



**Response to John Finnie MSP's consultation on proposed Children (Equal Protection from Assault) (Scotland) Bill**

**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?**

**X Fully supportive**

- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

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

Scottish Women's Aid (SWA) is the lead organisation in Scotland working towards the prevention of domestic abuse. We are the umbrella organisation for our 36 member groups that provide services directly to women, children and young people affected by domestic abuse. Of central importance to our work is the empowerment of women, children and young people, and the promotion and realisation of their human rights.

We are therefore strongly supportive of the proposal to ban all physical punishment of children. We were a firm supporter of the Children Are Unbeatable! Alliance, a collection of organisations who sought equal protection for children in Scotland and the rest of the UK. Children must be afforded the same rights and protections as adults – indeed, their increased vulnerability just by dint of being a child makes it all the more critical that they enjoy equal protection from assault. As an organisation working to end violence against women, we believe that everyone has the right to live without fear of being hurt. Physical punishment of children sits within the wider continuum of violence within society, and undermines the message that violence in all its forms will not be tolerated.

As the proposal makes clear, Scotland is neglecting its international human rights obligations in keeping the archaic legal defence of 'justifiable assault' of children. Scots law must be brought in line with human rights instruments including the UN Convention on the Rights of the Child (UNCRC) and the Convention to Eliminate All Forms of Violence against Women (CEDAW). There have been sustained and numerous calls from various human rights treaty bodies for Scotland to protect

children from physical punishment, most recently through the UNCRC's 2016 Concluding Observation that Scotland should "prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences".<sup>1</sup> This was followed by seven recommendations to the UK through the Universal Periodic Review at the Human Rights Council.<sup>2</sup>

We are aware of the counter arguments raised that removing the legal defence of 'justifiable assault' may have the unintended consequence of 'criminalising loving parents'. The proposal document is clear that the main aim of the change in law is not about criminalising parents; it is about rectifying a significant gap in children's protection, rights and equality under Scots law, and providing greater clarity for parents, services and children themselves about what is acceptable treatment of children. Further, there is no evidence of increased prosecutions in countries that have already introduced a ban.<sup>3</sup>

## 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.

Enshrining the aims of the proposal in law is the best means of establishing a clear, unequivocal mandate for the equal protection of children from assault, and contributing to a step-change in cultural attitudes about, and behaviours around, physical punishment. Legislation would provide clarity for parents and in the criminal justice response towards protection for children. Passing a Bill through Holyrood will also provide a necessary level of scrutiny of the proposed changes to the law.

## 2. 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?

- **Improved outcomes for children and young people** – There is extensive national and international research to evidence that physical punishment has a harmful impact on children's health, wellbeing and behaviour that can continue into adulthood. In a Scottish study of 1,600 children, those who had been

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<sup>1</sup>CRC (2016), 'Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland':

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskHOj6VpDS%2f%2fJgg2Jxb9gncnUyUgbnuttBweOlylfyYPkBbwffitW2JurgBRuMMxZqnGgerUdpjxij3uZ0bjQBOLNTNvQ9fUIEOvA5LtWOGl>

<sup>2</sup> <http://www.togetherscotland.org.uk/pdfs/Member%20briefing%20on%20Equal%20Protection.pdf>

<sup>3</sup> <http://www.childrenareunbeatable.org.uk/the-case-for-reform/faqs.html>

subjected to smacking during their first two years were more than twice as likely to display emotional and behavioural problems at age 4 than children who had not been smacked.<sup>4</sup> Banning physical punishment would help fulfil the GIRFEC aim of improving outcomes and supporting the wellbeing of children and young people.<sup>5</sup>

- **Reducing the risk of ‘milder’ physical punishment escalating into child abuse** – Research has highlighted a clear link between physical punishment and child maltreatment; six individual studies concluded that physical punishment is linked to increased risks for parental use of severe physical violence.<sup>6</sup> While we are not suggesting that the use of physical punishment will inevitably escalate into physical abuse, the evidence shows that some children will be at increased risk of harm. If we are to get it right for every child, as the GIRFEC approach promotes, a ban on physical punishment will play an essential part in prevention and early intervention efforts.
- **Better clarity for parents, services and children themselves about what is acceptable and unacceptable treatment of children** – As Children 1<sup>st</sup> have pointed out in their response to the consultation, there continues to be confusion around physical punishment, with some people believing that physical punishment is already against the law, while others don’t understand what is and is not within the confines of the law.<sup>7</sup> This can make it generally challenging for services working with families to promote positive parenting methods without causing further confusion.

What must be made clear is that legal reform is not creating ‘new legislation’ since the law protecting adults from assault already applies to children; it is the questionable exemption that allows ‘degrees’ of physical violence to be used against children, under the misapprehension that this is a valid and acceptable method of disciplining children, that must be extinguished.

Enshrining a complete ban against any extent of physical punishment on children under Scots law would help remove this ambiguity and provide better clarity for parents, children and services working with them that physical punishment is unacceptable, counter-productive, harmful towards the child-parent relationship and a negative way for parents to discipline children. This is particularly relevant in relation to the response of statutory services and the legal system in cases of domestic abuse. For instance, we have heard anecdotally from women affected by domestic abuse that in situations of separation where there is ongoing child contact with the perpetrator, women can face difficulties when it comes to preventing further abuse of children. Some statutory authorities and the courts perceive a woman’s concerns against the perpetrator using

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<sup>4</sup> NSPCC Scotland, Children 1st, Barnardo’s Scotland and the Children and Young People’s Commissioner Scotland (2015) *Equally Protected: A review of the evidence on the physical punishment of children*: <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

<sup>5</sup> <http://www.gov.scot/Topics/People/Young-People/gettingitright/what-is-girfec>

<sup>6</sup> NSPCC Scotland, Children 1st, Barnardo’s Scotland and the Children and Young People’s Commissioner Scotland (2015) *Equally Protected: A review of the evidence on the physical punishment of children*: <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf>

<sup>7</sup> <https://www.children1st.org.uk/media/6134/children1stconsultationresponseequalprotection260717.pdf>

physical violence against children under the excuse of ‘chastisement’ to be ‘malicious’ and merely an attempt to interfere or disrupt contact, as opposed to the accurate and valid position that this is a clear child protection issue and that the perpetrator’s physical chastisement of children is harmful.

Clarifying what forms of behaviour are not acceptable in relation to the parenting of children and that any physical punishment is intolerable would provide women in these situations with a stronger position to challenge unacceptable treatment of children.

- **Scotland meets its international human rights obligations** – As we have outlined above, Scotland is failing to meet its international human rights obligations, despite repeated criticism from multiple human rights treaty bodies. UNCRC article 19 outlines the obligation for states parties to ‘take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence’.<sup>8</sup> The UN Committee on the Rights of the Child has made it clear that physical violence includes all forms of physical punishment,<sup>9</sup> leaving no ambiguity for states parties; physical punishment, and a failure to take legislative measures to ban it, is in direct contravention of children’s rights.
- **Enhancing the status of children as independent rights holders** – In bringing children’s right to protection from assault in line with adults’, Scotland will send an important message that children and young people’s status as rights holders must be respected, including their right to have their views heard and taken seriously in all matters affecting them.<sup>10</sup> Children and young people themselves have expressed support for a ban on all physical punishment; in its 2015 manifesto consultation, the Scottish Youth Parliament found that, from 72,744 consultation responses, 82% agreed that ‘All physical punishment of children should be illegal’.<sup>11</sup>
- **Promoting a culture in Scotland that challenges violence and abuse in all its forms** – Equally Safe, Scotland’s strategy for preventing and eradicating violence against women and girls, prioritises prevention and early intervention and makes clear that children and young people of all genders are harmfully impacted by gender-based violence.<sup>12</sup> This is a progressive approach that makes the continued defence of ‘justifiable assault’ of children increasingly at odds with national policy around tackling violence. Banning physical punishment would provide greater protections against violence for children, complementing the wider aims of the Equally Safe strategy.

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<sup>8</sup> UNCRC, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>9</sup> UNCRC, ‘General Comment no. 13: the right of the child to freedom from all forms of violence’: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en)

<sup>10</sup> As outlined in UNCRC Article 12: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>11</sup> Scottish Youth Parliament (2015): [https://d3n8a8pro7vhmx.cloudfront.net/scottishyouthparliament/pages/283/attachments/original/1457781662/Lead\\_The\\_Way\\_Manifesto.pdf?1457781662](https://d3n8a8pro7vhmx.cloudfront.net/scottishyouthparliament/pages/283/attachments/original/1457781662/Lead_The_Way_Manifesto.pdf?1457781662)

<sup>12</sup> <https://blogs.gov.scot/equally-safe/wp-content/uploads/sites/18/2016/03/ES-update-18-April1.pdf>

While we have stated above that physical punishment sits within a wider continuum of violence, with an increased risk of escalation into physical abuse, we would strongly caution against making definite and causal links between physical punishment in childhood and the perpetration of violence/abuse in adult intimate relationships. We challenge assumptions around intergenerational transmissions of violence. The research<sup>13</sup> shows no inevitable trajectory of violence, which must be viewed through a gendered approach to abuse in intimate relationships – an approach which is essential for taking into account the wider structural and social inequalities between men and women which are a cause and consequence of domestic abuse.<sup>14</sup> That being said, there is no doubt that banning physical punishment of children will help reinforce attitudes that violence in all its forms will not be tolerated, which can only have positive messages for children about healthy relationships, be they between children and parents or between adult partners.

### **3. 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?**

We see no significant disadvantages to giving children equal protection from assault and reiterate our points above.

We would note that, should the proposal reach the stage of becoming a bill, it will be critical to keep in mind the influence of gender on expectations of parents, given that women largely continue to be seen as the caregiver primarily responsible for the protection and wellbeing of their children. Any activity around publicity and support for the campaign would need to take into account the gendered assumptions around parenting.

## **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)?**

#### **X Positive**

- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

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<sup>13</sup> Scottish Women's Aid, 'Do children "learn" to be abusers from living with it?':

[http://www.scottishwomensaid.org.uk/sites/www.scottishwomensaid.org.uk/files/IntergenerationalTransmission\\_Cycle%20of%20Violence.pdf](http://www.scottishwomensaid.org.uk/sites/www.scottishwomensaid.org.uk/files/IntergenerationalTransmission_Cycle%20of%20Violence.pdf)

<sup>14</sup> Scottish Government, CoSLA (2010) 'What does gender have to do with violence against women?':

<http://www.gov.scot/Resource/Doc/1032/0097230.pdf>

**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)**

We believe that with appropriate and high-quality information and support accompanying legislation, the proposed Bill will have a positive impact on protected groups. We would expect that, in addition to a Child Rights and Wellbeing Impact Assessment, an Equality Impact Assessment would also help 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 any protected groups.

**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

**For more information please contact:**

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