

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: Swansea Bay University Health Board

1 The Bill's general principles

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

Yes

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)

Yes, the Health Board is in agreement with the Abolition of the Defence of Reasonable Punishment Wales Bill and the overarching objective to protect children's rights by prohibiting physical punishments by parents. Acknowledging that it will have an impact on Children, Parents, Social Care, Health, and Education.

The reasons are outlined below.

- Reasonable punishment can, under current UK law be used as a defence against common assault and Trespass Against the person by parents or guardians of children within in the home setting. Physical punishment within schools and other professionally run settings has been outlawed since 1986 under section 47 of the Education act (No 2) subsequently replaced by section 548 of the education act 1996. Therefore as the law stands currently children do not have the same level of protection from assault within the home as outside the home. The bill would provide equably status for children both in and outside the home to protection from Common Assault and Trespass against the Person.
- The removal of such defence would see children viewed equally to adults within the UK and as such have the same rights of protection from Common assault and Trespass against the person. This is in line with other legislation such as VAWDASV, and compatible with Article 19

of the UNCRC and current European Law. This would give children in Wales's equitable status in the eyes of the law as adults.

- The Bill doesn't define acts carried out by the parents towards their children which would not be acceptable once the defence is removed. However the principals of the bill would imply that removing the defence will not interfere with the principal of common law which allows parents to physically intervene to keep a child safe from harm, or to ensure compliance with non-physical forms of discipline.

Children learn what they live and any form of 'violence' is a learned response. Many parents already use other methods of reprimand that are successful and do not involve physical chastisement. There is a need to re-educate society in this regard and also support parents in learning interventions that facilitate them dealing with a child's behaviours via a non-physical approach

Nobody can define reasonable chastisement, it is a very fluid concept, for example if individuals smack do they all use the same force?

Physical abuse is often chastisement that goes too far and it does nothing to teach children about acceptable boundaries and acceptable behaviour and provides a bad example of how to manage strong emotions. This may lead children to hit and bully others or encourage children to hide and lie to avoid being smacked. It can make defiant behaviour worse so discipline gets harder which can lead to a resentful and angry child.

Damages family relationships.

Smacking is often not effective and often damaging to the child.

s.58 of the Children Act 2004 continues to breach Article 19 UNRCC by failing to provide children with equal protection under the law of common assault.

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)

Yes, predominantly to ensure that children's rights are upheld and that they are afforded the same level of protection in law as adults. And that the UK is in line with the UNCRC.

In addition evidence from research suggests that countries where the legislation has changed and the defence removed report there is a shift in social thinking in respect of the use of physical punishment as a form of discipline of children. Evidence suggests that once the defence is removed adults shift their approaches to discipline to non-physical forms of behaviour management where there is a growing evidence base of efficacy.

Also it must be noted what constitutes reasonable physical chastisement is a very subjective notion and as a result it requires legislation to protect children and young people if their UNCRC rights under Article 19 are to be met.

As the practice is deeply embedded in our culture, and as such will take a long time to change, without the force of legislation behind it the physical chastisement of children and young people would continue and so become embedded as a 'norm' for the next generation of parents in many families.

Legislation is needed to deliver what this Bill is trying to achieve because there needs to be a cultural change in attitudes to smacking children it is not viewed generally as assault. However research is 50-50 as to whether legislation would be beneficial. In Sweden the government did a leaflet drop to all its citizens prior to legislation change. I feel something similar would need to happen here as there is a strong body of people advocating the law should not be changed identifying the tensions between children's rights and adult's rights. That legislation would set parents against the children and that current legislation is adequate regarding protecting children and that there would be an unacceptable intrusion into family life. Without a law change I don't feel much progress would be made in changing attitudes as smacking is equated to discipline which is seen as good. Children's rights need to be on par with adult's rights in terms of protection.

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)

Attitudes of individuals and personal belief systems in respect to parent's rights to discipline children. The Bill may in some instances raise a perceived conflict of interest between children's rights and the principal under the human rights act right to a private life free from intervention from the state.

Professional difficulties when balancing the rights of children and the potential criminalisation of parents.

Potential enforcement issues, and proportionate responses to allegations made could potentially overload public services and the criminal justice service.

Societal change is only achieved with sustained programmes of promotion and support, this will have a cost and resource implication for practitioners working with families, particularly those working with vulnerable groups.

Attitudes to change

Cost implications and limited resources

Overburden on public bodies

Diverting services away from crimes deemed more serious

Damage the trust between public bodies and families

Duty to report for some agencies.

Stigmatise and criminalise some parents

There will be arguments re infringement of parents rights on how to raise their children
"Nanny State"

How will this Bill be enforced?

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 explanatory memorandum outlines how the Bill has considered the points above, and demonstrates how some of these issues may be addressed in order for the Bill to achieve its purpose. Whilst the intent of the Bill is not to criminalise parents or prevent, parents from taking reasonable steps to act in a physical way to protect a child from immediate harm, or to facilitate appropriate behaviour management, more clarity in terms of definition of what is considered to be acceptable actions in this area may be needed.

Clarity needed re definitions interchangeable terms e.g. corporal punishment and physical punishment and proposed changes

Any extra funding that will be required to provide support to parents, guardians in terms of parenting groups, leaflets(bilingual) etc.

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)

Practice for many years amongst professionals such as Health Visiting and Early Year's Educators has aimed to discourage physical punishment of children. Programmes such as Triple P and The Incredible Years Nurture Programme have routinely been offered to parents requesting support, to develop an alternative strategy to physical discipline. This support is

currently in the form of universal service provision, universal targeted or early intervention programmes. These resources may experience higher demand once the defence is removed.

There is also the possibility that parents with most need may take a negative or fearful view of such programmes and practitioners may lose the opportunity of universal early intervention prevention offered by the current approach.

There is no clear consensus on the impact on services such as health services, police, CPs, the courts children's services, schools

Just having this discussion may change attitudes to smacking children attitudes are currently changing with there being an even split for a complete ban

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)

There will need for training, education and guidance aimed at practitioners within Health and Education to support them if disclosures of the use of physical punishment are made during the course of their work which necessitate a report to the Local Authority Children's Services or Police.

The Welsh Government state that they plan to build and maintain relationships with individuals and organisations to ensure that effected parties understand the changes being made. This will need to be robust and ensure that all affected parties are fully aware of their roles and responsibilities and how this will affect their duty to report under the Social Services and Well-being (Wales) Act, along with the implications for Local Authority Single Points of Contact/Common Access Points and potential management of cases brought to them as a result of the legislative change. There is a need to ensure a consistent approach to referrals made to statutory Services across Wales. This will inevitably come with a financial cost to each organisation.

It is currently incumbent on all statutory agencies to provide safeguarding training in respect to children and some of the long term cost will be mitigated if additional training is incorporated in to existing packages.

At present the cost to Local authority as a result of increased referrals is unquantified (as outlined in part 2 of the explanatory Memorandum) as such, so is the ongoing cost for partner agencies providing support via parenting programmes.

Support for parents and staff

Bilingual costs

Possible overburden of public bodies

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)

The fact that this is a potentially contentious issue should not prevent this legislation being progressed to ensure that children and young people are protected as societal change will take a long time to achieve and violence (in any form or at any level) breeds violence