Children (Equal Protection from Assault) (Scotland) Bill

Summary of Evidence

Introduction
The Children (Equal Protection from Assault) (Scotland) Bill is a Members’ Bill. It was introduced by John Finnie MSP to the Scottish Parliament on 6 September 2018.

The Committee launched its call for views on 2 November 2018. The deadline for responses was 25 January 2019.

The Committee received over 400 written submissions on the Bill, around 48 of which were from organisations. This paper summarises these submissions.

The Bill
The aim of the Bill is to help bring an end to the physical punishment of children by parents and others caring for, or in charge of, children.

The Children (Equal Protection from Assault) (Scotland) Bill abolishes the defence of ‘reasonable chastisement’ by repealing section 51 of the Criminal Justice (Scotland) Act 2003.

The effect of the Bill is that a person charged with assault of a child will no longer be: “entitled to claim that a use of physical force was justifiable on the basis that it was physical punishment administered in exercise of a parental right (or a right derived from having care or charge of a child)”.

‘Reasonable chastisement’ and ‘justifiable assault’ will no longer be able to be used as a defence in either criminal or civil proceedings. Children will therefore be given the same protection as adults.

If the Bill comes into effect, in order to secure a conviction, the prosecution will need to demonstrate there was intent to cause harm, and it is in the public interest to prosecute. According to the Explanatory Notes this will: “prevent trivial physical contact from being treated as assault.” In addition, the use of force in medical treatment or to remove a person from danger will not be treated as assault.

The Bill also places a duty upon Scottish Ministers to raise awareness about the effect of the Bill.

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1 The Bill documents are available at: https://parliament.scot/parliamentarybusiness/Bills/109156.aspx
2 Call for evidence: https://parliament.scot/parliamentarybusiness/CurrentCommittees/110066.aspx
4 Children (Equal Protection from Assault) (Scotland) Bill, Explanatory Notes (SP Bill 38-EN), page 1.
Support for the Bill

Those that gave their support for the Bill were primarily organisations. A total of 39 supported the Bill. Several individual responses also expressed support for the Bill.

Several organisations in support of the Bill stated that physical punishment of children is not acceptable and that retention of the defence of reasonable chastisement was contrary to Scotland’s commitment to human rights and ambition to be the best place for a child to grow up.

The Scottish Youth Parliament (SYP) wrote that it fully supports the Bill’s aim, stating: “it is unacceptable that the physical assault of children and young people can be justified in Scots law any longer.” The joint response from Barnardo’s Scotland, Children 1st and NSPCC Scotland (hereafter “Barnardo’s et al.”) wrote that the defence of justifiable assault: “is no longer defensible in a modern, progressive Scotland committed to valuing and upholding all our human rights.”

Scottish Child Law Centre stated that: “If Scotland is to meet international standards of human rights and children’s rights … and to achieve its aim to be a nation which promotes the best possible start for children in life, then it is of crucial importance that any legal defence or justification for acts of violence against children are removed.”

The two primary reasons for supporting the Bill (which will be discussed more fully later) were that at present adults and children do not have equal protection under the law and that physical punishment of children causes them both short and long-term harm.

In outlining its full support for the Bill, CLAN Child Law wrote that repealing section 51 of the Criminal Justice (Scotland) Act 2003 would ensure that: “children are given equal protection from assault in law.” Parenting Across Scotland stated that it was: “unfathomable to us that in Scotland the most vulnerable members of our society have less protection than its stronger and more powerful members.”

The National Deaf Children’s Society wrote that it supported the Bill as all children should not be: “smacked as this is a form of physical punishment.” UNICEF UK wrote in their submission that they consider corporal punishment as: “invariably degrading and therefore supports the aims and intentions of this Bill.”

The Infant Children and Young People’s Transformational Change Programme from at NHS Ayrshire and Arran outlined its support for the abolition of the defence of reasonable chastisement stating that there is: “clear evidence of its [physical punishment] harm.” The Faculty of Public Health described the Bill as a ‘necessary and important’ step in improving the health and wellbeing of Scotland’s children.

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In giving its support for the Bill, the Care Inspectorate noted that changing attitudes in the social care sector have already lead to legislation and regulations making it: “unacceptable for staff or carers of services regulated by the Care Inspectorate to smack children.” Overall, it welcomed the Bill as a ‘positive development’ for children in Scotland. Social Work Scotland also highlighted that: “Legislation has been key to bringing to an end corporal punishment in education and care settings; children’s equal protection at home is a congruent and necessary development.”

Zero Tolerance wrote of the positive messages about respect and healthy relationships the Bill will send out and that it will: “help reinforce attitudes that violence is not tolerated in Scotland. We are therefore supportive of the Bill’s aim to end the physical punishment of children by parents or carers.”

**Negative Impact of Physical Punishment**

The primary argument in support of the Bill was that the physical punishment of children is harmful to children, affecting both their physical and mental health, and has long-term impacts that last into adulthood. In addition, respondents stated it is ineffective as a means of discipline.

Published in 2015, ‘Equally Protected’ is a review of the international evidence on physical punishment of children jointly commissioned by Barnardo’s Scotland, Children 1st, NSPCC Scotland, and the Children and Young People’s Commissioner. In their joint submission to the Committee, Barnardo’s et al. highlighted the findings of the Equally Protected paper including: “strong and consistent evidence for a link between physical punishment and childhood aggression, and antisocial behaviour.” This finding was also highlighted by the Children and Young People’s Commissioner, Scotland (CYPCS) in their submission.

Other organisations also made references to the ‘Equally Protected’ paper. Together noted the report’s finding that physical punishment was related to an increase in depression and anxiety in children.

The Faculty of Health referred to evidence that physical punishment adversely affects children’s mental health and that: “childhood physical punishment is linked to adult aggression and antisocial behaviour, including aggression and sexual violence within intimate partner relationships.” The Scottish Academy wrote that there is: “strong and consistent evidence from good quality research that physical punishment is associated with increased childhood aggression and antisocial behaviour” stating that the nature of the studies and consistency of their findings suggested a causal link between physical punishment and increased aggression/antisocial behaviour.6

Barnardo’s et al. further noted the: “strong evidence for the harmful effects of childhood physical punishment on adult attitudes and behaviours.” Their response stated: “For example, individuals who were physically punished during childhood were more likely to engage in physical and verbal aggression with their spouses, were more controlling and were less able to take their spouse’s perspective.” This point was also made by Parenting Across Scotland.

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6 The Academy of Medical Royal Colleges and Faculties in Scotland is known as the “Scottish Academy”.

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Noting that physical punishment of children has been the subject of multiple peer reviewed studies, the Global Initiative to End All Corporal Punishment of Children (hereafter the “Global Initiative”) wrote: “these [studies] overwhelmingly find that smacking risks short and long-term damage to children and has strong associations with violence in later life, including domestic and sexual violence, criminality and mental and physical ill health.” NHS Greater Glasgow and Clyde also noted that the physical punishment of children is strongly associated substance misuse in adulthood.

In addition, the health board stated: “the evidence could not be clearer that the use of physical pain to discipline children is harmful (even in the context of high levels of maternal warmth), is associated with levels of violence in society and does not work in positively shaping a child’s behaviour.”

The SHRC noted that, not only does research demonstrate that physical punishment exacerbates problem behaviour, it also undermines the child/parent relationship. This was echoed in the response from Barnardo’s et al.:

“Best evidence confirms that physical punishment does not work as a disciplinary tool to address children’s difficult behaviour. Rather, it has been shown to worsen bad behaviour, increase aggression and can lead to escalating conflict between parent and child, undermining the crucial parent/child relationship.”

That physical punishment was ineffective and would likely worsen a child’s behaviour was also raised by COSLA; the Scottish Women’s Convention; the EHRC, the CYPCS, CELCIS and the Scottish Children’s Reporter Administration (SCRA).

Respondents also highlighted the risk that physical punishment can escalate, for example, Together wrote that: “permitting physical punishment … puts children at increased risk of more severe abuse and maltreatment.” Aberlour stated that: “it has been evidenced that escalation from mild smacking to serious assaults is an intrinsic feature of physical punishment”, with the Global Initiative stating the physical punishment - including mild punishment - carries an ‘inherent’ risk of escalation.

Barnardo’s et al. referred in their evidence to six different studies that all identify a link between physical punishment and the increased risk of severe physical violence or child maltreatment by parents. Scottish Women’s Aid (SWA) and Zero Tolerance also referred to these six studies, however, both respondents emphasised that they did not want to suggest that the physical punishment of children would inevitably escalate into abuse. For example, Zero Tolerance wrote: “We do not intend to suggest that the inevitable trajectory of physical punishment of children is child abuse.”

In addition, the SWA wrote that it would: “strongly caution against making definite and causal links between physical punishment in childhood and the perpetration of violence/abuse in adult intimate relationships.” As such, the SWA considered that the statement under paragraph 84 of the Policy Memorandum - that the Bill could help reduce instances of domestic abuse - to be ‘problematic.’ This concern was shared by Zero Tolerance which advised: “against making causal links between physical
punishment in childhood and the perpetration of abuse in adult intimate relationships.”

Equal Treatment
One of the most frequent arguments made by those in support of the Bill, is that children ought to have the same rights as adults. Respondents considered that the Bill would address the imbalance in the current legal system whereby children do not have the same protection from assault as adults. This disparity was frequently contrasted with the fact that children are more vulnerable than adults. The SYP argued that:

“Children and young people merit equal, if not greater, protection from physical punishment, and certainly not less protection. This can only be done through legislation … We must remove this abhorrent legal anomaly that allows people to hurt one of the most vulnerable sections of our society.”

The CYPCS stated that the: “starting point must be that a child has the same right as anyone else not to be assaulted”, arguing that, “the defence of a justifiable assault currently creates an unwarranted exception to that right.”

The Scottish Child Law Centre wrote that due to the existence of the defence of reasonable chastisement: “children are the only category of persons in Scotland against whom violence is explicitly permitted” with the SCRA stating: “there should be no difference between children and adults in the protection of the law in relation to physical assault.”

Zero Tolerance stated that as children are more vulnerable than adults, it is ‘imperative’ that they are afforded the same rights and protections. The vulnerability of children, and that they require equal or greater protection from violence than adults was also raised by Aberlour, the SHRC, the Scottish Women’s Convention, SWA, and the EHRC.

Rape Crisis Scotland questioned: “How can we work towards the vision of a ‘strong and flourishing Scotland where all individuals are equally safe and respected’ where our children, who are the most vulnerable and the most need of protection, are not equally safe, and not afforded the rights accorded to adults whose care they rely on.” This sentiment was echoed by Barnardo’s et al. “Scotland cannot consider itself the best place in the world to grow up whilst we continue to give our children less protection from assault under the law than adults.”

The Faculty of Public Health considered that the Bill will improve the human rights of children in Scotland: “as children will gain the same legal protection from assault that adults currently have”. In addition, Together highlighted that the United Nations Convention on the Rights of the Child is: “clear that children have the right to the same (if not stronger) protection from violence than adults, and that this should be reflected in law.”

In explaining why it had previously called on the Scottish Government to remove the defence of reasonable chastisement, the Church of Scotland stated that: “as a result of theological interpretation and a human rights perspective … it was decided that it
is right for the Church to support measures to enable equal protection for children, as well as adults.”

Individual respondents in favour of the Bill also stated that children should have the same rights as adults. Respondents argued that if there is no defence of justifiable assault for in cases involving two adults, then this should also be extended to children, particularly as they are more vulnerable. Numerous individual respondents not in support of the Bill argued that children are not the same as adults. This point will be discussed more fully, later in the summary.

The Royal College of Paediatrics and Child Health (RCPCH) wrote: “It is not legally justifiable to hit a spouse, an elderly relative, an adult with disability, or indeed adults with no particular vulnerability: we consider condoning the hitting of defenceless children to be an unacceptable legal anachronism.”

**Human Rights of Children**

Supporters of the Bill argued that it will protect the human rights of children and ensure that Scotland is compliant with international human rights treaties. The Scottish Child Law Centre described Scotland’s current position as ‘inadequate’, with multiple respondents stating that that Scotland is not meeting international standards in human rights, nor its obligations under treaties such as the United Nations Convention on the Rights of the Child (UNCRC).

The CYPCS stated that: “assaulting a child for the purpose of punishment is a breach of their human rights and can never be justified.” The Care Inspectorate considered that amending the law concerning the physical punishment of children: “is an essential further step to upholding children’s rights in Scotland”.

In addition, the EHRC stated: “the use of physical punishment also goes directly against several rights enshrined in international and European human rights law.” It went further to say: “Scotland is currently in violation of several international human rights treaties.”

The UNCRC, in particular Article 19 which concerns the rights of children to be protected from all forms of violence, was the most frequently referenced example of where Scotland was not meeting its international obligations.

That Scotland was not compliant with Article 19 was highlighted by: Barnardo’s et al., Parenting Across Scotland, the Scottish Women’s Convention, SWA, the SYP, NHS Tayside, the SCRA, the Scottish Academy, the Scottish Child Law Centre and Zero Tolerance.

NHS GGC wrote that, if passed, the legislation would uphold Article 19. with Children in Scotland stating in their response: “To be compliant/in line with the Convention it is clear that the defence of reasonable chastisement must be removed, and this Bill presents a clear opportunity to ensure that Scotland meets some of its obligations under article 19 of the UNCRC.”

The Scottish Child Law Centre also stated that: “Children in Scotland are currently not offered the protection guaranteed by Article 3 of the ECHR.” The CYPCS, Together and the SHRC also considered that at present Scotland is in breach of
Article 3 that: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Aberlour wrote that while part 7 of the Criminal Justice (Scotland) Act 2003 included:

“some protections and limitations as to what constitutes acceptable physical punishment of children, we believe it does not go far enough … the Scottish Government is duty bound to meet its obligations in relation to the European Convention of Human Rights (ECHR), specifically Article 3.”

The SYP wrote that in introducing this Bill: “Scotland would be in compliance with its international human rights obligations, setting a good example internationally and sending out a clear message that our society does not tolerate violence, and that we treat each other with dignity and respect.” The CYPCS argued that ending the physical punishment of children would send a ‘powerful message’ that Scotland is serious about protecting children’s rights.

Scotland was described by respondents including the SHRC, EHRC, Social Work Scotland and the SYP as ‘lagging’ behind internationally when it came to the issue of physical punishment of children. The Scottish Women’s Convention stated that the ‘vast number’ of other countries across the world which have banned physical punishment of children, are leaving Scotland behind.

The CYPCS, CELCIS and Together highlighted that 54 countries have a ban on physical punishment in all settings, with the SYP stating that Scotland is one of only five (now four) European Union member states that still permits the physical punishment of children.

“Scotland” Aberlour wrote, “is one of an increasingly diminishing number of countries” which has a legal defence of justifiable assault regarding the physical punishment of children. COSLA described Scotland as an ‘outlier’, arguing that the Bill would rectify Scotland’s position as one of the few European countries that allows some of physical punishment.

In addition, respondents highlighted that Scotland’s position on the physical punishment of children had been raised internationally human rights bodies. Particular reference was made to the 2016 concluding observations of the UNCRC Committee which called for the UK Government and devolved institutions to prohibit corporal punishment in the family, including the repeal of all relevant legal defences.

The Convention to Eliminate All Forms of Violence against Women (CEDAW) was mentioned by the CYPCS, Scottish Women’s Aid, Zero Tolerance and EHRC. The responses highlighted that in 2013 the UN Committee on the Elimination of Discrimination Against Women called on the UK and devolved governments to amend its legislation to prohibit corporal punishment.

**Clarifies the Law**
The CYPCS stated that changing the current law would provide ‘much needed clarity’. It argued that retention of the defence of reasonable chastisement sends out the message that: “some forms of assault against children are acceptable. This is unclear for young people, parents and practitioners as well as being indefensible in human rights standards.”
Barnardos et al. described the current law as ‘unclear and ambiguous’; confusing for parents and carers and stated it: “risks compromising practitioners working with children and families because the line around what constitutes ‘justifiable’ physical punishment is blurred.” The Scottish Women’s Convention described the current legislation as ‘confusing’ and ‘somewhat ambiguous’ regarding what could be classified as justifiable. This confusion, it noted, may affect the ability of professionals to provide advice to parents.

The SCRA wrote that there is a ‘legal grey area’ below the threshold that expressly prohibits the punishment of child by hitting on the head; shaking or using a belt, cane or other implement. As a result, it has been left to the courts to determine what is, and what is not reasonable chastisement. The SCRA stated that the Bill would address this and bring clarity for parents, children and professionals.

The SWA stated that removing the reasonable chastisement defence will provide better clarity for parents, services and children about what is un/acceptable treatment of children. It further noted that presently there is confusion around physical punishment with some believing it is already against the law to use physical punishment and others not understanding what is/is not permissible within the confines of Scottish Law. The SWA considers that a complete ban would remove this ambiguity. In short, the SYP wrote that the Bill will “make the law and what is acceptable clearer to parents and carers.”

Together highlighted the change in the law enacted in Ireland in 2015, stating that this: “has had a positive impact across social work and policing by clarifying acceptable standards.”

The Law Society, while stating that it is not for the Society to comment on social policy, stated that it welcomed the clarification of criminal law the Bill is seeking to provide.

**Alignment with Scottish Government Policies**

Another argument used in support for the Bill is that it would address the misalignment between the law and current Scottish Government policies. For example, Barnardo’s et al. wrote that the current law is: “at odds with the Scottish Government’s rights based approach to children’s policy and its stated aspirations to further children’s rights.” CHAS also highlighted this, writing: “by continuing to allow children to be subjected to physical punishment, and not offering the same protection as adults, Scotland is not complying with the terms of the UNCRC and is at odds with its own government’s policy in [Getting it Right for Every Child] GIRFEC”

The Care Inspectorate noted that the Bill would be congruent with GIRFEC and that it would support Scottish Ministers in carrying out their duties under the Children and Young People (Scotland) Act 2014 to keep under consideration and take steps to further children’s rights, and to promote and raise awareness of the UNCRC.7

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7 Section 1 of the [Children and Young People (Scotland) Act 2014](https://www.legislation.gov.uk/uksi/2014/3072/contents/made) outlines the duties of Scottish Ministers in relation to the rights of children, including that Ministers must: “keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements.”
The RCPCH suggested in its evidence that smacking children contradicts three of the eight SHANARRI wellbeing indicators, namely that children should be safe, nurtured and respected.8

**Bill will Support Change in Attitudes**

Who Cares? Scotland considered that the Bill: “will have the potential to create cultural change against using physical punishment in the family home, including the many different care settings that care experienced people can grow up in.” The SYP argued that of the main advantages of the Bill is that it would: “shape public attitudes towards the practice of physical punishment against children and young people, ultimately reducing its prevalence.”

EHRC wrote that it believed the Bill: “will help to achieve a change in culture and attitudes, moving away from a society where the physical punishment of children is accepted and towards a society where children’s rights are better respected”. In addition to this attitudinal change the EHRC considered that the Bill will also help parents focus on: “more effective, non-violent methods that treat children with dignity and respect.”

The CYPCS stated that: “Evidence from countries where physical punishment has already been prohibited shows that it is legal change that has acted as a catalyst for changes in parental behaviour.” Similarly, the RCPCH commented: “There is good evidence that legislation works to change attitudes at a population level, particularly when linked to a campaign of information and support for parents/carers.”

The need for legislation and public awareness campaign to work in tandem was raised by Barnardo’s et al.: “Best evidence confirms that a combination of law reform, public engagements and education is more effective in changing attitudes and behaviours than any of these strategies in isolation.”

**No evidence of increased prosecutions**

Several organisations, including the SWA, NHS GGC and the Faculty of Public Health noted in their responses that there is no evidence that repeal of s.51 of the Criminal Justice (Scotland) Act 2003 would lead to an increase in prosecutions.

Barnardo’s et al. cited the example of New Zealand where bi-annual reports from 2008 to 2013 showed no increase in prosecutions. The Care Inspectorate wrote that in Ireland, similar legislation had not led to a rise in unnecessary prosecutions.

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8 The SHANARRI indicators can be found online at: [https://www.gov.scot/policies/girfec/wellbeing-indicators-shanarri/](https://www.gov.scot/policies/girfec/wellbeing-indicators-shanarri/)
Opposition to the Bill
The majority of individual responses received did not support the Bill. In addition, nine organisations expressed their opposition to the Bill.

Those who submitted evidence stating their opposition to the Bill described the legislation variously as: “unnecessary, unwise and unfair”; an “unwarranted intrusion” and “not justified or wise.”

In terms of the issue the Bill seeks to address; respondents described the Bill as being: “a hammer to crack a nut”; “a blunt instrument” and “overkill.”

In his submission, Professor Tommy MacKay wrote:

“I fully respect the views of those who support this Bill and I recognise that their motivation is to foster the protection of children and to safeguard their best interests. However, I am not able to support the Bill. My view is that it will not in fact enhance the protection of children and that at the same time it will have a number of negative consequences.”

Criminalisation of Parents
One of the primary objections to the Bill was that it will criminalise parents.

Respondents considered that the legislation will result in the prosecution of ‘ordinary’, ‘normal’, ‘good’, ‘honest’, ‘loving’, ‘responsible’ parents because of the way they chose to discipline their children. Respondents wrote that the prospect of criminalising parents was ‘frightening’, and they worried about parents being criminalised for following their conscience.

Concerns were raised about the potential consequences of prosecution, including loss of custody of children and negative impact upon current/future employment, as well as the damage a prosecution could have upon a parent’s relationship with their child. These were also considered as potential consequences for those parents accused of/investigated for the offence, even if ultimately, they were not prosecuted.

The Bill was thought to be ‘over-the-top’, by potentially criminally penalising huge numbers of parents in order to address a problem occurring in a small number of families. Some respondents argued that efforts to address physical punishment ought to focus on education and support for parents - not criminalisation. Professor Tommy MacKay stated in his submission:

“I believe that the Bill is disproportionate. It will be inappropriately excessive for parents whose children are not in need of additional legal protection. It has potential to criminalise loving parents in contexts where the children themselves take the view that they are part of a secure and affectionate family. “

The Evangelical Alliance expressed its concern that an unintended consequence of the Bill is that it would potentially criminalise loving parents because of how they discipline their children, stating:

“As presently proposed, the bill allows for potential criminal liability for parents who smack their children. This seems to be a particularly severe and unpopular measure if the stated aim of the bill is to engender behavioural
change. More broadly, it may also be counter-productive to the child’s wellbeing for their parent to have a criminal record."

In its submission, Christian Action Research and Education (CARE) stated that it was aware some had sought to counter concerns raised about criminalisation of parents by stating that the Bill was more about a culture change, and that those who lightly smack their children would unlikely be ‘exposed to the full rigours of the law’. In response to this, CARE argued:

“the decision about the enforcement of the law is not a decision for the Parliament. If the Parliament makes it a criminal offence to lightly smack your child, the police and the Procurator Fiscal will be required to treat parents who lightly smack their children with all the seriousness that comes from breaking the criminal law. That will be the plain consequence of passing this legislation.”

Concerns about the criminalisation of parents were frequently expressed alongside assertions that the Bill will not help those children who are being abused. Be Reasonable wrote in its submission: “Criminalising parents for reasonable chastisement will distract child protection authorities from identifying families where parents are guilty of real abuse and neglect.” Respondents further considered that the Bill will not change the behaviour of parents who are genuinely abusing their children.

Although they are supportive of the Bill, in their submission Barnardo’s et al. acknowledged the concerns expressed by others about the criminalisation of parents. While their response noted that legislation in Ireland and New Zealand had not lead to an increased in prosecutions, they stated:

“The importance of monitoring the impact of legal reform is, however, a critical aspect of progressive policy making. Our organisations would support an obligation to monitor and report, on the face of the Bill, to ensure any unintended consequences can be addressed.”

Smacking and Assault are Different
Respondents asserted that a smack and an assault are completely different and to describe a smack as an assault is misleading. Respondents wrote that the Bill confuses punishment with assault. The use of the word assault was described as ‘emotive’ and ‘unfair’ as the law currently recognises, makes a distinction for, reasonable chastisement as being different to assault.

Be Reasonable further stated in its submission that the Bill: “also devalues the language of child abuse by applying it to behaviour everyone knows is not abusive.”

In submissions, respondents often expressed their opposition to child abuse and assaults on children but considered that a smack did not constitute either of these arguing that there were clear differences.

The Free Presbyterian Church of Scotland asserted that: “In no stretch of the imagination can a gentle smack be described as being child abuse; there is a clear difference between child abuse and loving parental discipline and care.”
Respondents frequently asserted their support for the prevention of genuine instances of abuse but not for this Bill, as it confused reasonable chastisement with child abuse. The Bill, respondents argued, distorted the common understanding of a smack as a form of discipline, by comparing it to a violent assault.

As stated by the Christian Institute in its evidence: “The overwhelming majority of people know there is a vast difference between child abuse and smacking, and the current law rightly recognises and respects this difference.”

Other respondents highlighted the importance of understanding the intention behind the action, stating that an assault is considered such because it seeks to cause bodily harm. They argued that when parents use a smack as chastisement or to prevent the child from danger the intention was not to cause them harm and hence the action was not an assault.

**Danger**

A substantial number of respondents wrote that a smack can be used to prevent children from harming themselves (or other children).

Respondents argued that children do not comprehend danger in the same way as adults and that, in order to ensure their safety, a smack can be necessary. Smacking a child’s hand out of the way of something hot was frequently used as an example. In particular, it acts as a warning to children that are not yet old enough to understand verbal reasoning.

An example cited often was using a smack or some other degree of physical force, such as pulling the child back, to stop a child from running out into the road, where there is insufficient time for explanation. As the child may not yet understand the potential consequences of this, the action would prevent harm.

It was considered by a number of respondents that young children are not able to comprehend verbal reasoning in the same way as older children and adults. In order to learn that some actions are unsafe, or unacceptable (i.e. that there are consequences to their behaviour) a smack can sometimes be used to help a child understand.

There were also references to the use of a smack to reinforce verbal directions, if after several warnings, a child still persists in bad behaviour or continues to put themselves at risk, a smack can be used to secure the child’s attention and demonstrate the importance of the need for them to stop their current action.

**Increase in Child-on-Child Violence**

A significant number of respondents who were not in favour of the Bill stated that it would lead to an increase in child-on-child violence. As evidence of this, they specifically referenced the example of Sweden which banned spanking in 1979, after which child-on-child violence was found to have increased.9

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9 This finding came from the following study: Larzelere, R.E., Swindle, T. and Johnson, B.R., 2013. Swedish trends in criminal assaults against minors since banning spanking, 1981-2010. International journal of criminology and sociology, 2, pp.129-137. Most respondents did not give the direct citation, referring only to the study in general terms.
**Public Opinion**

Multiple responses argued that the Bill is not in line with public opinion about banning smacking. They cited a figure from a 2017 ComRes poll, commissioned by Be Reasonable, where 74% of participants agreed with the statement: “Parental smacking of children should not be a criminal offence.”

Some respondents also highlighted that the ComRes survey found that 75% of parents agreed with the statement: “It should be the role of parents and guardians to decide whether or not to smack their children.” This was offered as another example of how the Bill is not in alignment with public opinion.

Respondents questioned why the Member/Scottish Government would seek to introduce a Bill that most adults in Scotland do not want or support, with others stating the Scottish Parliament ought to be reflective of voters’ views on the matter.

**Government Interference in family life**

A substantial number of respondents opposed the Bill as they considered it as a form of state interference. Respondents argued that it is not the place of the State to tell parents when or how they can discipline their children and that the Bill represents an ‘unwarranted’ and ‘unnecessary’ intrusion by the government into family life. CARE stated in its submission: “We believe that this proposal involves the state over-reaching itself.”

This argument was often coupled with statements regarding the right, and responsibility, of parents to determine how to raise their children. Parents, respondents considered, have the primary responsibility for their children. The Bill diminishes these rights and responsibilities, and undermines parents. Parents, they argued, not the state, know what is best for their children.

The Evangelical Alliance wrote that it is a: “settled principle in law, that it is only the role of the state to interfere in parental decisions around the functioning of family life in the most serious circumstances.”

A number of respondents argued that the government, rather than interfere, needs to trust parents and support them in doing a difficult job.

**Burden on Public Services**

A concern expressed by almost all of the responses was that the Bill would put unreasonable demands and additional stresses onto already under pressure public services, in particular the police and social work services.

CARE stated that: “One of the most disturbing aspects of this bill is the fact that it will take scarce resources away from enforcing the law in relation to cases of genuine abuse.”

The Evangelical Alliance argued that one of the unintended consequences of the Bill could be: “additional pressure on public services – there may be a danger that scarce resources are unintentionally diverted away from investigating potentially more serious cases relating to child safeguarding issues.”

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Concerns were raised that as a result of the Bill, the police and social services would be ‘flooded’ by trivial cases, thereby diverting resources and professionals away from serious cases of child abuse. Arguments were made that those children genuinely suffering will not receive the attention they require, as the Bill will result in public services wasting their valuable time investigating spurious accusations.

The Need for Legislation
There were several responses that questioned whether legislation is really needed and if other mechanisms might be used to enact the desired change.

The Evangelical Alliance wrote they are: “sympathetic to the intentions of this bill as it seeks to protect children in our society. However, we do have some concerns in relation to the necessity and scope of this bill as currently presented and in relation to potential unintended consequences.”

It further questioned whether there was: “evidence the current law was ineffective, and if evidence is correct that use of smacking as a form of discipline is in decline then why is it necessary to introduce legislation?”.

Some respondents wrote that they understood why the Bill seeks to end the physical punishment of children but considered legislation was not the best which to approach the situation, suggesting for example, that a public health or education campaign would be more effective. This point was also made by the Evangelical Alliance: “We believe investment in education would be a more proportionate way to tackle this issue as compared to potential criminalisation.”

Submissions from the Evangelical Alliance; Be Reasonable, the Christian Institute and other individuals questioned the need for a criminal offence, highlighting other countries where legislation has not included a criminal offence. For example, reference was made to the French law introduced in 2018 that changed the civil code.

In addition, CARE wrote: “an alternative approach which does not seek to criminalise loving parents would be preferable. If the evidence … is accurate that society is moving away from the use of physical chastisement, then it is reasonable to assume that investment in education programmes would be an effective means to achieve the aim proposed in the consultation of ending the use of smacking”

Children and adults are not the same
A frequent statement made by those in opposition to the Bill is that children and adults are not the same. Adults do a variety of things they would not do for other adults.

The Christian Institute stated that:

“Children are not adults. They are dependent upon their parents and need to be taught right from wrong. Parents do all kinds of things for their children that they would never do to another adult. This is not ‘inequality’ or ‘injustice’. It is just the reality of parenting.”
Children are already protected by the law
A substantial number of respondents who did not support the Bill stated that the current law is both appropriate and perfectly adequate for dealing with abuse of a child. The Christian Institute wrote:

“The title of the Bill disingenuously suggests that children are not legally protected from assault, and therefore that removing the defence of 'reasonable chastisement' is necessary to keep children safe … children are protected from assault and abuse. Parents who use unreasonable or immoderate physical punishment can already be prosecuted.”

As such, respondents argued, there is no need to abolish the defence of reasonable chastisement.

Culture of Fear
A concern expressed in numerous responses that parental actions could be seen by others, i.e. members of the public, in light of this Bill passing, as an assault resulting in parents being reported to police. Hypothetical examples of this included if a member of the public were to observe a parent smack their child to prevent them from touching something hot and reported this action as an assault.

In its evidence the Evangelical Alliance stated: “Criminalisation creates the fear that restraining a child in public, for example, might be taken as a criminal offence by a passer-by. We are aware of cases in other areas which have been come about due to the transient perception of an onlooker.”

Potential for exploitation
A few respondents raised the prospect of the potential for the law to be exploited, for example, if one parent were to accuse the other in a familial dispute or a teenager were to threaten to report their parent to the police for smacking them as a means of getting their own way.

Verbal Assault
Several respondents asked why verbal assault was not included under the Bill, arguing that this could be considered equally, if not more, damaging to a child than a smack.

Understanding of the Bill
A small number of those opposed to the Bill also raised that the Bill does not define assault. In addition, several respondents, including CARE, stated that the Bill creates a new offence.
Awareness, Guidance and Support
The need to raise awareness of the Bill and the subsequent legislative change was considered very important by the majority of responses supporting the Bill. CHAS wrote that it will be: “absolutely imperative’ that the Scottish Government establishes a high profile and concerted information campaign notifying the general public of the changes before they come into force.” As previously noted, respondents considered that for the Bill to achieve its desired aims, it would need to be accompanied by an information campaign.

The duty placed on Scottish Ministers under section 2 of the Bill was welcomed by several respondents, including the SYP and the Law Society which stated that: “effective communication of the important policy change will be important” and it that “fully endorsed” the inclusion of the section in the Bill.

The EHRC stressed the importance of the duty of Scottish Ministers in its evidence. It suggested that any campaign should not only focus on raising awareness and helping people understand the legislative change but should also promote positive, effective, non-violent parenting methods and: “include clear public health messaging that highlights the difference between physical punishment and the absence of discipline.”

Regarding the nature of the awareness raising campaign, the SHRC recommended a comprehensive information campaign which promotes alternatives to physical punishment and raises awareness of the harm it can cause. The Care Inspectorate considered that it might be helpful to include information about the experiences of other countries such as Ireland in any awareness campaign.

Zero Tolerance considered that the campaign ought to be informed by a child’s rights approach, emphasising their entitlement to the same protection from assault as adults and should avoid including messages: “that perpetuates unevenced cycle of violence theories.” The SWA also considered that any awareness campaign should be developed with a ‘gender-sensitive lens’ and should not replicate gendered assumptions about parenting. It echoed the call from Zero Tolerance for the campaign to take a child’s rights approach.

Multiple respondents argued that the campaign needs to be accessible, inclusive and reach everyone, including people with a learning disability, deaf people and blind people. The Law Society stated that specific attention needs to be paid to those with protected characteristics, with the Scottish Child Law Centre making reference to children with disabilities and from ethnic minority groups.

The SYP said any parental guidance on the change would need to be culturally sensitive and available in different languages to ensure that parents from a variety of backgrounds were included. The Care Inspectorate also suggested there may be the need for targeted/customised education for communities with different cultural expectations of parenting.

Police Scotland acknowledged:

“that following a change in legislation all parents and those in care or charge of a child, regardless of gender, age, religious belief, disability, ethnicity, race, sexual orientation, or marriage/relationship status must be equally supported
in not using physical punishment and where appropriate additional guidance provided to explain and encourage the use of alternative forms of discipline and guidance."

The SYP also argued that guidance would need to be aimed at ‘tackling intergenerational issues’ as children are looked after by grandparents and other older relatives who may support the use of physical punishment.

In addition to a need to raise awareness of the Bill, organisations argued for the provision of support services for parents. The Scottish Child Law Centre stated that, in addition to an awareness-raising campaign, the change in the law would need to be accompanied by: “positive parenting training programs/services to help change social norms and parental behaviour and attitudes.” It considered that this education could be delivered through pre-existing early intervention channels. The Centre wrote that it ‘strongly recommends’ a provision be included in the Bill concerning the resources, costs, and availability of parent training services and support.

The EHRC also noted the need for the awareness campaign to be adequately resourced and that the campaign ought to involve on-going engagement with children, parents and carers. The Care Inspectorate noted the evidence from Sweden, that indicated the success of legislation that seeks to bring about a culture change: “is dependent upon the level of investment made in the campaign.”

Aberlour commented that in order to promote a change in public opinion and behaviour, there would need to be: “substantial statutory investment in interventions which aim to support parents and improve positive parenting.” Their response went on further to state:

“we would caution against the Scottish Parliament passing this Bill without commitment from the Scottish Government to make available the necessary financial and additional resources to ensure that all families who require such can access the appropriate support.”

Social Work Scotland also ‘encouraged’ the Committee and Scottish Parliament to undertake: “a more detailed assessment of the impact and costs on local authorities (and their partners) in the investigation of allegations and providing services” stating that it considered the Financial Memorandum’s assessment had underestimated the impact the Bill might have on resources.

The importance of training and guidance for professionals was also noted in evidence. Barnardo’s et al. stated: “we consider clear professional guidance a fundamental aspect of legal reform” as this would raise awareness of the change in the law and ensure that: “frontline responses to physical punishment of children are appropriate and proportionate.”

Zero Tolerance stated that guidance for practitioners must provide advice concerning the ‘failure to protect mentality’ as women experiencing abuse can be held responsible for not protecting a child from a perpetrator. The failure to protect mentality was also noted by SWA.

The Scottish Child Law Centre considered that initial training may need to be provided to professionals working with children: “in order that they can feel confident
in their knowledge of the legislative changes, reporting duties and legal repercussions.”

Again, the Care Inspectorate cited international examples, noting: “the finding from Austria that particular training for the legal profession was required in order to ensure that where necessary, prosecutions and convictions were upheld.”

**Protected Characteristics**

In response to whether they considered the Bill would have any additional impact on groups with protected characteristics, the two main groups referred to by organisations were disabled children and those from ethnic minorities.

The CYCPS cited a 2013 study which found that children with disabilities were more likely to be physically punished, and to experience severe physical punishment than non-disabled children. The Deaf Children’s Society considered that, as research indicates disabled children are at greater risk of suffering from all forms of abuse, the law as it currently stands could be more detrimental to those children with disabilities. The Society highlighted that because of communication barriers deaf children can be more vulnerable and in need of protection, with evidence suggesting deaf children are twice as likely to experience abuse as hearing children.

Children from ethnic minorities were also raised as a group that would be affected by the Bill. For example, CRER stated: “for BME children to enjoy the same benefits as white children, significant consideration must be given to the potential negative impact of institutional racism and the need for intercultural competency training for practitioners.”

Regrading both race and disability, the EHRC stated that: “Due to the lack of available information on physical punishment in relation to race and disability, we recommend that greater research and monitoring of this is conducted.”

Other groups with protected characteristics it was considered the Bill may have an additional impact upon included:

- **Age:** Respondents such as the SYP, NHS Tayside and Parenting Across Scotland stated that, in consideration of age as a protected characteristic, the Bill would first, stop the age-based discrimination of children by ensuring they have the same protection as adults from assault. Second, as noted by the Faculty of Public Health as younger children are at greater risk of physical punishment, the Bill would ensure equality for children of all ages.

- **Sex:** Boys were noted as one group upon which the Bill would have a positive impact. According to NHS Greater Glasgow and Clyde evidence shows that they are more likely to be physically punished than girls. Together also noted this in their evidence. The Scottish Women’s Convention stated that as Scotland has sent out the message that violence against women and girls in never acceptable the Bill would uphold this commitment. Gender was also noted by Zero Tolerance as women continue to be seen as the primary caregiver this Bill could have a particular impact upon them especially in consideration of the aforementioned failure to protect aspect.

- **Religious Groups:** Multiple individual responses noted the potential conflict between those with firmly held religious beliefs and the law. In its response
CARE stated the Bill: “may have a disproportionate and unintended impact of singling out families with strong religious beliefs”.

- **LGBT children:** The Scottish Child Law Centre noted that this group already face an increased likelihood of exposure to violence to the Bill will provide LGBT children greater protection.

- **Adults with different cultural and behavioural norms:** Although not a protected characteristic, organisations including the SCRA and SYP, felt that those who had grown up with different cultural and behavioural norms may be more likely affected by the Bill. Individual responses also noted there could be an impact on families that have recently immigrated.

- **Looked After:** Again, while being looked after is not a protected characteristic, the Care Inspectorate raised the corporate parenting responsibility that Scottish Ministers and public bodies including the Inspectorate have for looked after children. Children who are cared for in foster or residential care are already protected from physical punishment, the Inspectorate considered the Bill will extend the same protection to looked after children living at home, or in certain kinship arrangements.

### Resource Implications

Of the organisations that said there would be resource implications as a result of the Bill, three of these were NHS boards. NHS Greater Glasgow and Clyde stated that there would likely be: “increased demand on parenting programmes as parents seek information and advice on alternative, positive disciplinary techniques.” The Infant Children and Young People’s Transformation Change Programme at NHS Ayrshire and Arran said that there would need to be: “allowances for additional positive parenting provision in terms of resource, staff training (for e.g. health visitors, early years’ staff, schools) and consideration to ensuring these are accessible for ALL families.”

NHS Tayside stated that there may be, in the short-term, increased demand on child protection services and the police, but that research from other countries suggested in the long-term there could be cost savings for both of these. The health board also wrote: “there will be a need to invest in parenting and family support in the short-term” but that due to a decline in incidents associated the negative outcomes of physical punishment of children (for example, emotional and behavioural problems) they would, in the long-term, anticipate a reduction in other publicly funded services.

Police Scotland wrote that, as a result of the Bill, they envision an increase in reporting which will have potential cost/resource implications for themselves and their partner agencies. It posited that these costs could be moderated if definitions were clear and if some form of ‘order’ – either Police or Social Work – was introduced that allowed referrals to a diversion from prosecution scheme which involved parental guidance and training.

The Scottish Child Law Centre anticipates there may be an increase in service users seeking information and training about the new law and its changes. The Centre stated that this was common when new legislation relating to children is introduced.

COSLA said that in order for the Bill to deliver on its aims: “sufficient resources must be made available for local authorities to support its introduction and sustained implementation.” For local government COSLA anticipated there could be some
initial resource increases required to meet increased use of children and families social work services, and some costs associated with raising awareness of the change in the law.

In their response Barnardo’s et al. considered the need to prepare for a potential increase in the number of reported concerns to child protection services. Their evidence suggested preparations could include the development of clear professional guidance, effective diversion services and the provision of clear public information, to make sure there was no increase in the burden to child protection services. In the long-term, the organisation believe that the Bill will: “significantly reduce the prevalence of physical punishment in Scotland, leading to a reduction in cases requiring intervention.”

**Equalities and Human Rights Issues**

In its call for evidence, the Committee asked: “Are there any equalities and human rights issues raised by the approach taken in the Bill that should be considered?”

Those in support of the Bill and who responded to this question, primarily reiterated arguments they had already made in their submissions regarding compliance with UNCRC and ECHR. In expressing their opposition to the Bill and in response to this question, CARE wrote:

> “it is important to recognise that the Convention makes no reference to the physical punishment of children and we consider it misleading to cite Article 19 of the Convention as doing so when in fact that article refers to physical or mental violence which is clearly different to physical discipline.”

The Evangelical Alliance responded to this question with concerns about the balance between the different Articles of ECHR: “There are clearly questions of proportionality to consider in relation to the additional limitations being placed on Article 8 of ECHR and the balance that exists between the provisions of Article 3 and Article 8 of ECHR.” The organisation also wrote: “it is respectfully submitted that the Article 9 rights of some religious parents are engaged attracting appropriate legal consideration.”

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