

Equal Protection Bill: Questions and Answers

Does the Bill have public support in Scotland?

- 75% of over 650 respondents to the public consultation on the Bill were in favour of legal reform.ⁱ
- 82% of over 72,000 young people in Scotland surveyed by the Scottish Youth Parliament agreed that all physical assault against children should be illegal.ⁱⁱ
- In 2006/7 79-84% of parents of 3,765 children aged about 4 years old said in the Growing Up in Scotland survey that 'smacking' was not very/not at all useful.ⁱⁱⁱ
- Opinion polls about equal protection give varied results depending on the question you ask. The media recently reported a ComRes survey of 1,100 Scottish adults (the majority of whom did not have children under the age of 18) commissioned by opponents to legal reform, Be Reasonable, which said that 3/4s of Scottish adults thought parental smacking should not be a criminal offence.
- However, a 2015 You Gov survey found that 92% of the Scottish public said children should have more or the same protection from assault than adults, implying a strong level of support for the proposals in the Bill.^{iv}

When the law changes, what would happen if a child was 'smacked' in a supermarket or I grabbed them if they ran into the road?

- Police and prosecutors already consider whether prosecuting is in the public interest, taking into account seriousness; length of time since the offence took place; interests of the victim and other witnesses; age of the offender; any previous convictions and other relevant factors; local community interests or general concern; and any other factors according to the facts and circumstances of the case.^v
- In examples where one person is trying to protect another (e.g. stopping a child from touching a fire or from running into the road) the prosecutor would take into account the circumstances on a case by case basis but we consider it unlikely that a prosecutor would consider it appropriate to prosecute. There are existing examples in law that allow for exceptions in these circumstances, such as s.16 of the Standards in Scotland's Schools etc. Act, 2000.^{vi}
- Police and social work already deal with reports of 'smacking.' Legal reform would not change their current processes, it would just mean that parents can no longer use the defence of 'justifiable assault' if they are charged.

Will the Bill criminalise parents?

- The Bill proposed by John Finnie does not create a new criminal offence. The same threshold for assault will continue to apply.
- The change would simply mean that a parent would no longer be able to argue they were using physical punishment as a defence, if they appeared in court on a charge of assaulting their child.
- The Scottish Police Federation does not believe that removing the statutory defence will result in a significant increase in the prosecution of parents and carers.^{vii}
- There is no evidence from countries that have reformed the law that more parents will be criminalised.^{viii}

Why introduce the Bill if you don't want to criminalise parents?

- The evidence shows that physical punishment doesn't work and can be harmful; children and their families deserve that the law reflects this.^{ix}
- Introducing the Bill will create a culture change, in the same way culture has changed around smoking. It will clearly show that Scotland does not tolerate violence against anybody – particularly the smallest, most vulnerable people in our society, children.
- Human rights bodies have repeatedly called on all parts of the UK to introduce this reform to uphold children's rights to live free from violence.^x

Why do we need this change if we have laws against child abuse?

- Scotland's child abuse laws work well, but the defence of justifiable assault creates a grey area in law. Removing the defence will not create a new law about child abuse, but will make it absolutely clear that Scotland doesn't accept any level of violence against children.
- International evidence shows that physical punishment can be part of a continuum of violence and that its use can sometimes lead to an escalation of violence against a child.^{xi}

Won't the Bill put more pressure on social workers and the police?

- Because the Bill does not introduce a new law the duties on social workers and the police will remain exactly the same following the removal of the defence of 'justifiable assault'.
- In Sweden, where legal reform happened in 1979, there has been no increase of children being removed from parents through the intervention of social workers.^{xii}
- In New Zealand police report that legal reform had "minimal impact" on police work.^{xiii}
- Social Work Scotland anticipate some reduction in the need for statutory protection services in the longer term following legal reform^{xiv} and the Association of Police Superintendents Scotland said the Bill will not change the police response or resources deployed to investigate any report of result, therefore stating that the impact will be "cost neutral."^{xv}

Shouldn't parents decide how to raise their children?

- Yes, parents should decide how to raise their children. Changing the law to give children the same protection from assault as adults does not stop parents from choosing how to raise their children or how to manage their behaviour.
- Legal reform would simply stop physical punishment, which we now know doesn't work and can be harmful, being an option.

Won't the Bill put more pressure on some families than others?

- Voluntary and statutory support organisations, who work daily alongside families who are under the most pressure, believe that removing the defence will help improve family relationships, encourage conversations about parenting and should be accompanied by investment in early help and support.
- The Millenium Cohort Study, which looks at the lives of 19,000 children across the UK showed that use of physical punishment is broadly similar across all social classes.^{xvi}

Won't the Bill lead to a generation of children who are 'unruly' and 'out of control'?

- There are no studies showing that children's behaviour improves as a result of 'physical punishment' and most show that it has a negative impact on a child's long-term behaviour and well-being.^{xvii}

- ⁱ <https://greens.scot/news/overwhelming-support-for-child-protection-proposal>. 87% of the total number of responses came from individuals, 75% of these came from members of the public.
- ⁱⁱ https://d3n8a8pro7vhm.cloudfront.net/scottishyouthparliament/pages/283/attachments/original/1457781662/Lead_The_Way_Manifesto.pdf?1457781662
- ⁱⁱⁱ Heilman, A., et al, *Equally Protected: A review of the evidence on the physical punishment of children*, NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner, Scotland, November 2015
- ^{iv} You Gov survey from 2015 commissioned by Children 1st
- ^v <http://www.copfs.gov.uk/about-us/what-we-do/10-about-us/17-our-role-in-detail>
- ^{vi} S.16 of Standards in Scotland's Schools etc Act 2000: *It shall not be an assault of a child to take reasonable steps with the intention of averting (a) an immediate danger of personal injury to; or (b) an immediate danger to the property of any person (including the child concerned)*
- ^{vii} Scottish Police Federation response to Equal Protection from Assault Bill available at: <https://johnfinniemsp.files.wordpress.com/2017/05/response-0389-publication.pdf>
- ^{viii} <http://www.childrenareunbeatablecymru.org.uk/wp-content/uploads/2014/03/How-would-a-ban-on-smacking-work-in-practice.pdf>
- ^{ix} Heilman, A., et al, *Equally Protected: A review of the evidence on the physical punishment of children*, NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner, Scotland, November 2015
- ^x Including the UN Committee on the Rights of the Child, the Council of Europe and the Human Rights Council. As detailed in Adamson, B., *Children's Rights and Physical Punishment*, The Journal of the Law Society of Scotland, July 2017 and Janys Scott QC's legal opinion (2017) Scotland is breaching its human rights obligations.
- ^{xi} Six individual studies have identified a link between physical punishment and an increased risk of physical abuse. Detailed in Heilman, A., et al, *Equally Protected: A review of the evidence on the physical punishment of children*, NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner, Scotland, November 2015
- ^{xii} Modig, C., *Never Violence- Thirty years on from Sweden's Abolition of Corporal Punishment*, Government Offices of Sweden and Save the Children, Sweden, 2009
- ^{xiii} Report to Prime Minister, Minister of Police, Minister for Social Development and Employment, *Review of New Zealand Police and Child, Youth and Family Policies and Procedures relating to the Crimes (Substituted Section 59) Amendment Act*, December 2009. Available at: https://www.beehive.govt.nz/sites/all/files/Sec59_review.pdf
- ^{xiv} Social Work Scotland response to Equal Protection from Assault Bill available at: <https://johnfinniemsp.files.wordpress.com/2017/05/response-0461-publication.pdf>
- ^{xv} Association of Police Superintendents Scotland response to Equal Protection from Assault Bill available at <https://johnfinnie.scot/equal-protection/>
- ^{xvi} Heilman, A., et al, *Equally Protected: A review of the evidence on the physical punishment of children*, NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner, Scotland, November 2015
- ^{xvii} Gershoff, E.T & Grogan-Kaylor, A., *Spanking and child outcomes: old controversies and new meta-analysis*, J. Family Psychology, 30(4):453-69, June 2016