

Legislative Proposal to Remove the Defence of Reasonable Punishment

This outline response is intended as a guide for individuals or organisations who wish to respond to the Welsh Government’s legislative proposal. You can find out more about the consultation here: <https://beta.gov.wales/legislative-proposal-remove-defence-reasonable-punishment>

The easy-read or Community version of the consultation document gives a clear overview of the proposal, if you do not have time to read the full consultation document. You can respond online – answering as few or as many questions as you like - if you do not have time to complete the pro forma. You can download the form using the links at the bottom of the consultation webpage and email or post it back.

Your response to the consultation will probably carry more weight if it is written in your own words and includes your own views and experience.

The suggested responses and key points are a guideline only and you can include as little or as much of the information as you feel is appropriate. The consultation document outlines the findings of a significant number of research studies which show the negative impacts of physical punishment. If you have examples from your own life or professional experience, research or practice to support the case for reform, please include them in your submission.

The number of responses received will also carry some weight so even if you, your organisation or your friends, family and colleagues only have a few minutes to spare it’s worth clicking on the respond online button on the above web link and indicating that you support equal protection for children and the Welsh Government’s proposal by the closing date of **Monday 2nd April, 2018**.

Consultation Question	Suggested response and key points
<i>Q1. Do you think our legislative proposal to remove the defence of reasonable punishment and prevent the use of corporal punishment will help achieve our stated aim of protecting children’s rights? (yes, no, d/k – If no, why not?)</i>	Yes. <ul style="list-style-type: none">• The existence of the ‘reasonable punishment’ defence is an anachronistic anomaly which fails to respect children’s human rights and leaves vulnerable children at risk.• Extensive research evidence shows that not only is physical punishment ineffective in managing children’s behaviour, but it can cause considerable harm. It is unfair to children and their parents to retain a legal defence that appears to condone something potentially harmful, that makes family life more stressful and has no benefits.

	<ul style="list-style-type: none"> • Under the UN Convention on the Rights of the Child (UNCRC), to which the UK government is a signatory, children in Wales have a right to be protected from abuse (Article 19) and to be protected from torture or other cruel, inhuman or degrading treatment or punishment (Article 37). • The UNCRC states that the convention rights apply to every child without discrimination, whatever their ethnicity, gender, religion, language, abilities or family background (Article 2). Articles 3 and 4 state that the best interests of the child must be the priority for governments and that they must do all they can to ensure that every child’s rights are respected, by passing laws to promote and protect those rights. The proposed change in the law will give all children in Wales the same level of protection. • The UN Committee on the Rights of the Child has called on UK government four times to remove the ‘reasonable punishment’ defence in relation to assaults on children. • Welsh Government’s intention to remove the defence of ‘reasonable punishment’ will help promote and protect children’s rights in Wales and is consistent with the ‘due regard’ duty in the Rights of Children and Young Persons (Wales) Measure 2011.
<p>Q2. In addition to our existing parenting support and information campaign are there any other support mechanisms you think we should put in place to support parents, carers and guardians? <i>(yes, no, d/k – If yes, what are they?)</i></p>	<p>Yes. <i>Add recommendations based on your/your organisation’s experience and expertise.</i></p> <p>Suggested key points:</p> <ul style="list-style-type: none"> • International experience indicates that a broad approach to public education, as well as information and support for parents, carers and guardians is needed. • Welsh Government should develop a clear strategy for delivering public education, information and support in relation to the change which considers the contribution that may be made across Ministerial portfolios by different policy areas including Health, Social Services, Education, Local Government and Public Services as well as Children and Social Care.

	<ul style="list-style-type: none"> • Key health professionals - including midwives, health visitors, children’s nurses, General Practitioners and paediatricians – have an important role to play in delivering a clear and consistent message to parents and should be supported to do so, in tandem with parenting support, education and information services in the statutory and voluntary sectors. Private childcare providers have a role to play too. • Information should be made available to children and young people. • Consideration needs to be given to ensuring that individuals who are reluctant to engage with statutory services, or who have specific cultural, linguistic, communication or other needs, are able to access information and support.
<p>Q3. What types of actions/behaviours would you consider to be “corporal punishment”?</p>	<p><i>Suggested response:</i></p> <p>We do not believe that drawing up a list of actions and behaviours which count as ‘corporal punishment’ is helpful. Intent is clearly a factor as much as the action or behaviour. The level of force used or pain caused is similarly unhelpful. Even the so-called ‘light smack’ can be administered with a frequency or in a way or context that is potentially harmful and abusive. Those investigating incidents or reports of common assault against a child should be allowed to exercise discretion</p> <p><i>Additional background (inclusion of all of part of the following is optional)</i></p> <p>In its General Comment No. 8, the United Nations Committee on the Rights of the Child defines corporal punishment as follows:</p> <p><i>“The Committee [on the Rights of the Child] defines “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example,</i></p>

*kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child."*¹

- The above definition and other sections of General Comment No 8 refer to some physical actions that could be described as 'restraint as a punishment'. We believe that there is a clear and fundamental distinction to be made between actions that restrain a child in order to punish them and restraint or other physical interventions (such lifting a child or pulling them back suddenly) to prevent harm or injury to a child or to others, or damage to property, or to prevent a criminal offence.
- In New Zealand, for example, the legal defence which permitted physical punishment of a child before 2007 referred to the use of 'force for the purpose of correction'. Such a defence could be interpreted as applying to a far broader range of behaviours than the 'reasonable punishment' defence contained in Section 58 of the Children Act 2004 which applies in Wales.
- Removal of the 'reasonable punishment' defence would have no impact on the ability of the parent to intervene to prevent a child from running into the road, or touching a hot stove, or inserting a key into an electrical socket, or acting in a forceful way to protect the child, to defend themselves or others, or to prevent a crime or other similar scenarios.
- The general common law defences available in cases of using force (or violence) against adults are equally applicable to offences against children. The most relevant defences arising from

¹ Committee on the Rights of the Child (2006), [General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment \(arts. 19; 28, para. 2; and 37, inter alia\)](#) (CRC/C/GC/8)

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	<p>what is said to be ‘normal parenting’, or physical interventions that may be necessary due to a child’s additional needs, are the so-called ‘private defences’: self-defence; defence of another; defence of property; and prevention of crime. The claim that removal of the ‘reasonable punishment’ defence will leave parents open to prosecution for normal physical interactions or for protecting their child is simply incorrect.</p>
<p>Q4. Do you agree with our understanding of potential impacts on public bodies in Wales arising from the legislative proposal? (yes, no, d/k – If not, why not?)</p>	<p>Yes.</p> <ul style="list-style-type: none"> • The main reason for changing the law is to prevent children from being hit or hurt in the first place and we are confident that the majority of the decreasing proportion of parents who still occasionally smack will be guided by the law. • Police and social services already receive and investigate reports of children being physically punished and they aim to support parents and children without resorting to heavy-handed interventions. Removal of the ‘reasonable punishment’ defence will help this process by allowing a clear message to be given. • Where there are serious concerns that a child is being abused it will be easier to intervene early and prevent more serious consequences. • The proposal does not create any new offences and is therefore unlikely to have a significant impact on the Courts in Wales. • Experience in the 53 states that have introduced similar legislation supports this view.
<p>Q5. Is there additional guidance or training required to support frontline professionals? (yes, no, d/k – If yes, please provide further details.)</p>	<p><i>Support your response with any information based on your/your organisation’s area of expertise or experience. If you or your organisation has no view or expertise in relation to this question we suggest you respond along the lines of the following:</i></p> <p>Welsh Government should consult directly with the professions concerned to establish whether there are any issues that need to be addressed through additional guidance or training. Frontline professionals are used to dealing with incidents and reports of ill-treatment as part their day-to-day</p>

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	<p>work. Child protection systems already in place are sufficiently flexible to deal with a range of circumstances on a case-by-case basis. In the course of this work professionals sometimes deal with misunderstandings, malicious allegations or counter allegations from estranged family members or neighbours as well.</p> <p>While guidance and training would need to be amended to reflect the legal position in Wales, this proposed change would fall under the Social Services and Well-being (Wales) Act 2014 requirement for frontline professionals to report any concerns about abuse or neglect to local authorities, which came into force in April 2016. We therefore feel that implementation of the proposed change is possible without additional guidance or training since preparation for the new reporting requirement covers much of the same ground. Adequate information regarding the legislation to remove the ‘reasonable punishment’ defence should of course be made readily available to frontline professionals.</p>
<p>Q6. Please explain how you believe the proposed policy could be formulated or changed so as to have:</p> <p>I. Positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language; and</p> <p>II. No adverse effects on opportunities for people to use the Welsh language and on treating the Welsh</p>	<p><i>If your organisation has no view or expertise in relation to this question we suggest you move to the next question or respond as follows:</i></p> <p>We have read the Welsh Language Assessment for this proposed policy and agree with its contents. Access to information, training and support relevant to the change should be available in the Welsh language.</p>

<p><i>language no less favourably than the English language.</i></p>	
<p>Q7. We have asked a number of specific questions. If you have any issues related to this consultation which we have not specifically addressed, please use this space to report them.</p>	<ul style="list-style-type: none"> • We believe that in order to be effective, the legislation to remove the ‘reasonable punishment’ defence should be clear and unambiguous. The amendments tabled to two Bills in the Assembly in 2014² and 2015³ provide a clear starting point. • Experience in other countries that have included - within the legislation itself - reassurances or details of exceptions where the use of ‘reasonable force’ is permitted, or requirements for the police or prosecuting authorities not to act in certain circumstance, has been mixed. Anecdotal evidence suggests that it undermines its effectiveness. • Police and prosecution services operate under the legal principle that they shouldn’t pursue trivial matters (the <i>de minimis</i> principle) and no prosecution for assault of a child goes ahead unless it is considered to be both in the public interest and in the best interest of the child. Therefore the chances of parents being prosecuted for ‘trivial’ smacks are remote. • The detail of how the change would be implemented should be included in guidance for professionals and the prosecution service and not on the face of the Bill. • We would caution against the inclusion of exceptions and reassurances which are already covered by existing common law defences, such as 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). These are already covered by existing common law defences which would be unaffected by the proposed legislation.

For further information or if you have any questions please contact us via email: CAUCymru@gmail.com

² <http://www.senedd.assembly.wales/documents/s23641/Notice%20of%20Amendments%2023%20January%202014.pdf>

³ <http://www.senedd.assembly.wales/documents/s37042/Notice%20of%20amendments%2024%20February%202015.pdf>