

## **EQUALITIES AND HUMAN RIGHTS COMMITTEE**

### **CHILDREN (EQUAL PROTECTION FROM ASSAULT) (SCOTLAND) BILL**

#### **SUBMISSION FROM ABERLOUR CHILD CARE TRUST**

##### **Introduction**

As Scotland's largest, solely Scottish Children's charity, Aberlour welcomes all proposals which aim to protect children from both physical and emotional harm. We believe unequivocally that physical punishment of children should be outlawed in Scotland, in accordance with Articles 19 and 37 of the United Nation's Convention on the Rights of the Child (UNCRC), both of which unambiguously state that children have the right to be protected from all forms of physical or mental harm, violence, abuse and/or degrading or inhuman treatment or punishment<sup>1</sup>. As of 2019, 54 countries worldwide, including 23 out of 28 European Union member states, have now legislated to ban physical punishment of children, and a further 56 have committed to introducing a ban in the near future<sup>2</sup>. Scotland is now one of an increasingly diminishing number of countries which retains a legal defence of "justifiable assault" in relation to the physical punishment of children<sup>3</sup>. As a result, Scotland now appears out of step with a growing international consensus that physical punishment of children is simply unacceptable.

Aberlour works with vulnerable children, young people and families throughout Scotland, providing services and support in over forty locations around the country across a range of settings. We help to overcome significant challenges, like growing up in and leaving care, living with a disability, poor mental health, or the impact of drugs and alcohol on family life. We aim to provide help and support at the earliest opportunity to prevent problems spiralling out of control. Protecting children is a fundamental focus of the work we do across Scotland every day. Parenting support is a key element of the work we do with the families who access our early years and family support

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<sup>1</sup> [https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC\\_united\\_nations\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf?\\_ga=2.80835543.1333129954.1499244055-521610672.1499244055](https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?_ga=2.80835543.1333129954.1499244055-521610672.1499244055)

<sup>2</sup> <http://endcorporalpunishment.org/wp-content/uploads/legality-tables/Global-progress-table-commitment.pdf>

<sup>3</sup> [http://www.legislation.gov.uk/asp/2003/7/pdfs/asp\\_20030007\\_en.pdf](http://www.legislation.gov.uk/asp/2003/7/pdfs/asp_20030007_en.pdf)

services, helping parents to gain the skills they need to be confident and secure in their parenting. With a proud history of both advocating for and delivering positive parenting interventions, we feel the focus of a prohibition on physical punishment of children should not be to criminalise parents but to protect children by promoting positive alternatives to physical punishment.

## **Equal Protection**

We are fully supportive of the proposal to provide equal protection to children from assault by prohibiting physical punishment. We believe all physical punishment of children should be prohibited by law, and that children require more, not less, protection from violence than adults. There naturally exists an imbalance of power in adult-child relationships, and as a result it is critical that children are provided with as much protection as possible to mitigate any risk of harm. As a society, we now accept without question that it is simply wrong, and indeed against the law, for teachers, foster carers, residential child care workers, and any other person with caring responsibilities, other than those with parental rights, to physically punish children. However, parents are still afforded the right to do so, and we believe this is an anomaly which must be addressed. There is overwhelming international evidence which now highlights that no positive effect results from physically punishing children, and in fact physical punishment has the potential to damage children emotionally and risks escalation into physical abuse<sup>4</sup>. Therefore, we see no reasonable basis for retaining a defence of justifiable assault of children within Scots Law, and fully support the aim and intention of this Bill.

As a result of comprehensive international research over the last decade on the effects of physical punishment on children, we can now evidence that physical punishment can provoke multiple negative outcomes, including: an increase in aggression and anti-social behaviour amongst children; exacerbation of existing problem behaviour; the likelihood of triggering adult aggression and anti-social behaviour later in life; and an increased risk of child maltreatment<sup>5</sup>. It has been evidenced that escalation from mild smacking to

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<sup>4</sup> <http://endcorporalpunishment.org/wp-content/uploads/research/Research-effects-summary-2015-05.pdf>

<sup>5</sup> <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

serious assaults is an intrinsic feature of physical punishment<sup>6</sup>, and there are also clear indicators that child maltreatment which begins as physical punishment can lead to physical abuse through a “**vicious cycle of cascading conflict**.”<sup>7</sup> It has also been identified there is a link between physical punishment and child mental health problems. Indeed, the most recent evidence has clearly established a link between physical punishment and detrimental outcomes generally, with no evidence at all that physical punishment has any positive effect<sup>8</sup>. Research has evidenced that physical punishment can expose children in such a way that they are more accepting of invasive physical contact, increasing the likelihood of being victims of sexual abuse. In addition, children are unlikely to complain when they believe physical punishment is permitted and justified, even when it is egregious. Furthermore, even the slightest smack sends children the clear message that hitting people is acceptable. Therefore, as evidenced by the experience of many other countries which have prohibited the physical punishment of children, we believe the introduction of such a prohibition would lead to a decline in the number of cases of physical abuse of children in Scotland.

Whilst part 7 of the Criminal Justice (Scotland) Act 2003 does include some protections and limitations as to what constitutes acceptable physical punishment of children<sup>9</sup>, we believe it does not go far enough. Furthermore, it is the responsibility of every government to provide appropriate protection to all its citizens, including children. To this end, the Scottish Government is duty bound to meet its obligations in relation to the European Convention of Human Rights (ECHR), specifically Article 3 which guarantees its citizens “**freedom from torture and inhuman or degrading treatment or punishment**”<sup>10</sup>. In addition, we believe the Scottish Government’s stated commitment to fully incorporate the principles of the UNCRC insists that a full prohibition on physical punishment of children must be implemented in Scotland if they are to follow through on that commitment.

However, we believe the introduction of legislation should not be done in isolation and should only be seen as one part of a wider strategy of informing and educating the public as to why it is necessary to introduce such a prohibition. Legislating alone will not protect children from physical harm, yet

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<sup>6</sup> <http://www.childrenareunbeatable.org.uk/the-case-for-reform/section-58.html>

<sup>7</sup> <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

<sup>8</sup> Gershoff ET, Grogan-Kaylor A. Spanking and child outcomes: Old controversies and new meta-analyses. *Journal of Family Psychology*. 2016;30:453-469

<sup>9</sup> [http://www.legislation.gov.uk/asp/2003/7/pdfs/asp\\_20030007\\_en.pdf](http://www.legislation.gov.uk/asp/2003/7/pdfs/asp_20030007_en.pdf)

<sup>10</sup> [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

legislation can act as a tool for educating the public with regard to what is and what is not acceptable behaviour. We accept that public opinion is currently not overwhelmingly in favour of prohibiting all physical punishment of children, although a change in the law can often lead to a shift in public opinion and behaviour. We believe that this Bill is not only important for embedding equal protection for children within law but will also in part fulfil that function of informing and educating the general public of the need to do so. Nonetheless, it is our opinion that any new legislation should be accompanied by an ongoing information and awareness raising campaign aimed at informing the public of the merits of positive parenting and the long-term harm that can be caused by physically punishing children. Moreover, we also believe that in addition to the introduction of legislation and an accompanying information and awareness raising campaign, to promote a wholesale shift in public opinion and behaviour there is also required substantial statutory investment in interventions which aim to support parents and improve positive parenting. It is our experience that offering parenting programmes and initiatives which promote positive parenting strategies, such as those we deliver in our own early years and family support services, can help and support parents to develop alternative approaches to physical punishment. It is our belief that such parenting support for those who require it, alongside the universal provision of information and advice through multiple channels, including via the Scottish Government, NHS, social work, schools and the media, will ultimately expedite the understanding and acceptance amongst the wider population that, as a society, we no longer tolerate physical punishment of children.

## Family Support

The Bill's financial memorandum states that “**evidence from countries which have prohibited the physical punishment of children suggests it [parenting support] is central to driving the wider cultural change in attitudes away from physical punishment and towards other, more positive parenting techniques**”<sup>11</sup>. This is consistent with our experience from delivering family support services and positive parenting initiatives. We find that such supports are key to ensuring, often vulnerable, parents are helped to learn and develop alternative strategies and techniques, which can aid both attitudinal and cultural change amongst parents and wider society in relation to physical

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[https://www.parliament.scot/S5\\_Bills/Children%20\(Equal%20Protection%20from%20Assault\)%20\(Scotland\)%20Bill/SPBill38FMS052018.pdf](https://www.parliament.scot/S5_Bills/Children%20(Equal%20Protection%20from%20Assault)%20(Scotland)%20Bill/SPBill38FMS052018.pdf)

punishment of children. For many parents we work with, their own experiences as children have influenced their approach to parenting, including their attitude to physical punishment. It is therefore essential to ensure that for particular groups of parents, such as parents with learning disabilities, there are the appropriate services and supports available locally which can help and support them to develop alternative approaches and build capacity and confidence in their parenting.

It is our opinion that the best approach to protecting children from all forms of harm, including physical punishment, is through early identification, early intervention and the provision of needs-led family support, which, as we have outlined, can in many circumstances help and support parents to become confident in their parenting and reduce the likelihood of parents resorting to physically punishing their children. It is our experience, from working with families every day, that if you identify and address issues early through preventative measures, needs-led support and positive parenting alternatives then parents are less likely to physically punish their children. Therefore, we believe the best legislative protection children can have from all forms of harm is to ensure a statutory obligation on the Scottish Government, local authorities and other relevant public bodies to provide the appropriate services and support to meet all families' needs. In addition, we would caution against the Scottish Parliament passing this Bill without commitment from the Scottish Government to make available the necessary financial and additional resources to ensure that all families who require such can access the appropriate support; in particular vulnerable parents, such as parents with learning disabilities, who otherwise could be at risk of becoming criminalised as a result of any change in law effected by this Bill.

### **Financial Implications**

We believe that statutory investment in services and resources to ensure the availability of family and parenting support to families who need it most, along with a national public information and awareness raising campaign, in order to promote positive parenting alternatives to physical punishment of children, as well as to highlight any change in law, will inevitably have associated costs. However, we believe such costs are likely, over time, to be mitigated by a reduction in costs and resources associated with the intervention of social work services and/or police, as a result of a decline in the number of instances of

physical punishment of children and resultantly a decline in cases of physical abuse – as has been the experience in other countries<sup>12</sup>.

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<sup>12</sup> <http://www.childrenareunbeatable.org.uk/the-case-for-reform/experience-of-countries.html>