



Equal Protection for children in Scotland

- International evidence is clear that physical punishment is harmful: it damages children's wellbeing and is linked to poorer outcomes in childhood and adulthood
- The proposed Bill will remove the legal defence of 'justifiable assault' to give children equal protection from assault as adults
- Evidence from countries which have already reformed their law shows there has been no significant increase in prosecutions
- The UK is one of only four EU nations which has not committed to legal reform

At present in Scotland it is lawful for a parent or someone caring for a child to use physical punishment. This means that children are afforded less protection from assault than adults.

However, there is clear evidence that physical punishment is ineffective in improving children's behaviour and in fact has an adverse impact on children's wellbeing.

John Finnie MSP is currently consulting on a draft Member's Bill which would remove the legal defence of 'justifiable assault' to ensure that children are offered the same protection from assault as adults.

The current legal position

Most forms of physical punishment of children were prohibited by the end of the twentieth century. However, in Scotland and across the UK, both common and statute law still permit the use of physical punishment by parents or those caring for a child, by enabling them to raise a relevant defence in court.

In Scotland, the Criminal Justice (Scotland) Act 2003 provides for a defence of 'justifiable assault'. However, the Act states that a blow to the head; shaking; or the use of an implement should not be deemed 'justifiable'.

In addition, the United Nations Convention on the Rights of the Child (UNCRC), ratified by the UK in 1991, directs state parties to take all measures to protect children from all forms of physical and mental violence, including physical punishment. The UK and its devolved administrations have repeatedly been called upon by international rights bodies to reform the law to prevent physical punishment, most recently by the UN Committee on the Rights

of the Child in 2016 and the Universal Periodic Review in 2017 but Governments have, so far, failed to act.

The need for change

There is clear and consistent evidence that the physical punishment of children is harmful. In 2015, an international literature review on the impact of physical punishment on children, commissioned by our organisations, found that:

- Prevalence of physical punishment is decreasing and attitudes towards its use are changing;
- There is strong and consistent evidence that physical punishment increases aggression, antisocial behaviour, depression and anxiety in children, which may continue into their adult lives;
- Physical punishment carries with it the risk of escalation into physical abuse.

Attitudes towards physical punishment are changing, with evidence from the Growing Up in Scotland studies showing a downward trend in the use of physical punishment, and increasing negative attitudes towards its use.

The Scottish Government's stated ambition is for Scotland to be the best place to grow up, Reforming the law on physical punishment and assault is a common-sense and necessary step in realising this ambition.

The proposal

In May 2017, John Finnie MSP launched a consultation on a draft Member's Bill on this subject. He proposed introducing a Bill that will remove the 'justifiable assault' defence, this ensuring that children have the same protection from assault as adults. The Bill does not propose the introduction of any new offence, but rather the removal of a legal defence.

The main aim of changing the law is educational and cultural, rather than punitive. There is an understandable concern that legal reform would criminalise loving parents. However, none of the countries which have amended their relevant legislation have experienced a rise in criminal prosecution.

Rather, measure would help create a society which respects children's rights and values non-violent parenting. The law, properly applied, is a most powerful tool in changing traditional social norms. There is strong evidence from other countries that the passage of legislation, in combination with public awareness and education campaigns, heralds a further change in public attitudes.

The consultation is open until August 4th 2017 and is available at:

<http://www.parliament.scot/parliamentarybusiness/Bills/104602.aspx>