

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

Tystiolaeth i'r Pwyllgor 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-609	CADRP-609

About you

Organisation: The Christian Institute

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 Christian Institute is fully opposed to the Bill and the principles behind it. Those who support the Bill disingenuously suggest that children are not legally protected from assault, and therefore that removing the defence of 'reasonable chastisement' is necessary to keep children safe. But of course children are protected from assault and abuse. Parents who use unreasonable or immoderate physical punishment can already be prosecuted. Those who support the use of smacking as one means of discipline used by loving parents are opposed to all cruelty towards children. Any treatment of a child which the ordinary person would regard as deserving of criminal sanction is already liable to prosecution. The law on this is clear.

Those promoting this Bill have been unable to document any cases where the reasonable chastisement defence has been successfully used by a parent to defend unreasonable punishment. Nor are good parents who merely use reasonable chastisement being prosecuted. This shows the current law is working. The overwhelming majority of people know there is a vast difference between child abuse and smacking, and the current law rightly recognises and respects this difference.

For many parents, smacking is simply one form of loving discipline that can be used with young children when, for example, verbal warnings and other methods have been ignored or

cannot be understood due to a child not having yet reached a sufficient level of maturity. To describe this use of smacking as assault is therefore misleading.

- Children are not the same as adults

Those calling for a ban fail to take into account the unique relationship between parents and their children. Children are not adults. They are dependent upon their parents and need to be taught right from wrong. Parents do all kinds of things for their children that they would never do to another adult. This is not 'inequality' or 'injustice'. It is just the reality of parenting. If a parent confiscates their child's phone or sends them to their room, it is not treated as theft or false imprisonment. Making smacking a criminal offence would represent a fundamental shift in the legal relationship between parents and children.

Other areas of the law demonstrate that children cannot be treated identically to adults with respect to personal and bodily autonomy. The Children Act 2004, for example, is predicated on the basis that there is such a thing as parental responsibility and rights, allowing parents (and, in rare cases, other adults) routinely to make decisions on behalf of children in every area of their lives. This is clearly not true of adults except under very narrow, specific circumstances. But for children it is good, right and essential that this obvious necessity should be recognised in law.

- Confusing smacking with abuse

Those seeking a smacking ban deliberately conflate smacking with hitting. Smacking is unjustly characterised as something that parents only do when lashing out in anger. This is to completely misrepresent what smacking is and how loving parents use it as a means of discipline. When good parenting includes smacking, any smack will not be done in a moment of anger but in full control. It is just one of the means good parents may use to teach their children right from wrong. But many parents make the judgement that, occasionally, a mild smack could be appropriate.

The Government-commissioned report published by the Wales Centre for Public Policy concluded that there is no definitive evidence that smacking causes harm to children. [Parental Physical Punishment: Child Outcomes and Attitudes, Public Policy Institute for Wales [now known as Wales Centre for Public Policy], July 2018, page 1] If that is the case, why criminalise ordinary parents who choose to use it to discipline their children in love? The original consultation document agrees: "there is unlikely to be any research evidence which specifically shows the effects of a light and infrequent smack as being harmful to children". [Legislative Proposal To Remove The Defence Of Reasonable Punishment: Consultation Document, Welsh Government, 9 January 2018, page 17] Given that many parents smack their children and the majority of the population defend their right to do so, it is clearly recognised as a legitimate parenting technique.

- International evidence

Much is made of the fact that over 50 countries around the world have banned smacking. The argument goes that Wales should 'keep up' and do the same. However, the fact is that there are almost 140 nations worldwide which allow parents to lovingly discipline their own children, including France, Italy, the US, Canada and Australia.

What's more, even a cursory glance at some of those countries which have a ban in place reveals diverse legal structures and different levels of legislation. The consultation document acknowledged: "Of the 53 countries... only 4 are common law jurisdictions. The other 49 are civil law jurisdictions with the basis of their legal system being so different to the UK's it is not possible to draw any useful comparisons in the drafting of legislation." [Legislative Proposal To Remove The Defence Of Reasonable Punishment: Consultation Document, Welsh Government, 9 January 2018, page 18]

An example of smacking being banned in civil law is Spain, which brought forward an amendment to its Civil Code on smacking in 2007. This was primarily educational and carries no penal authority. [Goicoechea, P H, 'Spain: Banning Physical and Humiliating Punishment in the Home', in Durrant, J E and Smith, A B (Eds), Global Pathways to Abolishing Physical Punishment: Realizing Children's Rights, Routledge, 2013, page 238]

In 1979, Sweden did enact a law which prosecutes parents who continue to discipline their children using a light smack. Sweden is often cited as a role model. Supporters of a ban argue smacking teaches children that violence is acceptable. If this were true, we would expect the figures to show reduced violence among children in Sweden. However, figures show the opposite. Since the smacking ban, child-on-child violence increased by 1,791 per cent between 1984 and 2010. [Larzelere, R E, Swindle, T, Johnson, B R, 'Swedish Trends in Criminal Assaults against Minors since Banning Spanking, 1981-2010', International Journal of Criminology and Sociology, 2, 2013, Table 1] One study comments: "trends in Swedish criminal assaults against minors suggest that the way the first spanking ban has been implemented in that country may have increased criminal assaults in that country, in contrast to its intended effect of decreasing violence". [Larzelere, R E, Swindle, T, Johnson, B R, 'Swedish Trends in Criminal Assaults against Minors since Banning Spanking, 1981-2010', International Journal of Criminology and Sociology, 2, 2013, page 5]

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)

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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)

Perhaps not surprisingly, given the points made above, polls and surveys routinely show significant levels of opposition to the Welsh Government's plans. 76 per cent of Welsh adults do not want smacking made a criminal offence. [ComRes poll of Welsh adults, 13-25 January 2017] Results from the Welsh Government's #TalkParenting exercise found that nearly two-thirds of parents disagreed with the Welsh Government's Bill. [Welsh Government #TalkParenting Online Engagement, 2 October – 24 November 2017] Even the official consultation response revealed a near 50-50 split, with 48 per cent of respondents saying they don't think a smacking ban would actually help protect children's rights. [Welsh Government consultation, 9 January – 2 April 2018] However, in the March press release which accompanied the publication of the Bill, all these statistics were ignored, in favour of a much smaller poll (269 people) which showed 81 per cent of respondents to be in favour of the ban. [Welsh Government – Parental Attitudes towards Managing Young Children's Behaviour 2017]

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)

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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)

1. Good parents could be criminalised

The reality of making parental smacking a criminal offence is that it will turn parents who lovingly discipline their parents in this way into criminals. Deputy Health Minister Julie Morgan herself has admitted that parents could be prosecuted. [National Assembly for Wales, Plenary, 26 March 2019, para. 183]

If a ban is introduced, there could be hundreds of extra investigations into parents using discipline which until now has been perfectly lawful. This is confirmed by data from the Police Liaison Unit (PLU), set out in the explanatory memorandum to the Bill. If the defence of reasonable chastisement were to be removed, the PLU estimates there would be 274 extra investigations per annum. [Children (Abolition of Defence of Reasonable Punishment) (Wales)

Bill: Explanatory Memorandum), Welsh Government, March 2019, Annex 7] This would equate to 1,370 potential offences in the first five years.

Freedom of Information responses obtained by campaign group Be Reasonable Wales show that if a patient or a staff member is suspected of smacking their child, it will be reported to police and social services. In other words, smacking will be treated as abuse. Cwm Taf University Health Board stated: "It is already a statutory duty to report child protection concerns to the Local Authority and if the defence of reasonable chastisement is removed, smacking will become one of those concerns." ['Cwm Taf FOI Response', Be Reasonable Wales, 1 March 2018, see <https://www.bereasonable.wales/cwm-taf-foi-response/> as at 13 May 2019]

In New Zealand, one of only a handful of countries to actually criminalise smacking, a top law firm has concluded that the country's smacking ban has criminalised ordinary parents. The analysis, from public law specialists Chen Palmer, criticised confusing legislation and a failure to issue clear guidance to police. It also said statements made by politicians in 2007 were simply wrong in law. Claims that amending section 59 of the Crimes Act would not criminalise 'good parents' were found to be "inconsistent with the legal effect of section 59 and the application of that section in practice". The report sets out a series of problems with the ban, citing comments made in Appeal Court and High Court rulings. In one such case, a former UK national, referred to as "DC", admitted gently smacking his two sons and was convicted. The Court of Appeal later quashed his conviction but DC lost custody of and contact with his sons. [Legal analysis of section 59 Crimes Act – the anti-smacking legislation – Update of previous opinion, Chen Palmer New Zealand Public and Employment Law Specialists, 17 January 2018; see also 'Parents Criminalised Under New Zealand Smacking Ban, Top Law Firm Finds', Be Reasonable Wales, 22 February 2018, see <https://www.bereasonable.wales/parents-criminalised-new-zealand-smacking-ban-top-law-firm-finds/> as at 24 January 2018]

2.A ban would overwhelm police and social services

It is widely acknowledged that police officers and social workers are already stretched and struggle to keep up with the workload. How will it help the situation to dump hundreds more cases on their desks? Those genuinely in need will suffer while resources are wasted on cases where there are no real problems. Social workers will be swamped, and vulnerable children will not get the help they need. Everyone accepts that the state must intervene to protect children who are in danger of abuse. But if that is to be done effectively, the limited resources available need to be focused on identifying and helping those at risk – not investigating loving parents.

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)

Part 2 of the explanatory memorandum sets out the estimated costs associated with implementing a smacking ban. These include nearly £1 million extra for the police and courts, and around £3 million for the Welsh Government. The memorandum is refreshingly honest when it says there may be “unknown” costs to social services, due to extra cases – each new referral is estimated at £535 – in addition to financial implications for family courts, the Crown Prosecution Service, and organisations which will need to provide up-to-date training on safeguarding of children. [Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill: Explanatory Memorandum), Welsh Government, March 2019, pages 30, 32 and 49] We feel that the Welsh Government should not be spending millions of taxpayers’ money on unpopular moves like this.

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)

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