1. Describe and explain the impact of the proposal on children and young people.

The purpose of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill (the Bill) is to prohibit the physical punishment of children in Wales by abolishing the defence of reasonable punishment in law.

The aim of the Bill is to help protect children’s rights by prohibiting the physical punishment of children by parents and those acting in loco parentis within Wales, including visitors to Wales. In doing so, children in Wales would have the same legal protection from physical punishment as adults.

The prohibition of the physical punishment of children is consistent with the Welsh Government’s commitment to children’s rights under the United Nations Convention on the Rights of the Child (UNCRC). It fits with the lead taken by the Welsh Government in setting our policy for children and their families firmly in the context of the UNCRC. This commitment is enshrined in legislation through the Rights of Children and Young Persons (Wales) Measure 2011.

Over a number of years the UK nations have been criticised for not fulfilling the UNCRC Article 19 duty which states that:

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

Successive recommendations from the United Nations Committee on the Rights of the Child have stated that the United Kingdom (as the Member State) should prohibit all forms of corporal punishment in the family, including through the repeal of all legal defences.
The defence of reasonable punishment is a defence to the existing common law offences of assault and battery. The legislative proposal to remove the defence of reasonable punishment does not create a new criminal offence. The defence applies only to the existing offences of common assault and battery. The existing penalties for the offences of common assault and battery would therefore remain unchanged. The police already receive reports of adults physically punishing children and respond and record such incidents, in line with agreed processes and procedures.

Removing the defence will not interfere with the principles of the common law, which acknowledge that a parent can intervene physically, for example, to keep a child safe from harm, or help with day-to-day activities such as dressing or cleanliness and hygiene.

Consultation on the legislative proposal

The legislative proposal was consulted on between January and April 2018. The consultation was widely distributed electronically and published on the Welsh Government’s website. In addition, external engagement events were held with stakeholders, the general public and children and young people.

Views of children and young people

Responses to the consultation were received from children and young people, via organisations such as schools and youth services and by organisations that represent children. The majority of these responses provided views in favour of the legislative proposal and agreed it would support the aim of protecting children’s rights. However, one respondent raised a concern that smacking would continue ‘behind closed doors’.

UNICEF worked with young people in schools across Wales to gather the views of 1,157 children and young people, on whether or not the law should change or stay the same; 72% of primary school pupils and 56% of secondary school pupils thought the law should change.

In addition, as part of the formal consultation, 54 young people aged 11-19 took part in workshops, as outlined in Annex B to the summary of responses to the consultation. Just over half of young people (54%) who participated were in favour of the legislative proposal. They felt all children deserve a chance to be happy and safe at home and, whilst accepting the need for discipline, argued there is no logical reason why a parent should be allowed to hit a child in Wales in the 21st Century. They also felt it is important for children to know their rights and how they can access legal protection if needed. Children, they reasoned, should be encouraged by their

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6 https://beta.gov.wales/legislative-proposal-remove-defence-reasonable-punishment
parents to recognise and learn from their mistakes instead of being punished physically.

Young people who disagreed with the legislative proposal (39%) were unsure if such a change will actually stop parents using physical punishment against their children in private. They also expressed concerns about potential malicious accusations by children against their parents. A minority saw it as the State interfering with the right to a private life and impacting on family life.

Evidence

The research evidence relating to the potential impact of physical punishment on children, alternatives to physical punishment, and attitudes towards physical punishment of children has been considered. A summary of relevant evidence was included for consultation purposes at pages 12 to 17 of the consultation document.10

The consultation summary acknowledges that research around parental physical punishment is complex because, for example, there are a number of external influences in a child’s life which may affect outcomes; many studies rely on retrospective self-reporting by parents; and it is possible that parents may feel under pressure to give a view which they consider to be socially acceptable.

The consultation summary concludes that no peer-reviewed research has shown improvements in developmental health as a result of parents’ use of physical punishment; and sets out that research suggests positive parenting is associated with benefits at all points in a child’s development. It sets out that the prevailing view from child development experts, backed up by research, is that corporal punishment does not work and that other positive alternatives are more effective at teaching children the right sort of behaviour.

A wide range of research is referenced in the consultation summary. One of these references was to a 2005 meta analysis comparing child outcomes of physical punishment and alternative disciplinary tactics. This was incorrectly cited (page 14). We have since revisited the evidence and concluded that it does not alter the overall assessment presented.

Since the publication of the consultation document further relevant research has been published, including three pieces of research commissioned by the Welsh Government:

‘Parental Attitudes Towards Managing Young Children’s Behaviour’ 201711

Key points from this research with parents and guardians of young children in Wales include:

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Parental attitudes towards managing children’s behaviour: There was a shift in attitude since the 2015 research, with fewer parents and guardians of young children in Wales supportive of physical punishment in 2017. For example, in 2017, 81% of parents disagreed with the statement “It is sometimes necessary to smack a naughty child” compared to 71% in 2015.

Attitudes towards legislation on managing children’s behaviour change: Attitudes towards law reform had not changed significantly compared to the survey in 2015. However, 50% of parents surveyed in 2017 did not agree that the law should allow parents to smack their children (compared to 24% who agreed that it should). In a slightly different question, parents were asked whether there should be a complete ban on smacking; 48% agreed there should be a complete ban on smacking and 39% disagreed.

Advice and support for managing children’s behaviour: in the 2017 survey 40% of parents reported they had sought advice or information about managing their children’s behaviour. For these parents, the most popular source of advice and information was the internet (52%), followed by a health professional (35%), school (20%) and a friend/relative (14%). A similar question was asked in the 2015 survey, where only 12% of those accessing support for parenting skills had done so online.

In the 2017 survey 95% of those who had accessed advice or information about managing children’s behaviour reported that it had a positive influence on their parenting skills or confidence: 49% reported that it had helped a lot, and 46% that it had helped a little.

‘Parental Physical Punishment: Child Outcomes and Attitudes’, 2018

This review indicates that, overall, the balance of evidence supports the following conclusions:

Severe physical punishment and child abuse are harmful to child development;

Although there is no definitive evidence that ‘reasonable’ physical punishment causes negative outcomes for children, there is evidence that it is associated with negative outcomes;

There is no reliable evidence demonstrating that ‘reasonable’ physical punishment has long-term developmental benefits, or is more effective at changing short-term behaviour, relative to other, non-physical means;

Physical punishment for defiant children is no more effective at changing short-term behaviour than other forms of non-physical discipline;

The majority of researchers in the field make the judgement that all physical punishment under all conditions is potentially harmful to children.

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In terms of the links between physical punishment and child outcomes, the report explains there are several hundred studies and that these do not all come to the same conclusions. The review authors’ view is:

“… the evidence does not definitively show that “reasonable” parental physical punishment causes negative outcomes. But there is evidence of an association with negative outcomes, and no evidence of benefits, either in terms of long-term developmental benefits, or in terms of its efficacy in influencing short-term changes to behaviour relative to other, non-physical means.”

‘Legislating to Prohibit Parental Physical Punishment of Children’, 2018

This review includes the following findings:

- There is a link between legislating on physical punishment and changes in attitudes towards and prevalence of the use of physical punishment: The report concludes: “The available evidence supports the view that legislating on physical punishment can contribute to changes in both attitudes towards, and the use of, physical punishment but that sustained information campaigns and support to parents are also needed for legislation to be effective.”

- The important role of information campaigns: “The conclusion drawn by almost all studies is that corporal punishment bans are associated with declining support for and practice of corporal punishment … but that it is often in combination with other factors (such as changing social policies) and direct causal connections cannot be proved. Information campaigns which are sustained and repeated are necessary, not only to raise awareness of the change, but also to allay fears about increased risks of prosecution for ‘trivial’ smacks and fears of increased compulsory intervention in family life.”

**Intended positive impacts on children and young people**

The Bill is intended to help protect children’s rights by prohibiting the use of physical punishment against children, through removal of the defence of reasonable punishment. The intended effect of the legislation, combined with awareness-raising and support for parents, is to bring about a further reduction in the use and tolerance of the physical punishment of children in Wales.

By introducing legislation to remove the defence of reasonable punishment, it is intended that the children and young people in Wales will grow up in a less violent society where everyone knows it is not acceptable to use any form of physical punishment, and parents are supported to use positive discipline strategies with clear boundaries. Children will have the same protection from physical punishment as adults.

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13 Keating H, 2018, Legislating to Prohibit Parental Physical Punishment of Children, PPIW


15 Keating H, 2018, Legislating to Prohibit Parental Physical Punishment of Children, PPIW
By changing the law, the ambiguities and confusion around what physical punishment is considered reasonable would be resolved for all parents. Removing the defence would provide a clearer and more consistent basis for professionals providing information, advice and support to parents to adopt positive forms of discipline – something professionals have asked for.

Changing the law would also remove the legal loophole which currently exists, which allows adults acting in loco parentis in what are termed ‘non-educational’ or ‘unregulated settings’, to use the defence of reasonable punishment. The ban on physical punishment of children in mainstream schools and education settings would, therefore, be extended to all settings where children learn, play, worship and are cared for.

The Bill supports the Welsh Government’s commitment to create conditions to give every child the best start in life, and enable them to fulfil their potential\[16\]. *Prosperity for All – the National Strategy*\[17\] identifies the early years as a Welsh Government priority, highlighting that an individual’s experiences in childhood play a significant part in shaping their future and committing to legislation to ban the physical punishment of children. This builds on the Rights of Children and Young Persons (Wales) Measure 2011\[18\], with its focus on children’s rights, and is in line with the Welsh Government’s stance against violence of any sort, including violence against women, domestic abuse and sexual violence\[19\].

Abolishing the defence of reasonable punishment is also consistent with Council of Europe Recommendation 2006 (19)\[20\]. This recommends that governments of member states should “create the necessary conditions for positive parenting in the best interests of the child”, with positive parenting defined as “parental behaviour based on the best interests of the child that is nurturing, empowering, non-violent and provides recognition and guidance which involves setting of boundaries to enable the full development of the child”.

*Possible negative impacts on children and young people*

This Bill is fundamentally about ensuring compliance with children’s rights and, in doing so, protecting children from physical harm. However, changing the law to remove the defence of reasonable punishment may, lead to a very small number of parents receiving a criminal conviction, if they chose to continue to use physical

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\[18\] http://www.legislation.gov.uk/mwa/2011/2/contents
punishment. We do not anticipate many such cases\textsuperscript{21}. This might impact on children and young people, whether directly or indirectly.

During stakeholder engagement the police identified a potential negative impact on the child if they are present when a parent is approached by the police or arrested, following a reported incident of physical punishment. The impact will depend on the individual circumstances, including; the age of the child, their cognitive ability, and how the parent responds. The police will make decisions about any further action based upon a number of factors including whether there is sufficient evidence\textsuperscript{22}, safeguarding concerns and what is seen to be in the best interests of the child.

Some research has linked children’s exposure to traumatic events, such as arrest of a family member, and their mental health outcomes. For example, Roberts et al. (2014) found that \textsuperscript{23}“children exposed to the arrest of a parent or other family member exhibit higher levels of mental health difficulties compared to peers not exposed” (p11). Furthermore they found that these difficulties persist even when controlling for other trauma exposure(s) and individual and family risk factors.

If a child is called as a witness in court Registered Intermediaries (RIs) must be considered. RIs are communication specialists (e.g. speech and language therapists, psychologists) who will assist to ensure answers are communicated more effectively during police interview and when giving evidence at trial. RIs are recruited, trained and accredited by the Ministry of Justice. There is currently a shortage of RIs and a very limited number of Welsh speaking ones however, the Ministry of Justice are recruiting additional RIs. RIs would not necessarily be used if there was unequivocal evidence, such as CCTV or a witness statement, which means the child would not be required to give evidence. Of course, the public interest test, including the best interests of the child, would need to be considered before making a decision on whether to charge or prosecute.

An incident of physical punishment reported to the police may have potential implications in terms of disclosure on certain Disclosure and Barring Service (DBS) checks\textsuperscript{24}. Enhanced DBS\textsuperscript{25} checks are required to assess suitability for certain employment roles and training. If an incident is disclosed it is then up to the employer or training provider to consider the disclosed information and decide if the individual is suitable for the role. In practice, employers may exercise their discretion to decide that such an incident, even if disclosed, has no impact on suitability for the role. On the other hand if a negative decision is made then this could have an adverse effect on the current or potential family income. This in turn could have a

\textsuperscript{21} We are unable to predict the impact of parent’s involvement with the justice system with absolute certainty because there is no precedent in the UK for removing the defence and because of current reporting and recording practices. This assessment has been made using the best data, currently available, including using the experience in New Zealand as a proxy. Please see the Justice Impact Assessment and Explanatory Memorandum for further information.

\textsuperscript{22} The Code for Crown Prosecutors 2018 accessed on 10/12/18 https://www.cps.gov.uk/publication/code-crown-prosecutors


\textsuperscript{24} More details can be found in the Explanatory Memorandum for the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

\textsuperscript{25} https://www.gov.uk/government/organisations/disclosure-and-barring-service
negative impact on the child or children concerned, financially, socially and emotionally. We do not anticipate many such cases.\textsuperscript{26}

\textsuperscript{26} We are unable to predict the impact of parent’s involvement with the justice system with absolute certainty because there is no precedent in the UK for removing the defence and because of current reporting and recording practices. This assessment has been made using the best data, currently available, including using the experience in New Zealand as a proxy. Please see the Justice Impact Assessment, and Explanatory Memorandum for further information.
Mitigations

The proposed change in the law does not of itself criminalise parents – it is their actions in relation to the law that may lead them to receiving a criminal record. There will be a period of awareness-raising which will aim to ensure that, so far as possible, parents, and those acting in loco parentis, are aware of the change in the law before it comes into force. This will put them in a position to choose not to physically punish their children, and thereby avoid the risk of being charged with a criminal offence.

In addition, the Welsh Government has been working with the police, Crown Prosecution Service and social services to clarify police and social services processes, and how they work together to respond, to reported incidents of parental assault on a child. If the Bill is passed, we will continue to work with them and the CPS in the period between Royal Assent and commencement, and beyond, to consider any processes, guidance or training which may need to be put in place following removal of the defence. The National Police Chiefs Council (NPCC) strategy on charging and out of court disposals 2017-2021 highlights that

“You cannot address vulnerability solely by way of prosecution, it requires a more sophisticated and effective whole system approach where the Police Service are trusted as professional decision makers who can access a range of services in partnership from early intervention pathways, out of court disposals and, where necessary, prosecution”.

In this context, the potential adverse effect on the child of a parent receiving a criminal conviction may be mitigated through the use of early intervention pathways or out of court disposals. The range of out of court disposals available has been investigated, with a view to establishing whether the police will be able to use diversionary approaches. Discussions are ongoing with the Ministry of Justice, police and Crown Prosecution Service.

Explain how the proposal is likely to impact on children’s rights.

It is not known exactly how many children and young people experience any form of physical punishment in Wales and therefore how many will be likely to be affected directly or indirectly by the legislation. However, the Bill has the benefit of bringing clarity so that all children, parents and professionals will know that physical punishment is unacceptable in Wales, and that children and young people have equal protection from physical punishment as adults.

For the majority of children, the family home is where they will realise many of the rights as recognised by the UNCRC. The Welsh Government considers that parents have a pivotal role as guardians and advocates of children’s rights with a responsibility on the state to assist, influence and support parents in this role. The aim of the legislation is to remove the defence of reasonable punishment and help protect children’s rights. This, combined with a package of support intends to prompt parents to parent in a positive manner that considers and reflects children’s rights.

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A focus on positive parenting will support children and young people’s rights and build on the foundations of other Welsh Government programmes and campaigns to support children and young people including Flying Start, Families First and Parenting. Give it Time.

The potential effect of the proposed legislation on Children’s Rights was explored in the formal consultation on the legislative proposals. 50.3% of the respondents agreed that the proposal will help to achieve the aim of protecting children’s rights. Of those who provided comments in response to this question the most frequent comment was that the proposal will ensure ‘children’s rights are safeguarded and that children are provided with the same legal protection as adults.’

48.1% of the respondents disagreed that the proposal will help to achieve the aim of protecting children’s rights. Of those who commented, the most frequent comment cited the potential adverse effect on what was perceived to be the right of the child to learn boundaries and discipline.

**UNCRC articles**

The Committee on the Convention on the Rights of the Child has issued general comment No 8 to highlight its recognition of the right of the child to respect of their human dignity, physical integrity and equal protection under the law. The committee’s view is that addressing the widespread acceptance or tolerance of corporal punishment and eliminating it in the family is an obligation of the State Parties who have signed up to the Convention and that corporal punishment is incompatible with the UNCRC.

**Articles 1-5:** The Welsh Government observes these articles in taking forward the legislative proposals.

The Committee on the Convention on the Rights of the Child has identified the principle that the ‘best interests’ (Article 3) of the child should be a primary consideration in all actions concerning children. The Convention also asserts, in Article 18 that the best interests of the child will be parents’ basic concern. The committee emphasises the need for the interpretation of the child’s best interest needing to be consistent throughout the convention, which includes the obligation to protect children from all forms of violence.

**Article 12** relates to a child’s right to express their views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. The Welsh Government’s consultation document

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was provided in different formats, including a young people’s version\(^{31}\), and received views from young people in response to the consultation and through stakeholder events held as part of the consultation process\(^ {32}\).

**Article 37** of the Convention requires States to ensure ‘no child shall be subjected to … degrading treatment or punishment’. This is complemented by **Article 19** which requires that ‘State Parties shall take all appropriate legislative, social and educational measures to protect the child from all forms of physical or mental violence… while in the care of parent(s)’.

By legislating to remove the defence of reasonable punishment, combined with awareness-raising and advice and support for parents, the Welsh Government will be directly implementing **Article 4** which calls for states to ‘undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present convention’

**Articles 41 and 42** – relate to existing statutory provision and promotion of the Convention which the Welsh Government will continue to work towards in respect of the proposals.

This is not an exhaustive list as all human rights, including the UNCRC rights, are ‘indivisible, interdependent and interrelated’ – and the enjoyment of one right depends on the fulfilment of other rights. Should the Bill be successful, officials will continue to be mindful of the need to ensure that, as far as possible, implementation supports the totality of the rights enshrined in the UNCRC.
