

Ending family violence in the United Kingdom – challenging physical punishment of girls and boys



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 72nd session,
from the Global Initiative to End All Corporal Punishment of Children
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Introduction: family violence in the UK and CEDAW's examination of the eighth state party report

Provisions against violence and abuse in domestic legislation provide some protection from family violence but they are largely undermined by the legal defences to the use of corporal punishment which are available to parents and others acting *in loco parentis*. A Domestic Violence and Abuse Bill is currently under discussion.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of the UK. In particular, we hope the Committee will:

- in its list of issues for the UK, ask what steps are being taken towards enacting a legal ban of all physical punishment of children, as a matter of priority, and
- in its concluding observations on the eighth state party report, recommend that the UK ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted as a matter of priority to prohibit domestic violence against all family members, including the violent punishment of girls and boys, throughout the territory.

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in the UK.
 2. Treaty body and UPR recommendations on the issue made to the UK to date.
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1 Laws on domestic violence and corporal punishment of children in the UK

Summary

1.1 Legal defences for the use of corporal punishment are found in the Children Act 2004 in England and Wales, in the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006, and in the Criminal Justice (Scotland) Act 2003. Although the Government's state report to the Committee declares that "violence towards children is not condoned", that statement is then directly contradicted by the assurance that "the "reasonable chastisement" defence is only available when the charge is one of *common assault*" (emphasis added).¹ No form of assault by a parent on their child should be condoned by the law. A Domestic Violence and Abuse Bill is currently under discussion and provides a vehicle for law reform.

Detail

1.2 Corporal punishment is lawful in the home. In England and Wales, section 58 of the Children Act 2004 provides for "reasonable punishment" of children. In Northern Ireland, article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 provides for "reasonable punishment". In Scotland, "justifiable assault" of children is lawful under section 51 of the Criminal Justice (Scotland) Act 2003, defining blows to the head, shaking and use of implements as unjustifiable.

1.3 In rejecting the recommendations of the Universal Periodic Review in 2008, the Government stated that it sees no need for law reform since it believes the current law is working well, parents should be allowed to discipline children and surveys show that the use of corporal punishment in childrearing has declined.² Following its second Universal Periodic Review in 2012, the Government again rejected recommendations to prohibit corporal punishment, defending its legality in the home and stating that it did not consider that this constituted a breach of the UN Convention on the Rights of the Child.³ Reporting to the Committee on the Rights of the Child in 2014, the Government stated that it "does not condone any violence towards children" but also that "our view is that a mild smack does not constitute violence".⁴ A similar statement was made to the Committee on Economic, Social and Cultural Rights in 2014⁵ and to the Human Rights Committee in 2015.⁶ In 2017, the Government rejected seven recommendations on corporal punishment it had received during its Universal Periodic Review, referring to the same argument.⁷

1.4 However, changes in the charging standards introduced in 2011 by the Crown Prosecution Service (CPS) have meant that between 2011 and May 2018 in England and Wales the law allowed parents to raise the defence of "reasonable punishment" for bruises, cuts or weals (under section 58 of the Children Act 2004), and not only for a "mild smack". Section 58 was originally introduced to remedy *A v UK*, the 1998 European Court of Human Rights decision which found the UK in breach of the European Convention for the Protection of Human Rights and Fundamental Freedoms after a man was acquitted for caning his stepson, causing bruising and weals. The reformed law provided that parents and others acting in *loco parentis* could only raise the defence of "reasonable punishment" in cases of common assaults on children. The pre-2011 CPS charging standards specifically advised that where the victim was a child or a vulnerable adult the threshold for defining common assault would be changed, so that "other than reddening of the skin, the

¹ 18 December 2017, CEDAW/C/GBR/8, Eighth report, para. 179

² 23 May 2008, A/HRC/8/25, Report of the working group, para. 25

³ 25 August 2008, A/HRC/21/9/Add.1, Report of the working group: Addendum, annex

⁴ [2014], CRC/C/GBR/5, Fifth state party report, para. 12

⁵ 25 September 2014, E/C.12/GBR/6, Sixth report, para. 41

⁶ [n.d.], CCPR/C/GBR/Q/7/Add.1, Advance Unedited Version, Reply to list of issues, para. 161

⁷ 29 August 2017, Annex to the response to the UPR recommendations received on 4 May 2017

charge will normally be assault occasioning actual bodily harm [ABH].” But in 2011, without any publicity, the CPS altered its charging standard on common assault, removing “reddening the skin” as the upper threshold for a charge of common assault on a child and reverting to a threshold of “serious” injuries.⁸ After holding a consultation in 2017, the CPS again amended the Charging Standard, which now states “unless the injury is transient and trifling and amounted to no more than temporary reddening of the skin, a charge of ABH [assault occasioning actual bodily harm], for which the defence does not apply, should be preferred.”

- 1.5 The UK’s 2017 report to the Committee on the Elimination of Discrimination Against Women declares that “violence towards children is not condoned” but then highlights that “the “reasonable chastisement” defence is only available when the charge is one of *common assault*” (emphasis added).⁹ Consultations on the Domestic Violence and Abuse Bill were conducted in spring 2018. There was however no indication that the removal of the reasonable chastisement defence was being considered.
- 1.6 Successive Governments in Wales have since 2002 committed to removing the “reasonable punishment” defence and prohibiting all corporal punishment but initially lacked the power to do so. However, following an extension of devolution, the National Assembly of Wales has the power to remove the defence and in October 2011 voted to encourage the Government to introduce the necessary legislation. An amendment to the Violence Against Women, Domestic Abuse and Sexual Violence Bill that would have achieved prohibition was defeated in the National Assembly in 2015. The Assembly had voted to establish a Committee to consider how the repeal of the defence of “reasonable chastisement” could be implemented but it was never operational. During his speech to the new Welsh Assembly on 18 May 2016, First Minister Carwyn Jones announced that legislation which would “remove the defence of reasonable punishment” would be taken forward on a cross-party basis. On 27 June 2017, it was announced that a consultation on the removal of the defence would be launched in the coming 12 months with the aim to introduce legislation in 2018. In November 2017, the Children’s Minister re-affirmed the Government’s intention to prohibit all corporal punishment. A consultation on the proposed removal of the “reasonable chastisement” defence ran between January and April 2018.¹⁰
- 1.7 The Scottish Human Rights Commission recommended in September 2016 that the Scottish Government abolish corporal punishment.¹¹ A consultation ran in Scotland on the Children (Equal Protection from Assault) Bill between May and August 2017, with the Bill aiming to repeal the legal defence of “justifiable assault” and ensuring that children are equally protected from assault in law.¹² In October 2017, both the SNP Government and the Scottish Labour party expressed their support for the Bill.¹³ By 26 October 2017, the Bill had been formally endorsed to be introduced to Parliament.
- 1.8 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of the United Kingdom to enact legislation as a matter of priority to clearly prohibit all corporal punishment of girls and boys and repeal all legal defences for its use in childrearing, throughout the territory.**

⁸ See the CPS’ website, http://www.cps.gov.uk/legal/l_to_o/offences_against_the_person/

⁹ 18 December 2017, CEDAW/C/GBR/8, Eighth report, para. 179

¹⁰ See <https://consultations.gov.wales/consultations/legislative-proposal-remove-defence-reasonable-punishment>, accessed 22 January 2018

¹¹ 22 September 2016, Scottish Human Rights Commission submission to the UN Human Rights Council, recommendation no. 10

¹² See http://www.parliament.scot/S5MembersBills/John_Finnie_Final_Consultation_Document_pdf.pdf, accessed 16 May 2017

¹³ See <https://www.theguardian.com/society/2017/oct/19/smacking-children-to-be-banned-in-scotland>, accessed 19 October 2017

2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review

- 2.1 The *Committee on the Elimination of Discrimination Against Women* has on two previous occasions expressed concern about the fact that corporal punishment remained legal in the home, stating that it constituted a form of violence against children. It recommended prohibition of all corporal punishment of children in the home during both reviews, in 2013 and in 2008.¹⁴
- 2.2 Other UN treaty bodies have made numerous recommendations to the UK to prohibit corporal punishment of children throughout the state party. Recommendations have been made by the *Committee on the Rights of the Child* (2016, 2008, 2002, 1995),¹⁵ the *Human Rights Committee* (2015, 2008, 1995),¹⁶ the *Committee on Economic, Social and Cultural Rights* (2009, 2002, 1997),¹⁷ the *Committee Against Torture* (2013, 1996).¹⁸
- 2.3 The *European Committee of Social Rights* has on three occasions concluded that the situation in the UK was not in conformity with the European Social Charter because corporal punishment of children in the home is not prohibited.¹⁹
- 2.4 Recommendations to prohibit corporal punishment were also made during the *Universal Periodic Review* of the UK in 2008,²⁰ in 2012,²¹ and again in 2017.²² The Government rejected them on all three occasions.

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org

¹⁴ 30 July 2013, CEDAW/C/GBR/CO/7, Concluding observations on seventh report of UK, paras. 34 and 35; 18 July 2008, Part of A/63/38, Concluding observations on fifth/sixth report, paras. 280 and 281

¹⁵ 3 June 2016, CRC/C/GBR/CO/5, Concluding observations on fifth report, paras. 38, 39 and 40; 20 October 2008, CRC/C/GBR/CO/4, Concluding observations on third/fourth report, paras. 6, 7, 38, 39, 40, 41 and 42; 9 October 2002, CRC/C/15/Add.188, Concluding observations on second report, paras. 8, 9, 35, 36, 37 and 38; 15 February 1995, CRC/C/15/Add.34, Concluding observations on initial report, paras. 16, 31 and 32

¹⁶ [July 2015], CCPR/C/GBR/CO/7 Advance Unedited Version, Concluding observations on seventh report, para. 20; 30 July 2008, CCPR/C/GBR/CO/6, Concluding observations on sixth report, para. 27; 27 July 1995, CCPR/C/79/Add.55, Concluding observations on fourth report, para. 8

¹⁷ 12 June 2009, E/C.12/GBR/CO/5, Concluding observations on fourth/fifth report, para. 24; 5 June 2002, E/C.12/1/Add.79, Concluding observations on fourth report, para. 36; 4 December 1997, CESCR/E/C.12/1/Add.19, Concluding observations on third report, paras. 16 and 28

¹⁸ [31 May 2013], CAT/C/GBR/CO/5 Advance Unedited Version, Concluding observations on fifth report, para. 29; 9 July 1996, A/51/44, Concluding observations on second report, para. 65

¹⁹ January 2016, Conclusions 2015; January 2012, Conclusions XIX-4 (2011); July 2005, Conclusions XVII-2

²⁰ 25 August 2008, A/HRC/8/25/Add.1, Report of the Working Group: Addendum, paras. 28, 29 and 30

²¹ 29 May 2012, A/HRC/WG.6/13/L.7, Draft report of the Working Group, paras. 110(78), 10(79) and 110(80)

²² 7 September 2017, A/HRC/36/9/Add.1, Report of the working group: addendum, para. 3; see also 29 August 2017, Annex to the response to the recommendations received on 4 May 2017