Health & Social Services Committee HSS-15-00(p.2)

Date: 5 July 2000

Venue: Committee Room 2, National Assembly for Wales

Title: Physical Punishment of Children – Outcome of Consultation

Purpose

1. The Committee is invited to note the responses to the consultation exercise; and consider any representations that it would like to make to the UK Government on this non-devolved matter.

Timing

2. Department of Health officials hope to put a submission to their Ministers in the Autumn. The intention is for the responses from Wales to contribute to that.

Recommendation

3. That the Committee gives its views on the proposals of the UK Government in light of the responses from consultation in Wales.

Background

The existing legal position .

4. The law in the UK allows a parent, or somebody acting in a parental role (e.g. a grandparent), to call upon a defence of 'reasonable chastisement' of the child if charged with assault as a consequence of physically punishing the child.

5. In criminal proceedings for assault, where the defence of reasonable chastisement is raised, it is for the prosecution to satisfy the Court beyond reasonable doubt that the punishment was not, in all the circumstances, reasonable or moderate. In civil actions, the burden of proof for establishing whether the punishment was reasonable rests with the defendant, on the balance of probabilities.

6. The defence of 'reasonable chastisement' is available generally to adults acting in loco parentis, but it may not be used by teachers and others

working in schools and nurseries, staff in children's homes, or foster

carers (other than in private fostering arrangements). Corporal

punishment has been outlawed in all of these settings.

7. What constitutes 'reasonable chastisement' is not defined in

law. Whether a defence succeeds in a UK Court depends upon

the facts of the case. The concept of 'reasonableness' enables the

Courts to apply standards prevailing in contemporary society.

The need for change

8. A case taken to the European Court of Human Rights found that UK law needs modernising to ensure that children are protected from harsh physical punishment. The UK was ruled to have failed to protect the child concerned from ‘inhuman or degrading treatment,’ in the form of severe beatings, in contravention of the European Convention on Human Rights. The failure to protect arises out of the availability to a person charged with criminally assaulting a child of the defence of ‘reasonable chastisement’ in respect of punishment that constitutes inhuman or degrading treatment. In this particular case, the defence of reasonable chastisement was successfully utilised to avoid a criminal conviction.

9. The UK Government accepts fully the need for change in existing domestic law, to ensure that there can be no successful defence to the harmful and degrading treatment of children. However, it does not consider that the way forward is to make smacking, and all other forms of physical rebuke, unlawful and has explicitly ruled out this possibility. It is not therefore proposing to abandon the defence of reasonable chastisement but to outline, in legislation, the factors that must be taken into account by the Courts in deciding whether punishment has been moderate and reasonable; and therefore not inhuman and degrading.

10. The European Court stated that in order to constitute inhuman and degrading treatment, ill-treatment must reach a minimum level of severity, and that the assessment of this minimum is relative, depending on all the

circumstances of the case. The circumstances it decided were relevant

included:

- the nature and context of the treatment;
- its duration;
- its physical and mental effects; and, in some instances,
- the sex, age and state of health of the victim.

11. The UK Government is proposing that, as a minimum, the Courts should always have regard to these factors in considering whether or not physical punishment constitutes reasonable chastisement.

Consultation

12. The Department of Health’s consultation document "Protecting Children, Supporting Parents" seeks views on the factors that need to be taken into account by the Courts in cases where the defence of reasonable
chastisement is used. The Secretary of State for Wales asked the First Secretary for assistance in carrying out the consultation in Wales. Assembly officials issued the Department of Health document, together with a Welsh

language version and a covering letter, on 9th March to a wide range of organisations and individuals. The document is at Annex A to this paper.

13. The consultation paper sought to address two issues:

- where should the line be drawn as to acceptability of physical punishment within the family setting ?
- how is that position to be achieved in law ?

and, as well as proposing that the factors set out on paragraph 10 of this paper must always be taken into account, asks a number of questions designed to inform these issues further.

14. The paper considers physical punishment in the context of the Government's wider policy aims in support of families, and current prevailing attitudes towards the issue are summarised. The consultation document outlines existing law, and explains why change is needed, proposes options and a way forward.

15. Consultees in Wales included local authorities, health authorities and trusts, child and family voluntary organisations, all-Wales voluntary bodies, professional associations, churches and religious bodies, the police and the Law Society. The process has been structured to enable Wales to submit its own response to the Department of Health.

16. A total of 89 responses were received from the organisations and individuals listed at Annex B to this paper. A table of the main views expressed and points made is at Annex C together with a summery of the main responses at Annex C1. Copies of the individual responses have also been lodged in the Library.

17. The overarching picture is that the responses fall into three broad categories : those who are opposed to any change in the law, those who support the abandonment of the defence of reasonable chastisement ; and those who also support a total, legal ban on physical punishment.

18. In considering the responses, it may be helpful for the Committee to keep

in mind that many of those respondees who favour an abandonment of the defence of reasonable chastisement did not recognise the validity of the specific questions posed as the questions are predicated on keeping this defence.

Consultation with Children

19. Save the Children and Children in Wales undertook a consultation with children between the ages of 4 and 12. This took the form of group discussions using a storybook approach. A summary of the main findings from the exercise is at Annex D. A full copy of the report has been lodged in the Library.

Compliance

20. **Human Rights -** the effect of section 107 of the Government of Wales Act is that it is unlawful for the Assembly to do any act that is incompatible with the European Convention on Human Rights. The purpose of this consultation is to bring UK law into line with the principles of the Convention but, as the Assembly has no power to change

the law in this area, this issue involves no breach of the Assembly's obligations under s107.

21. Section 33 of the Government of Wales Act 1998 empowers the Assembly to consider and make appropriate representations about any matter affecting Wales. Section 41 of the 1998 Act also provides for the Assembly to be able to enter into agency arrangements or to provide services to any Government department. There are no issues of regularity and propriety.

Financial Implications

22. As this is a non-devolved issue, there are no financial implications for the Assembly. The Assembly's Financial Planning Division has been consulted about the paper and is content with the financial aspects.

UK perspective

23. A similar consultation exercise has taken place in Scotland. The Scottish consultation document also proposes keeping the defence of reasonable chastisement but differs in respect of three additional questions : whether consultees agree with the Scottish Executive that the defence of reasonable chastisement should remain; whether the defence should be available in respect of the physical punishment of very young children and, if so, what should be the age limit; and whether corporal punishment should be banned in privately funded day/child care settings. Responses are currently being considered. There are plans to consult in Northern Ireland but no details of time scale or content are available at present.

Cross Cutting Themes

24. A version of this paper is being also being put to the Pre-16 Education, Schools and Early Learning Committee to consider at its meeting on 5 July, because of Mrs Butlers over-arching responsibilities towards children.

Action for the Health and Social Services Committee

25. To consider the responses to consultation in Wales and any representations that it would like to make to the UK Government, through the Secretary of State for Wales, on this non-devolved matter.

Contact Point:

Chris Burdett
Children and Families Division
Ext. 3936

Jane Hutt

Assembly Secretary

Annex B

-

-

Physical Punishment of Children consultation document

Response categories

Health Sector

Bernice Bird - Primary Care Nurse Advisor

British Medical Association

Bro Taff Health Authority

Carmarthen and Dinefwr Community Health Council

Ceredigion and Mid Wales NHS Trust

Dr E Webb - Senior Lecturer in Child Health

Gwent Community Health Council

Iechyd Morgannwg Health Authority

North Wales Health Authority Designated Nurses

North Wales Health Authority Designated Doctors

North Wales Health Authority Chief Executive

North West Wales NHS Trust

Professor J Sibert - Professor of Community Child Health

Royal College of Nursing

Swansea NHS Trust

Vale of Glamorgan Community Health Council

Welsh National Board for Nursing, Midwifery and Health Visiting

Academic Sector

Institute of Education - University of London

University of Wales, Bangor

University of Birmingham

University of Glamorgan

University of Wales, Swansea

Local Authority Sector

Caerphilly County Borough Council

Cardiff County Council

City & County of Swansea

Denbighshire Education & Social Services Department

Flintshire County Borough Council Social Services Department

Pembrokeshire County Council

Sure Start Rhondda Cynon Taff

Rhondda Cynon Taff Education Department

Torfaen County Borough Council Education Department

Torfaen County Borough Council Social Services Department

The Vale of Glamorgan County Borough Council

Wrexham County Borough Council

Voluntary Sector

Barnardo's

Care for Wales

Catholic Children & Family Care Society (Wales)

EPOCH - End Physical Punishment of Children

Families First

NSPCC

Parenting Education & Support Forum

Play Wales

Pontypridd Women's Aid

Save the Children

The National Council of Women of Great Britain

The National Early Years Network

The National Playbus Association

Welsh Women's Aid

Other Sector

British Association of Social Workers

Children are Unbeatable

Justice for Children

Law Society

Newport County Court

North Wales Police

South East Wales GALRO Panel

South Wales Police

The Christian Institute

Welsh Language Board

Individual

Ian & Judith Aveson

Dora Blakeledge

Mrs J S Clarke

Paul M Clarke

Rev. W John Cook

Dr & Mrs A C Eastwood

Judge G.O Edwards QC

Lloyd Ellis

Roland Hicks

Virginia Ironside

Graham Johnson

Mr J.S Johnston

Caroline Jones

Keith Lewis

R John Lewis

Karen Maloney

James & Julia McMaster

Professor John Morton OBE

Rev B Nott

Mrs A.M Norman

B Peat

Mark & Lorraine Pont

Rev. John Thackway

Mrs Iola Thomas

Richard Watson

Miss E Williams

Miss R Williams

Confidential Responses

One Local Authority response

One Individual Response

ANNEX C

NB Italics denotes organisations based in England who have copied their response to Wales

Main Responses to the Consultation on the Physical Punishment of Children

Question	Comments	Organisation
1. What, if any, factors over and above those factors set out in para 5.3 should the law require a Court to consider when determining whether the physical punishment of a child constitutes ' reasonable chastisement'?	No other factors need be taken into account.	**Health Sector -** British Medical Association Cymru, Carmarthen and Dinefwr Community Health Council, Ceredigion & Mid Wales NHS Trust. **Local Authority Sector -** Flintshire County Council Social Services Department, Rhondda Cynon Taff Education Department, South East Wales Guardian ad Litem Reporting Officer (GALRO) Panel. **Voluntary Sector -** Care for Wales, *Families First*, *Justice for Children.*

		The Christian Institute Centre. North Wales Police. **Individual Responses** - Mrs J Aveson,- P Clarke, Dr & Mrs AC Eastwood, Lloyd Ellis, R John Lewis, Mrs K Maloney, James & Julia McMaster, Rev B Nott, B Peat, Ms Iola Thomas, Confidential Individual Response, *Prof. John Morton from University College of London*
	The child's development, level of understanding and special educational needs.	South Wales Police. Vale of Glamorgan Unified Service for Children with Special Needs. Catholic Children and Family Care Society (Wales). *National Council of Women of Great Britain.* **Health Sector** - Welsh National Board for Nursing, Midwifery and Health Visiting, Iechyd Morgannwg Health. **Local Authority Sector** - Caerphilly Social Services Department, Cardiff City Council, Confidential Local Authority response. **Academic Sector -** University of Bangor, University of Glamorgan.
	The gender of the	**Health Sector -** Bernice

	person administering the punishment. Length of time after the event that the punishment took place. The duration and extent of previous chastisement. Child's understanding of why the punishment is being given. The reason for the punishment. The number of people involved in the punishment. Any underlying medical or behavioural problems. What factors led to the incident. Whether an alternative approached was tried first.	Bird - Primary Care Nurse Advisor. **Local Authority Sector** - Caerphilly Social Services Department, Cardiff County Council. Iechyd Morgannwg Health. **Academic Sector -** University of Bangor, University of Glamorgan. **Individual Responses -** Judge Glyn Morgan. Pontypridd Women's Aid. *National Council of Women of Great Britain.*
	Whether the same action would be considered an assault of an adult.	Designated Doctor Child Protection - North Wales Health Authority.
	Consideration of intent (to differentiate between purposeful chastisement or dangerous behaviour). Only punishment that would constitute common assault should be defensible as reasonable chastisement (excluding blows to the head).	Cardiff County Council.
	The nature of the	Pembrokeshire County

	relationship between the adult and child.	Council Social Services Department. Gwent Community Health Council.
	The child wilfully endangering himself or others.	Vale of Glamorgan Community Health Council.
	Does not support any approach which condones any physical punishment of children. Children should have the same position in law as adults.	**Health Sector** - Designated Doctor of Child Protection from Bro Taf Health Authority, - Chief Executive of North Wales Health Authority, North Wales NHS Trust, Dr E Webb Senior Lecturer in Child Health, Welsh National Board for Nursing Midwifery and Health Visitors. **Local Authority Sector -** Rhondda Cynon Taff Sure Start Team, South East Wales Guardian ad Litem Reporting Officer (GALRO) Panel, Wrexham Area Child Protection Committee. **Voluntary Sector -** Barnardos, NSPCC, Play Wales, Save the Children, Welsh Women's Aid, *Children are Unbeatable Alliance, EPOCH, National Early Years Network, National Playbus Association, The Parenting Education and Support Forum*. **Individual Response** - Mrs Caroline Jones, Dr Alison Maddocks Designated Doctor - Child Protection, Kay

		Mahoney, Robert Sanders, Professor Jo Sibert - Professor of Community Child Health, *Dr Priscilla Alderson, Virginia Ironside, Prof. John Morton University College of London.* **Academic Sector -** University of Glamorgan, University of Birmingham. *British Association of Social Workers*.
	The application of the word "reasonable" to physical chastisement is difficult as it legitimises the notion that smacking or hitting children is an acceptable form of punishment. A checklist of factors can only be a starting point when assessing the degree of harm.	**Voluntary Sector** - Barnardos, Play Wales *Children are Unbeatable.* City and County of Swansea Social Services Department.
	Concern as to how additional factors for consideration by the court will effectively alter or improve the present status quo.	Torfaen County Borough Council Social Services Department.
	Believes that the factors in para 5.3 remain subjective and arbitrary and would neither protect a child in law nor provide effective or useful guide for parents . Sex of the child is irrelevant, both sexes should receive equal treatment .	**Voluntary Sector** - NSPCC, Save the Children, Welsh Women's Aid.
	It is not possible or	Judge Glyn Morgan.

	desirable to specify all factors which may or may not be deemed relevant for consideration.	
	The defence of reasonable chastisement should be limited but there is potential that it could be extended by adding additional factors.	Care for Wales. The Law Society in Wales.
2. Are there any forms of physical punishment which should never be capable of being defended as 'reasonable'? Specifically , should the law state that any of the following can never be defended as reasonable: • **Physical punishment which causes, or is likely to cause injuries to the head (including injuries to the brain, eyes and ears)?** • **Physical punishment using implements (e.g. canes, slippers, belts)?**	Any physical punishment which causes or is likely to cause injury to the head (or any other part of the body) cannot be defended as reasonable whether caused by hand or implement.	**Local Authority Sector** - Caerphilly Social services Department, Cardiff County Council, Confidential Local Authority Response, Vale of Glamorgan Unified Service for Children with Special Needs. **Voluntary Sector -** Care for Wales, *Families First.* **Individual Responses -**Mrs Dora Blakeledge, J Clarke, Keith Lewis, R John Lewis, Mrs A M Norman, Mark & Lorraine Pont, Ms Iona Thomas, Confidential Individual Response. South Wales Police.
	Use of an implement should not be prohibited by law providing the	**Individual Responses** - Mrs Dora Blakeledge, Mr P Clarke, Dr & Mrs

	physical correction is reasonable and depending how the implement is used or where on the body.	AC Eastwood, Lloyd Ellis, Mrs B Hicks, Graham Johnson, Keith Lewis, James and Julia McMaster, Mrs A M Norman, Rev B Nott, B Peat, Ms Iona Thomas, Confidential Individual Response. Care for Wales.
	The defence of reasonable chastisement should be as limited as possible.	Torfaen County Borough Council Education Department.
	Support the proposal that the use of implements can never be defined as reasonable, does not agree that physical punishment to the head can never be defended, as it would depend on the age of the child.	North Wales Police.
	Minor, temporary marks cannot be defined as injuries and parents may be wrongly accused of abuse when these have occurred accidentally.	Rev B Nott. *Families First.*
	Wholly unacceptable that the Government is posing this question. Injuries to brain, eye or ear could never be reasonable and should be banned - the question implies that the Government considers injuries to other parts of the body may be considered reasonable.	**Voluntary Sector -** Barnardos, NSPCC, Save the Children Welsh Women's Aid. *British Association of Social Workers*. Robert Sanders.

	Shaking should be specifically outlawed.	Pontypridd Women's Aid. University of Glamorgan.
	Any punishment which marks the child's skin, humiliates or uses implements.	University of Glamorgan.
	There should be no change in the law as it stands the issue should be left to common sense of the courts.	Judith Aveson. *The Christian Institute.* Mrs K Maloney.
	Some religious groups use an implement in line with their beliefs and this should be respected. Reckless beating which causes injury whether by hand or implement is quite different from chastisement	**Individual Responses -** Rev W John Cook, Dr & Mrs AC Eastwood.
	The question of whether or not punishment is reasonable depends on the nature of the punishment, but to legislate that certain forms of punishment are permissible whilst others are not is unnecessary and undesirable because whether or not it is reasonable depends on the circumstances of each individual case.	Judge Glyn Morgan, Judge Gareth Edwards.
	Use of implements or punishment which results in anything other than the most trivial injuries should be outlawed. As should all punishment of children	The Law Society Wales.

	under 12 months.	
	Introducing a ban on the use of implements alone would not bring an end to the physical punishment of children .	*National Playbus Association*.
	The right of a parent to punish a misbehaving child should not be compromised, but neither should a child's right to be protected from injury. Any wilful injury to a child should be illegal whether an implement is used or not.	*Justice for Children.*
	Physical punishment, whether with a hand or an implement, should be acceptable providing it does not injure the child or cause any long term damage.	**Individual Responses -** J Clarke, P Clarke. Care for Wales.
	Neither punishment causing injury to the head or punishment using implements can be defined as reasonable.	**Health Sector** - Bernice Bird - Primary Care Nurse Advisor, British Medical Association Cymru, Designated Doctor Child Protection Bro Taf Health Authority, Carmarthen Dinefwr Community Health Council, Ceredigion & Mid Wales NHS Trust., Gwent Community Health Council, Iechyd Morgannwg Health, North Wales Health Authority - Chief Executive, Designated Doctor Child Protection - North Wales Health Authority, Designated Nurse Child Protection - North Wales Health

		Wales Authority, Vale of Glamorgan Community Health Council, Welsh National Board for Nursing Midwifery and Health Visiting. **Local Authority Sector -** Flintshire County Council Pembrokeshire County Council Social Services Department, Rhondda Cynon Taff Sure Start Team, South East Wales Guardian ad Litem Reporting Officer (GALRO) Panel, Torfaen County Borough Council Education Department, Torfaen County Borough Council Social Services Department , Wrexham Area Child Protection Committee. **Voluntary Sector -** Barnardos, Catholic Children and Family Care Society (Wales), NSPCC, Play Wales, Pontypridd Women's Aid, Save the Children, *Children are Unbeatable Alliance, EPOCH National Early Years, National Council of Women of Great Britain, National Playbus Association, The Parenting Education Support Forum.* **Academic Sector -** University of Bangor, University of Birmingham. **Individual Responses**

		- Dr Alison Maddocks Designated Doctor - Child Protection, Robert Sanders, *Dr Priscilla Alderson*, *Prof. John Morton University College of London.* *British Association of Social Workers.*
3 Should we restrict the defence of "reasonable chastisement" so that it may be used only by those charged with common assault, and not by those charged with causing actual bodily harm, or more serious assault?	Yes.	**Health Sector -** Bernice Bird - Primary Care Nurse Advisor, British Medical Association Cymru, Carmarthen and Dinefwr Community Health Council, Ceredigion and Mid Wales NHS Trust, Gwent Community Health Council Midwifery and Health Visiting, Iechyd Morgannwg Health , North Wales NHS Truist, Vale of Glamorgan Community Health Council, Welsh National Board for Nursing. **Local Authority Sector -** Confidential Local Authority response, Pembrokeshire County Council Social Services Department, South East Wales Guardian ad Litem Reporting Officer (GALRO) Panel, Torfaen County Borough Council Social Services Department. **Individual Responses** - Mrs Dora Blakeledge, J Clarke. **Academic -** University of Glamorgan, University of Bangor.

		The Law Society Wales. Care for Wales. *The National Council of Women in Great Britain.*
	This proposal would not help in any way, and would only increase fear in parents who are trying to bring up children that best way they can.	**Individual Responses -** James and Julia McMaster, Mrs A M Norman, Rev John Thackery, Confidential Individual Response.
	Should be restricted and an agreed definition of "reasonable chastisement" should be in place.	Pontypridd Women's Aid. Rhondda Cynon Taff Education Department.
	No need to restrict, as the more serious an injury is, the less likely the defence is to succeed.	Judge Glyn Morgan.
	There should be no changes to current law.	**Individual Responses -** Judith Aveson, Dr & Mrs AC Eastwood, B Peat, Confidential Individual Response. **Voluntary Sector -** *Families First, The Christian institute.*
	Were the Government to follow its proposal and remove the defence only in relation to actual bodily harm and more serious charges it would create a presumption that punishment causing injuries normally categorised as common assault was "reasonable".	**Voluntary Sector -** Barnardos, NSPCC, Save the Children. City and County of Swansea Social Services Department.
	Proposal highlights the inequality of protection	**Voluntary Sector -** Barnardos, NSPCC,

	currently available to children. The definition should be restricted so that it cannot be used by anyone charged with any category of assault.	Save the Children, Welsh Women's Aid *Parenting Education and Support Forum.*
	Suggests the government consider the law in Arkansas in respect of the type of punishment that should not be considered be considered reasonable or moderate (refer to individual responses for details of Arkansas legislation).	**Individual Responses -** P Clarke, Graham Johnson, R John Lewis. *Families First.*
	The law should reflect that the physical punishment of children is a different category to common assault. Providing no permanent damage occurs there should be an automatic defence of "reasonable chastisement".	Lloyd Ellis.
	Assault and physical punishment by a person who is not a parent should always constitute a criminal assault and should not be mitigated Any implement used should be regarded as a weapon and the resulting charge tarrifed upwards to deal with that.	Children and Family Care Society (Wales).
	Defence of "reasonable chastisement" should be abolished.	**Health Sector -** Designated Doctor Child Protection Bro Taf Health Authority, North

		Wales Health Authority - Chief Executive, Designated Nurse Child Protection - North Wales Health Wales Authority, Designated Doctor Child Protection - North Wales Health Authority, Dr E Webb Senior lecturer in Child Health. **Local Authority Sector -** Caerphilly Social Services Department, Flintshire County Council, Rhondda Cynon Taff Sure Start Team, South East Wales Guardian ad Litem Reporting Officer (GALRO) Panel. **Voluntary Sector -** Barnardos, NSPCC, Play Wales, Save the Children, *Children are Unbeatable Alliance, EPOCH, Justice for Children, National Early Years Network, National Playbus Association.* **Individual Responses -** Mrs Caroline Jones, Dr Alison Maddocks Designated Doctor - Child Protection, Robert Sanders, *Dr Priscilla Alderson*, *Prof. John Morton University College of London..* *British Association of Social Workers.* University of Birmingham.
4. Who should be able to claim the defence of		**Individual Responses -** Judith Aveson, J Clarke, Mr P Clarke,

'reasonable chastisement'? Should it be: • **As now all those acting on behalf of parents in looking after children (except in settings where physical punishment has been outlawed)?**	Yes.	Rev W John Cook, Dr & Mrs A C Eastwood, Graham Johnson, R John Lewis, Keith Lewis, James and Julia McMaster, Rev B Nott, B Peat, Mark & Lorraine Pont, Confidential Individual Response. *Prof. John Morton University College of London.* **Local Authority Sector -** Cardiff City Council, Confidential Local Authority response, South East Wales Guardian ad Litem Reporting Officer (GALRO) Panel, Torfaen County Council education Department, Vale of Glamorgan Unified Service for Children with Special Needs. **Health Sector -** Bernice Bird - Primary Care Nurse Advisor, Ceredigion and Mid Wales NHS Trust, Gwent Community Health Council, Iechyd Morgannwg Health, Vale of Glamorgan Community Health Council. **Voluntary Sector -** Care for Wales, *Families First, The Christian Institute, The National Council of Women in Great Britain*. **Other Sector -** North Wales Police, *Justice for Children.*

• **Parents only (defined as those with parental responsibility under the Children's Act 1989)?**	Yes.	**Local Authority Sector -** Caerphilly Social Services Department , Pembrokeshire County Council Social services Department, Rhondda Cynon Taff Education Department. Welsh National Board for Nursing Midwifery and Health Visiting. University of Bangor.
• **All those acting on behalf of parents , but only if parents have given their express permission that those acting on their behalf may physically punish their child?**	Yes.	**Individual Responses -** Mrs Dora Blakeledge, Lloyd Ellis, Judge Glyn Morgan. South Wales Police. **Health Sector -** Carmarthen and Dinefwr Community Health Council. North Wales NHS Trust. Flintshire County Council.
	Any extensions of the defence could lead to abuse.	The Law Society Wales.
	The possible scenario of two children living next door to each other one looked after by foster carers and one by natural parents being subject to different rules of chastisement, one legal and one illegal is one for consideration.	Wrexham Area Child Protection Committee.
	It will prove impossible for the Government to ensure that all possible situations are adequately covered by	Graham Johnson.

	legislation.	
	Parents should be able to give permission to any responsible adult, including in institutions such as schools.	**Individual Responses -** Lloyd Elis, Rev W John Cook.
	This is something to be discussed between the parents and those looking after the children and not something for Government interference.	Mrs B Hicks.
	No one should be able to use this defence .	**Voluntary Sector -** Barnardos, NSPCC, Play Wales, Save the Children, *Children are Unbeatable Alliance, EPOCH National Early Years Network, National Playbus Association.* **Health Sector** - Designated Doctor Child Protection Bro Taf Health Authority, North Wales Health Authority - Chief Executive. **Individual Responses -** *Dr Priscilla Alderson,* Robert Sanders. Rhondda Cynon Taff Sure Start Team.
	No one should be able to use this defence - but the next best option would be that parents only should be able to claim the defence.	**Health Sector -** British Medical Association Cymru, Designated Doctor Child Protection - North Wales Health Authority, Designated Nurse Child Protection - North Wales Health Wales Authority. **Voluntary Sector -**

		Barnardos, Pontypridd Women's Aid, The *Parenting Educational Support Forum.* Torfaen Borough Council Social Services Department. University of Glamorgan. *British Association of Social Workers.*
	This defence should be limited to as few people as possible.	City and County of Swansea Social Services Department. Judge Glyn Morgan.
	It is ironic that this special defence is available to the most vulnerable members of society.	The Law Society.
Additional Comments	Parents should be supported and a framework provided where parents can discipline their children without recourse to physical punishment.	**Health Sector -** North Wales Health Authority - Chief Executive, Royal College of Nursing in Wales, Welsh National Board for Nursing, Midwifery and Health Visiting. **Academic Sector -** University of Glamorgan, University of Birmingham. **Voluntary Sector -** Care for Wales, Children and Family Care Society (Wales), NSPCC, Save the Children, Welsh Women's Aid. *National Playbus Association.*

		Individual Responses - Dr Alison Maddocks Designated Doctor - Child Protection (individual response), Confidential Individual Response. Rhondda Cynon Taff Sure Start Team. The Law Society Wales. City and County of Swansea Social Services Department. *British Association of Social Workers.*
	Supports the Government's view that it would be unacceptable to outlaw all physical punishment of a child by a parent.	Torfaen County Borough Council Education Department. Care for Wales.
	The lack of reference to the role of the police & social services in the protection of children, nor the concept of section 47 of the Children Act joint investigation (local authorities duty to investigate if a child is likely to suffer significant harm) is a glaring omission in the paper. Matter for concern that the law may be interfering in a parents choice to bring up their own children; this should be balanced against the child's right to be bought up in an	South Wales Police.

	environment free from any sort of abuse.	
	There should be an upper limit for any form of physical punishment of 7 or 8 years of age.	*National Council of Women in Great Britain.*
	The Government has no firm evidence to support the argument that physical punishment of children breeds violence. Parents probably smacked their children more in the past than they do today yet children in today's society are more violent (e.g. number of young offenders has risen) and in many cases no restraint is being applied. Government should reflect that, dispite pressure from a small but well organised and financed children's rights lobby it has a responsibility to defend the wishes of the majority of ordinary parents. Rights of parents as well children should be taken into account.	Graham Johnson.
	The misuse of punishment by the minority should not prevent the national majority from using punishment in the interests of children.	Keith Lewis.
	It is disappointing that the Government is ruling out the option of outlawing all physical	**Academic Sector -** University of Bangor, University of Glamorgan.

	punishment by a parent.	**Individual Responses -** NSPCC, Welsh Women's Aid. Dr Alison Maddocks Designated Doctor - Child Protection.
	Government's time and money would be better utilised in persuading parents to play a amore active and responsible role in their children's lives. Rather than banning the use of implements the Government should promote a more positive policy in respect of physical punishment.	**Voluntary Sector -** Barnardos Cymru, NSPCC. **Individual Responses** - Mrs A M Norman, Rev John Thackway.
	Totally disagrees with the concept of the Government changing the law in any way.	**Individual Responses -** Mrs B Hicks, Miss E Williams, Ms R Williams, Judge Gareth Edwards.
	The current review seems to have been prompted by one case that is not representative of the current practice of family discipline in this country. The Government must ensure that it does not overreact to an isolated case of possible abuse. Britain is increasingly becoming a multi cultural country. Many families have cultural and religious traditions where corporal punishment is part of the upbringing of children , and where an implement is routinely	*The Christian Institute..* *Families First.* **Individual Responses -** J S Clarke, Lloyd Ellis, Ms Iona Thomas.

	used. In the interests of an inclusive society, the law should allow this, providing that no permanent damage ensues.	
	The Government has brought about major changes in philosophy and resources to support parents . Encouraging the cessation of physical punishment can only enhance these policies.	Mrs Caroline Jones.
	Discipline is of enormous benefit to young people, but the difference between brutality and discipline should be distinct. Children placed under the care of a childminder should be able to receive punishment if their behaviour demands it (a point the Bible makes clearly). If adolescent crime is the product of lack of discipline it is hypocritical to lock young offenders up when the blame can be laid at the Government's own legislation.	Richard Watson.
	Believes there have been cases where over zealous social workers have made inappropriate use of their legal powers. These may be exacerbated as many social workers and childcare experts	*The Christian Institute.*

	believe that snacking and "harmful and degrading treatments" are the same thing.	
	There is a doubt that this legislation could be enforced therefore it should not be introduced.	Rev W John Cook.
	No physical punishment other than the mildest could ever be capable of justification.	The Law Society Wales.
	Implementation of a criminal law against smacking would be impossible to uphold. Would prefer to see it dealt with via family support services and ultimately through Civil Law.	City and County of Swansea Social Services Department.
	Concerned at the lack of consultation with children.	**Voluntary Sector -** Barnardos Cymru, NSPCC, Save the Children, Welsh Women's Aid.
	Concerned at the very limited options for response given in the questions.	Save the Children.
	Government should promote the positive side of banning physical punishment.	Welsh Women's Aid.
	The options provided in the paper do not give a clear message that hitting children is wrong and it could be read as condoning physical punishment in circumstances which fall outside the definitions	Barnardos Cymru.

	given. Do not believe that these proposals will meet the UK requirement under the UN Convention on the Rights of the Child. This is an opportunity get the law right for children across Wales and the rest of the UK and make a change that would demonstrate the Governments and the National Assembly for Wales's commitment to support families and improve child protection.	
	At present children who are looked after away from the home environment are protected from physical punishment, in that the person acting as in loco parentis cannot use the defence of "reasonable chastisement". Children should have the right to the same protection in their own home.	*National Playbus Association.*
	Disappointing that the Assembly has not issued it's own consultation document in a similar way to the Scottish Parliament.	**Voluntary Sector -** Barnardos, NSPCC, *EPOCH.*
	Identifying circumstances and manner in which parents should be able	NSPCC.

	physically punish their children in fraught with difficulty and could lead to children being at greater risk.	
	The Government needs to be careful not to purse legislation (or change existing legislation) which will result in children & families being exposed to unhelpful intrusion by social services. there is a need to ensure the right balance is struck otherwise there would be a breach of Article 8 of the European Convention (the need to respect an individuals private and family life).	**Individual Responses** - Graham Johnson, Rev B Nott.
	Disciplining children is a personal matter and should remain so.	**Individual Responses -** Mrs Dora Blakeledge, J Clarke, P Clarke, Rev W John Cook, Judge G.O Edwards QC, Mrs B Hicks. *Families First.*
	Unclear from the document whether the Government includes disabled children and those with learning difficulties, assume that they are and we find this proposal is totally unacceptable.	**Voluntary Sector** - NSPCC, Save the Children, Welsh Women's Aid.
	Children need love and understanding which aims at their greatest	Rev W John Cook.

	welfare, this includes encouragement and praise for good behaviour but criticism and discipline including punishment for doing wrong.	
	Self evident that some forms of punishment are indefinable but no need to change the law as extreme punishment is already a criminal offence.	James & Julia McMaster.
	Trying to determine how parents punish their children sanctions the behaviour. Government should endeavour to create support services such as "Sure Start" on a universal scale to educate young people at school to develop skills in conflict resolution.	City and County of Swansea Social Services Department.
	Prosecution of a parent for chastising a child should not be the normal consequence of a complaint, depending on the severity of the punishment and whether it was repeated. Parents should have the option of counselling and advice in the first instance.	Judge Gareth Edwards.
	Proposals contained here for clarification of "reasonable chastisement" may in a legalistic sense make the position clearer in a Court of law. However these are unlikely to	University of Glamorgan.

	improve parental understanding.	

Annex C1

-

Summary of Main Responses

Question 1 - What, if any, factors over and above those factors set out in para 5.3 of the consultation document (reproduced in paragraph 10 above) should the law require a Court to consider when determining whether the physical punishment of a child constitutes ' reasonable chastisement' ?

- no other factors need to be taken into account;
- the child's development level of understanding and/or any special needs should also be taken into account;
- the reason for the punishment;
- the factors in paragraph 5.3 are subjective and arbitrary and will neither protect a child in law or provide an effective and useful guide to parents;
- there should be no support for any approach which condones physical violence.

Question 2 - Are there any forms of physical punishment which should never be capable of being defended as 'reasonable'? Specifically, should the law state that any of the following can never be defended as reasonable:

- **physical punishment which causes, or is likely to cause injuries to the head (including injuries to the brain, eyes and ears)?**
- **physical punishment using implements (e.g. canes, slippers, belts) ?**
- any punishment which causes injury to the head whether by a hand or implement cannot be defined as reasonable;
- the use of an implement should not be prohibited by law, providing the correction is reasonable;
- neither can be defined as reasonable;
- some religions use implements in line with their beliefs, and this should be respected.

Question 3 - Should we restrict the defence of "reasonable chastisement" so that it may be used only by those charged with common assault, and not by those charged with causing actual bodily harm, or more serious assault?

- the defence of reasonable chastisement should only be used by those charged with common assault;
- the current law should not be changed;

- the defence of "reasonable chastisement" should be abolished.

<u>Question 4</u> – Who should be able to claim the defence of 'reasonable chastisement'? Should it be:

- **as now, all those acting on behalf of parents in looking after children (except in settings where physical punishment has been outlawed)?**
- **parents only (defined as those with parental responsibility under the Children's Act 1989) ?**
- **all those acting on behalf of parents , but only if parents have given their express permission that those acting on their behalf may physically punish their child ?**

Although there was support for each of the three options, the majority of respondees supported option 1.

Additional responses

- parents should be supported and a framework provided where they can discipline their children without recourse to physical punishment;
- it is disappointing that the Government is ruling out the option of outlawing all physical punishment by parents;
- disciplining children is a personal matter and should remain so;
- the current review has been prompted by an extreme case, the fact that existing law has served children well for generations should not be ignored.

Annex D

Children Talking about Smacking - Main Messages

- Children define smacking as hitting; some of them described a smack as a hard hit;
- Children think they get smacked because they have been naughty or badly behaved;
- Children said parents and other relatives were most likely to smack children. Some children (all boys) thought it was more likely that children were smacked by male relatives;
- Children said that smacking usually takes place in the house, where no-one can see.
- Children said smacking hurt physically and has an emotional impact;
- Smacking hurts a child's feelings; children don't think it always stops bed behaviour and they think it can encourage children to smack other children and

can be perceived as humiliating to children;

- Children associated smacking with angry parents. Some of the older children said that adults felt regret after they smacked a child;
- Children do not smack adults because they are scared and fearful of being hit back; they understand the significance of relative size and strength. Children said that adults didn't smack each other because they know better, because they like each other and/or because they didn't want to get into a fight;
- Two-thirds of the children who took part in the consultation said they would not smack children when they got big;
- The vast majority of children we listened to said they thought smacking was wrong. All the children knew adults who didn't like smacking;
- Children said that to stop smacking both children and adults have to change their behaviour. Some of the older children favoured a legal process to protect children from being smacked;
- Children have lots of ideas of alternative sanctions or punishments which they thought would be more effective than smacking.