

**To:** Education and Children's Services Policy Board

**On:** 24 August 2017

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**Report by:** Director of Children's Services

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**Heading:** Children (Equal Protection from Assault) (Scotland) Bill Proposal

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**1. Summary**

- 1.1 This proposal for a Private Member's Bill has been introduced by John Finnie, Green Party MSP for the Highlands and Islands. It proposes a change in the law such that any physical punishment of children (currently allowable in some circumstances) becomes illegal. The Bill cites evidence which demonstrates the impact negative childhood experiences can have in later life, and points to obligations under international law which appear to be undermined by continuing to allow physical punishment. The UK ratified the United Nations Convention on the Rights of the Child in 1991 but has not amended the law. The United Nations (UN) have reported concerns about the lack of prohibition of corporal punishment and the defences of 'justifiable assault' (in Scotland) and 'reasonable punishment' (in the rest of the UK).
- 1.2 The proposal states its aim as 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. It proposes this would be achieved by ending the current legal position that the physical punishment of children can be viewed as justifiable assault.
- 1.3 The draft response to the consultation is attached as Appendix 1. In the draft response, we express support for the proposal, from the perspective of offering additional support to parents to manage children's behaviour in more positive ways and shift attitudes and behaviours, rather than to seek to criminalise parents. The importance of a supportive rather than punitive approach is highlighted.

- 1.4 The consultation process closed on 4 August 2017. The draft response (Appendix 1) has been submitted, in order to meet the timescale of the consultation, noting that approval will be sought at the Policy Board on 24 August 2017. Responses will be published on Mr Finnie's website unless confidentiality is requested. Respondents will be named unless anonymity is requested.
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## **2. Recommendations**

- 2.1 The Education and Children's Services Policy Board is asked to approve the draft response to the consultation on the Private Member's Children (Equal Protection from Assault) (Scotland) Bill Proposal, as detailed in Appendix 1.
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## **3. Background**

- 3.1 John Finnie, Green Party MSP for the Highlands and Islands, has introduced a Private Member's Bill<sup>1</sup> which proposes a change in the law such that any physical punishment of children (currently allowable in some circumstances) becomes illegal. The Bill cites evidence which demonstrates the impact negative childhood experiences can have in later life, and points to obligations under international law which appear to be undermined by continuing to allow physical punishment. The UK ratified the UN Convention on the Rights of the Child in 1991 but has not amended the law, despite the UN reporting concerns about the lack of prohibition of corporal punishment and the defences of 'justifiable assault' (in Scotland) and 'reasonable punishment' (in the rest of the UK).
- 3.2 Longitudinal studies indicate that, although there has been a decline in the use of physical punishment, this is very gradual. Mr Finnie believes that attitudes are not changing fast enough and therefore legislation is required. In 2016, the Scottish Government confirmed that it did not support the physical punishment of children, but has thus far not introduced any proposals to amend the law.

### **Existing Legislation**

- 3.3 The Criminal Justice (Scotland) Act 2003 prohibited certain forms of physical punishment of children in Scotland (blows to the head, shaking, hitting with an implement), and clarified the issues which should be considered in any case of alleged assault on a child which stemmed from physical punishment. The 2003 Act left room for parents and others caring for, or in charge of, children to plead a defence of justifiable assault under the existing common law. As such, Scots law does not prohibit all forms of physical punishment of children by parents and others caring for or in charge of children, neither does it offer children the same protection from assault as adults.

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<sup>1</sup> [http://www.parliament.scot/S5MembersBills/John\\_Finnie\\_Final\\_Consultation\\_Document\\_pdf.pdf](http://www.parliament.scot/S5MembersBills/John_Finnie_Final_Consultation_Document_pdf.pdf)

3.4 The 2003 Act also put into statute law common law principles about the factors a court must have regard to when considering whether an assault on a child, in exercise of a parental right or a right derived from having charge or care of a child, was justifiable. These are:

- the nature of what was done, the reason for it and the circumstances in which it took place;
- its duration and frequency;
- any effect (whether physical or mental) which it has been shown to have had on the child;
- the child's age; and
- the child's personal characteristics (including, in particular, sex and state of health at the time the thing was done).

3.5 Other legislation has outlawed the use of corporal punishment in certain contexts, specifically:

- In school education (Section 16 of the Standards in Scotland's Schools Act 2000);
- In foster care and kinship care agreements (Looked After Children (Scotland) Regulations 2009);
- In day care, child minding or child care settings (Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011).

Physical punishment remains legal in the other areas of the UK although the Welsh Government has indicated that it will seek cross-party support to end the defence of 'reasonable punishment'. The UK is one of 6 of the 28 EU member states which have not outlawed physical punishment of children.

3.6 The United Nations (UN) is clear that legal provisions which allow any level of violent punishment of children are not compatible with the UN Convention on the Rights of the Child (UNCRC) and ought to be repealed. In 2016 the UN Committee on the Rights of the Child called on all administrations in the UK to prohibit the use of corporal punishment as a matter of priority. This was the fourth time that the UK was called upon to do so, previous recommendations having been made by the UN Committee on the Rights of the Child in 1995, 2002 and 2008.

### **Scottish Policy Context**

3.7 In the 14 years since the 2003 Act was enacted, the Scottish Government's policies on children have been further developed. For example, the current Scottish Government's work in this area is underpinned by its *Getting It Right for Every Child (GIRFEC)* policy, key parts of which were translated into law via the Children and Young People (Scotland) Act 2014. GIRFEC features 8 indicators of wellbeing, one of which is: "Safe: Protected from abuse, neglect or harm at home, at school and in the community." GIRFEC states:

“Every child and young person has the right to be, and feel, safe and protected from any avoidable situation or acts of commission or omission by others that might affect their wellbeing. Such as:

- being physically, sexually or emotionally harmed in any way;
- being put at risk of physical, sexual or emotional harm, abuse or exploitation.”

### **Definition of Physical Punishment**

- 3.8 The United Nations 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, 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.”

### **Potential Impact of Bill**

- 3.9 The Bill would not create a new criminal offence, as the common law offence of assault will apply, albeit with a modification removing ‘reasonable chastisement’ as a defence. The Bill, if passed, would require the amendment or repeal of relevant parts of Section 51 of the Criminal Justice (Scotland) Act 2003.
- 3.10 It is intended that a Children’s Rights and Wellbeing Impact Assessment will be undertaken as part of the development of legislation. This would help to ensure that the impact of the legislation is fully explored and that measures are put in place to mitigate any negative impacts the Bill may have upon children.

### **Resource implications**

- 3.11 The proposed Bill states that evidence from countries where physical punishment is no longer permitted suggests that the number of reports of alleged incidents may increase (although it is unlikely that the proposal would result in a large number of additional prosecutions). There may therefore be a financial impact on those required to investigate and manage any additionally reported cases.
- 3.12 Should the Scottish Government and related services provide resources and public information to help parents move away from the use of physical punishment, as would be expected, there would also be cost implications.

Family support, health and social work services may also require additional resources to help support parents and manage the transition to any new arrangements.

3.13 Potential costs could therefore include:

- Scotland-wide information campaign to raise awareness of the change in the law (estimated as moderate);
- educational materials aimed at supporting parents and changing public attitudes towards physical punishment (estimated as moderate);
- additional parenting support (estimated as moderate);
- additional costs associated with investigating alleged assaults on children and any proceedings arising from these investigations, assuming there is an initial rise in reporting (estimated as minimal);
- the consequences of any criminal convictions (estimated as minimal).

3.14 These costs would fall on the Scottish Government, bodies such as social work services and Police Scotland, and on local authorities. In the context of Renfrewshire, there are already a number of parenting support programmes in place such as Incredible Years and Triple P, as well as services such as Families First which promote positive parenting. Social Work Scotland, have expressed a view that there may be an initial, short term increase in resourcing required, but that with sufficient early resourcing, in the longer term the positive impact may result in some reduction in the need for statutory protection services.

3.15 The proposal states that this Bill should both improve the well-being of children and lead to positive outcomes for children, parents, families and Scottish society as a whole. The proposal suggests that a fundamental aspect of sustainable development is ensuring that economic, cultural and political systems do not favour some people while harming others. It is therefore suggested that continuing to allow the physical punishment of children would tacitly encourage a form of discipline which can harm children physically and emotionally and which is not equal, as there is no legal justifiable assault on adults.

3.16 The consultation process asked respondents to give their views on the proposal, as detailed in appendix 1. A draft response has been submitted highlighting our position in support of the Bill. We are of the view that children should have the same rights and protection as adults. In accordance with the UN Convention on the Rights of the Child, all children have the right to a violence-free upbringing, including the right to be protected from all physical punishment. The international evidence indicates that physical punishment has the potential to damage children and carries the risk of escalation into physical abuse. Evidence also highlights the risks between physical punishment and a range of poor outcomes for children.<sup>2</sup>

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<sup>2</sup> <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

- 3.17 There is good evidence from those countries who have already experienced a change in the law, that legislating to ban the use of physical assault as a form of chastisement by parents to discipline children is accepted by society and does not result in the increased prosecution of parents<sup>3</sup>, but could potentially result in a decrease in incidence of violent crime<sup>4</sup> and child abuse in the long term<sup>4</sup>. We therefore support the proposed bill from the perspective of offering additional support to parents to manage children's behaviour in more positive ways and shift attitudes and behaviours, rather than to seek to criminalise parents. It is important that a supportive rather than punitive approach be taken.

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## Implications of the Report

1. **Financial** - There may be an initial, short term increase in resourcing required, but that with sufficient early resourcing, in the longer term the positive impact may result in some reduction in the need for statutory protection services

2. **HR & Organisational Development** – None.

3. **Community Planning** –

**Children and Young People** Renfrewshire's Community Plan outlines our aim for children and young people in Renfrewshire to live in a safe, secure, stable and nurturing environment at home and in the community and to have their rights respected. The proposed Bill is in line with this aim, and would ensure children have equal protection to adults.

**Safer and Stronger** The proposal states that this Bill should both improve the well-being of children and lead to positive outcomes for children, parents, families and Scottish society as a whole. The proposal suggests that a fundamental aspect of sustainable development is ensuring that economic, cultural and political systems do not favour some people while harming others. It is therefore suggested that continuing to allow the physical punishment of children would tacitly encourage a form of discipline which can harm children physically and emotionally and which is not equal, as there is no legal justifiable assault on adults.

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<sup>3</sup> Boyson R, Thrope L. (2002) Equal Protection for children: An overview of the experience of countries that accord children full legal protection from physical punishment. NSPCC.  
<https://resourcecentre.savethechildren.net/library/equal-protection-children-overview-experience-countries-accord-children-full-legal>.

<sup>4</sup> The Economist. *Spanking and Crime Rates*.  
<http://www.economist.com/blogs/charlemagne/2013/07/spanking-and-crime-rates?fsrc=scn/tw/te/bl/spankingandcrimerates>

4. **Legal** - The proposed Bill would give children the same rights and protection as adults. The current Scottish position contravenes the rights of children and young people to be protected from avoidable pain<sup>5</sup>. This is in direct opposition to Articles 3 and 8 of the UNCRC, which most recently, the Scottish Government in the Children and Young People (Scotland) Act 2014 committed public bodies to take steps “to secure better or further effect within its areas of responsibility on the UNCRC requirements”.
5. **Property/Assets** - None.
6. **Information Technology** – None.
7. **Equality & Human Rights** - The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals’ human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council’s website.
8. **Health & Safety** None.
9. **Procurement** – None.
10. **Risk** - None.
11. **Privacy Impact** - None.
12. **CoSLA Policy Position** – None.

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### List of Background Papers

- (a) Background Paper 1  
[http://www.parliament.scot/S5MembersBills/John\\_Finnie\\_Final\\_Consultation\\_Document\\_pdf.pdf](http://www.parliament.scot/S5MembersBills/John_Finnie_Final_Consultation_Document_pdf.pdf)

The foregoing background papers will be retained within Children’s Services for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is Laura McLean, Child Protection Advisor, Children’s Services, 0141 6186697, [laura.mclean@renfrewshire.gcsx.gov.uk](mailto:laura.mclean@renfrewshire.gcsx.gov.uk)

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<sup>5</sup> United Nations Committee on the Rights of the Child (2008): Consideration of reports submitted by States parties under Article 44 of the Convention. Concluding observations: United Kingdom Of Great Britain And Northern Ireland. United Nations. Available <http://www.refworld.org/docid/4906d1d72.html>





Draft Response to Consultation Questions on Children (Equal Protection from Assault)  
(Scotland) Bill Proposal

**SECTION 1 - ABOUT YOU**

**1. Are you responding as:**

- ☐ an individual – in which case go to Q2A
- ☒ on behalf of an organisation? – in which case go to Q2B

**2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)**

- ☐ Politician (MSP/MP/Peer/MEP/Councillor)
- ☐ Professional with experience in a relevant subject
- ☐ Academic with expertise in a relevant subject
- ☐ Member of the public

**2B. Please select the category which best describes your organisation:**

- ☒ Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)
- ☐ Commercial organisation (company, business)
- ☐ Representative organisation (trade union, professional association)
- ☐ Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- ☐ Other (e.g. club, local group, group of individuals, etc.)

**3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.**

- ☒ I am content for this response to be attributed to me or my organisation
- ☐ I would like this response to be anonymous (the response may be published, but no name)
- ☐ I would like this response to be confidential (no part of the response to be published)

Name/organisation: Renfrewshire Council Children's Services

**4. Please provide details of a way in which we can contact you if there are queries regarding your response.** (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)

Contact details: laura.mclean@renfrewshire.gcsx.gov.uk

## **SECTION 2 - YOUR VIEWS ON THE PROPOSAL**

### **Aim and approach**

**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?**

☒ Fully supportive

☐ Partially supportive

☐ Neutral (neither support nor oppose)

☐ Partially opposed

☐ Fully opposed

☐ Unsure

**Please explain the reasons for your response.**

We are of the view that children should have the same rights and protection as adults. In accordance with the UN Convention on the Rights of the Child, all children have the right to a violence-free upbringing, including the right to be protected from all physical punishment. The international evidence indicates that physical punishment has the potential to damage children and carries the risk of escalation into physical abuse. Evidence also highlights the risks between physical punishment and a range of poor outcomes for children.<sup>6</sup>

We therefore support the proposed bill from the perspective of offering additional support to parents to manage children's behaviour in more positive ways and shift attitudes and behaviours, rather than to seek to criminalise parents. It is important that a supportive rather than punitive approach be taken.

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<sup>6</sup> <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

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

☐ Yes (if so, please explain below)

☒ No

☐ Unsure

**Please explain the reasons for your response.**

Legislation has previously used to good effect as a means of facilitating attitudinal change and has the potential to bring about a positive change in behaviour. This has been demonstrated with other public health issues such as drink driving, wearing seatbelts and smoking in public places. Our aim should not be to criminalise parents, but to raise awareness and educate on the benefits of positive parenting.

**3. 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?**

A move away from physical punishment to more positive and less damaging means of discipline and guidance may help to support basic human needs such as being safe, feeling loved and part of a family, and having high levels of esteem (both self-esteem and esteem for others). It could serve to improve the wellbeing of children, parents, and family units, addressing issues such as physical and mental health and promoting good, respectful relationships between family members. Consequently this may lead to a reduction over time in the levels of violence and aggression in society. A move to increase societal awareness and recognition of children's rights and promote the messages of equality and safety is also consistent with the National Performance Framework Outcomes<sup>7</sup>, the Equally Safe Strategy<sup>8</sup> and the current National Parenting Strategy<sup>9</sup>.

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<sup>7</sup> <http://www.gov.scot/About/Performance/scotPerforms/outcome>

<sup>8</sup> <http://www.gov.scot/Resource/0045/00454152.pdf>

<sup>9</sup> <http://www.gov.scot/Resource/0040/00403769.pdf>

**4. What do you think would be the main disadvantages, if any, of giving children equal protection from assault by prohibiting all physical punishment of children?**

None. In establishing equal protection, rather than negatively impacting on parents, we would be offering positive parenting supports and clarity on the legal position. This may lead to initial resource implications, however this is likely to reduce over time through cultural change.

**Financial implications**

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

- ☐ Significant increase in cost
- ☒ Some increase in cost
- ☐ Broadly cost-neutral
- ☐ Significant reduction in cost
- ☐ Unsure

**Please explain the reasons for your response.**

The proposed Bill may lead to an increase in referrals to services initially, and to a need to resource positive parenting supports. Within Renfrewshire there are existing programmes in place to offer support in relation to positive parenting strategies. Over time the Bill may lead to a reduction in violence and aggression, and therefore a reduction in the need for intervention.

**Equalities**

**6. 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)?**

☒ Positive

☐ Slightly positive

☐ Neutral (neither positive nor negative)

☐ Slightly negative

☐ Negative

☐ Unsure

**Please explain the reasons for your response (if you are of the view that there will be different overall impacts for different groups please specify in your comments)**

The Bill would ensure children have the same protection as adults and as such address the current age based inequality.

**7. If you believe there is a negative impact in what ways could any negative impact of the Bill on any of the protected groups be minimised or avoided?**

**Sustainability of the proposal**

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

☒ Yes

☐ No

☐ Unsure

**General**

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

We welcome this proposed Bill and note the importance of recognising the links between this proposal and other work being undertaken, for example the Domestic Abuse Bill and the proposed review of Section 12 of the Children and Young Persons (Scotland) Act 1937.