

The Scottish Parliament Equalities and Human Rights Committee Call for Views:

Children (Equal Protection from Assault) (Scotland) Bill

January 2019

Call for Views:

The Children (Equal Protection from Assault) (Scotland) Bill was introduced in the Scottish Parliament on 6 September 2018. The purpose of the Bill is to end the physical punishment of children by parents or those with caring responsibility for a child. The Bill would remove the defence of “reasonable chastisement” which can be used to justify using physical force on a child.

The Scottish Women’s Convention (SWC)

The Scottish Women's Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy. The SWC uses the views of women to respond to a variety of Parliamentary, Governmental and organisational consultation papers at both a Scottish and UK level.

The Scottish Women’s Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission provides the views of women and reflects their opinions and experiences in a number of key areas relevant to the issues set out in terms of children’s rights.

**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)?**

The SWC welcomes the opportunity to respond to the proposal to equate any form of physical punishment against children as that which is used against an adult and subject to the same appropriate action. This pledges to inform at both a domestic and international level that Scotland is emboldened to commit itself to the protection of all children.

Scotland prides itself on taking a human rights based approach to its legislative agenda. It is therefore only fitting that children comfortably enjoy the same rights as adults within the appropriate legislative framework. Women compose the vast majority of primary caregivers for our children, both as parents and as carers. It is crucial that any reforms that seek to safeguard the rights of the most vulnerable are informed by the voices of these women in order to ensure that those at risk of harm are protected.

The abolition of the defence of justifiable assault has suitable merits in order to ensure children are protected under the same provisions as adults. Within our society, it is widely acknowledged that children make up one of the most vulnerable groups. Any legislative agenda which seeks solutions in order to protect them can only be seen as formulating a positive approach. There is widespread consensus amongst women that legislation should always strive to do the utmost to protect those most at risk of harm.

**Current Legislative Policy:**

Given the scale of the cultural shift in attitudes over the past few years towards child rearing, any agenda put in place with the specific aim of protecting children should be welcomed. Whilst the Criminal Justice (Scotland) Act 2003 did go some way at the time to curtail physical punishment by explicitly prohibiting certain conduct arising against a child in relation to a parent such as hitting with an implement, the legislation is seen as outdated in a changing society. In addition to this, much of the evidence now available concurs that physical punishment carried out against children as a form of managing bad behaviour is not beneficial and can in fact potentially lead to negative consequences.

Evidence from women has prompted much talk about the removal of the justifiable assault defence for the following reasons:

- Having a defence open for physical punishment of children has no place in modern Scotland, leaving children with less protection than adults. Physical assault should never be justified against anyone, with a number noting that doing so may be viewed as legitimisation.
- It is a violation of human rights as set out in the United Nations Convention of the Rights of the Child (UNCRC).
- Abolishing the defence has the potential to safeguard children.
- Strategies for the behavioural management of children should be preventative rather than reactive.

- The current legislation, as it stands, is thought to be confusing and somewhat ambiguous in terms of defining what could actually be classed as “justifiable”. It may be harder for professionals and childcare practitioners to provide advice given this confusion.
- A vast number of other countries around the world ban physical punishment of children leaving Scotland and the rest of the UK behind. This is tantamount to the change that has occurred at a global level in respect to this and is illustrative of anything of the fact that not only must Scotland change but also shows how this has been correctly applied in other places with best practice.
- As the primary caregivers of children, women have highlighted the benefits of this Bill for children in later life. Young adults will have a better understanding of assault and abuse. They may also be able to challenge it, resulting in a reduction of gender based violence in adulthood. Any legislation, therefore, which seeks to protect the wellbeing of children should be treated as an investment.
- Children may internalise physical punishment, leading to increased mental health issues. There is also the risk that it will normalise attitudes to hitting meaning they may see it as acceptable to hit other children.

Whilst there is still a view that physical punishment is the most “*traditional*” or beneficial way of teaching children important life lessons, this can actually have the opposite effect and, consequently, may lead to normalisation of physical punishment. A number of women did raise worries about a rise in needless criminalisation of parents, a drain on already stretched resources and an infringement by the state onto private and family life. However, others noted that as cases are only raised and taken to Court by applying the likes of the public interest test, it would only be those deemed to be extremely serious that would go on to possible conviction, repeal of this particular piece of legislation would have very little, if any, effect on conviction rates.

Women also raised the following points in order to implement fully and successfully the correct procedures:

- Parents should be made aware of viable alternatives to physical punishment and feel empowered throughout the process to know they are being consulted.
- Positive actions and communications should be in place to encourage parents in order to alleviate any the fear of being criminalised or policed. This should also involve stressing that the nature of this legislation does not create a new offence but simply repeals a caveat of current law.
- It is thought that using lessons learned in other state countries which allow children the same rights as adults should be put forth for forms of best practice and how the procedure was applied for legislators, judiciary and professionals as well as parents.
- In addition, The Children and Young People (Scotland) Act 2014 Act calls for Ministers to promote public awareness and understanding about the rights of children. In this vein, campaigns touting the negative associations and impacts of physical punishment should be provided and disseminated widely at a national level. This should include campaigns to encompass traditional media formats as well as the

likes of social media. This was also seen as a beneficial way of ensuring children are aware of their rights.

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

For a society to showcase its opposition to inequality in all forms, it must be communicated that violence should never be tolerated. In order to reduce gender inequality, it must be alert to the perceived violence that can evolve when setting this as an example to young, precocious children.

A number of women have commented on the fear that physically punishment as a child may lead to normalisation and an implication for the likes of abusive relationships later on in life. Scotland has sent out a strong message that VAWG is never acceptable. Therefore, in repealing the defence of justifiable assault, it continues to uphold its responsibility to this commitment.

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

Continuance of the defence of “justifiable assault” in relation to children can be seen as contravening a number of international approaches including the United Nations Convention on the Rights of the Child (UNCRC), as well as the European Convention on Human Rights.

Additionally, much of Scotland’s own legislation and agendas are unconditionally enshrined with children’s protection and sustainability at their core. For instance:

- The Scottish Government’s Getting It Right for Every Child (GIFREC) for supporting the wellbeing of children in order that they aspire to their full potential and reflective of the UNCRC.
- At present, Scotland is a leading nation on many actions to further equality such as “Equally Safe: Scotland’s Strategy to Eradicate Violence Against Women”. In order to uphold this reputation, Scotland must join the large number of other nations who have banned all forms of physical punishment against children.

### Conclusion:

Women have noted that alignment of children and adults protections equally under the same legislation is fundamental to safeguarding children’s welfare. As a women’s organisation, the SWC hold the belief that women’s views should be at the centre of this given their primary role as caregivers. Implementation of this proposal seeks to highlight Scotland’s continued commitment at a domestic and international level that no form of discrimination will be tolerated.

**For further information, please contact**

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