



Response to Scottish Parliament Equalities and Human Rights Committee call for evidence on the Children (Equal Protection from Assault) (Scotland) Bill.

January 2019

CEL CIS is Scotland's centre for excellence for children's care and protection, based at the University of Strathclyde. We welcome the opportunity to provide evidence to the Equalities and Human Rights Committee, to inform their scrutiny of the Children (Equal Protection from Assault) (Scotland) Bill (the Bill) at Stage 1. By removing the legal defence of 'reasonable chastisement', which can be used to justify the use of physical force on a child by a parent or carer, the Bill will modernise existing law and clarify that the physical punishment of children is unacceptable in Scotland.

Globally, 54 states have legally prohibited the physical punishment of children in all settings.¹ The UK is one of only six European Union Member States without its full prohibition in legislation.² The Bill is not only a critical step in giving further effect to the [United Nations Convention on the Rights of the Child](#) (UNCRC, 1989), but an opportunity to align our laws with global progression, societal attitudes, and our detailed understanding of the harmful effects of physical punishment on children.

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

Yes. We fully support the Bill's aim for three main reasons, namely: **children's rights**; the prevailing policy and societal **context**; and the **robust evidence** relating to the harmful effects of physical punishment on children.

Children's rights

CEL CIS' work focuses on improving the experiences and life chances of children and young people whose rights are often challenged, and already less likely to be fully realised.³ Ensuring equal protection from assault not only safeguards the

¹ Global Initiative to End All Corporal Punishment of Children (2018) [Global progress towards prohibiting all corporal punishment](#), <https://endcorporalpunishment.org/>

² Global Initiative to End All Corporal Punishment of Children (2018) [Progress towards prohibiting all corporal punishment in Europe and Central Asia](#), <https://endcorporalpunishment.org/>

³ Harris, J., Millership, L., Moodie, N. & Shepherd, J. (2016) [State of Children's Rights in Scotland](#), Edinburgh: Together

rights of all children, it also sends a message for care experienced children and young people: that it is never acceptable for violence to be used against a child, and that children's rights are paramount.

Current legal provisions allowing for the justification of violence against children are incompatible with a number of human and children's rights treaties⁴, including the UNCRC, ratified by the UK in 1991. The UN Committee on the Rights of the Child [General Comment 8](#) (2006) is explicit that children have the right to protection from corporal punishment, and the UK state and devolved governments have been urged by the UN in their 2016 [concluding observations](#) (and those of prior reporting periods) to prohibit all corporal punishment in the family; repeal legal defences such as 'reasonable chastisement'; and strengthen efforts to promote non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity.

Prevailing context

Progressive, rights-based policy and legislative advancements have been a commendable feature in the Scottish political landscape over recent years (examples include raising the age of criminal responsibility; the increasingly routine use of Children's Rights and Wellbeing Impact Assessments; introduction of the [Domestic Abuse \(Scotland\) Act 2017](#); and commitment to incorporating the principles of the UNCRC into domestic law, as set out in the Scottish Government's 2018-19 [Programme for Government](#)). In this context, removing the legal defence of justifiable assault from our statute is the next appropriate and logical step in modernising our legislative framework. Furthermore, societal attitudes towards the physical punishment of children have been changing in the UK, with a downward trend in the prevalence of physical punishment as well as a shift in attitudes regarding its acceptability.⁵ Prevailing social attitudes and behaviour are now ahead of current legislation. This Bill presents the opportunity to align our legislation with the attitudes and expectations of most parents, carers, and child-care professionals.

Robust evidence

Comprehensive evidence reviews clearly highlight the negative consequences of physical punishment.⁶ Most notably:

- Strong and consistent evidence shows that **physical punishment is associated with detrimental childhood and adult outcomes**, including increased childhood and adult aggression and antisocial behaviour.

⁴ Including but not limited to: [Article 3](#) of the European Convention on Human Rights; the UN Convention on the Elimination of All Forms of Discrimination Against Women [concluding observations](#) 2013, para 35(e); the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [concluding observations](#) 2013, para 29; the UN Human Rights Committee – International Covenant on Civil and Political Rights [concluding observations](#) 2015, para 'Corporal Punishment'; and the Human Rights Council Universal Periodic Review [draft report](#) 2017, paras 134.194-199.

⁵ Heilmann, Kelly & Watt (2015) [Equally Protected? A review of the evidence on the physical punishment of children](#). commissioned by the NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner Scotland

⁶ Bunting L, Webb MA, Healy J (2008): The 'smacking debate' in Northern Ireland – messages from research. Northern Ireland Commissioner for Children and Young People; Heilmann, Kelly & Watt (2015) [Equally Protected? A review of the evidence on the physical punishment of children](#). commissioned by the NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner Scotland

- The relationship between physical punishment and problem behaviour is reciprocal: physical punishment exacerbates existing problem behaviour. **Parents who are using physical punishment in response to perceived problem behaviour are likely to make it worse.**
- Experience of physical punishment is related to depressive symptoms and anxiety among children, and reduced self-esteem in later life.
- The harmful effects of physical punishment are the same even when levels of maternal warmth are high – the innocuous ‘loving smack’ could be a myth.
- Physical punishment carries a **serious risk of escalation into injurious abuse** and maltreatment. The evidence supports the notion that physical punishment and physical abuse are part of a continuum of violence, differing only by severity or degree. As of July 2017, 82% of ‘main abusers’ recorded at child protection case conferences in Scotland were parents or step-parents, and 484 children were placed on the Child Protection Register due to concerns including the risk of physical abuse.⁷

There is no evidence that physical punishment is associated with improved child behaviour, and no evidence to support the contention that physical punishment is only detrimental when combined with other abusive parental/carer behaviours.⁸ All available evidence informs us that the physical punishment of children is at best an ineffective parenting strategy, and at worst detrimental to children (and the parent-child relationship).

The proposed change in the law may be unpopular to some in society; primarily, those who hold strong personal views about the efficacy of ‘traditional’ parenting approaches, and those who have political views about the extent to which the state should ‘interfere’ in parents’ and carers’ decisions and actions towards their children. In our collective determination to make children’s rights real, and our commitment to evidence-based policy, these views must be listened to sensitively, and appropriate steps put in place to readdress their concerns, such as articulating clearly the reality of the Bill in day-to-day life (and the role of the State in protecting children from harm – which will be no different should the Bill be passed); the provision of information and guidance on alternative, more effective parenting strategies; and accessible public information campaigns about the negative effects of physical punishment (and, through these campaigns, providing parents and carers with clarity about what constitutes ‘physical punishment’). Concerted effort is required to ensure information, guidance and support is available and accessible to **all** those who care for children, including groups such as kinship carers.

⁷ Scottish Government (2018). [Children’s Social Work Statistics Scotland 2016/17](#). Edinburgh: Scottish Government.

⁸ Gershoff & Grogan-Kaylor (2016) Spanking and Child Outcomes: Old Controversies and New Meta-Analyses, *Journal of Family Psychology*, Vol. 30, No. 4, 453–469

Impact of modernised legislation

The most significant group who will be impacted by the proposed changes are children and their families. These impacts will be advantageous, in terms of advancing children's rights; clarifying the law for parents, carers and families; and eradicating a harmful and ineffective parenting strategy.

There will also be an impact on public services. Despite concerns that some public services (such as police and social work) may be overwhelmed by allegations of physical punishment, and that this will have an impact on the other important work they carry out, international comparisons provide no evidence to suggest this is likely. The Republic of Ireland achieved legal reform in 2015, and evidence suggests there have been no change in their rates of prosecution. In New Zealand, an independent review of legal reform in 2007 showed no alteration in agencies existing thresholds for taking action relating to child safety and wellbeing.⁹ So, while concerns about overburdening public services, and unnecessary criminalisation of parents are understandable, the international evidence indicates that these concerns have not materialised in practice. Evidence suggests that legal reform accelerates the decline in use of physical punishment, further decreasing the risk that services will be overwhelmed as physical punishment becomes less prevalent.¹⁰

Whilst a slight increase in numbers of concerns raised with public service agencies may be expected initially (in tandem with raised public awareness generally), these will be easier to respond to given the additional clarity the legislation will provide. The law in its current form is ambiguous. Whilst physically punishing children by hitting on the head, shaking, or hitting with an implement is explicitly illegal, other punishments may be legally justifiable depending on the circumstances. Legal reform (and accompanying guidance) will strengthen and clarify the service response, and enable more families to receive support early with alternative, effective parenting strategies.

Implementation measures and resourcing

Although absolutely necessary, the passage of the Bill alone is not sufficient to end the physical punishment of children. Additional implementation measures are also necessary to ensure the impact of the legislation is positive. Evidence is clear that sustained large-scale information and awareness raising campaigns, which target different levels of society (such as individuals, communities and the whole population) are important to the effective implementation of legislation to end the physical punishment of children.¹¹ Crucially, accessible support and information for families must be made available, setting out alternative parenting strategies. All parents and carers also require clear, unambiguous information about changes to the law, and knowledge about the service

⁹ Broad, H. et al (2009) [Review of New Zealand Police and Child, Youth and Family Policies and Procedures relating to the Crimes \(Substituted Section 59\) Amendment Act](#).

¹⁰ Heilmann, Kelly & Watt (2015) Equally Protected? A review of the evidence on the physical punishment of children. commissioned by the NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner Scotland

¹¹ *ibid*

response to instances of physical punishment. Professionals must have clear guidance, and the necessary resources to respond consistently, safeguarding children's rights, and supporting families. An initial increase in financial resources is required to meet these needs. Funds will be necessary to support implementation through an awareness raising campaign; creation of robust guidance; provision of training and coaching for professionals; and ensuring effective supports for parents with alternative parenting strategies are available.

About CELCIS

CELCIS is Scotland's centre of excellence for children's care and protection, based at the University of Strathclyde. We work to ensure the best international evidence is reflected in policy and practice, strengthening the skills and capacities of people who care for children and young people. CELCIS is part of the Institute for Inspiring Children's Futures, working to build brighter futures for children in need of care and protection around the world.