

Consultation on the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

1 Background of contributors

The **Welsh Local Government Association (WLGA)** represents the 22 local authorities in Wales and the three national park authorities, the three fire and rescue authorities are associate members.

The WLGA is a politically led cross-party organisation, with the leaders from all local authorities determining policy through the Executive Board and the wider WLGA Council. The WLGA also appoints senior members as Spokespersons and Deputy Spokespersons to provide a national lead on policy matters on behalf of local government.

The **Association of Directors of Social Services (ADSS Cymru)** is the professional and strategic leadership organisation for social services in Wales and is composed of statutory Directors of Social Services and the Heads of Service who support them in delivering social services responsibilities and accountabilities; a group of more than 80 social services leaders across the 22 local authorities in Wales.

As the national leadership organisation for social services in Wales, the role of ADSS Cymru is to represent the collective, authoritative voice of Directors of Social Services, Heads of Adult Services, Children's Services and Business Services, together with professionals who support vulnerable children and adults, their families and communities, on a range of national and regional issues of social care policy, practice and resourcing. It is the only national body that can articulate the view of those professionals who lead our social care services.

The **Association of Directors of Education in Wales (ADEW)** is the professional group of local authority officers accountable for statutory education functions in each of the Local Authorities in Wales.

ADEW provides a considered, co-ordinated and professional contribution to the development of education for children and families and lifelong learning initiatives in Wales. It ensures effective leadership and efficient management of innovative delivery arrangements, through integration of services and inclusion of all.

The WLGA, ADSS Cymru and ADEW welcome the opportunity to comment on the legislative proposals contained within the Bill, which is aiming to remove the defence of 'reasonable punishment' and ensure that children in Wales, have equal protection with adults before the law when it comes to physical assault.

2 The Bill's general principles

2.1 Do you support the principles of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill? *

— Yes — Partly — No — Don't have a view



Cynulliad
Cenedlaethol
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2.2 Please outline your reasons for your answer to question 1.1 *

We note the debate that has taken place across civic life in Wales over the past fifteen years, particularly during the legislative journeys of the Children Act 2004 and the Social Services and Well-being (Wales) Act 2014. We recognise that this is an emotive issue, which arouses strong feelings and that there has been deliberation as to whether, as a matter of political judgment, it is right or wise to use the criminal law to prohibit the smacking of children. However, it is evident that a general consensus has emerged across the political divide in that the clause restricting the scope of the 'reasonable punishment' defence in the Children Act 2004, despite its rare usage, does require change to ensure there is complete compliance, in both principle and in spirit, of the obligations placed on all legislatures in the UK under the UN Convention on the Rights of the Child.

Moreover, given the policy directive that the fourth National Assembly placed on the Executive in 2011, when it voted by a clear majority for a motion calling on the Welsh Government to introduce legislation to guarantee children equal protection under the law on assault, which was then reinforced by a public mandate given to a Welsh Labour manifesto commitment in the 2016 elections, ADSS Cymru and WLGA fully acknowledges that the Welsh Government's attempt to progress the legislation separately in the Fifth Assembly, is a natural and logical public policy progression.

We also welcome the research work that Welsh Government commissioned to underpin the move to legislation, particularly *Legislating to Prohibit Parental Physical Punishment of Children and Parental Physical Punishment: Child Outcomes and Attitudes* (both reports by the Public Policy Institute for Wales, 2018). The importance of a strong, robust evidence-base in the development of public policy cannot be overstated.

2.3 Do you think there is a need for legislation to deliver what this Bill is trying to achieve?

This legislative proposal is just one part of the wide-ranging action the Welsh Government has taken, in collaboration with its partners in local government, to support parents to give their children the best start in life and to reinforce the importance of safeguarding in protecting children from harm.

As organisations that represent the leaders of local government in Wales, all our members advocate, on a daily basis, the need for preventative or targeted interventions to assist families who may require additional support to implement positive parenting techniques. We believe that these supportive interventions have enabled a shift in culture and has allowed such families to develop the confidence and knowledge to manage difficult child behaviors in a controlled way without resorting to physical punishment.

We believe that while the removal of the defence of 'reasonable punishment' will not change parenting practice immediately, it will help to accelerate a cultural change that is already taking place in Wales and will continue to do so over time.

3 The Bill's implementation

3.1 Do you have any comments about any potential barriers to implementing the Bill? If no, go to question 3.1

In the report, *Legislating to Prohibit Parental Physical Punishment of Children*, one of the clear lessons learned by other jurisdictions that have already legislated in this field is there will be a need for on-going publicity campaigns and awareness raising about the law and its implications, as well providing parents with information and support about alternative disciplinary techniques or positive parenting. That information may have to be tailored to support sections of society where there are strong religious or cultural factors which support physical discipline. However, what must be made very clear to parents, guardians and the public - particularly given the narrow margin in favour of the legislation, as evidenced in the public feedback to the Government's consultation document - is this legislation is not looking to necessarily criminalise parents or guardians, or undermine their role in the on-going development and education of the children in their care; it's about protecting all children from harm.

We also believe that any national awareness raising campaign communicating changes in the legislation to remove the defence of reasonable punishment should be subject to consultation with regional Safeguarding Boards.

3.2 Do you think the Bill takes account of these potential barriers?

It is welcomed that the Explanatory Memorandum that accompanies the Bill recognises the importance of considering the financial and resource implications of the Bill in a post implementation review and local government will be keen to work with Welsh Government to support this work.

4 Unintended consequences

4.1 Do you think there are there any unintended consequences arising from the Bill? If no, go to question 4.1

While on the surface the perceived removal of the defence of reasonable punishment looks straightforward, we do believe the issue is more nuanced; so much so that there could be the potential of unintended consequences should there be any perceived deficiency in the depth of clarity required within the detail of the legislation itself.

Therefore, we believe there must be greater clarity around the definition of what constitutes 'corporal punishment' and what type of incidents may fall within scope of the legislation. We cannot allow any ambiguity to emerge regarding the legislative interpretation of the Bill; there must be certainty regarding what behaviours will be captured by the change in legislation and where the threshold lies. This will require additional work with both public service bodies, parents, guardians



and children themselves. We believe this will ensure that there is clear and consistent understanding for all concerned.

While Government anticipates that there may be a short-term increase in the reporting of incidents to the police and social services departments, it believes that this will decrease following public education and awareness of the law and of more positive parenting techniques. While we do not necessarily disagree or challenge this assumption based on evidence from other jurisdictions, we do believe it will be important to monitor legislative enforcement and any impacts that may emerge very closely.

It needs to be recognised, and we cannot overstate this enough, that local authorities, and children's services in particular, are already facing significant pressures both financially and in terms of demand. ADSS Cymru and the WLGA produced a paper in 2018 that highlighted these pressures and set-out a number of solutions. (addendum documents). There is already a national challenge regarding the number of children being referred into the care system in Wales and the most perverse and unintended consequence would be to see a further increase in referrals from various partner agencies. So, there will have to be careful consideration as to how the implementation of this legislation will be 'fully' resourced to avoid putting undue additional pressures on existing services.

There is of course the challenge of enforcement, not just in relation to parents domiciled in Wales but for those families who visit Wales, who will be subject to new legislative changes. This needs to be carefully considered in how the changes will be communicated.

5 Financial implications

5.1 Do you have any comments on the financial implications of the Bill (as set out in Part 2 of the **Explanatory Memorandum**)? If no, go to question 5.1

To continue the work of positive parenting that local government has taken forward in partnership with the Welsh Government, as well as developing a national awareness and education campaign, will require dedicated additional resource investment and its important the Government work closely with the WLGA and other public body partner agencies to ensure that there are no additional, unfunded financial implications for these bodies, particularly local government education and social service departments.

Moreover, a robust, well communicated education and awareness campaign could well trigger a demand by parents who want to actively seek out and access support around new approaches in order to change their parenting methods. Consequently, there could also be a need for further investment and enhancement of current services to meet that demand and that will require appropriate resourcing so no additional strain is put on existing services.

6 Other considerations

6.1 Do you have any other points you wish to raise about this Bill?

As we have already stated, it will be important to have absolute clarity regarding the definition of ‘corporal punishment’ that will fall under the scope of the legislation. As professional leaders in the sector, we must have a consistent and unambiguous understanding of the exact nature of the physical punishment which is no longer to be defended in legislation. Once that clarity is in place, we can then utilise the skills and training of our members to identify where the lines between acceptable discipline and child abuse are. It will then be important that our members, and our front-line colleagues in education and social care receive the necessary training and guidance on the processes involved in reporting and investigating suspected use of physical punishment, as well as how to support families’ wellbeing during the investigation process.

