

Agenda – Children, Young People and Education Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 6 June 2019

Meeting time: 12.50

For further information contact:

Llinos Madeley

Committee Clerk

0300 200 6565

SeneddCYPE@assembly.wales

Private pre-meeting

(12.50 – 13.00)

1 Introductions, apologies, substitutions and declarations of interest

(13.00)

2 Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill – evidence session 1 1

(13.00 – 14.00)

(Pages 1 – 23)

Crown Prosecution Service (CPS) Cymru – Wales

- Barry Hughes, Chief Crown Prosecutor for Wales
- Kwame Biney, Senior Policy Advisor, Crown Prosecution Service
- Iwan Jenkins, Head of Complex Casework Unit, Crown Prosecution Service Wales

Attached Documents:

Research Brief

CYPE(5)-17-19 – Paper 1

3 Papers to note



3.1 Letter from the Chair to the Business Committee – Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill – request for an extension to the Stage 1 report deadline

(Page 24)

Attached Documents:

CYPE(5)-17-19 – Paper to note 1

3.2 Letter from the Chair to the Deputy Minister for Health and Social Services – Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill – request to CAFCASS Cymru for information

(Pages 25 – 27)

Attached Documents:

CYPE(5)-17-19 – Paper to note 2

3.3 Letter from the Chair to the Minister for Education – Diamond Reform Implementation

(Pages 28 – 30)

Attached Documents:

CYPE(5)-17-19 – Paper to note 3

3.4 Letter from the Chair to the Minister for Health and Social Services – Perinatal Mental Health in Wales: follow up scrutiny

(Page 31)

Attached Documents:

CYPE(5)-17-19 – Paper to note 4

4 Motion under Standing Order 17.42(ix) to resolve to exclude the public from the meeting for the remainder of the meeting

(14.00)

5 Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill – consideration of the evidence

(14.00 – 14.10)

Document is Restricted

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 (Saesneg yn unig)	Evidence submitted to the Children, Young People and Education Committee for Stage 1 scrutiny
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Organisation: Crown Prosecution Service

1 The Bill's general principles

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

Don't have a view

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 Crown Prosecution Service will prosecute in accordance with legislation in England and in Wales. Our perspective is influenced by prosecuting in accordance with the restricted availability of the defence due to section 58 of the Children Act 2004 and the outcome of the UK Government review of its operation in 2007.

The Welsh Explanatory Memorandum quotes surveys that highlight the extent to which parental attitudes towards the way children are raised and disciplined are changing. There is however very little research that clarifies the extent to which changing parental attitudes may be attributed to the restrictions imposed by section 58.

The UK Government reviewed the operation of section 58 of the Children Act 2004 in 2007. Its analysis of the evidence resulted in findings that:

- section 58 has improved legal protection for children by restricting the use of the reasonable punishment defence in court proceedings;
- there are no reported significant practical problems with its operation;

- The Crown Prosecution Service's Charging Standard (raised in 2018) has clarified the boundary between what constitutes common assault and what constitutes assault occasioning actual bodily harm;
- Attitudes and behaviour amongst parents are changing, with younger parents less likely to use smacking as a method of discipline than older parents.

Section 58 was passed to ensure compliance with Article 3 of the European Convention on Human Rights (ECHR), which provides: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

Against this however the same review quoted the Parliamentary Joint Committee on Human Rights (JCHR) in 2004 that "there is a risk that in a future case the European Court of Human Rights will find that the continued availability of the reasonable chastisement defence to the offence of common assault is in breach of a child's right to dignity and personal integrity under Article 3, their right to physical integrity under Article 8, and/or their right not to be discriminated against compared to adults in relation to their enjoyment of those rights on grounds of their age. No such incompatibility exists at present, however".

We note that the UK Government review is now of some age.

Further, we support the comprehensive approach being taken by the Welsh Government with considerable thought being given to changing attitudes to parenting in Wales. This all embracing approach is to be complemented by monitoring and reviewing the effect of the legislation.

At this early stage it is too early for the Crown Prosecution Service to determine what success might be achieved in Wales. We are encouraged by the comprehensive approach being taken in securing data after the legislation comes into force. In our view that such data will assist in determining whether the Welsh Government's approach delivers on the principles behind the legislation.

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 500 words)

Changing attitudes to parenting in the manner desired will be supported by appropriate legislation. This is because the existing legislation provides a defence and so permits the assault of a child by a person with parenting responsibility albeit limited to common assault.

We welcome the Welsh Government recognition that simply enacting legislation is unlikely to achieve the desired aim. We support the wider intention to provide information, support to parents and to raise awareness both of positive alternatives to physical punishment and the legislative change. It is within this context that prosecutions, together with alternatives to prosecution, can meaningfully assist in delivering the desired aim.

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 500 words)

We foresee difficulties in collecting and collating meaningful data establishing what difference the Act will make. It is difficult to estimate the number of children who will be affected by the proposed legislation. Data is to be collected to identify the number of reasonable punishment cases that come to the attention of social services, police and the courts. Surveys may provide an insight into the extent of change in parenting attitudes. However attempts to determine a baseline for comparison with future data simply appear to be producing educated guesses due to the lack of any meaningful data. Paragraph 5, Annexe 7 of the Explanatory Memorandum sets this out as it states that " The figures produced are indicative due to the current non-recording or measurement of the defence of 'reasonable punishment' within policing. All the Welsh forces have not easily been able to produce these figures". This raises a concern as to how meaningful any future assessment of the impact of the Bill will be.

A potential barrier could be found in the expression of public opinion that the Bill would result in criminalising parents for actions in Wales that would in England have a defence within the criminal law.

Wales intends to abolish a defence that will still apply in England. The geographical proximity, single prosecuting authority and court structure covering England and Wales create potential barriers. Further the easy interaction between the populations of England and Wales may result in attitudes in England creating an influence on that in Wales.

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 500 words)

The Bill and its Explanatory Memorandum does take some account of these barriers. There appears to be a real commitment to generate data after the Bill is implemented. Annex 6 of the Explanatory Memorandum sets out a useful analysis of New Zealand where data has been relied on in the absence of data within the United Kingdom. Annex 7 sets out work

that has been done with Welsh Police to generate some tangible data for use as a baseline for future comparison although we have referred to some doubt on this data's reliability by referring to paragraph 5 of Annex 7 in our answer to the previous question.

The Welsh Government has worked with the Ministry of Justice to estimate the impact of the Bill's implementation on the Justice system.

As regards the concern about criminalising parents, Annex 4 of the Explanatory Memorandum sets out ongoing work exploring diversion. We note paragraph 18 at page 75 that anticipates out of court disposals possibly being offered to the parent, depending on the circumstances of the case while indicating that in some cases, referring immediately to the CPS for prosecution may be the preferred option. This is complemented by support that will be provided to parents that is discussed within Chapter 4 of the Memorandum. Paragraph 4.11 at page 25 of the Explanatory Memorandum sets out that the police and CPS agrees that a proportionate response in the best interests of the child is essential.

There is no indication of plans for awareness raising in England. We note the sentence at page 42 of the Explanatory Memorandum that sets limits on the geographical spread of the awareness raising campaign where it states that; "the Welsh Government recognises that a change in law must be accompanied by sustained awareness raising in Wales". There may be an assumption by those in England that the same laws that apply in England continue to apply in Wales in the absence of such action. However if a person from England is being prosecuted in Wales as a result of the legislative change a question could arise about the lack of knowledge about the different provisions that apply in Wales.

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 500 words)

The impact on otherwise law-abiding parents. We raise the scenario of prosecuting a person from England who administers corporal punishment to a child when in Wales. Such action would have a separate defence if committed in England, and that person did not have an opportunity to benefit from the awareness raising campaign in Wales. There may be an assumption by those in England that the same laws that apply in England continue to apply in Wales. This may be mitigated somewhat as CPS will amend its legal guidance to reflect legislative change and our guidance is published online so that it is widely available in Wales and in England. However we consider that further action is required in England – whether through advertising in national newspapers or other such action decided on in planning the awareness raising campaign.

Persons convicted for administering corporal punishment in Wales will have different life prospects when compared to otherwise law-abiding persons in England who have the benefit of the defence.

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 500 words)

We support the intention of the Welsh Government to provide financial support for awareness raising and support for parents. A measure of success will be a reduction in need for such financial support as attitudes change.

We do not consider that the costs of prosecuting cases made possible by the Bill will be of great significance to the Crown Prosecution Service.

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)

We welcome the indication at page 24 of the Explanatory Memorandum that "A reasonable period after Royal Assent and before the new arrangements are brought into force is proposed" to allow provision of information and support to parents and to raise awareness of the legislative change.

Agenda Item 3.1

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Plant, Pobl Ifanc ac Addysg

National Assembly for Wales
Children, Young People and Education Committee

CYPE(5)-17-19 - Paper to note 1

Elin Jones AM

Llywydd and Chair of the Business Committee

17 May 2019

Dear Llywydd,

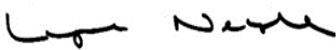
Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

I wrote to you on 14 March to agree in principle the timetable for the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill.

At the time I noted that the Committee was content to agree the timetable in principle, but may need to revisit it based on the number of responses to our consultation on the Bill's general principles. Our consultation closed on 14 May and we received 655 responses. This is much higher than our usual volume of responses.

In order to enable us to pay sufficient attention to all respondents' views, we would be grateful for a two week extension to produce our Stage 1 report (from Friday 19 July to Friday 2 August 2019). This would ensure that the report is published in plenty of time to avoid any delay to the debate on the general principles in Plenary, scheduled for 17 September 2019.

Yours sincerely,



Lynne Neagle AM
Chair



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Cynulliad Cenedlaethol Cymru
Y Pwyllgor Plant, Pobl Ifanc ac Addysg

National Assembly for Wales
Children, Young People and Education Committee

Julie Morgan AM
Deputy Minister for Health and Social Services,
and Member in Charge of the Bill

20 May 2019

Dear Julie,

Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

As part of our scrutiny of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill we invited CAFCASS Cymru to give oral evidence. In responding to our invitation, CAFCASS Cymru notified us via your officials that they had "considered the request carefully" but "as a Directorate of the Welsh Government and not an independent organisation [...] did not feel it appropriate to attend separately".

In light of references to CAFCASS Cymru's work in the Bill's Explanatory Memorandum and in the evidence we have gathered to date, we would be grateful to receive a written answer from CAFCASS Cymru to the questions attached at the Annex to this letter. We understand from your officials that yours and CAFCASS Cymru's preference is for this request to be directed through the Welsh Government.

We would be grateful to receive this information by **Tuesday 4 June** in order to inform our approach to our final session with you as the Member in Charge of the Bill on 12 June.

Yours sincerely,



Lynne Neagle AC / AM
Cadeirydd / Chair



1. The Bill's development

Please can you provide details of CAF/CASS Cymru's involvement to date in the Bill's development.

2. Resource and capacity

Please can you provide CAF/CASS Cymru's views on the following references to CAF/CASS in the Bill's **Explanatory Memorandum**, to include an indication of whether CAF/CASS is satisfied that it has the resources and capacity to support the Bill's implementation if enacted

- **Page 32 – Unquantified costs box**

"Unknown costs include the potential costs to [...] the Children and Family Court Advisory and Support Service (Cafcass) Cymru, as a result of a potential increase in allegations of common assault against a child or children of parents involved in a family court case."

- **Page 78 – Family Courts – paragraph 41**

"Awareness of the change in the law could lead to an increase in allegations of parental physical punishment in cases where a parent is seeking to further their cause against the other parent in a family related case; the police and social services would have to investigate. Cafcass Cymru would have to report the issue to the court (if involved) and the court would have to potentially adjudicate on an increased number of issues. This could lead to increased workloads and possible delays."

- **Page 78 – Cafcass Cymru – paragraphs 43-44**

"Cafcass Cymru has a statutory role in providing advice to the Family Court as to a child's best interests in public and private law cases. On the private law side i.e. where parents cannot agree child related arrangements following separation, and have made an application to the court, Cafcass Cymru are required to undertake safeguarding checks with the police and social services together with safeguarding interviews with the parents. It is likely the removal of the defence will add to the information being provided to the court. Beyond this stage, if Cafcass Cymru has active involvement with a family and comes across such issues (or if they are



alleged) then it will have a duty to report these to social services and the court which could lead to some additional work.”

3. Risk of malicious reporting

Please can you provide CAF/CASS Cymru’s views on the following reference to malicious reporting in the **Explanatory Memorandum**. Please could CAF/CASS Cymru indicate what assessment if any has been made of the risk of malicious reporting in private law cases and in what way CAF/CASS Cymru envisages this might affect its work.

“There appears to be consistency amongst the four Welsh police forces relating to the recorded crime categories. Approximately 12% of the named recorded crime categories were identified where lawful chastisement was used as a defence; or considered in the decision making process. Cross cutting themes relating to the malicious reporting via ex-partners was prevalent. Issues such as legal access and financial support issues featured prominently.” (Page 97, paragraph 12)



Agenda Item 3.3

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Plant, Pobl Ifanc ac Addysg

CYPE(5)-17-19 - Paper to note 3

National Assembly for Wales
Children, Young People and Education Committee

Kirsty Williams, AM
Minister for Education
Welsh Government

21 May 2019

Dear Kirsty

Diamond Reform Implementation

As you will be aware, the Children, Young People and Education Committee has over recent years undertaken work to scrutinise the implementation of the review by Professor Sir Ian Diamond on Higher Education Funding and Student Finance Arrangements in Wales.

As part of its on-going scrutiny of the Diamond reforms, the Committee is undertaking a short piece of work to assess progress on implementation. To help inform our work, I would be grateful if you could provide information on the following issues.

1. Progress on implementation

Welsh Government had previously accepted the Diamond review recommendation that HEFCW collect and potentially publish the price of an annual "basket of goods". HEFCW subsequently consulted on this and stated it would provide an annual report to Welsh Government but not publish its findings. In relation to this recommendation, can you confirm:

- Do these reports show any evidence of an increase in other costs to students?
- What do the reports show more widely?
- What the basis is for the agreement with HEFCW not to publish this information?
- Will the decision not to publish this information be reviewed?

Welsh Government has stated that it would "work with stakeholders to map out in detail the statistical and research work required to evaluate the operation and impact of changes and reforms". Can you update the Committee on this work and any findings or evaluations that may already have begun or been concluded?

Welsh Government has explained that it would "work with the Student Loans Company to implement a system of monthly maintenance payments as soon as is practicable. However, we will need to discuss the implications". Can you update the Committee on the progress made on this and on the Welsh Government's assessment of the implications?



Welsh Government has stated that: "we will work with Universities Wales and HEFCW to consider how and when [a Welsh Postgraduate Research Scholarship Scheme] could be implemented and administered". Can you update the Committee on the progress made on this?

Can you provide an update on the work conducted regarding the timeliness of Student Loans Company support for Welsh Government student finance reforms and if assurances have now been gained from the Student Loans Company on future reform delivery?

2. Impact on student well-being

Has Welsh Government made any early assessment of the impact that focussing support on living costs has had on the well-being of the September 2018 cohort as it approaches the end of the academic year? If so, what were the findings?

3. Forecasts and assumptions made

Has the take-up of student financial support by the 2018/19 cohort been in-line with Welsh Government modelling, particularly with regard to the take-up and size of the maintenance grant awards?

The likely increase in part-time and post-graduate numbers is positive for the sector, and welcome. Can you confirm how this increase has impacted costs and the future revenue planning assumptions you shared with the Committee in your letter of 05 December 2018?

What assessment has Welsh Government made of the impact the change in the student loan repayment threshold from April 2018 has had on the affordability of the reforms?

The additional funding provided to HEFCW in 2018-19 for research and innovation funding does not appear to be recurrent funding and is intended to be spent across two academic years. Can you confirm:

- What is the source of this funding?
- What is the rationale for hypothecating it for research rather than allowing HEFCW to determine its allocation?

4. Living costs support and the National Living Wage

Sir Ian Diamond recommended that the maintenance grant / loan support available to a student should be equivalent to the National Living Wage. The total support available to students for 19/20 has been uprated in-line with the increase in the National Living Wage, which is welcome, but this has been done by increasing the loan amount only and not the maintenance grant which remains at £8,100. If this were a consistent future policy the value of the maintenance grant will of course be eroded. Can you confirm:



- What are the Welsh Government's future intentions and policy with regard to up-rating the maintenance grant?
- Why has Welsh Government chosen to only uprate the loan amount and not proportion the uprating across the loan and the maintenance grant for 19/20?
- Why has Welsh Government not also uprated the universal base grant for 19/20 which remains at £1,000?
- What assumptions do Welsh Government's financial forecasts include regarding uprating the maintenance grant?

5. Post-16 Education Action Allocation 2019-20 – budget follow-up

Can Welsh Government provide:

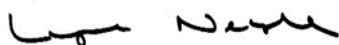
- The final 19-20 allocations within the Post-16 Education Action including FE, ACL, 6th Forms and other material allocations as stated in your letter to the Committee of 05 December 2018;
- an update on the outcome of the FE pay award negotiations, which I was pleased saw strike action avoided, and details of the settlement made including if the settlement is multi-annual and includes provision for pensions;
- details of any commitments Welsh Government have made in relation to future FE pay beyond 19/20 if any; and
- Information regarding how the deprivation, sparsity and welsh medium uplifts / allowance are calculated for 19/20.

6. FE institutions: funding allocations

Can you provide details on the final funding allocation to each FE institution for the 2019/20 academic year, including breakdown by each funding component (i.e. uplifts, maintenance, part-time, full-time etc)?

I look forward to receiving your response to the above. You may already be aware, but for your information, HEFCW will be attending Committee on 4 July to discuss Higher Education 19/20 academic year allocation.

Yours sincerely



Lynne Neagle AC / AM
Cadeirydd / Chair



Cynulliad Cenedlaethol Cymru
Y Pwyllgor Plant, Pobl Ifanc ac Addysg

CYPE(5)-17-19 - Paper to note 4

National Assembly for Wales
Children, Young People and Education Committee

Vaughan Gething AM

Minister for Health and Social Services

24 May 2019

Dear Vaughan

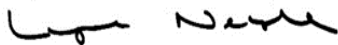
Perinatal Mental Health in Wales: follow up scrutiny

Earlier this year we exchanged correspondence relating to our **follow-up work** on our inquiry into provision of perinatal mental health services in Wales, undertaken in 2017.

In our **letter of 16 January 2019**, we acknowledged the progress made to date, but raised deep concerns about the continued lack of progress in relation to the establishment of mother and baby unit provision in Wales in particular.

Your response of **7 February 2019** reiterated your offer of providing 6 monthly updates on progress to the Committee, for which we are grateful. You also committed to providing an indication of the milestones you expect to reach, on a six monthly basis, between now and the end of this Assembly. While the Committee was hoping to have this indication as soon as possible, we note your intention to provide it in your first 6-monthly update, due by the beginning of August 2019. We look forward to receiving that update during the recess to enable us to maintain adequate, robust and fair scrutiny of actions in this area, and with a view to agreeing our next steps as a Committee at the beginning of next term as a matter of priority.

Yours sincerely,



Lynne Neagle AM

Chair

