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Llywodraeth Cymru
Welsh Government

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Assembly Members

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Dear Assembly Members,

I am very pleased the National Assembly voted to support the General Principles of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill on 17 September.

I would like to thank the Committees and all those involved during the Stage 1 scrutiny of the Bill and those who spoke during the debate last month. Time did not permit me to respond to all the points raised during the debate so I am taking this opportunity to do so prior to the Stage 2 Committee session.

I trust Members will find the information provided in the Annex to this letter helpful during your continued scrutiny of the Bill.

Yours sincerely

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Annex

Parenting support and mapping exercise

Delivering parenting support is a priority for this Government and, as I outlined in my response to recommendation 7 of the Children Young People and Education (CYPE) Committee report, we already have a package of measures in place. This includes 'Parenting. Give it Time', Flying Start, Families First and the Healthy Child Wales programme. I have increased the budget for Parenting Give it Time by £30,000 in this the financial year to develop new resources and expand the age range of support from 0 - 7 years of age to 0 - 18 years.

My officials have carried out a mapping exercise which updates the one conducted in 2016/17. That exercise highlighted that separating parents and children affected by parental imprisonment would benefit from additional support. As a result Welsh Government provided local authorities with £434,000 in 2017/18 for workforce training and engagement activities with families. This included the delivery of training on inter-parental conflict and parental imprisonment. A further £32,000 was utilised in 2017/18 to make the CAFCASS Cymru Working Together for Children course more widely available to parents. The course helps parents understand how best to work together to support their children during and after separation. We are continuing this investment in enhancing the skills of the workforce and have secured £400,000 from the European Transition Fund for 2019-20 to help mitigate the potential impact of Brexit on parental and family relationships.

We have re-established the Parenting Expert Advisory Group (PEAG) which supported us to develop the Parenting. Give it Time campaign, as a task and finish group under the Bill's Strategic Implementation Group. The PEAG includes stakeholders from a range of parenting related professions and sectors. At its first meeting on 17 October, the PEAG considered the results of the mapping exercise. I will share the group's project plan with you in due course, and provide updates on the work of the group linked to key milestones.

Non-physical violence or abuse

Article 19 of the UN Convention on the Rights of the Child (UNCRC) requires States to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child"¹.

¹ The full text of the Article includes 19. 2 which states that "Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

A question was raised as to why the government is legislating only in relation to physical, and not mental violence against a child, and whether this displays a lack of consistency of approach to the requirements of the UNCRC.

It is not necessary to create an offence of psychological or mental harm when there is already robust and specific legislation and statutory guidance in place.

Sustained emotional abuse, which causes psychological harm, is already illegal. The offence of cruelty to persons under 16 years incorporates suffering of a psychological nature, as set out in the Children and Young Persons Act 1933, section 1. In addition the Social Services and Well-being (Wales) Act 2014 has introduced a strengthened, robust and effective partnership approach to safeguarding, and guidance issued under that Act clearly sets out the duties of agencies towards children at risk of both physical and other forms of abuse or neglect. Under this framework, categories of abuse already include emotional or psychological abuse which may take the form of threats of harm or abandonment, coercive control, humiliation, verbal or racial abuse, isolation or withdrawal from services or supportive networks, witnessing abuse of others.

Therefore, there is no inconsistency in the government's approach to violence against children: we are removing a defence to the criminal offences of Assault and Battery which is why the legislation is in the criminal law arena.

Potential criminalisation of parents

Changing the law by abolishing the defence of reasonable punishment does not in itself criminalise a parent or any other individual – it is a person's actions in relation to the law as amended that may lead to them receiving a criminal record.

We will continue to provide support to parents and will run a comprehensive campaign to raise awareness of the law change. It is not our intention to draw people into the criminal justice system. However, by removing the defence, a small number of parents may be charged with, or prosecuted for, a criminal offence in circumstances where that would not happen now.

The Bill is removing a defence to an offence of common assault which has formed part of the common law of England and Wales for a very long time. The police already receive and investigate reports of children being assaulted and follow established procedures to determine how best to proceed. As Chief Constable of South Wales Police, Matt Jukes said when providing evidence to the CYPE Committee on 16 May:

".. my colleagues don't go to incidents in homes where there is an alleged assault and walk away and take no further action. They go to those incidents and, even if they don't make an arrest, they refer those incidents to those multi-agency safeguarding arrangements, where they'll be assessed. So, already we are creating police records, if you like—and I'm not talking about criminal records, but records in policing—of parents who have been engaged where the question of lawful chastisement arises. So, it is not clear to me that we're going to generate—unless community attitudes change significantly—a huge number of fresh reports."

Work is ongoing with the police and Crown Prosecution Service and through our Out of Court Disposals and Diversion Scheme task and Finish Group to investigate the potential for a diversion scheme which will seek to offer support for parents about positive approaches to disciplining their child.

There is a full explanation of the potential impacts and relevant processes and procedures relating to the criminal justice system, and disclosure and barring service in Annex 4 and Annex 5 of the Explanatory Memorandum². Alongside the Regulatory Impact Assessment (RIA) which forms part of the Explanatory Memorandum, a number of other potential impacts have been considered, and full impact assessments carried out where necessary. This includes a justice impact assessment which has been developed in consultation with the Ministry of Justice and reflects the most probable impact on the justice system³.

Impacts on children

This Bill takes our commitment to help protect children's rights a step further and will help end the physical punishment of children in Wales. If passed, this Bill will ensure children and young people in Wales are legally protected from physical punishment.

Alongside the RIA, a Children's Rights Impact Assessment and Equalities Impact Assessment have fully considered the potential impacts on children⁴. As set out in these assessments, changing this law may lead to a very small number of parents being arrested, receiving a criminal conviction or being separated from their parent due to safeguarding requirements. In these cases there may be an impact on the child, however, we do not anticipate many such cases.

As highlighted by Chief Constable of South Wales Police, Matt Jukes when providing evidence to the CYPE Committee (see quote on bottom of page 2) these issues are not new or specifically associated with this legislation. The impact, on the child, will depend on the individual circumstances, including; the age of the child, their cognitive ability, and how the parent responds. The police will make decisions about any further action based upon a number of factors including whether there is sufficient evidence, safeguarding concerns and what is seen to be in the best interests of the child.

The police also provided written evidence to the CYPE Committee⁵ stating that "in some cases the evidence of a child against their parent would be needed to support and proceed with a prosecution. In these cases, to prevent interference with the prosecution and as part of a safeguarding measure the child or parent would not be able to reside together". The Police and Crime Commissioner for Gwent and Chair of

² <http://www.assembly.wales/laid%20documents/pri-ld12454-em/pri-ld12454-em-e.pdf>

³ The full impact assessments can be found here. <https://gov.wales/children-abolition-defence-reasonable-punishment-wales-bill-integrated-impact-assessments>

⁴ <https://gov.wales/children-abolition-defence-reasonable-punishment-wales-bill-integrated-impact-assessments>

⁵ <http://senedd.assembly.wales/ieListDocuments.aspx?CIId=443&MIId=5518&Ver=4>

the All-Wales Policing Group, Jeff Cuthbert said in evidence to the CYPE Committee on 16 May⁶ this would only happen in “exceptional cases”.

As set out in the justice impact assessment, the evidence we have suggests, only a small number of parents would be prosecuted for a criminal offence in circumstances where that would not happen now. The Ministry of Justice in their letter to the CYPE Committee notes that “HMCTS expects a minimal impact on caseload for the Magistrates Courts”.⁷ Chief Constable of South Wales Police, Matt Jukes said in evidence to the CYPE Committee

“I think when we consider where the thresholds are for prosecution and we start talking about the tiered process, the cases in which we might consider removing the child for these reasons will not be very different than the ones we're already encountering now. I think that we do this now, we will continue to do it now and in the future, and I think it is really important to stress that we make some incredibly difficult decisions, and necessity and proportionality are always a part of that.”

Potential for malicious reporting

Malicious allegations happen now. Professionals, including the family courts, already take decisions on such issues; this Bill does not change that.

As outlined in my letter to the CYPE Committee on 4 June⁸, Cafcass Cymru are content the court has arrangements in place to handle such issues. While it is possible that allegations may add to the complexity of cases, it is not possible to predict or quantify exactly what this may look like.

As I also detailed in my response to the CYPE Stage 1 recommendations⁹ whilst it would be useful to understand the number of reports of physical punishment of a child found to be malicious, in practice this would provide a substantial challenge.

This is, however, an issue that Cafcass Cymru is actively considering in relation to allegations of domestic abuse. Cafcass Cymru will need to make an assessment of whether this approach has been successful in pinpointing cases of malicious reporting in relation to domestic abuse and whether it is feasible and practical to roll this process out on a larger scale.

Experience in New Zealand

Annex 6 of the Explanatory Memorandum¹⁰ sets out the details of the New Zealand police service published data about the numbers of cases reported to them in the three months before and five years after law change¹¹. This data identifies incidents of smacking and minor acts of physical discipline and whether or not prosecutions

⁶ <http://senedd.assembly.wales/ieListDocuments.aspx?CId=443&MId=5518&Ver=4>

⁷ <http://senedd.assembly.wales/documents/s91407/Ministry%20of%20Justice.pdf>

⁸ <http://www.senedd.assembly.wales/documents/s89821/CYPE5-18-19%20-%20Paper%20to%20note%202.pdf>

⁹ <http://www.senedd.assembly.wales/documents/s93534/Response%20by%20the%20Deputy%20Minister%20for%20Health%20and%20Social%20Services%20to%20the%20Children,%20Young%20People%20and%20Edu.pdf>

¹⁰ <http://www.assembly.wales/laid%20documents/pri-ld12454-em/pri-ld12454-em-e.pdf>

¹¹ <https://www.police.govt.nz/about-us/publication/crimes-substituted-section-59-amendment-act-2007>

followed investigation of these incidents. In the five years following the change in the law there were 8 prosecutions for 'smacking' and 55 for 'minor acts of physical discipline'.

In New Zealand in 2009, two years after the law came into force, in a review of police activity Deputy Police Commissioner Rob Pope said:

*"I am confident in saying that this latest review again shows the amendment has had minimal impact on police activity. It continues to be 'business as usual' for us and police continue to use their discretion and common sense in their decision making around child assault events."*¹²

In New Zealand, the data collected by the police covered assaults which left lasting evidence, such as marking or bruising of the skin. In contrast, in Wales the defence is not currently available for these types of assaults. Therefore the figures for prosecutions in New Zealand after the law change include prosecutions for acts which are already criminalised in Wales.

This data does not provide a wider context as to whether prosecutions or investigations by the police in New Zealand had consequences for an individual's employment or whether there was social services involvement and we are not aware of any government report which provides this information.

Since 2012 the New Zealand police have not published data. In 2014¹³ and 2018¹⁴ Family First¹⁵ commissioned Chen Palmer to provide a legal opinion of the law change in New Zealand. Chen Palmer analysed proceedings relating to a small number of court cases, including cases provided by Family First. As stated by Chen Palmer in paragraph 6 of their 2018 report:

"The difficulty of obtaining copies of judgements at this level [district court] prevents a comprehensive analysis of how the law is being interpreted at the level which most affects parents."

In paragraph 7 of the same report they go onto say:

"You [Family First] have advised that the police are not able to provide an analysis of how many parents are prosecuted under this section [section 5 of the Crimes (Substituted Section 59) Amendment Act 2007]¹⁶ how many are discharged without conviction and why, and how many are convicted. The absence of this key data is a

¹² <https://www.police.govt.nz/news/release/19854>

¹³ <https://www.familyfirst.org.nz/wp-content/uploads/2014/11/aaa-CHEN-PALMER-OPINION-NOV-2014.pdf>

¹⁴ <https://www.familyfirst.org.nz/wp-content/uploads/2018/01/Chen-Palmer-Opinion-s59-Crimes-Act-January-2018.pdf>

¹⁵ Family First is a lobby group, which is opposed to the legislation in New Zealand and wishes to amend the law to allow "light smacking". The group lost its charitable status from the Charities Registration Board in New Zealand in 2017 and this decision was upheld by the High Court of New Zealand Wellington Registry <https://www.charities.govt.nz/assets/Uploads/Family-First-New-Zealand2.pdf>

¹⁶ <http://www.legislation.govt.nz/act/public/2007/0018/latest/whole.html>

further impediment to an analysis of whether the law is working as parliament intended.”

While there are some similarities between Wales and New Zealand, the Explanatory Memorandum clearly sets out a number of differences and I would like to draw attention to the fact the legislation in New Zealand commenced just one month after Royal Assent¹⁷. I have brought forward an amendment to provide for a period of two years between Royal Assent and commencement to allow sufficient time to carry out awareness raising of this change in the law.

As I said in Plenary on 17 September I recently met the Children’s Commissioner for Scotland, who in August, met with police, social workers, and civil society (including parenting organisations) in New Zealand. They were unanimous in their positivity about the change in the law there. Social workers welcome the clarity the law has provided, and the police said it hadn’t led to increased prosecution - rather it had provided clarity for officers and allowed for supportive interventions. These frontline workers in New Zealand cited the progressive change in public attitudes over the last decade, which is backed up by the Government’s surveys of the population¹⁸.

Impact on public services

As I have stated previously, there is no precedent in the UK¹⁹ for removing the defence and, therefore no requirement to collect data about incidents of physical punishment. Accurately predicting the impact is difficult. However, in their evidence to the CYPE Committee social services and the police stated they already handle calls and referrals about the physical punishment of children, including what is currently defined as reasonable punishment. Therefore this will not be a new category of work. As the CYPE Committee set out in their Stage 1 report²⁰:

“Without exception, they [those working on the front line, delivering services] have told us that this Bill will improve their ability to protect children living in Wales because it will make the law clear. We have been told that, as a result, this will help them better protect children, including those at the “hard end” of the child protection system. Professionals told us that this Bill will make a significant difference because it provides a clear line for them and, importantly, a clear boundary that parents, children and the wider public can clearly understand.”

¹⁷ The Crimes (Substituted Section 59) Amendment Act 2007 was granted Royal Assent on 21 May 2007, and the law came into effect on 21 June 2007

¹⁸ As part of the New Zealand Health Survey parents or primary caregivers were asked if they had physically punished their child in the past four weeks. The survey conducts face to face interviews with the parents or primary caregivers of over 4000 children annually. The percentage of children who were physically punished has decreased from 10.4% in 2006/07 to 4.5 % in 2017/18.
https://minhealthnz.shinyapps.io/nz-health-survey-2017-18-annual-data-explorer/_w_0811ceee/_w_65556e86/_w_ed7bb274#!/explore-topics

¹⁹ Although MSPs in Scotland have passed the Children (Equal Protection from Assault) (Scotland) Bill this has not yet received Royal Assent or come into force; and the same data limitations apply
https://www.parliament.scot/S5_Equal_Opps/12062019_CEPfA_letter_to_Committee_on_costs.pdf

²⁰ <http://www.assembly.wales/laid%20documents/cr-ld12708/cr-ld12708-e.pdf>

This confirms what is stated in the Explanatory Memorandum. The published data which is available from other countries on the impact of measures they have taken to prohibit the physical punishment of children has been thoroughly explored. Discussions have been held with a range of stakeholders in Ireland, New Zealand and Malta who have legal systems similar to our own. In these countries there is no evidence that the police and social services have been overwhelmed following law reform.

In their evidence to the CYPE committee in Stage 1 professionals working on the frontline have confirmed this is their view:

“In terms of thresholds for children's services, we would not be anticipating a huge number of referrals to us. There may be a small number of referrals that come through. What we know from other nations is that it will peak and then settle. We recognise that's likely to happen”

Sally Jenkins, of the Association of Directors of Social Services

“...there's no expectation that there's going to be a huge increase in the number of referrals coming through to local authority social services, I think it would be dealt with within their existing resources.”

Jane Randall, Chair, National Independent Safeguarding Board

“I can't see it's going to lengthen consultations. I can't see that it's going to increase the number of consultations, and I don't think it's going to increase the number of referrals I make to the health visitor or to social services, because if I was worried, I'd make those referrals now regardless of the Bill.”

Dr Rowena Christmas, Royal College of General Practitioners

“I would be very surprised if we were to prosecute anything other than low single figures a year, if that much. If that much. We may have more referrals from the police, but I doubt it would be double the figure we prosecute, even. So, you're talking small numbers. Now, small numbers—and we might not have any.”

Barry Hughes, Chief Crown Prosecutor for Wales

We are committed to working with the police, the Crown Prosecution Service, HM Courts & Tribunals Service and social services to put in place arrangements to collect data, both to establish a baseline pre-implementation, and to monitor the impact post implementation. We are taking this work forward through the Strategic Implementation Group.

Alongside the RIA, Annex 4 of the Explanatory Memorandum²¹ provides a full explanation of the potential impacts to public services. A justice impact assessment has been developed in consultation with the Ministry of Justice and reflects the most probable impact on the justice system²².

²¹ <http://www.assembly.wales/laid%20documents/pri-ld12454-em/pri-ld12454-em-e.pdf>

²² The full impact assessments can be found here. <https://gov.wales/children-abolition-defence-reasonable-punishment-wales-bill-integrated-impact-assessments>

Public opinion

We published research, 'Public Awareness and Opinion of Proposed Legislation on Physical Punishment of Children', on 5 June. This research was conducted with a representative quota sample of 1,002 adults²³.

Before the Bill was introduced Welsh Government commissioned research to establish a baseline on public attitudes towards the physical punishment of children, including awareness of the current law and of our proposal for law change.

This representative survey showed that while opinion was split on the question of whether it is sometimes necessary to smack a child, more disagreed with the statement (49%) that agreed with it (35%). So the research suggests that the majority of the Welsh public do not agree that it is necessary to smack children.

The survey also found that the level of support for smacking is even lower among the younger generation in Wales; and those with caring responsibilities for children aged seven and under. 60% of those aged 16 – 35, and 59% of those with caring responsibilities for a child aged seven and under, disagreed with the statement 'it is sometimes necessary to smack a child'.

As part of our strategy to assess the effectiveness of the awareness raising campaign we will continue to 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.

²³ <https://gov.wales/sites/default/files/statistics-and-research/2019-06/public-attitudes-to-physical-punishment-of-children-baseline-survey-2018.pdf>