



Llywodraeth Cymru
Welsh Government

**CHILDREN (ABOLITION OF DEFENCE OF
REASONABLE PUNISHMENT)
(WALES) BILL**

Explanatory Memorandum
Incorporating the
Regulatory Impact Assessment and
Explanatory Notes

January 2020

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

Explanatory Memorandum to the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

This Explanatory Memorandum has been prepared by the Education and Public Services Group of the Welsh Government and is laid before the National Assembly for Wales.

It was originally prepared and laid in accordance with Standing Order 26.6 in March 2019, and a revised Memorandum is now laid in accordance with Standing Order 26.28.

Member's Declaration

In my view the provisions of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill, introduced by me on the 25 March 2019 would be within the legislative competence of the National Assembly for Wales.

Julie Morgan AM

Deputy Minister for Health and Social Services

Assembly Member in charge of the Bill

7 January 2020

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PART 1: EXPLANATORY MEMORANDUM

Summary of Part 1

- i. Part 1 describes what the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill (“the Bill”) will do, and why it was introduced. In summary:

What will the Bill do?

- ii. The Bill will prohibit the physical punishment of children in Wales by abolishing the defence of reasonable punishment.
- iii. The defence of reasonable punishment is only available to a parent or a person acting in loco parentis (in the place of a parent). Physical punishment of children in schools and other settings involving education was prohibited by section 47 of the Education (No. 2) Act 1986 (now repealed) and is now set out in section 548 of the Education Act 1996.
- iv. Since the Children Act 2004 came into force¹, physical punishment has been further restricted so it is available only in relation to the offence of common assault or battery, or tort of trespass, against a child.
- v. Crown Prosecution Service (CPS) guidance has clarified that an offence of assault or battery against a child can only be considered to be common assault where the injury is transient and trifling and amounts to no more than a temporary reddening of the skin – a more serious injury would indicate an offence of at least actual bodily harm for which the defence is not available. In addition, even where the defence is available, the CPS guidance indicates additional factors must be taken into account to determine the reasonableness of the punishment (e.g. the nature and context of the defendant’s behaviour). Currently, the CPS would not normally prosecute when they consider the defence would be successful, therefore court cases where the defence is successfully relied upon are relatively rare.
- vi. The Bill does not define actions by parents towards their children which would or would not be acceptable once the defence is removed. Removing the defence will not interfere with the principles of the common law, which acknowledge that a parent can intervene physically, for example, to keep a child safe from harm, or help with activities such as tooth brushing.

¹ The 2004 Act came into force on 15 January 2005

Why the Bill has been introduced

- vii. The Programme for Government, *Taking Wales Forward*², reaffirmed the Welsh Government's intention to take forward, on a cross-party basis, legislation which would remove the defence of reasonable punishment.
- viii. The aim of the Bill is to help protect children's rights by prohibiting the physical punishment of children by parents and those acting in loco parentis. The prohibition of the physical punishment of children is consistent with the Welsh Government's commitment to children's rights under the United Nations Convention on the Rights of the Child (UNCRC).
- ix. The intended effect of the Bill, together with an awareness-raising campaign and support for parents, is to bring about a further reduction in the use and tolerance of the physical punishment of children in Wales.
- x. Research with parents of young children in Wales carried out in 2015 and 2017 suggests attitudes towards the way children and young people are raised and disciplined are already changing³. This research involved telephone surveys with parents (or guardians) of young children who had previously taken part in the 2014–15 and 2016-17 National Survey for Wales. There has been a shift in attitude with fewer parents and guardians of young children in Wales supportive of physical punishment in 2017. For example, 81% of parents disagreed with the statement "it is sometimes necessary to smack a naughty child" compared to 71% in 2015.
- xi. In 2018, the Welsh Government commissioned the independent market research agency, Beaufort Research, to include a suite of questions on public attitudes to physical punishment in their Wales Omnibus Survey. The survey interviews a representative quota sample of 1,002 adults aged 16+ across Wales in their own home. This includes both parents/guardians and non-parents/guardians. It found that more respondents (49%) disagreed with the statement 'it is sometimes necessary to smack a child' than agreed with it (35%)⁴. For those aged 16-34, an even higher proportion disagreed with the statement (60%) whilst only 24% agreed⁵. It also found that those with caring responsibilities for a child under seven were more likely to be in favour of a change in the law. Although some of the questions used in this research were similar to those used in the surveys of parents of young children commissioned by the Welsh Government in 2015 and 2017 the method, sample and approach used were different and therefore direct comparisons cannot be made.

² <https://gov.wales/about/programme-for-government/?lang=en>

³ Welsh Government (2018) 'Parental Attitudes Towards Managing Young Children's Behaviour 2017', SOCIAL RESEARCH NUMBER: 42/2018 <https://gov.wales/parental-attitudes-towards-managing-young-childrens-behaviour-2017>

⁴ https://gov.wales/public-attitudes-physical-punishment-children-baseline-survey-2018?_ga=2.79511124.1794945239.1574945506-647361735.1572515616

⁵ In addition, 14% of respondents 'neither agree nor disagree' and 3% reported that they 'don't know'.

- xii. Research suggests physical punishment is no more effective than non-physical approaches to discipline. There is no compelling evidence against the proposal to remove the defence of reasonable punishment. The majority of researchers in the field make the judgement that all physical punishment under all conditions is potentially harmful to children⁶

⁶ <https://www.wcpp.org.uk/publication/parental-physical-punishment-child-outcomes-and-attitudes/>

Chapter 1: Description

- 1.1 The Bill will remove the common law defence of reasonable punishment so it is no longer available in Wales to parents or those acting in loco parentis as a defence to assault or battery against a child.
- 1.2 The defence currently applies in respect of both the criminal and civil law. Under the criminal law, it applies in respect of the common law offences of assault and battery; and under civil law, in respect of the tort of trespass against the person.
- 1.3 The availability of the defence has already been restricted under section 58 of the Children Act 2004⁷. It is never available in relation to criminal law charges of wounding or causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to persons under 16 or in relation to civil law charges for battery of a child causing actual bodily harm.
- 1.4 The Bill will remove the remaining availability of the defence in relation to the offence of common battery or assault and tort of trespass against the person.
- 1.5 The Bill is intended to help protect children's rights by prohibiting the use of physical punishment, through removal of this defence.

Definitions

- 1.6 In this Explanatory Memorandum, the following terms have the meaning described below:

Physical punishment: any battery of a child / children carried out as a punishment, and referred to in the Bill as "corporal punishment".

Parent: any parent and any other adult who is (at the relevant time) acting in loco parentis, caring for a child / children in a parental capacity.

⁷ <https://www.legislation.gov.uk/ukpga/2004/31/section/58>

Chapter 2: Legislative Competence

- 2.1 The National Assembly for Wales (“the Assembly”) has the legislative competence to make the provisions in the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill (“the Bill”) pursuant to Part 4 of the Government of Wales Act 2006⁸ (“GoWA 2006”) as amended by the Wales Act 2017⁹.
- 2.2 Part 1 of Schedule 7A to the GoWA 2006 lists the general reservations from competence, Part 2 the specific reservations from competence, which like those listed in Part 1 of Schedule 7A, are reserved matters. It is not considered that the provision made by the Bill will fall within the reservations contained in Schedule 7A. The following reservation and exception are relevant:

Section L12 – Family relationships and children

Paragraph 177- Parenthood, parental responsibility, child arrangements and adoption

Exceptions-

...Parental discipline

Paragraph 177 of Schedule 7A to the GOWA 2006 reserves “Parenthood, parental discipline, child arrangements and adoption”. The exception for “parental discipline” is carved out from this reservation. Paragraph 373 of the explanatory notes to the Wales Act 2017¹⁰ explains that:

“The exception for ‘parental discipline’ carves out from the reservation for parental responsibility, the right of a parent to discipline a child, this includes the right to administer reasonable chastisement to a child, or smacking. The Assembly has competence for the protection of children and young people and so would have the competence to ban smacking.”

- 2.3 It is considered that the provisions are compatible with convention rights and European Union (EU) law.
- 2.4 Whether the Bill’s abolition of the reasonable punishment defence could amount to an interference with a person’s Article 8 (respect for private and family life) or Article 9 (right to manifest their religious belief) rights falls to be assessed on the circumstances of the individual affected together with relevant case law. These rights are not absolute and action can therefore be taken which interferes with them, provided the interference is justified¹¹. The legitimate aim

⁸ <https://www.legislation.gov.uk/ukpga/2006/32/contents>

⁹ <http://www.legislation.gov.uk/ukpga/2017/4/contents/enacted>

¹⁰ http://www.legislation.gov.uk/ukpga/2017/4/pdfs/ukpgaen_20170004_en.pdf

¹¹ It may be justified if it is prescribed by law, in pursuit of a legitimate aim, and necessary in a democratic society. The nature of any interference needs to be proportionate for it to be ECHR compliant

of this legislation is the protection of the rights and freedoms of others, namely children. Given the fundamental importance of protecting children, any interference with articles 8 and 9 is justified as a proportionate means of achieving a legitimate aim.

Chapter 3: Policy Objectives and purpose and intended effect of the Bill

Context

- 3.1 On 18 May 2016, the then First Minister announced the Welsh Government's intention to introduce legislation to remove the defence of reasonable punishment.
- 3.2 On 27 June 2017, the then First Minister reaffirmed this commitment and said the Welsh Government would consult on proposals in the second year of the legislative programme (September 2017 – July 2018) with a view to introducing a Bill in the third year (September 2018 – July 2019).
- 3.3 The consultation on the legislative proposal took place between 9 January and 2 April 2018¹² and the summary of responses was published on 6 August 2018¹³ (this is discussed further in Chapter 4).
- 3.4 In light of the Welsh Government's and the Assembly's commitment to promoting children's rights, removing the defence of reasonable punishment has been the subject of debate in the Assembly since the early years of its existence.
- 3.5 In 2007, the Welsh Government advised the UN Committee on the Rights of the Child that it was committed to banning physical punishment but, at that particular time, did not have the legislative competence to change the law¹⁴.
- 3.6 The issue of removing the defence of reasonable punishment has been raised in the Assembly on a number of occasions. In recent years, this has included during the passage of the Social Services and Wellbeing (Wales) Act 2014 and the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.
- 3.7 On 9 January 2018, the former Minister for Children and Social Care made an oral statement in plenary confirming he was "launching a consultation to inform the development of the legislative proposal to remove the defence of reasonable punishment" and that "we want to make it clear that physically punishing a child is no longer acceptable in Wales"¹⁵.
- 3.8 The Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill was introduced to the National Assembly for Wales on 25 March 2019. During Stage 1 it was scrutinised by three Committees: the Children Young People and

¹² <https://gov.wales/sites/default/files/consultations/2018-02/180109-legislation-consultation-en.pdf>

¹³ <https://gov.wales/legislative-proposal-remove-defence-reasonable-punishment>

¹⁴ See section 183, UNCRC Committee On The Rights Of The Child Consideration Of Reports Submitted By States Parties Under Article 44 Of The Convention Third and fourth periodic reports of States parties due in 2007, United Kingdom Of Great Britain And Northern Ireland <https://www.qub.ac.uk/research-centres/advancing-childrens-rights/Filestore/Fileupload,403606,en.pdf>

¹⁵ <http://record.assembly.wales/Plenary/4893#A10000059>

Education Committee; the Finance Committee and the Constitutional and Legislative Affairs Committee. All three Committees published Stage 1 reports on their scrutiny of the Bill on 2 August 2019. The Children Young People and Education Committee received 650 responses to its written consultation and also took oral evidence from a range of stakeholders. Its report reflects the breadth of opinions it received. The Welsh Government responded to the recommendations made by all three Committees on 13 September 2019.¹⁶

- 3.9 On 17 September 2019, Assembly Members debated the General Principles of the Bill and voted in favour of it proceeding to Stage 2 of the Assembly's legislative process¹⁷. Stage 2 was completed on 24 October 2019.

The current position

- 3.10 Under the current law, the defence of reasonable punishment is available for the common law offences of assault and battery.

The concept of 'reasonable punishment' has its origins in Victorian times. The case that established the legally accepted definition was *R v Hopley*¹⁸ (1860). In this case, a boy was beaten by a schoolmaster with the permission of the child's father, which led to the death of the child. During the trial the presiding judge, Chief Justice Cockburn, stated that:

"A parent or a schoolmaster, who for this purpose represents the parent and has the parental authority delegated to him, may for the purpose of correcting what is evil in the child inflict moderate and reasonable corporal punishment, always, however, with this condition, that it is moderate and reasonable."

This case established in law reasonable punishment as a defence for those parents, carers or other responsible adults - such as teachers - who were charged with the criminal offence of assault on children.

- 3.11 Section 58 of the Children Act 2004 has made the defence unavailable for wounding or causing grievous bodily harm; assault occasioning actual bodily harm or an offence of cruelty to persons under 16. This means, in effect, that the defence can only be used at the level of common assault or battery, where it is applicable in both the criminal sphere and in relation to the law of tort (trespass to the person).

¹⁶ The Stage 1 Committee Reports and the Welsh Government's response to the recommendations made by each Committee can be downloaded from the website of the Children, Young People and Education Committee website <http://senedd.assembly.wales/mgIssueHistoryHome.aspx?Id=24674>

¹⁷ [National Assembly for Wales record of proceedings - General Principles debate, 17 September 2019](#)

¹⁸ (1860) 2 F & F 202, 175 ER 1024

3.12 Section 58 provides:

58 Reasonable punishment -

- (1) *In relation to any offence specified in subsection (2), battery of a child cannot be justified on the ground that it constituted reasonable punishment.*
- (2) *The offences referred to in subsection (1) are –*
 - (a) *an offence under section 18 or 20 of the Offences against the Person Act 1861 (c 100) (wounding and causing grievous bodily harm);*
 - (b) *an offence under section 47 of that Act (Assault occasioning actual bodily harm);*
 - (c) *an offence under section 1 of the Children and Young Persons Act 1993 (c 12) (cruelty to persons under 16).*
- (3) *Battery of a child causing actual bodily harm to the child cannot be justified in any civil proceedings on the ground that it constituted reasonable punishment.*
- (4) *For the purposes of subsection (3) “actual bodily harm” has the same meaning as it has for the purposes of section 47 of the Offences against the Person Act 1861.*
- (5) *In section 1 of the Children and Young Persons Act 1993, omit subsection (7).*

Operation of the current defence

3.13 The *Code for Crown Prosecutors*¹⁹ is issued by the Director of Public Prosecutions (DPP) and sets out general principles for the CPS to follow when making decisions about cases. This is supplemented by regularly-updated prosecution guidance²⁰, which is used in conjunction with the *Code for Crown Prosecutors* to make decisions in criminal cases.

3.14 The CPS provides charging advice in more serious or complex cases. The police apply the same principles in deciding whether to charge a person in those cases for which they are responsible. Whether a person is charged or not depends on whether there is sufficient evidence for a realistic prospect of conviction and whether a prosecution is in the public interest.

¹⁹ <https://www.cps.gov.uk/publication/code-crown-prosecutors>

²⁰ Section 37A of the Police and Criminal Evidence Act 1984 provides that the Director of Public Prosecutions may issue guidance for the purposes of enabling custody officers to decide how people should be dealt with and as to the information to be sent to the Director of Public Prosecutions.

- 3.15 Prosecution guidance is published on the CPS website²¹. The *Charging Standard on Offences Against the Person* (“the Charging Standard”)²² provides advice in relation to offences against the person on whether to charge an individual with common assault or actual bodily harm and about the approach required where the defence of reasonable punishment falls for consideration.
- 3.16 The Charging Standard is regularly updated to reflect changes in law and practice. It was amended following the change in the law resulting from section 58 of the Children Act 2004, which outlines that the defence of reasonable punishment would no longer be available for charges of actual or grievous bodily harm or child cruelty.
- 3.17 At that time, the Charging Standard was amended so the vulnerability of the victim, such as being a child assaulted by an adult, would be treated as an aggravating factor when deciding the appropriate charge. As a result, injuries that would have previously led to a charge of common assault are now charged as assault occasioning actual bodily harm under section 47 of the Offences Against The Person Act 1861 – the defence of reasonable punishment is no longer available for this offence.
- 3.18 A UK Government review in 2007²³ suggested the reasonable punishment defence appeared to be little used, at least in cases which reached the stage of referral to the CPS or prosecution in court. The CPS asked eight CPS areas to fill out a questionnaire about cases of child abuse and asked all 43 CPS areas to send in details of cases where the reasonable punishment defence was raised.
- 3.19 While the review was not exhaustive, it identified 12 cases between January 2005 and February 2007 when the defence had been used and resulted in acquittal or discontinuance. Of these 12 cases, there were:
- Four cases where the defence was explicitly used as a defence to a charge of common assault;
 - Four cases where the defendant had been charged with common assault but did not explicitly use the defence, although it may have been a factor in acquittal or discontinuance; and
 - Four cases where reasonable punishment was put forward by the defence despite the fact that it did not constitute a legal defence to the charge of child cruelty.
- 3.20 In its 2007 review, the UK Government concluded there was evidence to suggest the defence had been raised where it should not have been available.

²¹ www.cps.gov.uk

²² Prosecution guidance on Offences Against the Person, incorporating the Charging Standard, is regularly updated and is available at <https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard>

²³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/344503/Review_of_Section_58_of_the_Children_Act_2004.pdf

3.21 The CPS subsequently issued a policy bulletin to all its staff, reminding them of the changes introduced by section 58 of the Children Act 2004 and the revised Charging Standard and reminding prosecutors to inform courts, juries and defence lawyers that the defence of reasonable punishment would not be available unless the defendant is the child's parent or an adult acting *in loco parentis* and the charge was one of common assault.

3.22 Further revisions to the Charging Standard, to clarify the approach where reasonable punishment may come into consideration, were included in the version of the Standard published on 13 June 2018. There have been further iterations of the Charging Standard²⁴ since then, published on the CPS website, with the provisions relating to reasonable punishment carried over into the most recently-updated version.

3.23 The current Charging Standard provides advice about the selection of the charge where reasonable punishment may be a defence as follows:

"In selecting the most appropriate charge, where the likely defence is one of "reasonable punishment" (s58 Children Act 2004), regard must be given to the case of A v UK (1999) 27 EHHR 611. Unless the injury is transient and trifling and amounted to no more than temporary reddening of the skin, a charge of ABH, for which the defence does not apply, should be preferred."

3.24 The Charging Standard also provides advice about factors to take into account to assist in determining the reasonableness of the punishment:

"The Court of Appeal in the case of R v H, The Times 17 May 2001 adopted the guidance set out in the case of A v UK and considered the factor to be taken into account where a defence of reasonable punishment is raised. Therefore, in such a case, limited to common assault by s58, the following factors will assist in determining whether the punishment in question was reasonable and moderate:

- *the nature and context of the defendant's behaviour;*
- *the duration of that behaviour;*
- *the physical and mental consequences in respect of the child;*
- *the age and personal characteristics of the child; and*
- *the reasons given by the defendant for administering the punishment."*

3.25 The Code for Crown Prosecutors was revised following a consultation in 2018. It reaffirms that the DPP is the head of the CPS, which is the principal public prosecution service for England and Wales and states (at 2.13) that where the law differs in England and Wales prosecutors must apply the Code and have regard to any relevant policy, guidance or charging standard. The CPS is aware of the Welsh Government's intention to remove the defence of reasonable punishment and agrees that, if the Bill to remove the defence is passed, the

²⁴ <https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard>

Charging Standard will need to be amended to make it clear the defence no longer applies in Wales.

Data on reasonable punishment cases handled by the CPS

3.26 A Freedom of Information request made to the CPS in February 2018²⁵ asked for information about the number of times the defence of reasonable punishment had been raised in cases where a decision to charge had been made. During the period 2009 to 2017, three notifications were made – two in 2011 and one in 2014. The cases all emanated from England; there were no recorded uses of the defence in Wales. However, the CPS noted that:

- It is possible not all cases were notified to the appropriate directorate;
- The number of notifications may not reflect all that were made, as some prosecutors may have notified the responsible policy lead directly, rather than via the administrative contact; and
- The requirement to notify was when a decision had been made to charge the chastiser – if the decision was not to charge then no notification was required.

Data on reasonable punishment cases handled by the police

3.27 As noted at paragraph 3.14 above, the police follow the same principles as the CPS in deciding whether or not to charge a person with a criminal offence: this includes considering whether there is sufficient evidence for a realistic prospect of conviction, and whether it would be in the public interest to charge.

3.28 Consequently, the defence of reasonable punishment is relevant to charging decisions made by the police, as well as those made by the CPS for cases which are referred to them. Therefore, in deciding whether to charge a parent for battery or assault of a child, the availability of the defence of reasonable punishment for the assault committed would be relevant.

3.29 The Police do not collect data on the numbers of cases of common assault by parents on children which may be categorised as reasonable punishment. However, the four Welsh police forces have worked with the Welsh Government to retrospectively identify such cases to establish a baseline for the purposes of this memorandum. Further detail can be found at annex 7.

Purpose and intended effect of the Bill

3.30 The purpose of the Bill is to help protect children's rights by abolishing the common law defence of reasonable punishment of children so it can no longer be relied on by parents in any criminal or civil court proceedings within the territory of Wales.

²⁵ <https://www.cps.gov.uk/sites/default/files/documents/publications/foi/2018/Disclosure-3.pdf>

- 3.31 Research has suggested parental attitudes towards the way children are raised and disciplined are already changing. The Welsh Government commissioned research in 2017²⁶ on parental attitudes towards managing young children's behaviour. This survey asked a similar range of questions to the previous research undertaken in 2015²⁷. Fewer parents of young children in Wales reported smacking their children in 2017 compared with parents asked in 2015 and only a minority of parents said they were comfortable with the idea.
- 3.32 The Welsh Government "Public attitudes to physical punishment of children: baseline survey, 2018" includes a sample of both parents/guardians and non-parents/guardians. It found that more respondents (49%) disagreed with the statement 'it is sometimes necessary to smack a child' than agreed with it (35%). For those aged 16-34, an even higher proportion disagreed with the statement (60%) whilst only 24% agreed^{28 29}.
- 3.33 The intended effect of the Bill, combined with an awareness-raising campaign and support for parents, is to bring about a further reduction in the use and tolerance of the physical punishment of children in Wales.

Actions by parents which would or would not be acceptable once the defence is removed

- 3.34 The actions which would or would not constitute physical punishment once the defence is removed have not been defined in the Bill.
- 3.35 This is because the common law already acknowledges the necessity (and lawfulness) of certain physical interventions carried out by parents, or other adults in the exercise of parental authority in relation to children, even where (but for this acknowledgement) the interventions would constitute assault or battery.
- 3.36 The legality of these interventions does not derive from the existence of the defence of reasonable punishment, as they are not intended to constitute physical punishment. This means that certain physical interventions by a parent in relation to a child are permissible even where, in the context of two adults, those interventions would not necessarily be permitted.

²⁶ Welsh Government (2018) 'Parental Attitudes Towards Managing Young Children's Behaviour 2017', SOCIAL RESEARCH NUMBER: 42/2018 <https://gov.wales/parental-attitudes-towards-managing-young-childrens-behaviour-2017>

²⁷ Welsh Government (2015) "The Attitudes of Parents towards Managing Young Children's Behaviour: Revised Report National Survey for Wales, 2014–15 – Re-contact Survey, SOCIAL RESEARCH NUMBER: 9/2018 <https://gov.wales/attitudes-parents-towards-managing-young-childrens-behaviour-2015>

²⁸ In addition, 14% of respondents 'neither agree nor disagree' and 3% reported that they 'don't know'.

²⁹ Welsh Government "Public attitudes to physical punishment of children: baseline survey, 2018", GSR SOCIAL RESEARCH NUMBER: 25/2019 Welsh Government commissioned the independent market research agency, Beaufort Research, to interview a representative quota sample of 1,002 adults aged 16+ across Wales in their own home. This includes both parents/guardians and non-parents/guardians.

25/2019 <https://gov.wales/sites/default/files/statistics-and-research/2019-06/public-attitudes-to-physical-punishment-of-children-baseline-survey-2018.pdf>

- 3.37 An example might be the physical intervention necessary to keep a child safe from harm, such as physically stopping a child from running into a road (as opposed to any physical intervention intended to punish a child for running into a road) or physically restraining a child to keep them from injuring themselves or others. Other examples might be the use of reasonable force to dress a child, or to brush a child's teeth.
- 3.38 The exercise of parental authority may also require physical interventions which are necessary for the purpose of using alternatives to physical punishment, as a means of encouraging positive behaviour and keeping children safe. This would include, for example, carrying a child to a time out area.

The use of reasonable force in schools

- 3.39 Corporal punishment was outlawed in state schools through the Education (No. 2) Act 1986 (section 48A), now repealed³⁰ and in independent schools in 1998³¹. The current law prohibiting the use of corporal punishment in relation to pupils receiving education is set out in section 548 of the Education Act 1996³². Current provisions in Wales relating to the use of reasonable force in schools are set out in the Welsh Government guidance 097/2013, 'Safe and effective intervention – use of reasonable force and searching for weapons'³³. By removing the defence of reasonable punishment, we do not intend to impact on the ability of teachers and other members of the school workforce to control and restrain pupils in accordance with this Guidance.

Policy aim and supporting evidence

- 3.40 The overarching objective of the Bill is to protect children's rights by prohibiting physical punishment by parents. The United Nations Committee on the Rights of the Child recognises that any physical punishment of children, however minor, is incompatible with the human rights of children under the United Nations Convention on the Rights of the Child (UNCRC) Article 19, and has called for it to be abolished. It has issued a general comment to highlight its recognition of the right of the child to respect of their human dignity, physical integrity and equal protection under the law.³⁴
- 3.41 The Welsh Government considers that the Bill brings Wales in line with recommendations of the UN Committee on the Rights of the Child³⁵. It also accords with the recommendations of a number of other key international

³⁰ <https://www.legislation.gov.uk/ukpga/1986/61>

³¹ Section 131, School Standards and Framework Act 1998
http://www.legislation.gov.uk/ukpga/1998/31/pdfs/ukpga_19980031_en.pdf

³² <http://www.legislation.gov.uk/ukpga/1996/56/section/548>

³³ [Safe and effective intervention: guidance for schools and local authorities](#)

³⁴ 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

<https://www.refworld.org/docid/460bc7772.html>

³⁵ <https://ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

bodies such as the UN Human Rights Council³⁶ and the UN Committee on the Elimination of Discrimination Against Women³⁷.

- 3.42 The research evidence relating to the potential impact of physical punishment on children, alternatives to physical punishment, and attitudes towards the physical punishment of children has been considered. A summary of relevant evidence was included for consultation purposes at pages 12 to 17 of the consultation document, which was published on 9 January 2018³⁸.
- 3.43 The consultation document analysis of the evidence acknowledges that research around parental physical punishment is complex. There are recognised issues in determining the impact of physical punishment on children, including the many other external influences in a child's life which may affect outcomes; the reliance of many studies on retrospective self-reporting by parents; and the possibility that parents may feel under pressure to give a view which they consider to be socially acceptable.
- 3.44 In light of these issues, the analysis acknowledges that there is unlikely to be any research evidence which specifically shows the effects of a light and infrequent smack as being harmful to children. However, the consultation analysis was able to conclude that no peer-reviewed research has shown improvements in developmental health as a result of parents' use of corporal punishment. In addition, it set out that research suggests positive parenting, is associated with benefits at all points in a child's development.
- 3.45 In our consultation document summary of the evidence we cited a 2005 meta-analysis comparing child outcomes of physical punishment and alternative disciplinary tactics³⁹. This was incorrectly cited (page 14). We have acknowledged this inadvertent paraphrasing error. We have revisited this evidence and concluded that it does not alter the overall assessment presented.
- 3.46 Since the consultation document was published, we have taken account of the responses to the consultation, and of further relevant research which has been published. This includes four pieces of research commissioned by the Welsh Government:

³⁶ <https://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx>

³⁷ <https://www.ohchr.org/en/hrbodies/cedaw/Pages/CEDAWIndex.aspx>

³⁸ <https://gov.wales/sites/default/files/consultations/2018-02/180109-legislation-consultation-en.pdf>

³⁹ <https://gov.wales/sites/default/files/consultations/2018-02/180109-legislation-consultation-en.pdf>

(1) Parental attitudes towards managing young children's behaviour, 2017

3.47 This research, conducted by Beaufort Research, was commissioned by the Welsh Government and published on 11 July 2018⁴⁰. It was broadly a repeat of previous research undertaken for the Welsh Government by Wavehill Ltd in 2015⁴¹. Whilst there were some new questions in the 2017 survey, most were repeated from the 2015 survey and the same methods and approach were used. This, therefore, enabled comparisons to be made between the 2017 and 2015 study.

3.48 Key points from this research include:

- **Parental attitudes towards managing children's behaviour:** There was a shift in attitude since the 2015 research, with fewer parents and guardians of young children in Wales supportive of physical punishment in 2017. For example, in 2017, 81% of parents disagreed with the statement "It is sometimes necessary to smack a naughty child" compared to 71% in 2015.
- **Attitudes towards legislation on managing children's behaviour change:** Attitudes towards law reform had not changed significantly compared to the survey in 2015. However, 50% of parents surveyed in 2017 did not agree that the law should allow parents to smack their children (compared to 24% who agreed that it should). In a slightly different question, parents were asked whether there should be a complete ban on smacking; 48% agreed there should be a complete ban on smacking and 39% disagreed.
- **Advice and support for managing children's behaviour:** in the 2017 survey 40% of parents reported they had sought advice or information about managing their children's behaviour. For these parents, the most popular source of advice and information was the internet (52%), followed by a health professional (35%), school (20%) and a friend/relative (14%). A similar question was asked in the 2015 survey, where only 12% of those accessing support for parenting skills had done so online.
- In the 2017 survey 95% of those who had accessed advice or information about managing children's behaviour reported that it had a positive influence on their parenting skills or confidence: 49% reported that it had helped a lot, and 46% that it had helped a little.

⁴⁰ Welsh Government (2018) 'Parental Attitudes Towards Managing Young Children's Behaviour 2017', SOCIAL RESEARCH NUMBER: 42/2018 <https://gov.wales/parental-attitudes-towards-managing-young-childrens-behaviour-2017>

⁴¹ Welsh Government (2015) "The Attitudes of Parents towards Managing Young Children's Behaviour: Revised Report National Survey for Wales, 2014–15 – Re-contact Survey, SOCIAL RESEARCH NUMBER: 9/2018 <https://gov.wales/attitudes-parents-towards-managing-young-childrens-behaviour-2015>

(2) Parental Physical Punishment: Child Outcomes and Attitudes, 2018

3.49 The former Cabinet Secretary for Communities and Children asked the Public Policy Institute for Wales (PPIW) – now the Wales Centre for Public Policy (WCPP) - to undertake a review of the evidence about children’s attitudes towards physical punishment and the link between parental physical punishment and child outcomes. The review was published on 19 July 2018⁴².

3.50 The review indicates that, overall, the balance of evidence supports the following conclusions:

- Severe physical punishment and child abuse are harmful to child development;
- Although there is no definitive evidence that ‘reasonable’ physical punishment causes negative outcomes for children, there is evidence that it is associated with negative outcomes;
- There is no reliable evidence demonstrating that ‘reasonable’ physical punishment has long-term developmental benefits, or is more effective at changing short-term behaviour, relative to other, non-physical means;
- Physical punishment for defiant children is no more effective at changing short-term behaviour than other forms of non-physical discipline;
- The majority of researchers in the field make the judgement that all physical punishment under all conditions is potentially harmful to children.

3.51 In terms of the links between physical punishment and child outcomes, the report explains there are several hundred studies and that these do not all come to the same conclusions. The review authors’ view is:

“... the evidence does not definitively show that “reasonable” parental physical punishment causes negative outcomes. But there is evidence of an association with negative outcomes, and no evidence of benefits, either in terms of long-term developmental benefits, or in terms of its efficacy in influencing short-term changes to behaviour relative to other, non-physical means.”

⁴² <https://www.wcpp.org.uk/publication/parental-physical-punishment-child-outcomes-and-attitudes/>

(3) Legislating to Prohibit Parental Physical Punishment of Children, 2018

- 3.52 At the request of the former Cabinet Secretary for Communities and Children, PPIW carried out a review about what can be learned from those countries, which have legislated to prohibit the physical punishment of children and, specifically, to explore the impact of legislation prohibiting physical punishment and the factors which make such legislation effective or ineffective.
- 3.53 The report of the review was published on 2 November 2018 and includes the following findings:⁴³
- **There is a link between legislating on physical punishment and changes in attitudes towards and prevalence of the use of physical punishment:** The report concludes: *“The available evidence supports the view that legislating on physical punishment can contribute to changes in both attitudes towards, and the use of, physical punishment but that sustained information campaigns and support to parents are also needed for legislation to be effective.”*
 - **The important role of information campaigns:** *“The conclusion drawn by almost all studies is that corporal punishment bans are associated with declining support for and practice of corporal punishment ... but that it is often in combination with other factors (such as changing social policies) and direct causal connections cannot be proved. Information campaigns which are sustained and repeated are necessary, not only to raise awareness of the change, but also to allay fears about increased risks of prosecution for ‘trivial’ smacks and fears of increased compulsory intervention in family life.”*

(4) Corporal punishment bans and physical fighting in adolescents: an ecological study of 88 countries (2018)⁴⁴

- 3.54 This study, published in BMJ Open, included a diverse sample of countries and is one of the largest cross-national analyses of youth violence, with more than 400,000 participants. The data was drawn from the Health Behaviour in School-aged Children (HBSC) study and Global School based Health Survey (GSHS), which are well-established international surveys of adolescents.
- 3.55 The study found:
- An association between national bans of corporal punishment in all settings and less frequent physical fighting in male and female adolescents.
 - When looking at countries with partial bans, the results indicate that countries that ban corporal punishment in schools but not in the home (including Canada, the USA and the UK) also have a lower prevalence of fighting than countries with no bans, but only in females.

⁴³ <https://www.wcpp.org.uk/publication/legislating-to-prohibit-parental-physical-punishment-of-children/>

⁴⁴ <https://bmjopen.bmj.com/content/8/9/e021616>

- Partial bans on corporal punishment did not relate to the prevalence of fighting in adolescent males. The researchers suggested this could be because males, compared with females, experience more physical violence outside school settings or are affected differently by corporal punishment by teachers.
- There are some limitations to the study: causal associations could not be inferred due to data gaps and study design, and it is unclear whether bans precipitated change or reflect a social milieu that inhibits youth violence.
- However, overall, the results suggest a graded association between the breadth of corporal punishment bans and the prevalence of frequent physical fighting in children aged 13 with more comprehensive bans related to less fighting.

(5) Public attitudes to physical punishment of children: baseline survey, 2018⁴⁵

- 3.56 Welsh Government commissioned the independent market research agency, Beaufort Research, to interview a representative quota sample of 1,002 adults aged 16+ across Wales in their own home. This includes both parents/guardians and non-parents/guardians.
- 3.57 The objective of this research was to establish a research baseline on public awareness and opinion towards physical punishment of children and the proposed legislation. It was carried out in November 2018, four months before the Bill was introduced to the National Assembly for Wales.
- 3.58 Although some of the questions used in this research were similar to those used in the surveys commissioned by the Welsh Government in 2015 and 2017, the method, sample and approach used were different and therefore direct comparisons cannot be made.
- 3.59 Key points from this research include:
- **Attitudes towards managing children’s behaviour** – When asked whether they agreed ‘it is sometimes necessary to smack a child’, more disagreed (49%) than agreed (35%). For those aged 16-34, an even higher proportion disagreed with the statement (60%) whilst only 24% agreed⁴⁶. Those with caring responsibilities for children aged seven or under were less likely to agree that ‘it is sometimes necessary to smack a naughty child’ (28%) compared with those who do not have caring responsibilities for those aged seven and under (38%).

⁴⁵ [Public attitudes to physical punishment of children: baseline survey, 2018](#)

⁴⁶ In addition, 14% of respondents ‘neither agree nor disagree’ and 3% reported that they ‘don’t know’.

- **Knowledge of current legislation** - 58% of people surveyed thought that the law did not allow parents to smack their children, while 27% thought the law did allow parents to smack and the remaining 15% reported being unsure. Older respondents (aged 55+) were more likely to believe that smacking was allowed (32%), although they were still in the minority.
- **Awareness of proposed changes to legislation** - 28% of people reported that they were aware of proposed changes to the law around physical punishment of children at an unprompted level. Awareness was no greater among carers of children seven and under than those who did not have these responsibilities.
- **Opinion of proposed changes to legislation** - Respondents were asked whether they were in favour of the removal of the defence of reasonable punishment, against it, or needed more information to decide. Overall, there was mixed opinion on this, however more respondents reported being in support of the removal (38%) than reported being either against it (31%) or needing more information / don't know (31%). Those with caring responsibilities for children aged seven and under were more likely to be in favour of the proposed change (47% in favour, 27% against) compared with those who did not have these responsibilities (36% in favour, 32% against).

Fit with Welsh Government policies and priorities

- 3.60 The Programme for Government, *Taking Wales Forward*⁴⁷ reaffirmed the Welsh Government's intention to take forward, on a cross-party basis, legislation which would remove the defence of reasonable punishment.
- 3.61 *Taking Wales Forward* outlines a number of measures aimed at improving the health and wellbeing for all, to ensure everyone can fulfil their potential, meet their educational aspirations and play a full part in the economy and society of Wales.
- 3.62 Building on the headline commitments in the Programme for Government, *Prosperity for All*⁴⁸ sets out the Welsh Government's vision and commitments, which includes removing the defence of reasonable punishment. The early years is one of five priority areas with a vision for "children from all backgrounds to have the best start in life". This also aligns with the thinking around Adverse Childhood Experiences (ACEs). The importance of good parenting skills is reinforced by the evidence that ACEs can have negative and lasting effects on a child's health, education and wellbeing.
- 3.63 *Prosperity for All* recognises that confident, positive and resilient parenting is fundamental to preparing children for life, and that the provision of help and support to parents is important. The Bill supports the adoption of positive

⁴⁷ <https://gov.wales/taking-wales-forward>

⁴⁸ <https://gov.wales/prosperity-all-national-strategy>

parenting styles and contribute to several of the national wellbeing goals under the Well-being of Future Generations (Wales) Act 2015⁴⁹, including:

- A healthier Wales – evidence indicates positive parenting is a strong factor in promoting positive outcomes for children, benefitting their health, happiness and well-being, and laying the foundation for reaching their full potential in adult life (Robertson, 2017⁵⁰; O'Connor and Scott, 2007⁵¹; Katz and Redmond, 2009⁵²; Nixon, 2012⁵³).
- Globally responsible Wales – International human-rights and treaty bodies such as the UN Committee on the Rights of the Child⁵⁴, and the UN Human Rights Council⁵⁵ and the UN Committee on the Elimination of Discrimination Against Women⁵⁶, have advocated an end to all forms of corporal punishment, arguing that it violates children's human rights. Reforming legislation around the physical punishment of children in the home would be in accordance with article 19 (*"States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence...while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."*) of the UNCRC⁵⁷.

⁴⁹ <https://gov.wales/well-being-future-generations-wales-act-2015-guidance>

⁵⁰ Robertson, L. (2017) "Literature review on outcomes of parental discipline styles, evidence on effective parenting styles and the international experience of prohibition of physical punishment in law". Glasgow: Scottish Centre for Crime and Justice Research

⁵¹ O'Connor, T. and Scott, S. (2007) "Parenting and outcomes for children", York: Joseph Rowntree Foundation

⁵² Katz, I and Redmond, G. (2009) "Family income as a protective factor for child outcomes" Social Policy Review 21, Bristol: The Policy Press

⁵³ Nixon, E. (2012) "Growing Up In Ireland – How Families Matter For Social And Emotional Outcomes Of 9-Year-Old Children", Department of Children and Youth Affairs, Ireland, ISBN 978-1-4064-2646-5

⁵⁴ <https://ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

⁵⁵ <https://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx>

⁵⁶ <https://www.ohchr.org/en/hrbodies/cedaw/Pages/CEDAWIndex.aspx>

⁵⁷ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Supporting the implementation of the Bill

Support for parents

- 3.64 The Welsh Government has long recognised the need to provide support to parents in Wales through evidence-based parenting programmes. These have mainly been provided through the Welsh Government’s Flying Start⁵⁸ and Families First⁵⁹ programmes and encourage parents to adopt a positive style of parenting. Some of these programmes, such as Triple P and Incredible Years, have been independently evaluated extensively over the last 30 years with diverse groups of parents in many different countries. Studies demonstrated effectiveness in achieving improved and more positive parenting approaches, reduced parental stress and conflict over child rearing as well as improved child behaviour⁶⁰. In addition, Triple P and Incredible Years have been reviewed by the Early Intervention Foundation (EIF) and included in their guidebook for early intervention programmes⁶¹ which have achieved positive outcomes of children⁶².
- 3.65 Alongside the commitment to the Bill, the Welsh Government will continue to provide information, advice and support on a range of topics related to parenting, including positive alternatives to physical punishment, and other common concerns such as potty training, tantrums and mealtimes.
- 3.66 The Welsh Government’s Parenting Support Guidance⁶³ encourages those delivering parenting support to tailor programmes to meet the specific needs and circumstances of parents and the goals identified by them. Parenting support should be delivered in a way that values and uses parents’ expertise and is compatible with their beliefs and values.
- 3.67 Across Wales, parents and carers have access to a range of services to support them delivered by partners in local government, health, education, social services, social justice and the third sector. Types of support available include evidence-based, group-based structured parenting programmes; one-to-one support; informal structured group-based parenting support; and informal drop-in support.
- 3.68 This support is delivered at different points in a child’s life (antenatal to teenage) and ranges from support for parents with low levels of need, through to more targeted, intensive support. All families have access to a range of universal services provided by midwives, Health Visitors, GPs and Family Information Services. Childcare providers and schools also have a vital role in identifying

⁵⁸ <https://gov.wales/flying-start-guidance>

⁵⁹ <https://gov.wales/families-first-guidance>

⁶⁰ For a list of research articles please visit the Triple P⁶⁰ and Incredible Years’ websites <http://www.incredibleyears.com/for-researchers/evaluation/>

⁶¹ <https://guidebook.eif.org.uk/about-the-guidebook>

⁶² The EIF evidence review found these programmes to have evidence of a short-term positive impact from at least one rigorous evaluation where a judgment about causality can be made.

⁶³ <https://gov.wales/sites/default/files/publications/2019-07/flying-start-parenting-support-guidance.pdf>

children and families who have additional needs and in supporting parents to provide a positive home learning environment.

- 3.69 The Welsh Government *Parenting. Give it Time* campaign⁶⁴ started in 2015 focussing on support, information and advice for families with children up to the age of 5. The new campaign, launched in October 2018 provides information, advice and support for parents of children up to the age of 7. It promotes positive parenting messages through social and print media and digital advertising. A dedicated website and Facebook page provide parenting tips on common parenting concerns like tantrums, bed times, meal times and potty training, information and advice, and signpost parents to sources of further support.
- 3.70 The Welsh Government will enhance the support already provided by expanding the age range of the *Parenting. Give it Time* campaign from 0 - 7 years of age to 0 - 18 years of age in order to support parents with older children. In the financial year 2019-20 a budget of around £30,000 has been identified to develop new resources.
- 3.71 A mapping exercise has been conducted to examine the extent of parenting support currently provided across Wales and help inform decisions about future delivery. Further details can be found in Chapter 4.
- 3.72 We have also looked at the role of the Healthy Child Wales programme in supporting parents. The Healthy Child Wales programme delivers key public health messages covering the period from conception to 7 years of age. It supports families to make long term health enhancing choices in order to provide a safe, nurturing environment. At every contact, opportunities are taken to ensure that key public health priorities are identified and evidence-based messages delivered in order to improve the health and well-being of children and their families. The Welsh Government will ensure that any key messages about the removal of the defence of reasonable punishment and positive parenting techniques are cascaded through the Health Visitor and Specialist Community Public Health Nurse Forum to inform the workforce as necessary.
- 3.73 Public Health Wales are working on the provision of a suite of information for expectant mothers, which will eventually replace the advice currently provided by the *Bump, Baby and Beyond* book⁶⁵.
- 3.74 The aim is that key information, which will include information about the Bill, will be presented in a format that is accessible to parents and appropriate to their child's needs and stage of development.

⁶⁴ <http://giveittime.gov.wales/?lang=en>

⁶⁵ <http://www.wales.nhs.uk/documents/Pregnancy%20to%204%20Years%20Book%20FINAL%20English%20March%202019%20-%20E-Book%20V....pdf>

Raising awareness of the provisions of the Bill

- 3.75 Parents and those acting with parental responsibility will need to be aware of the proposed change in the law before it comes into force.
- 3.76 The 2018 PPIW report *Legislating to Prohibit Parental Physical Punishment of Children*⁶⁶ found that where a change in the law is not accompanied by a publicity campaign or a campaign is not sustained, knowledge of the law is less widespread.
- 3.77 Alongside the existing *Parenting. Give it Time* campaign we are, therefore, developing a comprehensive strategy and campaign to raise awareness of the change in the law which will be brought about by the Bill. This is discussed further in Part 2 of this memorandum (impact assessment).
- 3.78 The Welsh Government will build and maintain relationships with a range of individuals and organisations to help ensure that affected parties understand the changes in legislation.

⁶⁶ <https://www.wcpp.org.uk/publication/legislating-to-prohibit-parental-physical-punishment-of-children/>

Chapter 4: Consultation

- 4.1 A public consultation was launched on 9 January 2018⁶⁷, with the intention of gaining public and stakeholder views to inform further development of the Bill and to address any concerns as the legislation developed. It was decided not to consult on a draft Bill, because the sole operative provision of such a Bill would be to remove the defence of reasonable punishment. We consulted on the wider issues related to implementing such a provision.
- 4.2 The consultation included seven questions, including whether respondents agreed the removal of the defence would help protect children's rights; the impacts on stakeholders (including parents, carers and guardians, and public bodies and frontline professionals); understanding of the term corporal punishment and the impact on the Welsh language.
- 4.3 The consultation was widely distributed electronically and via social media, and was published on the Welsh Government website. The documents included an easy-read version and a version for young people. A draft Regulatory Impact Assessment, a Welsh Language Impact Assessment and a Children's Rights Impact Assessment were published alongside the consultation documents.
- 4.4 External engagement events were held with representatives of stakeholder organisations, the general public and groups of parents and young people during the consultation period. The consultation ended on 2 April 2018. There were 1,892 responses to the consultation, and 274 people participated in external engagement events. An analysis of the responses was prepared by an independent contractor⁶⁸.
- 4.5 The key question asked was whether respondents agreed the proposal would help achieve the stated aim of protecting children's rights. While the data collected cannot be taken as representative of the wider population, 50.3% of respondents agreed the legislative proposal would help achieve the aim of protecting children's rights; 48.1% disagreed and 1.5% said they didn't know.
- 4.6 While many respondents welcomed the proposal and considered it would help achieve the aim of protecting children's rights, a number also raised concerns, including the potential criminalisation of parents. Respondents also identified the need to raise awareness of the proposed legislative changes so parents are aware of the change in the law with regard to the physical punishment of children and that parents would also need access to support to develop parenting skills. There were a number of comments about the potential impact on public bodies, in addition to, or building on, those already identified in the consultation paper. Concerns were also raised about the evidence considered by the Welsh Government, and the detail of how the proposal would be implemented in practice.

⁶⁷ <https://gov.wales/sites/default/files/consultations/2018-02/180109-legislation-consultation-en.pdf>

⁶⁸ <https://gov.wales/legislative-proposal-remove-defence-reasonable-punishment>

- 4.7 The Welsh Government has considered these points, and has addressed, or plans to address them, as follows:

Support for parents

- 4.8 Providing information and support to parents and raising awareness of the legislative change is part of the plan for implementing the legislation, alongside the ongoing provision of advice and support on positive alternatives to physical punishment. A reasonable period after Royal Assent and before the new arrangements are brought into force is proposed, to allow sufficient time to allow for this. The current package of support for parents is outlined in paragraphs 3.64 to 3.74. As part of the preparation for implementation, we have re-established the Parenting Expert Action Group which supported us to develop the original Parenting. Give it Time campaign. The Group comprises existing and new members, and is a task and finish group under the Strategic Implementation Group.

Impact on parents: potential criminalisation, interference in private lives and rights of families

- 4.9 One of the aims of the awareness raising strategy will be to ensure that, so far as possible, parents are aware of the change in the law before it comes into force. This means they will be aware of the possible consequences should they continue to physically punish their children; they can avoid the risk of being charged with a criminal offence by adopting non-physical approaches to discipline.
- 4.10 It is possible that some parents who physically punish their children will be charged, prosecuted and convicted, or offered a statutory out of court disposal which would be disclosed as conviction information on an enhanced Disclosure and Barring Service check, in situations where previously the defence of reasonable punishment may have been available. However, it is important to note that:
- the defence currently in existence is not an absolute defence: the CPS charging standard⁶⁹ explains the limits on its availability, and makes clear that even within those limits, the offending behaviour must be reasonable and moderate, taking account of factors such as the nature and context of the defendant's behaviour, duration of the behaviour, physical and mental consequences in respect of the child, age and personal characteristics of the child, and reasons given by the defendant for administering the punishment.
 - following removal of the defence, it will still be recognised at common law that it is lawful and necessary for parents to carry out certain physical

⁶⁹Prosecution guidance on Offences Against the Person, incorporating the Charging Standard, is regularly updated and is available at <https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard>

interventions with their children, even though these interventions would constitute battery if it were not for that recognition. Therefore, normal day to day activities, and physical interventions to protect the child or others, would still be lawful after removal of the defence.

- 4.11 The police and CPS are key stakeholders in the implementation of this proposed change in the law. We have consulted and met with them and with social services to work through their processes for handling allegations of physical punishment of children. The police and CPS are not bodies within our direct control but all parties agree that a proportionate response, in the best interests of the child, is essential.

Impact on public bodies

- 4.12 To take account of concerns about the potential impact on public bodies, we have engaged with relevant public bodies, including the police and social services. Together, we have considered the impact on resources and on how they could work to ensure consistent implementation across Wales, so that parents can have a reasonable expectation of how allegations will be dealt with, wherever they live in Wales.
- 4.13 This work will continue as the Bill progresses through the Assembly, and particularly following Royal Assent (assuming the Bill is passed by the Assembly) in preparation for commencement. This work is being conducted with key stakeholders through a Strategic Implementation Group. The Group's membership includes representatives from the police, police and crime commissioners, social services, health, education, Cafcass Cymru and Her Majesty's Court and Tribunal Service. Flowing from the Strategic Implementation Group are four work streams:
- Parenting Expert Action Group;
 - Data Collection and Monitoring Task and Finish Group;
 - Operations, Guidance and Training Task and Finish Group; and
 - Out of court disposals and diversion scheme Task and Finish Group
- 4.14 A high level work plan for the Strategic Implementation Group and associated task and finish groups is provided at Annex 8. This is a living document that is likely to evolve as the work around implementation progresses.
- 4.15 To take account of the number of stakeholders and the complex relationships between public bodies involved, a reasonable period is required between Royal Assent and commencement to allow any changes to processes to be put in place. Following an amendment at Stage 2 the removal of the defence of reasonable punishment will come into force two years following the day after Royal Assent, which ensures sufficient time for awareness raising and implementation.

Guidance/ training to support frontline professionals

- 4.16 The Welsh Government is engaging with professionals who work with children and families, to ensure they are fully aware of the Bill and, if the Bill is passed, ensure they are in a position to communicate the impact of the legislative change to the families they work with, and support them with alternative methods for guiding and providing boundaries for their children. The Operations, Guidance and Training Task and Finish Group will consider what, if any, existing guidance or training may need to be revised, or whether new guidance and training approaches will be needed. As the legislation removes a defence rather than creating a new offence, we consider it unlikely that extensive changes to current guidance and training for frontline professionals will be required, we will test this through the Task and Finish Group.
- 4.17 Preparatory work has already started. If the Bill is passed further work will be done between Royal Assent and commencement so that, as far as possible, a consistent approach to providing advice and guidance to parents on alternatives to physical punishment, will be in place for front line professionals by the time the legislation comes into force. This will also allow for any changes to safeguarding procedures to be communicated.
- 4.18 While the bulk of this preparatory work is being undertaken through the Strategic Implementation Group and the Operations, Guidance and Training Task and Finish Group, the Welsh Government is also utilising existing networks and forums to communicate with relevant professionals, making them aware of the Bill and its implications thus enabling them to start considering what guidance and training may be needed for their workforce. The Welsh Government has, for example engaged with professionals through the All Wales Health Visiting Forum; The Flying Start Health Visiting Forum; the Parenting Coordinator's Network; Education Trade Unions in Wales; and Wales Safeguarding Procedures Project Board.

Evidence

- 4.19 As outlined at paragraphs 3.40 to 3.59, the Welsh Government has considered a range of research, including further research published since the consultation document was published. Our views on the research are outlined in those paragraphs.

Detail about implementation

- 4.20 As outlined above, the Welsh Government is already consulting and working with a wide range of stakeholders. In Chapters 8 and 10 there is further information about implementation.

Chapter 5: Power to make subordinate legislation

5.1 The Bill contains one provision to make subordinate legislation. Table 5.1 (subordinate legislation) sets out in relation to this:

- (i). the person upon whom, or the body upon which, the power is conferred;
- (ii). the form in which the power is to be exercised;
- (iii). the appropriateness of the delegated power;
- (iv). the applied procedure; that is, whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.

Table 5.1: Summary of powers to make subordinate legislation in the provisions of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
4	Welsh Ministers	Regulation	Allows the Welsh Ministers to make transitional, transitory or saving provision in connections with the coming into force of a provision in the Bill.	No procedure	This Regulation relates to the commencement of provisions considered and passed by the Assembly.

PART 2 – REGULATORY IMPACT ASSESSMENT

A Regulatory Impact Assessment (RIA) has been completed for the Bill.

Chapter 6 contains the summary of the RIA.

Chapter 7 describes the options considered in relation to the proposal to remove the defence of reasonable punishment.

Chapter 8 sets out an analysis of the potential costs and benefits associated with the options.

Chapter 9 provides a summary of other relevant impact assessments.

Chapter 10 sets out the post implementation review plans.

Chapter 6: Summary of RIA

6.1 The following table presents a summary of the costs and benefits for the Bill as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix).

<i>Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill</i>		
Preferred option: Legislate to remove the defence of reasonable punishment in Wales (pages 41-55)		
Total estimated cost set out below breaks down as follows:		
Welsh Government	£3,351,000	
Police	£962,000 - £964,000	
Local authorities	£314,000	
Her Majesty's Courts and Tribunals Service	Up to £71,000	
Crown Prosecution Service	£44,000 - £54,000	
Health sector	£471,000	
Third sector	£5,000	
Task and finish groups (opportunity cost)	£128,000	
Updating guidance	£15,000 - £19,000	
Out of court disposal scheme	£810,000 - £2,508,000	
Stage: Introduction	Appraisal period: 2019/20 - 2026/27	Price base year: 2018/19
Total Cost Total: £6,171,000 - £7,885,000 Present value: £5,581,000 - £7,045,000	Total Benefits Total: £0 Present value: £0	Net Present Value (NPV): £-5,581,000 - £-7,045,000

Administrative cost

Costs:

The All Wales Child Protection Procedures provide common standards to guide child protection work for every local safeguarding board in Wales, and all professionals who work with children and families. The administrative cost to update these All Wales procedures and for key safeguarding organisations to update their own guidance in line with those revised procedures is estimated to be between £15,000 and £19,000. Details of these costs can be found at paragraphs 8.113 to 8.119.

The opportunity cost for those working in a safeguarding role who will need to familiarise themselves with the new guidance is estimated to be £882,000. There is a further training cost to police forces in Wales of between £8,000 and £10,000 and a training cost to the CPS of £6,000. Details of these costs can be found at paragraphs 8.122.

The Welsh Government's work to raise awareness of the Bill will incur a cost of up to £2.759m, this includes internal staff costs to manage the communications campaign as described at paragraphs 8.32 to 8.35.

There will be an upfront cost to Welsh Government of £492,000 associated with the operation of the Task and Finish/implementation groups and an opportunity cost of £128,000 spread across various stakeholders to participate on these groups, as described at paragraphs 8.64 to 8.68.

There is a £100,000 cost to Welsh Government for the post-implementation review of the change in legislation, as described at paragraphs 8.108 to 8.112.

Transitional: £4,391,000 - £4,397,000	Recurrent: £0	Total: £4,391,000 - 4,397,000	PV: £4,081,000 - £4,087,000
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Cost-savings:

No administrative cost savings have been identified.

Transitional: £0	Recurrent: £0	Total: £0	PV: £0
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Net administrative cost: £4,391,000 - £4,397,000

Compliance costs

The best estimate of costs incurred by public services and the justice system are set out at paragraphs 8.40 to 8.63. The existence of the defence means there is no published data within Wales which would provide a baseline for current levels of 'reasonable punishment'. Therefore, the best estimates provided within the RIA will need to be followed up with data collection and monitoring both pre and post implementation to provide the most accurate information about the impact on public services and the justice system.

The total cost below covers best estimates of cost to the police for responding to reports of assault on children which would currently be considered to be 'reasonable punishment'; the justice system and CPS. The cost to the police during the appraisal period is estimated to be £890,000, the cost to HM Courts and Tribunals Service is up to £70,000 and the cost to the Crown Prosecution Service is between £10,000 and £20,000.

The cost of an Out of Court Disposal Scheme will depend on the model of scheme chosen. Current best estimates suggest the upfront cost to develop the scheme will be between £0 and £143,000 with an ongoing cost of between £810,000 and £2,365,000. Further information about the OoCD scheme is set out in paragraphs 8.69 to 8.107.

Transitional: £0 - £143,000	Recurrent: £1,780,000 - £3,345,000	Total: £1,780,000 - £3,488,000	PV: £1,500,000 - £2,958,000
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Other costs

No other quantified costs have been identified.

Transitional: £0	Recurrent: £0	Total: £0	PV: £0
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Unquantified costs

Unknown costs include the potential costs to:

- Social services as a result of a potential increase in referrals
- Family courts and 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
- CPS, as a result of a potentially higher volume of requests, for charging advice from the police

It has not been possible to quantify all of the potential costs arising from the bill, due to:

- Limited or lack of evidence on which to base the likely, realistic scale of the impact (for example although we have worked with a small number of local authorities we have been unable to establish a sufficiently accurate estimate for a baseline for social services⁷⁰ and Cafcass Cymru are currently unable to establish numbers of allegations of parental physical punishment in the context of litigation between separated couples but are considering how to resolve this⁷¹;
- The cost of a potential impact may vary according to individual circumstances.

Benefits and disbenefits

Benefits include:

- Helping protect children's rights by removing the defence of reasonable punishment
- Ensuring children have the same protection from physical punishment as adults
- Putting unregulated settings (where the defence of reasonable punishment is currently available for adults acting in loco parentis) on the same footing as educational settings
- Enabling frontline professionals to provide unequivocal advice to parents about the physical punishment of children

Potential dis-benefits (discussed further at paragraphs 9.3 to 9.4, and Annexes 4 and 5) include:

- the potential impact on a parent charged with the offence of common assault following removal of the defence
- the potential impact on the child of a parent arrested or charged in this way.

Total: £0

PV: £0

⁷⁰ The reasons for this have been outlined in a letter sent by the Deputy Minister for Health and Social Services' to the Chairs of the Children Young People and Education and Finance Committees on 7 January 2020

⁷¹ Please see Annex 4, paragraphs 45-47 for further information

Key evidence, assumptions and uncertainties

The aim of the Bill is to help protect children's rights, in accordance with the Welsh Government commitment to the UNCRC, and calls from the UN Committee on the Rights of the Child and other international organisations to remove the defence of reasonable punishment.

Key research and evidence which has been considered by the Welsh Government is highlighted in Chapter 3, paragraphs 3.40 to 3.59. In summary:

- The majority of researchers in the field make the judgement that all physical punishment under all conditions is potentially harmful to children⁷²
- Research with parents (or guardians) of young children suggests that parental attitudes towards managing children's behaviour in Wales are changing, with fewer parents of young children supportive of physical punishment in 2017 compared to 2015⁷³
- Although there is no definitive evidence that 'reasonable' physical punishment causes negative outcomes for children, there is evidence that it is associated with negative outcomes⁷⁴
- There is no reliable evidence demonstrating that 'reasonable' physical punishment has long- term developmental benefits, or is more effective at changing short- term behaviour, relative to other, non-physical means⁷⁵
- Legislating on physical punishment can contribute to changes in attitudes towards, and the use of, physical punishment, but sustained information campaigns and support to parents are also needed for legislation to be effective⁷⁶
- Research in 2018 with both parents/guardians and non-parents/guardians in Wales found that 49% disagreed that it is sometimes necessary to smack a child, and 35% agreed with it. For those aged 16-34, an even higher proportion disagreed with the statement (60%) whilst only 24% agreed⁷⁷
- Those with caring responsibilities for children aged seven or under, were less likely to agree that 'it is sometimes necessary to smack a naughty child' (28%) compared with those who do not have caring responsibilities for those aged seven and under (38%)

⁷² <https://www.wcpp.org.uk/publication/parental-physical-punishment-child-outcomes-and-attitudes/>

⁷³ <https://gov.wales/parental-attitudes-towards-managing-young-childrens-behaviour-2017>

⁷⁴ <https://www.wcpp.org.uk/publication/parental-physical-punishment-child-outcomes-and-attitudes/>

⁷⁵ <https://www.wcpp.org.uk/publication/parental-physical-punishment-child-outcomes-and-attitudes/>

⁷⁶ <https://www.wcpp.org.uk/publication/legislating-to-prohibit-parental-physical-punishment-of-children/>

⁷⁷ In addition, 14% of respondents 'neither agree nor disagree' and 3% reported that they 'don't know'.

Chapter 7: Options

7.1 Two options are presented for the purposes of this RIA. The policy objective is to prohibit the physical punishment of children in Wales by removing the defence of reasonable punishment. This can only be given effect by a change in the law. The two options, therefore, are to bring forward legislation to change the law, or to do nothing.

Option 1: Do nothing and retain the defence of reasonable punishment

7.2 “Do nothing”. The option of doing nothing would mean that the Welsh Government would not remove the defence of reasonable punishment in law in Wales. No legislation would be introduced and the present arrangements would continue.

Option 2: Introduce a Bill to abolish the defence of reasonable punishment in Wales

7.3 The Bill would abolish the defence of reasonable punishment, which is currently available to parents as a defence to the offences of assault and battery against a child/children in their care. It would not create a new criminal offence. The effect of the legislation would be that the physical punishment of children by parents in Wales would be prohibited.

7.4 Option 2 is the preferred option.

Introduction to Chapters 8 and 9

- 8.1 Chapter 8 considers the two options identified in chapter 7. The Bill will remove the common law defence of reasonable punishment of children, under both the criminal and civil law applying in Wales.
- 8.2 We have identified potential impacts on a number of organisations and individuals should the Bill be passed and come into force. A draft RIA⁷⁸ was published alongside the consultation on the legislative proposal in January 2018. This RIA builds on the work carried out in preparation for the draft RIA, and takes account of the outcome of the consultation, further engagement with stakeholders and new research evidence. The analysis of the costs, benefits and dis-benefits has developed as a result. This RIA has been updated to reflect new information available since the Bill was introduced in March 2019 and to take account of amendments at Stage 2.
- 8.3 Some of the potential impacts may have costs attached to them, and the best estimates of these costs are explored in the costs and benefits section of the RIA at chapter 8.
- 8.4 Throughout the document, figures are annual and pan-Wales unless specified. Costs have been rounded to the nearest £1,000 unless stated otherwise, some of the figures in the tables might not sum due to this rounding. The Bill is not expected to have a direct impact on businesses in Wales.
- 8.5 It is not possible to quantify or monetise all potential impacts arising from the Bill, because:
- In some cases, an impact is theoretically possible, but there is limited or no evidence on which to base the likely, realistic scale of the impact; for example, the likely scale of the impact in terms of an increase in referrals to social services; and/or
 - The cost of a potential impact may vary according to individual circumstances; for example, the cost of the impact on a parent cautioned or convicted for common assault on a child would depend on whether or not they work in a regulated activity or might wish to work in a regulated activity in future.
- 8.6 We have not attempted to monetise the aspiration for culture change as a result of the Bill, in terms of a reduction in the prevalence and acceptability of the physical punishment of children. We have monetised two mechanisms by which we seek to affect cultural change – awareness raising and parenting support.
- 8.7 Chapter 9 summarises the additional impact assessments we have carried out.

⁷⁸ <https://gov.wales/sites/default/files/consultations/2018-02/180109-legislation-regulatory-en.pdf>

- 8.8 To provide context for both chapters 8 and 9, we have provided further detail about relevant processes and procedures currently followed by stakeholders, and about the potential impact on parents, at Annex 4. The potential impact on children is the subject of a separate children's rights impact assessment⁷⁹ (CRIA), and is summarised in Chapter 9. A description of Disclosure and Barring Service (DBS) processes, and how a caution, out of court disposal, or conviction for assault on a child would be treated for DBS purposes, is at Annex 5.
- 8.9 As outlined in Chapter 10, a Strategic Implementation Group and Operations, Guidance and dedicated Training Task and Finish Group have been established to consider the extent to which current processes, training or guidance may need to be revised, and how to raise awareness among professionals who will be involved in the implementation of the law change. As we are not creating a new offence we expect existing guidance, across public bodies, to be updated, rather than produced from scratch. The organisations responsible for this guidance, for example the CPS or National College of Policing regularly update guidance to reflect changes in law and practice.

⁷⁹ <https://gov.wales/children-abolition-defence-reasonable-punishment-wales-bill-integrated-impact-assessments>

Chapter 8. Costs and benefits

Option 1: Do nothing

Description

- 8.10 This option would involve leaving the defence of reasonable punishment in place in law in Wales as it currently stands.
- 8.11 The analysis of the costs and benefits of this option assumes Welsh Government investment, in the wide-ranging support currently given to parents, carers and families in this Assembly term continuing at the same level. Key messages about the benefits of positive parenting would continue to be communicated, but the defence of reasonable punishment would remain. Therefore, the physical punishment of children in Wales, within the limits set out in section 58 of the Children Act 2004, would still be lawful.
- 8.12 The current support provided is outlined at paragraphs 3.64 to 3.74 of this Explanatory Memorandum. It includes evidence-based parenting programmes and direct support funded through the Welsh Government’s Flying Start and Families First programmes; services to promote positive parenting delivered by partners in local government, health, education, social services, social justice and the third sector; universal services provided by midwives, health visitors, GPs and Family Information Services; and information and advice provided through the Welsh Government *Parenting. Give it Time* campaign⁸⁰.

Costs

- 8.13 There would be no additional costs associated with option 1, as it is the “do nothing” option.
- 8.14 We anticipate under option 1 that the Welsh Government would continue to provide support to parents, carers and families in Wales. The table below sets out some of the ways in which the Welsh Government provides such support.

⁸⁰ <https://giveittime.gov.wales/?lang=en>

Programme / Activity	Cost
Health visiting and school nursing service for children from birth to 7 years.	The latest available data shows that as at 30 September 2018, there were 875.5 full time equivalent health visitors and 93.3 full time equivalent school nurses working in Wales (Stats Wales ⁸¹).
Programme / Activity	Cost
Flying Start is a Welsh Government programme for families with children under 4 years of age who live in some of the most disadvantaged communities in Wales. In addition to receiving parenting support, parents and carers in Flying Start areas are entitled to intensive health visiting, good quality part time childcare for 2-3 year olds and support for speech, language and communication. The programme has a target to reach 36,000 children (currently around 27% of the under 4 population) – it has exceeded this target for the fifth consecutive year.	In 2018-19, the total revenue spend on the Flying Start programme was £74.036m.
The Families First programme is delivered at a local level with each local authority strategically commissioning projects to respond to the needs of local populations. Families First supports parents in a number of ways, from the provision of information and advice to the provision of evidence based parenting interventions. Projects which provide access to parenting interventions or parenting support services cover a range of ages, from pre-birth to children and young people.	In 2018-19, the total revenue spend on the Families First programme was £37.108m.
The “Education begins at Home” campaign was launched in May 2014 and aims to encourage parents and carers to take an active interest in their child’s education by doing simple things, like reading with their child and making sure they have a healthy breakfast.	In 2017-18 the spend on the campaign was £90k. This contract produced resources to be used in subsequent years

⁸¹ <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/NHS-Staff/Non-Medical-Staff/nursingmidwiferyandhealthvisitingstaff-by-grade-areaofwork-year>

Programme / Activity	Cost
<p>The “Parenting. Give it time” campaign was launched in November 2015, targeted at those responsible for raising children from birth to 5 years old. It was re-launched in October 2018 with the age range extended to 7.</p> <p>The campaign is in its fourth year and provides positive parenting tips and information via a website and a Facebook page. Over 160,000 booklets and a suite of information sheets, have been created and translated into ten community languages. These have been provided to local services such as the Family Information Service, Flying Start and Families First settings, GP surgeries, health visitors, schools and libraries.</p>	<p>The total spend on the campaign in 2018/19 was £325k</p>

Benefits

- 8.15 There are no changes to the current situation, therefore, no additional cost would be incurred by Welsh Government
- 8.16 Similarly, no additional cost would be incurred by public services and the justice system regarding an increase in the number of reports of common assault on children following removal of the defence of reasonable punishment.

Dis-benefits

8.17 Disbenefits include:

- Welsh Government would not meet its stated policy aim, which is to help protect children’s rights by abolishing the physical punishment of children by parents. This is incompatible with the United Nations Convention on the Rights of the Child and will leave Wales, as part of the UK, open to continued criticism from the United Nations Committee on the Rights of the Child for not fulfilling its obligations under Article 19 (protection from all forms of violence).
- Children would continue to have less protection with regard to physical punishment than adults.
- Frontline professionals would continue to be unable to provide unequivocal advice to parents about physical punishment of children because of the existence of the defence.

- The Welsh Government would not achieve the intended effect of reducing physical punishment by parents in the way suggested in the PPIW report on legislating to prohibit parental physical punishment of children⁸².

⁸² https://www.wcpp.org.uk/wp-content/uploads/2018/11/181101_PPIW-REPORT-Legislating-to-Prohibit-Parental-Punishment.pdf

Option 2: Legislate to remove the defence of reasonable punishment.

Description

- 8.18 Under option 2, legislation will abolish the defence of reasonable punishment available to parents and those acting in loco parentis in Wales facing a charge of assault or battery against a child /children in their care (for further information, see paragraphs ii to v in the Summary of Part 1, and Chapter 3, paragraphs 3.13 to 3.25 on operation of the current defence, and paragraphs 3.30 to 3.33 on purpose and intended effect of legislation).
- 8.19 As a result of removing the defence of reasonable punishment any organisation and public service involved with the safeguarding of children will need to review guidance and training to ensure their policies and procedures are up to date. The justice system, public services such as some health related services, education including schools, and some third sector organisations will have to be aware of the change in the law. They will need to ensure that practice and processes reflect the change in the law as well as raising awareness among employees through training and guidance.
- 8.20 Over and above this, the main impacts are likely to fall on social services and the police. There is little published evidence available about the effects on public services in other countries that have made similar legislative changes. There is evidence from New Zealand where the police service has published data about the numbers of cases reported to them in the three months before and five years after law change⁸³. The published data indicates that an increase in reporting of physical punishment incidents is likely as a result of law change and awareness of that change; but there are differences between the situations in New Zealand and Wales which must be borne in mind when comparing the two.

Costs

- 8.21 The information contained in the RIA has been prepared through discussion with key stakeholders, including local authorities and the four police forces in Wales, and through researching data from other countries on the impact of measures they have taken to prohibit the physical punishment of children. If passed, the Bill is expected to receive Royal Assent in early 2020 and so the RIA considers costs and benefits incurred in the final quarter of 2019-20. The appraisal period runs until 2026-27. This timeframe is considered sufficient to capture the costs associated with the awareness raising and those costs incurred by stakeholders in the period following commencement. HM Treasury's central discount rate of 3.5% has been used to calculate present values.
- 8.22 The Bill only contains a single power to make regulations containing transitory, transitional or saving provision if such provisions are required in connection with

⁸³ <http://www.police.govt.nz/about-us/publication/crimes-substituted-section-59-amendment-act-2007>

the coming into force of section 1 of the Bill. There will be no other subordinate legislation deriving from the Bill therefore there are no costs mentioned relating to subordinate legislation.

Raising awareness of the change in the law

- 8.23 Under option 2, there would be additional costs relating to raising awareness of the change in the law, which would fall on the Welsh Government.
- 8.24 A report by the PPIW on legislating to prohibit parental physical punishment of children⁸⁴ highlighted experience from other countries which showed that a change in the law, accompanied by an awareness raising campaign and support for parents can lead to a decline in physical punishment and a change in attitudes. Where campaigns have been less intensive, there is a similar downward trend, but with a more limited impact⁸⁵.
- 8.25 The PPIW report on legislating to prohibit parental physical punishment underlined the importance of legislation and communications working hand in hand to deliver policy objectives. The report also found that where a change in the law is not accompanied by a publicity campaign, or a campaign is not sustained, knowledge of the law is less widespread. This highlights the importance of considering sustained awareness raising, not only in the period leading up to commencement of the legislation, but also following it, to consolidate messages about alternatives to physical punishment and positive ways to set boundaries for children⁸⁶.
- 8.26 Therefore, the Welsh Government recognises that a change in law must be accompanied by sustained awareness raising in Wales. Lessons about how best to do this can be learned from campaigns which have accompanied legislation both in Wales and elsewhere:
- In New Zealand, for example, the SKIP ('Strategies with Kids, Information for Parents'), government funded programme promotes positive parenting through community projects, through a number of media channels and through a website. Parents and caregivers interviewed as part of a review of the SKIP programme⁸⁷ reported incorporating the SKIP principles of effective discipline into their relationships as well as a higher degree of parenting efficacy and confidence.

⁸⁴ Public Policy Institute for Wales (2018) 'Legislating to Prohibit Parental Physical Punishment of Children' https://www.wcpp.org.uk/wp-content/uploads/2018/11/181101_PPIW-REPORT-Legislating-to-Prohibit-Parental-Punishment.pdf

⁸⁵ Heilmann, A., Kelly, Y., and Watt, R. C. (2015) "Equally Protected? A review of the evidence on the physical punishment of children" [online]. Available from: <https://www.nspcc.org.uk/globalassets/documents/research-reports/equally-protected.pdf> [Accessed: 12 December 2017]; Bussmann, K D; Erthal, C; Schroth, A (2011) "The Effect of Banning Corporal Punishment in Europe: A Five-Nation Comparison"

⁸⁶ Keating, Prof Heather (2018), University of Sussex, "Legislating to Prohibit Parental Physical Punishment of Children," Wales Centre for Public Policy. Available from:

<https://www.wcpp.org.uk/publication/legislating-to-prohibit-parental-physical-punishment-of-children/>

⁸⁷ Ministry of Social Development (2009), "Strategies with Kids – Information for Parents (SKIP) What it is and why it works", New Zealand Ministry of Social Development

- The second hand smoking in cars campaign ran for a total of 2 years and 1 month, from 2012-2015, at a cost of £1.75 million. This included advertising on TV, radio, in the printed media, through a variety of roadshows and events and a website. Messages were also disseminated amongst existing networks including the Flying Start and Families First Co-ordinators and by the Family Information Service.
- The campaign around the change in law for organ donation in Wales was conducted over the course of a 6 year period and at a total cost of £4.08 million. Communications activity began in 2013 with the vast majority of spend occurring during the period between Royal Assent of the Human Transplantation (Wales) Act in 2013 and its coming into force in 2015. The public awareness campaign was comprehensive and messages were cascaded across a wide variety of media channels and through supporting documentation delivered to every household in Wales. During the height of the campaign, awareness levels about the changes taking place to the organ donation system were at 82% (from a baseline of 58%)⁸⁸.

8.27 The table below represents three options for a low, medium or high intensity awareness raising strategy, which could be used to support the legislation to remove the defence of reasonable punishment.

	Description
Option A	A low intensity campaign would allow for two bursts of agreed activity in each year.
Option B	A medium intensity campaign in each year, with two-to-three substantial bursts of agreed activity in each year.
Option C	A high intensity campaign, with large bursts of agreed activity in each quarter of the year leading up to and after commencement.

8.28 During Stage 1 scrutiny, the Deputy Minister for Health and Social Services confirmed her commitment to a high intensity communications and awareness raising campaign (Option C above). Planning of ongoing awareness raising will need to take into account ongoing research and evaluation however it is anticipated that the high intensity campaign will comprise four strands of activity: advertising (including TV, radio, digital and outdoor), public relations, stakeholder engagement and work with targeted and harder to reach audiences.

⁸⁸ Welsh Government / Beaufort Research (2016), "Survey of Public Attitudes to Organ Donation: Waves 10, 11 and 12." Available from: <https://gov.wales/public-attitudes-organ-donation-waves-10-11-and-12>

Duty to raise awareness and period between Royal Assent and commencement

- 8.29 The Stage 1 Committee Reports from the Children, Young People and Education Committee and the Finance Committee recommended the inclusion of a duty to raise awareness of the change in the law relating to the removal of the defence of reasonable punishment on the face of the Bill. The Deputy Minister for Health and Social Services agreed to bring forward a Stage 2 amendment in response to the Committees' recommendations. This amendment was agreed during the Stage 2 Children, Young People and Education Committee session on 24 October 2019.
- 8.30 The Children Young People and Education Committee also recommended the Welsh Government allow sufficient time between Royal Assent and commencement of the Bill's substantive provision (to remove the defence of reasonable punishment) and for the Deputy Minister to keep the National Assembly updated on her plans in this regard. The Committee considered this time would be needed to enable the provision of information and support to parents, to raise awareness of the legislative change, and to update the necessary training and guidance.
- 8.31 The Welsh Government agrees that sufficient time is required following Royal Assent to allow this work to be done. In addition, the Welsh Government considers a level of certainty about the period of time between Royal Assent and commencement would facilitate effective planning for implementation, including planning for a comprehensive awareness campaign prior to the removal of the defence of reasonable punishment. To this end, the Deputy Minister for Health and Social Services brought forward a Government amendment at Stage 2 to provide certainty on the date of commencement of the removal of the defence. Following agreement at the stage 2 scrutiny Committee on 24 October 2019, the abolition of the defence of reasonable punishment will come into force at the expiry of the period of two years beginning with the day after the day on which the Bill receives Royal Assent.

Costs of the communications campaign

- 8.32 The table below illustrates the potential costs of a high intensity campaign (Option C) for the period between Royal Assent and commencement, and for four years following commencement. These figures are based on an assumption of Royal Assent in January 2020; therefore, the 2019/20 year covers a two-three month period only. Planning of ongoing awareness raising will need to take into account continuing research and evaluation however it is anticipated that the high intensity campaign will comprise four strands of activity; advertising (including TV, radio, outdoor and digital), public relations, stakeholder engagement and work with targeted and harder to reach audiences.
- 8.33 Some communication costs will be incurred before Royal Assent; these will include, but are not limited to, staffing, research and development costs and stakeholder engagement.

Financial Year	Option C (high intensity campaign)
2019/20	£50,000
2020/21	£600,000
2021/22	£800,000
2022/23	£300,000
2023/24	£200,000
2024/25	£150,000
2025/26	£150,000
2026/27	-
WG Staffing Costs (6 years & 3 months)	£466,000
Total	£2,716,000

Figures may not sum to total due to rounding. Totals have been calculated using un-rounded numbers.

- 8.34 The above costs include the cost of a communications contract with an external communications agency; the contract and all awareness raising activity will be managed and co-ordinated by staff within the Welsh Government. For the purposes of this option, we estimate that the staffing would be equivalent to one full time Higher Executive Officer (HEO) post and one part time Senior Executive Officer (SEO).
- 8.35 The gross cost of one full time HEO per year is approximately £45,644 and the gross cost of one full time SEO per year is approximately £57,977, based on the current mid-point of the pay scale. Therefore, the annual gross staffing cost to the Welsh Government would be in the region of £75,000. It is anticipated that this resource would be required for a period of 6.25 years (should there be a change in law) and that, after this time, the roles would be subsumed into business as usual activities within existing teams.

Awareness Raising with Children

- 8.36 The aim of this Bill is to help protect children's rights, and engaging with children and young people is a priority for the Welsh Government.
- 8.37 The Welsh Government has consulted its Expert Stakeholder Group on plans for engaging with children and young people on the Bill. The consensus was that awareness raising with children and young people should be embedded within the wider context of children's rights, and included in ongoing activity, so that it can be framed and discussed within the context of children's rights in a safe and appropriate setting⁸⁹. In addition it was deemed appropriate to discuss

⁸⁹ This approach to engaging with children and young people on the Bill was set out in the Deputy Minister for Health and Social Services' letter dated 12 July 2019 to the Chair of Children Young People and Education Committee:

<http://senedd.assembly.wales/documents/s91370/Letter%20from%20the%20Deputy%20Minister%20or%20Health%20and%20Social%20Services%20-%202012%20July%202019.pdf>

It is consistent with the Children's Commissioner for Wales' view in her letter dated 11 July:

<http://senedd.assembly.wales/documents/s91371/Letter%20from%20the%20Children%20Commissioner%20for%20Wales.pdf>

our engagement strategy with representatives of young people. The Welsh Government has, therefore, asked Children in Wales to facilitate this consultation through Young Wales, both before and after Royal Assent, to help inform the Welsh Government strategy on engaging with children and young people on the Bill. This would be at a cost of approximately £43,000, spread over 2020/2021 and 2021/2022.

- 8.38 The second aspect of the work relating to awareness raising with children is to map those organisations working and caring for children and young people, including youth services, Healthy Child Wales, Flying Start, Families First and other key partners regarding early years settings, e.g., Cwlwm, and Mudiad Meithrin. The purpose of this is to ensure we have an understanding of the network of stakeholders who can cascade relevant, positive, empowering information to children and young people. Stakeholders would be equipped via a central rights-based resource pack on how to answer queries from children, young people and their families regarding the legislation.
- 8.39 Alongside this, work is being carried out to ensure that the objectives of the legislation are considered within the development of the new curriculum, including the Health and Wellbeing Area of Learning and Experience (AoLE). Practitioners developing the AoLE guidance are taking account of feedback and they will consider how the guidance can be refined to support professionals when thinking about different types of relationships in their curriculum design; this includes parenting and caring relationships. Work also continues with the Children's Commissioner and the NSPCC to understand how the legislation will be embedded in their school-facing projects.

Police, Social Services and the Justice System

8.40 While we anticipate there will be an impact on the justice system, and on (the police and social services, to accurately predict the impact on resources and associated cost is complex for the following reasons:

	Data required to assess impact on organisation	Data limitations
1	Identifying appropriate data to provide a baseline of current referrals to police in Wales	<p>Under their current reporting and recording practices, alleged offences of assault at the level of reasonable punishment of children are not separately recorded. This has presented challenges in separating out data relating to physical punishment of children at the level where the defence of reasonable punishment would apply.</p> <p>Currently Home Office statistics of 'Police recorded crime' provide data on the number of cases of common assault and battery (under the broad category of Offences of Violence without injury, which includes a number of different offences under this heading). This is not broken down by age of victim or relationship to victim. It does not, therefore, enable us to provide data on the number of offences where parents could potentially have used the defence. These statistics also provide data for police recorded offences of cruelty to a child (Violence without injury) under the Children and Young Persons Act 1933 (section 1). This legislation relates to the welfare of children but is not isolated to physical punishment. It includes a number of other offences including neglect and exposure to anything which may cause suffering or injury to health.</p>
2	Identifying appropriate data to provide a baseline of current referrals to social services in Wales	<p>We have worked with social services colleagues to try to establish a baseline figure. Local authorities do not necessarily record the specific details of a referral or report of an incident in the first instance in a searchable form. The details of each individual case, record or report are usually established later in the process. This has presented challenges in separating out data relating to physical punishment of children where the defence of reasonable punishment would apply. The recording of incidents differs among the 22 local authorities, for example, some record under child protection some under a child welfare issue or other categorisations.</p>

	Data required to assess impact on organisation	Data limitations
3	<p>Appropriate data to provide a baseline for cases of assault at the level of reasonable punishment of children which may be prosecuted in the courts in Wales following the change in the law.</p>	<p>An alleged offence of physical assault on a child would be assessed by the CPS before it was prosecuted. If the CPS considered the defence would apply and there were no other grounds for prosecution, the case would probably not proceed to court. Data is not routinely published on the number of times the defence has been used, but as part of a UK Government review of section 58 of the Children Act 2004⁹⁰, 12 cases were identified where the defence had been used between January 2005 and February 2007 and resulted in acquittal or discontinuance. In response to a Freedom of Information request made in February 2018⁹¹, the CPS confirmed that during the period 2009 to 2017, three notifications were made of instances where the defence of reasonable punishment had been raised.</p> <p>As noted at paragraph 3.26 of this memorandum the data released in response to the Freedom of Information request is not necessarily complete, because e.g. it is possible not all cases were notified to the appropriate directorate. In addition, it was acknowledged that if a decision had been made not to charge the chastiser (because for example the CPS considered the prosecution would not be successful because of the existence of the defence of reasonable punishment), no notification was required. The same arguments would be likely to apply in relation to the number of cases identified as part of the UK Government's review.</p> <p>As a result, this data is not suitable as baseline data for the numbers of cases of reasonable punishment which may be prosecuted in the courts in Wales following the law change.</p>

⁹⁰https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/344503/Review_of_Section_58_of_the_Children_Act_2004.pdf

⁹¹<https://www.cps.gov.uk/sites/default/files/documents/publications/foi/2018/Disclosure-3.pdf>

	Data required to assess impact on organisation	Data limitations
4	Estimating the potential increase in referrals or additional burden on services or the court system.	<p>There is no precedent in the UK⁹² for removal of the defence, and there is limited relevant data from other countries to indicate the likely increase in referrals, or in cases which are prosecuted through the courts, following the removal of the defence. Although data is limited discussions with a range of stakeholders in Ireland and Malta, who have legal systems similar to our own, indicate that the police and social services have not been overwhelmed following law reform.</p> <p>There is however, data available in relation to New Zealand, where there is a legal system (as in England and Wales) based on a common law jurisdiction. New Zealand Police have published data for three months prior to enactment of their legislation, and over a 5 year period following enactment. This data identifies incidents of smacking and minor acts of physical discipline and whether or not prosecutions followed investigation of these incidents. This data is therefore relevant (subject to the caveats explained below) to our consideration of the potential impact on the police and on the court system.</p> <p>The New Zealand Government’s Ministry of Social Development publishes data in relation to referrals to their social services, but unlike the police data, this is not specifically aimed at reporting on incidents of smacking and acts of minor physical discipline in order to monitor the impact of the legislation on such referrals. Their annual reports include data for “reports of concern” that involve “smacking only” between 2011 and 2014, however, in general, they do not publish a comprehensive breakdown of the reasons for referral to social services below the categories of Physical Abuse and or other forms of abuse and neglect.</p>

8.41 In short, the increase in reporting, and thereafter prosecution, of such cases will depend upon a number of factors:

- Societal attitudes, awareness of and responses towards the new legislation
- Crown prosecution and justice policy in relation to the new legislation

⁹² Although the Children (Equal Protection from Assault) (Scotland) Act received Royal Assent on 7 November 2019 it will not come into force until 6 November 2020.

A note on using New Zealand data to give an indication of potential impact of the legislation on social services, the police and justice system

- 8.42 While there are similarities between Wales and New Zealand, with both jurisdictions based on common law, there are also a number of differences, for example:
- Differences between the Legislation in New Zealand and what is proposed in Wales;
 - Law enforcement in New Zealand is distinct to that in Wales;
 - Age of child covered by the legislation;
 - Population differences and
 - Parenting support and awareness raising about the legislation
- 8.43 Considering what has happened in New Zealand following legislation change to prohibit physical punishment is helpful. However, there are different factors which might have a bearing on the rates of physical punishment of children pre- and post- enactment of legislation which cannot be controlled for including: availability of support; willingness to report crime; and prosecution rates. There was no specific educational and media campaign to explain the law change in New Zealand and raise awareness with those affected, while we are planning an awareness raising campaign to accompany the law change in Wales.
- 8.44 In New Zealand, the data collected by the police covered assaults which left lasting evidence, such as marking or bruising of the skin, as well as lower level assaults. In contrast, the defence of reasonable punishment is not currently available for these types of assaults in Wales. Therefore the figures for prosecutions in New Zealand after their law changed includes prosecutions for acts for which the defence already does not apply in Wales. As such, the New Zealand figures include cases for which there would already be a case for prosecution in Wales. Therefore it is anticipated that the increase in reports and prosecutions in New Zealand following their change in legislation will likely be higher than in Wales.
- 8.45 As the New Zealand data collected by the police was specifically for the purpose of monitoring the impact of the change in the law, we have used that data as a proxy to estimate the potential increase in reporting to the police, and numbers of prosecutions in the courts. It should be noted that numbers of prosecutions do not necessarily equate to the number of convictions. The caveats around use of the New Zealand data are further explained in Annex 6.
- 8.46 In relation to social services, the New Zealand data published by the Ministry of Social Development is less directly relevant: annual reports contain data relating to physical and wider abuse of children, and for some years they also contain data for smacking (but not other minor acts of physical discipline); but these have not been collected with the purpose of monitoring the impact of the legislation change, and there is no specific baseline data available. As a result, we have not used the available social services data from New Zealand to estimate the potential impact of the legislation change on children's services in Wales.

Local Authorities – Social Services

8.47 To calculate the potential additional costs for social services in the five years post enactment, the following information is required:

- A unit cost for children’s services work in handling the referral
- Baseline data for the current number of referrals to social services of parental physical punishment of children at the level of common assault
- Best estimate of the likely impact of the legislation change in terms of whether there would be an increase in referrals, and if so, the likely scale of the increase.

Unit cost	<p>£ 535 per referral.</p> <p>This unit cost has been established in consultation with local authorities. The cost reflects that for a referral relating to physical assault on a child, which does not progress to child protection section 47 enquiries by social services and/ or the police. Section 47 enquiries are carried out to determine what if any action is needed to promote and safeguard the welfare of a child, where it is considered there is risk of significant harm to that child.</p> <p>This is considered to be the best available approximation of unit cost, on the basis that physical punishment at the level where the reasonable punishment defence would currently apply would not be likely to progress to the stage of section 47 enquiries.</p> <p>The unit cost breaks down as follows:</p> <ul style="list-style-type: none"> • £60 for the administrative costs to input a referral and agency checks completed by Health, Education and Police (based on £20 hourly rates). • £75 for a senior social worker to review the case, and notify the family a referral has been made, and offer support (based on £20 hourly rates for a senior social worker and £10 an hour for admin support). • £100 for a multi-agency strategy discussion under All Wales Safeguarding legislation, between police, social services, health and education. • £300 following a No Further Action decision during the strategy meeting, given that voluntary sector/early intervention support would be offered, totalling 2-3 visits with the family over a month.
Baseline data	<p>Due to the fact that the defence currently exists, social services in Wales do not specifically collect information on physical punishment. There is therefore no published or readily available data to use as a baseline for referrals to social services of cases of reasonable punishment.</p> <p>We have considered various options for obtaining relevant data which could be used as an approximation for a baseline. To date, we have not been able to identify a baseline which is sufficiently robust. We have worked with a small number of local authorities to try to establish a sufficiently accurate estimate for a baseline based on the method that</p>

	<p>the police were able to use when analysing their own data. However, for the reasons outlined in the Deputy Minister for Health and Social Services' letter dated 7 January 2020 to the Chairs of the Children Young People and Education and Finance Committees, it has not been possible to produce a sufficiently accurate estimate.</p>
Scale of increase	<p>As outlined in the table at paragraph 8.46, the New Zealand social services data is not suitable as a proxy for the likely increase in numbers of referrals following removal of the defence. Therefore, even if it had been possible to establish an estimated baseline, there is no comparative data with which to calculate a potential increase in caseload. Therefore, we will continue to work with social services to establish a recording system so the potential impact can be monitored (this work has already started through the Data Collection and Monitoring Task and Finish Group established under the Strategic Implementation Group for the Bill). The cost to social services is therefore unknown at this stage.</p>

Police

Unit cost	<p>£ 650 per referral.</p> <p>This has been established in consultation with the Police Liaison Unit (PLU) and the four police forces in Wales.</p> <p>The police identified the activities that would be considered for a physical assault on a child where there are no aggravating factors or issues that would necessitate additional demands for resources (e.g. if interpreters are required, or if there are complex needs which necessitate additional specialist resource).</p> <p>The costing is based from the time the incident is allocated to a Detective Constable and the investigation is complete. It does not include file building or CPS engagement which would increase cost. The figure does not capture the costs that would arise prior to the allocation to the Detective Constable (e.g. the force control room, uniform response officers etc.).</p>
Baseline data	<p>274 referrals per annum.</p> <p>The four police forces in Wales, in coordination with the PLU, conducted a retrospective audit of recorded crime offences relating to Common Assault and Cruelty to Children covering a period of 19 months. The police filtered the information using specific terms - violence where no injury occurs and child cruelty, where the offender was an adult and the victim a child, and the age gap between the two was greater than 3 years.</p>

	<p>They manually analysed a sample of the results to determine which proportion related to reasonable punishment, and identified that one in seven/eight did, depending on the specific police force. Using this sample they estimated that there are around 274 cases of reasonable punishment reported to the police in Wales per year. (See Annex 7 for the more detailed methodology).</p> <p>The four police forces in Wales and the Welsh Government will continue to work together to identify the relevant data to collect on assaults which currently amount to reasonable punishment, so that the impact can be monitored over a period of time. Collection will continue for a number of years following commencement in order to monitor the impact of the legislation. Where possible data collection will be aligned with expanding existing activity or other relevant work.</p>
Scale of increase	<p>100% increase – additional £178,000</p> <p>The most comparable baseline data is from the New Zealand Police Force. They began collecting data on reports of ‘smacking’ and other acts of physical discipline three months before introducing their ban on physical punishment. Their data showed that in the five years following the ban, compared to the baseline, reports to the Police of child assaults, including smacking and minor acts of physical discipline, occurred on average twice as often each quarter than they had before the bill (a 100 per cent increase). The numbers of reports rose steadily over the first four years, and began to fall again in the fifth. An average increase has been used as reporting periods in New Zealand were not uniform, so attempting to forecast on a year by year basis is complex.</p>

Ministry of Justice - Her Majesty’s Courts and Tribunals Service

- 8.48 We have considered the potential impact on the justice system, particularly the courts, in conjunction with the Ministry of Justice. A full [justice impact assessment](#) is published separately. The justice impact assessment is also summarised at paragraphs 9.17 to 9.24.
- 8.49 In the absence of any other reliable data to make estimates of the number of prosecutions that might occur in Wales as a result of the legislation, the police data from New Zealand has been used as a proxy⁹³ to provide an estimate of potential numbers of cases prosecuted in Wales in the five years following commencement. The estimated numbers for Wales are based on Wales having around 60% of the numbers of 0-14 year olds compared with New Zealand (the legislation in New Zealand applies to 0-14 Year olds). It is acknowledged that these are only estimates, and that robust monitoring following commencement will be required to accurately measure the numbers.

⁹³ New Zealand Police, (2009) “Final results of 2 year review of police activity since enactment of the Crimes(Substituted Section 59) Amendment Act 2007”.

- 8.50 The Finance Committee recommended that the Welsh Government consider how to ensure there is a clear link between estimated referrals to the police and prosecutions for offences that previously would have been covered by the defence of reasonable punishment. However, due to the lack of comparable data, it is not possible to provide a robust forecast of how many of the 500-600 estimated cases per annum that may be reported to the police in Wales would be prosecuted or convicted.
- 8.51 Trying to do this would not be a reliable way of estimating the prosecution rate in Wales for the following reasons:

Levels of seriousness of assault reported in New Zealand

- 8.52 In Wales, the defence is only available in relation to a charge of common assault against a child, and would not be available where bruising or lasting reddening of the skin is present. In contrast, in New Zealand, post commencement recording of assaults included those which left lasting evidence, such as marking or bruising of the skin. As such, the figures for prosecutions in New Zealand after their law changed include cases for which there would already be a case for prosecution in Wales. In addition, the types of assault in New Zealand were likely easier to evidence, which may have increased the rates of prosecution. It is not possible to identify the proportion of prosecutions in New Zealand for those cases which are equivalent to the level of assault relevant to this legislation, which we anticipate be lower.

Different systems and criteria for reporting crimes

- 8.53 Prosecution rates for crimes reported to the police may not be comparable in the two countries. We tried to gauge prosecution rates in New Zealand for common assault and assaults against children in order to adjust for these differences, however this data was not available.

Meaning of 'prosecution'

- 8.54 From studying the New Zealand police reports, it appears that their prosecution data may also include instances of referrals to diversion schemes, which would not be included in prosecution rates in Wales.
- 8.55 As such, based on the data currently available, it is not possible to draw a meaningful comparison between the estimated number of cases reported to the police, and the number of prosecutions which we might see in Wales,
- 8.56 Due to the differences in the laws applicable in New Zealand and Wales before law change (with the defence being available in New Zealand for more serious levels of assault prior to law change), we expect that the rates of additional cases that move forward for prosecution in Wales following law change would be far below the rate in New Zealand.

- 8.57 It is also important to draw the distinction between the number of cases taken forward for prosecution and the numbers of convictions, as not all cases prosecuted will result in a parent being convicted. It is likely that the proportion of cases prosecuted which result in a conviction and criminal record in Wales would be lower than those in New Zealand, due to differences in the way that diversion schemes and out of court disposals work across the two nations. It has not, however, been possible to quantify how much lower these rates would be.
- 8.58 For the reasons outlined above, we consider that it is not possible to calculate the rate of prosecutions in Wales, showing a clear link between the rate of reports or investigations by police, and the rate of prosecutions. As a result, we consider that the proxy method used for the original calculation of an estimated number of prosecutions in Wales is the best estimate we can provide in the circumstances, although that is itself subject to a number of caveats.
- 8.59 Subject to the information set out in paragraphs 8.42 to 8.45 the estimated number of cases over 5 years is 38. Cost estimates for court cases relating to an offence for which the defence would previously have been available have been agreed with the Ministry of Justice for the first 5 year period after the law change comes into force. Due to the proxy measure used, there is an element of uncertainty, and it is difficult to predict what would be likely to happen after five years. However, we would expect the numbers of cases prosecuted to level off, as awareness of the law change increases.
- 8.60 Allowing for a split of 75:25 between magistrates and Crown court cases, the approximate total cost over 5 years is estimated to be up to £70,000. (See the Justice Impact Assessment for more detail⁹⁴).
- 8.61 For the purposes of this RIA, we have estimated a cost of up to £14,000 per annum for the five year period.

Crown Prosecution Service (CPS)

- 8.62 The CPS is responsible for:
- Charging advice to the police, where required, relating to cases of common assault on children where the defence of reasonable punishment would previously have been available; and
 - Prosecution of any cases which progress to the courts.
- 8.63 The CPS has carried out a cost impact assessment. They estimate the total additional annual cost impact on the CPS following implementation of the Bill would be between £2,000 and £4,000 per annum, with the cost incurred from 2022-23. This cost is additional to the costs which have been estimated and agreed with the Ministry of Justice, set out in paragraphs 8.60 to 8.61.

⁹⁴ <https://gov.wales/children-abolition-defence-reasonable-punishment-wales-bill-integrated-impact-assessments>

Supporting Implementation

8.64 This section covers the cost of the work of the Strategic Implementation Group and its task and finish groups; potential costs of a diversion scheme; the post implementation review; and transitional costs to update guidance and training.

Implementation groups

8.65 To support the implementation of the Bill a Strategic Implementation Group has been established. The Group's membership includes representatives from the police, police and crime commissioners, social services, health, education, Cafcass Cymru and Her Majesty's Courts and Tribunals Service. Flowing from the Strategic Implementation Group are four work streams:

- Parenting Expert Action Group;
- Data Collection and Monitoring Task and Finish Group;
- Operations, Guidance and Training Task and Finish Group; and
- Out of Court Disposals and Diversion scheme Task and Finish Group.

8.66 There would be an opportunity cost to the Welsh Government and other sectors in supporting the implementation of the Bill. In the two years between Royal Assent and commencement of the Bill it is estimated each of the groups would meet quarterly. The venue costs for meetings of the groups for one year is estimated to be £9,600. Welsh Government staff will provide secretariat for all of the groups. They will also lead on taking forward the actions of the workplan which can be seen at Annex 8. It is estimated that the Task and Finish groups will require staffing of three part time SEOs and two part time HEOs. The work of the Strategic Implementation Group and an overview of the Task and Finish groups will be coordinated by one full time SEO and one full time HEO.

8.67 The gross cost of one SEO per year is approximately £57,977 and the gross cost of one HEO per year is approximately £45,644. Therefore the annual gross staffing cost to the Welsh Government for supporting implementation would be in the region of £236,000.

8.68 The input, advice and experience of the members of the implementation groups are invaluable to ensure an effective implementation of the Bill. There is an opportunity cost to the individual organisations to which the members belong, for the time in attending the meetings and the additional support they provide to the Welsh Government. The annual cost has been estimated to be £64,000.

Diversion scheme

8.69 A task and finish group comprised of representatives from the four police forces in Wales, the Crown Prosecution Service (CPS) and the Police and Crime Commissioners has been formed to consider the potential for an Out of Court Disposal (OoCD) scheme. A range of potential options have been discussed, these include:

- **Option 1** - Use existing parenting interventions run by a national provider or a number of providers across the country;

- **Option 2** - Refer into an existing diversion scheme such as the Women's Pathfinder or Checkpoint;
- **Option 3** - Refer to an existing family support scheme such as Families First;
- **Option 4** - Develop a bespoke course which could include some element of positive parenting education and behaviour management;
- **Option 5** - Develop a bespoke diversion scheme similar to the model of Checkpoint or the Women's Pathfinder.

8.70 At this stage, no decision has been made on the model for the OoCD scheme and so, for the purposes of the RIA, a range of costs has been considered to reflect the alternative options identified above. The cost estimates are based on the best information available at this time.

8.71 The baseline data presented on page 57 indicates approximately 274 referrals are made to the police each year for the offence of common assault on a child (which would currently be considered as 'reasonable punishment'). As set out earlier, evidence from New Zealand suggests the number of referrals to the police will double following the removal of the defence. The calculations set out below are based on an estimate that, guided by the experience in New Zealand, 548 individuals referred to the police might subsequently be referred to a diversion scheme. While we are using this figure to work out best estimates of related costs, there are a number of reasons why the actual numbers referred to a diversion scheme, if the legislation is passed, may differ from this estimate.

8.72 Firstly, while we have been able to work with the police forces to identify the best possible data on numbers of offences which relate to parental physical punishment, it is not possible to predict with certainty how many of these cases may result in the police taking 'no further action'; or cases where an offence might be dealt with through an out of court disposal.

8.73 Secondly, while we have considered the New Zealand police data and used it to estimate the number of cases which might proceed to court and the scale of increase in referrals to the police, there are a number of caveats that must be borne in mind. These are set out in Annex 7.

8.74 Thirdly, we anticipate the number of cases of physical punishment which the police would investigate to reduce over time. The available evidence⁹⁵ supports the view that legislating on physical punishment, alongside the provision of sustained information campaigns and support to parents, can contribute to changes in both attitudes towards, and the use of, physical punishment. Since the change in legislation in New Zealand in 2007 child physical punishment rates do appear to be decreasing. As part of the New Zealand Health Survey parents or primary caregivers were asked if they had physically punished their child in the past four weeks. The percentage of parents/primary caregivers

⁹⁵ <https://www.wcpp.org.uk/publication/legislating-to-prohibit-parental-physical-punishment-of-children/>

reporting they physically punished their child has decreased from 10.4% in 2006/07 to 4.5% in 2017/18⁹⁶.

- 8.75 Finally, we anticipate a multi-agency response will be provided in the majority, if not all cases. This could lead to support being put in place at a local level and in some cases this may negate the need for further action by the police.

Options

- 8.76 We anticipate that in most cases, there will be a multi-agency response (including an assessment of risk to the child) based on current operating procedures and practices, the potential costs to other agencies have been noted in Chapter 8. Following that, based on current arrangements for diversion, the options below assume the police will be responsible for undertaking an initial assessment of whether an offence has been committed and for determining whether the offence and the individual committing it is suitable and eligible for referral to an OoCD scheme.
- 8.77 In terms of monitoring an individual's compliance with the diversion scheme this could be done by another organisation who has been contracted to run the diversion scheme. Such an organisations would need to liaise with the police to notify them as to whether the individual has complied with the scheme's conditions. The police would then need to take further steps based on that information, such as closing the case or referring to the CPS for prosecution.

Option 1 - Use an existing package of parenting interventions

- 8.78 A number of third sector organisations already work with families to provide a range of parenting interventions such as courses and one-to-one support to address a wide range of needs, which would include an element of strategies to manage challenging behaviour. Under this option, one of the organisations (or a number of organisations working collaboratively) could be contracted, to run a bespoke service offering an intervention tailored to the parent's specific needs. There are assumed to be minimal administrative costs incurred in negotiating with the existing organisation(s) to provide these services.
- 8.79 The police costs identified on in Chapter 8 of this RIA relate to the cost of investigating whether a crime has been committed. In addition to this, there would be a cost of undertaking an assessment to determine the individual's suitability and eligibility for inclusion on the scheme and for liaising with the organisation on whether the individual has complied with the course requirements. The opportunity cost for this is estimated to be £24,000 per annum.
- 8.80 In addition to running parenting courses, the third sector organisation(s) could also be expected to provide 1:1 support to address any needs identified by the provider in the individual's assessment of parenting need. The organisation will

⁹⁶ The survey conducts face to face interviews with the parents or primary caregivers of over 4000 children annually. <https://www.health.govt.nz/publication/annual-update-key-results-2017-18-new-zealand-health-survey>

also incur administrative costs through having to engage with the Police, which includes monitoring compliance. The cost to deliver these elements of the scheme are estimated to be £100,000 per annum.

- 8.81 For the purposes of this cost estimate we have assumed that anyone referred to the police for the offence of common assault on a child (at the previous 'reasonable punishment' level) would be required to participate in a suitable parenting intervention (bearing in mind the caveats outlined above) and that additional support would be needed to accommodate the 548 participants. The cost of running additional parenting courses will depend on the number of people attending each course, and how long the course lasts for. Assuming there are between 6 and 12 attendees per course and the course typically lasts one day, the total cost is estimated to be between £50,000 and £87,000 per annum. This includes the cost of venue hire, providing childcare facilities and course materials.
- 8.82 The total cost for this option is therefore estimated to be between £174,000 and £211,000 per annum.

Option 2 - Refer into an existing diversion scheme

- 8.83 Under this option one of the existing multi-agency/multi-disciplinary diversion schemes such as the Women's Pathfinder⁹⁷ or Checkpoint schemes⁹⁸ could be extended to include parents who commit an offence of common assault on a child (at the previous 'reasonable punishment' level). If the scheme is provided by an external contractor (such as the Women's Pathway in Gwent and South Wales) this would need to be negotiated. The expansion of the Women's Pathway to include men would also need to be considered and negotiated.
- 8.84 In the existing schemes, the police make an initial assessment of an individual's suitability and eligibility for the diversion scheme. If referred, the Women's pathfinder project/case worker or Checkpoint navigator would assess the individual's needs and determine what level of support and what type of interventions would be suitable to match the needs identified.
- 8.85 There would be a small cost to produce revised guidance and some additional training would be needed for the existing project workers/navigators who work in these schemes. This opportunity cost is estimated to be £20,000 and is expected to be incurred in 2020-21 in the period when the scheme would be developed.

⁹⁷ The aim of the Women's Pathfinder is to reduce offending and reoffending by women. It takes a multi-agency approach to address the complex needs of women. The women's diversion scheme is not a set course – it can be a 1-day course, 1:1 support with a project/case worker, or they may refer the individual into local community support services (e.g. housing, education, alcohol cessation, domestic abuse etc).

⁹⁸ Checkpoint offers eligible offenders an individualised contract which offers interventions to address the underlying reasons why the individual committed the crime to prevent them re-offending (e.g. tackles issues around drug or alcohol misuse, mental and physical health issues, housing or homelessness, or problems to do with money or relationships). The offender is supported through the Checkpoint process by a specialist 'navigator' who completes a detailed needs assessment and draws up the contract for that individual to follow and comply with.

- 8.86 A 2017 evaluation of the Women's Pathfinder scheme undertaken by the University of South Wales⁹⁹ included an estimated cost per person supported by the scheme of approximately £377 (this cost has been updated to 2019-20 prices using the GDP deflator series). This cost includes the initial assessment made by the project/case worker/navigator. Based on 548 people using the scheme each year, this equates to a total cost of approximately £207,000 per annum.
- 8.87 The evaluation acknowledged that the costs incurred by third parties were not always recorded as part of the cost of the scheme. To reflect this finding, an additional cost equivalent to an average of four hours of support per person from a third sector organisation has been included in the cost estimates, this equates to a cost of approximately £40,000 each year.
- 8.88 On this basis, the ongoing cost of using the existing Pathfinder scheme is estimated to be £247,000 per annum.

Option 3 - Refer to existing parenting support scheme such as Families First

- 8.89 In this option, after an initial assessment of suitability and eligibility for the diversion scheme by the police, the individual committing the offence would be referred to parenting interventions provided through the Families First / Team Around the Family (TAF) programme. If referred via this multi-agency option it is assumed an assessment would be made by the TAF of the individual's parenting and family support needs. The family would then be referred to appropriate support to match the needs identified. This might be referral to a parenting course or if the individual has complex needs it may include additional multi-agency support. For the purposes of this Explanatory Memorandum, it is assumed engagement by the individual committing the offence would be voluntary and if this option was taken forward this would need to be negotiated with the Local Authority. There would be a small administrative cost incurred in negotiating with Local Authorities.
- 8.90 The evaluation of Families First undertaken by Ipsos MORI and Ecorys in 2015¹⁰⁰ included estimates of the cost of various activities delivered through the programme. Again, the costs reported in the evaluation have been updated to 2019-20 prices using the GDP deflator series.
- 8.91 As with Option 1, there will be an opportunity cost relating to the Police to assess each individual's suitability for an out of court disposal and eligibility to engage with the diversion scheme. It is also assumed that there would need to be consideration of whether the individual complied with the requirements of the OoCD scheme at the end of the process. This cost is estimated to be £24,000 per annum.

⁹⁹https://wccsj.ac.uk/images/docs/publications/2017/WilliamsHollowayBrayford_Womens_Pathfinder.pdf

¹⁰⁰<https://gov.wales/sites/default/files/statistics-and-research/2018-12/150930-evaluation-families-first-year-3-en.pdf>

- 8.92 The evaluation indicates the parenting and behaviour management courses delivered through Families First cost approximately £300 each. An assessment provided by the multi-agency TAF is estimated to cost approximately £44 per hour. Assuming each individual then has an average of 4-hours of 1:1 support and attends a parenting course, the annual cost is estimated to be approximately £308,000. If each individual also attends a behaviour management course, the cost increases to approximately £473,000 per annum.
- 8.93 There are not expected to be any upfront development costs associated with this option.

Option 4 - Develop a bespoke parenting scheme/course

- 8.94 Under this option, after an initial assessment of suitability and eligibility for the diversion scheme by the police, the individual committing the offence would be referred to a parenting course. It is assumed a bespoke course will be developed and that the course would be delivered by suitable providers commissioned centrally by the Welsh Government.
- 8.95 The most likely approach is that an academic or other suitable provider with relevant experience would be commissioned by the Welsh Government to develop the scheme with input from the Welsh Government, the Police, the CPS, Child and Family services and relevant third sector organisations. Assuming that developing the course would take approximately 6 months of an academic researcher's time, the cost is estimated to be £48,000. Welsh Government costs to project manage and contribute to the development of the course are estimated to be £6,000. The costs for the police, social services, the CPS and third sector organisations are estimated to be £16,000, £7,000, £2,000 and £6,000 respectively. These costs, which are all assumed to be opportunity costs, are expected to be incurred in 2020-21.
- 8.96 The organisation(s) responsible for delivering the bespoke course will require some training prior to roll-out. The cost of delivering this training (including materials) is estimated to be £7,000, with an opportunity cost to the trainees of approximately £10,000.
- 8.97 The opportunity cost relating to the Police undertaking an initial assessment and to evaluate the individual's compliance with the scheme requirements is assumed to be the same as previous options at approximately £24,000 per annum.
- 8.98 The main element of this option is expected to be the bespoke course. The organisation responsible for delivering the course would also incur some costs in liaising with the police. The cost of these elements are expected to be approximately £50,000 per annum.
- 8.99 The on-going cost of running the bespoke course will depend mainly on the number of sessions per course and the number of people attending each course. Assuming each course involves two sessions and groups of twelve people, the cost (including venue hire, materials and the provision of childcare)

is estimated to be £88,000 per annum. If there were smaller groups (of six people) and four sessions per course, the estimated cost increases to approximately £312,000 per annum.

8.100 Total ongoing costs for this option are therefore estimated to be between £162,000 and £385,000 per annum.

Option 5 - Develop a bespoke diversion scheme (similar to Pathfinder and Checkpoint)

8.101 It is envisaged that, as they have the most relevant expertise, the police working with the Out of Court Disposals and Diversion Scheme Task and Finish Group would lead on developing a new diversion scheme with input from the Welsh Government, Child and Family Services, the Crown Prosecution Service and the relevant third sector organisations. This multi-agency approach means the cost of developing the scheme is expected to be higher than that for developing a bespoke parenting course.

8.102 The total scheme development costs are therefore estimated to be approximately £95,000. This comprises opportunity costs incurred by the police, the Welsh Government, social services, the CPS and third sector organisations in 2020-21.

8.103 There would be an additional cost of approximately £48,000 if additional project workers/navigators need to be recruited and trained to deliver a new scheme.

8.104 The ongoing costs are estimated to average around £460 per person/family, with this cost covering an initial assessment of suitability for the scheme and the individual's/family's needs plus support delivered by the police, social services and third sector organisations. The cost is therefore approximately £252,000 per annum.

8.105 How this cost is split between organisations would depend upon the nature of the advice/support needed by the individuals/families.

Summary

8.106 Based on the alternative options considered above, the best estimate of the potential cost of a diversion scheme is a transitional cost of between £0 and £143,000 (expected to be incurred in 2020-21) and on-going costs of between £162,000 and £473,000 per annum.

8.107 As explained above, a task and finish group has been established to consider the Out of Court Disposal scheme. As yet, no decision has been taken on the appropriate model for this scheme and so the cost estimates presented above should only be regarded as indicative at this stage. The group may yet select an alternative model which isn't described above or may choose to combine elements from two or more options to form an entirely new approach.

8.108 The cost estimates will be refined as and when a preferred model is identified and agreed with relevant service, including the police. Any scheme will be subject to agreement with the organisations involved about levels of resourcing, responsibility, affordability and funding.

Post Implementation Review

8.109 As part of the five year Post Implementation Review, a number of monitoring and evaluation activities are planned. This includes monitoring the impact on public services, levels of awareness, and changes in attitudes. We estimate that this will cost around £100,000 over the five years. Details will be finalised prior to commencement drawing on advice from the Data and Monitoring Task and Finish Group as well as Welsh Government colleagues in Knowledge and Analytical Skills.

8.110 *Impact on public services:* Work has commenced, through the Data Collection and Monitoring Task and Finish Group, to develop methods for collecting data across organisations to monitor the impacts of the legislation on public services and other organisations. Current discussions suggest that existing system administrators already employed by local authorities and police forces will implement changes needed to monitor the effect of the change in legislation on public services. We have been advised that such changes are made routinely to recording systems as part of usual business activity. The Welsh Government intends to publish these figures annually where possible.

8.111 *Public attitudes and awareness:* As part of the assessment of the effectiveness of the legislation, the Welsh Government will use representative surveys to track public awareness of the change in legislation and changes in attitude towards physical punishment of children. These surveys will enable the monitoring of the trends on public awareness and opinion towards physical punishment of children, compared to the public attitudes to physical punishment baseline survey 2018. It is expected that this work will be undertaken annually and include data from range of population groups.

8.112 *Stakeholder views and experiences:* It will also be important to understand how the change in law is being experienced by a range of stakeholders such as parents and practitioners through qualitative research. This will help support and inform implementation work as well as providing important context for interpreting the monitoring figures.

8.113 A post implementation review report will be published at the earliest opportunity after five years following commencement of the Bill. This is in line with the monitoring which took place in New Zealand. The expectation is that this work will bring together the data gathered through the three strands above as well as considering the broader implications of the change in law.

Transitional costs – updating guidance and training

8.114 It is expected that there will be some transitional costs, relating to updating guidance, familiarisation and training for staff, for public bodies including the police, CPS, local authorities (in respect of both social services and education), the health sector, and voluntary organisations who work with children.

Guidance

8.115 The Wales Safeguarding Procedures (WSP) provide common standards to guide child protection work for every local safeguarding board in Wales, and guide the work of all professionals who work with children and families.

8.116 Cardiff and the Vale Safeguarding Board have developed updated Wales Safeguarding Procedures (WSP) on behalf of all Safeguarding Boards in Wales. The Wales Safeguarding Procedures Project Board provides oversight for this work. The procedures were drafted by a consultant with oversight, revision and sign off by the Project Board which includes representatives from all Regional Safeguarding Boards in Wales and partner agencies (such as ADSS Cymru, ADEW, Welsh Government). They will replace All Wales Child Protection Procedures and the Policy and Procedures for the Protection of Vulnerable adults (POVA). WSP were published and launched on 11 November 2019 and are in digital format, including an App, so they can be easily updated when changes need to be made due to, for example, practice learning, updates to statutory guidance and new legislation (such as the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill, if passed).¹⁰¹

8.117 Drafting an update to the WSP to reflect the legislative change following the removal of defence of reasonable punishment in Wales is expected to take between two and four hours of a local authority policy official's time. This update to the WSP would then need to be discussed and agreed by the Project Board. The Project Board will continue to meet periodically (probably quarterly) after the updated procedures are published to consider any revisions that need to be made. The work of the Project Board is not dependent on the Bill as the remit of the Board is to ensure the procedures are kept up to date on behalf of Safeguarding Boards in Wales. The Project Board is already aware that the procedures will need to be updated to take account of the Bill if it is passed.

8.118 It is assumed that one quarter of a three hour Project Board meeting would be devoted to considering the changes relating to this Bill. The value of the policy official's time and that of the Project Board membership is estimated to total less than £1,000.

8.119 In addition, we have identified that some bodies / organisations may require their own individual guidance to be updated for their members and or employees; this includes Welsh Government, the education and social services departments in local authorities, third sector and health sector organisations. It

¹⁰¹ The WSP can be accessed at www.safeguarding.wales

is estimated between 75 and 100 organisations will need to amend guidance and training materials to reflect the removal of the defence and changes to the all Wales procedures. As with the WSP, this updating work is expected to take no more than four hours of a policy officer's time, with a total estimated cost (across all 75-100 organisations) of between £12,000 and £16,000.

8.120 The CPS advise that various pieces of guidance will need to be updated to reflect the change in the law in Wales. An update has already been included in the Code for Crown Prosecutors. The Offences against the Person Charging Standard and the Director's Guidance on Charging are also likely to require updates. Policy advisors will work on updates prior to their being cleared at Chief Crown Prosecutor and Director level. The total time already incurred and likely to be required is estimated at around 30 hours. . On this basis, the total cost to the CPS is estimated to be £2,000.

Familiarisation with guidance

8.121 As part of normal continuous professional development, those in contact with or working with children and young people and their families will need to familiarise themselves with the revisions in whatever guidance is relevant for them (e.g. revised charging standard, revised WSP). This includes those people working in social services; the health sector; education; the third sector; police and the justice system. Given the anticipated nature of the changes, the time needed for each individual to become familiar with the revised guidance is expected to take an average of 15 minutes. Based on the number of people working in the identified sectors and an approximation of the average salary for the roles/sectors, the opportunity cost for familiarisation is estimated to be £882,000. This opportunity cost would be incurred between 2020-21 and 2021-22, with the majority incurred in 2021-22, closer to the expected commencement of the law.

Familiarisation cost by sector, 2020-21 to 2021-22

Sector	Familiarisation cost (£)
Local Authority ¹⁰²	314,000
Police	64,000
CPS	27,000
HMCTS	1,000
Health	471,000
Third sector	5,000
Total	882,000

Training

8.122 Every person in contact with or working with children, young people and their families; or responsible for arranging services for children, is expected to receive safeguarding training to a level commensurate with their role and

¹⁰² This includes a range of staff in the Local Authority including education, social services, and staff providing family support (e.g. Families First and Flying Staff). It also includes other relevant staff employed in the Local Authority such as in adult services, leisure and housing.

responsibilities. What training, and how often this is provided varies according to which sector or agency the individual works in and their role. It is our understanding from engagement with a range of stakeholders that information about the legislation will be integrated into the existing training packages already provided to staff on an on-going basis. Basic safeguarding training is often provided through e-learning packages, which would be straight forward to update.

8.123 The police may also need some training to cover awareness of the legislation and how to respond if a person commits the offence of common assault on a child (which would currently be considered as 'reasonable punishment'). The opportunity cost associated with training 160-200 police constables (40-50 from each force in Wales) is estimated to be £8,000-£10,000.

8.124 The CPS are likely to need to provide specific training for lawyers in Wales who are most likely to provide advice on cases of common assault against children alleged to have been carried out by parents. It is estimated that opportunity cost associated with this training will be around £6,000.

Cost summary table

8.125 The table below shows costs to Welsh Government before commencement for awareness raising and then costs for key stakeholders following commencement for a period of 5 years.

	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
WG								
Awareness raising ¹	50,000	600,000	800,000	300,000	200,000	150,000	150,000	
Comms staff costs	19,000	75,000	75,000	75,000	75,000	75,000	75,000	
Awareness raising with children		21,500	21,500					
Task and finish group (venue and secretariat)		246,000	246,000					
Post-implementation review				20,000	20,000	20,000	20,000	20,000
Police								
Additional referrals				178,000	178,000	178,000	178,000	178,000
Familiarisation		64,000						
Training		8,000-10,000						
Local Authorities²								
Familiarisation		314,000						
HMCTS								
Court costs				14,000	14,000	14,000	14,000	14,000
Familiarisation		1,000						
CPS								
Additional caseload				2,000-4,000	2,000-4,000	2,000-4,000	2,000-4,000	2,000-4,000
Familiarisation		27,000						
Training		6,000						
Health sector								
Familiarisation		471,000						
Third sector								
Familiarisation		5,000						
Other costs								
Task and Finish groups ³		64,000	64,000					
Updating guidance and training docs ³		15,000-19,000						
Out of Court Disposal scheme ⁴		0-143,000		162,000-473,000	162,000-473,000	162,000-473,000	162,000-473,000	162,000-473,000
Total	69,000	1,918,000-2,067,000	1,207,000	751,000-1,064,000	651,000 - 964,000	601,000 - 914,000	601,000 - 914,000	376,000 - 689,000

Notes:

1. The awareness raising costs to Welsh Government cover the period of 6 years and three months from January 2020 to March 2027.
2. It is considered likely that there will be an increase in referrals to social services, at least in the short term, however as explained at the table at paragraph 8.47, it has not been possible to date to identify a robust baseline against which a potential increase in referrals can be estimated. As a result, these costs are unknown at present.
3. These opportunity costs are spread across a number of public and third sector organisations, including some of those organisations listed above (for example, CPS, local authorities and police etc.)
4. Where these costs falls will be dependent on the chosen model for the Out of Court Disposal Scheme.

Benefits

8.126 A number of benefits relating to option 2 have been identified:

- By prohibiting the physical punishment of children in Wales, we will help protect children's rights in line with our commitment to the UNCRC.
- Removing the defence of reasonable punishment will ensure children have the same protection from physical punishment as adults.
- The physical punishment of children will be prohibited in certain settings which provide instruction or coaching for children, but which are not covered by the earlier changes to the law which apply to educational settings. Whilst physical punishment of children has long been banned in schools, the reasonable punishment defence is still available to adults acting in loco parentis in what are termed 'non-educational settings'. This Bill would remove the defence of reasonable punishment in all circumstances.
- Prohibiting the physical punishment of children will allow frontline professionals to provide unequivocal advice to parents about how to provide discipline and guidance for their children through non-physical means.
- The PPIW review¹⁰³ of evidence about children's attitudes towards physical punishment and child outcomes acknowledged that "*the evidence does not definitively show that "reasonable" parental physical punishment causes negative outcomes*", but also concluded that "*there is evidence of an association with negative outcomes, and no evidence of benefits, either in terms of long-term developmental benefits, or in terms of its efficacy in influencing short-term changes to behaviour relative to other, non-physical means*".
- No environmental benefits have been identified.

Dis-benefits

8.127 Under this option, any parent who physically punishes a child in Wales would no longer be able to rely on the defence of reasonable punishment. They may be approached by the police, with a range of possible outcomes including the parent being arrested or receiving a criminal conviction. There is the potential for a statutory or non-statutory out of court disposal, or prosecution, as a result of that charge.

8.128 In the case of a conviction following prosecution for common assault, or a caution for common assault on a child, this would form part of an individual's criminal record. It would not be eligible for filtering and would therefore appear for the purposes of a standard or enhanced check undertaken through the Disclosure and Barring Service (DBS). This may have consequences for the

¹⁰³ https://www.wcpp.org.uk/wp-content/uploads/2018/07/PPIW-REPORT-Parental-Physical-Punishment-Child-Outcomes-and-Attitudes_fo....pdf

individual's employment prospects, depending on the area where they work, and on the ability to travel to certain countries. Further detail is provided in relation to the impact on parents and DBS checks in Annexes 4 and 5.

8.129 No environmental dis-benefits have been identified.

Chapter 9: Impact Assessments

- 9.1 Alongside the RIA, a number of other potential impacts have been considered, and full impact assessments carried out where necessary. These are summarised below, and the full impact assessments can be found here. <https://gov.wales/children-abolition-defence-reasonable-punishment-wales-bill-integrated-impact-assessments>. The impact assessments prepared prior to the Bill's introduction have been revised to take account of the amendments to the Bill at Stage 2.

Children's Rights Impact Assessment

- 9.2 The physical punishment of children is incompatible with the United Nations Convention on the Rights of the Child (UNCRC). The main purpose of this proposal is to help protect children's rights in relation to the duty set out in article 19. In doing so, children in Wales would be offered the same legal protection from physical punishment as adults. If passed, this Bill will prohibit the physical punishment of children by parents within Wales, including visitors to Wales.
- 9.3 The Children's Rights Impact Assessment (CRIA) considers the intended positive impacts on children and young people, together with possible negative impacts and mitigations of those impacts. The intended positive impacts include bringing about a further reduction in the use and tolerance of the physical punishment of children. Possible negative impacts include that changing the law may lead to a parent being approached by the police, with a range of possible outcomes including the parent being arrested or receiving a criminal conviction. The arrest, cautioning or conviction of a parent may have negative impacts on the child, as outlined in the CRIA.
- 9.4 The change in the law of itself does not criminalise parents. Mitigation of possible negative impacts include the awareness raising strategy which will ensure that, so far as possible, parents are aware of the change in the law before it comes into force and are in a position to choose not to physically punish their children and avoid the risk of being charged with a criminal offence. In addition, the Welsh Government is working with the police, CPS and social services to clarify police and social services processes, and how they work together to respond to reported incidents of parental assault on a child. If the Bill is passed, we will continue to work with them to consider any processes or guidance which may need to be put in place.

Equalities Impact Assessment

- 9.5 We have considered the impact of the Bill on people in protected groups and those living in low income households and how these will be mitigated.
- 9.6 The positive impact of the proposed legislation is that it will provide legal protection from physical punishment to all children in Wales regardless of any protected or other characteristic.

- 9.7 Research suggests that the use of physical punishment is associated with certain groups of parents (e.g. younger parents¹⁰⁴ and those with poor maternal physical and mental health¹⁰⁵). There is also some evidence that physical punishment is associated with certain groups of children (e.g. younger children, boys¹⁰⁶). It does not necessarily follow, however, that parents will behave in accordance with these research findings. Some of this research has been conducted with previous generations of parents in other countries and there are often methodological issues with some of this type of research¹⁰⁷.
- 9.8 The Equalities Impact Assessment explores the positive impacts and how potential negative impacts could be mitigated. This includes ensuring parents (including those in protected groups) are aware of the legislation and are signposted to relevant advice, support and information.

Rural Proofing Impact Assessment

- 9.9 Rural communities and individuals living within those communities have not been identified as being specifically impacted by the Bill. The proposed change in the legislation will apply equally to all individuals and communities within the geographical area of Wales, and to those visiting Wales. The potential impact on a parent who physically punishes their child at the level of common assault will be the same regardless as to their location within Wales. It has therefore been decided not to carry out a full rural proofing impact assessment.

Privacy Impact Assessment

- 9.10 A Privacy Impact screening assessment has been conducted in relation to the Bill. No personal data will be processed by the Welsh Government for this proposal. Therefore, a Data Protection Impact Assessment (DPIA) was not required.

Welsh Language Impact Assessment

- 9.11 The potential impacts to the Welsh Language were explored during the formal consultation of the proposed legislation. The mandatory Welsh Language question was asked, exploring positive and adverse effects of the proposals on the opportunity to use the Welsh Language. The majority of responses indicated that the changes proposed by the Bill will have a neutral effect on the Welsh Language.

¹⁰⁴Halpenny, A.M., Nixon, E. & Watson, D., (2010) Parents' Perspectives on Parenting Styles and Disciplining Children, Office of the Minister For Children and Youth Affairs

¹⁰⁵ Heilman, A., Kelly, Y. & Watt, R.G. (2015) "Equally Protected? A review of the evidence on the physical punishment of children" Report commissioned by the NSPCC Scotland, Children 1st, Barnardo's Scotland and the Children and Young People's Commissioner Scotland, November 2015

¹⁰⁶ Smith, A. B., Gollop, M. M., Taylor, N. J., Marshall, K. A. (2005) *The Discipline and Guidance of Children: Messages from Research*

¹⁰⁷ For example methodological issues include confounding variables (other variables that are associated with punishment and difficult to separate from it), retrospective reports by parents or children, the definition of punishment and distinguishing it from physical abuse, and lack of generalisability because of limited sample populations.

Biodiversity Impact Assessment

- 9.12 The impact of the Bill on biodiversity and the habitat regulations were considered and it was agreed that there will be no direct impact on either.

Climate Change Impact Assessment

- 9.13 Part 2 of the Environment (Wales) Act 2016 committed Welsh Ministers to reducing emissions of greenhouse gases from Wales by at least 80% in 2050. Other provisions in the Act and in the Climate Change Act 2008 address the impact of, and adaptation to, climate change. We have considered the impact of the Bill on greenhouse gas emissions and have concluded there is no direct link, either positive or negative. We have also concluded there is no direct link between the Bill and adapting to the effects of climate change.

Natural Resources Impact Assessment

- 9.14 We have considered the impact of the Bill on the National Priorities in the Natural Resources Policy and opportunities for the sustainable management of natural resources. We have concluded there is no direct link, either positive or negative.

Health Impact Assessment

- 9.15 The impact of the Bill on health determinants has been considered. The intended impact of legislating to remove the defence of reasonable punishment is that children will be less likely to be physically punished and will therefore be protected from some of the negative outcomes associated with physical punishment. The Bill is therefore considered to have an overall positive impact on health.
- 9.16 However, it is possible that some parents within Wales who physically punish their children will be charged, prosecuted and convicted, or offered a statutory out of court disposal which would be disclosed as conviction information on a Disclosure and Barring Service enhanced check, in situations where previously the defence of reasonable punishment may have been available. In this situation there may be an adverse impact on their mental health and wellbeing. However, negative impacts would be mitigated by an awareness raising strategy ensuring, so far as possible, parents are aware of the change in the law before it comes into force. The awareness raising campaign will signpost to relevant advice, support and information. Being in receipt of this information could help to mitigate the risk of using physical punishment and potentially being charged with a criminal offence. It has therefore been decided not to carry out a full health impact assessment at this stage, but this will be kept under review as the legislation progresses.

Justice Impact Assessment

- 9.17 A justice impact assessment has been developed in consultation with the Ministry of Justice (MoJ), and reflects the most probable impact on the justice system. We are unable to predict with absolute certainty the impact on the justice system because there is no precedent in the UK¹⁰⁸ for removing the defence and because of current reporting and recording practices.
- 9.18 There have been issues with identifying appropriate data to provide a baseline of current cases which come before the courts. Currently Home Office statistics of 'Police recorded crime' provide data on the number of cases of common assault and battery (under the broad category of Offences of Violence without injury, which includes a number of different offences under this heading). This is not broken down by age of victim or relationship to victim. While we have been able to work with the police forces in to identify the best possible data on numbers of offences which relate to parental physical punishment at the level of 'reasonable punishment', this does not translate into likely numbers of cases which would proceed to court as a number of those would be likely to be dealt with through out of court disposals or cautions.
- 9.19 The potential additional impact on the justice system is, therefore, identified using New Zealand as a starting point. New Zealand's legal system (as in England and Wales) is based on a common law jurisdiction and data has been published following legislative change regarding physical punishment. However, there are limitations in using this data arising from key differences between the two countries for example, differences in the proposed legislation, law enforcement, age of child covered by the legislation, population differences, and parenting support and awareness raising around the legislation.
- 9.20 From a criminal justice point of view it would not be expected there would be a large increase in the volume of cases coming before the courts.
- 9.21 The estimate of 38 cases in 5 years is based on what has been observed in New Zealand. But it is unclear how many of those New Zealand cases wouldn't have occurred had it not been for the legislative change. Further, this is a summary only offence and it is clear that the costs would be insignificant. Additionally, there is the likelihood that after 5 years public knowledge would increase to the extent that parents would be aware that all forms of corporal punishment of a child are illegal and, thus the incidence would likely drop away.
- 9.22 With regard to the criminal case income, the proportion of common assault and battery cases that result in a fine is small so no real impact to such income. And with regard to criminal law sentencing, there is no real impact, as there is no proposed change to existing penalties.
- 9.23 On civil justice, there are no rule or enforcement changes required so there is no real impact in relation to civil procedure and enforcement.

¹⁰⁸ Although the Children (Equal Protection from Assault) (Scotland) Act received Royal Assent on 7 November 2019 it will not come into force until 6 November 2020.

9.24 The estimated cost projection for the justice system for the 5 years following implementation is included in the RIA in Chapter 8. A Data Collection and Monitoring Task and Finish Group (overseen by a Strategic Implementation Group) has been established and brings together a wide range of expertise and experience from the CPS, police service, health, social services, youth justice, education, and voluntary sector. The Group is considering the best approach to collecting data which will monitor the potential impacts of the legislation after commencement, including the resource implications.

Chapter 10: Post implementation review

- 10.1 The intended effect of the Bill, together with an awareness-raising campaign and support for parents, is to bring about a further reduction in the use and tolerance of the physical punishment of children in Wales.
- 10.2 The Bill sets out that its provision abolishing the physical punishment of children will come into force two years after the day following Royal Assent, allowing time for comprehensive awareness raising of the removal of the defence of reasonable punishment.
- 10.3 The Welsh Government recognises the importance of considering the financial and resource implications of the Bill in a post implementation review. The Stage 1 scrutiny Committee Reports from the Children, Young People and Education Committee and the Constitutional and Legislative Affairs Committee recommended a duty to undertake a post implementation review of the Bill over 3 years, be included on the face of the Bill. The Government considers that a five year period provides for a similar timeframe to monitoring which took place in New Zealand, enabling more effective trend analysis. The Deputy Minister for Health and Social Services tabled a Government amendment to this effect at Stage 2, which was agreed at the Stage 2 Committee session on 24 October 2019.
- 10.4 A Strategic Implementation Group has been established and includes representatives from the police, police and crime commissioners, social services, the health and education sectors, Cafcass Cymru and Her Majesty's Court and Tribunal Service. There are two task and finish groups¹⁰⁹ flowing from the Strategic Implementation Group that are considering how best to monitor the impact of the Bill if passed on public bodies and what changes to processes may be required following commencement.
- 10.5 Through the Data Collection and Monitoring Task and Finish Group we are working with the police, social services and the courts to agree the collection of relevant data for a period prior to implementation in order to establish baselines. Data collection will continue following commencement in order to monitor the impact of the Bill. It is anticipated that, where possible, the monitoring data collected by local authorities and police forces would be collated into an annual update.
- 10.6 As part of the five year Post Implementation Review, a number of monitoring and evaluation activities are planned. This includes monitoring the impact on public services, levels of awareness, and changes in attitudes. Details will be finalised prior to commencement drawing on advice from the Data and Monitoring Task and Finish Group as well as Welsh Government colleagues in Knowledge and Analytical Skills.
- 10.7 *Impact on public services:* Work has commenced, through the Data Collection and Monitoring Task and Finish Group, to develop methods for collecting data

¹⁰⁹ The Data Collection and Monitoring Group and the Operations, Guidance and Training group

across organisations to monitor the impacts of the legislation on public services and other organisations. Current discussions suggest that existing system administrators already employed by local authorities and police forces will implement changes needed to monitor the effect of the change in legislation on public services. We have been advised that such changes are made routinely to recording systems as part of usual business activity. The Welsh Government intends to publish these figures annually where possible.

- 10.8 *Public attitudes and awareness:* As part of the assessment of the effectiveness of the legislation, the Welsh Government will use representative surveys to track public awareness of the change in legislation and changes in attitude towards physical punishment of children. These surveys will enable the monitoring of the trends on public awareness and opinion towards physical punishment of children, compared to the public attitudes to physical punishment baseline survey 2018. It is expected that this work will be undertaken annually and include data from range of population groups.
- 10.9 *Stakeholder views and experiences:* It will also be important to understand how the change in law is being experienced by a range of stakeholders such as parents and practitioners through qualitative research. This will help support and inform implementation work as well as providing important context for interpreting the monitoring figures.
- 10.10 A post implementation review report will be published five years after commencement of the Bill. This is in line with the monitoring which took place in New Zealand. The expectation is that this work will bring together the data gathered through the three strands above as well as considering the broader implications of the change in law.

Annex 1: Explanatory Notes

CHILDREN (ABOLITION OF DEFENCE OF REASONABLE PUNISHMENT) (WALES) BILL 2019

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill. They have been prepared by the Department for Education and Public Services of the Welsh Government to assist the reader of the Bill.
2. The Explanatory Notes should be read in conjunction with the Bill but are not part of it. They are not meant to be a comprehensive description of the Bill and where an individual section does not seem to require any explanation or comment, none is given.

POLICY BACKGROUND

3. On 18 May 2016, the former First Minister announced the Welsh Government's intention to introduce to the National Assembly legislation to remove the common law defence of reasonable punishment (this was a commitment included in the Labour party's manifesto for the National Assembly election held in May 2016).
4. The Bill is intended to help to protect children's rights by prohibiting the use of corporal punishment, through removal of the defence.
5. The Welsh Government considers that the Bill brings Wales in line with recommendations of the UN Committee on the Rights of the Child, which has stated that the defence is incompatible with Wales' obligations under article 19 (protection from all forms of violence) of the United Nations Convention on the Rights of the Child (<https://www.ohchr.org/EN/Countries/ENACARegion/Pages/GBIndex.aspx>). It also accords with the recommendations of a number of other key international bodies such as the UN Human Rights Council (<https://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx>) and the UN Committee on the Elimination of Discrimination Against Women (<https://www.ohchr.org/en/hrbodies/cedaw/Pages/CEDAWIndex.aspx>).
6. A public consultation on the proposal to abolish the defence was launched by the former Minister for Children and Social Care on Tuesday 9 January 2018; the consultation closed on Tuesday 2 April.

These notes refer to the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 24 October 2019

7. A summary of responses to the consultation was published by the Welsh Government on 6 August 2018 (<https://beta.gov.wales/legislative-proposal-remove-defence-reasonable-punishment>).

LEGAL BACKGROUND

The legal concept of assault and battery

8. In criminal law, assault and battery are forms of offence against the person. In civil law, assault and battery constitute a tort, or civil wrong: the tort of trespass against the person.
9. The expression “assault” is commonly used to describe acts involving the application of force against a person. But the concepts of “assault” and “battery” have different, specific meanings in the law of England and Wales.
10. A “battery” for these purposes means the intentional or reckless application of unlawful force to the body of another person. This would include an adult punching another adult, for example. But it may also include what might be considered more minor incidences of physical contact, such as a pat on the shoulder. Whether this would constitute a battery would depend on the circumstances of the case.
11. An “assault” occurs where one person causes another person to apprehend the immediate infliction of unlawful force (a face-to-face threat by an adult to punch another adult during a disagreement, for example).

The defence of reasonable punishment

12. Under the current law, the defence of reasonable punishment makes certain acts constituting battery or assault of a child *potentially* defensible in legal proceedings on the basis that the acts were reasonable – and therefore lawful. The defence is currently available to parents and subject to certain exceptions (see paragraphs 13 and 14 below), persons acting in the role of parent (*in loco parentis*).
13. The availability of the defence in the current law is subject to controls imposed by section 58 of the Children Act 2004, an Act of Parliament.
14. By virtue of section 58 of the 2004 Act, the defence is not available where the harm caused to a child constitutes or exceeds actual bodily harm (deemed to be harm which is more than transitory or trifling: harm which goes beyond temporary reddening of a child’s skin), or where the offence in question is an offence of child cruelty, under section 1 of the Children and Young Persons Act 1933.
15. Historically, the defence of reasonable punishment was available under common law in relation to proceedings brought against teachers or other staff who, in the course of giving education, gave corporal punishment to pupils. This was because the staff were treated as acting *in loco parentis*. But Parliament, in section 47 of the Education (No.2) Act 1986 (now repealed) began a process of prohibiting corporal punishment in schools and other settings involving education.
16. The current law prohibiting the use of corporal punishment in relation to pupils receiving education is set out in section 548 of the Education Act 1996. This position is not changed by the Bill.

Other physical interventions by parents not involving corporal punishment

17. The common law acknowledges the necessity (and lawfulness) of certain physical interventions carried out by parents or other adults in the exercise of parental authority in relation to children, even where (but for this acknowledgement) the interventions would constitute assault or battery.
18. The legality of these interventions does not derive from the existence of the defence of reasonable punishment, as they are not intended to constitute corporal punishment.
19. This means that certain physical interventions by a parent in relation to a child are permissible even where, in the context of two adults, those interventions would not necessarily be permitted.
20. An example might be the physical intervention necessary to keep a child safe from harm, such as holding back a child from running into a road (as opposed to any physical intervention intended to punish a child for running into a road) or restraining a child to keep them from injuring themselves or others.
21. Other examples might be the use of reasonable force to dress a child, or to brush a child's teeth.
22. The exercise of parental authority may also require physical interventions which are necessary for the purpose of using alternatives to corporal punishment, as a means of maintaining discipline and addressing poor behaviour. This would include, for instance, carrying a child to a time-out area ("naughty-step").

SUMMARY OF THE BILL

23. The Bill proposes the abolition of the defence of reasonable punishment in relation to corporal punishment of a child taking place in Wales; and makes provision in connection with the defence's abolition.

COMMENTARY ON SECTION 1

Abolition of common law defence of reasonable punishment

24. Section 1(1) of the Bill abolishes the defence of reasonable punishment in relation to corporal punishment of a child taking place in Wales.
25. Abolition of the defence in accordance with section 1(1) will mean that any act of battery constituting corporal punishment of a child which takes place in Wales will be unable to be justified on the ground that it was reasonable punishment. This will be the case in respect of any civil or criminal proceedings in the jurisdiction of England and Wales.
26. Abolition of the defence will also mean that any act of assault which involves the apprehension by a child of the immediate infliction of corporal punishment will be incapable of being justified by reference to the defence. (An example might be a threat to smack a child).

27. This is because an assault for the purposes of the common law involves the apprehension of *unlawful* force (as mentioned in paragraph 11, above). The current existence of the defence of reasonable punishment in the common law means that certain actions which would otherwise constitute an assault are, in relation to children, potentially defensible – and lawful – in legal proceedings; this is because the physical intervention to which the assault relates is currently capable of being justified as reasonable punishment. Abolition of the defence removes this possibility and therefore addresses both assault and battery.
28. “Corporal punishment” for the purposes of this section means any battery carried out as a punishment (the definition of the expression appears in subsection (4)).
29. In practice this might typically involve a smack given as a telling-off to a child (whether on the child’s bottom, legs or other part of the body). But neither the definition – nor the application in the current law of the defence – is limited to smacking. A case where a parent shook a child, or poked a child in the chest, as a punishment for perceived wrong-doing, for instance, would also be caught.
30. (There may be other, more ambiguous, instances where a particular physical intervention described at paragraphs 17 to 22 could amount to a battery carried out as a punishment. Some of the physical interventions described by those paragraphs could be carried out in a way which was intended to punish a child; but this will depend on the circumstances of a given case. This kind of case is perhaps best illustrated by considering the differences between the use of force genuinely necessary to brush an unwilling child’s teeth for the purposes of maintaining good dental hygiene and aggressive tooth brushing intended to cause a child pain as a punishment for failing to co-operate.)
31. Abolition of the defence is not intended to affect the existing law of battery and assault in relation to the use of force otherwise than as a punishment (see paragraphs 17 to 22 above).
32. As discussed above at paragraphs 17 to 22, the common law acknowledges the necessity of certain physical interventions by adults in relation to children, in the exercise of parental authority. This permits the use of force in circumstances which involve physical interactions generally considered to be acceptable, and uncontroversial, in the ordinary course of everyday life.
33. Abolition of the defence of reasonable punishment, without more, might leave open the possibility of a person attempting to defend the use of punishment on the basis of its being generally acceptable in the course of ordinary life. For instance, a person might seek to argue that it is acceptable in the course of everyday life to smack a child, just as it is acceptable to brush a child’s teeth. The wording in subsection (3) has been included to avoid this possibility.
34. When the defence of reasonable punishment is abolished in accordance with subsection (1), section 58 of the Children Act 2004 will no longer be relevant to battery or assault of a child which takes place in Wales. In consequence, subsection (5) makes

These notes refer to the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 24 October 2019

minor amendments to section 58 to make it clear that it will apply in relation to things done in England only.

COMMENTARY ON SECTION 2

35. Section 2 of the Bill places a duty on the Welsh Ministers to take steps to promote public awareness of the abolition of the defence of reasonable punishment. The duty will require steps to be taken during a two-year period, starting with the day after the day the Bill receives Royal Assent. Once section 1 – which abolishes the defence – is in force, the duty in this section ceases to apply.
36. It will be for the Welsh Ministers to determine what steps to take for the purposes of this section; and different steps may be required in relation to different groups of people, to ensure effective communication with parents, children and the wider public.
37. The steps taken to raise public awareness are likely to include many different strands of activity; including advertising (for example on television, radio, the internet and through other digital media); and communication with professionals who work with parents and children to ensure they know about the change to the law.

COMMENTARY ON SECTION 3

38. Section 3 of the Bill places a duty on the Welsh Ministers to prepare and publish a report on the effect of the abolition of the defence. The report will reflect on a five-year period, starting with the day on which the defence is abolished.
39. The report is likely to examine, among other things, any impact on public services; levels of awareness of the change to the law made by section 1; and any changes in public attitudes towards the physical punishment of children.
40. The report is likely to draw on monitoring and evaluation activities carried out by the Welsh Government; for example, surveys carried out to assess attitudes towards the legislation, and levels of public awareness of the legislation.

COMMENTARY ON SECTION 5

41. This section deals with when the sections of this Bill come into force. With the exception of section 1, the Bill's provisions, including this section, will come into force on the day after the day the Bill receives Royal Assent.
42. Section 1, which provides for the abolition of the defence, will come into force at the expiry of the period of two years, beginning with the day after the day on which the Bill receives Royal Assent.

Annex 2: Index of Standing Order requirements

Standing order		Section	pages/ paragraphs
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Assembly	Member's declaration	Page 2 (Member's Declaration) and pages 8 - 9, paragraphs 2.1 – 2.4
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 – Policy objectives and purpose and intended effect of the Bill	Pages 15 - 16, paragraphs 3.30 – 3.33
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – impact assessment Chapter 7 – Options	Page 39, chapter 7, paragraphs 7.1 – 7.4
26.6(iv)	Set out the consultation, if any, which was undertaken on: <ul style="list-style-type: none"> (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts) 	Chapter 4 – Consultation	Page 28, paragraphs 4.1 – 4.4
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation	Pages 28 – 31, paragraphs 4.5 – 4.20

Standing order	Section	pages/ paragraphs
26.6(vi)	If the bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	Chapter 4 – Consultation Page 28, paragraph 4.1
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Annex 1 – Explanatory Notes Page 82
26.6(viii)	<p>Set out the best estimates of:</p> <ul style="list-style-type: none"> (a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise; (b) the administrative savings arising from the Bill; (c) net administrative costs of the Bill's provisions; (d) the timescales over which such costs and savings would be expected to arise; and (e) on whom the costs would fall 	Part 2 – impact assessment Chapters 6 and 8 Pages 34 – 37 & Cost summary table Pages 71 - 72, Paragraph 8.125

Standing order		Section	pages/ paragraphs
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – impact assessment Chapter 8	Pages 73-74, Paragraphs 8.126 – 8.129
26.6(x)	Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision: <ul style="list-style-type: none"> (a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised; (b) why it is considered appropriate to delegate the power; and (c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure); 	Chapter 5 - Power to make subordinate legislation	Page 32, Paragraph 5.1
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate	The requirement of Standing Order 26.6(xi) does not apply to this Bill	

Standing order		Section	pages/ paragraphs
26.6(xii)	Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.	Part 2 – impact assessment Chapters 8 and 9	Pages 58 – 60, Paragraphs 8.48 – 8.63 and Pages 78 - 79, paragraphs 9.17 - 9.24
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a standalone piece of legislation and does not derive from existing primary legislation for the purposes of amendment or consolidation.	
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	Annex 3 – Schedule of Amendments	Pages 91 - 92

Please note: this annex has been prepared solely to assist people in understanding the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill. It should not be relied on for any other purpose.

Annex 3: Schedule of amendments

Children Act 2004 (c.31)

AMENDMENTS TO BE MADE BY THE CHILDREN (ABOLITION OF DEFENCE OF REASONABLE PUNISHMENT) (WALES) BILL

This document is intended to show how the provisions of the Children Act 2004 as they applied in relation to Wales on 31 December 2018 would look as amended by the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill (if enacted as introduced on 25 March 2019).

Material to be deleted by the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right hand column on each page.

A number of related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments.

Warning

This text has been prepared by officials of the Department for Education and Public Services of the Welsh Government. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.

It has been produced solely to help people understand the effect of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill. It is not intended for use in any other context.

Please note: this annex has been prepared solely to assist people in understanding the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill. It should not be relied on for any other purpose.

<p>Children Act 2004 (2004 c31)</p>	<p><i>Amending section of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill</i></p>
<p>Part 5 Miscellaneous (ss 44-63)/58</p> <p>58 Reasonable Punishment: <u>England</u></p> <p>(1) In relation to any offence specified in subsection (2), battery of a child <u>taking place in England</u> cannot be justified on the ground that it constituted reasonable punishment.</p> <p>(2) The offences referred to in subsection (1) are—</p> <ul style="list-style-type: none"> a) an offence under section 18 or 20 of the Offences against the Person Act 1861 (c 100) (wounding and causing grievous bodily harm); b) an offence under section 47 of that Act (assault occasioning actual bodily harm); c) an offence under section 1 of the Children and Young Persons Act 1933 (c 12) (cruelty to persons under 16). <p>(3) Battery of a child <u>taking place in England</u> causing actual bodily harm to the child cannot be justified in any civil proceedings on the ground that it constituted reasonable punishment.</p> <p>(4) For the purposes of subsection (3) “actual bodily harm” has the same meaning as it has for the purposes of section 47 of the Offences against the Person Act 1861.</p> <p>(5) In section 1 of the children and Young Persons Act 1933, omit subsection (7).</p>	<p>Section 1(5)</p> <p>Section 1(5)</p> <p>Section 1(5)</p>

ANNEX 4: Potential impacts on individuals and organisations

1. In this annex, the potential impacts and relevant processes and procedures regarding the following individuals and organisations are considered:

Parents and those acting in loco parentis	Page 93
The justice system (including the police and Crown Prosecution Service)	Page 94
Police	Page 95
Crown Prosecution Service	Page 98
Other impacts on the justice system	Page 99
Social services	Page 100
Education Sector	Page 102
Health	Page 103

Parents and those acting in loco parentis

2. The potential impacts on parents include:
- the legislation coupled with an awareness raising campaign may encourage parents who physically punish their children to consider positive alternatives to physical punishment to provide guidance and discipline for their children (as evidenced in the PPIW report¹¹⁰)
 - parents who physically punish their children following the commencement of the legislation will commit an offence and may, therefore, be charged with the criminal offence of assault or battery. This potential impact was raised as a concern in some of the responses to the consultation.

Scope of the potential impact on parents in terms of the potential to commit an offence and receive a criminal record

3. The reasonable punishment defence is currently only available to a charge of common assault where the injury is transient and trifling and amounts to no more than temporary reddening of the skin¹¹¹. Where the offence is one of common assault, the CPS takes into account other factors when deciding whether the punishment was reasonable and moderate. They would consider, for example, the nature, context and duration of the defendant's behaviour, and the physical and mental consequences for the child¹¹². This could lead to a prosecution.

¹¹⁰ https://www.wcpp.org.uk/wp-content/uploads/2018/11/181101_PPIW-REPORT-Legislating-to-Prohibit-Parental-Punishment.pdf

¹¹¹ CPS guidance in the charging standard on offences against the person sets out that "...unless the injury is transient and trifling and amounted to no more that temporary reddening of the skin, a charge of ABH, for which the defence [*of reasonable punishment*] does not apply, should be preferred".

¹¹² Offences against the Person, incorporating the Charging Standard <https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard>

The impact on a parent who commits and is charged with an offence of common assault against a child

4. Whether a person is charged or not depends on whether there is sufficient evidence for a realistic prospect of conviction and whether a prosecution is in the public interest¹¹³. After charge it is for the CPS to prosecute. Where a parent is charged with an offence of common assault against a child, there is the potential for a statutory or non-statutory out of court disposal to be used rather than prosecution. The potential for using out of court disposals is discussed further in paragraphs 16 to 26 in relation to police processes.
5. A conviction or caution for common assault on a child would result in the offender receiving a criminal record. A non-statutory out of court disposal, such as a community resolution, would not impact on the offender's criminal record, although there are some circumstances when the information would need to be disclosed under the current DBS regime. In summary:
 - A conviction or caution for common assault on a child will be disclosed for the purposes of a standard or enhanced check, and will never be eligible for filtering (i.e. it will continue to show even if it is considered spent under the provisions of the Rehabilitation of Offenders Act)
 - Other information held locally on police records in respect of an investigation for common assault on a child, including investigations which resulted in no further action or a non-statutory disposal such as a community resolution, may, but will not necessarily, be disclosed for the purposes of an enhanced check.
6. A full explanation of the DBS process and implications is provided at Annex 5.

The justice system (including the police and Crown Prosecution Service)

7. For the justice system, the potential impacts generally relate to:
 - **Processes** - The processes for handling allegations of the criminal offence of common assault by parents, who physically punish their children, may need to be amended when the defence of reasonable punishment is no longer available. Consideration will need to be given to what, if anything, in the process needs to change when the legislation is brought into force; and
 - **Resources**: Potentially there could be an increase in reports of common assault on children, which may have an impact on resources within the justice system. This has been considered as part of the justice impact assessment¹¹⁴.

¹¹³ The College of Policing and CPS provide advice on the public interest factors that should be taken into account when making a decision to charge or prosecute

¹¹⁴ <https://gov.wales/children-abolition-defence-reasonable-punishment-wales-bill-integrated-impact-assessments>

Police

8. The Welsh Government works closely with the four police forces in Wales but policing remains the responsibility of the UK Home Office.

Police records and procedures involving children

9. Home Office Counting Rules (HOCR) state:

“all reports of incidents, whether from victims, witnesses or third parties and whether crime related or not, will result in the registration of an incident report by the police”.

10. The HOCR require that an incident will be recorded as a crime (notifiable offence) or ‘crimed’ if the offence is against an identified victim and if, on the balance of probability:

“The circumstances as reported amount to a crime defined by law (the police will determine this, based on their knowledge of the law and counting rules)”

“The rules place an obligation on the police to accept what the victim says unless there is “credible evidence to the contrary”.

11. A record will only be ‘non-crimed’ if evidence is found to prove it did not happen, if there is no evidence it will stay on the system as ‘unresolved’.
12. The **Police National Database (PND)** holds records on intelligence, crime, custody, domestic abuse and child abuse, and allows users (generally, the police) to search the data records of all UK forces in relation to people, objects, locations and events.
13. The **Police National Computer (PNC)** is a computer system for England and Wales which is used to record convictions, cautions, reprimands and warnings for any offence punishable by imprisonment and any other offence that is specified within regulations.
14. The **National Law Enforcement Database (LEDS)** will replace the existing separate PNC and PND and merge data from these systems to create a single technology platform. All recordable offences from both the PND and PNC (including information about community resolutions) will be shown on the LEDS.
15. The police have highlighted the need for guidance on the way in which a report of common assault against a child is recorded by the police in Wales. As LEDS covers both Wales and England, it will be necessary to identify that reports of common assault, which could be categorised as “reasonable punishment” in England, would be reports of a criminal offence in Wales, particularly to assist disclosure units considering whether to release intelligence about reports which have not resulted in a conviction or caution.

Out of Court disposals

16. There are a number of out of court disposals which the police can use to respond to offences in a proportionate and pragmatic way.
17. The **National Police Chiefs Council (NPCC)** has published a national strategy 2017-2021 for charging and out of court disposals¹¹⁵, to provide guidance on the use of out of court disposals. It has a number of aims, including simplifying the framework for out of court disposals and aligning to the Policing Vision 2025 which focuses on early intervention and partnership work. It recognises that:

“You cannot address vulnerability solely by way of prosecution, it requires a more sophisticated and effective whole system approach where the Police Service are trusted as professional decision makers who can access a range of services in partnership from early intervention pathways, out of court disposals and where necessary, prosecution”.
18. For the purposes of the crime of common assault against a child as a result of parental physical punishment, following removal of the defence, we anticipate the following out of court disposals may be offered to the parent, depending on the circumstances of the case (in some cases, referring immediately to the CPS for prosecution may be the preferred option).

Cautions

19. A simple or conditional caution can be offered to a person who has admitted to committing the offence and where the police have sufficient evidence to charge. These are issued by the police in accordance with Ministry of Justice guidelines^{116 117}.
20. A **simple caution** (currently no statutory basis) is a formal warning which forms part of a person’s criminal record. The NPCC strategy suggests moving towards a two tier framework of out of court disposals for adult offenders – community resolutions and conditional cautions, although it does envisage a youth caution remaining as part of the framework for young offenders.
21. A **conditional caution** (sections 22 – 27 of the Criminal Justice Act 2003) has conditions attached such as attending a course. It is part of a person’s criminal record. Failure to comply with any of the conditions may result in prosecution for the offence.
22. The person who commits the offence is not prosecuted or convicted, but the caution forms part of their criminal record and may be referred to in future legal

¹¹⁵ [NPCC Charging and Out of Court Disposals - A National Strategy](#)

¹¹⁶ Simple cautions - <https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors>

¹¹⁷ Conditional cautions - <https://www.gov.uk/government/publications/code-of-practice-for-adult-conditional-cautions>

proceedings and revealed as part of a DBS standard or enhanced criminal record check.¹¹⁸

23. When it is not possible to give a caution or conditional caution, because e.g. the person does not make the required admission of guilt or simply refuses to accept the caution, they must be charged with an offence (provided there is sufficient evidence). (*Police and Criminal Evidence Act 1984 and the Code for Crown Prosecutors*)

Community resolutions

24. A community resolution has no statutory basis¹¹⁹. It does not form part of an individual's criminal record: for the purposes of disclosure, it constitutes non conviction data which is not generally disclosed. However, a community resolution may be disclosed as part of an enhanced DBS check, if a chief officer of a police force considers it relevant to the application and that it ought to be disclosed.
25. The Welsh Government is working closely with the police to explore the potential for including community resolutions as one of the out of court disposals which may be offered, depending on the circumstances of the case, possibly in conjunction with a diversion scheme, for example, to provide advice and support on positive alternatives to provide discipline for children.
26. Community resolutions are generally suitable for lower level crime, and acceptance of responsibility is required. In many cases, victim consent is required.

Evidence from children

27. The Youth Justice and Criminal Evidence Act 1999 (YJCEA) introduced a range of measures to facilitate the gathering and giving of evidence by vulnerable and intimidated witnesses – in this case children.
28. Registered Intermediaries (RIs) must be considered for use at court in every case involving a child witness. RIs are communication specialists (e.g. speech and language therapists, psychologists) who will assist to ensure answers are communicated more effectively during police interview and when giving evidence at trial. RIs are recruited, trained and accredited by the Ministry of Justice. RIs would not necessarily be used if there was unequivocal evidence, such as CCTV or a witness statement.
29. The cost of the RIs during the investigative stage is met by the police and if it comes to court by the CPS. We understand from engagement with the Ministry of Justice in October 2019 that there are 61 Registered Intermediaries active in

¹¹⁸ As explained at paragraph 5 above, a caution or conditional caution for common assault on a child would be revealed as part of a DBS standard or enhanced check.

¹¹⁹ <http://library.college.police.uk/docs/appref/Community-Resolutions-Incorporating-RJ-Final-Aug-2012-2.pdf>

Welsh Police Force Areas. Four Registered Intermediaries have confirmed Welsh language proficiency.

Multi-agency approach

30. The police work on the basis of a multi-agency approach, with social services and other relevant services, in relation to potential child protection cases.
31. Referrals of potential child protection cases can be through social services, or directly to the police; or, where multi-agency safeguarding hubs (MASH) are in place, through a MASH.
32. The police will seek, where possible, to make a joint decision with social services on the appropriate response to a child protection referral.

Impact on police resources

33. There is potential for an increase in the numbers of alleged incidents of parental common assault against a child reported to the police following the removal of the defence. The best estimate of the likely impact and its potential cost is discussed in Chapter 8 (Costs and Benefits).

Crown Prosecution Service (CPS)

34. Guidance applying to the CPS across England and Wales would need to be revised to reflect the different legal positions in the two countries, should the defence be removed in Wales. The Director of Public Prosecutions would be responsible for any revisions to this guidance.

The Charging Standard for Offences against the Person

35. Any amendments to the Charging Standard for Offences against the Person (the Assault Charging Standard) are decided by the Director of Public Prosecutions (DPP) in consultation with the police. While it is not possible to be definitive at this stage, we anticipate amendments will be required to the Assault Charging Standard in relation to the guidance on reasonable punishment, to highlight its abolition in Wales and the implications of that. The precise nature of the amendments will be for the DPP and police to consider.

Code for Crown Prosecutors

36. The Code for Crown Prosecutors¹²⁰ sets out the general principles for crown prosecutors to follow when they make decisions on cases.
37. The Full Code test, set out in the Code, has two stages:
 - the evidential stage and
 - the public interest stage.

¹²⁰ <https://www.cps.gov.uk/publication/code-crown-prosecutors>

38. Paragraph 2.6 of the Code indicates that in applying the Code prosecutors must follow the policies and guidance of the CPS issued on behalf of the DPP and available for the public to view on the CPS website. They consider that relevant guidance will include the Assault Charging Standard and the Domestic Abuse Guidelines for Prosecutors. The latter has a requirement that police and CPS should take care to consider the full facts of any offending behaviour, relevant background and history before any action is taken in arresting and/ or charging the suspected offender.

Other impacts on the justice system

39. We have liaised with the Ministry of Justice, and the justice impact assessment is summarised in Chapter 9; the full [impact assessment](#) including anticipated costs is published on the Welsh Government website.

Criminal courts

40. While a large increase in the volume of cases coming before the criminal courts is not anticipated, there will be a need to ensure legal professionals are aware of the change in the law, particularly as there will be a divergence in the law between England and Wales.

Family courts

41. There may be an impact on the family courts, in the context of litigation between separated couples. 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.
42. There are also logistical issues to consider if there are to be child witnesses: the current shortage of registered intermediaries, and the fact that while some family courts have specific rooms for children to give evidence remotely and sensitively, (if children are required to give evidence there) others do not.

Cafcass Cymru

43. 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.
44. 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.

45. The change in the law could lead to an increase in allegations of parental physical punishment in the context of litigation between separating/separated couples. The court has in place arrangements to deal with malicious allegations. This includes ‘finding of fact’ hearings which are intended to provide a factual basis for the assessment of risk in determining the implications on applications for safe contact between a child and the non-resident parent.
46. Whilst it is acknowledged it would be useful to understand the number of reports of physical punishment of a child found to be malicious, in practice this would provide a substantial challenge. Allegations of this kind are unlikely to feature in isolation from other safeguarding concerns raised during private law litigation. To tease out cases where malicious reporting relates specifically to physical punishment, in isolation to other issues and how this should be quantified, is extremely complex. This is, however, an issue that Cafcass Cymru is actively considering in relation to allegations of domestic abuse.
47. Cafcass Cymru does not systematically keep a record of whether the allegation considered by the ‘finding of fact’ hearing in court was found to be malicious. It has started, however, piloting the use of a ‘case closure form’ which will be used to record the outcomes of court hearings and whether malicious allegations featured. The case closure form will attempt to capture the issue of domestic abuse allegations and subsequent ‘next steps’ in the court process – i.e. did the court hold a ‘Finding of Fact’ hearing to consider those allegations. The form will not be addressing allegations in relation to physical harm directed from the parent to the child – although it will identify if ‘physical harm related issues’ featured in the case. The pilot will be completed before the end of March 2020. Cafcass Cymru will need to make an assessment of whether this approach has been successful in pinpointing cases of malicious reporting in relation to domestic abuse and whether it is feasible and practical to roll this process out on a larger scale. There are no financial implications because any work required to create a more refined form would be placed into business as usual processes.

Social Services

48. There is already a distinction in law between physical punishment, and child neglect or abuse. There is robust and specific legislation and statutory guidance as well as the criminal law in place to safeguard and protect children from neglect or abuse. The Social Services and Well-being (Wales) Act 2014 (the 2014 Act) introduced a strengthened, robust and effective partnership approach to safeguarding.
49. A ‘child at risk’ is already defined within Part 7 of the 2014 Act. It defines a “child at risk” as a child who:

- a) is experiencing or is at risk of abuse, neglect or other kinds of harm; and
 - b) has needs for care and support (whether or not the local authority is meeting any of those needs).
50. When a child has been reported under section 130 of the 2014 Act, the local authority must consider whether there are grounds for carrying out an investigation under section 47 of the Children Act 1989. Section 47 requires that where a local authority has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm, the local authority shall make or cause to be made such enquires as it considers necessary to enable it to decide whether it should take any action to safeguard or promote the child's welfare.
51. Supplementary statutory guidance provides further direction on what constitutes 'neglect' and 'abuse' and on the conditions under which action must be taken where there is reasonable cause to suspect a child is at risk.
52. Local authorities are required to have arrangements in place to receive and respond to such reports. In some areas a Multi-Agency Safeguarding Hub (MASH) approach is in place, in others social services are the point of contact for referrals.

Impact on process

53. As now, it is anticipated that a significant proportion of incidents of physical punishment will not require a response under the child protection process outlined above. There may, however, initially be an increase in reporting of incidents from individuals in the community and organisations such as schools given this proposed change in the law and the 'duty to report' on partner organisations set out in the Social Services and Well-being Act. This could have an impact on the initial stages of social services activity in response to such reports.
54. If the defence of reasonable punishment is removed, social services would have a duty to report allegations of physical punishment to the police as a potential crime. They have indicated that following a proportionate assessment, in accordance with existing multi-agency child protection procedures, a strategy discussion would need to be held to discuss details of the allegations; assess risk; and agree whether the enquiry will be conducted by the police, social services or jointly. The strategy discussion would involve social services, the police, health and other bodies such as the referring agency. More than one discussion may be necessary.
55. The Social Services and Wellbeing (Wales) Act 2014 Part 7 statutory guidance on 'Working Together to Safeguard People: Volume 5 Handling Individual Cases to Protect Children at Risk' and the Wales Safeguarding Procedures currently in development will need to reflect the removal of the defence.
56. Discussions regarding any changes needed to current guidance and training concerning the safeguarding, care and support of children are ongoing.

Impact on resources

57. There is the potential for an increase in referrals when the legislation comes into force, at least in the short term. It is not possible, at this stage, to predict accurately the likely increase in volume of referrals. We are working with social services to try to identify baseline data in a small number of local authorities. We are also exploring with social services what systems can be put in place to collect and monitor data about the numbers of referrals both before and after implementation, so that the impact can be measured as accurately as possible. This is discussed further in Chapter 8 on costs and benefits.

Education sector

Teachers' safeguarding responsibilities

58. Section 175 of the Education Act 2002 requires school governing bodies, local education authorities and further education institutions to make arrangements to safeguard and promote the welfare of children. The statutory guidance, *Keeping Learners Safe*, sets out those responsibilities in more detail. The individual responsibilities of teachers will depend upon their role in relation to child protection at their school, but the Social Services and Well-being (Wales) Act 2014 contains a duty to report a child at risk.
59. Currently if a child reports to a teacher that their parent has smacked them, or they witness a child being smacked, the teacher would report the incident in line with agreed practice and in consultation with their designated safeguarding person at the school. It would then be for relevant partners to determine what action, if any, to take.

Use of reasonable force in schools

60. From 1986 the UK Parliament increasingly restricted the use of corporal punishment in schools, prohibiting it in all state maintained schools in 1987 and in independent schools in 1999.
61. Some confusion occurred when the defence of reasonable punishment was first removed for teachers in 1986. Initially teachers were uncertain about the extent to which physical intervention was permissible. This meant, for example, teachers were sometimes reluctant to physically intervene when children were at risk of coming to harm.
62. The current law prohibiting the use of corporal punishment in relation to pupils receiving education is set out in section 548 of the Education Act 1996 which provided further clarity on the use of reasonable force. This position is not changed by the proposed Bill to remove the defence of reasonable punishment.
63. Current provisions in Wales relating to the use of reasonable force in schools are set out in the Welsh Government guidance, 'Safe and effective intervention

- use of reasonable force and searching for weapons'. The Guidance states that

“schools should never seek to inhibit the ability of staff to use force by adopting a 'no contact' policy. The power to use force helps ensure pupil and school safety and the risk with a no-contact policy is that it might place a member of staff in breach of their duty of care towards a pupil, or prevent them taking an action needed to prevent a pupil causing injury to others”.

Impact on process - regulated settings (schools)

64. Safeguarding arrangements in schools may need to be reviewed to reflect the removal of the defence.

Unregulated settings

65. While teachers are no longer able to use force as a punishment in schools, adults acting in loco parentis in what are termed 'unregulated settings' are able to use the defence of reasonable punishment. This legislative proposal would remove this loophole.

Impact on process – ‘unregulated settings’

66. Many unregulated settings may already have safeguarding protocols in place. We have no evidence that children are being physically punished in unregulated settings, but the Welsh Government will need to engage with relevant groups to ensure they are aware of the law change and able to incorporate it in their safeguarding processes.

Health

67. Within healthcare practitioners including, Midwives, Health Visitors, Children's Nurses, General Practitioners and Paediatricians (especially Community Paediatricians) will have a key role in providing clear and consistent advice to parents and carers about the change in the law.
68. All healthcare staff receive safeguarding training to a level and at a frequency appropriate to their role and any changes to legislation would be included and discussed in that training.

Annex 5: Criminal Records and Disclosure and Barring Service

1. The **Disclosure and Barring Service**¹²¹ (DBS) helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children.
2. **Part V of the Police Act 1997**¹²² is the legislation which makes provision relating to Criminal Record Checks.
3. There are four types of check:
 - a **basic check** shows unspent convictions and is for anyone. The individual applies for this, not the organisation;
 - a **standard check** shows spent and unspent convictions, cautions, reprimands and final warnings and is for security guards, traffic wardens, licensing, vets, solicitors etc.;
 - an **enhanced check** shows the same as a standard check plus any information held locally by police that is considered relevant to the role.
 - an **enhanced check with barred lists** shows the same as an enhanced check plus whether the applicant is on one (or both) of two lists of people barred from working with vulnerable groups: one list shows those barred from working with children, and the other those barred from working with vulnerable adults. This will be for roles such as teachers; doctors, nurses or pharmacists, known as regulated activity
4. Figure 1 (page 86) shows the DBS process.
5. The **Rehabilitation of Offenders Act 1974** (ROA)¹²³ allows all convictions and all cautions, reprimands and final warnings to be considered spent after a certain period. It gives people the legal right not to disclose them when applying for most jobs, most courses and all insurance purposes. Convictions and out of court disposals such as cautions will always show on police records but may not show on DBS checks. This will depend on:
 - a. The type of check the person is applying for;
 - b. Whether their conviction is spent under the (ROA); and
 - c. Whether their conviction is eligible to be filtered from standard or enhanced DBS certificates.
6. Filtering means that certain minor offences are removed or 'filtered' from standard or enhanced DBS checks¹²⁴. Offences that are eligible to be filtered no longer need to be disclosed by the applicant for jobs that require standard or enhanced DBS checks. "*Any offence of assault or indecent assault on a*

¹²¹ <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

¹²² <http://www.legislation.gov.uk/ukpga/1997/50/part/V/data.pdf>

¹²³ <https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>

¹²⁴ <https://www.gov.uk/government/publications/dbs-filtering-guidance>

*child*¹²⁵ is an offence which will never be filtered from a criminal record check (i.e. not protected regardless of time). This is because this offence is considered relevant in the context of safeguarding. If a person has more than one conviction or caution this will also never be filtered. DBS checks are also used for some educational courses (such as medicine, dentistry, teaching and social work). As a caution in relation to assault on a child is never filtered from a DBS check it may affect a person's chances of receiving an offer to study or affect them if they are already part way through a course. Those in volunteering roles working with children may also be affected, depending on the nature of their role.

Enhanced checks

7. As well as convictions and cautions an Enhanced Certificate can also include:

*"information held on local police records, which does not form part of a person's criminal record. It is often called – 'non-conviction' information. Each Chief Constable decides what, if any, non-conviction information should be released in response to an application for [an Enhanced] disclosure."*¹²⁶
8. This could include the following:
 - incidents for which individuals were never arrested, charged or prosecuted;
 - incidents for which individuals were found "Not Guilty" in a court of law (in certain circumstances);
 - incidents which were dealt with by bodies other than the police (such as local authorities in their disciplinary processes; employers; schools; hospitals etc.); and
 - third party information - information about people other than the applicant
9. For an enhanced DBS check, cases where the police took No Further Action (NFA) may, but are not automatically, disclosed. For example, a pattern of several similar NFAs may be disclosed, but a single NFA may not. While someone is under investigation, this could also be included in an enhanced DBS check.
10. The Protection of Freedoms Act 2012¹²⁷, introduced a number of safeguards relating to the disclosure of non-conviction information. Statutory Disclosure Guidance¹²⁸, issued by the Home Office, sets out the principles chief officers should apply in deciding what, if any, information should be provided for inclusion in an enhanced check. The guidance sits alongside the Quality Assurance Framework (QAF)¹²⁹ which is a standardised decision-making process and more detailed guidance covering the disclosure of local police information, drawn up by the police service and the Disclosure and Barring

¹²⁵ <https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>

¹²⁶ As set out in 2007 Guidance, Safeguarding Children and Safer Recruitment in Education

¹²⁷ <https://www.legislation.gov.uk/ukpga/2012/9/notes/division/5/1/5/2/4>

¹²⁸ <https://www.gov.uk/government/publications/statutory-disclosure-guidance>

¹²⁹ <https://www.gov.uk/government/publications/quality-assurance-framework-version-nine-qaf-v9>

Service (DBS). The objective of the QAF is to deliver a standard process and audit trail across all Disclosure Units when considering information for disclosure under 113B (4) of the Police Act 1997. Disclosure Unit compliance with the QAF process is assessed by the Standards and Compliance Unit (SCU). An overview of the structure and function of the QAF is set out in “Quality Assurance Framework: An applicant’s introduction to the decision-making process for Enhanced Criminal Record Checks”¹³⁰.

11. Before information held locally, is disclosed by the police it must pass certain tests which are contained within the Statutory Disclosure Guidance. Information must pass certain tests (related to considerations of Relevance, Substantiation and Proportionality and considerations of the safety aspects of disclosing information). Police must record, their thought process (their “rationale”) explaining how/why they reached all of their conclusions and decisions.
12. The information is assessed by the Chief Officer to determine whether it is reasonable to believe that it is relevant and whether, in their opinion, it ought to be disclosed. Information should only be disclosed if it meets both of those requirements.
13. Consideration is also given to the Human Rights impact of disclosure and non-disclosure on the applicant and on the vulnerable group/groups associated with the application.
14. The tests for disclosure have a lower threshold than the “beyond reasonable doubt” required for conviction in a criminal court of law. By law, information being considered for disclosure does not need to pass this test.
15. The Police cannot make suitability decisions or recommendations. Each employer considers the disclosed information and decides whether the applicant is suitable for a particular role or not. The employer is responsible for managing that risk appropriately.
16. If the police disclose any non-conviction information as part of an enhanced check, the applicant is able to challenge this decision by way of an application to an Independent Monitor¹³¹. The Independent Monitor assesses whether or not police applied QAF correctly when processing an application. In accordance with section 119B of the Police Act 1997 (1997 Act), the Independent Monitor must also review a sample of cases in which police non-conviction information is included, or not included, on enhanced criminal record certificates. The purpose of these reviews is to ensure there has been compliance with Home Office Statutory Guidance on disclosure and Article 8 of the European Convention of Human Rights (ECHR).

¹³⁰ <https://www.gov.uk/government/publications/an-applicants-introduction-to-the-decision-making-process-for-enhanced-criminal-record-checks>

¹³¹ As legislated for in section 82 of the Protection of Freedoms Act 2012

17. Those organisations who use the DBS checking service must comply with the code of practice (section 122 of Part V Police Act 1997¹³²). Under the code organisations are under an obligation to use the information released fairly. The code also ensures that sensitive personal information, disclosed by the DBS, is handled and stored appropriately and is kept for only as long as necessary.
18. We do not expect the Children (Abolition of Reasonable Punishment) (Wales) Bill to necessitate any changes to this process. Any changes made would have to be within the confines of existing UK primary legislation.
19. In the year 18/19 in Wales:
 - 2,582 enhanced/standard DBS applications were despatched;
 - Of these 2,536 or 98.22% were despatched clean (i.e. there was no recorded information of any sort);
 - 44 enhanced/standard DBS applications were despatched which contained information on convictions/cautions;
 - 2 enhanced DBS applications were despatched containing non-conviction data (Local Police Force 'approved' information).
20. As this data applies to all offences and is not limited to 'assault against a child' we do not expect the Bill to have an appreciable impact on the disclosure of 'non-conviction' information.

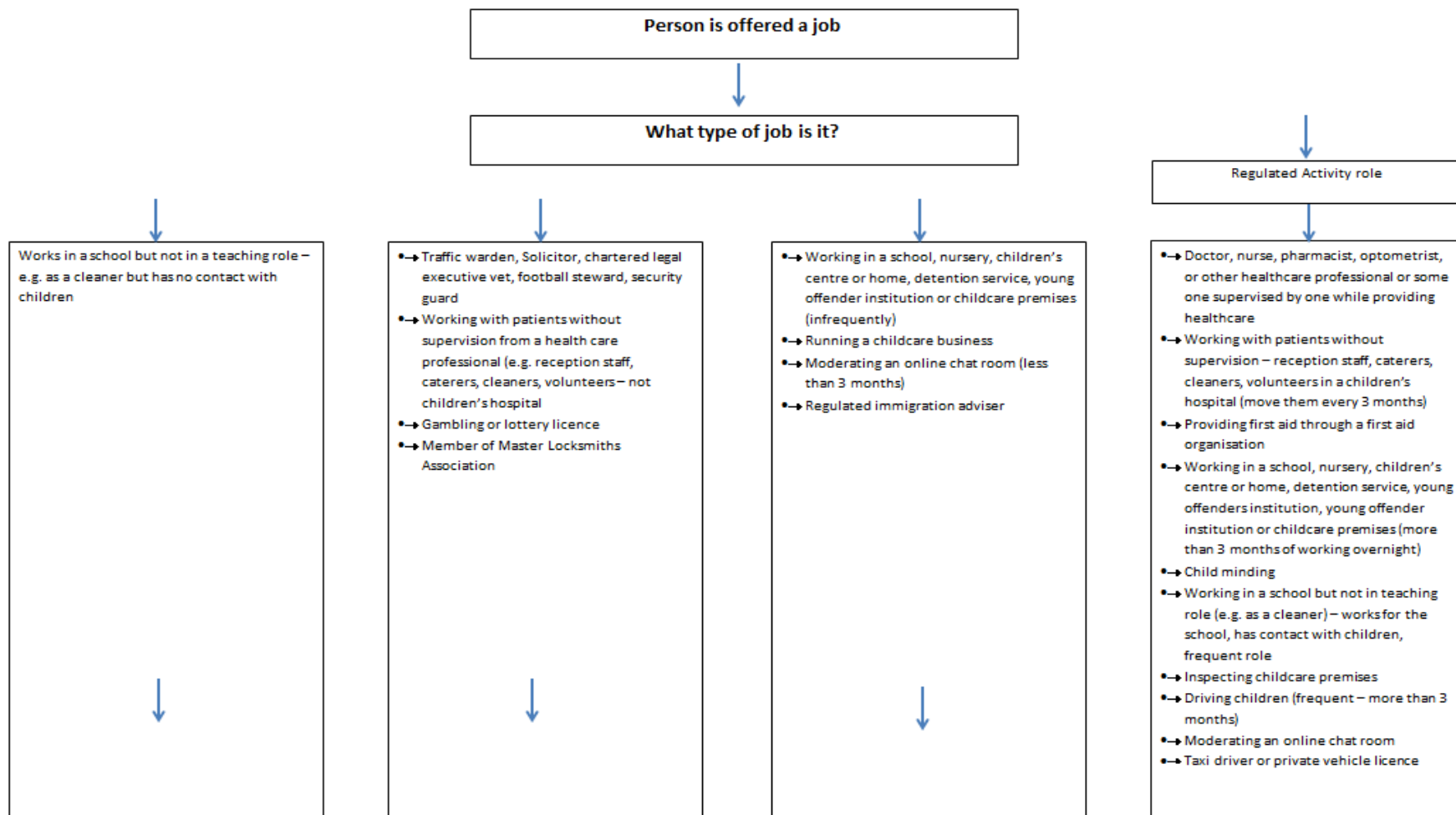
Fitness to practice

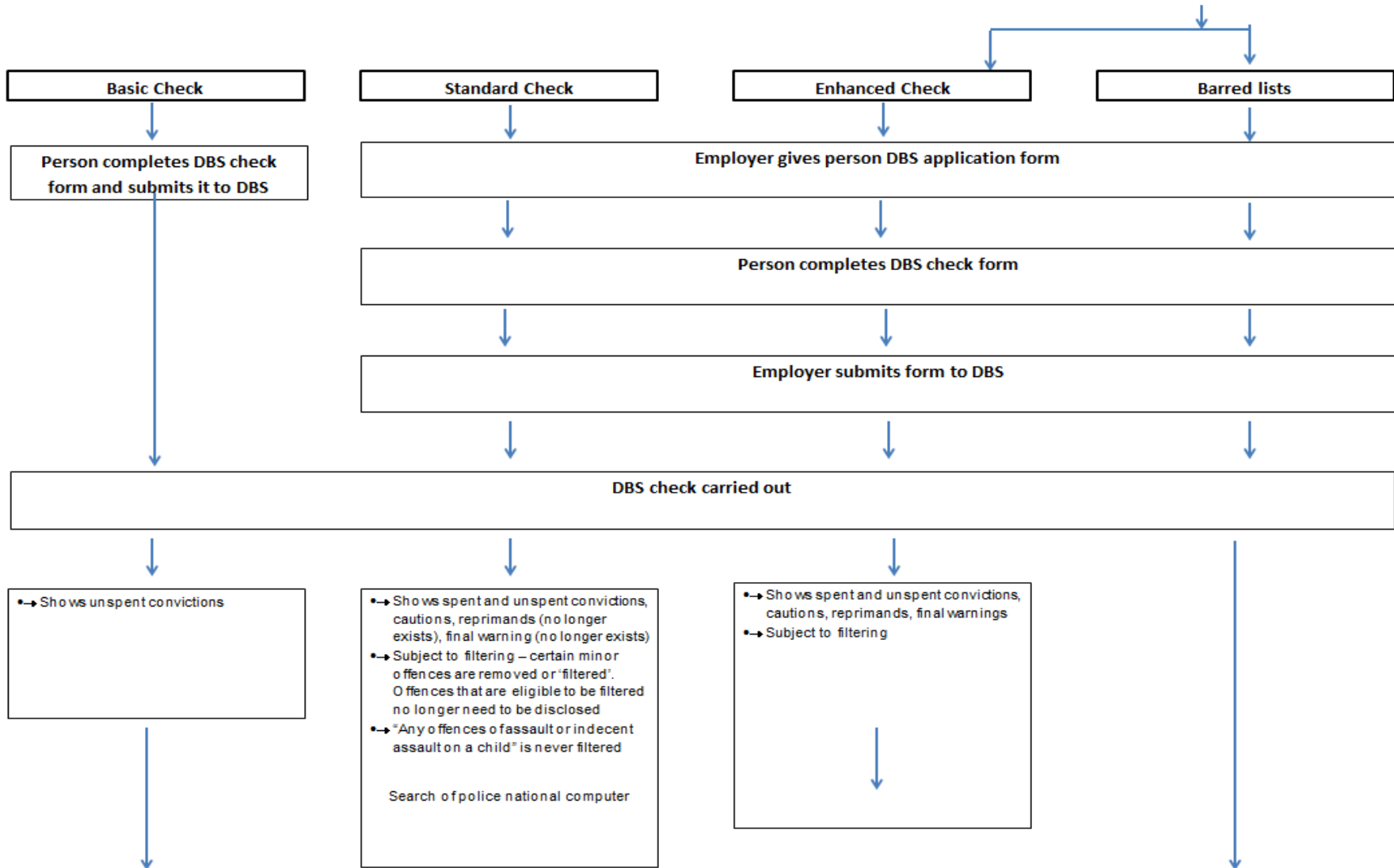
21. If the police believe a person has committed a criminal offence against a child and that person works with children in a regulated activity (e.g. paediatric nurse, doctor, teacher, childcare worker) the police will inform the Local Authority Designated Officer (LADO). The LADO is employed by the local authority to manage and have oversight of allegations across the children's workforce. The employer will make decisions on whether the offence meets the threshold for unacceptable professional conduct.
22. Those working in a regulated activity have a duty to tell both their employer and their professional body/independent regulator (e.g. Nursing and Midwifery Council; General Medical Council, Education Workforce Council, Social Care Wales), if applicable, about any caution or charge, or if they have been found guilty of a criminal offence (other than a protected caution or conviction).
23. If the professional body/independent regulator receives a referral from an employer and it appears such a referral may involve the harm, or the risk of harm to children or vulnerable adults it should forward the referral to the DBS. The DBS may decide to include the registered person in the Children's Barred List or Adults' Barred List.

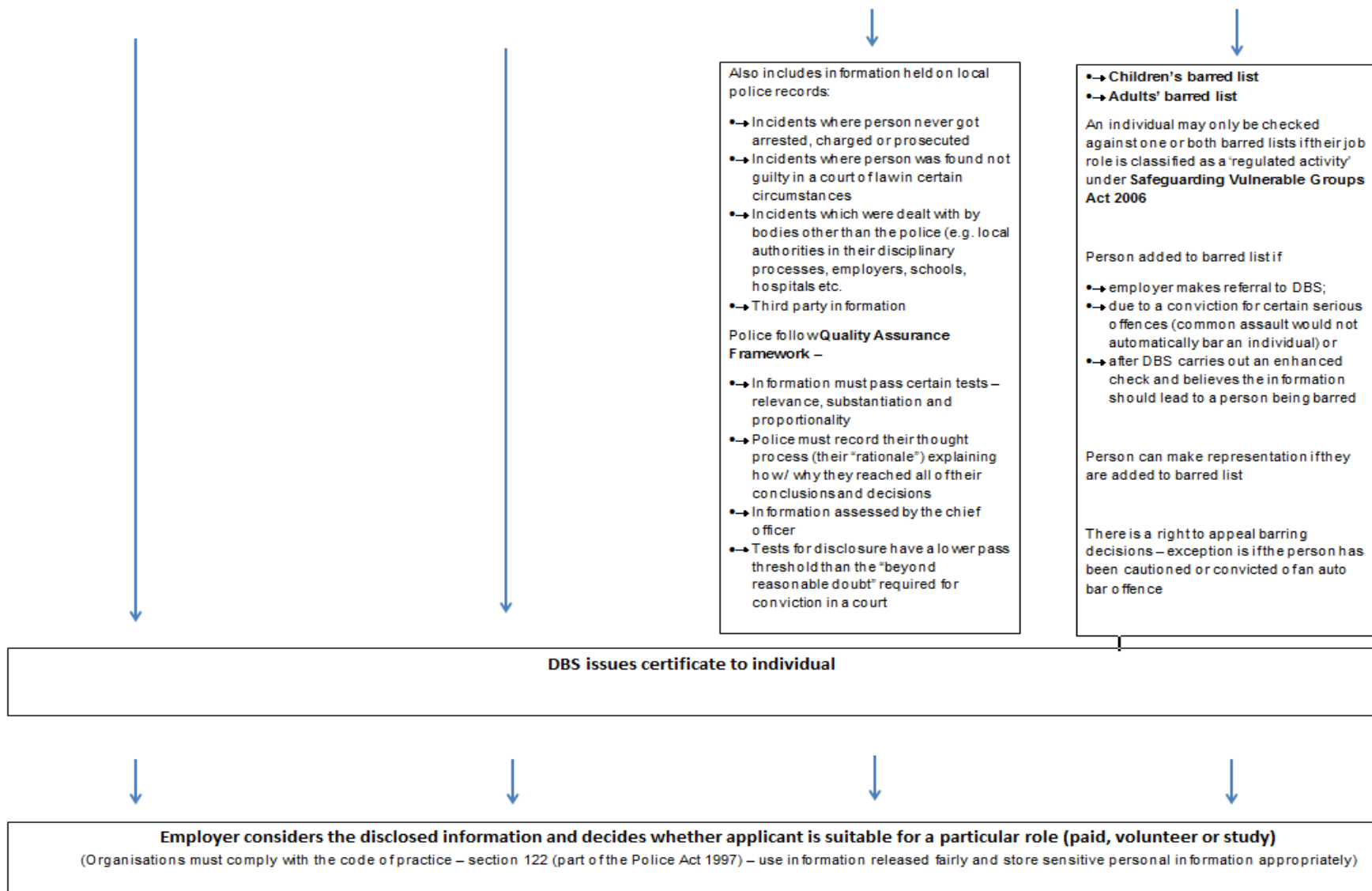
¹³² <http://www.legislation.gov.uk/ukpga/1997/50/section/122>

Figure 1 - Disclosure and Barring Service Process

(A non departmental body of Home Office party of the Police Act 1997 is legislation which makes provision related to criminal recorded checks)







Annex 6: Using New Zealand data as a proxy for estimates in Wales

Background

1. As there is no precedent in the UK¹³³ for removing the defence of reasonable punishment, anticipating the number of parents who would be prosecuted following the proposed change in legislation in Wales is complex.
2. 58 countries have now taken steps to end physical punishment of children in all settings, including in the home¹³⁴. Only four of these countries have legal systems based on a common law jurisdiction and of these only three have ended physical punishment of children using the criminal law: Ireland, New Zealand and Malta.
3. In Malta corporal punishment is unlawful in the home under a 2014 amendment to the Criminal Code Act¹³⁵. This amendment also made corporal punishment unlawful in alternative care settings, day care, and schools. There is no known published data which provides information on the impact of this legislation in Malta.
4. Ireland has removed the common law defence of reasonable punishment. Part 5 (section 28) of the Children First Act 2015¹³⁶ provides for an amendment to the Non-Fatal Offences Against the Person Act 1997¹³⁷. A person who administers physical punishment to a child will no longer be able to rely of the defence of reasonable punishment in the courts. Ireland has not published relevant data on investigations or the number of prosecutions since the legislation was passed so we cannot draw a conclusion as to the extent of the impact following the change to the legislation there.
5. Lessons could be learnt from the experience in New Zealand as it has a number of parallels with Wales. It is a small developed country, with a common law-derived legal and political system. Unlike Ireland police in New Zealand recorded numbers of investigations and prosecutions for five years following the change in legislation in 2007.
6. In the absence of any other data to make more firm estimates, New Zealand has been used as a proxy for the purposes of assessing the impact of law change on the police and justice system. However, caution must be taken in making concrete assumptions and cost projections based on the New Zealand data: there are a number of caveats, as explained below.

¹³³ Although the Children (Equal Protection from Assault) (Scotland) Act received Royal Assent on 7 November 2019 it will not come into force until 6 November 2020.

¹³⁴ According to the Global Initiative to End All Corporal Punishment of Children <https://endcorporalpunishment.org/countdown/> [Accessed 17 October 2019]

¹³⁵ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25940&l=1>

¹³⁶ <http://www.irishstatutebook.ie/eli/2015/act/36/section/28/enacted/en/html>

¹³⁷ <http://www.irishstatutebook.ie/eli/1997/act/26/enacted/en/html>

Caveats

7. While there are a number of parallels with Wales it must be emphasised that New Zealand has a distinct history, culture, values, social norms and social structure. The two countries have different legal definitions and arrangements, enforcement mechanisms, criminal justice systems, demography and economic circumstances. The data published in New Zealand is typically quantitative data, which provide limited cultural or procedural context. In making comparisons it is impossible to control for all the different factors which might have a bearing on rates of physical punishment; willingness to report crime and prosecution rates.

Differences in the Legislation in New Zealand and what is proposed in Wales

8. In 2007, the New Zealand Parliament passed a law repealing section 59 of the Crimes Act 1961¹³⁸. This legislation removed the legal defence of "reasonable force" for parents and those acting in loco parentis prosecuted for assault on their children. Section 59 was similar to the physical punishment defence contained within English and Welsh law. After the repeal and replacement of section 59 in 2007 it became illegal for parents to use any force against their children "for the purposes of correction".
9. The legislation in New Zealand commenced one month after Royal Assent. In Wales a period of two years between Royal Assent and commencement is planned to allow sufficient time to carry out awareness raising, so that the public have time to understand the implications of this law and, if needed, identify ways to discipline their children that do not include physically punishing them.
10. The legislation in New Zealand is not identical to that proposed in Wales and the legislative framework in these two countries is also distinct.

Law enforcement in New Zealand is distinct to that in Wales

11. The criminal justice system in New Zealand is distinct to that which operates in England and Wales, and there may be differences in requirements around recording of offences by the police and crime reporting practices. The legislation in New Zealand provides that the "*Police have the discretion not to prosecute*" where "*the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution*". Police Practice Guidance provides advice in relation to that intention¹³⁹. Amongst other things the Police Practice Guidance states that:

"while smacking may, in some circumstances, be considered inconsequential, a prosecution may be warranted if such actions are repetitive or frequent, and other interventions or warnings to the offender have not stopped such actions."

¹³⁸ Crimes (Substituted Section 59) Amendment Act 2007

<http://www.legislation.govt.nz/act/public/2007/0018/latest/whole.html#DLM407671>

¹³⁹ The Practice Guidance is referred to in a Press Release following the enactment of the legislation in New Zealand in 2007. <http://www.police.govt.nz/news/release/3149.html>

12. It goes on to advise:

“In cases where the force used is found to be minor, trivial or inconsequential, it will be appropriate to record the event on a POL400 and forward the file to the Family Violence Co-ordinator. The expected outcome for such events will be one using common sense and of offering guidance and support, dependent on the context following discussion by the Family Violence Co-ordinator.”

13. It is not clear to what degree the police have used the discretion provided for in the legislation and whether the Practice Guidance around alternatives to prosecution has had a bearing on the potential number of prosecutions in New Zealand. We also have limited evidence regarding the operation of the criminal justice system in New Zealand and to what extent out of court disposals are utilised as an alternative to prosecution.

Population differences

14. New Zealand and Wales are also not identical in the make up of their populations. The population of New Zealand is 4,871,300¹⁴⁰ (31 Mar 2018) and in Wales it is 3,125,000¹⁴¹ (30 June 2017).
15. As the legislation primarily affects parents, consideration also needs to be given to the proportion of parents and children in each country. To provide a rough estimate of the proportion of those potentially affected by the proposed legislative change we have compared the number of children living in each country. The number of children does not necessarily equate to the number of parents because one parent may have more than one child. This does, however provide a rough estimate. As we are unable to find a breakdown of child ages by year for New Zealand we have used a total of the age categories 0-4, 5-9 and 10-14 for both countries to help determine the proportion for this calculation. We have, therefore, confined the comparison to the population of children in each country 0-14 years. This is in line with an assumption that the New Zealand legislation applies to those 14 years or under.

¹⁴⁰ <https://www.stats.govt.nz/indicators/population-of-nz> [accessed June 2018]

¹⁴¹ <https://stats.wales.gov.wales/Catalogue/Equality-and-Diversity/Equality/population-estimates-by-age-year>

Number of children in Wales and New Zealand, by age of child		
Age of child	Wales population (2011 census) ¹⁴²	New Zealand population (2013 census) ¹⁴³
0–4	178,301	292,041
5–9	163,079	286,758
10–14	177,748	286,830
Total	519,128	865,629

16. Although these population figures are based on census for different years these are the best available data for each country. Based on these figures, Wales has around 60% of the number of 0-14 year olds compared with New Zealand.

Parenting support and awareness raising about the legislation

17. The number of prosecutions in New Zealand may be influenced by public willingness to report the offence and levels of awareness around changes in the legislation. Also the number of offences committed in the first place may be affected by the levels of support parents receive to change their behaviour.
18. In New Zealand a public education campaign was launched in 2004 prior to legislation and this still continues. The SKIP: Strategies with Kids – Information for Parents campaign (<https://www.skip.org.nz/>) provides information and support on positive parenting approaches for parents and caregivers of children up to five years old. Funding is also provided for community groups to set up local positive parenting projects and for the production of national resources to support the campaign.
19. In addition the New Zealand Government funds a range of parenting support including Family Start (intensive, home-based support services for families with children under 5 with high needs); Strengthening Families (network of support for families requiring multi-agency assistance); and Integrated Service Response (most at-risk families).
20. The Government did not have any specific educational and media campaign to explain the law change and raise awareness with those affected.
21. Across Wales, parents and carers have access to a range of services to support positive parenting delivered by local government, health, education, and social services. Supporting parents to adopt positive parenting styles is an integral part of both Flying Start (families with children under 4 years of age) and Families First (early intervention and prevention programme).

¹⁴² Data is from:

<https://statswales.gov.wales/Catalogue/Census/2011/UsualResidentPopulation-by-FiveYearAgeBand-Gender> [accessed June 2018]

¹⁴³ Data is from: http://archive.stats.govt.nz/Census/2013-census/data-tables/tables-about-a-place.aspx?request_value=24388&reportid=14&tabname=Ageandsex [accessed June 2018]

22. The 'Parenting, Give it time' campaign (<http://giveittime.gov.wales>), launched in November 2015, also promotes positive parenting messages through social and print media and digital advertising. A dedicated website and Facebook page provide parenting tips, information and advice.
23. It is possible that the availability of parenting support and awareness of the legislation in New Zealand may have affected levels of physical punishment. It may also have influenced the tendency to report offences which might have a bearing on the numbers of prosecutions. For example, child physical punishment rates do appear to be decreasing in New Zealand since the change in legislation. As part of the New Zealand Health Survey parents or primary caregivers were asked if they had physically punished their child in the past four weeks. The survey conducts face to face interviews with the parents or primary caregivers of over 4000 children annually. The percentage of children who were physically punished has decreased from 10.4% in 2006/07 to 4.5 % in 2017/18¹⁴⁴.

Summary

24. As outlined above, while there are some similarities with Wales, New Zealand is a discrete jurisdiction, with a different legal framework and a different criminal justice system. While New Zealand have removed a similar defence of reasonable punishment (reasonable force), the law there is different to that proposed in Wales and all the mechanisms that support implementation and enforcement are distinct from those in Wales.
25. While we have considered and used the New Zealand police data and used it to guide the estimate of the potential impact of law change on the police and justice system in Wales, we are conscious of the differences outlined above, and that the scale of the impact in Wales may be different as a result.

¹⁴⁴ <https://www.health.govt.nz/publication/annual-update-key-results-2017-18-new-zealand-health-survey>

Annex 7: Police Liaison Unit estimate of current levels of reporting

1. The following was submitted by the Police Liaison Unit, with agreement from the four police forces in Wales, as an estimate of the number of reports they receive currently at the level of reasonable punishment.

Background

2. Police forces in England and Wales comply solely with the Home Office Counting Rules for Recorded Crime. This also informs the development of UK Government policy to reduce crime and establish policy effectiveness. Welsh police forces do not currently measure crimes where the defence of 'reasonable punishment' is used, as it does not feature under the Home Office Counting Rules.
3. At the request of the Welsh Government, the Police Liaison Unit conducted an audit of recorded crime offences relating to Common Assault and Cruelty to Children. These relate to crimes recorded in the four Welsh police forces' areas. The data will provide the Welsh Government with a caveated dataset from which to commence an impact assessment prior to and post introduction of the proposed legislation relating to the removal of the defence of reasonable punishment.

Methodology

4. Given that the data required is not the subject of recording or other easily retrievable chronicling or logging, a methodology was agreed by all forces to ensure consistency and create a caveated dataset that focused on:
 - Recorded Common Assault (HOC 105/1) where no injury occurs, the defence of reasonable chastisement does not hold where injury is evident;
 - Recorded Cruelty to Children offences (HOC 11/3) as assaults on children can appear as 'hidden crimes' during an investigation;
 - The audit focused on crimes where the victim was aged under 18 years and the offender aged 18 years or over;
 - The audit excludes offences where the victim is aged 15 -18 years and the perpetrators aged 18-24 years due to the unlikelihood that a parent/child relationship exists or in loco parentis due to ages described;
 - The aforementioned offences were audited in respect of recorded offences 1st April 2017 – 31st October 2018 (19 months).
5. 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. The research has involved both electronic and manual processes to produce refined datasets. Representative samples were utilised during the analytical process due to the volume of recorded crimes and collapsing timeframe.

6. A representative sample of one hundred Section 47 Actual Bodily Harm offences were also audited. Only two offences were found where lawful chastisement featured. However, further scrutiny revealed that there were no visible injuries recorded. This indicates the crimes were incorrectly recorded at source (potentially due to the differing CPS charging guidance criteria) and should have been re-classified as common assault. This again is caveated due to the size of the sample used and is underpinned by the non-recording of 'lawful chastisement' by police forces in England and Wales.
7. In order to arrive at the figures relating to estimated current and anticipated increased demand on each force, the following calculations were used:
 - The total number of crimes over the 19 month period were divided by 19, which provided the total number of crimes per month;
 - The monthly crime total was then multiplied by 12 to provide the annual total;
 - The annual total was then divided by 7 or 8 (dependant on each force). These numbers are the ratio of lawful chastisement occurrences to crimes reported under the set criteria. This produced the estimated and approximated figures for crime demand per annum on each force.
 - This number is caveated and the figures are once again indicative.

Results

8. **Dyfed-Powys Police** crime figures (based on the methodology above) suggested that approximately one in every eight recorded offences relating to Common Assault and Cruelty to Children were identified; where lawful chastisement was used as a defence or considered in the decision making process. *This equates to an estimated 39 crimes per annum; cutting across both crime categories. Under the new legislation, therefore, this would mean a potential additional 39 further investigations by the force every year.
9. **Gwent Police** crime figures reveal that approximately one in every seven recorded offences relating to Common Assault and Cruelty to Children were identified; where lawful chastisement was used as a defence or considered in the decision making process. *This equates to an estimated 56 crimes per annum; cutting across both crime categories. Under the new legislation, therefore, this would mean a potential additional 56 further investigations by the force every year.
10. **North Wales Police** crime figures reveal that approximately one in every eight recorded offences relating to Common Assault and Cruelty to Children were identified; where lawful chastisement was used as a defence or considered in the decision making process. *This equates to an estimated 57 crimes per annum; cutting across both crime categories. Under the new legislation, therefore, this would mean a potential additional 57 further investigations by the force every year.
11. **South-Wales Police** crime figures reveal that approximately one in every seven recorded offences relating to Common Assault and Cruelty to Children were identified; where lawful chastisement was used as a defence or considered in the decision making process. *This equates to an estimated 122

crimes per annum; cutting across both crime categories. Under the new legislation, therefore, this would mean a potential additional 122 further investigations by the force every year.

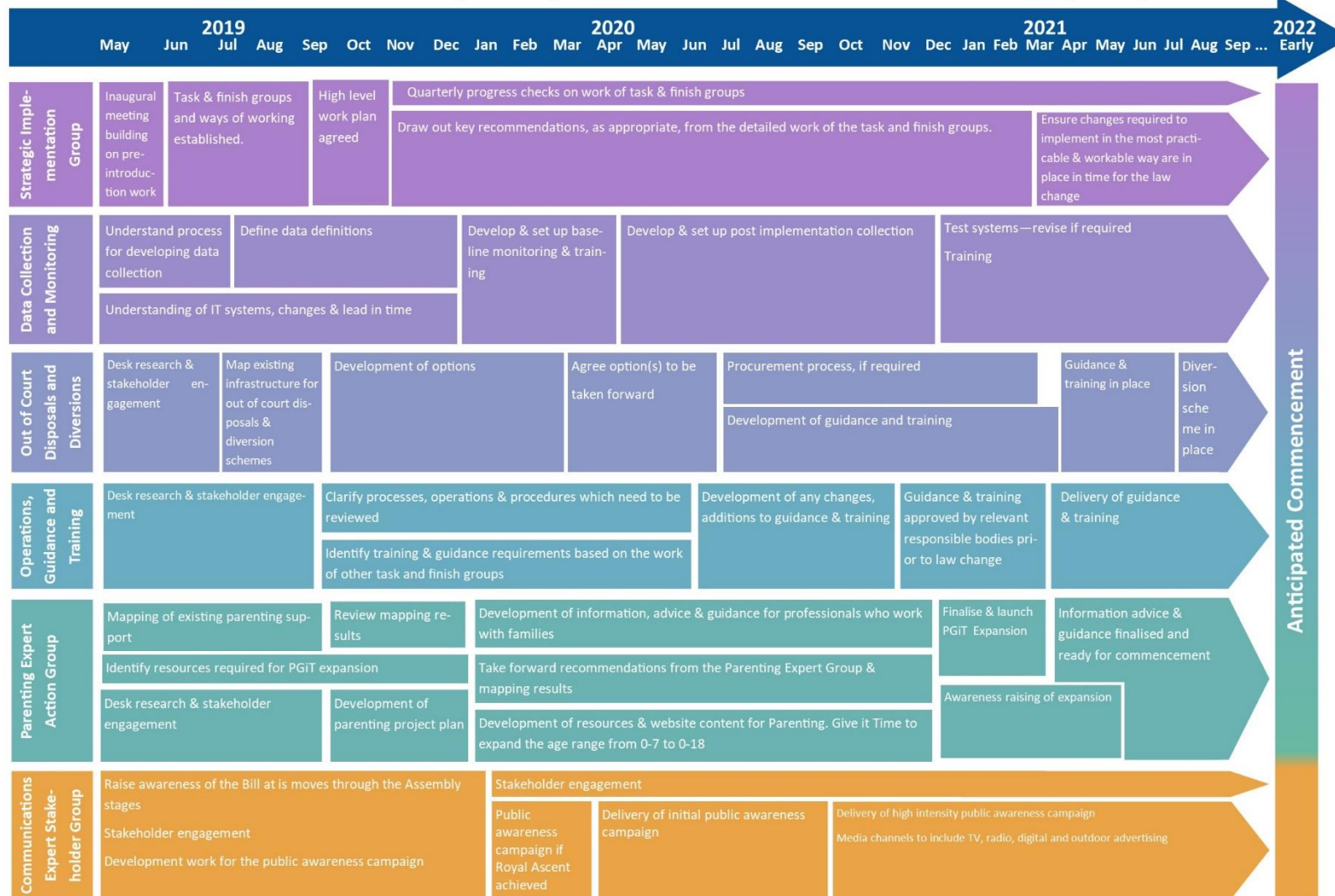
Commentary

12. 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. There is also potential to create extra demand on out of hour's social service teams due to the time that the offences were reported and in order to support safeguarding measures.

Annex 8: High Level Implementation Work Plan

High level Implementation Work Plan

Version (Nov 2019)



Anticipated Commencement
