

GBV 78

Communities, Equality and Local Government Committee

Gender-based Violence, Domestic Abuse and Sexual Violence (Wales)

Bill : Stage 1

Response from: Save the Children



## **Save the Children Consultation Response – Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill**

**National Assembly for Wales’ Communities, Equality and Local Government Committee Inquiry into the general principles of the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill.**

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### **About Us**

Save the Children works in more than 120 countries. We save children’s lives. We fight for their rights. We believe that no child should be born without a chance to thrive and fulfil their potential.

In the UK Save the Children works to ensure that the rights of children are protected, promoted and respected in line with the UN Convention on the Rights of the Child (UNCRC) and other international human rights instruments. We believe no child should have their childhood experiences or life chances damaged by living in poverty.

### **Context**

Save the Children is writing in response to the above Bill with a specific focus on corporal punishment in the family setting.

### **Key points**

The Explanatory Memorandum states that the Bill's overall intention is to create a stronger and more consistent focus on prevention of violence between family members (including parents and children), the protection of victims and support for all affected. While hitting children remains legal there can be no consistency of approach in either prevention or protection from violence and abuse.

Over the last decade, like successive Welsh Assembly Governments and the National Assembly for Wales, Save the Children as chair and coordinator of the Wales UNCRC Monitoring Group has consistently supported giving children 'equal protection' before the law. There have also been repeated recommendations from the UN Committee on the Rights of the Child and other Human Rights bodies to prohibit corporal punishment in the family.

In 2002, the UN Committee on the Rights of the Child stated:

*"With urgency adopt legislation throughout the State party to remove the "reasonable chastisement" defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation"*<sup>1</sup>

In 2008, the UN Committee on the rights of the child stated:

*"Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of legal defences, in England, Scotland and Northern Ireland and in all Overseas Territories and Crown Dependencies. "*<sup>2</sup>

In a memorandum to the UK Government following a formal visit in 2008, the Council of Europe Commissioner for Human Rights, while condemning the lack of progress made by the UK Government welcomed the strong support that the Welsh Assembly Government had expressed for the removal of the reasonable punishment defence:

*"As international and European human rights treaty bodies have reiterated, respect for human dignity and physical integrity are the foundation of human rights. Maintaining a law which allows some level of violence to be justified as punishment or discipline is not in compliance with human rights. That children, uniquely, should have less protection under the criminal law from assault is additionally discriminatory and unimaginable, given children's obvious special vulnerability. It is inconceivable that any Member State would defend less legal protection from assault for any other population group – women, people with disabilities, elderly people. Children are more*

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<sup>1</sup> CRC/C/GBE/CO/CRC/C/15/Add.188 4 October 2002

[https://www.essex.ac.uk/armedcon/story\\_id/000020.pdf](https://www.essex.ac.uk/armedcon/story_id/000020.pdf)

<sup>2</sup> CRC/C/GBR/CO/20 October 2008 para 42, a

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

*dependent and defenceless in relation to adults and need more rather than less protection.”<sup>3</sup>*

In May 2009, the Committee on Economic, Social and Cultural Rights repeated its 2002 recommendation, saying: The Committee reiterates its recommendation that physical punishment of children in the home be prohibited by law.<sup>4</sup>

The European Committee of Social Rights, monitoring the UK 's compliance with the European Social Charter, issued its latest 'conclusions' on the UK 's report early in 2012, patiently answering all the UK 's excuses for not banning it completely and concluding that the UK was not in compliance because of its failure to remove the "reasonable punishment" defence completely.<sup>5</sup>

During the second cycle of the Universal Periodic Review of the UK in the Human Rights Council in Geneva on May 24 2012, the UK Government was pressed hard to ban the corporal punishment of children in the home with recommendations from Finland, Sweden and Hungary, emphasising the clear human rights obligation to do so.<sup>6</sup>

Save the Children believes that the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill provides an excellent opportunity for removing the defence of reasonable punishment. There can be no reason to delay reform now the Assembly has devolved power to enact this measure. The amendment to remove the 'reasonable punishment' defence is both clear and concise. It repeals, in relation to assaults on children in Wales, section 58 of the Children Act 2004. It is civil not criminal justice legislation so arguments that the Bill is 'not a criminal justice Bill' are not relevant. The amendment would not have a negative impact on other elements of the Bill and the Government's own legal advisers have concluded that giving children equal protection is within the Assembly's legislative powers.

We urge the National Assembly for Wales to legislate to remove the defence of 'reasonable punishment' in line with its human rights obligations. Children in Wales have waited too long for equal protection under the law on assault.

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<sup>3</sup> Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visits to the United Kingdom, February and March 2008; issue reviewed: corporal punishment, CommDH(2008)28, Strasbourg, 9 October 2008

<sup>4</sup> Crowley A, & Newell P, In Croke (eds) *Rights here, right now: are children's rights a reality in Wales?* Save the Children 203.

<sup>5</sup> Ibid

<sup>6</sup> Universal Periodic Review, Human Rights Council, 13th session (examination May 24 2012, Geneva)