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

Tystiolaeth i'r Pwllgor Plant, Pobl Ifanc ac Addysg ar gyfer craffu Cyfnod 1 Bil Plant (Diddymu Amddiffyniad Cosb Resymol) (Cymru) | 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-558 | CADRP-558 |

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)

1. IT IS NOT SUPPORTED BY THE EVIDENCE BASE.

Most parenting practices are harmless if used moderately and lovingly, but harmful if used excessively or harshly e.g. time-outs, verbal, reward systems, praise, screen-time etc. We require a scientific evidence base to demonstrate precisely where those lines exist to guide parents and punish abusers, rather than creating indiscriminate blanket bans of particular 'potentially' harmful practices. To be consistent, just and equitable to all families, then ALL 'potentially' harmful methods of discipline must be criminalised as well. This would become untenable.

The Government’s own Consultation Document repeatedly states there is no evidence linking light, infrequent, calm, loving (i.e. reasonable) physical discipline to harmful outcomes in children. Section 58 of the Children Act 2004 ensures the defence cannot be used if the act is more than 'transient' or 'trifling' or amounts to 'no more than temporary reddening of the skin'. And CPS guidance for prosecutors ensures they take into account degree of harm as well as the nature, context and duration of discipline; the physical and mental consequences on the child; age and personal characteristics of child; and reasons for the punishment.

These guidelines ensure that harmful physical discipline could NOT find a defence.
3. THIS REMOVES THE OPTION OF A DISCIPLINARY METHOD WHICH IS AT LEAST AS EFFECTIVE AS MOST NON-PHYSICAL METHODS e.g. Larzalere & Kuhn 2005

2. THIS IS AN ILLIBERAL METHOD OF CHANGING A PARENTING CULTURE - Criminalisation may be a quick and effective way of changing parental practices but legal threat, unsupported by an evidence base, is not an acceptable way of changing culture in a liberal society. This amounts to coercion and the imposition of one ideology by a political elite.

3. THE INFRINGEMENT OF HUMAN RIGHTS TO PRIVACY OF FAMILY LIFE AND FREEDOM OF CONSCIENCE IS NOT JUSTIFIED AND THEREFORE UNLAWFUL, because the consequences of administering an occasional, light, loving, protective smack (e.g. to warn a toddler who is repeatedly venturing towards an electric socket) would be completely disproportionate, even without a criminal conviction e.g. police and social services intrusion, DBS record, loss of employment within certain professions, family distress, undermining of parental confidence and authority etc.

4. IT IS BASED ON FLAWED ARGUMENTS e.g.

a) "All physical discipline is violence and therefore the UNCRC article 19 demands we protect children from it" - This argument is flawed because violence is the physical venting of anger or intention to harm and such behaviour is already illegal. Loving physical disincline is neither of those. Conversely, many legal acts cause pain to children which we do not consider violence e.g. immunisation, dental surgery, exercise.

b) "Children will imitate smacking and be violent towards others" - This argument is flawed because reasonable chastisement is not violent but lovingly explained and administered in a controlled way. Children understand the unique authority relationship between parent and child and we do not find them imitating this or other forms of loving discipline e.g. time-outs/ removal of privileges on other children.

c) "The law as it stands is unclear" - This argument is flawed because the CPS has very clear guidelines for 'reasonable' chastisement and, despite thousands of successful prosecutions, the defence has not been used to acquit any parent of common assault in Wales in the last decade! Furthermore, removing the defence will not increase clarity, but rather create a lack of clarity at another point, namely around what exactly constitutes physical punishment in the first place: restraining a tantruming child/ unwanted removal from a situation/ physically coercing a child who is unwilling to be strapped into a car-seat/ buggy/ holding a child down on a 'time-out' seat/ holding the child firmly by the arms in order to speak to them at eye-level/ 'pinning down' a toddler who is not complying with having their nappy changed. In many cases these practices require greater, more distressing and more drawn-out physical force than single, calm, light smack which is understood and quickly over-and-done-with. The removal of the reasonable chastisement defence will mean arbitrary lines are drawn between what physical force is 'disciplinary' and what is 'protective' and in the absence of this
reasonable method of discipline parents may find themselves resorting to more forceful, physically coercive methods in desperation.

d) "Children should have equal protection as adults" - this is a flawed argument because there are all sorts of things which parents do to children as part of their care and nurture which it would be illegal to do to an adult e.g. send them out of the room, remove their possessions, remove them from a situation against their will, decide what they eat etc. No punishment at all is appropriate between adults because it is legitimate only in the unique authority relationship between a parent and child.

5. THE NEW LEGISLATION WOULD NOT HELP POLICE OR SOCIAL SERVICES DEAL WITH REAL ABUSE CASES. Child abuse is already illegal and tragically occurs despite existing laws. Removing the reasonable chastisement defence will not prevent that any further. Rather it will undermine the seriousness abuse by applying the term ‘abuser’ to many loving parents. It will flood stretched police and social services with minor referrals where there is no evidence of harm, diverting resources away from serious cases where they are already failing.

6. IT WILL DISPROPORTIONATELY AFFECT WOMEN IN DOMESTIC VIOLENCE SITUATIONS who are already victims and often failed by poor mental health provision. It will make them afraid to ask for help for fear of criminal investigations, so pushing the problem further underground.

7. THERE IS NOT EVIDENCE OF SUCCESSFUL OUTCOMES IN OTHER COUNTRIES e.g. in Sweden, child-on-child violence has increased 6-fold since a smacking ban was introduced, clearly not producing the desired effect. And where parental authority is undermined there is evidence if more capricious, violent outbursts.

8. THE USE OF PHYSICAL DISCIPLINE HAS DECLINED IN WALES IN RECENT YEARS, YET VIOLENT CRIME IS RISING. The Government needs to recognise that there are negative trends which correlate with the decline in parental smacking, and question their assumptions.

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.

- Consistently, large, demographically representative polls show that between 60 and 80% of citizens do NOT want to see parents criminalised for occasionally using a controlled, mild/moderate, loving smack. The fact that many of these parents do not actually smack themselves shows that they respect other parents to be able to decide how to love and discipline their own children best. It shows they know the difference between discipline and abuse, between a painful consequence and violence. It also shows that they trust the existing law to catch truly violent/ abusive parents. It shows that they think the role of the State is to
support not criminalise loving parents in the very personal job of raising of children in which every situation and every child is unique.

- There are other, more liberal and just ways of modifying the use of physical discipline without criminalisation.

- Children are already protected from violence and harmful (that is excessive/ harsh) physical punishment.

- Creating a culture of suspicion and fear will push parenting problems underground where people might previously have asked for help from professional services or their neighbours and friends.

- Undermining parental authority and confidence to discipline will cause parents to feel more out of control and therefore more likely to become angry or exasperated which is when acts of violence are more likely to be committed.

- Children may encouraged to 'tell-on' their parents for cases of light smacking resulting in disproportionate consequences for their family that they did not anticipate or intend.

- Limiting the disciplinary options available to parents will force parents to other methods to excess or use methods that are harmful to children in other ways eg shouting/ isolation/ removal of privileges/ grounding/ emotional blackmail/ insincere praise/ shaming/ bribery with rewards/ empty threats/ coercion, etc Many of these methods are much more drawn-out than a smack, create resentment and mistrusrt and disrupt the parent-child relationship much more. How will we quantify or mitigate against these negative unintended consequences? How can we be so inconsistent in targeting one disciplinary method when so many parents harm their children far more with other approaches, often with marked long-term emotional and psychological impacts.

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)

I believe that many ethnic minorities will not be aware of the change in the law or its implications and these may be the groups which more often use parental smacking as a matter of conscience.

Many people in vulnerable or deprived social situations will have least awareness of the law on this matter and maybe disproportionally affected.

Visitors from England or other nations may be unfamiliar with the law on this.
As there is not a new law being created to ban smacking, some parents may conscientiously object to the removal of the defence and ‘take the risk’ of continuing with their loving disciplinary practices because they believe it to be in the better interests of their children and that the legislative change with is human right infringements is unjustified by the evidence base. Does the Government intend to introduce surveillance in homes or routine questioning of children in childcare centres to control this? This would be a terrifying totalitarian trajectory, considering the lessons we should have learned from history and other parts of the world. We must guard against the State acting as ‘Big Brother’ or soliciting children to turn against their parents.

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)

Many.

- In the vast majority of the UN member states which have banned smacking there are not common law jurisdictions or criminal consequences associated. So we have very little evidence as to what will result. But there is already evidence from New Zealand and Sweden that secure families have been disrupted by investigations and and good parents criminalised for mild, non-harmful acts of loving discipline, which the majority of the population consider to be perfectly reasonable.

- disproportionate interference in and disruption of safe, loving families

- disproportionate impact on ethnic minorities

- disproportionate impact on women as mothers tend to be primary carers

- disproportionate impact on vulnerable parents in deprived/ domestic violence/ mental ill-health situations

- undermining of respect for the wisdom of older generations which has come with experience - support for this law is largely within younger parents who have been re-educated by professional ‘parenting experts’ rather than from those who have completed their parenting journey and seen the outcomes.
- ill-disciplined children will be far more severely punished by natural or societal consequences later in life than the fleeting but protective discomfort of the occasional light smack

- pushing violent family situations underground because parents are scared to ask for help

- undermining of parental confidence increasing permissive and capricious parenting

- fragmenting of supportive community relationships where people are afraid to ask for help/suspicious of others/in fear of being reported if physically restraining a child in public

- creation of two classes: ordinary loving parents -v- professionals who give parenting advice/check-up and monitor/report on parenting practices

- further threat to our liberal society, with over-reach of State control and surveillance into the private realm of family life and freedoms to make loving parenting choices according to conscience.

- disproportionately devastating DBS and employment implications for some parents (even without conviction!), resulting from minor, loving, well-intended disciplinary acts

- misrepresentation of the previous generation of parents as violent abusers because the majority used physical discipline at times, even potential retrospective abuse claims.

- diversion of stretched police and social services away from real abuse cases which are already under resourced and often failed.

- children making un-thought-through decisions to ‘tell on’ their parents e.g. at school resulting in serious consequences for their family life that they did not know or intend

- setting a precedent for making laws that are unsupported by the evidence bases, and contrary to public opinion

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)

Millions of pounds for public services such as police and social services and many unknown and unquantified unintended costs.
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)

Having worked with children in voluntary, professional and parenting capacities all of my adult life I have as much desire as anyone to see harmful parenting practices eliminated and children in Wales growing into flourishing, secure, self-regulating young adults. But this is simply not the right way to go about it in a just and liberal society, and I do not believe it will have the desired long-term effect.

Furthermore, have been frankly appalled by the one-sided, misleading handling of much evidence and polling data used in the Government's media campaigns to sway public opinion in the promotion of this bill. This has no place in a supposedly open, honest, evidence-based society and underlines the weakness of any real case for legislative change.

- CHERRY-PICKING DATA e.g. "81% oppose the ban" when actually the truth is 81% 1% disagreed with the statement "It is sometimes necessary to smack a naughty child" which is very different from the how many people want to see parents CRIMINALISED for smacking a naughty child i.e. around 25-35%. And the 81% was not from a large, impartial, demographically representative poll, but around 270 young, self-selecting parents who had already responded to the Government's campaign.

- MISREPRESENTING CONCLUSIONS OF SCIENTIFIC RESEARCH e.g. "Smacking is linked to negative outcomes in children" when actually the truth is that all methods of discipline are potentially harmful/ linked to negative outcomes if used disproportionately or harshly. When studied rigorously the evidence clearly discriminates between the outcomes of differing degrees and and contexts of physical discipline, but the Government has failed to communicate this widely in the media.

If the Government has to resort to twisting of the data and appeal to trends in order to push through its agenda then it clearly doesn’t believe the case for legislative change is strong enough and is clutching at straws to impose its ideology. Nothing good can come of laws made on weak evidence, against public opinion with many likely harmful unintended consequences and increasing over-reach of the State into the private sphere of family life.

I strongly urge the Committee to oppose the existing plans, to see that they are arbitrary, unnecessary, inconsistent and unjust. Instead, please encourage the Government to resource proper enforcement of existing legislation, as well as failing child-protection and mental health provision. At the same time we need to foster open, supportive, not suspicious communities and affirm the role of parents who know and love their own children far better than the State can.

I am so grateful for this opportunity to contribute to the consultation. Thank you.