

D. JUSTICE IMPACT ASSESSMENT

This Justice Impact Assessment (JIA) was originally developed in consultation with the Ministry of Justice (MoJ), prior to introduction of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill Act 2020 (“the Children Wales Act”) It reflects the most probable impact on the justice system. We are unable to predict the impact 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.

This JIA was re-assessed (September 2020) following the Children Wales Act gaining Royal Assent in March 2020. This assessment considers whether, 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, there will be any impacts which have not already been identified.

As no significant new impacts were identified this JIA will not be shared with the MoJ again. However we will continue to work with the MoJ to share case data, as necessary, post implementation. If further analysis produces different information in relation to the volumes outlined in this justice impact assessment, it may be necessary to re-evaluate the impact on the justice system.

1. General information

- 1.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;
b) the Justice Policy lead if known.

- 1.2. In brief, what is your proposal? (no more than half a page) (*This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts*).

The Welsh Government is committed to upholding children's rights which includes bringing to an end the physical punishment of children by removing the defence of reasonable punishment in Wales. This commitment is set out in the [Programme for Government](#) and subsequently in our [National Strategy "Prosperity for All"](#).

In March 2020 the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 ("the Children Wales Act") received Royal Assent and Section 1 (removal of the defence of reasonable punishment) will come into force in March 2022. During the period from Royal Assent (March 2020) and commencement of Section 1 the Welsh Government is focusing on ensuring the legislation is implemented in a practicable and workable way.

The overarching objective is to support children's rights and ensure compliance with international human rights obligations. Prohibiting the use of physical punishment of children by parents will address an aspect of the law which is out of date and at odds with a child's right to be protected from all forms of physical punishment, however minor.

There is no evidence that physical punishment is associated with improved behaviour in children or positive effects on their long-term developmental outcomes. Conversely there is a sufficient body of evidence that positive styles of parenting are key to successful outcomes for children, including social development, self esteem and good mental health.

The Welsh Government wants to send a clear, unambiguous message that the physical punishment of children is not acceptable.

The Welsh Government wants to support a change in attitudes and behaviour in Wales and encourage parents to manage their children's behaviour without resorting to physical punishment. The Children Wales Act is part of a much wider package of measures the Welsh Government is taking to support children and their parents. This includes our ['Parenting. Give it Time'](#) campaign and access to face to face advice through health visitors and through our family support programmes Flying Start and Families First. When Section 1 of the Act commences in March 2022 the defence of reasonable punishment will be removed which will provide a clearer and more consistent basis for supporting parents to adopt positive forms of discipline.

Although direct causal connections cannot be proved those who have looked at countries where reform has taken place have suggested that corporal punishment bans are associated with declining support for corporal punishment. Lessons from other countries which have legislated suggest successful implementation, accompanied by awareness raising and educational campaigns to support parents, can result in accelerated changes to public attitudes and behaviours. Common assault and battery are criminal offences but also exist in civil law. When Section 1 of the Children Wales Act comes into force in March 2022 the corporal punishment of a child will no longer be justified in any criminal or civil court proceedings.

A provision in the Children Wales Act is that Welsh Ministers have a legal duty to promote public awareness of the law change before it comes into force in March 2022. The public awareness campaign for the 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 will be 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. This campaign will inform the public about the change in the law and how it may potentially impact on them. Alongside this the Welsh Government's public education campaign, 'Parenting. Give it Time' promotes positive parenting including alternatives to physical punishment. This campaign is currently aimed at parents of children aged 0 – 7, but the age range will be extended to 0 – 18 by summer 2021. When developing and delivering the public education campaign consideration will be given to raising awareness to visitors from outside Wales.

To prepare 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 Out of Court Disposals and Diversion Scheme Task and Finish Group will provide advice and recommendations on options for using Out of Court Disposals and the development of a suitable diversion scheme by commencement, which could provide interventions to support behaviour change and (where appropriate) divert individuals away from prosecution.

1.3. Please specify the name of all related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

Related legislation:-

- Children Act 2004, Section 58;
- Criminal Justice Act 1988, Section 39;
- Offences against the Person Act 1861;
- Children And Young Persons Act 1933 Section 1;
- Section 548 Education Act 1996.

Section 1 of the Children Wales Act, which removes the defence of reasonable punishment, will come into force in March 2022.

1.4. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

The legislative change to remove the defence of reasonable punishment will come into force on 21 March 2022

1.5. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

When Section 1 of the Children Wales Act comes into force on 21 March 2022 the defence of reasonable punishment would no longer be available in Wales to parents, carers and guardians, and those acting in loco parentis facing a charge of assault or battery against a child in their care.

- 1.6. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- Wales only
- England
- Scotland
- Northern Ireland
- Other (Please Specify)

Section 58 of the Children Wales Act 2004 has removed the availability of the reasonable punishment defence for parents or adults acting in loco parentis where the accused is charged with wounding, causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to persons less than 16 years of age. However the reasonable punishment defence remains available for parents or adults acting in loco parentis against charges of common assault.

When Section 1 of the Children Wales Act comes into force on 21 March 2022 the defence of reasonable punishment will no longer be available to parents, carers and guardians, and those acting in loco parentis facing a charge of assault or battery *in Wales*. The defence would still be available *in England*.

- 1.7. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-
- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
 - b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

a) The Act is part of a much wider package of measures the Welsh Government is taking to support children and their parents and raise awareness of our intentions around the legislation.

During scrutiny in the Senedd the Children Wales Act generated widespread media interest and was reported in the press on a UK wide level including by the BBC, The Express, The Times, The Telegraph, The Mirror, The Sun, The Guardian, The Daily Mail, , ITV, The Metro, iNews, The Daily Star and Huffington Post. This media interest would have helped raise awareness of the legislation outside Wales.

Our “Parenting. Give it time” campaign is targeted at all those responsible for raising children from birth to 7 years old. It aims to equip parents with the tools to help them adopt positive parenting approaches, through a website and media campaign providing positive parenting tips and information. Although the campaign is primarily targeted at parents living in Wales the website and Facebook page are available for anyone to access. 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 years.

Another provision in the Children Wales Act is that Welsh Ministers have a legal duty to promote public awareness of the law change before it comes into force in March 2022. Awareness will be raised through 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. Further communications requirements will be considered alongside approaches to awareness raising with visitors entering Wales who may be affected by the legislation.

b) When Section 1 of the Children Wales Act comes into force in March 2022 the common law defence of reasonable punishment will be abolished in relation to corporal/physical punishment of a child *taking place in Wales*. The law will apply to those within the territorial limits of Wales and would therefore apply to visitors to Wales as well as those normally resident in Wales.

As mentioned above, we will consider how awareness of the proposed change in the law can be raised with visitors to Wales, so they are less likely to inadvertently contravene the law in Wales.

Our understanding, based on discussions with the police and CPS, is that, where an individual not normally resident in Wales is charged with an offence of assault or battery against a child, the police, CPS and courts would deal with those cases in exactly the same way they would deal with allegations of assault or battery currently where individuals reside in different police force areas. The additional factor to consider would be that enforcement authorities and the courts would need to be aware that the defence of reasonable punishment is not available to parents (or those acting in loco parentis) where the offence took place in Wales, whereas it would still be available in England. The key issue, therefore, is the police, judiciary’s and CPS’ awareness of the law in Wales.

1.8. What are the options under consideration and how does this change the existing situation?

N/A

1.9. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

N/A

Criminal Offences and Civil Penalties and Sanctions

1.10. Which of the following are you creating / amending? (Tick all that apply)

- Civil Sanctions
- Fixed Penalties
- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

Section 58 of the Children Wales Act 2004 has removed the availability of the reasonable punishment defence for parents or adults acting in loco parentis where the accused is charged with wounding, causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to persons less than 16 years of age. However the reasonable punishment defence remains available for parents or adults acting in loco parentis against charges of common assault or battery.

When Section 1 of the Children Wales Act comes into force in March 2022 the defence of reasonable punishment will no longer be available to parents, carers and guardians, and those acting in loco parentis facing a charge of assault or battery in Wales.

1.11. If you are creating a criminal offence, is it:

- Summary Only (heard before a bench of lay magistrates / judge only)
- Triable Either Way
- Indictable Only (heard before a judge and jury)

1.12. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be a reduced need for enforcement action?

Director of Public Prosecutions Guidance (DPP) mandates what is to be charged by the police and what is to be charged by the Crown Prosecution Service (CPS). After charge it is for the CPS to prosecute. The CPS provides charging advice in more serious or complex cases, in accordance with the Code for Crown Prosecutors and the Director of Public Prosecutions' (DPP) Guidance on Charging. The police apply the same principles in deciding whether to charge a person in those cases for which they are responsible. Whether a person is charged or not depends on whether there is sufficient evidence for a realistic prospect of conviction and whether a prosecution is in the public interest.

Charging decisions for the offending behaviour being discussed will tend to be made by the police. Where the police find sufficient evidence for a realistic prospect of conviction they will have to consider whether it is in the public interest to charge. The [College of Policing](#) and [CPS](#) provide advice on the public interest factors that should be taken into account when making a decision to charge or prosecute.

1.13. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

We anticipate an increase initially in reporting of incidents from individuals in the community who may not be clear as to what they should or should not report, resulting in an increase in investigations by the police and social services. However, we expect this will decrease in the medium to long term as the acceptability and use of physical punishment declines.

It is difficult to anticipate numbers of cases per year. Currently Home Office published statistics of 'Police recorded crime' provide data on the number of cases of common assault and battery (under the broad category of Offences of Violence without injury, which includes a number of different offences under this heading). This is not broken down by age of victim or relationship to victim. It does not, therefore, enable us to provide data on the number of offences where parents could potentially have used the defence. These statistics do provide data for police recorded offences of cruelty to a child (Violence without injury) under the [Children and Young Persons Act 1933 \(section 1\)](#). This legislation relates to the welfare of children but is not isolated to physical punishment. It includes a number of other offences including neglect and exposure to anything which may cause suffering or injury to health. Although this legislation is broader in scope it may provide some indication of numbers. In 2016/17 there were 426 offences of cruelty to a child recorded by the four Welsh police forces. ([Police recorded crime open data Police Force Area tables from year ending March 2013 onwards](#)). We are not aware of data providing numbers of reports to police regarding this type of offence.

The four police forces in Wales, in coordination with the PLU, conducted a retrospective audit of recorded crime offences relating to Common Assault and Cruelty to Children covering a period of 19 months. The police filtered the information using specific terms, where the offender was an adult and the victim a child, and the age gap between the two was greater than 3 years.

They manually analysed a sample of the results to determine which proportion related to reasonable punishment, and identified that one in seven/eight did, depending on the specific police force. Using this sample they estimated that there are around 274 cases of reasonable punishment reported to the police in Wales per year.

While we have worked with the police forces in Wales to identify the best possible data on numbers of offences which relate to parental physical punishment at the level of 'reasonable punishment', this would not translate into likely numbers of cases which would proceed to court as a number would be likely to be dealt with through NFA and out of court disposals.

Data is not published on the number of times the defence has been used. The only data which is available is from a review undertaken in 2007 by the UK Government of Section 58 of the Children Wales Act 2004. As part of that review the CPS asked all 43 CPS areas to send in details of cases where the reasonable punishment defence was raised during the timeframe. The review was not exhaustive, but it identified 12 cases between January 2005 and February 2007 when the defence had been used and resulted in acquittal or discontinuance. Of these 12, there were:

- 4 where it was explicitly used as a defence to a charge of common assault;
- 4 where the defendant had been charged with common assault, did not explicitly use the defence but where it may have been a factor in acquittal or discontinuance; and,
- 4 where reasonable punishment was put forward by the defence despite the fact that it did not constitute a legal defence to the charge of child cruelty.

Another issue with gauging the extent to which the defence of reasonable punishment has been used by parents is that punishment, which is seen as 'reasonable' is not offending behaviour at present. Acts that are not offending behaviour do not usually get reported to the police; do not result in people being charged and are not, therefore, publically recorded. If such behaviour is reported to the police, provided it is reasonable punishment the person would not be charged and so it would not come before the CPS.

Some lessons could be learnt from the experience in New Zealand as it has some parallels with Wales. It is a small country (population around 4 million) with an English-derived legal system. New Zealand removed a similar defence as proposed in this legislation. The Crimes (Substituted Section 59) Amendment Act came into force in June 2007. Monitoring by the Police of the impact of the Act covered five years until June 2012.

In the five years of the review period there were 8 prosecutions for 'smacking' and 55 'minor acts of physical discipline'. The New Zealand Police attended 3,602 incidents. Of these:

- 143 were 'smacking' (a slap with the open hand on the buttocks or legs that does not result in any form of injury);
- 435 were a 'Minor Act of Physical Discipline' (A slap with the open hand on any other part of the body (including the face) that does not result in any form of injury); and

These figures do not reflect the total number of child assault events the Police attended. The overall trend from the first review (June 2007) to the 11th (June 2012) indicates a growth in the number of reports to the police of 'child assault', and a slight increase in 'smacking' and 'minor acts of physical discipline' incidents.

Estimates of prosecutions for Wales

In the absence of any other reliable data to make estimates of the number of prosecutions that might occur in Wales as a result of legislative change, data from New Zealand can be used as a proxy. The estimates provided in this paper are just that – estimates. Caution must be taken in making concrete assumptions and cost projections based on these estimates.

These figures are based on Wales having around 60% of the numbers of 0-14 year olds compared with New Zealand. Figures have been rounded to the nearest whole number.

Event type	1 st and 2 nd year after commencement of legislation	3 rd and 4 th year after commencement of legislation	5 th year after commencement	Total
Smacking NZ figure	0	2	2	4
MAPD NZ figure	8	11	14	33
Total	8	13	16	37¹

Please see Annex 6 of the Explanatory Memorandum for further information including caveats which make it clear that while there are some similarities with Wales, New Zealand is a discrete jurisdiction, with a different legal framework and a different criminal justice system. While New Zealand have removed a similar defence of reasonable punishment (reasonable force) the law there is different to that proposed in Wales and all the mechanisms that support implementation and enforcement are distinct from those in Wales. In addition New Zealand has a distinct history, culture, values and social norms which influence decisions on what is appropriate parenting behaviour and either prevent or perpetuate the physical punishment of children.

- The Welsh Government estimate of 37 cases in 5 years is based on what has been observed in New Zealand. But it is unclear how many of those New Zealand cases wouldn't have occurred had it not been for the legislative change. Further, this is a summary only offence and it is clear that the costs would be insignificant. Additionally, due to the commitment to raise awareness of the change in the law, there is a high likelihood that after 5 years public knowledge would increase to the extent that parents would be aware that all forms of physical punishment of a child are illegal and, thus the incidence would likely drop away.
- With regard to the criminal case income, the proportion of common assault and battery cases that result in a fine is small so no real impact to such income. And with regard to criminal law sentencing, there is no real impact, as there is no proposed change to existing penalties.
- On civil justice, there are no rule or enforcement changes required so there is no real impact in relation to civil procedure and enforcement. No impact also on Courts in relation to criminal IT systems, criminal enforcement, civil and family, Tribunals, Offender Policy, Civil analysts and Administrative Justice.
- 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 full report 5 years after the Act comes into force. As part of this review a number of monitoring and evaluation activities are planned. This includes monitoring the impact on public services, levels of awareness, and changes in attitudes. Work has commenced, through the Data Collection and Monitoring Task and Finish Group, to develop methods for collecting data across organisations (including the police, CPS and HMCTS) to monitor the impacts of the legislation on public services and other organisations.

¹ This figure is based on rounded estimates for Wales, it is not exactly 60% of the equivalent total for New Zealand

Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

As common assault and battery are summary offences we expect that the majority of cases that do come to court to be held in the Magistrates' Court. However, if the requirements of section 40 of the Criminal Justice Act 1988 are met, then Common Assault can be included as a count on an indictment. In these instances, assault and battery offences can be tried in the Crown Court.

1.14. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

When Section 1 of the Children Wales Act comes into force in March 2022 the defence of reasonable punishment will no longer be available to parents, carers and guardians, and those acting in loco parentis facing a charge of assault or battery in Wales.

Criminal Justice Act 1988, Section 39 provides that 'Common assault and battery shall be summary offences and a person guilty of either of them shall be liable to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding six months, or to both.'

It is not intended or expected that the change in the law will lead to a substantial increase in the numbers of offences which are prosecuted. Our engagement with the CPS suggests that the level of offending being discussed is such that the police may find that the public interest could be met by out of court disposals. We are working with the police, CPS and other relevant stakeholders to develop a suitable diversion scheme which could provide interventions to support behaviour change and (where appropriate) divert individuals away from prosecution.

If an individual was prosecuted the sentence applied would depend on the circumstances of the case, those of the individual and whether the person has any previous criminal convictions.

Current Sentencing Guidelines Council ['Overarching Principles: Sentencing Guidelines relating to assaults on children and cruelty to a child'](#) offer the following guidance:

"In considering whether a custodial sentence is the most appropriate disposal for an offence of assault on a child the court should take into account any available information concerning the future care of the child."

Sentencing Guidelines Council ['Imposition of Community and Custodial Sentences Definitive Guideline'](#) offer the following guidance

"A custodial sentence must not be imposed unless the offence or the combination of the offence and one or more offences associated with it was so serious that neither a fine alone nor a community sentence can be justified for the offence.

There is no general definition of where the custody threshold lies. The circumstances of the individual offence and the factors assessed by offence-specific guidelines will determine whether an offence is so serious that neither a fine alone nor a community sentence can be justified.

Where no offence specific guideline is available to determine seriousness, the harm caused by the offence, the culpability of the offender and any previous convictions will be relevant to the assessment.

The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.

- Despite there being an estimate of approx. 8 cases in the first 2 years, it is unlikely they will result in a custodial sentence due to the nature of the crime and the circumstances surrounding it, therefore we anticipate there will be no impact on HMPPS.
- With regard to the criminal case income, the proportion of common assault and battery cases that result in a fine is small so no real impact to such income. And with regard to criminal law sentencing, there is no real impact, as there is no proposed change to existing penalties.
- On civil justice, there are no rule or enforcement changes required so there is no real impact in relation to civil procedure and enforcement. No impact also on Courts in relation to criminal IT systems, criminal enforcement, civil and family, Tribunals, Offender Policy, Civil analysts and Administrative Justice.

1.15. Please provide details of any proxy or current offences and / or penalties on which the proposed penalties are based.

See answer to 3.15

1.16. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.

The Children Wales Act does not involve the creation of a new criminal offence. The defence of reasonable punishment only applies to the existing offences of common assault and battery. The existing penalties for the offences of common assault and battery would therefore remain unchanged.

It is not intended or expected that when the law changes it will lead to a substantial increase in the numbers of offences which are prosecuted in the courts.

The Children Wales Act will also remove the defence of reasonable punishment in civil law but it is not thought that it will have any impact in terms of civil proceedings.

1.17. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

When Section 1 of the Children Wales Act commences in March 2022 the defence of reasonable punishment will no longer be available to parents, carers and guardians, and those acting in loco parentis facing a charge of assault or battery in Wales. How the police, CPS and courts respond to this will depend on the circumstances of the case, those of the individual and the child and whether the person has any previous criminal convictions. Please also see answer to 3.15.

The Rehabilitation of Offenders Act (ROA) allows most convictions and all cautions, reprimands and final warnings to be considered spent after a certain period. The ROA gives people with spent convictions, cautions, reprimands and final warnings the legal right not to disclose them when applying for most jobs, most courses and all insurance purposes.

Convictions will always show on police records but the conviction may not show on Disclosure and Barring Service (DBS) checks. This will depend on:

1. The type of check the person is applying for;
2. Whether their conviction is spent under the (ROA) and
3. Whether their conviction is eligible to be filtered from standard or enhanced DBS certificates.

Under the ROA, cautions become spent immediately and will therefore not be disclosed on a basic DBS check. However, they will be disclosed on standard and enhanced DBS checks unless they are eligible for filtering.

Filtering means that certain minor offences are removed or 'filtered' from standard or enhanced DBS checks. Offences that are eligible to be filtered no longer need to be disclosed by the applicant for jobs that require standard or enhanced DBS checks (filtering is not applicable to jobs that are 'exempt' from the ROA, but do not require DBS checks e.g. the police). The DBS provides a list of offences which will never be filtered from a criminal record check. This includes "Any offence of assault or indecent assault on a child".

For an enhanced DBS check, incidents recorded on a police occurrence log as 'No Further Action' (NFA) may, but are not automatically, disclosed. For example, a pattern of several similar NFAs may be disclosed, but a single NFA may not. The DBS officer would look at the reasons around the incident and the reason for the DBS assessment, they would then make a decision of whether to disclose or not. Officers follow the [Quality Assurance Framework](#) developed by the Association of Chief Police Officers (ACPO) and the DBS when making these decisions.

For visas to travel to Australia, Belgium, Canada, New Zealand, South Africa or the United States of America individuals need to apply for a Police Certificate. The certificate will include details of all cautions and convictions unless they are eligible to be 'stepped down'. Depending on the nature of the offence, the disclosure of a caution may result in a visa being refused.

The Welsh Government's ambition is that the rights of every child and young person in Wales should be promoted and respected to enable them to meet their full potential. The only way to fully comply with Article 19 of the United Nations Convention on the Rights of the Child is to prohibit the corporal punishment of children, and in Wales this involves legislation to remove the defence of reasonable punishment.

As set out in 1.7 (a) we will be raising awareness of the change in the law prior to the commencement of the legislation and for a period afterwards. Communications messaging will focus on informing the public of the legislation and its potential impact. The Children Wales Act is part of a much wider package of measures the Welsh Government is taking to support parents, as outlined earlier.

1.18. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

No

2. HM Courts & Tribunals Service and the Welsh Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

- 2.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

It is not expected that the change in the law will lead to a substantial increase in the numbers of offences which are prosecuted and we expect there to be minimal increase in the volume of cases to HM Courts. See also answer to 3.15

- Despite there being an estimate of approx. 8 cases in the first 2 years, it is unlikely they will result in a custodial sentence due to the nature of the crime and the circumstances surrounding it, therefore we anticipate there will be no impact on HMPPS.
- With regard to criminal case income, the proportion of common assault and battery cases that result in a fine is small so no real impact to such income. And with regard to criminal law sentencing there is no real impact, as there is no proposed change to existing penalties. This is a summary only offence with a max. penalty of a fine which mirrors existing penalties in the Plant Health (England) Order 2015.
- On civil justice, there are no rule or enforcement changes required so there is no real impact in relation to civil procedure and enforcement. No impact also on Courts in relation to criminal IT, criminal enforcement, civil and family, Tribunals, Offender Policy, Civil analysts and Administrative Justice.

- 2.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

- No
 Yes (please provide details)

Appeal Rights

- 2.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

No

- 2.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

No

Alternative Dispute Resolution

- 2.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

N/A

Prosecution and Enforcement

- 2.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

The Children Wales Act does not involve the creation of a new criminal offence. The defence of reasonable punishment only applies to the existing offences of common assault and battery.

- 2.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

The ability to bring a civil claim would not change as a result of the Children Wales Act.

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

- 2.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

The Children Wales Act is unlikely to require a change to the HMCTS procedural rules.

- 2.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

We anticipate that the Children Wales Act would change sentencing and / or penalty guidelines.

3. Legal Aid and Court Fees

3.1. What evidence is there that individuals affected by your proposal will be able to afford:

- a) legal representation and legal advice in order to secure a fair hearing of their case
- b) associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

Those affected by the legislation are parents, carers and guardians, and those acting in loco parentis. Research suggests that physical discipline is more likely to be used with children aged 1-5 years. Although it was a small sample [our research with parents of children aged six or under about their attitudes towards managing young children's behaviour](#) found insufficient evidence to suggest that:

- the age, gender or marital status of the parent is associated with reporting smacking;
- the deprivation level of the area in which the parents live, or their educational attainment, is associated with reporting smacking.

Civil (non-criminal) cases

To get legal aid, an individual would usually need to show they can't afford to pay for legal costs and their problem is serious.

Criminal cases

An individual has the right to free legal advice if they're questioned at a police station.

An individual automatically gets legal aid for legal representation in court if they're under 16 (or under 18 and in full-time education) or on certain benefits.

If an individual is on a low income and their case is serious (they have been charged and could go to prison), legal aid might pay some or all of their legal costs.

Common assault and battery are summary offences and would in a vast majority of cases be heard in the magistrate's court. The Ministry of Justice publish a legal aid statistics bulletin which presents statistics on the legal aid scheme administered by the Legal Aid Agency (LAA) for England and Wales. In 2016/17 there were 118,021 applications in England and Wales for legal aid for *summary only offences* heard in the magistrate's court. Of these 110,012 were granted legal aid. Please note these figures include a range of summary only offences. No information is provided on whether individuals are in Wales or England or the specific nature of the offence the legal aid relates to.

Alternatives to legal aid:

If an individual can't get legal aid, they may be able to get free advice from:

- Law Works
- Citizens Advice – advice on the court process and signposting to further advice
- AdviceNow

Court fees

Individuals on a low income, or on certain benefits and who don't have much in savings, might be able to get money off their court fee.

3.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

The Children Wales Act applies to the existing offences of common assault and battery. An individual has the right to free legal advice if they are questioned at a police station. According to the UK Government 'Gov.UK' website if a person has been charged with a crime, they can ask their solicitor or barrister if they are able to get criminal legal aid. The individual will not get a final decision until they speak to an adviser.

The ability to bring a civil claim would not change as a result of the Children Wales Act. To get legal aid, an individual would usually need to show they can not afford to pay for legal costs and their problem is serious.

3.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

There could be an impact on legal aid but we anticipate this is likely to be a low impact in connection with criminal legal aid arising from the removal of the 'reasonable punishment' defence from the offences of common assault and battery committed against children. Our projection reflects the estimated additional volume of prosecutions, which uses the New Zealand model as a proxy and shows the following:

- Years 1 & 2 – 8 prosecutions
- Years 3 & 4 – 13 prosecutions
- Year 5 – 16 prosecutions

Total = 37 prosecutions

It is anticipated that the great majority of these prosecutions will take place at the Magistrates Court (MC), although no formal split between Magistrates Court and Crown Court (CC) is proposed. For the purpose of our calculation below, we assumed a 75/25 split. Taking into account: average unit MC costs of £400 per case with 50% of all MC defendants passing on means, and average unit CC costs of £5,800 with all CC defendants eligible. The costs over a 5 year period are estimated to be less than £70,000

However, given the uncertainty of such proxy measures (and the assumed split between CC and MC), the forecast could be higher or lower than this estimate.

Civil Legal Aid

In addition, there could in theory be an impact on civil legal aid given that it might make these cases more likely to be brought / succeed. However, this impact would be very small given the number of people who obtain funding for common assault in these circumstances and likely level of damages would be quite low. In addition, we suspect that the existence of the defence wouldn't necessarily be a deterrence to starting litigation at the moment, albeit the case would be focussed on whether the punishment was "reasonable". We are therefore of the view that there could be a potential impact on civil legal aid but the impact is unquantifiable and likely to be very small in any event.

4. Prisons and Offender Management Services

Impact on HM Prison Services

- 4.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

Criminal Justice Act 1988, Section 39 provides that 'Common assault and battery shall be summary offences and a person guilty of either of them shall be liable to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding six months, or to both.'

Due to the level of offending being discussed it is not expected that the change in the law will lead to a *substantial* increase in the numbers of offences which result in a prison sentence.

Current Sentencing Guidelines Council ['Overarching Principles: Sentencing Guidelines relating to assaults on children and cruelty to a child'](#) offer the following guidance:

"In considering whether a custodial sentence is the most appropriate disposal for an offence of assault on a child the court should take into account any available information concerning the future care of the child."

Sentencing Guidelines Council Prison place offer the following guidance

"A custodial sentence must not be imposed unless the offence or the combination of the offence and one or more offences associated with it was so serious that neither a fine alone nor a community sentence can be justified for the offence."

Currently there are no Ministry of Justice published statistics providing information on the number of cases where a parent is prosecuted for common assault (and uses the defence of reasonable punishment). The statistics provide information for the offence of 'Violence against the person'. This broad category includes a number of different offences including homicide, violence with injury and violence without injury. This data is not broken down to show how many of these cases were for an "Assault without injury" and whether the victim was a child. ([Ministry of Justice statistics](#)).

We envisage there would be minimal or nil impact in the following area:

- Despite there being an estimate of approximately 8 cases per year in the first year, it is unlikely they will result in a custodial sentence due to the nature of the crime and the circumstances surrounding it, therefore we anticipate there will be no impact on HM Prison Services.

- 4.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

No

5. Main Justice System Impacts Identified

5.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions	As outlined in 3.13 and 6.1 it is difficult to predict number of cases. We do not expect a substantial increase in custodial sentences.	Out of Court disposals			
		Fine			
		Prison place			
Civil Penalties	Negligible				
HM Courts & Tribunals Services	As outlined in 3.13 and 6.1 it is difficult to predict number of cases				
Welsh Tribunals	N/A				
Legal Aid	As outlined in 3.13 and 6.1 it is very difficult to predict number of cases				

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Notes:-					

5.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) ² (please provide numeric estimate and min-max range)
Assault and battery	6 months				
Notes:					

Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.

² The MoJ publish statistics on "Prison cost per place and cost per prisoner:" - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>