

CYPE(5)-18-19 - Paper to note 1

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Y Dirprwy Weinidog Iechyd a Gwasanaethau
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Services



Llywodraeth Cymru
Welsh Government

Our ref: MAL JM 405/19

Lynne Neagle AM
Chair
Children, Young People and Education Committee

Llyr Gruffydd AM
Chair
Finance Committee

National Assembly for Wales
Cardiff Bay
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31 May 2019

Dear Lynne and Llyr,

I would like to thank the Children, Young People and Education Committee and the Finance Committee for their scrutiny of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill to date.

As the action from each Committee related to providing further detail relating to the police data used in the Regulatory Impact Assessment, I am providing a single response which covers both Committees' actions.

I trust the Committees will find the information provided in the Annex to this letter helpful during your continued scrutiny of the Bill.

A copy of my letter is also being sent to the Chair, Mick Antoniw AM, Chair Constitutional and Legislative Affairs Committee.

Yours Sincerely

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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

ANNEX

- ***The Deputy Minister agreed to provide further clarification on whether the Explanatory Memorandum's estimated 274 cases of reasonable punishment reported to the police in Wales per year included smacking only, or smacking as part of a wider range of behaviours.***

At the request of the Welsh Government, the Police Liaison Unit conducted an audit of recorded crime offences relating to Common Assault and Cruelty to Children. These relate to crimes recorded in the four Welsh police forces' areas. The methodology used by the Police Liaison Unit is set out in Annex 7 of the Explanatory Memorandum. Police forces in England and Wales comply solely with the Home Office Counting Rules for Recorded Crime (HOC).

The dataset focused on:

- Recorded Common Assault (HOC 105/1) where no injury occurs, (the defence of reasonable punishment does not hold where injury is evident);
- Recorded Cruelty to Children offences (HOC 11/3) as assaults on children can appear as 'hidden crimes' during an investigation.

A search was made of the data for incidents against children with the words:

- Smacking;
- Slapping;
- Hitting;
- Parental control;
- Chastisement; and
- Punishment

Through discussion with the Police Liaison Unit we understand the figure of 274 cases of reasonable punishment may, in some cases, not have been isolated to incidences of physical punishment but could also be part of a wider set of issues such as neglect and abuse.

- ***The CYPE Committee asked for a more detailed note on the differences between the figures cited in the Explanatory Memorandum from New Zealand on prosecutions under similar legislation, and estimates from Wales's Police Liaison Unit based on unpublished data.***
- ***The Deputy Minister agreed to provide the Finance Committee with further information on how the number of cases of reasonable punishment reported to the police was estimated and how this links to the number of prosecutions in Wales each year.***

The figures cited in the Explanatory Memorandum from New Zealand have been used to estimate the potential number of *prosecutions* which could occur in Wales if the legislation is enacted. Prosecution is where an individual is charged and the case is tried in court.

The data from the police has been used to provide an estimate of the number of cases the police may need to *investigate* if the Bill is enacted. While we have been able to work with the police forces to identify the best possible data on numbers of offences which relate to parental physical punishment, this does not translate into likely numbers of cases which would proceed to court. This is because most would be resolved before reaching that stage. The police and Crown Prosecution Service balance factors for and against prosecution very carefully. They consider the evidence and what is in the public interest and this will include what is in the best interests of the child. Some cases may result in the police taking 'no further action'. In other cases an offence might be dealt with through an out of court disposal which may be offered by the police.

The data collected by the New Zealand police was specifically for the purpose of monitoring the impact of the change in the law, and included specific data on number of prosecutions. We have therefore used the New Zealand data as a proxy to estimate the potential number of prosecutions if the law changes in Wales.

Further detail about how these figures were developed is set out in the Explanatory Memorandum. I also referred to these figures in my letter to the Committee on 25 April.

New Zealand data on prosecutions

In New Zealand, The Crimes (Substituted Section 59) Amendment Act 2007 came into force on 22 June 2007. Its purpose was to abolish the use of parental force for the purpose of correction.

In New Zealand the police service published data about the numbers of cases reported to them in the three months before and five years after the law changed.

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 the legislation, the police data from New Zealand has been used as a proxy to provide an estimate of the potential numbers of cases prosecuted in Wales in the five years following commencement. A justice impact assessment was developed in consultation with the Ministry of Justice. This included an estimate of costs to the justice system using the New Zealand data as a proxy. This approach was agreed with the Ministry of Justice.

While there are similarities between Wales and New Zealand, with both jurisdictions based on common law, there are also a number of differences, which need to be taken into consideration. These include:

- Differences between the Legislation in New Zealand and what is proposed in Wales;

- Law enforcement in New Zealand is distinct to that in Wales;
- Age of child covered by the legislation;
- Population differences; and
- Parenting support and awareness raising about the legislation.

In the five years of the review period, there were eight prosecutions for ‘smacking’ and 55 for ‘minor acts of physical discipline’, so 63 prosecutions in total in New Zealand. Due to differences in population sizes between Wales and New Zealand we have therefore, estimated 37 or 38 prosecutions over a five year period in Wales.

In New Zealand there was no specific educational and media campaign to explain the law change. In Wales we have made a commitment to raise awareness about the change in the law (if passed) and would, therefore, anticipate that the number of cases proceeding to prosecution would reduce over time.

This is explained further on pages 8-9 of the Justice Impact Assessment, and in chapter 8 of the Explanatory Memorandum.

Police data on investigations

The four police forces in Wales, in coordination with the Police Liaison Unit, conducted a retrospective audit of recorded crime offences relating to Common Assault and Cruelty to Children covering a period of 19 months (April 2017-December 2018). The police filtered the information using the specific terms set out above, where the offender was an adult and the victim a child, and the age gap between the two was greater than 3 years.

The police 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. The police identified a sample size for review large enough to provide 90% confidence in their estimate that 274 crimes identified by the search would relate to physical punishment. This estimate would be subject to a small margin of error (± 25 crimes).

The potential scale of increase was calculated by reference to the New Zealand data, on the basis that incidents categorised in New Zealand as ‘smacking’ or ‘minor acts of physical discipline’ would most likely equate to offences at the level of ‘reasonable punishment’ in Wales. The table in chapter 8 (headed Police) of the Explanatory Memorandum explains that, on average, such incidents occurred twice as frequently in the five years following commencement of the legislation in New Zealand. An average increase has been used as reporting periods in New Zealand were not uniform over the five year reporting period.

Through the Implementation Group further work will take place with the police, and other key stakeholders, to agree the approach to data collection pre and post the change in the law (if the Bill is passed) with the intention of developing the baseline and future monitoring requirements.