

## Equal Protection for Children in Northern Ireland

November 2021

- International evidence is clear that physical punishment is harmful: it damages children's wellbeing and is linked to poorer outcomes in childhood and adulthood.
- The proposed legislative amendment will remove the legal defence of 'reasonable punishment' to give children equal protection from assault.
- Evidence from countries which have already reformed their law shows there has been no increase in prosecutions.

At present in Northern Ireland it is lawful for a parent or someone caring for or in charge of a child to use physical punishment. This means that children are afforded less protection from assault than adults.

The United Nations Committee on the Rights of the Child has defined physical punishment as follows:

*“Corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.”<sup>1</sup>*

There is clear evidence that physical punishment is ineffective in improving children's behaviour and in fact has an adverse impact on children's wellbeing.

A legislative amendment to the upcoming Justice (Sexual Offences and Trafficking Victims) Bill is planned which would remove the legal defence of 'reasonable punishment' to ensure that children are offered the same protection from assault as adults.

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<sup>1</sup> United Nations Committee on the Rights of the Child (2006) Forty Second Session. General Comment No.8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. Geneva: United Nations.

## **The current legal position**

Most forms of physical punishment of children were prohibited in the UK by the end of the twentieth century. However, in Northern Ireland, both common and statute law still permit the use of physical punishment by parents or those caring for a child, by enabling them to raise a relevant defence in court.

In Northern Ireland, the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 provides for a defence of 'reasonable punishment'. However, the law states that battery of a child occasioning common assault, wounding, actual bodily harm and grievous bodily harm cannot be justified on the ground that it constituted 'reasonable punishment'.

In addition, the United Nations Convention on the Rights of the Child (UNCRC), ratified by the UK in 1991, directs State Parties to take all measures to protect children from all forms of physical and mental violence, including physical punishment. The UK and its devolved administrations have repeatedly been called upon by international human rights bodies to reform the law to prevent physical punishment, most recently by the UN Committee on the Rights of the Child in 2016 and the Universal Periodic Review in 2017, but the Northern Ireland Executive has, so far, failed to act.

## **The need for change**

There is clear and consistent evidence that the physical punishment of children is harmful. In 2015, an international literature review on the impact of physical punishment on children<sup>2</sup> found that:

- Prevalence of physical punishment is decreasing and attitudes towards its use are changing;
- Declines in the use of physical punishment are evident in countries which have instigated legal reform;
- There is strong and consistent evidence that physical punishment increases aggression, antisocial behaviour, depression and anxiety in children, which may continue into their adult lives;
- Physical punishment carries with it the risk of escalation into physical abuse.

Prior research has concluded that physical / corporal punishment is not effective in achieving parenting goals of increasing children's moral internalisation and decreasing aggressive and antisocial behaviour.<sup>3</sup>

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<sup>2</sup> Heilmann, A., Kelly, Y. and Watt, R.G. (2015) Equally Protected - A review of the evidence on the physical punishment of children. Edinburgh: Children and Young People's Commissioner Scotland, Children 1<sup>st</sup>, Barnardo's Scotland, NSPCC Scotland.

<sup>3</sup> Gershoff, E.T. and Bitensky, S.H. (2007): The case against corporal punishment of children - Converging evidence from social science research and international human rights law and implications for US public policy. *Psychology Public Policy and Law*, 13(4), 231-272; Gershoff, E.T. (2002): Corporal punishment by parents and associated child behaviors and experiences: a meta-analytic and theoretical review. *Psychological Bulletin*, 128(4), 539-579.

Attitudes towards physical punishment and the acceptability of hitting or smacking children are changing, with evidence from the NI Commissioner for Children and Young People<sup>4</sup> in 2017 showing that the majority of adults think it is time that children in Northern Ireland were given Equal Protection under the law.

Additionally, the pandemic and resultant lockdowns have increased the risks which children face. NSPCC figures show that since lockdown began, there was an increase in contacts to Childline, from across the UK, about physical abuse. Before the restrictions, there was an average of 420 counselling sessions per month which rose to an average of 514 per month after lockdown began.

Some of the contacts revealed the harrowing stories of children who have been subject to abuse, with many children unsure if what they are experiencing is physical punishment or abuse and most describing an escalation in the severity of violence towards them. The damage caused to their mental and emotional health by these experiences is stark.

In Wales, legal change is underway and the law has already changed in the Republic of Ireland, Scotland and Jersey; leaving children in Northern Ireland with less protection from assault than their peers in other parts of the UK and Ireland.

It is vital that the Northern Ireland Executive puts children at the heart of its response to recovery post-Covid by sending a clear message to our children that their protection matters. The opportunity to do so must be taken by the Northern Ireland Executive without delay.

Northern Ireland is taking significant steps to recognise and address Adverse Childhood Experiences (ACEs) and the lasting harmful impact of these not only on children's early years but through their adolescence and into adulthood.

The Northern Ireland Executive continues to commit to its ambition for children in Northern Ireland to have the best start in life, and the forthcoming Family and Parenting Support Strategy should further support this and provide a greater focus on positive parenting. The Executive's Programme for Government Draft Outcomes Framework<sup>5</sup> states that it is our responsibility to ensure our young people get the best start in life and grow up safe, healthy and happy. Reforming the law on physical punishment is a common-sense and necessary step in realising this ambition.

In order to improve outcomes for children, and society as a whole, the Northern Ireland Executive must introduce legal reform to ensure Equal Protection for children.

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<sup>4</sup> Northern Ireland Commissioner for Children and Young People (2017) Changing Perceptions: Equal Protection for Children NICCY's work and survey results on attitudes to physical punishment. Belfast: NICCY.

<sup>5</sup> Northern Ireland Executive (2021) Programme for Government Draft Outcomes Framework. Consultation Document. Belfast: NI Executive.

## **The proposal**

We expect a legislative amendment to be put forward to the Justice (Sexual Offences and Trafficking Victims) Bill which would remove the legal defence of 'reasonable punishment' to ensure that children are offered the same protection from assault as adults. This would not propose the introduction of any new offence, but rather the removal of an existing legal defence.

The main aim of changing the law is educational and cultural, rather than punitive. There is an understandable concern that legal reform would criminalise loving parents. However, there is no evidence of an increase in criminal prosecutions of parents in countries which have amended their relevant legislation.<sup>6</sup>

Rather, such a measure would help create a society which respects children's rights and supports positive parenting. The law, properly applied, is a most powerful tool in changing traditional social norms. There is strong evidence from other countries that the passage of legislation, in combination with public awareness and education campaigns, heralds a further change in public attitudes.

## **What can you do?**

We urge organisations and individuals to engage with elected representatives to impress on them the need to change the law to give children equal protection from assault in Northern Ireland. The Justice (Sexual Offences and Trafficking Victims) Bill is currently being considered by the Justice Committee and we expect the proposed amendment to be introduced at Consideration Stage in January 2022. It is vitally important in keeping children safe and securing brighter futures for all our children that the defence of reasonable punishment is removed. Affording children equal protection from assault – as is the case with adults – and their peers in other parts of the UK and Ireland, will send out a clear message from our Government that no form of physical violence is acceptable in any of our homes.

You can show your support as an individual or group by signing up to these calls for legal reform on NICCY's website or to access more information on this campaign visit <https://www.niccy.org/equalprotectioncampaign>

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<sup>6</sup> [Prohibiting-all-corporal-punishment-of-children-laying-the-foundations-for-nonviolent-childhoods.pdf \(endcorporalpunishment.org\)](https://www.niccy.org/equalprotectioncampaign)