

*The children's rights impact assessment (CRIA) for the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 ("the Children Wales Act") was originally considered prior to the introduction of this legislation. This CRIA makes a re-assessment of potential impacts (September 2020) following the Children Wales Act gaining Royal Assent in March 2020. This updated CRIA considers any potential impacts on children's rights during the period of implementation activity up to Section 1 (removal of the defence of reasonable punishment) of the Act taking effect in March 2022.*

*Alongside this CRIA the impacts on children with a protected characteristic are explored in Annex B; on the Welsh Language in Annex C and on the criminal justice system in Annex D.*

## **A: CHILDREN'S RIGHTS IMPACT ASSESSMENT**

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

#### 1.1 Background and context

During the period from Royal Assent (March 2020) and commencement of Section 1 (removal of the defence of reasonable punishment) of the Children Wales Act in March 2022 the Welsh Government is focusing on ensuring the legislation is implemented in a practicable and workable way. The purpose of the Children Wales Act is to prohibit the physical punishment of children in Wales by abolishing the defence of reasonable punishment in law.

The aim of the Children Wales Act 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 will have the same legal protection from physical punishment as adults.

Prohibiting 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)<sup>1</sup>. 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<sup>2</sup>.

Over a number of years the UK nations have been criticised for not fulfilling the UNCRC Article 19 duty<sup>3</sup> which states that:

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

<sup>2</sup> <http://www.legislation.gov.uk/mwa/2011/2/contents>

<sup>3</sup> [https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC\\_united\\_nations\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf](https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf)

*“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<sup>4 5</sup>.

The defence of reasonable punishment is a defence to the existing common law offences of assault and battery. Removing 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.

The Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill was introduced into the Assembly on 25 March 2019. Its Stage 1 scrutiny was undertaken by the Children, Young people and Education (CYPE) Committee, Finance Committee and Constitutional and Legislative Affairs (CLA) Committee<sup>6</sup>.

The CYPE Committee took oral and written evidence including from lobby groups for and against the legislation; from the Children’s Commissioner for Wales; from health professionals; the Third Sector; the education sector; from the police; the CPS; and HMCTS.

They heard from those working on the front line, delivering services and having a statutory responsibility to protect children and act in their best interest (e.g. the Police, the Crown Prosecution Service, Social Services, teacher representatives and a wide range of Health Professionals). Without exception, those individuals told the Committee that the Children Wales Act would improve their ability to protect children living in Wales because it will make the law clear.

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<sup>4</sup>United Nations Committee on the Rights of the Child (2006): Forty Second Session. General Comment No.8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. Geneva: United Nations  
<https://www.refworld.org/docid/460bc7772.html>

<sup>5</sup> Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Ireland, recommendation at paragraph 41  
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskHOj6VpDS%2f%2fJqg2Jxb9gncnUyUgbnuttBweOlyfyYPkBbwffitW2JurgBRuMMxZqnGgerUdpjxij3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0GL>

<sup>6</sup> <https://business.senedd.wales/mglIssueHistoryHome.aspx?Ild=24674>

*1.2 Views of children and young people* To enable the voice of children and young people to be heard as part of their scrutiny, the CYPE Committee invited the Welsh Youth Parliament to consider the general principles of the Bill. In regional meetings in April 2019, Welsh Youth Parliament Members discussed and considered the Bill's general principles, and held a secret ballot on the question: "Do you support the principles of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill?" The majority (70%) of the Welsh Youth Parliament Members supported the Bill.

In addition the Children's Commissioner for Wales told the Committee that "the overwhelming majority [of children] seem to be against the physical punishment of children and many are amazed that it isn't already prohibited in a modern democratic country like Wales, that formally respects human rights".

Stakeholders have advised that raising awareness of the legislation with children and young people should be embedded in a wider context of children's rights / ongoing activity / ongoing programmes. This approach was also recommended by the Children's Commissioner for Wales in [a letter to the Chair of the Children, Young People and Education Committee](#). We will work with key stakeholders who work with children and young people to develop a plan which will set out our how we intend to raise awareness among children and young people. The intention is to get meaningful input from children and young people on this engagement plan.

### *1.3 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<sup>7</sup>.

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.

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<sup>7</sup> <https://gov.wales/sites/default/files/consultations/2018-02/180109-legislation-consultation-en.pdf>

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

***'Parental Attitudes Towards Managing Young Children's Behaviour' 2017<sup>8</sup>***

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

- **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<sup>9</sup>***

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;

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<sup>8</sup> Welsh Government (2018) 'Parental Attitudes Towards Managing Young Children's Behaviour 2017', SOCIAL RESEARCH NUMBER: 42/2018 <https://gov.wales/parental-attitudes-towards-managing-young-childrens-behaviour-2017>

<sup>9</sup> Carter-Davies L, Bristow D, 2018, Parental Physical Punishment: Child Outcomes and Attitudes, PPIW <https://www.wcpp.org.uk/publication/parental-physical-punishment-child-outcomes-and-attitudes/>

- 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.

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<sup>10</sup>**

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.”*

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<sup>10</sup> Keating H, 2018, Legislating to Prohibit Parental Physical Punishment of Children, PPIW  
<https://www.wcpp.org.uk/publication/legislating-to-prohibit-parental-physical-punishment-of-children/>

## **‘Public attitudes to physical punishment of children: baseline survey’, 2018<sup>11</sup>**

Key points from this research include:

- **Attitudes towards managing children’s behaviour** – When asked whether they agree with the statement ‘it is sometimes necessary to smack a child’, more disagreed with this statement (49%) 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%). Those with caring responsibilities for children aged seven or under, were also less likely to agree that ‘it is sometimes necessary to smack a naughty child’ (28%) compared with those who do not have such caring responsibilities (38%).
- **Knowledge of current legislation** - 58% of people surveyed thought that the law did not allow parents to smack their children, while 27% thought the law did allow parents to smack and the remaining 15% reported being unsure. Older respondents (aged 55+) were more likely to believe that smacking was allowed (32%), although they were still in the minority.
- **Awareness of proposed changes to legislation** - 28% of people reported that they were aware of proposed changes to the law around physical punishment of children at an unprompted level. Awareness was no greater among carers of children seven and under than those who did not have these responsibilities.
- **Opinion of proposed changes to legislation** - Respondents were asked whether they were in favour of the removal of the defence of reasonable punishment, against it or needed more information to decide. Overall, there was mixed opinion on this with similar proportions being for the removal (38%), against it (31%) or needing more information / don’t know (31%). Those with caring responsibilities for children aged seven and under were more likely to be in favour of the proposed change (47% in favour, 27% against) compared with those who did not have these responsibilities (36% in favour, 32% against).

As set out in Section 1.2, during scrutiny of the Children Wales Act the CYPE Committee took oral and written evidence. In their Stage 1 report they concluded that:

“On balance, the majority of our Committee believes there is a strong argument that this Bill will reduce the risk of potential harm to children and young people. We are not convinced that there is a potential for high numbers of prosecutions as a result of this Bill. There is simply no evidence for that, and that is not the view of the Police or the Crown Prosecution Service either. The detailed evidence underpinning this conclusion is outlined in chapter 3.” (Page 98)<sup>12</sup>

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<sup>11</sup> <https://gov.wales/sites/default/files/statistics-and-research/2019-06/public-attitudes-to-physical-punishment-of-children-baseline-survey-2018.pdf>

<sup>12</sup> <https://senedd.wales/laid%20documents/cr-ld12708/cr-ld12708-e.pdf>

#### 1.4 Intended positive impacts on children and young people

The Children Wales Act 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.

Commencement of Section 1 of the Children Wales Act in March 2022 will remove the defence of reasonable punishment, and it is intended that children and young people in Wales will grow up in a less violent society<sup>13</sup> 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<sup>14</sup>. Children will have the same protection from physical punishment as adults.

The change in the law, will remove any ambiguities and confusion around what physical punishment is considered reasonable and provide a clearer and more consistent basis for professionals providing information, advice and support to parents to adopt positive forms of discipline. A range of professionals giving evidence to the CYPE Committee confirmed that they believe the Children Wales Act will provide them with clarity in their work and "add weight" to advice already given on positive parenting and behaviour management techniques<sup>15</sup>. The Welsh Government has been, and will continue during implementation, to raise awareness amongst professionals who support parents to make them aware that the law is changing.

When Section 1 of the Children Wales Act commences it will 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. To support implementation the Welsh Government will work with individuals and organisations in these settings to ensure that they are aware that the law is changing.

The Children Wales Act 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<sup>16</sup>. *Prosperity for All – the National Strategy*<sup>17</sup> 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

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<sup>13</sup> Elgar FJ, Donnelly PD, Michaelson V, et al 2018 Corporal punishment bans and physical fighting in adolescents: an ecological study of 88 countries BMJ Open;8:e021616. doi: 10.1136/bmjopen-2018-021616

<sup>14</sup> Keating H, 2018, Legislating to Prohibit Parental Physical Punishment of Children, PPIW <https://www.wcpp.org.uk/publication/legislating-to-prohibit-parental-physical-punishment-of-children/>

<sup>15</sup> <https://senedd.wales/laid%20documents/cr-ld12708/cr-ld12708-e.pdf>

<sup>16</sup> Programme for Government *Taking Wales Forward – Ambitious and Learning* <https://gov.wales/sites/default/files/publications/2017-08/taking-wales-forward.pdf>

<sup>17</sup> <https://gov.wales/sites/default/files/publications/2017-10/prosperity-for-all-the-national-strategy.pdf>

Persons (Wales) Measure 2011<sup>18</sup>, 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<sup>19</sup>.

Abolishing the defence of reasonable punishment is also consistent with Council of Europe Recommendation 2006 (19)<sup>20</sup>. 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".

### *1.5 Possible negative impacts on children and young people*

The Children Wales Act is fundamentally about ensuring compliance with children's rights and, in doing so, protecting children from physical harm. However, removing the defence of reasonable punishment may, lead to a very small number of parents receiving a criminal record, if they choose to continue to use physical punishment after Section 1 of the law commences. We do not anticipate many such cases<sup>21</sup>. 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<sup>22</sup>, 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 <sup>23</sup>"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.

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<sup>18</sup> <http://www.legislation.gov.uk/mwa/2011/2/contents>

<sup>19</sup> In 2015, the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 came into force. The National Strategy outlines six key objectives, aligned to the Act <https://gov.wales/violence-against-women-domestic-abuse-and-sexual-violence-strategy-2016-2021>

<sup>20</sup> Council of Europe Recommendation Rec(2006)19 of the Committee of Ministers to member states on policy to support positive parenting: <https://archive.crin.org/en/library/legal-database/council-europe-recommendation-rec200619-policy-support-positive-parenting.html>

<sup>21</sup> 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.

<sup>22</sup> The Code for Crown Prosecutors 2018 accessed on 10/12/18 <https://www.cps.gov.uk/publication/code-crown-prosecutors>

<sup>23</sup> Roberts, Y. H., Snyder, F. J., Kaufman, J. S., Finley, M. K., Griffin, A., Anderson, J., Marshall, T., Radway, S., Stack, V., Crusto, C. A. (2014). Children exposed to the arrest of a family member: Associations with mental health. *Journal of Child and Family Studies*, 23, 214–224.



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. 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<sup>24</sup>. Enhanced DBS<sup>25</sup> 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 negative impact on the child or children concerned, financially, socially and emotionally. We do not anticipate many such cases<sup>26</sup>.

### *1.6 Mitigations*

The Children Wales Act will not of itself criminalise parents – it is an individual's actions in relation to the law that may lead them to receiving a criminal record. The Children Wales Act places a legal duty on Welsh Ministers to promote public awareness of the law change before it comes into force in March 2022. The public awareness campaign for the Children Wales Act was officially paused whilst all Welsh Government communications focused on the response to the Covid-19 crisis. The awareness raising campaign has been re-designed, and a public awareness raising campaign will commence in summer 2021, subject to COVID-19 developments. Up until then the focus is on stakeholder engagement, including work with Black, Asian and Minority Ethnic, faith and other specific audiences, and planning for the public facing awareness campaign. The awareness raising campaign will include a targeted multi-media campaign incorporating engagement with stakeholders and specific audiences as well as a range of advertising and PR. Awareness raising will continue for a period after the Act commences in March 2022. In this period of awareness-raising we 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 in March 2022. This will put parents and those acting in loco parentis in a position to choose not to physically

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<sup>24</sup> More details can be found in the Explanatory Memorandum for the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

<sup>25</sup> <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

<sup>26</sup> 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.

punish their children, and thereby avoid the risk of being charged with a criminal offence.

During this implementation phase the Welsh Government is working with key individuals through the Parenting Expert Action Group to enhance existing parenting support provision for parents. This includes expansion of the Parenting Give it Time campaign so that it covers the age range 0-18, rather than 0-7 as is currently the case. In addition parents in Wales have access to a helpline run by Family Lives which provides emotional support, information, advice and guidance on any aspect of parenting and family life. The Welsh Government has provided funding to Family Lives to employ a Welsh speaking calltaker until the end of March 2021. This will be evaluated to inform future thinking. Family Lives are also looking to expand their Welsh language provision even further with the aim of recruiting additional volunteers who also speak Welsh.

As part of the preparation for implementation, 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. This work is being conducted with key stakeholders through a Strategic Implementation Group and the following four work streams:

- Parenting Expert Action Group;
- Data Collection and Monitoring Task and Finish Group;
- Operations, Guidance and Training Task and Finish Group; and
- Out of court disposals and diversion scheme Task and Finish Group

These groups will consider how to monitor the impact of the Act; whether any processes, guidance or training may need to be put in place following removal of the defence and what additional, if any, support for parents will be required, including through a suitable diversion scheme.

The National Police Chiefs Council (NPCC) strategy on charging and out of court disposals 2017-2021<sup>27</sup> 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<sup>28</sup>. The Out of court disposals and diversion scheme Task and Finish Group are providing advice and recommendations on options for using Out of Court Disposals and the development of a suitable diversion scheme which could provide interventions to support behaviour change and (where appropriate) divert individuals away from prosecution.

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<sup>27</sup><http://www.npcc.police.uk/Publication/Charging%20and%20Out%20of%20Court%20Disposals%20A%20National%20Strategy.pdf>

<sup>28</sup> For further information on Out of Court Disposals please see the Explanatory Memorandum.

## 2. 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 successful implementation of the Children Wales Act 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. The need for more clarity in the law is a view supported by health delivery bodies and organisations representing frontline practitioners such as the Royal College of General Practitioners (RCGP) and Betsi Cadwaladr University Health Board, who told the CYPE Committee during scrutiny that the Act "can only enhance the protection of children"<sup>29</sup>.

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 Children Wales Act 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.

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 Children Wales Act places a duty on the Welsh Government to conduct a post implementation review and publish an interim report 3 years and a final report 5 years after the Act comes into force. As part of this review the following monitoring and evaluation activities are planned:

- *Impact on public services*: Work has commenced, through the Data Collection and Monitoring Task and Finish Group, to develop methods for collecting data across organisations to monitor the impacts of the legislation on public services and other organisations.
- *Public attitudes and awareness*: The Welsh Government will use representative surveys to track public awareness of the change in legislation and changes in attitude towards physical punishment of children. These surveys will enable the monitoring of the trends on public awareness and opinion towards physical punishment of children, compared to the public attitudes to physical punishment baseline survey 2018. It is expected that this work will be undertaken annually and include data from range of population groups.
- *Stakeholder views and experiences*: It will also be important to understand how the change in law is being experienced by a range of stakeholders such as parents and practitioners through qualitative research. This will help support

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<sup>29</sup> <https://senedd.wales/laid%20documents/cr-ld12708/cr-ld12708-e.pdf>

and inform implementation work as well as providing important context for interpreting the monitoring figures.

It is anticipated that the post implementation review reports will bring together the data gathered through the three strands above as well as considering the broader implications of the change in law. This information should help us to further assess the impact on children.

### 3. UNCRC articles<sup>30</sup>

The Committee on the Convention on the Rights of the Child has issued general comment No 8<sup>31</sup> 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 will observe these articles when implementing the Children Wales Act:

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. Following commencement of the Children Wales Act, the police, social services and other front line professionals will need to make appropriate decisions on what response to take if a parent or adult acting in loco parentis physically punishes a child. Best interest considerations will be at the forefront of these deliberations. The best interests of children are best served by supporting parents to adopt positive approaches to managing children's behaviour, rather than through physical punishment.

**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 has consulted its Expert Stakeholder Group on plans for engaging with children and young people on the Children Wales Act. The consensus was that awareness raising with children and young people should be embedded within the wider context of children's rights, and included in ongoing activity, so that it can be framed and discussed within the context of children's rights in a safe and appropriate setting<sup>32</sup>.

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<sup>30</sup> [https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC\\_united\\_nations\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf](https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf)

<sup>31</sup> United Nations Committee on the Rights of the Child (2006): Forty Second Session. General Comment No.8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. Geneva: United Nations  
<https://www.refworld.org/docid/460bc7772.html>

<sup>32</sup> This approach to engaging with children and young people was set out in the Deputy Minister for Health and Social Services' letter dated 12 July 2019 to the Chair of Children Young People and Education Committee:

**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 removing 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.

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. 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.