Consultation on the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

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<th>Evidence submitted to the Children, Young People and Education Committee for Stage 1 scrutiny of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill</th>
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**About you**

Name: Thomas Brooks

Role: Retired Healthcare Management Consultant

1 The Bill’s general principles

1.1 Do you support the principles of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill?

— No

1.2 Please outline your reasons for your answer to question 1.1

(we would be grateful if you could keep your answer to around 1000 words)

As a father and grandfather and someone who before retirement worked extensively with healthcare in a number of countries across the world, I appreciate that the ‘parent’ child relationship is a key element in the child’s upbringing. I also recognise that the occasional and appropriate restraint or chastisement assists many children’s learning process.

As viewed by a third party, one parent’s physical restraint is another’s loving hug. What one video label might describe as one parent’s chastisement warning, will be labelled by another as a congratulatory tap or a poorly directed ‘high five’.

I understand that ANY ACTION which causes actual bodily harm, however transitory, or is repeated so frequently as to classified as cruelty, is already a criminal offence. I understand that the current law defines a clear red line to acceptable parental educational action. Why replace clarity with the obfuscated set of vague definitions proposed for this ill-considered Bill?
1.3 Do you think there is a need for legislation to deliver what this Bill is trying to achieve?

(we would be grateful if you could keep your answer to around 1000 words)

NO

I would have expected The Children (Abolition Of Defence Of Reasonable Punishment) (Wales) Bill Explanatory Memorandum to have sought to justify why there is a need for legislation. Having read it, I see no such justification.

The Explanatory Memorandum is defective in several important respects:

• It does not list the types of parental actions that are legal now and would be made illegal under the Bill, if approved; The Bill does not define actions by parents towards their children which would or would not be acceptable once the reasonable chastisement defence is removed, leaving an uncertain void.

• It is almost devoid of statistical evidence, especially on the numbers of parents, who if the Bill was in force now, would be prosecuted each year.

• It does not clarify the legal duties to be imposed on healthcare workers, staff in schools and kinder gardens to report any suspected mild physical discipline and the penalties that such staff will face if they fail to do so.

• It does not clarify the legal duties to be imposed on members of the public who inadvertently video an alleged mild physical disciplinary action and the penalties that such persons will face if they fail to send their video to the ‘authorities’.

The Bill appears to ignore the fact that the common law defence of reasonable punishment was never available in relation to criminal law charges of wounding or causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to persons under 16 or in relation to civil law charges for battery of a child causing actual bodily harm.

2 The Bill’s implementation

2.1 Do you have any comments about any potential barriers to implementing the Bill?

If no, go to question 3.1

(we would be grateful if you could keep your answer to around 1000 words)

The Bill does not define actions by parents towards their children which would or would not be acceptable once the defence of reasonable chastisement is removed. As such it would introduce a vast area of damaging uncertainty which would be left to courts to determine, potentially over a long period of time.
2.2 Do you think the Bill takes account of these potential barriers?

(we would be grateful if you could keep your answer to around 1000 words)

NO

3 Unintended consequences

3.1 Do you think there are there any unintended consequences arising from the Bill? If no, go to question 4.1

(we would be grateful if you could keep your answer to around 1000 words)

Based on my experience, I predict that there will be a variety of “unintended consequences” if the Bill is enacted. But such unintended consequences will NOT be unforeseen ones. Some of the implications of this imprecise, ill-defined Act have been rehearsed in various settings. For example, on what precise criteria might a complaint under this Bill be deemed to be common assault or tort of trespass against the person. Will we have to wait for case law to find out? If this Bill is passed, a claim of ‘tort of trespass’ is said to be a potential new action for an aggrieved parent to take against another when a family has broken up.

During my various management roles in healthcare, I have observed an investigation into an occasion under the current law when staff had failed to notify the authorities of a suspected actual bodily harm caused by a child’s guardian. Such cases, although often receiving much publicity when they occur, have been very rare. On many more occasions I have attended reviews of cases where a referral to authorities was made and found to be an incorrect judgement by the healthcare worker. While working in countries where litigation is more common than in the UK, such actions have been costly financially. But they have also been costly in terms of community relations. In every society there are a small number of individuals whose desire to interfere and complain about the actions of others is much greater than the norm. They are sometimes labelled as ‘busybodies’. This Bill, if enacted could encourage such ‘busybodies’ thereby unnecessarily increasing law enforcement work.

The Bill is extremely short, while the explanatory memorandum is nearly 100 pages, illustrating how the Bill fails to address the unintended consequences that it will create.
4  Financial implications

4.1  Do you have any comments on the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)? If no, go to question 5.1

(we would be grateful if you could keep your answer to around 1000 words)

The financial estimates in the Explanatory Memorandum are wholly unconvincing. For example they suggest a recurrent policing cost of less than a £1 million per annum. This figure is not justified and appears ludicrously low. It must be based on some statistics of complaints made, and the average hours taken to investigate them, but the numbers of expected complaints and the cost of addressing each typical one is not specified.

5  Other considerations

5.1  Do you have any other points you wish to raise about this Bill?

(we would be grateful if you could keep your answer to around 1000 words)

There is no indication that I have seen in articles about this Bill that consideration has been given to the TECHNOLOGICAL ERA we are now entering. The 5G telecommunications launch has happened and within 18 months, millions of live video streams every day will be flowing around the cyber world in the UK. Where such videos show an incident that may be a deliberate chastisement of a child by a ‘parent’, what action is required in law from the person who recorded the event, by design or accidentally? Is any action required by the thousands of people who may view the event on ‘social media’? Or may they ignore what they see? What steps will enforcement officers take to screen 5G video to look for cases where “child smacking” should be pursued?