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

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

| CADRP-297 | CADRP-297 |

About you
Individual

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)

The legislation is unnecessary as its proponents have not demonstrated that there is a significant harm that needs correcting. Laws should not be made for administrative convenience or for the convenience of harmonising with the recommendations of international bodies or other external quasi governmental councils.

If however the law is implemented it will lead to the wrongful criminalisation of loving parents, opportunities for false accusations, and an atmosphere of legalism in the bringing up of children in the complexities of family life. This is a significant public disbenefit.

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)

Not at all. The justification for the bill that contains nothing of substance that makes it appear that the presence of legislative arrangements are problematic. The justification for the bill rests primarily on the ambiguous objective of protecting children's rights. Removing any form of physical punishment or restraint may lead to a child persisting in dangerous or antisocial behaviour which may be to the future great detriment of that or other children's rights. Given
the great diversity of the human situation this may or may not be effective in a specific situation or with a specific child, but on the other hand research suggests that it can be effective and beneficial. It is therefore illogical for the state to attempt to legislate further on this matter.

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)

Interfering with established and generally successful norms of rearing children is not a trivial activity, and particularly introducing law into the relationships within families is a very authoritarian and potentially disruptive act. Smacking or physically restraining children is not child abuse and conflating effective and loving methods of child rearing with abuse is illogical.

The legislation does not seem to be concerned that criminalising what had hitherto been good cultural norms will quite unnecessarily create all manner of additional work for the police and social services without on balance any measurable benefit to the sum of children’s rights.

It also raises problems as to the treatment of visitors to Wales, most of whom will not be familiar with such legislation. Is it the intention that families holidaying in Wales will be criminalised for an act that is fully legal over the border. As a resident of a county bordering Wales I find this a most unpleasant attitude in what hitherto I thought was a moderate and tolerant country.

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 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)

Evidence from Sweden suggests that a ban on smacking leads to children not being properly disciplined. This is presumably undesirable.
It is also most likely where families are accused of smacking a child, whilst this may have been done in a loving and constructive context, the law will be incapable of discriminating between this and child abuse leading to the immediate removal of children (even before guilt has been legally established) to their severe and permanent disadvantage. This is completely wrong.

In my response to question 2.1 above I have raised the problem of the effects of the law on visitors to Wales. The threat of a family being broken up as a result of a trivial and reasonable disciplinary action whilst on holiday is extremely serious, and not comparable with the infringement of most other local laws with which a visitor may not be familiar.

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)

I could not find any estimate of the costs of legal aid for accused parties or for children who have allegedly been smacked. I would have thought these costs would have been considerable.

The legislation provides the opportunity in the medium and longer term for compensation for false conviction and resulting family disruption. The legal costs to the state are likely to be considerable, as are the potential damages, particularly if action is taken against non-residents.

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)

Throughout the explanatory memorandum a key stated "benefit" is the requirements of the UNCRC in relation to their perception of "children's rights". This is taken as an irrevocable good, without much in the way of objective evidence. It is not clear to me why Wales needs to unquestionably follow the wishes of such a body. Taken to its logical conclusion laws could be implemented directly from an offshore authority without any need for the expensive intervention of national assemblies or parliaments.

The only other benefit of note cited in 8.52 of the explanatory memorandum is that someone who reasonably punishes a child physically should be stopped from doing so. However if the punishment is "reasonable", why should it be prohibited? It would thus seem that the legislation flows from a doctrinaire, Procrustean interpretation of how children should be nurtured. This is not logical and neither is it logical to treat children in the same way as adults, and hence to claim that they need "the same protection from physical punishment as adults".
Smacking as a physical intervention is generally seen as a last resort in a loving family, but may on occasion be necessary for the benefit of a child and should not be criminalised.