Llywodraeth Cymru
Welsh Government

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

Explanatory Memorandum

Incorporating the
Regulatory Impact Assessment and
Explanatory Notes

March 2019

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.

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

25 March 2019

TABLE OF CONTENTS

	Page
PART 1: EXPLANATORY MEMORANDUM	**4**
Summary of Part 1	**4**
Chapter 1: Description	**6**
Chapter 2: Legislative Competence	**7**
Chapter 3: Policy Objectives and purpose and intended effect of the Bill	**8**
Chapter 4: Consultation	**23**
Chapter 5: Power to make subordinate legislation	**27**
PART 2 – REGULATORY IMPACT ASSESSMENT	**29**
Chapter 6: Summary of RIA	**30**
Chapter 7: Option	**34**
Introduction to Chapters 8 and 9	**35**
Chapter 8. Costs and benefits	**37**
Chapter 9: Impact Assessments	**56**
Chapter 10: Post implementation review	**61**
ANNEXES	
Annex 1: Explanatory Notes	**62**
Annex 2: Index of Standing Order requirements	**66**
Annex 3: Schedule of amendments	**70**
Annex 4: Potential impacts on individuals and organisations	**72**
Annex 5: Criminal Records and Disclosure and Barring Service	**83**
Annex 6: Using New Zealand data as a proxy for estimates in Wales	**89**
Annex 7: Police Liaison Unit estimate of current levels of reporting	**94**

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 is being 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 force[1], 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 is being 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 changing[3]. 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. 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 children[4]

[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://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 2004[5] . 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.

[5] 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 2006[6] ("GoWA 2006") as amended by the Wales Act 2017[7].

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 2017[8] 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.

[6] https://www.legislation.gov.uk/ukpga/2006/32/contents
[7] http://www.legislation.gov.uk/ukpga/2017/4/contents/enacted
[8] http://www.legislation.gov.uk/ukpga/2017/4/pdfs/ukpgaen_20170004_en.pdf

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 2018[9] and the summary of responses was published on 6 August 2018[10] (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 law[11].

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"[12].

[9] https://beta.gov.wales/sites/default/files/consultations/2018-02/180109-legislation-consultation-en.pdf
[10] https://beta.gov.wales/legislative-proposal-remove-defence-reasonable-punishment
[11] 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/Filetoupload,403606,en.pdf
[12] http://record.assembly.wales/Plenary/4893#A10000059

The current position

3.8 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*[13] *(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.

3.9 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).

3.10 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.

[13] (1860) 2 F & F 202, 175 ER 1024

(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

3.11 The *Code for Crown Prosecutors*[14] 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 guidance[15], which is used in conjunction with the *Code for Crown Prosecutors* to make decisions in criminal cases.

3.12 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.

3.13 Prosecution guidance is published on the CPS website[16]. The *Charging Standard on Offences Against the Person* ("the Charging Standard")[17] 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.

3.14 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.

3.15 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.

---

[14] https://www.cps.gov.uk/publication/code-crown-prosecutors

[15] 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.

[16] www.cps.gov.uk

[17] 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

3.16 A UK Government review in 2007[18] 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.

3.17 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.

3.18 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.

3.19 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.

3.20 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 Standard[19] since then, published on the CPS website, with the provisions relating to reasonable punishment carried over into the most recently-updated version.

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

[19] https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard

3.21 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."*

3.22 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."*

3.23 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 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

3.24 A Freedom of Information request made to the CPS in February 2018[20] 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;

[20] https://www.cps.gov.uk/sites/default/files/documents/publications/foi/2018/Disclosure-3.pdf

- 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

3.25 As noted at paragraph 3.12 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.

3.26 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.

3.27 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

3.28 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.

3.29 Parental attitudes towards the way children are raised and disciplined are already changing. The Welsh Government commissioned research in 2017[21] on parental attitudes towards managing young children's behaviour. This survey asked a similar range of questions to the previous research undertaken in 2015[22]. 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.

[21] 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

[22] 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

3.30 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

3.31 The actions which would or would not constitute physical punishment once the defence is removed have not been defined in the Bill.

3.32 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.

3.33 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.

3.34 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.

3.35 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

3.36 Corporal punishment was outlawed in state schools through the Education (No. 2) Act 1986 (section 48A), now repealed[23] and in independent schools in 1998[24]. 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[25]. 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'[26].

[23] https://www.legislation.gov.uk/ukpga/1986/61
[24] Section 131, School Standards and Framework Act 1998 http://www.legislation.gov.uk/ukpga/1998/31/pdfs/ukpga_19980031_en.pdf
[25] http://www.legislation.gov.uk/ukpga/1996/56/section/548
[26] https://gov.wales/docs/dcells/publications/130315safe-effective-en.pdf

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

3.37 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.[27].

3.38 The Welsh Government considers that the Bill brings Wales in line with recommendations of the UN Committee on the Rights of the Child[28]. It also accords with the recommendations of a number of other key international bodies such as the UN Human Rights Council [29] and the UN Committee on the Elimination of Discrimination Against Women [30].

3.39 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 2018[31].

3.40 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.

3.41 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

[27] 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
[28] https://www.ohchr.org/EN/Countries/ENACARegion/Pages/GBIndex.aspx
[29] https://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx
[30] https://www.ohchr.org/en/hrbodies/cedaw/Pages/CEDAWIndex.aspx
[31] https://beta.gov.wales/sites/default/files/consultations/2018-02/180109-legislation-consultation-en.pdf

punishment. In addition, it set out that research suggests positive parenting, is associated with benefits at all points in a child's development.

3.42 In our consultation document summary of the evidence we cited 2005 meta-analysis comparing child outcomes of physical punishment and alternative disciplinary tactics[32]. 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.

3.43 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 three pieces of research commissioned by the Welsh Government:

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

3.44 This research, conducted by Beaufort Research, was commissioned by the Welsh Government and published on 11 July 2018[33]. It was broadly a repeat of previous research undertaken for the Welsh Government by Wavehill Ltd in 2015[34]. 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.

3.45 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

[32] https://beta.gov.wales/sites/default/files/consultations/2018-02/180109-legislation-consultation-en.pdf
[33] 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
[34] 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

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.

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

3.46 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 2018[35].

3.47 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.

3.48 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*

[35] https://www.wcpp.org.uk/publication/parental-physical-punishment-child-outcomes-and-attitudes/

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."

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

3.49 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.

3.50 The report of the review was published on 2 November 2018 and includes the following findings:[36]

- **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)[37]

3.51 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.

[36] https://www.wcpp.org.uk/publication/legislating-to-prohibit-parental-physical-punishment-of-children/
[37] https://bmjopen.bmj.com/content/8/9/e021616

3.52 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.

- 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.

Fit with Welsh Government policies and priorities

3.53 The Programme for Government, *Taking Wales Forward*[38] reaffirmed the Welsh Government's intention to take forward, on a cross-party basis, legislation which would remove the defence of reasonable punishment.

3.54 *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.

3.55 Building on the headline commitments in the Programme for Government, *Prosperity for All*[39] 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.

[38] https://gov.wales/taking-wales-forward
[39] https://gov.wales/docs/strategies/170919-prosperity-for-all-en.pdf

3.56 *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 parenting styles and contribute to several of the national wellbeing goals under the Well-being of Future Generations (Wales) Act 2015[40], 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, 2017[41i]; O'Connor and Scott, 2007[42]; Katz and Redmond, 2009[43]; Nixon, 2012[44]).
- Globally responsible Wales – International human-rights and treaty bodies such as the UN Committee on the Rights of the Child[45], and the UN Human Rights Council[46] and the UN Committee on the Elimination of Discrimination Against Women[47], 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 UNCRC[48].

Supporting the implementation of the Bill

Support for parents

3.57 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 Start[49] and Families First[50] 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

[40] https://gov.wales/topics/people-and-communities/people/future-generations-act/?lang=en
[41] 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
[42] O'Connor, T. and Scott, S. (2007) "Parenting and outcomes for children", York: Joseph Rowntree Foundation
[43] Katz, I and Redmond, G. (2009) "Family income as a protective factor for child outcomes" Social Policy Review 21, Bristol: The Policy Press
[44] 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
[45] https://www.ohchr.org/EN/Countries/ENACARegion/Pages/GBIndex.aspx
[46] https://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx
[47] https://www.ohchr.org/en/hrbodies/cedaw/Pages/CEDAWIndex.aspx
[48] https://www.ohchr.org/en/professionalinterest/pages/crc.aspx
[49] https://gweddill.gov.wales/topics/people-and-communities/people/children-and-young-people/parenting-support-guidance/help/flyingstart/?skip=1&lang=en
[50] https://gweddill.gov.wales/topics/people-and-communities/people/children-and-young-people/parenting-support-guidance/help/families-first/?lang=en

parenting approaches, reduced parental stress and conflict over child rearing as well as improved child behaviour (For a list of research articles please visit the Triple P[51] and Incredible Years' websites[52]). In addition, Triple P and Incredible Years have been reviewed by the Early Intervention Foundation (EIF) and included in their guidebook for early intervention programmes[53] which have achieved positive outcomes of children[54].

3.58 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.

3.59 The Welsh Government's Parenting Support Guidance[55] 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.

3.60 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.

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

3.62 The Welsh Government *Parenting. Give it Time* campaign[56] 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.

[51] https://pfsc-evidence.psy.uq.edu.au/
[52] http://www.incredibleyears.com/for-researchers/evaluation/
[53] https://guidebook.eif.org.uk/about-the-guidebook
[54] 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.
[55] https://gov.wales/docs/dsjlg/publications/cyp/170519-parenting-in-wales-guidance-en.pdf
[56] http://giveittime.gov.wales/?lang=en

Raising awareness of the provisions of the Bill

3.63 Parents and those acting with parental responsibility will need to be aware of the proposed change in the law before it comes into force.

3.64 The 2018 PPIW report *Legislating to Prohibit Parental Physical Punishment of Children*[57] 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.

3.65 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).

3.66 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.

[57] 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 2018[58], 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 contractor[59].

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.

[58] https://beta.gov.wales/sites/default/files/consultations/2018-02/180109-legislation-consultation-en.pdf
[59] https://beta.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 3.55 to 3.60. As part of the preparation for implementation, we will work with key stakeholders in Wales to consider what, if any, additional support to that outlined above is required.

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 will put them in a position to choose not to physically punish their children, and thereby avoid the risk of being charged with a criminal offence.

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 standard[60] 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 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.

[60]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

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). 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.

Guidance/ training to support frontline professionals

4.14 The Welsh Government intends to engage with professionals who work with children and families, to ensure they are fully aware of the Bill and, if the Bill is passed, 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. This could involve revising existing guidance or training, or developing new guidance and training approaches.

4.15 Preparatory work will start during the progress of the Bill through the Assembly. If the Bill is passed further work will be done between Royal Assent and commencement so that, so 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.

Evidence

4.16 As outlined at paragraphs 3.39 to 3.50, 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

4.17 As outlined above, the Welsh Government is already consulting and working with a wide range of stakeholders. In Chapter 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
2	Welsh Ministers	Order	Allows the Welsh Ministers to appoint by order made by a statutory instrument the coming into force date of provisions in the Bill and may make transitional, transitory or saving provision in connections with the coming into force of a provision in the Bill.	No procedure	This order 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).

Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill		
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 £1,286,000 - £2,716,000 Police £890,000 Her Majesty's Courts and Tribunals Service Up to £70,000 Crown Prosecution Service £11,000 - £20,000		
Stage: Introduction	**Appraisal period:** 2019/20 - 2026/27	**Price base year:** 2018/19
Total Cost **Total: £2,258,000 - £3,696,000** **Present value: £1,988,000 - £3,312,000**	**Total Benefits** **Total: £0** **Present value: £0**	**Net Present Value (NPV): £-1,988,000 - £-3,312,000**

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 procedures are regularly revised, and it is expected that any changes as a result of the Bill will be part of the normal cycle of revisions.

Administrative costs for Welsh Government and stakeholders, relating to updating guidance and training for staff, are not known but are expected to be minimal. There may be some cost in staff time, but it is likely that in most cases only updates or minor revisions to existing guidance and training will be required. Costs relating to police and social services will be considered by the Implementation Group.

The Welsh Government's work to raise awareness of the Bill will incur a cost of £1.286m - £2.716m, depending on the intensity of the campaign as described at paragraphs 8.23 to 8.27.

Transitional: £1,286,000 - £2,716,000	**Recurrent: £0**	**Total: £1,286,000 - £2,716,000**	**PV: £1,169,000 - £2,486,000**
Cost-savings: No administrative cost savings have been identified.			
Transitional: £0	**Recurrent: £0**	**Total: £0**	**PV: £0**
Net administrative cost: £1,286,000 - £2,716,000			

Compliance costs

The best estimate of costs incurred by public services and the justice system are set out at paragraphs 8.28 to 8.42]. 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 £11,000 and £20,000.			
Transitional: £0	**Recurrent: £971,000 - £980,000**	**Total: £962,000 - £976,000**	**PV: £819,000 - £826,000**

Other costs

No other quantified costs have been identified.			
Transitional: £0	**Recurrent: £0**	**Total: £0**	**PV: £0**

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
- Provide the delivery of out of court disposals
- Review training and guidance offered by organisations involved in safeguarding of children, to ensure they are up to date

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;
- 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 non-educational 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 disbenefits (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**

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 3.39 to 3.50. In summary:

- The majority of researchers in the field make the judgement that all physical punishment under all conditions is potentially harmful to children[61]
- The research 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 2015[62];
- 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[63]
- 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[64];
- 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 effective[65].

[61] https://www.wcpp.org.uk/publication/parental-physical-punishment-child-outcomes-and-attitudes/
[62] https://gov.wales/parental-attitudes-towards-managing-young-childrens-behaviour-2017
[63] https://www.wcpp.org.uk/publication/parental-physical-punishment-child-outcomes-and-attitudes/
[64] https://www.wcpp.org.uk/publication/parental-physical-punishment-child-outcomes-and-attitudes/
[65] https://www.wcpp.org.uk/publication/legislating-to-prohibit-parental-physical-punishment-of-children/

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 RIA[66] 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.

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.

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,

[66] https://beta.gov.wales/sites/default/files/consultations/2018-02/180109-legislation-regulatory-en.pdf

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 assessment (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, an Implementation Group will be established to consider the extent to which current processes 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.

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 3.55 to 3.60 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* campaign[67].

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.

[67] 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 2017, there were 884.7 full time equivalent health visitors and 87.1 full time equivalent school nurses working in Wales (Stats Wales[68]).
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 (around 25% of the under 4 population) – it has exceeded this target in the last four years.	In 2017-18, the total revenue spend on the Flying Start programme was £75.012m.
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 2017-18, the total revenue spend on the Families First programme was £38.612m.
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.	The total spend on the campaign in 2017-18 was £90k.

[68] https://statswales.gov.wales/Catalogue/Health-and-Social-Care/NHS-Staff/Non-Medical-Staff/nonmedicalnhsstaff-bystaffgroup-grade-year

Programme / Activity	Cost
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. It aims to equip parents with the tools to help them be the best parent they can be, through a website and media campaign providing positive parenting tips and information. Over 80,000 booklets and a suite of information sheets on a range of parenting concerns have been provided to health visitors, parenting professionals and the Family Information Service to distribute to parents. Information has also been made available through childcare settings, GP surgeries and libraries.	The total spend on the campaign in 2017/18 was £163k.

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.

Disbenefits

8.17 Dis-benefits 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 children[69].

[69] 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 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 3.11 to 3.23 on operation of the current defence, and 3.28 to 3.30 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. Any costs associated with such training and guidance are expected to be minimal (see paragraphs 8.38 to 8.42 for further information).

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 change[70]. 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. 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.

[70] http://www.police.govt.nz/about-us/publication/crimes-substituted-section-59-amendment-act-2007

8.22 Other than a Commencement Order, there will be no subordinate legislation deriving from the Bill therefore there are no costs mentioned relating to subordinate legislation.

Welsh Government

8.23 Under option 2, there would be additional costs relating to raising awareness of the change in the law.

8.24 A report by the PPIW on legislating to prohibit parental physical punishment of children[71] 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 impact[72].

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 children[73].

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 programme[74] reported incorporating the SKIP principles of effective discipline into their relationships as well as a higher degree of parenting efficacy and confidence.

[71] 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

[72] 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"

[73] 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/

[74] 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%)[75].

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 The table below illustrates the potential costs over a 7 year period based on the three different options set out above. 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. These figures are an approximation; detailed planning will be undertaken in the 2019/20 financial year. Planning of ongoing awareness raising will need to take into account ongoing research and evaluation.

8.29 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.

[75] Welsh Government / Beaufort Research (2016), "Survey of Public Attitudes to Organ Donation: Waves 10, 11 and 12." Available from: https://gov.wales/docs/caecd/research/2016/160905-survey-public-attitudes-organ-donation-waves-10-11-12-en.pdf

Financial Year	Option A	Option B	Option C
2019/20	£50,000	£50,000	£50,000
2020/21	£200,000	£400,000	£600,000
2021/22	£200,000	£600,000	£800,000
2022/23	£170,000	£200,000	£300,000
2023/24	£100,000	£200,000	£200,000
2024/25	£50,000	£100,000	£150,000
2025/26	£50,000	£100,000	£150,000
2026/27	-	-	-
WG Staffing Costs (6 years & 3 months)	£466,000	£466,000	£466,000
Total	£1,286,000	£2,116,000	£2,716,000

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

8.30 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).

8.31 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.

Police, Social Services and the Justice System

8.32 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	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. 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.
2	Identifying appropriate data to provide a baseline of current referrals to social services in Wales	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.

	Data required to assess impact on organisation	Data limitations
3	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.	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 2004[76], 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 2018[77], 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. As noted at paragraph 3.24 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. 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.

[76] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/344503/Review_of_Section_58_of_the_Children_Act_2004.pdf
[77] 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.	There is no precedent in the UK 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. 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. 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.

8.33 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

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

8.34 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

8.35 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 this affected, while we are planning an awareness raising campaign to accompany the law change in Wales.

8.36 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 prosecutions in the courts. The caveats around use of the New Zealand data are further explained in annex 6.

8.37 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

8.38 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	£ 535 per referral. 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. 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. The unit cost breaks down as follows: • £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	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. 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 are working with a small number of local authorities to try to establish a sufficiently accurate baseline based on the method that the police were able to use when analysing their own data.

Scale of increase	As outlined in the table at paragraph 8.28, 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. If a baseline is established there is no comparative data with which to calculate an increase in caseload. Therefore, we will work with social services to establish a recording system so the potential impact can be monitored. The cost to social services is therefore unknown at this stage.

Police

Unit cost	£ 650 per referral. This has been established in consultation with the Police Liaison Unit (PLU) and the four police forces in Wales. 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). 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.).
Baseline data	274 referrals per annum. 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. 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). 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.
Scale of increase	100% increase – additional £178,000 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.

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

8.39 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.

8.40 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 proxy[78] 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.

8.41 Subject to this caveat, 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.

[78] New Zealand Police, (2009) "Final results of 2 year review of police activity since enactment of the Crimes(Substituted Section 59) Amendment Act 2007".

8.42 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 detail[79]).

8.43 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)

8.44 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.

8.45 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 8.42 – 8.43.

Transitional costs – public bodies and third sector

8.46 It is expected that there will be some transitional costs, relating to updating guidance and training for staff, for public bodies including the police, local authorities (in respect of both social services and education), the health sector, and voluntary organisations who work with children. The exact cost is unknown but is expected to be minimal, for the reasons outlined below.

8.47 The All Wales Child Protection Procedures 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. The procedures are regularly revised, and it is expected that any changes to the procedures as a result of the Bill will be part of the normal cycle of revisions.

8.48 It is expected relevant staff would already be aware of the defence of reasonable punishment, so notification of its removal should serve to clarify that no physical punishment of children by their parents is permissible following the legislation coming into force. While there may be an increase in the number of referrals / reported allegations of physical punishment, the process for professionals dealing with incidents of physical abuse should largely remain the same.

8.49 We have identified that some bodies / organisations may require their own guidance to be updated for their members and or employees; this includes Welsh Government, the education and social services departments in local

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

authorities, organisations in the justice system, third and health sector organisations. Any changes to such guidance will need to be communicated to staff, alongside awareness raising of the change in the law. The Welsh Government would intend to explore this further in the Implementation Group it is setting up on work that would need to be done if the Bill should be enacted.

8.50 Familiarisation and/or attending any update sessions are routine activities for those organisations involved so there should be no additional costs in this respect.

Cost summary table

8.51 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.

FY	Welsh Gov't	Police	Local auth or-ities*	HMCTS	CPS	Total
2019/20	£50,000		-	-	-	£50,000
2020/21	£200,000 - £600,000		-	-	-	£200,000 - £600,000
2021/22	£200,000 - £800,000		-	-	-	£200,000 - £800,000
2022/23	£170,000 - £300,000	£178,000	-	£14,000	£2,000-£4,000	£364,000 - £496,000
2023/24	£100,000 - £200,000	£178,000	-	£14,000	£2,000-£4,000	£294,000 - £396,000
2024/25	£50,000 - £150,000	£178,000	-	£14,000	£2,000-£4,000	£244,000 - £346,000
2025/26	£50,000 - £150,000	£178,000	-	£14,000	£2,000-£4,000	£244,000 - £346,000
2026/27	-	£178,000	-	£14,000	£2,000-£4,000	£194,000 - £196,000
WG staff awareness raising**	£466,000					£466,000
Total	£1,286,000 - £2,716,000	£890,000	-	£70,000	£11,000 - £20,000	£2,258,000 - £3,696,000

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

* 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 8.34, 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 t at present.

**These costs to Welsh Government cover the period of 6 years and three months from January 2020 to March 2027.

Benefits

8.52 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 review[80] 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.

Disbenefits

8.53 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.

8.54 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

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

appear for the purposes of a standard or enhanced check undertaken through the Disclosure and Barring Service (DBS). This may have consequences for the 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.

8.55 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

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 parents[81] and those with poor maternal physical and mental health[82]). There is also some evidence that physical punishment is associated with certain groups of children (e.g. younger children, boys[83]). 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 research[84].

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

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

[82] 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

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

[84] 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.

indicated that the changes proposed by the Bill will have a neutral effect on the Welsh Language.

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 UK 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.

9.24 The estimated cost projection for the justice system for the 5 years following implementation is included in the RIA in Chapter 8. The intention is to set up an Implementation Group which will monitor the potential impacts of the legislation after commencement, including the resource implications.

Chapter 10: Post implementation review

10.1 This section sets out the intended approach for monitoring and reviewing the effect of the legislation.

10.2 The Bill sets out that its provision abolishing the physical punishment of children will come into force on a day appointed by the Welsh Ministers, allowing time for comprehensive awareness raising of the removal of the defence of reasonable punishment.

10.3 The effect of the Bill will be measured in a number of ways, including through research and evaluation as well as developing routine data collection with stakeholders. To monitor and evaluate the effectiveness of the legislation we will use representative surveys to track public awareness of the change in legislation, changes in attitude towards physical punishment of children and prevalence of parents reporting they use physical punishment.

10.4 An Implementation Group will be established to ensure any changes to processes which may be required following commencement will take account of existing procedures.

10.5 The Welsh Government recognises the importance of considering the financial and resource implications of the Bill in a post implementation review. We will work 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. Data collection will, wherever possible, be aligned with existing activity or other relevant work.

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.

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. "Corporal punishment" in this context means any battery carried out as a punishment (the definition of the expression appears in subsection (4)).

26. 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.

27. (There may be other, more ambiguous, instances where a particular physical intervention described at paragraphs 15 to 20 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.)

28. 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).

29. 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.

30. 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.

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

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 page 7, paragraphs 2.1 – 2.3
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 – Policy objectives and purpose and intended effect of the Bill	Pages 13 - 14, paragraphs 3.28 – 3.30
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 34, chapter 7, paragraphs 7.1 – 7.4
26.6(iv)	Set out the consultation, if any, which was undertaken on: (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 23, 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 23 – 26, paragraphs 4.5 – 4.17

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 23, 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 62
26.6(viii)	Set out the best estimates of: (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 30 – 32 & Cost summary table Page 53, Paragraph 8.51

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 54 – 55, Paragraphs 8.52 – 8.55
26.6(x)	Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision: (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	Pages 27 – 28, 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 51 – 52, Paragraphs 8.39 – 8.45 and Page 59, 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 70 - 71

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.

Children Act 2004 (2004 c31)	*Amending section of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill*
Part 5 Miscellaneous (ss 44-63)/58	
58 Reasonable Punishment: England	**Section 1(5)**
(1) In relation to any offence specified in subsection (2), battery of a child taking place in England cannot be justified on the ground that it constituted reasonable punishment.	**Section 1(5)**
(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 1933 (c 12) (cruelty to persons under 16).	
(3) Battery of a child taking place in England causing actual bodily harm to the child cannot be justified in any civil proceedings on the ground that it constituted reasonable punishment.	**Section 1(5)**
(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 1933, omit subsection (7).	

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 72
The justice system (including the police and Crown Prosecution Service)	Page 73
Police	Page 74
Crown Prosecution Service	Page 77
Other impacts on the justice system	Page 78
Social services	Page 79
Education	Page 80
Health	Page 82

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 report[85])
   - 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 skin[86]. 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 child[87]. This could lead to a prosecution.

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

[86] 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".

[87] 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 interest[88]. 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.

<u>The justice system (including the police and Crown Prosecution Service)</u>

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 assessment[89].

[88] 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

[89] 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 disposals[90], 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[91] [92].

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.

---

[90] https://www.npcc.police.uk/Publication/Charging%20and%20Out%20of%20Court%20Disposals%20A%20National%20Strategy.pdf

[91] Simple cautions - https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors

[92] Conditional cautions - https://www.gov.uk/government/publications/code-of-practice-for-adult-conditional-cautions

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 proceedings and revealed as part of a DBS standard or enhanced criminal record check.[93]

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 basis[94]. 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 there is currently a shortage of

[93] 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.
[94] http://library.college.police.uk/docs/appref/Community-Resolutions-Incorporating-RJ-Final-Aug-2012-2.pdf

RIs and a very limited number of Welsh speaking ones. This could create delays in the process.

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 Prosecutors[95] 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.

[95] 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.

Social Services

45. 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.

46. 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).

47. 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.

48. 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.

49. 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

50. 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 etc 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.

51. 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.

52. The Social Services and Wellbeing (Wales) Act 2014 Part 7 statutory guidance on 'Handling Individual Cases' and the Wales Safeguarding Procedures currently in development will need to reflect the removal of the defence.

53. Discussions regarding any changes needed to current guidance and training concerning the safeguarding, support and care of children are ongoing.

Impact on resources

54. 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

55. 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 individual responsibilities of teachers will depend upon their role in relation to child protection in their school.

56. 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. It would then be for social services or the police, depending on the nature of the incident, to investigate and determine what action, if any, to take.

Use of reasonable force in schools

57. 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.

58. 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.

59. 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.

60. 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)

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

Unregulated settings

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

.

Impact on process – 'non-educational settings'

63. Many non-educational settings may already have safeguarding protocols in place. We have no evidence that children are being physically punished in unregulated non-educational 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

64. 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.

65. 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**[96] (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**[97] 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)[98] 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 checks[99]. 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*

[96] https://www.gov.uk/government/organisations/disclosure-and-barring-service
[97] http://www.legislation.gov.uk/ukpga/1997/50/part/V/data.pdf
[98] https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974
[99] https://www.gov.uk/government/publications/dbs-filtering-guidance

child"[100] 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."[101]

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. When disclosing information held locally, the police follow the **Quality Assurance Framework**[102] developed by the National Police Chiefs Council (NPCC)[103] and the DBS. 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.

[100] https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check
[101] As set out in 2007 Guidance, Safeguarding Children and Safer Recruitment in Education
[102] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/295392/DBS_Applicant_s_introduction_to_QAF_March_2014.pdf
[103] https://www.npcc.police.uk/

11. 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.

12. 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.

13. 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.

14. 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.

15. Those organisations who use the DBS checking service must comply with the code of practice (section 122 of Part V Police Act 1997[104]). 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.

Fitness to practice

16. 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.

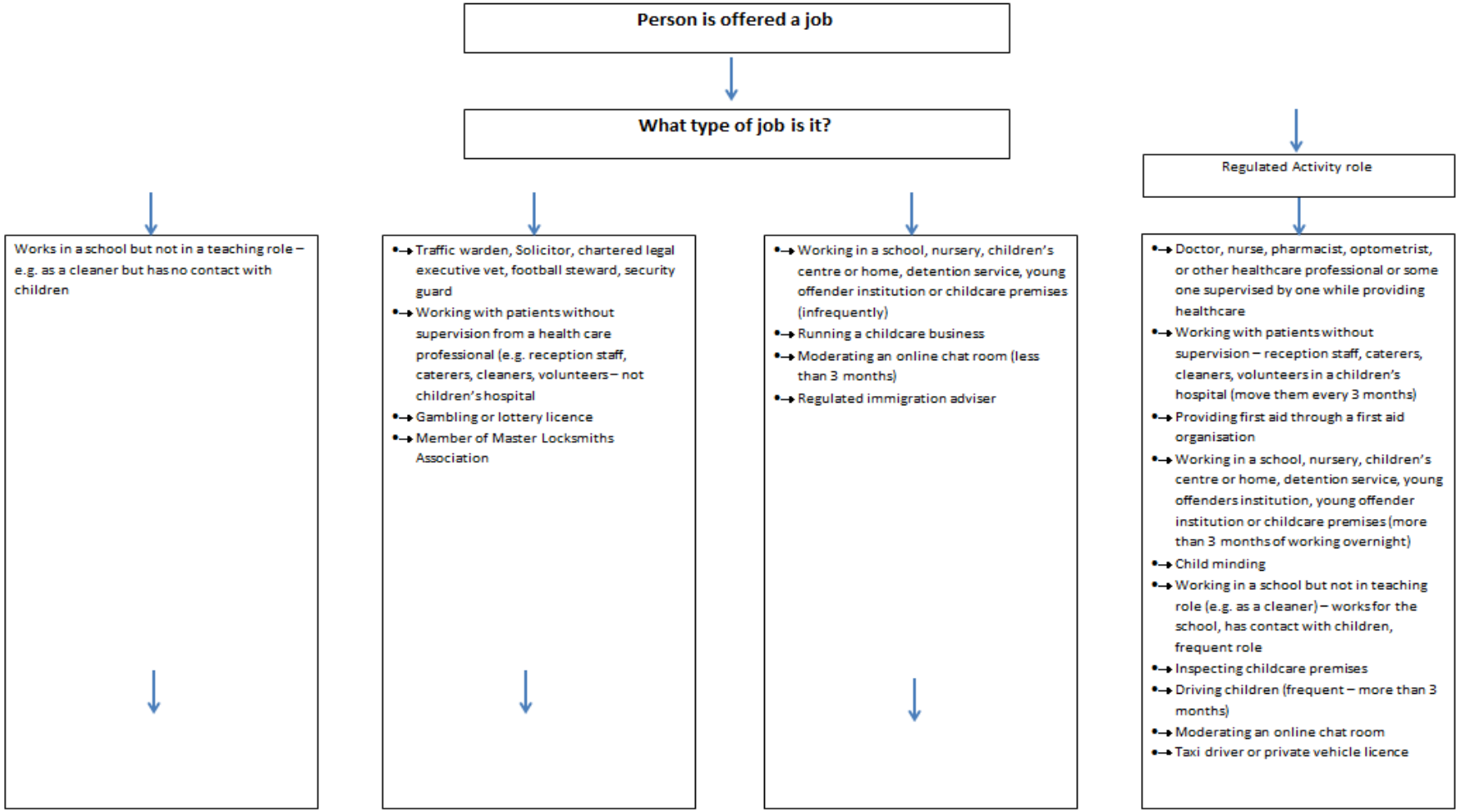
17. Those working in a regulated activity have a duty to tell both their employer and their professional body/independent regulator (e.g. Nursing and Midwifery Council; General Medical Council, Education Workforce Council, Social Care Wales), if applicable, about any caution or charge, or if they have been found guilty of a criminal offence (other than a protected caution or conviction).

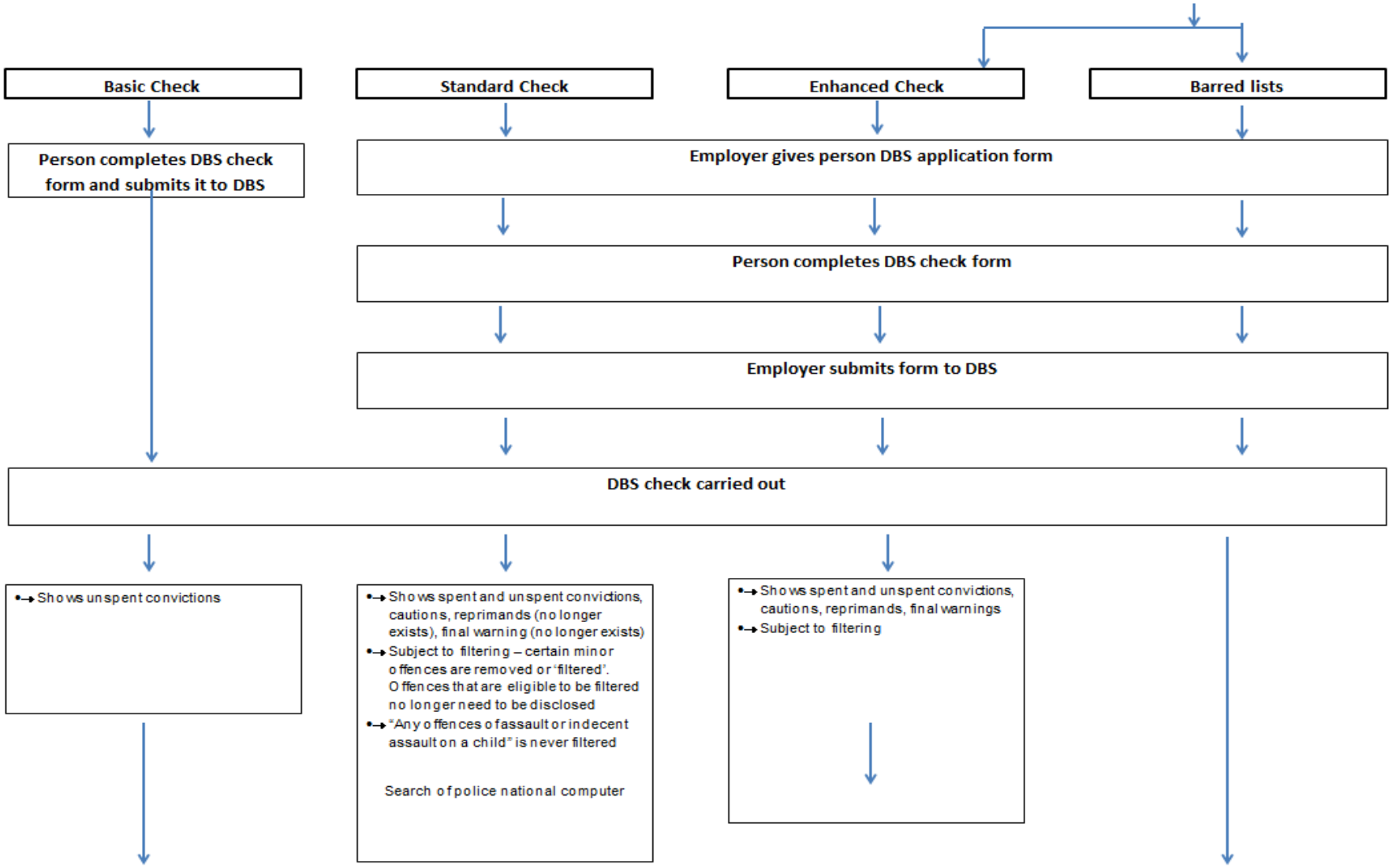
18. If the professional body/independent regulator receives a referral from an employer and it appears such a referral may involve the harm, or the risk of harm to children or vulnerable adults it should forward the referral to the DBS. The DBS may decide to include the registered person in the Children's Barred List or Adults' Barred List.

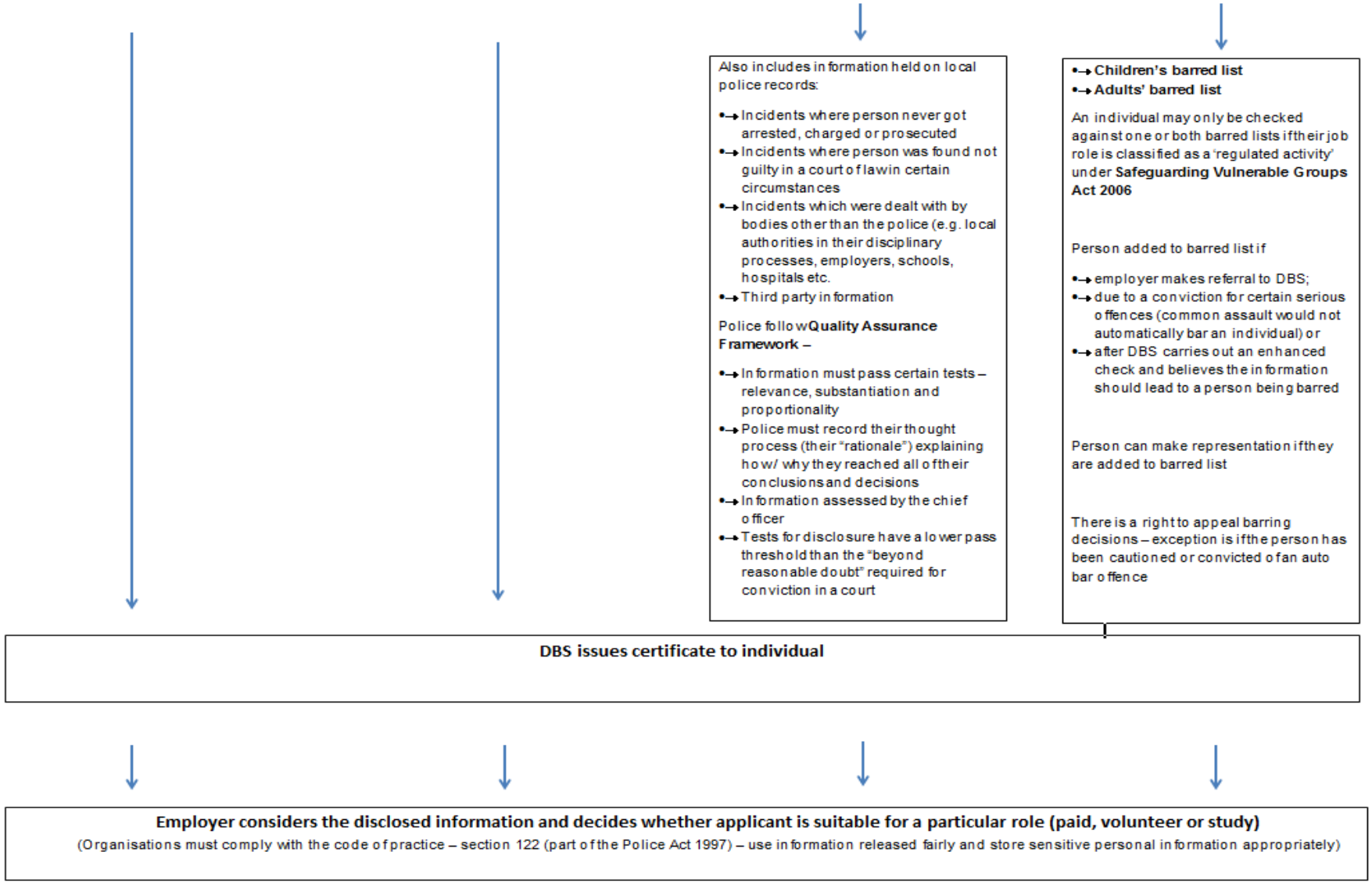
[104] http://www.legislation.gov.uk/ukpga/1997/50/section/122

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)




Basic Check
Standard Check
Enhanced Check
Barred lists
Person completes DBS check form and submits it to DBS
Employer gives person DBS application form
Person completes DBS check form
Employer submits form to DBS
DBS check carried out
Shows unspent convictions
Shows spent and unspent convictions, cautions, reprimands (no longer exists), final warning (no longer exists)
Subject to filtering – certain minor offences are removed or 'filtered'. Offences that are eligible to be filtered no longer need to be disclosed
"Any offences of assault or indecent assault on a child" is never filtered
Search of police national computer
Shows spent and unspent convictions, cautions, reprimands, final warnings
Subject to filtering


Also includes information held on local police records:
• Incidents where person never got arrested, charged or prosecuted
• Incidents where person was found not guilty in a court of law in certain circumstances
• Incidents which were dealt with by bodies other than the police (e.g. local authorities in their disciplinary processes, employers, schools, hospitals etc.
• Third party information
Police follow Quality Assurance Framework –
• Information must pass certain tests – relevance, substantiation and proportionality
• Police must record their thought process (their "rationale") explaining how/ why they reached all of their conclusions and decisions
• Information assessed by the chief officer
• Tests for disclosure have a lower pass threshold than the "beyond reasonable doubt" required for conviction in a court
• Children's barred list
• Adults' barred list
An individual may only be checked against one or both barred lists if their job role is classified as a 'regulated activity' under Safeguarding Vulnerable Groups Act 2006
Person added to barred list if
• employer makes referral to DBS;
• due to a conviction for certain serious offences (common assault would not automatically bar an individual) or
• after DBS carries out an enhanced check and believes the information should lead to a person being barred
Person can make representation if they are added to barred list
There is a right to appeal barring decisions – exception is if the person has been cautioned or convicted of an auto bar offence
DBS issues certificate to individual
Employer considers the disclosed information and decides whether applicant is suitable for a particular role (paid, volunteer or study)
(Organisations must comply with the code of practice – section 122 (part of the Police Act 1997) – use information released fairly and store sensitive personal information appropriately)

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

Background

1. As there is no precedent in the UK 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. 54 countries have now taken steps to end physical punishment of children in all settings, including in the home. 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 Act[105]. 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 2015[106] provides for an amendment to the Non-Fatal Offences Against the Person Act 1997[107]. 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.

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

[105] http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25940&l=1
[106] http://www.irishstatutebook.ie/eli/2015/act/36/section/28/enacted/en/html
[107] http://www.irishstatutebook.ie/eli/1997/act/26/enacted/en/html

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 1961[108]. 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. However 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

10. 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 intention[109]. 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."*

11. 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."*

[108] Crimes (Substituted Section 59) Amendment Act 2007 http://www.legislation.govt.nz/act/public/2007/0018/latest/whole.html#DLM407671

[109] 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 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

13. New Zealand and Wales are also not identical in the make up of their populations. The population of New Zealand is 4,871,300[110] (31 Mar 2018) and in Wales it is 3,125,000[111] (30 June 2017).

14. 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.

Number of children in Wales and New Zealand, by age of child

Age of child	Wales population (2011 census)[112]	New Zealand population (2013 census)[113]
0–4	178,301	292,041
5–9	163,079	286,758
10–14	177,748	286,830
Total	519,128	865,629

15. 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.

[110] https://www.stats.govt.nz/indicators/population-of-nz [accessed June 2018]
[111] https://statswales.gov.wales/Catalogue/Equality-and-Diversity/Equality/population-estimates-by-age-year
[112] Data is from: https://statswales.gov.wales/Catalogue/Census/2011/UsualResidentPopulation-by-FiveYearAgeBand-Gender [accessed June 2018]
[113] 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]

Parenting support and awareness raising about the legislation

16. 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.

17. 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.

18. 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).

19. The Government did not have any specific educational and media campaign to explain the law change and raise awareness with those affected.

20. 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).

21. 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.

22. 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 2016/17 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 5.4 % in 2016/17[114].

[114] https://www.health.govt.nz/publication/annual-update-key-results-2016-17-new-zealand-health-survey

Summary

23. 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.

24. 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.

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.