

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

January 2019

## About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 380 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 views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations.

## **Do you support the Bill's aim to end the physical punishment of children by parents or carers? It will do this by abolishing the defence of reasonable chastisement. Please provide an explanation for your response.**

Together (Scottish Alliance for Children's Rights) fully supports the Bill's aim to end the physical punishment of children by parents or carers, ensuring children are given equal protection from assault. Our position is based on the following key factors:

### 1. Protecting Children and Young People's Rights

The UN Convention on the Rights of the Child (UNCRC) 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.<sup>1</sup> The UN Committee on the Rights of the Child's General Comment No.8 is unambiguous that all forms of violence are incompatible with the UNCRC, and that children need a range of safeguards, including specific legal protection.<sup>2</sup> The UN Sustainable Development Goals<sup>3</sup> emphasise that countries must tackle all forms of violence against children.<sup>3</sup>

The UN Committee on the Rights of the Child (the Committee) has repeatedly condemned Scotland's failure to protect children from physical punishment by parents and carers. In 2016, the 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."<sup>4</sup> Similar calls have been made by other human rights bodies. In 2016, the UN Committee against Torture called on the UK to indicate what steps it was taking to explicitly prohibit corporal punishment in all settings.<sup>5</sup> A similar call was made in 2018 by the UN Committee on the Elimination of Discrimination against Women.<sup>6</sup> During the 2017 Universal Periodic Review, seven recommendations were made to the UK to change the current law.<sup>7</sup> A 2018 Legal Opinion by Janys Scott QC found that the current law was highly likely to breach Article 3 (prohibition on cruel and degrading treatment) of the European Convention on Human Rights.<sup>8</sup>

A growing body of research is helping us understand the impact that physical punishment has on children. A 2015 review found strong and consistent findings from 98 international studies that physical

<sup>1</sup> See UNCRC Article 19(1) and UNCRC Article 37(a)

<sup>2</sup> UN Committee on the Rights of the Child (2006). [General Comment No. 8](#), Part V.

<sup>3</sup> [UN Sustainable Development Goals](#), Goal 16.2

<sup>4</sup> CRC/C/GBR/CO/5: Paras: 41(a))

<sup>5</sup> UN Committee Against Torture (2016). [List of Issues Prior to Reporting](#), para 41

<sup>6</sup> UN Committee on the Elimination of Discrimination Against Women (2018). [List of Issues Prior to Reporting](#), para 9

<sup>7</sup> Human Rights Council (2017). [Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland](#), see paras 134.193-134.199

<sup>8</sup> Janys Scott QC (2017). Opinion: [The Legality of Scot Law on the Physical Punishment of Children](#), para 20.

punishment is detrimental to child and adult outcomes.<sup>9</sup> Physical punishment of children can increase the likelihood of aggressive behaviours, antisocial behaviour, low self-esteem, depression, anxiety and other mental health issues in children. A 2018 study from the University of McGill noted the long-lasting impacts that these outcomes can have on children's health and wellbeing as they grow up.<sup>10</sup> Permitting physical punishment also puts children at increased risk of more severe abuse and maltreatment. There are clear implications for children and young people's right to the highest attainable standard of physical and mental health under Article 24 UNCRC, and the obligation on duty-bearers to take the best interests of the child into account as a primary consideration in decision making.

Physical punishment has also been linked to academic problems and related cognitive deficits<sup>11</sup> raising concerns that, by failing to reform the law, Scotland falls foul of its obligation to "ensure to the maximum extent possible the survival and development of the child" under Article 6(2). There are related concerns for the right to education under Article 28.

The current Bill, coming at a time when the Scottish Government has committed to incorporate the principles of the UNCRC into Scots law,<sup>12</sup> is an essential element of a wider move to ensure children's rights are protected, respected, fulfilled and enforceable.

## 2. Progress in other countries

By failing to give children equal protection from assault, Scotland is increasingly out of step with international standards. Globally, 54 countries have now completely prohibited physical punishment, including by parents or carers.<sup>13</sup> The most recent is Nepal, which adopted new legislation in September 2018.<sup>14</sup> An additional 56 countries have committed to reforming their laws to ensure the complete prohibition on all forms of physical punishment against children.<sup>15</sup>

Among the 28 EU member countries, just four have neither prohibited physical punishment at home nor committed themselves to doing so.<sup>16</sup> In October 2015, Ireland reformed the law in line with equal protection. This has had a positive impact across social work and policing by clarifying acceptable standards.<sup>17</sup> In January 2019, politicians in Jersey voted to repeal the defence of 'reasonable chastisement' by an overwhelming majority of 38-3.<sup>18</sup> In Wales, the Minister for Children stated in March 2018 that physical punishment of children was no longer acceptable in a modern and progressive Wales.<sup>19</sup> The Welsh Government has since committed to introduce legislation for equal protection before July 2019.<sup>20</sup> The current Bill will bring Scotland in line with progress in other countries to adhere to international standards.

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<sup>9</sup> Heilmann, A., Kelly, Y. (2015). [Equally Protected? A review of the evidence on the physical punishment of children](#). Commissioned by NSPCC Scotland, Children 1st, Barnardo's Scotland and CYPCS.

<sup>10</sup> Elgar, F., Donnelly, P., Michaelson V., Gariépy, G., Riehm, K., Walsh, S., Pickett, W., (2018). [Corporal punishment bans and physical fighting in adolescents: an ecological study of 88 countries](#), BMJ Open.

<sup>11</sup> Straus, MA., Paschall, MJ., (2009). [Corporal punishment by mothers and development of children's cognitive ability: a longitudinal study of two nationally representative age cohorts](#). Journal of Aggression, Maltreatment and Trauma, pp. 459–83; MacKenzie, MJ., Nicklas, E., Waldfogel, J., et al. (2012). [Corporal punishment and child behavioral and cognitive outcomes through 5 years-of-age: Evidence from a contemporary urban birth cohort study](#). Infant Child Development, pp.3–33; Durrant, JE., Ensom, R., (2017). [Twenty-Five Years of Physical Punishment Research: What Have We Learned?\\*](#). J Korean Academy Child Adolesc Psychiatry, pp. 20–4.

<sup>12</sup> Scottish Government (2018). [Delivering for Today, Investing for Tomorrow: The Government Programme for Scotland 2018-19](#), pp.75 and 83.

<sup>13</sup> [Global Initiative to End All Corporal Punishment of Children \(2018\)](#). (accessed 18<sup>th</sup> Jan).

<sup>14</sup> [Global Initiative to End All Corporal Punishment of Children \(2018\)](#). (accessed 18<sup>th</sup> Jan).

<sup>15</sup> [Global Initiative to End All Corporal Punishment of Children \(2018\)](#). (accessed 18<sup>th</sup> Jan).

<sup>16</sup> The countries are France, Belgium, the UK (excluding Scotland and Wales which have made a commitment) and the Czech Republic – [Global Initiative to End All Corporal Punishment of Children \(2018\)](#).

<sup>17</sup> Verbal evidence given by Jillian van Turnhout, former independent member of the Irish Senate

<sup>18</sup> States of Jersey, States Assembly (2018). [States agree to make smacking children illegal](#).

<sup>19</sup> Welsh Government (2018). ["The physical punishment of children is ineffective and outdated" – Huw Irranca-Davies](#)

<sup>20</sup> Welsh Government (2018). [Ending the physical punishment of children will protect their rights](#)

### 3. Widespread support for the change

Ensuring that children’s fundamental right to be protected from all forms of violence is enshrined in law garners widespread support among civil society organisations, academics, professionals, individuals and children and young people themselves.

#### *(a) Children and young people*

There is extensive evidence that children and young people are supportive of equal protection from assault being enshrined in law. 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.<sup>21</sup> At the 2018 Cabinet meeting, children and young people raised broader issues around their wellbeing, asking Cabinet Ministers to take actions to promote this.<sup>22</sup> In 2016, a survey of over 1500 secondary pupils across Scotland found that over half thought it was “not okay” for parents to physically punish children.<sup>23</sup> Younger pupils were more likely to feel this way. Overall, 62% of the pupils surveyed felt that physical punishment could be harmful to children.<sup>24</sup>

Earlier research into children’s experiences of physical punishment shows that children are “upset” or made “angry” by being hit and that “sometimes they want to smack someone else”.<sup>25</sup> 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).

82% of young people responding to a Scottish Youth Parliament consultation agreed that “all physical assault against children should be illegal”.<sup>26</sup> Workshops conducted by the Children’s Parliament found that protective, supportive parents play an important role in making children feel happy and safe.<sup>27</sup>

#### *(b) Civil Society, academics and professionals*

There is a widespread support for a change in the law amongst civil society organisations, academics and professionals working with children and young people. The 2017 consultation on the proposed Bill received 660 responses, of which 75% supported the aims of the Bill.<sup>28</sup> Of the organisations responding, 93% supported the change. These represented a diverse range of bodies such as Social Work Scotland, the Scottish Police Federation, the Church of Scotland, the Royal College of Paediatrics and Child Health and the Scottish Directors of the Public Health Group.

### **What groups would be impacted by the change (for example, parents, children, public services, the legal profession, etc)?**

#### 1. Children and young people:

See Q.1 which outlines the positive impacts for children.

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<sup>21</sup> See “Children & Young People’s Rights” as discussed at the Children & Young People’s Cabinet Meeting on 28.02.17.

<sup>22</sup> Children’s Parliament (2018). [Children’s Parliament meets the Scottish Cabinet 2018](#)

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

<sup>24</sup> CYPSC (2016). Young People’s Views on Physical Punishment: Summary findings from the Young People in Scotland Survey.

<sup>25</sup> Willow & Hyder (1998). “It hurts you inside” – children talking about smacking. National Children’s Bureau & Save the Children.

<sup>26</sup> Scottish Youth Parliament (2016). ‘Lead The Way’ Scottish Youth Party Manifesto 2016 - 2021.

<sup>27</sup> 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

<sup>28</sup> [Summary of Consultation Responses](#), pp. 7

## 2. Parents

The intention behind the Bill is to send a clear message that violence in all forms is unacceptable and to indicate that parents should look to use other methods of discipline. Physical punishment is already in decline in Scotland,<sup>29</sup> with over 80% of parents agreeing that it is not effective and that they look to alternative parenting strategies.<sup>30</sup> By prohibiting physical punishment, the Bill would accordingly reflect and support existing practices. Research and experiences from other countries show that changing the law can lead to a positive culture change, rather than criminalising parents.<sup>31</sup> Changing the law leads parents to discover positive and more effective ways to manage their children's behaviour.<sup>32</sup> Some have argued that the current law 'does parents a disservice by continuing to imply that physical punishment can be effective in managing children's behaviour'.<sup>33</sup> A change in the law is not, as some fear, an intrusion into private matters, but instead an opportunity to "open up a public discussion about parenting styles which do work...Instead of having less options in raising their children, parents have more to choose from, without having to resort to means which both hinder and harm."<sup>34</sup>

## 3. Public Services

Together considers that the impact on public services will be minimum, beyond perhaps an initial increase in reporting.<sup>35</sup> This is in line with experiences in Ireland following the change in the law in October 2015. Public services in Ireland reported a slight initial impact, but there was no evidence of the system becoming overwhelmed.<sup>36</sup> In any event, the potential burden can be offset by a preventative approach, based in child rights budgeting approaches.

### **Do you see any additional impact on groups with protected characteristics?**

The proposed Bill will have a positive impact on groups with protected characteristics, 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 punishment<sup>37</sup>. A 2012 study conducted with children in Scotland aged 7-8 found that over half reported being "smacked" by their parents.<sup>38</sup> The proposed Bill would therefore have a positive impact by ensuring that all children enjoy equal protection under the law.

### **Are there any equalities and human rights issues raised by the approach taken in the Bill that should be considered?**

See Q.1. Together welcomes the Bill as promoting children's rights and removing an existing age-based inequality in the law.

### **Please tell us about any other comments you feel are relevant to the Bill.**

Together notes that the Bill could help promote positive culture change within Scotland. A 2010 review found that public acceptance of equal protection follows on from legal change, alongside a decline in

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<sup>29</sup> NSPCC study showed that in the decade 1998 and 2009, number of young adults reporting they had been regularly physically punished through childhood fell from 10% to 3%: Radford L, Corral S, Bradley C, Fisher HL, Bassett C, Howat N, Collishaw S (2011). Child abuse and neglect in the UK today. London: NSPCC.

<sup>30</sup> Growing Up in Scotland (2012 – sweep 7, n= 3,353).

<sup>31</sup> Heilmann, A., Kelly, Y., and Watt, R.G. (2015). Equally Protected?

<sup>32</sup> Heilmann, A., Kelly, Y., and Watt, R.G. (2015). Equally Protected?

<sup>33</sup> Children 1<sup>st</sup> (2017). [Parents are being let down by our law on physical punishment.](#)

<sup>34</sup> Children 1<sup>st</sup> (2017). [Parents are being let down by our law on physical punishment.](#)

<sup>35</sup> Boyson, R., Thope L. (ed) 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 – indicated that there is some evidence of an initial rise in reporting of incidents.

<sup>36</sup> Celcis (2018). [Implications of the Children \(Equal Protection from Assault\) \(Scotland\) Bill](#)

<sup>37</sup> Growing Up in Scotland (2012 – sweep 7, n= 3,353); Heilmann, A., Kelly, Y., and Watt, R.G. (2015). Equally Protected?

<sup>38</sup> Growing Up in Scotland (2012 – sweep 7, n= 3,353).

severe physical abuse.<sup>39</sup> Changing the law in Scotland would promote positive culture change and promote public understanding that all violence is wrong.

Together notes the recommendations of Dr Susan Elsley who completed the Child Rights and Wellbeing Impact Assessment for the Bill in late 2018.<sup>40</sup> Together fully supports the recommendations of this assessment, in particular the recommendation for a public information and awareness campaign, informed by children and young people's views; and the recommendation to establish a working group to consider how the legislation is being implemented.<sup>41</sup>

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<sup>39</sup> 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), pp.229-247

<sup>40</sup> Elsley, S. (2018). [Child Rights and Wellbeing Impact Assessment \(CRWIA\)](#)

<sup>41</sup> Elsley, S. (2018). [Child Rights and Wellbeing Impact Assessment \(CRWIA\)](#), pp.39-41