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Llywodraeth Cymru
Welsh Government

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Dear Lynne,

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

Annex 1 to this letter provides further information on a number of points your Committee has requested further clarity on, following my evidence session on 12 June 2019.

I trust the Committee will find the information provided helpful during your continued scrutiny of the Bill.

Best Wishes
Julie

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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

1. Information on the contacts made with parents, including details of the messaging used relating to parenting, before the Healthy Child Wales Programme's 3.5 years pre-school point

The Healthy Child Wales Programme (HCWP) sets out what planned contacts children and their families can expect from their health boards from maternity service handover to the first years of schooling (0-7 years). At these planned contacts health visitors may provide parents with appropriate [Parenting. Give it Time](#) resources, which provide a range of information, including on brain development, potty training, tantrums, mealtimes and bedtimes. [Bump, Baby and Beyond](#) also provides parents with a range of information including on pregnancy, breastfeeding, weaning, mealtimes, sleeping, temper tantrums and toilet training.

The Welsh Government expects that every child and family will be offered the HCWP. The programme underpins the concept of progressive universalism and aims to identify a minimum set of key interventions to all families with pre-school children, irrespective of need. For some families there will be a need to increase intervention to facilitate more intensive support.

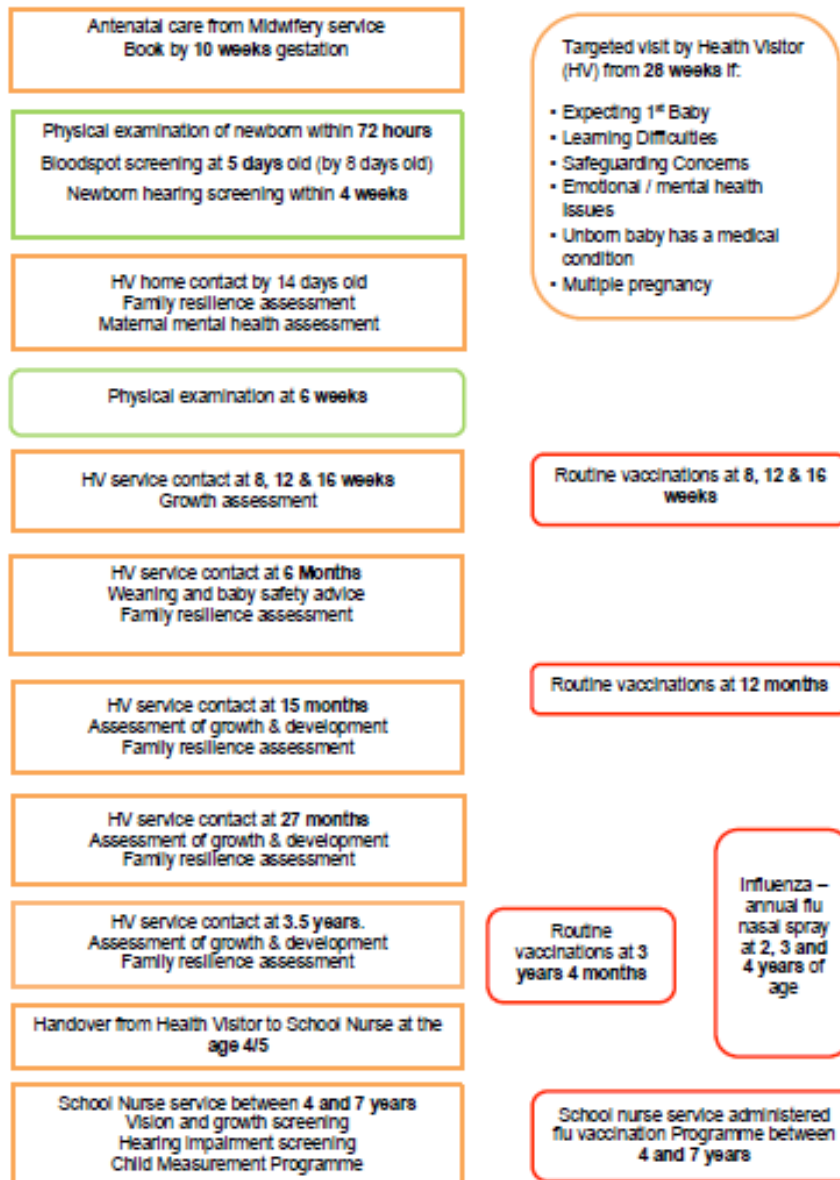
The programme aims to achieve the following key priorities:

- Deliver key public health messages from conception to 7 years, so that families are supported to make long term health enhancing choices (e.g. advice on breast feeding and healthy weaning, smoking and substance misuse; and prevention of Sudden Infant Death Syndrome through safe sleeping advice)
- Promote bonding and attachment to support positive parent-child relationships resulting in secure emotional attachment for children (e.g. parenting support programmes, including assessment and promotion of parent-baby interaction)
- Promote positive maternal and family emotional health and resilience (e.g. looking at the development of the child and consideration of wider influences such as social, economic and environmental factors and whether the child and family need additional support to address areas of concern.)
- Support and empower families to make informed choices in order to provide a safe, nurturing environment (e.g. Positive behaviour change (smoking, substance misuse, diet, dental health etc.)
- Assist children to meet all growth and developmental milestones enabling them to achieve school readiness.
- Support the transition into the school environment.

- Protect them from avoidable childhood diseases through a universal immunisation programme.
- Ensure early detection of physical, metabolic, developmental or growth problems through an appropriate, universal screening programme.

Summary of HCWP Universal Scheduled Contacts for 0-7 year olds

The following **screening, immunisation and monitoring and supporting child development (surveillance)** contacts are what each child and parent can expect to receive.



Further detailed information on the expectations around each contact session can be found in the guidance which accompanies the Healthy Child Wales programme <https://gweddill.gov.wales/docs/dhss/publications/160926healthy-children.pdf>

2. A note on the mapping exercise being undertaken in relation to the availability of early years support for parents, to include detail of the mapping process, timescales, and how findings will be taken forward

The mapping exercise, to scope what parenting support is currently being delivered in Wales, will be undertaken during the summer with internal and external stakeholders. The findings of the exercise will determine what, if any additional parenting support, advice and information is required to support behaviour change alongside the Bill, as well as identifying any gaps in current provision. The findings will be reported to me by the end of September.

The findings will be shared with the Parenting Expert Group, which will advise the Implementation Group on its parenting support work stream. The group will be tasked to consider and determine what additional information and support, if any, may be needed for parents, those acting in loco parentis, and professionals who work with parents and families. The inaugural meeting will be held in the autumn, once the mapping has been completed, and will meet regularly from then on.

In addition, we will enhance the support we already provide by committing to expand the age range covered by our Parenting. Give it Time campaign, from 0 - 7 years of age to 0 - 18 years of age, in order to support parents and families with older children. We will use the expertise of the Parenting Expert Group to support us with the expansion, including the development of new resources as required.

3. An update on the Welsh Government's latest work on out of court disposals, including estimated costs

Decisions around the use of out of court disposals are a non-devolved responsibility. We will continue to work with the Home Office, Ministry of Justice, CPS, Police and Police and Crime Commissioners to consider suitable and proportionate interventions.

As I said in Committee on 12 June the Strategic Implementation Group held their first meeting on 14 May. The group agreed to establish a dedicated work-stream to consider out of court disposals and diversions. This task and finish group, will meet on 11 July, and will take this detailed work forward overseen by the Strategic Implementation Group. There are a range of options the group will consider, ranging from a leaflet or on-line e-learning 'course' to a face-to-face group session. Costs will vary according to which option or options are agreed upon.

Providing a firm estimate of costs of a diversion scheme is, therefore, difficult at this stage because the details of what will be delivered; who will deliver it and how it would be delivered are to be determined.

To provide the rough costs below, we have estimated that approximately 548 individuals may be directed to a diversion scheme per annum. This is based on an assumption that the estimated figure of 274 cases the police currently investigate at the reasonable punishment level, set out in annex 7 to the Explanatory

Memorandum for the Bill, will increase by 100% after the Bill comes into force¹. Paragraphs 8.34 to 8.36 of the Explanatory Memorandum explain the differences between Wales and New Zealand which might have an effect on the rates of physical punishment of children; however, this data gives us the best estimates possible in the current circumstances.

The following options give an initial estimate of potential annual costs depending on which option, if any, is selected:

- £8,000 for 2,500 copies each of 3 bilingual (English and Welsh) booklets appropriate for different age ranges and translated into 10 community languages²;
- £118,000 for a half day group based course³; and
- £45,000 for individuals to access an existing evidence-based on-line parenting course⁴.

These costs are based on existing resources and provision which may need to be adapted and do not include police and other operational and administrative costs (e.g. for monitoring compliance with conditions). Further work to establish these costs will be undertaken by the relevant task and finish group.

Caution must be taken in making assumptions and cost projections based on these cost estimates, which are intended to give an approximate estimate only. The most appropriate models of delivery, guidance, funding and resourcing arrangements will need to be negotiated through our dedicated task and finish group and with partners in the Home Office and Ministry of Justice.

¹ The projected 100% increase is based on data from the New Zealand police force. Their data showed that in the five years following legislation prohibiting physical punishment, compared to the baseline, reports to the Police of child assaults, including smacking and minor acts of physical discipline, occurred on average twice as often each quarter than they had before the legislation (a 100 per cent increase).

² This is based on the cost in financial year 18/19 of printing the ['Parenting Give it Time' booklet, Supporting and Guiding Children](#) and translating it into 10 community languages. We would assume that 3 different booklets would be needed to cater for parents with children of different ages. Cost assumes content will be written, designed and Welsh translation provided by Welsh Government staff. Translation into community languages would be out sourced. Additional copies would be available for subsequent years, as printing costs go down the more copies that are printed.

³ This is based on the [Cafcass Cymru – Working Together for Children \(WT4C\) half-day course](#) which costs £150 per person. The half day course helps parents understand how best to work together to support their children during and after separation. It is not suitable for our needs but gives an idea of cost to deliver a half-day course. £35,000 has also been included in this total to account for development of a bespoke half-day course, approximate costs for training and translation of content and materials.

⁴ The basis of this cost is the fee to complete the [Triple P Online evidence based web-based parenting intervention](#). It includes 8 modules which focus on positive parenting principles and parenting strategies. The cost per participant is £72.00 but it is only available in English so an estimate for translation costs has also been included. Providing this cost estimate does not imply this on-line course would necessarily be used. Any procurement undertaken by Welsh Government would follow normal Welsh Government procurement rules.

4. Figures relating to the frequency with which ‘non-conviction’ information has, and is anticipated to be, disclosed;

A note providing further detail on the discussions the Welsh Government referred to holding with the Disclosure and Barring Service (DBS) in relation to the Bill and the disclosure of ‘non-conviction’ information

As I explained in my evidence to the Committee on 12 June the disclosure of non-conviction data is not confined to the offence of common assault against a child. An Enhanced Disclosure and Barring Certificate can include relevant and proportionate non-conviction information (for example details of arrests, incidents for which individuals were never arrested, charged or prosecuted or where they were found “Not Guilty” in a court of law, in certain circumstances); as well as convictions and cautions.⁵ The police have a legal responsibility to disclose such information in accordance with Part V of the [Police Act 1997](#) (section 8). An enhanced certificate would be required for certain occupations such as work with children or vulnerable adults or roles in certain licensed occupations or positions of trust (e.g. police officers, solicitors).

The [Protection of Freedoms Act 2012](#), introduced a number of safeguards relating to the disclosure of non-conviction information. [Statutory Disclosure Guidance](#), issued by the Home Office⁶, sets out the principles chief officers should apply in deciding what, if any, information should be provided for inclusion in an enhanced check. The guidance sits alongside the [Quality Assurance Framework](#) (QAF) which is a standardised decision-making process and more detailed guidance covering the disclosure of local police information, drawn up by the police service and the Disclosure and Barring Service (DBS). The objective of the QAF is to deliver a standard process and audit trail across all Disclosure Units when considering information for disclosure under 113B (4) of the Police Act 1997. Disclosure Unit compliance with the QAF process is assessed by the Standards and Compliance Unit (SCU). An overview of the structure and function of the QAF is set out in [“Quality Assurance Framework: An applicant’s introduction to the decision-making process for Enhanced Criminal Record Checks”](#).

Before information held locally, is disclosed by the police it must pass certain tests which are contained within the Statutory Disclosure Guidance. These are related to considerations of whether the information is reliable and relevant and whether it is proportionate to disclose the information considering the likely impact on the applicant. The Police must record their thought process, their “rationale”, and explain how and why they reached all of their conclusions and decisions. The information is assessed by the Chief Officer to determine whether it is reasonable to believe that it is relevant and whether, in their opinion, it ought to be disclosed. Information should only be disclosed if it meets both of those requirements. Consideration is also given to the Human Rights impact of disclosure and non-disclosure on the applicant and on the vulnerable group/groups associated with the application.

⁵ See Annex 5 of the Explanatory Memorandum for further information

⁶ The guidance is issued under section 113B(4A) of the Police Act 1997

If the police disclose any non-conviction information as part of an enhanced check, the applicant is able to challenge this decision by way of an application to an Independent Monitor⁷. The Independent Monitor assesses whether or not police applied QAF correctly when processing an application. In accordance with section 119B of the Police Act 1997 (1997 Act), the Independent Monitor must also review a sample of cases in which police non conviction information is included, or not included, on enhanced criminal record certificates. The purpose of these reviews is to ensure there has been compliance with Home Office Statutory Guidance on disclosure and Article 8 of the European Convention of Human Rights (ECHR).

We do not expect the Children (Abolition of Reasonable Punishment) (Wales) Bill to necessitate any changes to this process. Any changes made would have to be within the confines of existing UK primary legislation.

Further to recent discussions my officials have had with the DBS, in the year 18/19 in Wales:

- 2,582 enhanced/standard DBS applications were despatched;
- Of these 2,536 or 98.22% were despatched clean (i.e. there was no recorded information of any sort);
- 44 enhanced/standard DBS applications were despatched which contained information on convictions/cautions;
- 2 enhanced DBS applications were despatched containing non-conviction data (Local Police Force 'approved' information).

As this data applies to all offences and is not limited to 'assault against a child' we do not expect the Bill to have an appreciable impact on the disclosure of 'non-conviction' information.

5. How will the Welsh Government ensure this Bill protects the youngest children who are unable to voice their experiences?

The Bill supports the Welsh Government's commitment to create conditions to give every child the best start in life, and enable them to fulfil their potential⁸. [Prosperity for All – the National Strategy](#) identifies the early years as a Welsh Government priority, highlighting that an individual's experiences in childhood play a significant part in shaping their future and committing to legislation to ban the physical punishment of children.

As outlined in the [Children's Rights Impact Assessment](#) the prohibition of the physical punishment of children is consistent with the Welsh Government's commitment to children's rights under the [United Nations Convention on the Rights of the Child](#) (UNCRC). It fits with the lead taken by the Welsh Government in setting our policy for children and their families firmly in the context of the UNCRC. This commitment is enshrined in legislation through the [Rights of Children and Young Persons \(Wales\) Measure 2011](#).

⁷ As legislated for in section 82 of the Protection of Freedoms Act 2012

⁸ Programme for Government *Taking Wales Forward – Ambitious and Learning*
<https://beta.gov.wales/sites/default/files/publications/2017-08/taking-wales-forward.pdf>

As set out in the [Equality Impact Assessment](#) research suggests that children aged between two to nine experience physical punishment more frequently than children of other ages. The use of physical punishment appears to peak for children between the ages of three and five⁹.

The defence of reasonable punishment, which can apply to the actions of parents, carers, guardians or those acting in loco parentis in any unregulated settings including places of learning, worship, play, leisure, in the home or any other location, will no longer be available. The intended positive impact of the Bill is that younger children will be less likely to be physically punished and will therefore have their rights respected and be protected from the negative outcomes associated with physical punishment.

As currently happens, I would expect professionals, including those in health, education and childcare to be sufficiently tuned in to the voices of young children and have an awareness of changes in behaviour or other signs of distress which may indicate a family needs extra support. As is the case now I expect such staff to follow established procedures if they do have any concerns about a young child. This Bill does not change that.

I am reassured to hear from childcare settings and health visitors that our [‘Parenting. Give it Time’ resources](#) are being offered to parents at appropriate stages of their child’s development. These provide advice to parents on positive parenting and a range of common parenting concerns including on tantrums, potty training and biting. Alongside the Bill, information and face to face support (i.e. through health visitors, Flying Start and Families First) will help promote culture change in reducing the acceptability and subsequent use of physical punishment of any child, of any age taking place in Wales.

6. What assessment has been made of whether women, particularly vulnerable women, will be affected disproportionately by this Bill given that they are the primary care giver in many cases?

The [Equality Impact Assessment](#) provides a detailed and thorough assessment of the impacts of the Bill on a broad range of individuals with protected and other characteristics, including women.

Some research has explored whether mothers and fathers differ in their use of physical punishment. Evidence appears to be somewhat contradictory, but a common finding reported in the literature is that mothers are more likely to use physical punishment than fathers. Some differences, however, may occur because some of the research was conducted some time ago when mothers tended to have a greater caretaking role and therefore, compared to fathers, may have spent more time with their children¹⁰. In a comprehensive review of research on the physical

⁹ Please see the Equality Impact Assessment for a full list of references

¹⁰ Please see the Equality Impact Assessment for a full list of references

discipline of children by the [University of Otago](#)¹¹, for example, much of the research cited was conducted in the late 1990s. Nobes et al (1999)¹² concluded that rather than being a mother/father distinction, use of physical punishment is related to parental roles. When these roles were more 'equal' parents administer physical punishment to equal extents.

Although research has identified certain characteristics of parents or children as a risk factor in the use of physical punishment, a parent's decision to use physical punishment is complex. It may depend on a number of factors including personal choice and experience; family structure; the individual child and adult; stress and society/cultural norms. It is also important to recognise the limitations of some of the research around parental physical punishment which is a sensitive and complex area. Many studies rely on retrospective self-reporting from parents making it harder to accurately measure the use of physical punishment. Also most studies have not taken place in Wales and the findings may not necessarily transfer to the Welsh context.

The positive impact of the Bill is that all children irrespective of the gender of their parent or any other characteristic would have the same protection from physical punishment if the law is enacted.

The Welsh Government already provides information, advice and support for parents that include alternatives to physical punishment. As part of awareness raising existing parenting support will be promoted to parents through the 'Parenting. Give it' Time campaign and other initiatives.

Our [Parenting Support guidance](#) includes specific sections highlighting the issues faced by parents whose situation may make them vulnerable (e.g. who have experienced domestic abuse, mental health problems or because they are young). The guidance provides practical strategies for those delivering parenting support to help them adapt services to ensure parents' needs are met.

¹¹ Smith, A. B., Gollop, M. M., Taylor, N. J., Marshall, K. A. (2005) "The Discipline and Guidance of Children: Messages from Research," A Review of Research Literature for the Office of the Children's Commissioner by the Children's Issues Centre, University of Otago.

¹² Nobes, G., Smith, M., Upton, P., & Heverin, A. (1999). "Physical punishment by mothers and fathers in British homes". *Journal of Interpersonal Violence*, 14(8), 887-902 - research cited in Smith et al (2005)– reference provided at footnote 11.

- 7. This Bill's Equality Impact Assessment says: "...there is some limited evidence that children from some ethnic groups may experience physical punishment more frequently due to the parents' ethnic or cultural origin"; "Minority ethnic parents face a number of different barriers to accessing services including discrimination; language and cultural barriers and a lack of awareness of services and how to access them" and that Gypsy and Traveller families "may be reluctant to use services for fear of stigma and prejudice; have a lack of trust in service providers and may also have limited literacy". Please can the WG outline how significant an issue it believes this to be, and provide practical examples of how it will be mitigating these potential impacts?**

We have given detailed consideration to the impact of the Bill on people in protected groups and how these could be mitigated, and this is set out in detail in the [Equality Impact Assessment](#).

There is some limited evidence that children from some ethnic groups may experience physical punishment more frequently due to the parents' ethnic or cultural origin. On the whole the research into physical abuse and punishment in minority and ethnic groups is inconclusive and often contradictory. Ethnicity can be confounded with other variables, such as socio-economic status, which make it difficult to establish the influence of ethnic group status¹³.

This legislation will ensure children and young people from all ethnic groups would have the same protection from physical punishment if the law is enacted.

Our family support programmes, Flying Start and Families First take an individualised, tailored and flexible approach to support parents and promote their engagement. Our '[Parenting. Give it Time](#)' parenting campaign provides practical tips and advice to parents on encouraging positive behaviour, boosting their child's confidence and supporting their development. Information is provided through a dedicated website, Facebook page and printed resources. Tips and advice on common parenting concerns including on tantrums, bed times, bath times and potty training is available in ten minority community languages.

Our Parenting Support guidance sets out the Welsh Government's expectations on how parenting support should be provided. The guidance highlights practical strategies for facilitating the engagement of those less likely to access support, including those from Gypsy and Traveller communities and other ethnic groups.

The Welsh Government will use existing networks and trusted agencies who work with parents from minority ethnic groups to raise awareness of the change in the law and consider whether extra support, advice and information may be needed.

In our communications work we will be looking at effective messages for a range of audiences, including for those from black and minority ethnic communities, recognising where individuals have different needs, rather than expecting that one message will work for everyone.

¹³ Please see the Equality Impact Assessment for a full list of references