

Equal protection for children

Removing the 'reasonable punishment' defence in relation to assaults on children in Wales

What do you mean by 'equal protection'?

Most people would agree that children, as the most vulnerable members of Welsh society, deserve *at least* the same level of protection as adults – equal protection. But at the moment they have *less*. Section 58 of the Children Act 2004 includes a defence which may be used by parents, some carers and other adults if they face a charge of common assault against a child. To refer to it as a 'smacking ban' trivialises the issue.



We want to see an end to the 'reasonable punishment' defence. It's a legal defence to a charge of assault and battery and is not available if an assault is against an adult. Changing the law to remove it wouldn't create a new offence, but it would remove an anomaly that fails to respect children's human rights and leaves vulnerable children at risk. The existence of the defence also means that those working to support parents and families can't give a clear, unequivocal message about not using physical punishment. The research evidence shows that it doesn't work, fewer and fewer current parents use it and that it has the potential to cause harm.

Welsh Government is currently consulting on how to deliver a commitment to remove the 'reasonable punishment' defence made at the last Assembly elections. Both Welsh Labour and Plaid Cymru manifestos included such pledges and several individual AMs from other parties also support reform. The Scottish Parliament will also be considering similar legislation to give children equal protection, and the Scottish Government has said it will be supporting the change.

Since both Welsh Labour and Plaid Cymru pledged to do this in their manifestos, 41 Assembly Members were elected on a platform that includes supporting equal protection for children. However, it's important to get the law right and to make sure that all the public information and support for parents is in place and that guidance and training for professionals is available as well.

But that's just two countries. Have they done this anywhere else?

Wales certainly won't be alone in doing this. Fifty-three states have introduced legislation prohibiting all physical punishment of children (see p5). Sweden was the first, nearly 40 years ago. Among the most recent is the Republic of Ireland. A further 56 countries are committed to legislating. In each of

the 53 states legislation was enacted ahead of public opinion, with governments showing strong leadership. In not one of those countries has reform been reversed, even after a change of government. Neither have concerns about mass prosecutions or increasing numbers of unruly children been shown to have been valid once the law was in place.



Isn't this a sudden change of direction?

Not really. The first Assembly debate on this issue was in 2002 and the Government Minister responding spoke in support of equal protection. Since devolution began the Assembly has voted twice in favour of removal of the defence, but the Assembly lacked the power to legislate. In 2004, Welsh Government urged the Labour UK Government to act and in 2008 the UN Committee on the Rights of the Child recognised Wales' progressive stance on this issue. "Making all physical punishment of children illegal" was Priority 10 in the Welsh Government's action plan on implementing the UN Convention on the Rights of the Child.

Throughout that time parenting programmes and publications have clearly stated that physical punishments don't work and have promoted a positive approach to managing behaviour.

Who are 'Sdim Curo Plant!'/CAU! Cymru

'Sdim Curo Plant!'/CAU! Cymru is an alliance of key organisations working across Wales and many individuals including teachers, academics, childcare workers, young people, and of course parents. Our Strategy Group includes the leading children's charities (including NSPCC Cymru/Wales, Tros Gynnal Plant and the umbrella organisation Children in Wales), Welsh Women's Aid, relevant Royal Colleges (such as those for Paediatricians and Nurses). Other Royal Colleges, professional associations (such as BASW Cymru [social workers]) and Safeguarding Children Boards are also supporters. Cardiff Council has signed up to the campaign as have many religious groups, the main childcare and parenting support providers and many Flying Start projects.

Prominent individuals involved in the campaign include the Children's Commissioner for Wales, Prof Sally Holland; and the multi-disciplinary group Academics for Equal Protection. In March 2015 the actor Michael Sheen also joined the call for legislation, criticising Wales for 'dragging its feet'.

Isn't this just a ban on smacking?

Although often referred to as a 'smacking ban' the legislative change wouldn't create a new criminal offence and isn't a ban as such. **It would simply remove an anachronistic and inequitable defence open to parents and some carers who commit *common assault* on a child.** The defence can be used

to excuse a range of painful and humiliating punishments and to remove it would simply give children in Wales the same degree of protection currently available to adults – no more, no less.

The leading organisations supporting parents and families, as well as child protection agencies, consider such a change to be helpful to parents as well as to their work of protecting the most vulnerable children.

The odd smack doesn't really do any harm though, does it?

The research evidence on this is clear. Using physical punishment is ineffective and can cause considerable harm. The more than 250 studies covered by the Global Initiative to End All Corporal Punishment of Children's review of research (<http://endcorporalpunishment.org/research/impact-corporal-punishment.html>) on the impact of such punishment show a wide range of negative outcomes for children, parents, families and wider society. Children's organisations in Scotland also commissioned the report *Equally protected?* (2015) which echoed these findings (<https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>). Contrary to what people used to believe, there are no benefits.

But won't good parents be 'criminalised'?

Experience in other countries doesn't support this concern. Fears that there will be huge increases in prosecutions haven't been borne out. The main purpose of changing the law is to stop children being hit or hurt in the first place, to change behaviour and help families get support; not to prosecute parents after the event. Public education and parenting programmes have a significant part to play, and we've already made a lot of progress on this in Wales.

International experience shows that after changing the law, fewer and fewer parents use physical punishments and attitudes change. We know that attitudes are already changing in Wales. The vast majority of parents will be guided by the law.

To most people the word 'criminalised' means being charged, prosecuted or convicted, not the theoretical commission of an offence. The chances of this happening to parents for 'trivial' smacks are remote. Police and prosecution services operate under the legal principle that they shouldn't pursue trivial matters (the *de minimis* principle). And no prosecution of child assault goes ahead unless it is considered to be both in the public interest and in the best interest of the child. Prosecuting parents for a 'trivial' smack is unlikely to be either of these.

Police and social services already receive reports from people who are concerned about seeing a child being hit or hurt and know how to respond appropriately. Under the *All Wales Child Protection Procedures* police treat such cases as child protection matters and only act in consultation with social services. This would still be the case and the '*significant harm*' threshold used by professionals would not change.

Professionals working with families – such as health visitors and family centre staff - sometimes see parenting behaviour they are concerned about. At the moment it's hard to give a clear, unequivocal message to the people they are supporting because the law is unclear. Where children may be at risk

of abuse this delay could have devastating consequences. All the main child abuse cases in the media have had physical punishment as a factor and in many cases neighbours, members of the public, the wider family, or professionals have had concerns but felt unable to act.

A parent's use of reasonable force to stop a child from hurting the parent, or hurting another child, or damaging property, or committing a crime, or from harming themselves (such as stopping a child running into a road) is covered by existing common law defences which would be unaffected.

Couldn't all this be achieved through public education?

Research and experience in other countries shows that legislation is necessary. Public education alone doesn't work, but a change in the law should be accompanied by a public education campaign. This can be dovetailed with the existing parenting programmes here in Wales. Not being allowed to hit children doesn't mean that parents lose their powers to teach, guide, control and discipline.

Why does this need to happen now?

- It's a **public health and child protection concern**: it inhibits professionals (doctors, health visitors, social workers, family support workers, teachers etc) working with children and families. The long term costs – financial and otherwise - of not being able to intervene early, supportively and sensitively are considerable.
- The 'reasonable punishment' defence is a **breach of the universal human right to protection from violence**. International Treaty Bodies have repeatedly called for the UK to address this, including recommendations from the UN Committee on the Rights of the Child which repeated this call for the fourth time in June 2016. Removing the defence is consistent with the 'due regard duty' on Welsh Ministers under the Rights of Children and Young Persons (Wales) Measure 2011, passed unanimously by the Assembly.

What should the legislation look like?

The legislation should be clear and unambiguous and should remove the 'reasonable punishment' defence in Wales. The amendments tabled to two Bills in the Assembly in 2014¹ and 2015² show what the legislation could look like.

In some other countries, such as New Zealand, the legislation includes exceptions or reassurances about how the change in the law should be implemented. We don't believe that this is helpful since existing legislation, common law and prosecution guidelines include the necessary safeguards. Although including such clauses can seem innocuous, they can undermine the effectiveness of the law and the message it gives about physical punishment being unacceptable.

This reform can cause anxiety so accurate information, public education and support for parents to accompany the legislation is essential; particularly in the face of misinformation from those who don't recognise children as holders of human rights.

¹ <http://www.senedd.assembly.wales/documents/s23641/Notice%20of%20Amendments%2023%20January%202014.pdf>

² <http://www.senedd.assembly.wales/documents/s37042/Notice%20of%20amendments%2024%20February%202015.pdf>

COUNTRIES WITH FULL ABOLITION

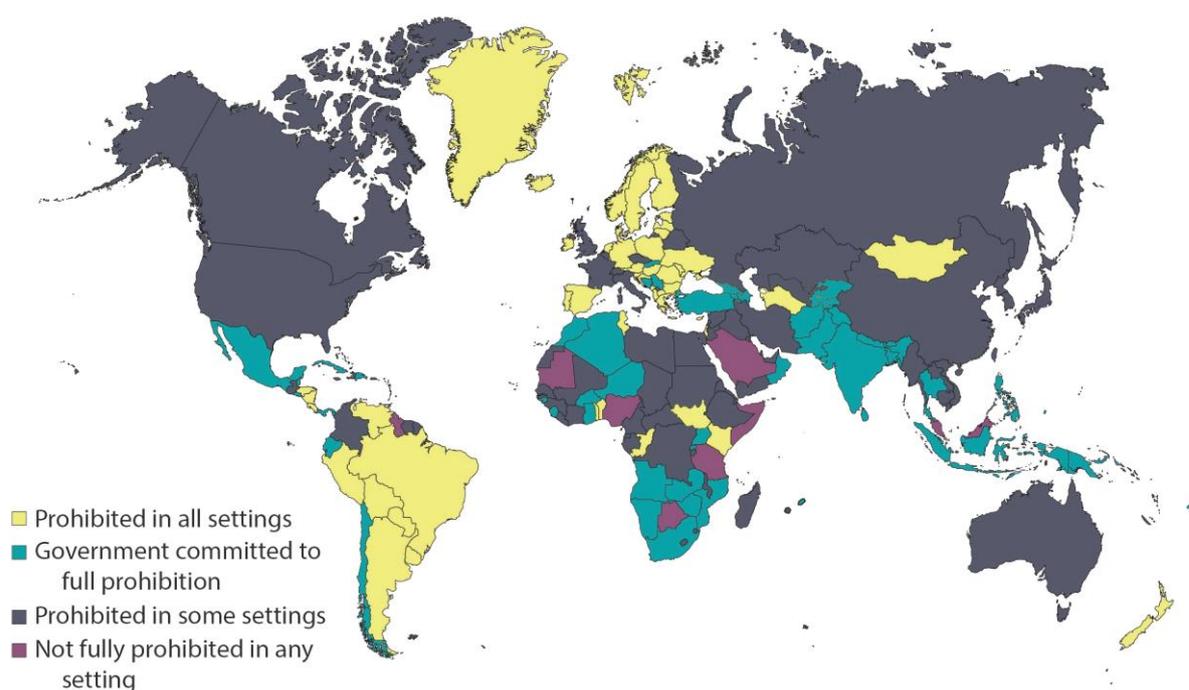
In the following 53 states children have equal protection and are protected by law from all corporal punishment (most recent first):

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|------------------------------|-------------------------------|------------------------|
| 1 Lithuania (2017) | 22 Republic of Congo (2010) | 41 Iceland (2003) |
| 2 Slovenia (2016) | 23 Kenya (2010) | 42 Turkmenistan (2002) |
| 3 Paraguay (2016) | 24 Tunisia (2010) | 43 Germany (2000) |
| 4 Montenegro (2016) | 25 Poland (2010) | 44 Israel (2000) |
| 5 Mongolia (2016) | 26 Liechtenstein (2008) | 45 Bulgaria (2000) |
| 6 Peru (2015) | 27 Luxembourg (2008) | 46 Croatia (1999) |
| 7 Republic of Ireland (2015) | 28 Republic of Moldova (2008) | 47 Latvia (1998) |
| 8 Benin (2015) | 29 Costa Rica (2008) | 48 Denmark (1997) |
| 9 Andorra (2014) | 30 Togo (2007) | 49 Cyprus (1994) |
| 10 Estonia (2014) | 31 Spain (2007) | 50 Austria (1989) |
| 11 Nicaragua (2014) | 32 Venezuela (2007) | 51 Norway (1987) |
| 12 San Marino (2014) | 33 Uruguay (2007) | 52 Finland (1983) |
| 13 Argentina (2014) | 34 Portugal (2007) | 53 Sweden (1979) |
| 14 Bolivia (2014) | 35 New Zealand (2007) | |
| 15 Brazil (2014) | 36 Netherlands (2007) | |
| 16 Malta (2014) | 37 Greece (2006) | |
| 17 Cabo Verde (2013) | 38 Hungary (2005) | |
| 18 Honduras (2013) | 39 Romania (2004) | |
| 19 TFYR Macedonia (2013) | 40 Ukraine (2004) | |
| 20 South Sudan (2011) | | |
| 21 Albania (2010) | | |

This list includes 32 Council of Europe member states and 23 members of the EU.

At least a further 56 states have committed to enacting the necessary legislation.

Progress towards universal prohibition of physical punishment of children



What do children say?

In 2013 during an event to celebrate Universal Children's Day, children and young people took part in activities which allowed them to express their views on physical punishment. Here are some of the messages they communicated to politicians at an event in Tŷ Hywel, Cardiff Bay on the same day:

'I think that people smack children because they get angry at their kids, and they can't help it.'

'Some people smack because they are angry or depressed about something.'

'People smack because they are taking out their anger.'

'Adults are meant to keep us safe'

'Hitting children in wrong because there are many better other ways of sorting out problems.'

'Hitting children is wrong because it makes you feel scared and unhappy.'

'It's like all the trust has gone.'

'Adults can't be hit. Why should children be?'

'I have a right to be safe.'

'Smacking children is wrong because it is hurting children.'

'It is very wrong to hit people. Don't do it.'

'It makes you feel scared and unhappy'

'Smacking is embarrassing, upsetting, hurtful, humiliating, and scary.'

'It may not leave a mark on the outside ... but it will leave a mark on the inside, forever...'

'Smacking doesn't make you behave, it makes you cry.'

'Hurting someone is wrong.'

'I just think it's wrong for adults to be able to harm a child and call it discipline.'

'Other countries have seen sense, why hasn't the UK?'

Listen Up! Children talk about smacking A report on Welsh research with children can be found here: <http://www.endcorporalpunishment.org/assets/pdfs/miscellaneous/ListenUp-English.pdf>

It Hurts You Inside A summary of research with children in England can be accessed here: <http://www.crae.org.uk/media/26377/it-hurts-inside-summary-report.pdf>

For more details on the work of CAU! Cymru visit: www.childrenareunbeatablecymru.org.uk

For information on global progress and research visit: www.endcorporalpunishment.org

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