



Equal Protection from Assault for Children Briefing - July 2017

In May 2017, John Finnie MSP launched a consultation on a proposed Bill on Equal Protection for children. The proposed Bill aims to give children equal protection from assault by removing the legal defence of “*justifiable assault*”. Drawing from the international and domestic legal perspective, robust international evidence and children’s views, this briefing has been written to inform responses to the consultation. We encourage individuals and organisations across all sectors to join us in urging the Scottish Government to protect children from assault. You can do this by responding to John Finnie’s consultation using the links below, both as organisations and as individual supporters. Responses can be as long or short as you like – but **must be submitted by 4 August 2017!**

[Respond to the consultation.](#)

[Download the consultation paper.](#)

Key Messages

Children do not enjoy the same legal protection from assault as adults.

In Scotland, the law does not give children the same protection from assault as it gives to adults.

Children and parents consistently talk about the negative impact of physical punishment.

82% of young people responding to a Scottish Youth Parliament consultation agree that “All physical assault against children should be illegal” and over 80% of parents in Scotland agree that physical punishment is not effective and look to alternative parenting strategies.

International evidence of the negative impact of physical punishment is strong and consistent.

There is strong and consistent evidence that physical punishment has the potential to damage children, risks escalation into physical abuse and is an ineffective way to improve children’s behaviour.

Failure to legislate contravenes international human rights obligations.

Law reform to abolish all physical punishment of children is an obligation under international law by both European and United Nations human rights monitoring bodies. The proposed Bill would bring Scotland in line with international standards, as articulated in the UN Convention on the Rights of the Child (UNCRC) and implemented in almost all other European countries.

There is widespread support across Scotland for a change in law.

Among those calling for children to be given equal protection are 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.

Introduction

As Scots law currently stands, children do not have the same protection from assault as adults. A defence is available which enables parents who have been charged with assaulting their child to argue that they were using physical punishment justifiably.¹ 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

Children’s perspective

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.³ 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.⁴

Earlier research into children’s experience of physical punishment⁵ 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).

82% of young people responding to a recent Scottish Youth Parliament consultation agreed that “*All physical assault against children should be illegal*”.⁶ Workshops conducted by the Children’s Parliament found that protective, supportive parents play an important role in making children feel happy and safe.⁷

The evidence-base

A 2015 review of the international evidence on physical punishment⁸ 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. 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,⁹ and in a 2012 study

¹ [Criminal Justice \(Scotland\) Act 2003](#), s.51.

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

³ See “[Children & Young People’s Rights](#)” as discussed at the Children & Young People’s Cabinet Meeting on 28.02.17.

⁴ CYPCS (2016). [Young People’s Views on Physical Punishment: Summary findings from the Young People in Scotland Survey](#).

⁵ Willow & Hyder (1998). “[It hurts you inside](#)” – children talking about smacking. National Children’s Bureau & Save the Children.

⁶ Scottish Youth Parliament (2016). [‘Lead The Way’ Scottish Youth Party Manifesto 2016 - 2021](#).

⁷ 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.

⁸ Heilmann, A., Kelly, Y., and Watt, R.G. (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.

⁹ [Growing Up in Scotland](#) (2012 – sweep 7, n= 3,353); Heilmann, A., Kelly, Y., and Watt, R.G. (2015). [Equally Protected?](#)

conducted with children in Scotland aged 7-8, over half reported being “smacked” by their parents.¹⁰ 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.¹¹ A 2010 review¹² 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.¹³ Such evidence shows the need for the Scottish Government to support legislation to provide children with equal protection from assault and lead the culture change needed to ensure all violence against children is deemed unacceptable.

The international perspective

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.¹⁴ 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.¹⁵ In June 2017, the [Welsh Government](#) announced a consultation on removing the legal defence of ‘reasonable chastisement’ within the next 12 months.

The UNCRC is clear about children’s right to equal protection.¹⁶ The UN Committee on the Rights of the Child’s General Comment No. 8¹⁷ 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 very many other UN treaty bodies¹⁸ – 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.*”¹⁹ This has been followed in 2017 by seven recommendations to the UK through the Universal Periodic Review at the Human Rights Council. As consensus builds internationally, the position in Scotland is becoming increasingly untenable.

The legal perspective

A legal opinion from Janys Scott QC²⁰ concludes that there are strong legal reasons to further consider 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 could be seen as a breach of the European Convention on Human Rights (ECHR). The 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.²¹ It also states that children have the same right as adults not to suffer from assault²² and, in light of commonly accepted standards, it can be left to the government’s discretion

¹⁰ [Growing Up in Scotland](#) (2012 – sweep 7, n= 3,353).

¹¹ Heilmann, A., Kelly, Y., and Watt, R.G. (2015). [Equally Protected?](#)

¹² 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.

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

¹⁴ The four countries are France, Belgium, the UK and Malta.

¹⁵ Verbal evidence given by Jillian van Turnhout, former independent member of the Irish Senate.

¹⁶ See [UNCRC Article 19\(1\) and UNCRC Article 37\(a\)](#).

¹⁷ UN Committee on the Rights of the Child (2006). [General Comment no.8.](#)

¹⁸ See Appendix 2.

¹⁹ [CRC/C/GBR/CO/5](#): Paras: 41(a).

²⁰ Commissioned by the Children's Rights Strategic Litigation Working Group on Equal Protection - see Appendix 3.

²¹ ECHR Article 3 – see *ibid*, para 20.

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

to provide for a defence.²³ Therefore, in not supporting 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.

Support for Equal Protection

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 2013²⁴ 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.”²⁵

Scottish Government has indicated the need to see a shift in public opinion before taking action to remove the legal defence of “justifiable assault”. The contradiction between Scottish Government’s position and its ambition to make Scotland “the best place in the world to grow up”²⁶ is stark. In allowing the “justifiable assault” of children, the Scottish Government is out of step with its own principles of preventative and early support outlined in the [GIRFEC](#) approach. It directly contradicts Scottish Government’s statement in [Equally Safe](#) that:

“Violence against women and girls, in any form, has no place in our vision for a safe, strong, successful Scotland.” and that violence “...damages health and wellbeing, limits freedom and potential, and is a violation of the most fundamental human rights.”²⁷

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.²⁸ 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.²⁹ Over 80% of parents in Scotland agree that physical punishment is not effective and look to alternative parenting strategies.³⁰

Child rights and wellbeing impact assessment (CRWIA)

The [Children and Young People \(Scotland\) Act 2014](#) places a duty on Scottish Ministers to consider steps they could take to further the UNCRC.³¹ 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.³² 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.

²³ Ibid, para 26.

²⁴ Scottish Government (2013). [5th UK Government Report to the UN Committee on the Rights of the Child](#).

²⁵ Scottish Parliament (2017). [Official report 18.04.17 - Children \(Physical Punishment\)](#).

²⁶ As articulated at the [Commencement of the Children and Young People \(Scotland\) Act 2014](#).

²⁷ Scottish Government (2016) [Equally Safe: Scotland’s Strategy to Prevent & Eradicate Violence Against Women & Girls](#).

²⁸ 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](#).

²⁹ Scottish Human Rights Commission (2013). [Scotland’s National Action Plan for Human Rights 2013-2017](#), page 42.

³⁰ [Growing Up in Scotland](#) (2012 – sweep 7, n= 3,353).

³¹ [Children & Young People \(Scotland\) Act 2014](#), Pt.1, s.1.

³² Scottish Government (2015). [CRWIA Guidance for Scottish Government Officials](#).

Appendix 1

Further resources

- ❖ [Download the full *Equally Protected?* report](#)
- ❖ [Access Together's 2016 *State of Children's Rights* report](#)
- ❖ [Read about cross-sectoral support for Equal Protection](#)
- ❖ [Read Children 1st's blog '*Parents are being let down by our law on physical punishment*'](#)
- ❖ [Read blog '*Equally Protected? Parents' role in defending children's rights*'](#)
- ❖ [View '*Our Rights to be Heard*': Longstone Primary School child consultation video](#)

If you wish to respond without writing a full consultation response, Children 1st have produced e-postcards to demonstrate support for the Equal Protection Bill.

- ❖ [Complete an e-postcard in support of Equal Protection here.](#)

Appendix 2

International Recommendations against the physical punishment of children

International Bodies	Concluding Observations and Recommendations	Year and reference
<i>UN Committee on the Rights of the Child</i>	<p>With reference to its general comment No. 8 and its previous recommendations, the Committee urges the State party to:</p> <p>(a) Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement”;</p> <p>(b) Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;</p> <p>(c) Strengthen its efforts to promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.</p>	<p>2016. Similar recommendations made in 2008.</p> <p>CRC/C/GBR/CO/5 Paragraph 41(a)(b)(c).</p>
<i>International Covenant on Civil and Political Rights</i>	<p>The Committee remains concerned that corporal punishment is still not fully outlawed in the home and certain educational and alternative care facilities in the United Kingdom. It is also concerned about the lack of an explicit prohibition on corporal punishment in the home and about the existing legal defences of “reasonable punishment” in England, Wales and Northern Ireland and “justifiable assault” in Scotland (arts. 7 and 24).</p> <p>The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings, including the home, throughout United Kingdom, and should repeal all existing legal defences across the State party’s jurisdiction. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.</p>	<p>2015</p> <p>CCPR/C/GBR/CO/7 Paragraph 20</p>
<i>Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)</i>	<p>The Committee further recalls its previous concluding observations (ibid., paras. 280 and 281) and is concerned that corporal punishment remains lawful in the home. Recalling its general recommendation No. 19, on violence against women, and its previous recommendation, the Committee urges the State party:</p> <p>(e) To revise its legislation to prohibit corporal punishment of children in the home.</p>	<p>2013</p> <p>CEDAW/C/GBR/CO/7 Paragraph 35(e)</p>

<p><i>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)</i></p>	<p>The Committee remains concerned that some forms of corporal punishment are still legally permissible in the home by parents and those in <i>loco parentis</i>. In addition, it is concerned that some forms of corporal punishment are lawful in the home, schools and alternative care settings.</p> <p>The Committee recommends that the State party prohibits corporal punishment of children in all settings, repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.</p>	<p>2013</p> <p>CAT/C/GBR/CO/5 Paragraph 29</p>
<p><i>UK Universal Periodic Review (UPR)</i></p>	<p>134.193. In all devolved administrations, overseas territories and Crown dependencies, prohibit all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement” (Liechtenstein)</p> <p>134.194. Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care (Liechtenstein)</p> <p>134.195. Prohibit corporal punishment in all settings, including the family (Ireland)</p> <p>134.196. Reconsider its position on the legality of corporal punishment of children (Mongolia)</p> <p>134.197. Ban corporal punishment of children to ensure the full protection and freedom from violence for all children (Sweden)</p> <p>134.198. Consider prohibiting corporal punishment against children and ensure that it is explicitly prohibited in all schools and educational institutions, and all other institutions and forms of alternative care (Croatia)</p> <p>134.199. Take further actions in protecting the rights of the child by prohibiting all corporal punishment of children as required by the convention of the Rights of Child (Estonia)</p>	<p>2017. Similar recommendations made in 2012 by Sweden, Norway and Finland.</p> <p>A/HRC/WG.6/27/L.7</p>