



Consultation on a Proposed Children (Equal Protection from Assault) (Scotland) Bill

4th August 2017

About Together

Together (Scottish Alliance for Children's Rights) is an alliance of children's charities that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have over 360 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs. Our activities include collating an annual State of Children's Rights report to set out the progress made to implement the UNCRC in Scotland. The most recent report was launched in November 2016 and sets out recommendations to the Scottish and UK Government that should be taken forward to ensure children in Scotland have their rights under the UNCRC respected, protected and fulfilled¹.

Together's support for the proposal

Together is fully supportive of children being given equal protection from assault. Assault of a child should never be justified: allowing it in law is immoral, unjust and risks a tolerance of violence against children more widely. It goes against all the international human rights obligations to which the First Minister commits to *"put at the heart of policy-making."*² A 2015 review of the international evidence on physical punishment³ found strong and consistent findings from 98 international studies that physical punishment is detrimental to child and adult outcomes. Physical punishment is related to an increased risk of child maltreatment and abuse. It increases aggression, antisocial behaviour, depression and anxiety in children, which may continue into their adult lives.

In its failure to give children equal protection from assault, Scotland is increasingly out of step with international standards. The provision for a "justifiable assault" defence has been the subject of much criticism at the United Nations, the Council of Europe and the European Union. Globally, 52 states have completely prohibited physical punishment, including in the family. Among the 28 EU states, just four – the UK among them – have neither prohibited nor committed themselves to do so.⁴ In October 2015, Ireland reformed the law in line with equal protection. This had a positive impact across social work and policing by clarifying acceptable standards.⁵ In June 2017, the Welsh Government announced a consultation on removing the legal defence of 'reasonable chastisement' within the next 12 months.

¹ Together (Scottish Alliance for Children's Rights) (2016). [State of Children's Rights in Scotland](#).

² Scottish Government (2016). Position Statement to the Universal Periodic Review on Human Rights.

³ Heilmann, A., Kelly, Y., [Equally Protected?](#) A review of the evidence on the physical punishment of children. Commissioned by NSPCC Scotland, Children 1st, Barnardo's Scotland and CYPCS.

⁴ The four countries are France, Belgium, the UK and Malta.

⁵ Verbal evidence given by Jillian van Turnhout, former independent member of the Irish Senate.

The UNCRC is clear about children’s right to equal protection.⁶ The UN Committee on the Rights of the Child’s General Comment No. 8⁷ is unambiguous in stating that all forms of violence are incompatible with the UNCRC, and that children need a range of safeguards, including specific legal protection. The UN Committee – alongside many other UN treaty bodies – has repeatedly condemned Scotland’s failure to protect children from physical punishment. In 2016, the UN Committee concluded that the UK (including Scotland) should “*prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences.*”⁸ This has been followed in 2017 by seven recommendations to the UK through the Universal Periodic Review at the Human Rights Council. Together therefore urges the Scottish Parliament to support the proposal of giving children equal protection from assault in order to bring legislation in line with international standards as soon as possible.

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

A legal opinion from Janys Scott QC⁹ concludes that there are strong legal reasons to progress legal reform in relation to the physical punishment of children. Given the growing consensus both within Europe and internationally, the failure to give children equal protection from assault is likely to be a breach of the European Convention on Human Rights (ECHR). Janys Scott’s opinion affirms that there is a “*serious risk*” that the defence of “*justifiable assault*” represents a violation of children’s right to protection from cruel and inhuman treatment.¹⁰ It also reiterates that children have the same right as adults not to suffer from assault¹¹ and, in light of commonly accepted standards, it cannot be left to the government’s discretion to provide for a defence.¹² If they do not support calls to give children equal protection from assault, it is highly likely that Scottish Ministers may be found to be acting in violation of the ECHR.

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

There is convincing evidence from countries that have changed the law that the passage of legislation – alongside public awareness campaigns – leads to a change in public attitudes and does not result in criminalising parents.¹³ A 2010 review¹⁴ found that public acceptance of equal protection follows on from legal change, alongside a decline in severe physical abuse. In addition, parents discover positive and more effective ways to manage their children’s behaviour.¹⁵ Such evidence shows the need for the Scottish Parliament to support legislation to provide children with

⁶ See UNCRC Article 19(1) and UNCRC Article 37(a).

⁷ UN Committee on the Rights of the Child (2006). General Comment no.8.

⁸ CRC/C/GBR/CO/5: Paras: 41(a).

⁹ Commissioned by the Children’s Rights Strategic Litigation Working Group on Equal Protection (Available here: http://www.togetherscotland.org.uk/pdfs/Legal_Opinion_Janys_Scott_QC.pdf).

¹⁰ ECHR Article 3 – see *ibid*, para 20.

¹¹ ECHR Article 8 - see *ibid*, para 22.

¹² *Ibid*, para 26.

¹³ Heilmann, A., Kelly, Y., and Watt, R.G. (2015). [Equally Protected?](#)

¹⁴ Zolotor, A. J., & Puzia, M. E. (2010). [Bans against corporal punishment: a systematic review of the laws, changes in attitudes and behaviours](#). *Child Abuse Review*, 19(4), 229-247.

¹⁵ Heilmann, A., Kelly, Y., and Watt, R.G. (2015). [Equally Protected?](#)

equal protection from assault and lead the culture change needed to ensure all violence against children is deemed unacceptable.

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

None

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

Together expects that the financial impact of the proposed Bill would be broadly cost-neutral. The introduction of the Bill may result in a rise in the number of police reports regarding assault and will therefore require more resources to process. However, the Bill will also help to ensure child protection concerns are flagged more quickly and a preventative approach is taken.

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

The proposed Bill will have a positive impact on these protected groups, particularly children and young people. Data, both in Scotland and internationally, finds that particular groups of children – such as younger children and boys – are at an increased risk of physical punishment¹⁶, and in a 2012 study conducted with children in Scotland aged 7-8, over half reported being “smacked” by their parents.¹⁷ The proposed Bill would therefore have a positive impact on these groups in particular and mitigate the risk of children and young people experiencing negative outcomes as a result of physical punishment.

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

The proposed Bill will not have a negative impact on any of these protected groups.

Do you consider that the proposed Bill can be delivered sustainably i.e. without having a disproportionate economic, social and/or environmental impact?

Together expects that the proposed Bill will have limited economic impact and no environmental impact. The social impact of the Bill will be positive owing to the reasons outlined above.

¹⁶ Growing Up in Scotland (2012 – sweep 7, n= 3,353); Heilmann, A., Kelly, Y., and Watt, R.G. (2015). Equally Protected?
¹⁷ Growing Up in Scotland (2012 – sweep 7, n= 3,353).

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

The Scottish Government has repeatedly stated that it “does not support ‘smacking’ as a way of disciplining children” and encourages “all parents to avoid physical punishment of children”. There has been no progression since 2013 on the Scottish Government position on changing the law in this area, reiterating in April 2017:

“We have no plans to introduce legislation in the area, but we will consider carefully the Member’s Bill that we understand John Finnie intends to introduce.”¹⁸

There is widespread support for a change in law, not just among children’s organisations but more widely from the Police Violence Reduction Unit, the Church of Scotland, Social Work Scotland, Scottish Police Federation, the Royal College of Nursing, the Royal College of Paediatrics and Child Health and the Scottish Directors of the Public Health Group.¹⁹ In addition, Scotland’s National Action Plan for Human Rights (SNAP) 2013-2017 identifies violence against children as a priority area for change, specifically including the need to repeal the defence of “justifiable assault” and enhance parenting support and child protection.²⁰ Over 80% of parents in Scotland agree that physical punishment is not effective and look to alternative parenting strategies.²¹

There is extensive evidence that children and young people are supportive of children having equal protection from assault. In February 2017, children and young people spoke directly to Cabinet Ministers about their experiences of physical punishment and urged the Scottish Government to support John Finnie’s Bill.²² In 2016, a survey of over 1,500 secondary school pupils across Scotland, found that over half of pupils felt it was “not OK” for parents to physically punish children and that younger pupils were more likely to say it was “not OK” for parents to physically punish children. 62% of pupils felt that physical punishment could be harmful to children.²³

Earlier research into children’s experience of physical punishment²⁴ shows that children describe a smack as “a hard or very hard hit” that “hurts”. Children talk about reacting badly to physical punishment, and that it makes them “angry” and “upset” and “sometimes they want to smack someone else.” Children speak about the physical and emotional impact of physical punishment and how it affects their relationships with their parents:

“It hurts and it’s painful inside - it’s like breaking your bones.” (seven-year-old girl)

“[It makes you] grumpy and sad and really upset inside. And really hurt.” (five-year-old girl)

“It feels, you feel sort of as though you want to run away because they’re sort of like being mean to you and it hurts a lot.” (seven-year-old girl).

18 Scottish Parliament (2017). Official report 18.04.17 - Children (Physical Punishment).

19 See; CYPSC (2016). ‘Wide calls for Equal Protection of Children’; Scottish Directors of Public Health Group (2012). Comments on the proposed Children’s Services; RCPCH (2009). Position Statement on corporal punishment; Button, A. (2017). ‘Officers back smacking ban’; Children are Unbeatable Alliance.

20 Scottish Human Rights Commission (2013). Scotland’s National Action Plan for Human Rights 2013-2017, page 42.

21 Growing Up in Scotland (2012 – sweep 7, n= 3,353)

22 See “Children & Young People’s Rights” as discussed at the Children & Young People’s Cabinet Meeting on 28.02.17.

23 CYPSC (2016). Young People’s Views on Physical Punishment: Summary findings from the Young People in Scotland Survey.

24 Willow & Hyder (1998). “It hurts you inside” – children talking about smacking. National Children’s Bureau & Save the Children.

82% of young people responding to a recent Scottish Youth Parliament consultation agreed that “All physical assault against children should be illegal”.²⁵ Workshops conducted by the Children’s Parliament found that protective, supportive parents play an important role in making children feel happy and safe.²⁶

The Children and Young People (Scotland) Act 2014 places a duty on Scottish Ministers to consider steps they could take to further the UNCRC.²⁷ To implement this duty, CRWIA have been introduced to ensure that all parts of Scottish Government consider the impact of proposed policies and legislation on the rights and wellbeing of children.²⁸ Giving children equal protection from assault clearly falls within the scope of this duty and, as such, Scottish Government should undertake a CRWIA on John Finnie’s proposals to inform the Ministerial decision as to whether or not to support the resulting Bill.

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²⁵ Scottish Youth Parliament (2016). ‘Lead The Way’ Scottish Youth Party Manifesto 2016 - 2021.

²⁶ Children’s Parliament (2012). How does your garden grow? A report for children on a consultation for the Scottish Government on the Children and Young People Bill.

²⁷ Children & Young People (Scotland) Act 2014, Pt.1, s.1.

²⁸ Scottish Government (2015). CRWIA Guidance for Scottish Government Officials.