# Title of proposal:

Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

## Department:

Communities and Tackling Poverty

## Cabinet Secretary/Minister responsible:

Deputy Minister for Health and Social Services, Julie Morgan AM

## Start Date:

July 2018

## Contact e-mail address:

ChildrenWalesBill@gov.wales
What action is the Welsh Government considering and why?

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. This does not create a new criminal offence.

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 Welsh Government’s Commitment

Introducing legislation to remove the defence of reasonable punishment has been a long standing commitment of the Welsh Government.

The Programme for Government, Taking Wales Forward¹, reaffirmed the Welsh Government's intention to take forward, on a cross-party basis, legislation which would remove the defence of reasonable punishment. It outlines a number of measures aimed at improving the health and wellbeing for all, to ensure everyone can fulfil their potential, meet their educational aspirations and play a full part in the economy and society of Wales.

Prosperity for All², builds on this, setting out the Welsh Government’s vision and commitments, including removing the defence of reasonable punishment. The early years is one of five priority areas with a vision for “children from all backgrounds to have the best start in life”. This aligns with the thinking around Adverse Childhood Experiences (ACEs). The importance of good parenting skills is reinforced by the evidence that ACEs can have negative and lasting effects on a child’s health, education and wellbeing.

The Bill supports the adoption of positive parenting styles and contributes to several of the national wellbeing goals under the Well-being of Future Generations (Wales) Act 2015³ including:

- A healthier Wales – evidence indicates positive parenting is a strong factor in promoting positive outcomes for children, benefitting their health, happiness and well-being, and laying the foundation for reaching their full potential in adult life (Robertson, 2017⁴ O’Connor and Scott, 2007⁵; Katz⁶ and Redmond, 2009; Nixon, 2012⁷).

---

⁴ Robertson, L. (2017) “Literature review on outcomes of parental discipline styles, evidence on effective parenting styles and the international experience of prohibition of physical punishment in law”. Glasgow: Scottish Centre for Crime and Justice Research
• Globally responsible Wales – International human-rights and treaty bodies such as the UN Committee on the Rights of the Child, the UN Human Rights Council and the UN Committee on the Elimination of Discrimination Against Women, have advocated an end to all forms of corporal punishment, arguing that it violates children’s human rights. Reforming legislation around the physical punishment of children in the home would be in accordance with article 19 (“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence…while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”) of the UNCRC.

Prevention and the long term

The Welsh Government has long recognised the need to provide support to parents in Wales through evidence-based parenting programmes. These have mainly been provided through the Welsh Government’s Flying Start and Families First programmes and encourage parents to adopt a positive style of parenting. Some of these parenting programmes, such as Triple P and Incredible Years, have been independently evaluated, extensively over the last 30 years, with diverse groups of parents in many different countries. Studies have demonstrated effectiveness in achieving improved and more positive parenting approaches, reduced parental stress and conflict over child rearing, as well as improved child behaviour.

Alongside the Bill, the Welsh Government will continue to provide information, advice and support on a range of topics related to parenting, including positive alternatives to physical punishment, and other common concerns such as potty training, tantrums and mealtimes.

The Welsh Government’s Parenting Support Guidance encourages those delivering parenting support to tailor programmes to meet the specific needs and circumstances of parents and the goals identified by them. Parenting support should be delivered in a way that values and uses parents’ expertise and is compatible with their beliefs and values.

---

8 https://www.ohchr.org/EN/Countries/ENACARegion/Pages/GBIndex.aspx
9 https://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx
10 https://www.ohchr.org/en/hrbodies/cedaw/Pages/CEDAWIndex.aspx
12 https://gov.wales/flying-start-guidance
13 https://gov.wales/families-first-guidance
14 (For a list of research articles please visit the Triple P and Incredible Years’ websites http://www.incredibleyears.com/for-researchers/evaluation/). In addition, Triple P and Incredible Years have been reviewed by the Early Intervention Foundation (EIF) and included in their guidebook for early intervention programmes which have achieved positive outcomes of children. https://guidebook.eif.org.uk/about-the-guidebook/ The (EIF evidence review found these programmes to have evidence of a short-term positive impact from at least one rigorous evaluation where a judgment about causality can be made.)
Across Wales, parents and carers have access to a range of services to support them delivered by partners in local government, health, education, social services, social justice and the third sector. Types of support available include evidence-based, group-based structured parenting programmes; one-to-one support; informal structured group-based parenting support; and informal drop-in support.

This support is delivered at different points in a child’s life (antenatal to teenage) and ranges from support for parents with low levels of need, through to more targeted, intensive support. All families have access to a range of universal services provided by midwives, Health Visitors, GPs and Family Information Services. Childcare providers and schools also have a vital role in identifying children and families who have additional needs and in supporting parents to provide a positive home learning environment.

The Welsh Government Parenting. Give it Time campaign\(^\text{16}\) provides information, advice and support for parents of children up to the age of 7. It promotes positive parenting messages through social and print media and digital advertising. A dedicated website and Facebook page provide parenting tips on common parenting concerns like tantrums, bed times, meal times and potty training, information and advice, and signpost parents to sources of further support. The Welsh Government will enhance the support already provided by expanding the age range of the Parenting. Give it Time campaign from 0-7 years of age to 0-18 years of age in order to provide information for parents with older children.

Parents and those acting with parental responsibility will need to be aware of the proposed change in the law before it comes into force. The 2018 PPIW report Legislating to Prohibit Parental Physical Punishment of Children\(^\text{17}\) found that where a change in the law is not accompanied by a publicity campaign or a campaign is not sustained, knowledge of the law is less widespread.

Alongside the existing Parenting. Give it Time campaign we are developing a comprehensive strategy and campaign to raise awareness of the change in the law which will be brought about by the Bill, if passed. This is discussed further in Part 2 of the Explanatory Memorandum.

The Welsh Government will build and maintain relationships with a range of individuals and organisations to help ensure that affected parties understand the changes in legislation.

Collaboration and involvement

We recognise there are differing opinions regarding the Bill, which is why the views of the public and a wide range of stakeholders have been sought, including the:

- police, Crown Prosecution Service, Disclosure and Barring Service, the Judiciary and the Ministry of Justice;
- social services and education;
- faith groups;
- parents and parent groups; and
- children and young people.

This engagement has helped inform our understanding of the potential impact of the Bill and to develop a proposal which helps protect children and their rights and supports parents.

Engagement with stakeholders has been ongoing throughout the development of the Bill. This included an informal survey #Talkparenting in October 2017 and the formal consultation which took place between 9 January and 2 April 2018, supported by comprehensive communications and engagement. The consultation was widely distributed electronically and via social media and was published on the Welsh Government website. The consultation document was also published as an easy-read version and a version for young people.

There were 1,892 written responses and 274 people took part in external engagement events held with representatives of stakeholder organisations, the general public, and groups of young people, parents and carers. To gather the views of children and young people UNICEF supported primary and secondary schools across Wales to hold classroom debates on the legislative proposals. UNICEF’s high level response, of the views of over a 1,000 children and young people, is included in the final consultation response report. An analysis of the responses received was prepared by an independent contractor18 and was published on 6 August 2018.

Impacts

Impacts on Children, Equality, Welsh Language, Justice and biodiversity are fully explored in the attached impacts assessments and can be found in Annexes A-E.

Many respondents to the consultation welcomed the legislative proposal and considered it would achieve the aim of protecting children’s rights and some raised concerns, including the potential criminalisation of parents. Respondents also identified that Welsh Government would need to raise awareness of the change in the law (if passed) and that parents would also need access to support to develop parenting skills. There were a number of comments about the potential impact on public bodies, in addition to or building on those already identified in the consultation paper. Concerns were also raised about the detail of how the proposal would be implemented in practice.

---

18 https://gov.wales/legislative-proposal-remove-defence-reasonable-punishment
Impacts on Children and Young People

The impacts on children have been detailed in the Children’s Rights Impact Assessment which can be found at Annex A to this document.

Impacts on parents

Providing information and support to parents and those acting in loco parentis – both in terms of raising awareness of the change in the law and providing advice and support on positive alternatives to physical punishment – is part of the plan for implementing the legislation.

Awareness raising activities will take place prior to and after commencement if the legislation is passed. The aim is to ensure the general public in Wales will be aware of the change in the law and what that will mean for them. The Welsh Government will work with specific groups, communities and organisations to inform them of the change in the law and consider whether extra support advice and information may be needed.

Those parents who do continue to physically punish their children after the legislation is enacted may face criminal charges. The potential impacts on parents and individuals are set out in paragraphs 1-6 of Annex 4 of the Explanatory Memorandum. However, it is important to note that normal day to day activities, and physical interventions to protect the child or others, would still be lawful after removal of the defence.

Impact on public bodies

The Welsh Government have consulted and met with relevant public bodies, including the police, Crown Prosecution Service (CPS) and social services to:

- discuss their processes for handling allegations of physical punishment of children;
- to consider the impact on their resources; and
- how they could work to ensure consistent implementation across Wales, so that parents can have a reasonable expectation of how allegations will be dealt with, wherever they live in Wales.

The impacts on public bodies are set out in more detail in Chapter 8 of the regulatory impact assessment in the Explanatory Memorandum including some of the costs and benefits.

The Welsh Government will continue to work with professionals and organisations that work with children and families, during the passage of the Bill. A Strategic Implementation Group, has been established and met formally for the first time in May 2019. The Group’s membership includes representatives from the police, police and crime commissioners, social services, health, education, Cafcass Cymru and Her Majesty’s Court and Tribunal Service. Flowing from the Strategic Implementation Group are four work streams: Parenting Expert Advisory Group; Data collection and monitoring task and finish group; Operations, Procedures, Processes, Guidance and Training Task and Finish Group; and Out of court disposals and diversion scheme
Task and Finish Group. In addition, a Communications Expert Group has been established that will report to the Strategic Implementation Group.

Costs and savings

The financial implications of the Bill are set out in Part 2 of the Explanatory Memorandum the Regulatory Impact Assessment, published as part of the Bill documentation at introduction and revised ahead of Stage 3.

Mechanism

The proposal is to bring forward primary legislation. The National Assembly for Wales ("the Assembly") has the legislative competence to make the provisions in the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill ("the Bill") pursuant to Part 4 of the Government of Wales Act 2006\(^\text{19}\) ("GoWA 2006") as amended by the Wales Act 2017\(^\text{20}\). A Regulatory Impact Assessment has been published as part of the Bill documentation at introduction.


Conclusion

1. How have people most likely to be affected by the proposal been involved in developing it?

The people most likely to be affected by the legislative proposal are children, parents and those acting in loco parentis. In addition the Bill will impact on public services including the police and social services.

A public consultation took place between 9 January and 2 April 2018\(^\text{21}\), with the intention of gaining public and stakeholder views to inform further development of the Bill and to address any concerns as the legislation developed. It was widely distributed electronically, via social media, and published on the Welsh Government website. Easy-read and young people’s versions were also published.

External engagement events were held with representatives of stakeholder organisations, the general public and groups of parents and young people during the consultation period. There were 1,892 written responses to the consultation, and 274 people participated in external engagement events. An analysis of the responses was published on 6 August 2018\(^\text{22}\).

UNICEF gathered the views of 1,157 children and young people across Wales, 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. UNICEF’s high level response of these views is included in the final consultation report.

The Welsh Government commissioned research in 2017\(^\text{23}\) on parental attitudes towards managing young children’s behaviour. This research was with parents of children from 0-6 years old and asked a similar range of questions to the previous research undertaken in 2015\(^\text{24}\). Fewer parents of young children in Wales reported smacking their children in 2017 compared with parents asked in 2015 and only a minority of parents said they were comfortable with the idea.

In 2018, the Welsh Government commissioned the independent market research agency, Beaufort Research, to include a suite of questions on public attitudes to physical punishment in their Wales Omnibus Survey. The survey interviewed a representative quota sample of 1,002 adults aged 16+ across Wales in their own home. This included parents/guardians and non-parents/guardians. It found that


\(^{22}\) https://gov.wales/legislative-proposal-remove-defence-reasonable-punishment


more respondents (49%) disagreed with the statement ‘it is sometimes necessary to smack a child’ than agreed with it (35%). Respondents aged 16-34 were significantly less likely to agree that it is sometimes necessary to smack a child (24%) than those aged 55 and over (45%).

The Welsh Government has engaged with a large number of organisations including the police and social services and other public services to seek views, advice and their expertise through various workshops, meetings and conferences.

2. What are the most significant impacts, positive and negative?

The main purpose of this proposal is to help protect children’s rights in relation to the duty set out in the United Nations Convention on the Rights of the Child (UNCRC) article 19. In doing so, children in Wales would be offered the same legal protection from physical punishment as adults. If passed, this Bill will prohibit the physical punishment of children by parents and those acting in loco parentis within Wales, including visitors to Wales.

The Children’s Rights Impact Assessment (CRIA), at annex A, considers the intended positive impacts on children and young people, together with possible negative impacts and mitigations of those impacts. The intended positive impacts include bringing about a further reduction in the use and tolerance of the physical punishment of children.

Negative impacts include that changing the law may lead to a parent being approached by the police, with a range of possible outcomes including the parent being arrested or receiving a criminal conviction. The arrest, cautioning or conviction of a parent may have negative impacts on the child, as outlined in the CRIA. 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. This is explored further in annex 5 of the Explanatory Memorandum.

While many respondents to the consultation welcomed the proposal and considered it would help achieve the aim of protecting children’s rights, a number also raised concerns, including the potential criminalisation of parents. Respondents identified the need to raise awareness of the proposed legislative changes and that parents would need access to support to develop parenting skills.

In addition the following were raised:

- the potential impact on public bodies, in addition to, or building on, those already identified in the consultation paper;
- concerns about the evidence considered by the Welsh Government; and
- the detail of how the proposal would be implemented in practice.

To take account of concerns about the potential impact on public bodies, we have engaged with relevant public bodies, including the police and social services. Together, we have considered the impact on resources and on how they could work to ensure consistent implementation across Wales, so that parents can have a
reasonable expectation of how allegations will be dealt with, wherever they live in Wales.

Providing information and support to parents and raising awareness of the legislative change is part of the plan for implementing the legislation, alongside the ongoing provision of information, advice and support on positive alternatives to physical punishment.

3. In light of the impacts identified, how will the proposal:
   • maximise contribution to our well-being objectives and the seven well-being goals; and/or,
   • avoid, reduce or mitigate any negative impacts?

The Bill supports the adoption of positive parenting styles and would contribute to several of the national wellbeing goals under the Well-being of Future Generations (Wales) Act 2015 including: healthier Wales and Globally responsible Wales as set out in Section 1 of this document.

Impacts and mitigations to the proposed legislation are set out in detail in the Explanatory Memorandum. The following summarises the mitigations to those impacts:

- The Welsh Government will mitigate some of the negative impacts through a high intensity communications and awareness raising campaign of the legislative change. This will be alongside information, advice and support to parents and will be developed and refined based on feedback from stakeholders, focus groups and evaluations. If passed the Bill includes a duty on the Welsh Government to raise awareness of the change in the law.

- If passed the defence of reasonable punishment will be abolished two years following the day after the Bill receives Royal Assent. The aim is to provide certainty and ensure there is a reasonable period before the new arrangements are brought into force. This should allow sufficient time for professionals, parents and those who may act in loco parentis to become aware of the change in the law. This will put adults in a position to choose not to physically punish their children and for professionals to provide clarity and advice on parenting approaches and behaviour management.

- The Welsh Government will continue to work with the police, Crown Prosecution Service and social services to consider the impact on their resources and processes.

- A Strategic Implementation Group overseeing dedicated Task and Finish Groups has been established: to consider the extent to which current processes, guidance and/or training for professionals may need to be revised; how to raise awareness and support families; and to explore an out of court disposal scheme.
• There is the potential for an increase in referrals to social services and the police when the legislation comes into force, at least in the short term. The best estimate of the likely impact and its potential cost is discussed in Chapter 8 of the Explanatory Memorandum (Costs and Benefits). It is intended that the awareness raising campaign will drive a change in behaviour where Wales becomes a society in which the physical punishment of children is unacceptable and therefore, the number of referrals to public services is reduced.

• 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. A Task and Finish Group has been set up to investigate the range of out of court disposals available, 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.

• 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.

The Welsh Government has considered the positive and negative impacts of the legislation, and the processes that can be put in place to mitigate the negative impacts. On balance, our view is that proceeding with the Bill supports our legitimate aim to help protect children’s rights.

4. **How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?**

The Bill sets out that, the defence of reasonable punishment, will be abolished two years following the day after the Bill receives Royal Assent, allowing time for comprehensive awareness-raising of the change in the law.

A Data Collection and Monitoring Task and Finish Group (overseen by a Strategic Implementation Group) has been established to ensure any changes to processes required following commencement will take account of existing procedures.

The Welsh Government recognises the importance of considering the financial and resource implications of the Bill in a post implementation review. Included in the Bill is a duty to undertake a post implementation review of the Bill over 5 years. We will work with the police, social services and the courts to agree the collection of relevant data for a period prior to implementation in order to establish baselines. Data collection will continue following commencement in order to monitor the impact of the Bill. Data collection will, wherever possible, be aligned with existing activity or other relevant work.
The effect of the Bill will be measured in a number of ways, including through research and evaluation as well as developing routine data collection with stakeholders. To monitor and evaluate the effectiveness of the legislation we will use representative surveys to track public awareness of the change in legislation, changes in attitude towards physical punishment of children and prevalence of parents reporting they use physical punishment.

Mae’r ddogfen yma hefyd ar gael yn Gymraeg. This document is also available in Welsh.