

Scottish Women's Convention response to:
Children (Equal Protection from Assault) (Scotland) Bill
August 2017

The Consultation

John Finnie, MSP, has launched a consultation relating to a draft proposal lodged at the first stage in the process of introducing a Member's Bill into the Scottish Parliament. The aim of this proposal is to promote and safeguard the health and well-being of children and young people by ensuring they are afforded the same right to protection from assault as adults.

At present, the Criminal Justice (Scotland) Act, 2003, prohibits certain forms of physical punishment against children by parents and carers. However, this leaves room for a defence of justifiable assault under common law, specifically against children alone, as a form of punishment. In order to bring the law into line with United Nation's guidance and the large number of countries that have already criminalised all forms of physical punishment, this proposal seeks to curtail any grounds for justifiable assault and ensure the utmost protection for children.

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. Women in Scotland compose the vast majority of those responsible for protecting 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.

We welcome the opportunity to respond to the proposed Bill to equate any form of physical punishment against children as that which is used against an adult and subject to prosecution. This pledges to inform at both a domestic and international level that Scotland is emboldened to commit itself to protection of all children.

Question 1:

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?

As a women's organisation, the SWC is fully supportive of the proposal put forth to ensure children are protected under the same provisions as adults in relation to all forms of physical violence. Children make up an extremely vulnerable group within any society. There is widespread consensus amongst women that legislation should always strive to do the utmost to protect those most at risk of harm.

The recent Domestic Abuse (Scotland) Act makes provision for a statutory aggravator to be implemented in the occurrence that any form of domestic violence is witnessed by a child. This is proof of the Scottish Government's (SG) commitment to adhering to the UN goal of eliminating all forms of discrimination against children. The proposal laid out here signals this continued effort within Scotland to protect children and should be looked upon as such.

Evidence is explicit in detailing the lasting damage that can occur as a consequence of physical assault as a form of punishment. In addition, a number of factors must be taken into consideration under current legislation in order to determine whether the punishment inflicted is justifiable, such as frequency and child's age. Allowing those responsible for a child's wellbeing to enter into such a plea of defence when the same cannot be used against an adult is completely unreasonable.

Women have told the SWC that they are of the belief that any assault against a child should be treated as intention to do that child harm, with risk of causing physical and mental health issues both at present and in later life. Punishment of a physical nature should not be allowed to be justified simply because the perpetrator is the parent or carer of that child. In effect, given the responsibility that the individual has for protecting and safeguarding, it can be argued to be significantly worse as an act of assault.

Question Two:

Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)?

Legislation is first and foremost the primary way in ensuring the aims stated are received by the public. Placing children under protection from assault in the same way as adults, with liability to prosecute, will act as a deterrent.

"This issue is so important. The only way to ensure access to justice, support and most importantly safety, is by putting laws in place"

However, as is the case with all legislation that intends to change attitudes that may be deeply ingrained, this should be undertaken with a nationwide publicity campaign. The public must be made aware of the harm physical punishment can cause.

Any promotion should also include resource materials for schools in order to educate children from as young an age as possible. The Scottish Government strategy must factor in prevention work. Instilling in children the dangers of assault at a young age would raise awareness and go some way to preventing instances of this occurring.

“Clear cut emphasis on the education system should be a key priority that cannot be underestimated.”

Question Three:

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?

Striving to protect children from all forms of violence, including prohibition of physical punishment is advantageous and beneficial for Scottish society as a whole. Evidence suggests that physical punishment has no positive effects on children’s behaviour. Studies continue to pinpoint to the alarming and negative consequences this conduct can have.

Removal of reasonable grounds for defence and denoting all forms of physical punishment as liable to prosecution is extremely beneficial in promoting the well being of all children throughout Scotland. This legislation should be made as soon as possible in order that future attitudes can be shaped and changed immediately. More convictions and harsher sentences would make clear to those who commit these offences that they will not *“get off lightly”*.

Whilst a small handful of people may hold the 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, consequentially, may lead to normalisation of physical punishment.

Women have highlighted that this is a very real worry in terms of young girls who may be subject to this as punishment. There is a risk of young women accepting physical abuse in relationships in later life. A *“behind closed doors”* mentality may be displayed in domestic violence situations due to the perceived normality of physical assault from childhood.

Question Five:

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

Whilst the financial costs of publicity campaigns and resources for the proposal will have to be accounted for, this can be offset by the number of advantages that will come with making the proposed legislation into law.

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.

Whilst the consultation document itself alludes to the financial implications of a rise in the number of prosecutions due to proposed legislation, this can actually be argued to be looked upon as a deterrent.

There is also the idea that the long term potential for saving is huge. Immediate action will stop many children and young adults suffering from mental and physical health conditions now and in later life.

Question Six:

What overall impact is the proposed Bill likely to have for the following protected groups (under the Equality Act): race, disability, sex, gender reassignment, age, religion and belief, sexual orientation, marriage and civil partnership, pregnancy and maternity)?

There are a number of impacts that the proposed Bill may have on specific groups with protected characteristics. Awareness must always be made concerning the likes of stigma around reporting physical abuse both by women and children.

Cultural barriers may be further aggravated by the likes of language impediments or fear that can prevent many from speaking out. This must be taken into account when implementing the Bill to ensure that all children are protected from physical harm. Overall, the proposal will have a highly beneficial impact on any with protected characteristics given that its utmost purpose is to ensure that all children are fully safeguarded within Scotland.

“Police and prosecution services must ensure there are solutions in place such as translators for women and children.”

The impact that physical punishment can have on children is wide-ranging and should be explicit grounds for securing extra punishment. Many women have remarked on the fear they have experienced that abuse may become normalised in the eyes of their children.

“I think teaching kids to recognise abuse is useful in a way. Even if it’s just communicating to them ‘it’s wrong’ can be a great thing. It means that if it is going on at home, they can speak out and won’t go on to carry it out themselves when they grow up.”

Strategies enacted by the SG to prevent and eradicate Violence against Women and Girls (VAWG) covers all children and young people, regardless of sex. However, an important distinction must be made in terms of young women in application of this legislation. There is a real danger that girls who experience physical punishment as youngsters may internalise this as something that is normal. They may, therefore, go on to become victims in abusive relationships at later stages in their life.

Given that the vast majority of domestic abuse occurrences, or gendered violence in any form, is against women, this Bill can go some way to acting as a preventative measure to

these and tackling the present patriarchal culture. This can also be looked upon as having the potential to have an extensive effect on young boys as well. The Bill has the potential to act as a measure that can stop those who may internalise physical assault carried out upon them as punishment and go on to use it themselves when older as a form of VAWG.

Question Eight:

Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

As mentioned above, the SWC believes that any immediate disproportionate effect in economic terms, through the likes of public campaigns or prosecution, is in fact an investment for the future wellbeing of children within Scotland.

At present, Scotland is a leading nation on many actions to further equality such as the “Equally Safe” strategy to combat and eradicate VAWG. 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.

Women have spoken to the SWC about the growing insecurities and pressures that young people feel in society today. Eliciting legislation that will prevent all physical punishment could go some way in halting many of the root causes of that insecurity.

In putting forth this legislation, the SG is committing itself to the United Nation Convention on the Rights of Children, highlighting Scotland’s place in an international capacity as a country where discrimination is not tolerated in any form.

Question Nine:

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

Whilst a counter-argument for this Bill may be that the prosecution of a parent simply for seeking to discipline their child will in fact be detrimental to said child, the SWC urges the SG to take this into account and seek to ensure that this is not the case. The explicit direction of this Bill is geared towards ensuring maximum safety for all children. This should be done in a way that is best suited to educate parents and society at large, including implementation of time and resources for those parents who currently use physical punishment on their children.

Conclusion

The SWC is fully supportive and pleased to respond to any proposal which seeks to ensure the utmost protection is offered to all children in terms of physical assault. Alignment of children and adults protections equally under the same legislation is fundamental to safeguarding children's welfare. Furthermore, as a women's organisation, the SWC hold the belief that this has the potential to prevent many instances of abuse which may occur in later life by highlighting that it is wrong to use physical misconduct as punishment. Implementation of this particular Bill in law seeks to highlight Scotland's continued commitment at a domestic and international level that no form of discrimination will be tolerated.

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The Scottish Women's Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission paper provides the views of women and reflects their opinions and experiences in a number of key areas relevant to the physical punishment of children in Scotland.

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