



## **SASW Response to John Finnie MSP's Consultation on proposed Children (Equal Protection from Assault) (Scotland) Bill**

**Which of the following best expresses your view of the proposal of giving children equal protection from assault by prohibiting all physical punishment of children?**

### **Fully Supportive (X)**

SASW is pleased to respond to the Proposed Children (Equal Protection from Assault) (Scotland) Bill. As the Professional Association for Social Work in Scotland, SASW is here to promote the best possible social work services for all who may need them - often, societies most vulnerable. This, of course, includes children.

As Article 19 of the UN Convention on the Rights of the Child<sup>i</sup> states:

- 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.**
- 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.**

The UK is one of only four EU countries that has not committed to a ban on all physical punishment. SASW believes that the proposal for giving Children Equal Protection from assault will allow for the removal of a legal defence that is out-dated and runs counter to the progressive policy of the Scottish Government. It will ensure that children's right to live free from violence is made real, prevent children and young people from being given mixed messages about violence and ensure that there is no risk that physical punishment will escalate into physical abuse.

Although changing the legislation will not immediately solve problems, it will help to facilitate cultural change, as is evidenced by such changes in legislation as the Smoking Ban and Wearing Seat Belts in cars. A national campaign needs to be implemented for awareness raising purposes, ensuring this will be more universal and less stigmatising for parents who currently use physical punishment as a form of chastisement. It would also provide families with accurate and up to date information about the parenting choices they make. It is important that parents are not criminalised and resources need to be put in place for families to prevent this from happening. Extra support -

both emotional and financial - needs to be provided for those families who have children with learning disabilities and complex needs as this behaviour can at times be particularly challenging.

There are resource issues with regards to the people responsible for assessing circumstances and supporting parents (e.g. social workers, health workers) - the ones who will play the most significant part in supporting families through this change. These issues of resourcing and support need to be taken into consideration if pushing forward the reform, to ensure the transition is as smooth as possible and can progress in a fair way.

## **2. Could the aims of the proposal be better delivered in another way (without a bill in the Scottish Parliament)?**

**No**

SASW believes delivering the aims of the proposals with a Bill in the Scottish Parliament is adequate and legal reform will help to facilitate comprehensive cultural change. As evidence from other countries demonstrates, when legislation is passed - particularly when this is alongside educational/public awareness campaigns – a change in public attitudes follows. In Scotland, this is demonstrated in the Smoking Ban and Wearing Seat Belts: when laws change, culture follows.

Children 1<sup>st</sup>, in their comprehensive response to this consultation,<sup>ii</sup> quote studies which have shown that public support for, and prevalence of, physical punishment declined before the introduction of legal bans in other parts of world, and continued to decline afterwards. A 2010 review of countries that have reformed the law in this area found that public acceptance of equal protection follows on from legal change, alongside a decline in severe physical abuse. For example, as Children 1<sup>st</sup> also highlighted in their response to this consultation, prior to legal change in Sweden in 1979, polling indicated that over 50% of the public were supportive of physical punishment. Following legal change public support for physical punishment steadily decreased and in 2000 data suggested that just a “few per cent” of parents used physical punishment. The Swedish Government reported 30 years on that the “abolition of corporal punishment, along with the debate that preceded it and the publicity campaigns that followed, has had a major impact on children’s lives.”

Children 1<sup>st</sup> also reference a report on preventing child abuse and neglect from the American National Centre for Injury Prevention and Control. SASW believe that this adds support to the case for legislative reform. The study links smacking with long-lasting negative effects. The report found that legislative approaches to reduce physical punishment “can help establish norms around safe, more effective discipline strategies to reduce the harms of harsh physical punishment, particularly if paired with engagement and education campaigns”.<sup>iii</sup>

### **3. 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?**

As Article 19 of the UNCRC states children, like adults, 'have the right to be protected from being hurt and mistreated, physically or mentally'.<sup>iv</sup> There is clear evidence to suggest that physical chastisement is not in the best interests of the child and there are other, more appropriate ways of chastising children who have misbehaved.<sup>v</sup>

SASW believes there are key advantages to giving children equal protection from assault. These are drawn from the report 'Equally Protected? A review of the evidence on the physical punishment of children'<sup>vi</sup> and are as follows:

- 1) No long-term ill effects.

According to Professor Michael Marmot, in the report referenced above

"The international evidence could not be any clearer – physical punishment has the potential to damage children and carries the risk of escalation into physical abuse."

There is strong and consistent evidence that physical punishment is harmful and damages children's wellbeing. According to academic research on the issue of physical chastisement, undertaken by Dr Anja Heilman of the London School of Economics, multiple meta-analyses show evidence which highlights a correlation between physical punishment and increased aggression, anti-social behaviour and depression and anxiety in children, likely to carry on into adulthood. Similarly, there is evidence to suggest that individuals who experience physical punishment as a child, are more likely to engage in physical and verbal aggression with their spouses as adults. This evidence was presented at the seminar 'Can Scotland still be the best place to grow up if we hit our children?' 27<sup>th</sup> June 2017 in Edinburgh.

Although not all children who are physically punished as children will display these tendencies, a change in the law would encourage parents to use alternative methods of discipline and would send a clear signal that physical punishment is ineffective, whilst also helping to mitigate any concerns of long-term ill effects in children.

- 2) Children will be given consistent messages about violence not being tolerated.

SASW believes that giving parents the legal defence of justifiable assault could send a contradictory and confusing message to children – "if it's okay for my mum and dad to hit me, why is not okay for my mum and dad to hit each other, or for me to hit my friends?" Children may replicate behaviour, and could find themselves being punished for doing so. Removing this defence will send a clear message that violence is unacceptable, in any form, with a zero-tolerance approach to all types of violence in Scotland beginning as a child and continuing throughout adult life. It also helps mitigate the risk of the cycle continuing, as children will not be given an opportunity to absorb this as learned behaviour, and thus choose to punish their children physically.

- 3) There will be no risk of physical punishment escalating to physical abuse.

SASW believes that there is a risk of physical punishment escalating into physical abuse and changing the law could help to prevent this from happening. As Bruce Adamson, the Children and Young People's Commissioner for Scotland argues: "There is no such thing as a reasonable level of violence. Legalised violence against children in one context risks tolerance of violence against children generally." <sup>vii</sup>

As Children 1<sup>st</sup> have also highlighted in their response, <sup>viii</sup>a number of Serious and Significant Case Reviews in the UK have specifically referenced physical punishment, including:

- Heidi Koseda (1984) Four year old beaten and starved to death by mother's boyfriend, who was punishing her for "being greedy".
- Kimberley Carlile (1986) Four year-old imprisoned and beaten by her stepfather for "being naughty" and refusing to accept him as her new father.
- Liam Johnson (1987) Three year old beaten to death by his father, Robert Johnson. Johnson's girlfriend later said, "He was so powerful that when he smacked his sons he sometimes knocked them off their feet."
- Leanne White (1992) Three year-old beaten to death by her mother and her boyfriend. A neighbour reported Leanne's screams and the boyfriend saying, "If you do that again, I'll thrash you."
- Lauren Wright (2000) Six year-old beaten to death by her stepmother. People in her village had seen her being hit, but felt powerless to intervene.
- Carla Nicole Bone (2002) 13 month-old murdered by her mother's boyfriend, who was "disciplining" her for refusing to walk. He told the police it started with "not-excessive smacks... It was the way I was brought up. It never did me any harm."
- Kieran Edwards (2007) 21-month year-old who died after being shaken and struck by his step-father because he was "messing about and struggling".

In speaking about their own legal reform 30 years on the Swedish Government has stated: "Violence that was once a family secret is more likely to be reported today because we are less likely to excuse or minimise instances of physical abuse of children by parents or others close to them." <sup>ix</sup>

#### 4) Clarity over the law and procedures.

There will be clarity over the law regarding physical punishment and families will be better supported. Legal reform, accompanied by clear public messaging, would ensure that everyone in Scotland is clear that physical punishment does not work and that there is no legal defence of 'justifiable assault.'

Families often resort to physical punishment due to a momentary loss of control, or because they may not know any different (e.g. parents could have grown up in a household where this was how they were disciplined and as a result it becomes a learned behaviour/cycle). SASW believes that it is imperative that legislative change be accompanied by support services and information for parents that conveys messages about positive parenting and alternatives to physical punishment instead of

introducing a 'blame' culture, where they risk being criminalised instead of supported and educated about appropriate and less harmful parenting strategies.

Children and families' social workers can find themselves in the situation of trying to define, and communicate to parents, what exactly is "reasonable chastisement" in the eyes of the law as it currently stands, and at what point does this cross the boundary and become a child protection issue. By prohibiting all physical chastisement of children, there will be no further scope for ambiguity. Social workers (and parents) will be able to operate within a much clearer legal framework.

5) Equal protection for children is in line with the general direction of Scottish policy.

The current law relating to physical punishment sits at odds with many recent progressive policies relating to GIRFEC and children's rights. The last decade has seen a major child protection reform programme and the development of a preventative approach to policy which enshrines all children's rights to be nurtured, kept safe from harm and have the best start in life. The Scottish Government has consistently reiterated the importance of early intervention and trauma prevention. Legislation in this area provides Scotland with an opportunity to turn its rhetoric into reality.

6) The UK will be complying with its international human rights obligations.

Physical punishment is a human rights issue. 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. Article 19 of the United Nations Convention on the Rights of the Child (UNCRC) sets out the States obligation to protect children from violence. Assaults justified under Scots Law at present are a breach of the right to respect for physical and psychological integrity protected by Article 8 of the European Convention on Human Rights (EHRC). The UK has come under repeated criticism from UN human rights treaty bodies, the Council of Europe and the European Union for not honouring its international human rights commitments to provide children with protection from assault. Bruce Adamson, the Children and Young People's Commissioner for Scotland argues that, 'as consensus builds internationally, the position in Scotland is becoming increasingly untenable'.

#### **4. 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?**

1) Large numbers of parents will be criminalised for 'smacking'

SASW is concerned that parents will be criminalised for smacking their children. Appropriate measures must be put into place to ensure that parents aren't criminalised; by being educated and supported into learning alternative methods of disciplining through support services and a national awareness raising campaign, to reduce stigma, mitigate potential criminalisation and increase universality. Whilst evidence from 52 countries where this reform has already taken place do not highlight an increase in criminal proceedings and there is no evidence of negative consequences for parents, families or children from the countries that they have already made these legal changes,

this is most likely as-a-result of support and awareness raising being implemented in conjunction with changes to the law. <sup>x</sup>

It is imperative that resources are put in place to provide the necessary support and education for parents bringing up children. Many parenting support services in Scotland have already been withdrawn as a result of austerity measures. This combined with cuts to welfare mean that families are stretched well beyond their means, and that some parents are struggling more than ever to provide safe, nurturing care. There must be a commitment from government to provide the necessary supports to change the culture around smacking, and to provide more parenting support in general. In the long term, this will be more cost effective than prosecuting and criminalising large numbers of struggling parents.

2) Increased pressures on social workers/health workers.

In addition to resources for parents, there must be appropriate training and support for social workers and health workers, who are key professionals that will be tasked with supporting families through the process of cultural change and helping them discover alternative ways to discipline their children. There is a risk of an increased burden on these already over-stretched services that must be taken into consideration, and resourced appropriately, before legislation is put in place.

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

**(Some increase in cost)**

A national campaign to help facilitate change will be costly. As will providing education programmes for workers and parents and investing in systemic and early support for families. This-being-said, an initial cost in terms of investment in positive parenting and awareness raising should not be a barrier to doing the right thing for children. In the long term SASW is confident that the removal of the legal defence, alongside a public awareness- raising campaign and investment in early intervention and systemic family support, will ease the burden on public services. Indeed, it should eventually lead to a reduction in cost, given there will be less demand for expensive crisis management and intervention. Educating and supporting parents will be more financially viable than criminalising and prosecuting parents, so surely must account for a saving in the long term.

**6. 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**

**(Positive)**

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

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

Yes

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

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<sup>i</sup> The United Nations Convention on the Rights of the Child, UNICEF

<sup>ii</sup> Children 1<sup>st</sup> Response to John Finnie MSP's consultation on proposed Children (Equal Protection from Assault) (Scotland) Bill July 2017  
<https://www.children1st.org.uk/media/6134/children1stconsultationresponseequalprotection260717.pdf>

<sup>iii</sup> Children 1<sup>st</sup> Response to John Finnie MSP's consultation on proposed Children (Equal Protection from Assault) (Scotland) Bill July 2017  
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<sup>iv</sup> The United Nations Convention on the Rights of the Child, UNICEF

<sup>v</sup> Heilmann, A., et al, 'Equally Protected? A review of the evidence on the physical punishment of children', NSPCC Scotland, Children 1<sup>st</sup>, Barnardos Scotland, and the Children and Young People's Commissioner, Scotland, November 2015.  
<https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

<sup>vi</sup> Heilmann, A., et al, 'Equally Protected? A review of the evidence on the physical punishment of children', NSPCC Scotland, Children 1<sup>st</sup>, Barnardos Scotland, and the Children and Young People's Commissioner, Scotland, November 2015.  
<https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

<sup>vii</sup> Adamson, B 'Children's Rights and Physical Punishment', The Journal of the Law Society of Scotland, 17<sup>th</sup> July 2017.

<sup>viii</sup> Children 1<sup>st</sup> Response to John Finnie MSP's consultation on proposed Children (Equal Protection from Assault) (Scotland) Bill July 2017  
<https://www.children1st.org.uk/media/6134/children1stconsultationresponseequalprotection260717.pdf>

<sup>ix</sup> Modig, C. 'Never Violence – Thirty years on from Sweden's Abolition of Corporal Punishment', Government Offices of Sweden and Save the Children, Sweden, 2009.

<sup>x</sup> Heilmann, A., et al, 'Equally Protected? A review of the evidence on the physical punishment of children', NSPCC Scotland, Children 1<sup>st</sup>, Barnardos Scotland, and the Children and Young People's Commissioner, Scotland, November 2015.  
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