



Ministry
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Children, Young People and Education Committee
Cynulliad Canedlaethol Cymru/National Assembly for Wales
Caerdydd/Cardiff
CF99 1NA

14th May 2019

Dear Ms Neagle AM

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

Thank you for your letter of 9 April regarding the Committee's inquiry into the Children (Abolition of defence of reasonable punishment) (Wales) Bill and your call for evidence from the Ministry of Justice (MoJ).

You may be aware that the MoJ has received a Justice System Impact Identification ("JSII") form from the Welsh Government in relation to the Bill. The JSII process provides an opportunity for the Welsh Government to outline the potential impacts of proposed legislation on the justice system, and for the MoJ to respond with an assessment of those potential impacts.

Having reviewed the Committee's online consultation, we do not think that it would be helpful for us to submit information this way: given the Assembly's competence to legislate in relation to this matter, it would not be appropriate for us to comment on whether we support the Bill's general principles and we have already provided information for the latter sections of the portal via the JSII process and the direct engagement we have had with Welsh Government. I am, however, happy to respond to the questions in your letter.

I understand that the Welsh Government has provided you with the justice impact assessment for the Bill (which is also available publicly). As the assessment incorporates the JSII and our response, I would direct you towards this resource regarding the information requested via the online portal.

Q1. Do you believe there are any implications of implementing this Bill on the Ministry of Justice's work and/or workload?

The Crown Prosecution Service (CPS) does not anticipate a significant increase in workload, but has asked that the MoJ incorporate the monitoring of data following the Bill's implementation into its

workload, as that may prove useful in the future for reasons such as comparisons between the English and Welsh approaches.

Her Majesty's Courts and Tribunals Service (HMCTS) has identified three areas of expected impacts:

Regarding criminal courts, HMCTS expects a minimal impact on caseload for the Magistrates Courts, however they note potential issues around child witnesses (most magistrates' courts are not set up to accommodate the needs of child witnesses) and ensuring the legal profession is aware of the wider expected impact of the Bill on the police.

The main concern expressed by HMCTS relates to family courts. They note that there are 6,500 private law cases where separating parents cannot agree arrangements for their children and CAFCASS Cymru are involved. HMCTS have serious concerns that feuding parents may, following removal of the defence, use the change to further their cause against the other parent in a separation or divorce. Following the change, it would be easy for an allegation of smacking to be made which may lead to the involvement of the police and a concurrent criminal investigation. This would inevitably cause delays in proceedings when the family court which is already under pressure. Currently 60% of cases are resolved within 6 weeks – if a more formal investigation is needed then this may not be possible.

HMCTS also raised the issue of parental alienation (where one parent tries to turn the child against another), one parent may fabricate an episode of smacking as a reason for non-contact with the other parent and for the involvement of the police. This is a complex problem that is recognised as an issue in other countries as well as in the UK.

Q2. What discussions are you aware of with Welsh Government about this Bill?

We have discussed the proposals through direct engagement with Welsh Government policy officials and via the JSII process, which allows officials from across the MoJ to discuss specific details with counterparts in the Welsh Government. In these discussions with the Welsh Government, our primary concerns have centred around: the unintended criminalisation of parents or adults with caring responsibilities for children, and the impact that might have on family justice; the unknown effect that the policy (and publication thereof) will have on the number of cases reported, with corresponding impact on policing, the CPS and court volumes; the need for changes to be made to CPS and court procedures to account for the difference in defence; and impacts on legal aid provision and sentencing relating to the offence.

HMCTS has met the team drafting the Bill on two occasions formally: once in July 2018, and more recently in April 2019. Both meetings were to update HMCTS on the progress of the Bill and to discuss any potential unintended consequences of the Bill implementation. HMCTS has also subsequently been invited to be part of the Implementation Working Group in relation to the Bill, which they have accepted. The aim of this group is to work alongside WG officials to explore if there are any unintended consequences for HMCTS.

CPS responded to the Welsh Government consultation that ran from 9 January 2018 to 2 April 2018. The Chief Crown Prosecutor for Wales has also led subsequent discussions with the Welsh Government, the output of which is reflected in the explanatory memorandum.

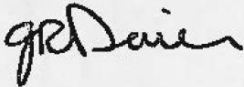
Q3. Any comments you wish to make in relation to the divergence in law that the Bill, if passed, would create.

With regard to divergence in law, the Bill achieves its effect by removing a defence to an existing offence, rather than creating a new or different offence. In terms of the impact on the justice system, as above we are considering the effect this may have on different stages of the justice system, from initial charging, through to prosecution decisions and procedure through the courts. There is likely to be an impact on volumes of prosecutions and prosecuting authorities will need to be aware of the effect of the removal of the defence and the impact on bringing prosecutions and there will be impact on courts in Wales both in terms of volume and procedure.

HMCTS noted that The Judicial College will need to be aware of the difference in England and Wales. If tourists from England are charged with an offence they would likely appoint a lawyer in England from their local area. Therefore, it is important that solicitors operating in England are also made aware of the law changing in Wales. They suggested the Solicitors Regulation Authority is one way of raising awareness among solicitors about the divergence between England and Wales.

This is a matter on which the MoJ, CPS and the police will need to continue to work closely with the Welsh Government to ensure that it is delivered effectively in Wales.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gerald Davies', written in a cursive style.

Gerald Davies

09 April 2019

Dear Mr Davies,

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

The [Children, Young People and Education Committee](#) is undertaking an inquiry into the general principles of the [Children \(Abolition of Defence of Reasonable Punishment\) \(Wales\) Bill](#) ('the Bill'). More information about the Bill and the Committee's work on it is attached as an Annex to this letter.

Call for written evidence

Given the relevance of this Bill to the Ministry of Justice's work, the Committee is keen to hear from you. The Committee would be grateful for two things:

1. A response to its online consultation

The Committee has issued an open call for evidence and would welcome a response from the Ministry of Justice. Given the volume of information the Committee expects to receive, and the set timetable in which it is expected to report, we request that you submit all information via an [online portal](#). This will help us ensure that all views are given sufficient consideration. If you have any questions about the portal, please contact the Committee Clerk: seneddcype@assembly.wales.

2. A response to the specific questions below (either as part of your response to the online consultation or in separate correspondence, whichever is easiest for you)

To inform its consideration of the Bill, the Committee would welcome a response to the following questions:

- Do you believe there are any implications of implementing this Bill on the Ministry of Justice's work and/or workload?
- What discussions are you aware of with Welsh Government about this Bill?
- Any comments you wish to make in relation to the divergence in law that the Bill, if passed, would create.

The Committee would request that this information is submitted by **Tuesday 14 May** at the very latest.



Bilingual policy

The National Assembly for Wales has two official languages, Welsh and English.

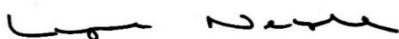
In line with the Assembly's [Official Languages Scheme](#), the Committee requests that documents or written responses to consultations intended for publication or use in National Assembly proceedings are submitted bilingually. When documents or written responses are not submitted bilingually, we will publish in the language submitted, stating that it has been received in that language only.

We expect other organisations to implement their own standards or schemes and to comply with their statutory obligations.

Disclosure of information

You can find further details about how we will use your information at www.assembly.wales/InquiryPrivacy. Please ensure that you have considered these details carefully before submitting information to the Committee.

Yours sincerely,



Lynne Neagle AC / AM

Cadeirydd / Chair



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

The purpose of the Bill is to abolish the common law defence of reasonable punishment so it is no longer available in Wales to parents or those acting in loco parentis as a defence to assault or battery against a child.

The defence currently applies in respect of both the criminal and civil law. Under the criminal law, it applies in respect of the common law offences of assault and battery; and under civil law, in respect of the tort of trespass against the person.

The Bill is intended to support children's rights by prohibiting the use of physical punishment, through removal of this defence.

The intended effect of the Bill, together with an awareness-raising campaign and support for parents, is to bring about a further reduction in the use and tolerance of the physical punishment of children in Wales.

A [Summary of the Bill](#) is available.

The Committee's work

The [Children, Young People and Education Committee](#) is a cross-party committee of the National Assembly for Wales comprised of 8 Assembly Members. It is responsible for scrutinising the Welsh Government's policy, legislation and finances as they relate to children, young people and education in Wales.

From March to July 2019, the Committee will be scrutinising the general principles of the [Children \(Abolition of Defence of Reasonable Punishment\) \(Wales\) Bill](#). You can read more about [how legislation is scrutinised](#) on the Assembly's website. To help inform the report the Committee will produce, Members would like to hear the views of organisations and individuals about the Bill, particularly on the following **terms of reference**:

- the general principles of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;
- any potential barriers to the implementation of the provisions and whether the Bill takes account of them;
- whether there are any unintended consequences arising from the Bill;



- the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum);
- the appropriateness of the power in the Bill for Welsh Ministers to make subordinate legislation (as set out in Part 1: Chapter 5 of the Explanatory Memorandum).

