for Every Child<sup>86</sup>, now enshrined in the Children and Young People (Scotland) Act 2014.

The Scottish Government has stated its national commitment to children and young people and to making Scotland ‘the best place to grow up’ through its programme of legislation and policy measures such as the Children and Young People (Scotland) Act 2014<sup>87</sup>, Getting it Right for Every Child<sup>88</sup> and Equally Safe: A Delivery Plan for Scotland’s Strategy to Prevent Violence Against Women and Girls<sup>89</sup> which is focused on prevention and challenging the notion that violence is every acceptable. The Scottish Government stated its support for the proposal for equal protection in its programme for 2017-18.<sup>90</sup>

### **3. Are some children and young people more likely to be affected than others?**

The Bill will affect the rights and wellbeing of all children and young people under the age of 16 in Scotland – from the youngest children to those aged 15 years. Evidence from Scotland and internationally has identified that younger children and boys have an increased risk of physical punishment.<sup>91 92</sup>

The Bill would eliminate age discrimination in terms of children having equal protection under the law as adults and would protect all children including those with protected characteristics as outlined in the Equality Act 2010 (race, disability, sex, gender re-assignment, age, religion, belief and sexual orientation).

### **4. Resource implications of policy modification or mitigation**

See Financial memorandum.

### **5. How does the policy/measure promote or impede the implementation of the UNCRC and other relevant human rights standards?**

#### **Promoting human rights standards**

The Bill will promote the implementation of the UNCRC and other relevant human rights standards by bringing about legislation which will provide children with the same legal protection from assault as adults, therefore ensuring that the physical punishment of children by parents and others caring for children will no longer be viewed as appropriate.

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<sup>86</sup> Getting it Right for Every Child <http://www.gov.scot/Topics/People/Young-People/gettingitright>

<sup>87</sup> Children and Young People (Scotland) Act 2014 <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

<sup>88</sup> Getting it Right for Every Child <http://www.gov.scot/Publications/2017/09/8468/9>

<sup>89</sup> Equally Safe- A Delivery Plan for Scotland’s Strategy to Prevent Violence Against Women and Girls (2017)

<http://www.gov.scot/Publications/2017/11/5647>

<sup>90</sup> A Nation with Ambition: The Government’s Programme for Scotland 2017-18 (2017)

<http://www.gov.scot/Publications/2017/09/8468/9>

<sup>91</sup> Heilmann, A., Kelly, Y. and Watt, R.G. (2015) Equally protected? a review of the evidence on the physical punishment of children. London: NSPCC

<sup>92</sup> Treanor, M (2017) SUII seminar 4: Measuring the progress of children’s rights in Scotland

<https://togetherscotland.wordpress.com/2017/05/31/suii-seminar-4-measuring-the-progress-of-childrens-rights-in-scotland/>

The United Nations Committee on the Rights of the Child is unequivocal: physical punishment should be prohibited. The lack of equal protection under the law for children in the UK has been consistently criticised by the UN Committee on the Rights of the Child in its concluding observations on the UK.<sup>93</sup> In responding to the UK's most recent report, the UN Committee concluded that the UK should:

“prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences...”<sup>94</sup>

### **Current position in Scotland, UK, Europe and internationally**

In Scotland, the current legislation relating to the physical punishment of children, the Criminal Justice (Scotland) Act 2003, includes a defence of ‘justifiable assault’ which parents and carers can use, taking into account factors such as age, duration, nature of what was done and effect on a child.<sup>95</sup>

The provision for a defence of “justifiable assault” has been much criticised by the United Nations, the Council of Europe and the European Union and the Council of Europe.<sup>96</sup> The European Court of Human Rights has repeatedly criticised the UK's position including in its judgement on *A. versus the UK*.<sup>97</sup>

The UK is one of only six states in the European Union which retains the physical punishment of children.<sup>98</sup> Fifty-three countries across the world have prohibited physical punishment of children with another 56 stating a commitment to full prohibition according to the Global Initiative to End All Corporal Punishment of Children.<sup>99</sup>

The physical punishment of children is not outlawed in other parts of the UK. However, the Welsh Government undertook a consultation in early 2018 on the removal of the defence of reasonable punishment.<sup>100</sup> As a neighbouring country to the UK, Ireland abolished the common law defence of reasonable chastisement in 2015 and, according to early verbal feedback, has had a positive impact on both social work and policing by providing clarity on what is acceptable.

### **Promoting the implementation of the UNCRC**

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<sup>93</sup> UN Committee on the Rights of the Child (2016) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskHOj6VpDS%2f%2fJgg2Jxb9gncnUyUgbnuttBweOlyfyYPkBbwffitW2JurgBRuMMxZqnGgerUdpjij3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0GL>

<sup>94</sup> CRC/C/GBR/CO/5: Paras: 41(a).

<sup>95</sup> Scottish Government <http://www.gov.scot/Topics/Justice/law/17867/fm-children-root/fm-children-punishment>

<sup>96</sup> See Appendix 2 for summary of international recommendations, Together (2017) Equal Protection from Assault for Children Briefing - July 2017

<http://www.togetherscotland.org.uk/pdfs/Member%20briefing%20on%20Equal%20Protection.pdf>

<sup>97</sup> CRIN, Case of *A. v. The United Kingdom* (100/1997/884/1096) <https://www.crin.org/en/library/legal-database/v-united-kingdom-0>

<sup>98</sup> EU countries without a full prohibition on the physical punishment of children: Belgium, Czech Republic, France, Italy, Slovakia and the UK

<sup>99</sup> Global Initiative to End All Corporal Punishment of Children <http://www.endcorporalpunishment.org/>

<sup>100</sup> Welsh Government (2018) Legislative proposal to remove the defence of reasonable punishment <https://beta.gov.wales/legislative-proposal-remove-defence-reasonable-punishment>

The United Nations Committee on the Rights of the Child has recommended prohibition of all forms of physical punishment since it began examining states parties' reports. It defines corporal or physical punishment as:

“...any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading.”<sup>101</sup>

The United Nations Committee on the Rights of the Child also condemns other forms of punishment which are “cruel and degrading” whilst recognising more positive approaches to discipline by those caring for children.

### **Human rights treaty bodies**

Scotland has fallen behind international standards in giving children equal protection from assault. Other international human rights treaty bodies have criticised the legislative position across the UK.<sup>102 103</sup>

In 2017, seven countries (Including Ireland, Sweden and Estonia) criticised the UK’s failure to give children equal protection from violence as part of the UN’s Universal Periodic Review process.<sup>104</sup> The UK, including Scotland, has been found to be in breach of the European Social Charter by the European Committee of Social Rights on two occasions because of its continued acceptance of the defence of ‘justifiable assault’ for violence against children.<sup>105</sup>

### **European Convention on Human Rights (ECHR)**

A legal opinion written by a senior legal solicitor and advocate, Janys Scott QC, and commissioned by Clan ChildLaw, an advocacy and legal service for children, on behalf of the Children Rights Strategic Litigation Working Group on Equal Protection, has highlighted the legal reasons to support consideration of the law on physical punishment, taking into account

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<sup>101</sup> United Nations Committee on the Rights of the Child (2007) Forty-second session Geneva, 15 May-2 June 2006 General comment No. 8 (2006):

<http://www.refworld.org/docid/460bc7772.html>

<sup>102</sup> Including the Committees for the International Covenant on Civil and Political Rights (ICCPR), the Convention for the Elimination of Discrimination Against Women (CEDAW) and the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (UNCAT).

<http://www.togetherscotland.org.uk/pdfs/Member%20briefing%20on%20Equal%20Protection.pdf>

<sup>103</sup> See Appendix 2 for summary of international recommendations, Together (2017) Equal Protection from Assault for Children Briefing - July 2017

<http://www.togetherscotland.org.uk/pdfs/Member%20briefing%20on%20Equal%20Protection.pdf>

<sup>104</sup> Recommendations 134.193-134.199. Human Rights Council (2017) Report of the Working Group on the Universal Periodic Review <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/192/15/PDF/G1719215.pdf?OpenElement>

<sup>105</sup> Conclusions XIX-4-United Kingdom- Article 17

<http://hudoc.esc.coe.int/eng#%7B%22ESCDcIdentifier%22:%5B%22XIX-4/def/GBR/17//EN%22%5D%7D>

Articles 3 and 8 of the European Convention on Human Rights and the UNCRC.<sup>106</sup> It is pointed out in the legal opinion that Article 3 is absolute and any form of torture, inhuman or degrading treatment or punishment contravenes Article 3 of the ECHR.

This consideration of Article 8 states that “the state has a positive obligation to operate an administrative or legislative scheme to protect the right to respect for family life” (2017:13). Janys Scott QC goes on to state that:

“Given that in Scotland assault is a criminal offence, and the issue here is whether there should be a defence of “reasonable chastisement, it would be difficult to argue that there has been no interference with the rights of children.” (2017:13).

The author states that it has been shown that there are known alternative methods of disciplining children, there is evidence that physical punishment is harmful, and that corporal punishment is banned in other settings and asks if these changes and international standards on corporal punishment have reached the point where “the issue can no longer be treated as an area for the state’s discretion.” (2017:14).

### **UN Sustainable Development Goals**

In 2015, the First Minister of Scotland, Nicola Sturgeon, announced that Scotland would adopt the action plan for the UN Sustainable Development Goals (SDGs) and would commit to demonstrating how it will achieve these targets by 2030.<sup>107</sup> The First Minister’s statement emphasised that key parts of the SDGs were consistent with the National Performance Framework (now updated)<sup>108</sup> and Scotland’s National Action Plan on Human Rights<sup>109</sup>. The updated National Performance Framework includes a commitment that:

“We do all we can to ensure our children grow up in an atmosphere of happiness, love and understanding. We enhance their life chances through our early years provision and by supporting families when they need it. We ensure childhood is free from abuse, tobacco, alcohol, drugs, poverty and hunger. Our children are not left worried or isolated. We include and involve children in decisions about their lives and world, and protect their rights, dignity and wellbeing.”<sup>110</sup>

The UN Sustainable Development Goal 16.2 targets aims to “end abuse, exploitation, trafficking and all forms of torture and violence against children”.<sup>111</sup> The Global Partnership on Violence Against Children has been established to progress SDG Goal 16.2, including ending the physical punishment of children. It has 271 members worldwide with 20 pathfinding countries across the world who have committed to end violence against children.<sup>112</sup>

The High Level Global Conference on the Universal Prohibition of Corporal Punishment, held in June 2018 in Malta, produced a special report in 2018 which outlines progress to date in

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<sup>106</sup> Scott, J (2017) Opinion of Senior Counsel re the Legality of Scots Law on the Physical Punishment of Children [http://www.togetherscotland.org.uk/pdfs/Legal\\_Opinion\\_Janys\\_Scott\\_QC.pdf](http://www.togetherscotland.org.uk/pdfs/Legal_Opinion_Janys_Scott_QC.pdf)

<sup>107</sup> Leading the way in tackling inequality (2015) <https://news.gov.scot/news/leading-the-way-in-tackling-inequality>

<sup>108</sup> National Performance Framework <http://nationalperformance.gov.scot>

<sup>109</sup> Scotland’s National Action Plan on Human Rights <http://www.scottishhumanrights.com/actionplan>

<sup>110</sup> National Performance Framework <http://nationalperformance.gov.scot>

<sup>111</sup> Sustainable Development Goals <https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals>

<sup>112</sup> End Violence Against Children <http://www.end-violence.org>

achieving universal prohibition and elimination of corporal or physical punishment.<sup>113</sup> The report draws attention to how the new Sustainable Development Agenda 2030 provides impetus to this process.

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<sup>113</sup> Global Initiative to End All Corporal Punishment of Children & The President's Foundation for the Wellbeing of Society (2018) Working Towards Universal Prohibition of Corporal Punishment Special Progress Report 2018 <https://endcorporalpunishment.org/resources/global-progress-publications/special-progress-report-2018/>

## **STAGE 5 Recommendations, monitoring and review- key points**

### **1. Record your overall conclusions from the CRWIA**

The Children (Equal Protection from Assault) (Scotland) Bill will have a positive impact on all children and young people under the age of 16.

It will advance the realisation of children's rights and wellbeing in Scotland by giving children equal protection from assault by abolishing the common law right of parents (or others caring for or in charge of children) to use physical force to discipline a child. A person charged with assault of a child will no longer have the defence that the use of force constituted "reasonable punishment" or "justifiable assault."

The Bill supports the Scottish Government's commitment to making Scotland "the best place to grow up" through its programme of legislation and policy measures such as the Children and Young People (Scotland) Act 2014<sup>114</sup>, Getting it Right for Every Child<sup>115</sup> and Equally Safe: A Delivery Plan for Scotland's Strategy to Prevent Violence Against Women and Girls<sup>116</sup> which is focused on prevention and challenging the notion that violence is every acceptable.

The Bill remedies Scotland's current violation of the UNCRC and ensures compatibility in relation to physical punishment. It makes changes recommended by the UN Committee on the Rights of the Child in its concluding observations for 2016. It complies with other human rights obligations to abolish all forms of physical punishment.

### **2. Recommendations**

The Children (Equal Protection from Assault) (Scotland) Bill supports a national commitment to children and young people and their rights and wellbeing and will advance the rights and wellbeing of children and young people.

#### **Stages of the Bill**

Evidence from children and young people should be sought by the lead Scottish Parliament committee during the stages of the Bill. It should take account of the evidence provided by children and young people and the organisations that support them during the consultation on the Bill's proposal (for example, the Scottish Youth Parliament and Children's Parliament) and by other organisations working with children and young people.

Evidence should be also sought from organisations and experts who can contribute their views and expertise.

#### **Implementation of the Bill**

- It is recommended that there is a commitment to promoting public understanding and awareness of the Bill through an appropriate information and awareness campaign.

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<sup>114</sup> Children and Young People (Scotland) Act 2014 <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

<sup>115</sup> Getting it Right for Every Child <http://www.gov.scot/Publications/2017/09/8468/9>

<sup>116</sup> Equally Safe- A Delivery Plan for Scotland's Strategy to Prevent Violence Against Women and Girls (2017) <http://www.gov.scot/Publications/2017/11/5647>

- Children and young people should be consulted on the implementation of the legislation and the content of resources produced to raise awareness and provide information for the public.
- A working group or similar should be established to bring together key stakeholders such as Police, Crown Office and Procurator Fiscal Services (COPFS), Social Work, Health Visitors, NGOs and representation from parents and children and young people to consider how the legislation will be implemented.
- Support for parents and carers and members of the public should be publicised and be in place in order to provide advice and information on parenting and how to respond to incidents. This should take into account the capacity of current provision such as ParentLine.<sup>117</sup> It should also promote existing resources such as 'Ready Steady Baby', produced by NHS Health Scotland, which is given to every pregnant woman in Scotland and does not advocate physical punishment.<sup>118</sup>

The above actions would be in line with the recommendations of the UN Committee on the Rights of the Child. In its General Comment no. 8, the UN Committee states that: "implementation of the prohibition of all corporal punishment requires awareness-raising, guidance and training for those involved" and highlights that the "first purpose of law reform to prohibit corporal punishment of children within the family is prevention".<sup>119</sup>

The UN Committee therefore recommends public information programmes including awareness raising campaigns to promote positive approaches to child rearing and to combat any negative societal attitudes. It also recommends that there should be budgets allocated to implementing legislation and other measures to end violence against children.

The Council of Europe has produced a website resource for its members<sup>120</sup> which includes a repository of tools<sup>121</sup>. It brings together examples to help inform parents and carers and professionals and share initiatives and examples from across Council of Europe countries.

### **3. How will the policy/measure be monitored?**

Monitoring should include:

- Monitoring, gathering data and reporting on the impact of the legislation. Consideration should be given as to what monitoring, data and reporting will be helpful such as data from Social Work in relation to their statutory interventions, Police Scotland in relation to arrests and charges for parental assault on a child and from the Crown Office and Procurator Fiscal Service (COPFS) in relation to levels of prosecution for parental assault of children.
- Monitoring should include processes which gather children and young people's views and experiences as those of parents and carers.

<sup>117</sup> ParentLine <https://www.children1st.org.uk/help-for-families/parentline-scotland/>

<sup>118</sup> Ready Steady Baby <http://www.readysteadybaby.org.uk>

<sup>119</sup> CRC/C/GC/8\* para 38

<sup>120</sup> Council of Europe [https://www.coe.int/en/web/children/corporal-punishment#{"12441097":\[\]}\]](https://www.coe.int/en/web/children/corporal-punishment#{)

<sup>121</sup> Council of Europe <https://www.coe.int/en/web/children/repository-of-good-practices>



- International human rights bodies will undertake monitoring as part of their duties, reporting in their judgements, rulings and reports. The Scottish Government will contribute to UK reports.

#### **4. Date and agreed process for Child Rights and Wellbeing Impact Evaluation**

Arrangements and processes for evaluation should be put in place at the time of enactment in order to measure the impact of the changes in legislation.