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Llywodraeth Cymru  
Welsh Government

Welsh Government  
Consultation Document

Legislative Proposal To Remove The Defence Of  
Reasonable Punishment

Date of issue: 9 January 2018  
Action required: Responses by 2 April 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

<b>Overview</b>	The Welsh Government is committed to bringing to an end the corporal punishment of children by removing the defence of reasonable punishment in Wales. This consultation is seeking views on the development of the legislative proposal. This would not create a new criminal offence, but would remove a defence to the existing offence of common assault or battery.
<b>How to respond</b>	<p>The closing date for responses is 2 April 2018 and you can respond in any of the following ways:</p> <p>Email: Please complete the consultation response form and send it to:</p> <p><a href="mailto:talkparenting@gov.wales">talkparenting@gov.wales</a></p> <p>Please include ‘Removal of Defence of Reasonable Punishment consultation – WG33656’ in the subject line.</p> <p>Post: Please complete the consultation response form and send it to:</p> <p>Removal of Defence of Reasonable Punishment  Consultation Legislation Team  Children and Families Division  Welsh Government  Cathays Park  Cardiff  CF10 3NQ</p>
<b>Further information and related documents</b>	<p><b>Large print, Braille and alternative language versions of this document are available on request.</b></p> <p>Parenting: Give it Time Website:</p> <p><a href="http://www.giveittime.gov.wales/?lang=en">www.giveittime.gov.wales/?lang=en</a></p>
<b>Contact details</b>	<p>For further information:</p> <p>Email: <a href="mailto:talkparenting@gov.wales">talkparenting@gov.wales</a></p>
<b>Data protection</b>	<p>How the views and information you give us will be used</p> <p>Any response you send us will be seen in full by Welsh Government staff dealing with the issues which</p>

this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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## **Ministerial Foreword**

We all want to give our children the best start in life and, I know as a parent myself, that it can sometimes be a challenging experience. Children do not come with an instruction manual and sometimes parents need guidance and support to help them raise healthy and happy children.

Our knowledge of what children need to grow and thrive has developed considerably over the last 20 years. The interactions that parents now have with their children have also changed in response to that knowledge and public attitudes to parenting practices have changed as well.

We now know that physical punishment can have negative long term impacts on a child's life chances and we also know it is an ineffective punishment. Whilst physically punishing children was accepted as normal practice in previous generations, we know that it is increasingly being seen as less acceptable and parents feel less comfortable using physical punishment. As a Government, we have invested significantly in parenting programmes across Wales and in information campaigns to support parents to do the best possible job.

If there is any potential risk of harm to a child then it is our obligation as a Government to take action. Legislation was introduced many years ago to stop physical punishment in schools and childcare settings – now is the time to ensure it is no longer acceptable anywhere.

The Welsh Government is rightly proud of our record of promoting children's rights and working to ensure all children in Wales have the best start in life. The Welsh Government's ambition is that the rights of every child and young person in Wales should be promoted and respected to enable them to meet their full potential. When the Rights of Children and Young Persons (Wales) Measure 2011 was passed, it broke new ground. We were brave enough to be the first in the UK, and amongst only a few in Europe and the world, to put such arrangements in place.

We must continue to be brave. We must continue to deliver on this commitment. This is why as a Government we are bringing forward legislation to remove the defence of reasonable punishment, to make it clear that physically punishing a child is no longer acceptable in Wales. Children currently have less protection with regard to physical punishment than adults and that must change.

We are committed to removing the defence of reasonable punishment and we want to ensure we develop legislative proposals that are fit for purpose. I am aware there are differing views on this legislation; this consultation provides an opportunity for everyone to have their say to help us try to address concerns as the legislation develops.

I am proud to be launching this consultation and encourage you all to take part.

**Huw Irranca-Davies**  
**Minister for Children and Social Care**

## Section 1 - Background

### Context

The Welsh Government's commitment to seeking cross party support to end the defence of reasonable punishment was set out in "Taking Wales Forward", the Programme for Government (September 2016), which outlines what action the Welsh Government will take during its 5 year term to improve the lives of people in Wales.

The national strategy "Prosperity for All" published in September 2017, demonstrates the Welsh Government's recognition that an individual's childhood experiences play a significant part in shaping their future and are critical to their chances of going on to lead a healthy, prosperous and fulfilling life.

Indeed, since the enactment of the Rights of Children and Young Persons (Wales) Measure 2011<sup>i</sup>, all Welsh Ministers have been obliged to have due regard to the United Nations Convention on the Rights of the Child (UNCRC) when making decisions. This duty is critical in securing positive outcomes for children and young people in Wales by creating a culture which respects, promotes and upholds children's rights.

All nations within the UK have, however, been criticised over a number of years for not fulfilling the Article 19 duty in the UNCRC<sup>ii</sup>. Article 19 (paragraph 1) of the UNCRC<sup>iii</sup> states that:

*"States Parties shall 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."*

While many of these issues have more serious effects and are covered by existing law, successive recommendations from the United Nations Committee on the Rights of the Child have stated that the United Kingdom (as the Member State) should prohibit all forms of corporal punishment in the family, including through the repeal of all legal defences<sup>iv</sup>. The only way to fully comply with Article 19 is to prohibit the corporal punishment of children in the home, and in Wales this involves legislation to remove the defence of reasonable punishment<sup>v</sup>.

### Policy Aim

Given the lead the Welsh Government has taken in setting our policy for children and their families firmly in the context of the United Nations Convention on the Rights of the Child, the overarching objective of the proposed legislation is to support children's rights by prohibiting the use of corporal punishment, through the removal of the defence of reasonable punishment. This would remove the current anomaly whereby children have less protection with regard to physical punishment than adults.

Our understanding of what is needed to protect and support individuals, children and their families has changed considerably over the years and societal norms have changed as a result. In years gone by it was legal to:

- travel in a car without a seat belt;
- physically punish children in schools; and,
- smoke in enclosed public places and in cars carrying children.

Times have changed. We all now understand these things are not acceptable in a healthy, prosperous and progressive society and laws have been passed to safeguard individuals, children and families.

Attitudes to parenting practices have also changed. Whilst physically punishing children was accepted as normal practice in previous generations, research shows parents today are increasingly using positive approaches which are proven to be more effective, whilst feeling less comfortable about using physical punishment. In 1998<sup>xxix</sup>, for example, 88% of British adults agreed that “*it is sometimes necessary to smack a naughty child*” while in 2015<sup>xcii</sup> only 24% of parents in Wales supported this statement.

Prohibiting the use of physical or corporal punishment of children will therefore address an aspect of the law which is out of date and at odds with our modern and forward thinking society.

Despite evidence showing that physical punishment is not effective and is potentially harmful (section 3), it is still legal due to the existence of the defence of reasonable punishment. The Welsh Government wants to remove this anomaly in the law and send the clearest message that physical punishment of children is not acceptable.

### **Measures to support families**

The proposal is part of a much wider package of measures the Welsh Government is taking to support children and their parents. We recognise children need boundaries and parents often need advice and support on positive alternatives to physical punishment.

In 2015, we launched the “Parenting. Give it time” campaign which is targeted at all those responsible for raising children from birth to 5 years old. It aims to equip parents with the tools to help them do the best job they can, through a website and media campaign providing positive parenting tips and information.

The principles of positive parenting are that parents are warm and supportive; model good behaviour; provide appropriate supervision; provide clear, consistent and age-appropriate boundaries based on realistic expectations; praise good behaviour; and handle problem behaviours consistently without resorting to physical punishment or excessive shouting.

We want parents in Wales to be confident in managing their children’s behaviour without feeling they must resort to physical punishment. We want to reinforce the growing change of attitude in the way parents want to raise their children by making physical punishment unacceptable and sending a strong message that proven positive alternatives are much better for our children and their wellbeing.

Alongside our campaign, parents and carers in Wales have access to a range of services to promote positive parenting delivered by partners in local government, health, education, social services, social justice and the third sector. 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 the Family Information Services, GPs, health visitors and midwives. Schools and childcare providers 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. In addition supporting parents is an integral part of our more targeted interventions, Flying Start and Families First, which offer support and advice to parents in raising happy and healthy children.

Flying Start is a Welsh Government programme for families with children under 4 years of age who live in 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 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 older children.

This legislative proposal is therefore just one part of the wide-ranging action the Welsh Government is taking to support parents to give their children the best start in life.

Against this backdrop, the Welsh Government's commitment to remove the defence of reasonable punishment is a natural and logical progression and will ensure that all children in Wales are given the chance to thrive and fulfil their potential.

## **#Talkparenting**

In October 2017 the Welsh Government launched the #talkparenting campaign with the aim of learning more about people's practical understanding of the current law and to identify any concerns about how a change in law would be implemented. The informal survey received over 1300 responses and highlighted some confusion around the current law, as well as some concerns as to how the changes may impact on children and wider public services. This consultation document therefore sets out the policy rationale and evidence base for this legislative proposal, and seeks to address some of the issues raised through the informal survey.

### **Consultation Questions**

- 1. Do you think our legislative proposal to remove the defence of reasonable punishment and prevent the use of corporal punishment will help achieve our stated policy aim of protecting children's rights?**

**(Yes/No/Don't know) If not, why not?**

- 2. In addition to our existing parenting support and information campaign are there any other support mechanisms you think we should put in place to support parents, carers and guardians?**

**(Yes/No/Don't know) If yes, what are they?**

The defence of reasonable punishment is a defence to the existing common law offences of assault and battery.

The common law, or case law, is a body of law developed by judges in courts and tribunals. Common law systems, such as we have here in the UK, place great weight on court decisions, which are considered "law" with the same force of law as those set out in legislation.

Understanding and interpreting the application of a common law defence is therefore entirely dependent on case law, as there is no statute to refer to. In the case of the defence of reasonable punishment, understanding its application and scope is made more difficult as there is limited case law.

The Crown Prosecution Service (CPS) guidance "Offences against the Person incorporating the Charging Standard"<sup>vi</sup> provides the following definitions of these common law criminal offences:

"An offence of Common Assault is committed when a person either assaults another person or commits a battery. An assault is committed when a person intentionally or recklessly causes another to apprehend the immediate infliction of unlawful force. A battery is committed when a person intentionally and recklessly applies unlawful force to another".

## **Origins of the Defence of Reasonable Punishment**

### ***How the defence was established***

The concept of 'reasonable punishment' has its origins in Victorian times. The case that established the legally accepted definition was *R v Hopley*<sup>vii</sup> (1860). In this case, a boy was beaten by a schoolmaster with the permission from 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.

### ***How the defence has changed over time***

The use of corporal punishment was commonplace in schools until the 1980s. From 1986, however, the UK Parliament increasingly restricted the use of corporal punishment, prohibiting it in all state maintained schools in 1987 and in independent schools in 1999. Its use was ended in children's homes in 2001, Local Authority foster care in 2002 and in childcare provision in 2007.

Section 58 of the Children Act 2004 limited the circumstances in which the reasonable punishment defence could be used, restricting its use to a charge of common assault. Since the introduction of the Act, parents who caused physical injury to their children could not use

the reasonable punishment defence for charges of cruelty, wounding or assaults occasioning actual or grievous bodily harm.

The remit of the defence is outlined in the Crown Prosecution Service's legal guidance on Offences against the Person including the Charging Standard which states that:

“Section 58 of the Children Act 2004 has removed the availability of the reasonable chastisement defence for parents or adults acting in loco parentis where the accused is charged with wounding, causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to persons less than 16 years of age. However the reasonable chastisement defence remains available for parents or adults acting in loco parentis against charges of common assault.”

The Crown Prosecution Service guidance also clarifies that “although any injury that is more than 'transient or trifling' can be classified as actual bodily harm, the appropriate charge will be one of Common Assault where no injury or injuries which are not serious occur”.

### ***Reviewing the defence***

In 2007, the UK Government reviewed the practical consequences of Section 58 of the Children Act 2004<sup>viii</sup>. As part of the review, 8 CPS areas were asked to fill out a questionnaire about cases of child abuse, and all 43 CPS areas were asked to send in details of cases where the reasonable punishment defence was raised.

Whilst the review was not exhaustive, it showed the defence of reasonable punishment was little used at the point of prosecution. The defence had been used in 12 cases between January 2005 and February 2007, all resulting in either acquittal or discontinuance. Of these 12, there were 4 where it was explicitly used as a defence to a charge of common assault; 4 where the defendant had been charged with common assault, did not explicitly use the defence but where it may have been a factor in acquittal or discontinuance; and, 4 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.

### **Civil Law**

In civil law, individuals are able to bring forward all types of claims for financial compensation before the civil courts, including for harmful incidents that occurred during childhood. There are different ways to claim compensation, for example through civil court proceedings, by seeking a criminal compensation order if the perpetrator has already been convicted, and, by making a claim to the Criminal Injuries Compensation Authority. The ability to bring a civil claim would not change as a result of these proposals.

There are time limits in respect of pursuing civil court proceedings. The standard limit is 3 years from the date of the harmful act and, if there was more than one incident, each incident has its own time limit. The 3 year period, however, does not start until the person injured turns 18 years of age. Accordingly, individuals harmed in childhood have until they are 21 years old to issue a claim at civil courts.

Common assault and battery are criminal offences but also exist in civil law. Our intention in removing the defence of reasonable punishment is that the corporal punishment of a child will no longer be justified in any criminal or civil court proceedings. However, as outlined

above, the ability to bring a civil claim would not change as a result of this legislative proposal.

### Section 3 - Evidence and the case for change

Research around parental physical punishment is a sensitive and complex area. There are recognised issues in determining the impact of physical punishment on children because of the many other external influences in a child's life, such as family dynamics, poverty, the parent-child attachment relationship or stress that may affect child outcomes. Also, many studies rely on retrospective self-reporting from parents making it harder to accurately measure the use and frequency of physical punishment. Parents may also feel under pressure to give a view that they consider to be socially acceptable. In addition research studies tend not to specify the frequency of physical punishment.

#### Impact of physical punishment on children

Even considering all of these factors around the research methodology, comprehensive reviews of several decades of literature in this area<sup>ix x xi xii xiii xiv xv xvi xvii</sup> indicate a significant relationship between the use of physical punishment and short and long-term negative outcomes. It has been suggested that despite this significant relationship, the size of these negative effects are modest<sup>xviii</sup>.

There is evidence from a number of studies, including longitudinal studies, which indicate a relationship between the use of physical punishment and increased childhood aggression and anti-social behaviour.<sup>xix</sup> There is also evidence that more frequent physical punishment in one year is significantly related to more frequent child anti-social behaviour in the next year. Children who are smacked frequently are more likely to be reported as having difficult behaviours, including being over-active, and defiant. These findings concur with models<sup>xx</sup> suggesting parents' use of physical discipline promotes children's anti-social behaviour, more so than child anti-social behaviour elicits harsh parenting<sup>xxi</sup>.

A US study in 2000<sup>xxii</sup>, examined the outcomes for children in families where parents used non-abusive, routine physical punishment. One finding was that "spanking" (or smacking as it may be termed in the UK) has consistently beneficial outcomes when it is non-abusive and used primarily to back up milder disciplinary tactics with 2- to 6-year olds by loving parents. However, when one of the same researchers conducted a meta analysis of 26 published studies on corporal punishment<sup>xxiii</sup> five years later he concluded that even mild physical punishment, if used as the primary method of discipline, was linked with poorer child outcomes.

Physical punishment has also been associated<sup>xxiv xxv xxvi xxvii xxviii</sup> with:

- decreased quality of relationship between parent and child;
- decreased child mental health;
- decreased adult mental health;
- increased risk of being a victim of physical abuse;
- increased adult aggression;
- increased adult criminal and anti-social behaviour;
- an increased risk of abusing own child or spouse; and
- lower academic achievement.

However, one study in 2005 concluded<sup>xxiv</sup> that whilst 'Corporal punishment does not guarantee a harmful effect', 'the more children experience corporal punishment and the more frequent and severe it is, the more they are at risk of problems like aggression or depression'.

Some who argue parents have a right to discipline their children with physical punishment critique this body of literature as systematically biased<sup>xxx</sup> and suggest that the effects are trivial<sup>xxx</sup>. What is less certain is whether physical punishment represents a causal factor in the prediction of detrimental child outcomes or whether the relationship is less direct, with punishment being associated with other causal factors (e.g. wider parental behaviours, or cultural norms).<sup>xxxi</sup>

Although some studies have found no relation between physical punishment and negative outcomes<sup>xxxii</sup> and others<sup>xxxiii</sup> have found the relation to be moderated by other factors, no peer-reviewed research has shown improvements in developmental health as a result of parents' use of physical punishment or that physical punishment has any long-term positive effect.<sup>xxxiv xxxv</sup>

Physical punishment has also been found to be an ineffective parenting strategy for achieving long-term compliance<sup>xii</sup> and encouraging social competence<sup>xxxvi</sup>. In her analysis of 92 studies on physical punishment Gershoff<sup>xii</sup> found that physical punishment is not an effective disciplinary method and does not reduce or prevent undesired behaviours. The only short-term desirable outcome associated with physical punishment, in a limited number of research studies Gershoff reviewed was immediate compliance<sup>xxv</sup>. However research suggests that physical punishment was not any more effective than time-outs for increasing immediate compliance<sup>xiii</sup>. Although immediate compliance might be a short-term goal for many parents, it does not guarantee that children will continue to comply over the longer term and may lead to parents having an over-reliance on physical punishment to gain compliance.

### **Alternatives to physical punishment**

It should be recognised that there is a significant difference between discipline and punishment. Discipline is about providing a child with guidance so he or she learns appropriate behaviour. Physical punishment is not a necessary part of disciplining children. Disciplinary techniques are most likely to be effective if they occur in the context of a relationship where children feel loved and secure.

There is no evidence that smacking is associated with improved behaviour in children<sup>xxxvii</sup>, whereas there is a sufficient body of evidence that positive styles of parenting are key to successful outcomes for children<sup>xxxviii</sup>.

Family environments which include factors associated with good parenting have also been identified as a protective feature for children growing up in disadvantaged neighbourhoods.<sup>xxxix xl xli</sup> Sensitive, available and consistent parenting practices have been shown to promote resilience in children living in poverty<sup>xlii</sup>.

This positive parenting approach, commonly referred to as authoritative, encourages parents to build positive relationships with their child by being responsive, warm and nurturing. The authoritative approach encourages parents to focus on good behaviour, have high expectations and establish boundaries. It also recognises that parents should reward good behaviour with positive attention and rewards and respond consistently to inappropriate behaviours. Children need to know where the limits are, and what behaviour is expected of them.

Children raised in this manner are more likely to have positive outcomes including social development, self esteem and good mental health<sup>xliii</sup>. When this foundation of positive parenting is in place, the need for coercive disciplinary techniques is greatly reduced.<sup>xliv</sup>

Conversely, permissive styles of parenting, devoid of any control or consequences for poor behaviour, are likely to lead to poorer outcomes for children. Equally, research evidence shows negative short-term and long-term outcomes of authoritarian styles of parenting, i.e. more controlling but less responsive to a child's needs, although the context of behaviour affects outcomes.<sup>xliv xlv</sup>

Research suggests therefore that positive, authoritative parenting is beneficial at all points in a child's development<sup>xlvi xlvii xlviii xlix l li lii liii</sup>. It is recognised that children need, for their healthy development, to be given guidance and direction by their parents, in line with their age and stage of development. Parents caring for children, especially when young, need frequent physical handling and interventions to protect them from harm. There are many alternatives parents may use to discipline a child, which do not require the use of physical punishment.

For minor unwanted behaviour parents can use other techniques such as planned ignoring of the behaviour, distracting the child with a toy or activity, redirecting them or giving appropriate consequences. For young children this could be removing toys or removing the child from the situation (e.g. from a sandpit if they are throwing sand). With older children this could be removing privileges such as time on a console or withholding pocket money.

The use of proactive discipline rather than reactive discipline can also help reduce the incidence of unwanted behaviour in children. Reactive discipline is where parents respond to bad behaviour after it happens but do not apply other strategies for encouraging good behaviour. Proactive discipline is where parents apply strategies to avoid bad behaviour such as providing positive attention, praise and rewards for desirable behaviours; being flexible and allowing choices which are appropriate for the age of the child. A lot of minor unwanted behaviour may be avoided by parents anticipating when problems may arise and planning to prevent them (for example. taking a drink, snack and a small toy when going out shopping or with older children solving problems by talking and compromising). Being proactive is about having realistic and consistent expectations, involving older children in decision making and ensuring children have sufficient attention and play and leisure opportunities which avoid them behaving poorly to get attention.

A meta-analysis of the research on physical punishment<sup>xxiii</sup> in 2005 found that reasoning was more effective than smacking for enhancing positive child characteristics, but that non-physical disciplines (e.g. time-out, privilege withdrawal) were better for inhibiting misbehaviour.

The use of time-out<sup>1</sup> has a role to play in providing parents with an alternative to physical punishment for behaviours that can't be ignored, for example when a child is clearly defiant or is hurting another child. There is a large body of research showing that time-out is effective as a behaviour management tool for children aged 3 to 7, when used in an evidence based manner<sup>2</sup>, and in combination with other techniques such as praise and

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<sup>1</sup> Time-out usually involves removing attention from the child every time they display a specific problem behaviour. What is important is the contrast between time in (praise, attention, stimulation) and time-out from this rewarding stimuli.

<sup>2</sup> Advice to parents on the effective use of time-out is described on the Welsh Government's 'Parenting Give it Time' website <http://giveittime.gov.wales/parenting-and-encouragement-tips/how-you-respond-to-unwanted-behaviour/give-time-for-praise?lang=en>

positive reinforcement. Time-out has been shown to be effective to tackle various different problem behaviours including reductions in aggressive behaviour, destruction of property, inappropriate verbalisations and non-compliance.<sup>liv lv lvi</sup>

As with any parenting strategy, time-out can be used in a manner that is authoritarian and punitive, harsh and delivered in an inconsistent way that can shame or frighten a child. Critics of the technique believe it may have potentially adverse effects on the parent child relationship and the child's emotional well being. They argue that when a child is "forced" into isolation it can lead to feelings of insecurity or anxiety and that time-out may be emotionally harmful and increase poor behaviour as children become angry and resentful.<sup>lvii</sup>  
<sup>lviii lix</sup> Whilst there appears no evidence that this is the case<sup>lx</sup> it is recognised that parents require guidance to implement time-out appropriately, in the context of other positive parenting strategies.

## Positive Parenting

Parenting programmes, such as Triple P and Incredible Years, have been independently and extensively evaluated over the last 30 years with diverse groups of parents in many different countries. The programmes have been found to be effective in strengthening parenting skills and reducing the use of coercive parenting strategies such as physical discipline. They have helped improve children's and parents' emotional well-being and reduce childhood behaviour problems.<sup>lxi lxii lxiii lxiv</sup> There is evidence that Triple P and Incredible Years show positive outcomes even several years after the course is completed.  
<sup>lxv lxvi</sup>

In recognition of the power of positive parenting, the Welsh Government's 'Parenting Give it Time' campaign <http://giveittime.gov.wales> and family support programmes provide parents with information, advice and support on positive approaches to discipline. Parents are encouraged to plan to avoid bad behaviour as a lot of minor unwanted behaviour may be avoided by parents anticipating when problems may arise and planning to prevent them (e.g. taking a drink, snack and a small toy when going out shopping).

The evidence based parenting programmes, such as Triple P and Incredible Years, delivered through the Welsh Government's programmes Flying Start<sup>lxvii</sup> and Families First<sup>lxviii</sup> provide parents with support and guidance on parenting techniques that are effective and supportive of the parent child relationship. Midwives, health visitors, GPs and school nurses also play a key role in supporting parents in bringing up their children.

## Research on light or infrequent smacking

Article 19 of the UNCRC obliges ratifying states to protect children from "all forms of physical or mental violence" while in the care of parents or others. The Committee on the Rights of the Child has now recommended three times that the United Kingdom (as the Member State) outlaw all forms of physical punishment, defined by them as: "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light."<sup>lxix</sup>

It is acknowledged there is little evidence regarding the use of light or infrequent smacking. As Durrant and Ensom<sup>xxxv</sup> explain: "Although randomized control trials can be used to study the effect of reducing physical punishment (as in the Forgatch study), they cannot be used to study the effect of imposing such punishment because it would be unethical to submit children to painful treatment when research suggests that such pain poses harm not

outweighed by potential benefit. The few existing randomized control trials showed that corporal punishment was no more effective than other methods in eliciting compliance. In one such study, an average of eight spankings in a single session was needed to elicit compliance, and there was 'no support for the necessity of the physical punishment.'<sup>lxxx</sup>

Exponents of corporal punishment argue that smacking does not cause harm if done only rarely. However, it is not possible to determine how often "rarely" is as this assessment differs between individuals, thus this belief cannot be tested.

One study<sup>lxxxi</sup> found the best approximation to "rarely" was corporal punishment occurring only once in the 2 sample weeks because only 10.5% were spanked this rarely. Consequently, the 6.6% of the children who were not hit at all during the 2 sample weeks were compared with the 10.5% who were hit only once, as well as with those hit twice, three or more times. The development of the cognitive ability of children who were hit even once in these 2 weeks was lower than that of the children who were not hit at all although this was a relatively small effect size. Separate tests for the two age groups studied found similar results for children 5–9 years old.

In the same study it was noted that because corporal punishment is often a taken-for-granted event, parents do not realise how often they do it and that the self-reported numbers are almost certainly lower-bound estimates. One indication that "spanking" is taken for granted is that 18% of the mothers of the children who were 26 months old hit the child during the course of the interview for the study.

Another US study<sup>lxxii</sup> reported that compared to those not spanked at age 3, children who had been spanked on average 1-2 times a month were 40% more likely to display aggressive behaviour at age 5 (adjusted odds ratio = 1.40), while children who had been spanked more than twice a month were 100% more likely to show aggressive behaviour two years later (adjusted odds ratio = 2.01).

## **Evidence of escalation**

Some researchers have suggested that there may be a danger of escalation from milder to harsher forms of physical punishment over time when parents rely on corporal punishment to discipline their children. One US study found that compared to no spanking, mild spanking was associated with a 50% increase in risk of subsequent harsh spanking<sup>lxxiii</sup>.

A large, nationally representative study from Finland<sup>lxxiv</sup> included children up to 12 years old. Mothers who reported using 'mild' corporal punishment (defined as throwing an object, pushing or grabbing a child, pulling a child's hair, giving a child a flick i.e. flick of the fingers) were 11 times more likely to report the use of severe physical violence, after adjustment for a wide range of potentially confounding factors.

Whilst there is clearly a distinction between smacking and more serious forms of physical abuse, various studies have examined the potential for escalation in some cases. Studies examining child abuse cases in various countries have found that parents often reported that abusive incidents started with attempts to discipline their child using corporal punishment. In Canada in 1998, for example, the Incidence Study of Reported Child Abuse and Neglect<sup>lxxv</sup> showed that 75% of substantiated physical abuse of children occurred during episodes of corporal punishment. This finding was replicated in a similar study in 2003<sup>lxxvi</sup>.

It should be noted, however, there is no single determining cause for child abuse and neglect. The World Health Organisation<sup>lxxvii</sup> identifies a range of multiple and complex risk factors for child abuse and neglect including factors relating to the parent/child relationship; the parent/caregiver's background; family characteristics such as physical, developmental or mental health problems; and community factors such as lack of adequate housing or services, high levels of unemployment or poverty.

UNICEF's 'Report Card on Child Maltreatment in Rich Nations' (2003)<sup>lxxviii</sup> found that poverty and stress, as well as drug and alcohol abuse appeared to be the factors most closely and consistently associated with child abuse and neglect. It also argued, however, that a tolerance of physical punishment in society makes it harder to identify physical abuse and that "removing the bottom rungs will make the ladder of serious child abuse more difficult to climb".

## **Conclusion**

Much of the research in this area finds that harsh discipline and corporal punishment increase the likelihood of disruptive or poor behaviour. Several decades of research indicate that corporal punishment increases the risk of detrimental outcomes in children, including aggression, anti-social behaviour and delinquency, decreased quality of the relationship between the parent and child, depressive symptoms and anxiety. Children who are smacked frequently are more likely to be reported as having difficult behaviours, including being over-active and defiant.

It is acknowledged 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, whilst there is no evidential link that children suffer harm where corporal punishment is used more infrequently, there is evidence that the more frequent and severe it is the more children are at risk of problems like aggression or depression. In addition, no peer-reviewed research has shown improvements in developmental health as a result of parents' use of corporal punishment.

The prevailing view from child development experts, backed up by research, is that corporal punishment does not work and that other positive alternatives are more effective at teaching children the right sort of behaviour. Research suggests that positive (authoritative) parenting is beneficial at all points in a child's development.

However, irrespective of the degree of proof of evidence of harm to children or that alternative, positive means of disciplining children are more effective this is a matter of protecting children's rights. The UNCRC<sup>lxxix</sup>, of which the United Kingdom is a signatory, recognises that any physical punishment of children, however minor, is incompatible with their human rights<sup>lxxx</sup>. It is therefore also a question of principle.

Due to their vulnerability, children have a right to more, rather than less, legal protection to ensure they are disciplined in a manner which does not violate their personal integrity and which is most likely to promote their best interests. As a Government, if there is any potential for harm to a child then it is our duty to take action.

## **Section 4 - International Comparisons**

This section examines the lessons which can be learnt from other countries which have already prohibited all forms of corporal punishment. These lessons are predominantly centred around the measures that have been put in place to support legislation, the impact on societal attitudes to corporal punishment and the wider impacts on individuals and public bodies.

The Global Initiative to End Corporal Punishment state 53 countries have ended corporal punishment in all settings, including the home. When looking at whether there are international examples which can help us take forward our legislative proposals in Wales, it is important to consider the basis of other countries' legal systems.

### **Comparing legal jurisdictions**

The defence of reasonable punishment in England and Wales exists as a defence to the common law offences of assault and battery. As outlined in section 2, the common law is a body of law developed by judges and common law systems (such as the UK) which places great weight on court decisions, which are considered "law" with the same force of law as statutes. By contrast, in countries with civil law systems, courts lack authority to act if there is no statute. The decisions of judges are therefore given less interpretive weight. This means that a judge deciding a given case has more freedom to interpret the text of a statute independently, and less predictably, as they don't have to worry about creating precedent.

Of the 53 countries quoted by the Global Initiative, only 4 are common law jurisdictions. The other 49 are civil law jurisdictions with the basis of their legal system being so different to the UK's it is not possible to draw any useful comparisons in the drafting of legislation.

Another important distinction is that in England and Wales common law assault and battery are criminal offences. The defence of reasonable punishment is therefore a defence to a criminal offence and its removal would primarily impact on the criminal law.

Of the 4 countries which operate in a common law system, only 3 have ended corporal punishment using the criminal law. These are the Republic of Ireland, New Zealand and Malta. In developing our legislative proposals we have therefore looked closely at the examples provided by these 3 countries. Whilst there are some potential lessons, the differences in how our laws have developed means that exact comparisons can not be drawn. For example, in the Republic of Ireland legislation had already been introduced amending aspects of the common law of assault and battery, prior to the removal of the defence of reasonable punishment. This therefore provided them with a different starting point to England and Wales.

Despite there being no direct comparators to examine when drafting legislation, we can learn from the wider experiences of all 53 countries in bringing forward and implementing such laws.

### **Corporal punishment – prevalence and attitudes**

In terms of public opinion, one study<sup>lxxxi</sup> noted that in many countries, including the UK, the prevalence of corporal punishment is declining and public attitudes have shifted, with corporal punishment being used less and being less acceptable, with a high proportion of parents doubting its usefulness. The study found there is convincing evidence that these

declines happen more quickly in countries that have banned the use of corporal punishment, and that such laws have important symbolic value.

A systematic review of the laws, and changes in attitudes and behaviours in 24 countries<sup>lxxxii</sup> where corporal punishment was banned, showed that public support for, and prevalence of corporal punishment, declined before the introduction of legal bans and continued to decline afterwards. The authors suggested that legislation - in combination with public awareness campaigns - could lead to a change in public attitudes.

A comparative study in 2009<sup>lxxxiii</sup> compared parental use of, and attitudes to, corporal punishment of children in five European countries. Nearly all forms of corporal punishment were used significantly less in Sweden, Austria and Germany where corporal punishment was prohibited than in France and Spain where corporal punishment was still lawful.

### **Impact of corporal punishment bans**

In terms of the impact of introducing bans on corporal punishment of children by parents and carers, Sweden was the first country to introduce legislation prohibiting such punishment in 1979. A 2009 review<sup>lxxxiv</sup> of the thirty years since the legislation was introduced showed there had been a consistent decline in the use of corporal punishment and the number of adults who were in favour of it. In the 1970s, around half of children were smacked regularly; this fell to around a third in the 1980s, and just a few per cent after 2000. Children who were still smacked experienced this less often; 1.5% experienced corporal punishment with an implement.

Contrary to some expectations that juvenile delinquency would increase in Sweden following the ban of corporal punishment, levels of youth crime remained steady, while theft convictions and the number of suspects in narcotics crimes among Swedish youth significantly decreased; youth substance misuse and youth suicide also decreased. The author noted that although it was too simplistic to draw a direct causal link between the corporal punishment ban and these social trends, the evidence indicated that the ban had not had negative effects.

This research found no evidence of a rise in crimes by young people. From the mid-1990s into the 2000s, youth crime decreased, primarily owing to fewer instances of theft and vandalism, while violent crime remained constant. Most young people in Sweden who commit offences do not become habitual criminals, according to the Ministry of Health and Social Affairs

A 2013 US study<sup>lxxxv</sup> also found that children across numerous cultures who were “spanked” committed more crimes as adults than children who were not “spanked”, regardless of the quality of their relationship to their parents.

### **Potential criminalisation of parents**

To allay fears that parents might be unnecessarily criminalised the New Zealand Government undertook to ask the police to collect data on responses to parents under their 2007 Act. In November 2009 a Government report<sup>lxxxvi</sup> stated police data showed that, although there had been a rise in the reporting of violence generally, parents had not been prosecuted for “light smacking.” It reported:

“[t]he data does not disclose any changes, during the two years the [Amendment] Act has been in force, in the way the New Zealand Police or Child, Youth and Family have responded to reports of light smacking or other minor acts of physical discipline or evidence of unwarranted investigation or prosecution for light smacking of children.”

The statutory review found that police officers were exercising discretion, finding Police data “does not suggest that parents are being subject to more attention from the New Zealand Police in terms of responses to light smacking”. It also considered twelve acts of what the police call “minor physical discipline” which were prosecuted, but it was noted “these could not reasonably be described as ‘minor acts’” because they involved, for example, the child being punched in the face or hit multiple times or assaulted in anger”.

Police also believed that the new law “has had a minimal impact on their business” and there had been no change in the reporting of smacking since it was enacted. This was supported by a further review<sup>lxxxvii</sup> that year which found one of the consistent messages from police officers and social workers was that the change in the law did not alter the way they thought about or responded to reports of concerns about child safety and wellbeing. Frontline New Zealand Police and Child, Youth and Family staff said they had not been asked to deal with smacking allegations differently as a result of the Section 59 Amendment Act.

The review noted in the year ending 30 June 2009, Child, Youth and Family received 110,797 notifications: 49,224 were assessed as requiring further action; and 2,855 cases of physical abuse were substantiated. However, whilst notifications to Child, Youth and Family had been increasing since before the Section 59 Amendment Act took effect (27,507 were received in 2001/02, compared to over 110,000 in 2008/09), the number of notifications that required a further response had not increased to the same extent.

Further, the Swedish Government reported<sup>lxxxviii</sup> that contrary to what their law’s critics predicted in 1979 – and contrary to what opponents of such reform continue to argue – the proportion of reported assaults that are prosecuted has not increased.

Whilst there is limited evidence in this area, these studies indicate that there has not been a consequential increase in the prosecution of parents since bans were introduced.

The experience in New Zealand also indicates the importance of ensuring policies and procedures about child wellbeing and safety that guide police officers’ and local authority responses are clear in terms of how they respond to allegations and reports that are made. It also highlights the need for police and local authorities to be able to provide advice or signpost families to local services if they think a family is simply in need of some additional support.

Lessons from other countries which have ended corporal punishment suggest successful implementation, accompanied by awareness raising and educational campaigns to support parents, can result in accelerated changes to public attitudes and behaviours. We have considered the experiences of others in developing both our legislative proposals and the wider package of measures we have in place to support its successful implementation.

Prior to the launch of this consultation, Scotland outlined proposals to bring forward legislation in this area. Given their similar legal position, we are closely monitoring developments in Scotland to ensure we continue to learn lessons as we further develop our proposals.

## Section 5 – Attitudes towards the physical punishment of children in Wales

There have been a number of independent surveys of current parents commissioned by the UK and Welsh Governments exploring parents' attitudes to corporal punishment and the law. Due to the different methodologies used and characteristics of the respondents in these surveys they are not directly comparable, but they do indicate that, overall, opinion has shifted in the last decade to be less supportive of corporal punishment with an increase in support for a complete ban on parents hitting their children:

Study commissioned by	Data Collection	Sample	Key findings
Department of Health <sup>lxxxix</sup>	April 1998	2,000 British adults	88% agreed that " <i>it is sometimes necessary to smack naughty children</i> ".  85% also agreed that the law should allow parents to smack a naughty child over the age of 5, with 9% disagreeing.
Department for Children, Schools and Families <sup>xc</sup>	July and August 2007	1,822 British parents with a child under 18 years old	52% agreed that ' <i>it is sometimes necessary to smack a naughty child</i> '.  59% generally agreed " <i>the law should allow parents to smack their children</i> " with 22% generally disagreeing.  18% generally agreed " <i>there should be a complete ban on parents hitting their children, even a smack as a punishment</i> " with 68% generally disagreeing.
Welsh Government <sup>xci</sup>	November 2013	1,022 adults in Wales (of which 56% were parents with a child under 18 years old)	44% generally agreed " <i>it is sometimes necessary to smack a naughty child</i> ".  43% agreed " <i>the law should allow parents to smack their children</i> " with 33% disagreeing  28% agreed " <i>there should be a complete ban on parents hitting their children, even a smack as a punishment</i> ", with 51% disagreeing.
Welsh Government <sup>xcii</sup>	November 2015	387 parents in Wales with a child aged 6 or under	24% of parents agreed " <i>it is sometimes necessary to smack a naughty child</i> "  34% generally agreed with the statement " <i>the law should allow parents to smack their children</i> ".  46% generally agreed " <i>there should be a complete ban on parents hitting their children, even a smack as a punishment</i> " with 43% generally disagreeing.

As with all issues of public interest, views are mixed on whether or not children should be subjected to corporal punishment and whether or not it should be made unlawful. Whilst the majority of surveys show a distinct change in attitudes over the past 20 years with fewer people supporting this as a means of discipline, others continue to show opposition to banning corporal punishment of children.

A 2014 YouGov survey<sup>xciii</sup> for the Western Mail asked 1,009 adults living in Wales “Do you think parents/guardians should or should not be banned from smacking their children?” 69% felt smacking should not be banned; 19% thought it should be banned and 13% said they didn’t know. The survey did not, however, specify whether the respondents were current parents or not, with the majority (over half) being over 40 and nearly a third of the sample over 60.

### **The views of children**

In 2001 Save the Children consulted 77 young children, aged 4 -10 years, living in Wales on their views and experiences of smacking<sup>xciv</sup>. Children described both the physical and emotional hurt that resulted from a smack. The vast majority of those who took part thought smacking was wrong.

In 2007 a study explored the views of 64 children aged 4-16, from around the UK including in Wales.<sup>xcv</sup> Children accepted discipline and punishment from their parents when it was explained to them and administered fairly. Overall, most children struggled to endorse smacking as an effective form of punishment and suggested that the emotional impact of smacking was more powerful and enduring than the physical impact. They felt that dialogue and effective communication were a crucial part of discipline.

A study in Ireland in 2010<sup>xcvi</sup> explored the views of 132 children, aged 6-17. The use of physical punishment made children feel bad in some way. This included feeling sad, upset, unloved, sore, scared, angry and embarrassed. Loss of privileges, such as not being allowed to watch TV or removal of pocket money, were viewed by children as the most effective discipline strategy. Older children felt that parental strategies that involved communication and explanation were more effective than, using physical punishment.

## Section 6 – Proposal

The Welsh Government is committed to protecting the rights of children and bringing to an end all forms of corporal punishment by removing the defence of reasonable punishment in Wales.

As is set out in section 1, the aim of the legislation is to protect the rights and freedoms of others, namely children. In pursuit of this aim, the proposal is therefore to abolish the defence of reasonable punishment so that it is no longer available to anyone facing a charge of assault or battery. It would mean that any adult looking after a child would no longer be able, under the law, to use physical or corporal punishment against them. This would therefore apply to parents, carers and guardians, as well as those acting in loco parentis. It would remove the current anomaly whereby children have less protection with regard to physical punishment than adults.

It would also remove a loophole which exists for certain sorts of settings which are not covered by the earlier changes to the law about corporal punishment in educational settings. Whilst corporal punishment has long been banned in schools, there remains a legal loophole that allows adults acting in loco parentis in what are termed ‘non-educational settings’ (such as Sunday schools or Madrassas) to use the defence of reasonable punishment. This legislative proposal would remove this loophole.

Whilst we consider the terms ‘physical punishment’ or ‘corporal punishment’ to be readily understood, it is important we set out in this consultation exactly what we are talking about when we refer to them. The terms are often used inter-changeably – indeed the Oxford English Dictionary defines corporal punishment as “physical punishment; such as canning or flogging”. Others define corporal punishment as the use of physical punishment to correct behaviour. So in its most extreme form it could involve punching or hitting a child with an implement - and at the other end of the scale it could involve smacking or pinching a child. All these actions would be intended to cause pain and would be used for the purpose of punishing a child.

We would therefore contend that it is clear when we use the terms ‘corporal punishment’ or ‘physical punishment’, we are not referring to other parenting practices or actions that are not concerned with punishment. For example, brushing a child’s hair or teeth, or pulling them out of the path of a speeding car, would not constitute corporal or physical punishment. In fact, they would not be examples of any type of punishment. They are instead actions that parents, guardians and carers undertake on a day to day basis as part of their role of nurturing and protecting their children.

As such, whilst there is a degree of uncertainty as to the exact scope of the current defence of reasonable punishment (as set out in section 2) - given the defence specifically relates to ‘punishment’, we do not consider it to apply to other types of parenting practices. Therefore, if the current defence does not relate to these activities, then removing it will have no impact on them.

This consultation is intended to help inform the development of our legislative proposals. One aspect of this is testing our view that the terms ‘corporal punishment’ or ‘physical punishment’ are well understood, as we believe these terms have an ordinary everyday meaning.

It is, of course, important when developing legislation that it provides sufficient clarity for individuals to be able to conduct themselves in accordance with the law. However, it is also important that there is sufficient flexibility in the law to respond to the individual circumstances the legislation was intended to cover. The legislation should provide a judge with enough clarity to apply the law effectively, as was intended, to the particular set of circumstances before them. We believe that the term 'corporal punishment' is sufficiently well understood to provide such clarity as to the types of behaviours and actions we intend the legislation to apply to.

**Consultation Question**

- 3. What types of actions/ behaviours would you consider to be 'corporal punishment'?**

## **Section 7 - European Convention on Human Rights**

The European Convention on Human Rights (ECHR) is an international treaty which protects fundamental rights and freedoms. The Welsh Ministers are subject to the Convention Rights as set out in the Human Rights Act 1998 and have to ensure that any legislation they propose is compliant with the Convention. Legislation will only be within the Assembly's competence if it is compatible with Convention rights and EU law. Legislation relating to the removal of the defence of reasonable punishment will therefore engage those rights. The main rights, as they appear in the Convention, which are likely to be engaged, are:

### **ARTICLE 8: Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others

### **ARTICLE 9: Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

These rights are not, however, absolute rights – action may still be taken which interferes with these rights, as long as it can be justified. Interference can be justified where it is in accordance with the law, pursues a legitimate aim and is proportionate.

In developing legislative proposals, we have therefore given careful consideration to whether such interference can be justified and whether the actions we are taking are proportionate.

### **Justified interference**

For interference to be justified it must be in accordance with the law. This is a requirement that the law is adequately accessible and its effect sufficiently clear so that people understand what is lawful and what is unlawful. Our early engagement with stakeholders and the public through our #talkparenting campaign has highlighted some confusion around the application of the current law. In developing our legislative proposals, we therefore recognise the importance of ensuring the legislation is clear as to its likely effect. We have examined the current law in great detail in order to fully understand the effect of any changes and believe our legislative proposals will provide clarity for parents, carers and guardians that it will no longer be acceptable under the law for them to use corporal punishment on their children. Our proposals will also provide sufficient clarity and certainty

so as not to unintentionally criminalise other physical interactions between parents and children, which are undertaken in the course of normal parenting.

As set out in section 1, the legislation will be supported by our established positive parenting campaign and a comprehensive package of parenting support.

It is our intention that following Royal Assent, and in the period up to the commencement of the legislation, communications messaging will focus on ensuring the public know the legislation is in place and how it may impact on them.

As this consultation document sets out, the legitimate aim of this legislation is the protection of the rights and freedoms of others, namely children. Given the lead the Welsh Government has taken in setting our policy for children and their families firmly in the context of the United Nations Convention on the Rights of the Child, the overarching objective of the legislation is to support children's rights. A further examination of the policy objectives is undertaken in section 1.

## **Proportionality**

Consideration also has to be given to whether legislating in this area is proportionate to achieve our policy aim.

As outlined in section 1, the policy intent is to support children's rights by prohibiting all forms of corporal punishment, and remove the current anomaly whereby children have less protection with regard to physical punishment than adults. The law that applies in Wales currently provides for a defence which enables parents to use a degree of physical punishment against their children. This contrasts with the provisions of the Rights of Children and Young Persons (Wales) Measure 2011, which places a duty on Welsh Ministers to have due regard to the UNCRC, which explicitly prohibits all forms of physical punishment against children, whenever they are making decisions about policy or legislation in Wales.

As such, we consider a change in the law is required through primary legislation, to remove the defence of reasonable punishment. Simply introducing non legally binding guidance or further developing the existing positive parenting campaigns will not, in itself, address the inconsistency in the law.

Additionally, as outlined in section 4, experience from other countries suggests that eradicating corporal punishment requires more than just raising public awareness. Whilst it is acknowledged that a proportion of adults will willingly review and adjust their attitudes and behaviours in the face of evidence and information, it is also recognised that significant behavioural change often occurs only in response to legislation or law reform.

Gershoff <sup>cited in xcvi</sup> also pointed out that legal bans in many countries have been implemented without a majority of public support and that there is evidence that the passage of legislation in combination with public awareness campaigns leads to a change in public attitudes.

Public awareness campaigns alone are therefore not considered to be sufficiently effective; neither is legislative change in itself. Instead, introduction of any legislation in this area should be strengthened and supported by large-scale, sustained information and awareness

campaigns to inform the population of the advantages of positive parenting and the harm caused by corporal punishment.

This consultation document also sets out the evidence around the use of physical punishment and its impact on children (section 3). The evidence indicates that smacking or other corporal punishment is ineffective in improving the behaviour of children and instead is associated with anti-social and poor behaviour.

In terms of harm to a child, as is acknowledged in the evidence section, there are so many factors which could influence a child's development, that it is virtually impossible to assess the impact of infrequent or light corporal punishment. However, as demonstrated in the evidence section, the position currently held by a significant majority of researchers in the field is that evidence supports the claims that all physical punishment under all conditions is potentially harmful to child development.

If corporal punishment can have a negative impact on a child's development, then as a Government we therefore consider it is entirely appropriate and proportionate for us to ensure children are not subjected to any form of corporal punishment. Without legislating to remove the defence of reasonable punishment, children would continue to be subjected to corporal punishment lawfully and it would not be possible for us to achieve our aim of protecting children's rights.

## **Section 8 – Impact on Public Bodies and Individuals**

The Welsh Government recognises that removing the defence of reasonable punishment may have an impact on key public services, notably the Police, Social Services Departments in Local Authorities, the Crown Prosecution Service and Her Majesty's Courts and Tribunals Service. However, it is important to note once again that we are proposing not to create a new offence, but to remove a defence to the existing offences of assault and battery.

In developing our proposals, we have discussed impacts with public service bodies in order to assess the effect of the proposed legislation. A Regulatory Impact Assessment (RIA) is published alongside this document in order to demonstrate where the impacts may fall and any financial implications arising from the proposal.

In understanding the impact of the proposed legislation, it is important to understand the current role of these public services in potential cases of assault or battery against a child. We have therefore engaged with these public service bodies to understand their operating practices and how these may be affected by the proposed legislation.

### **The Police**

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

As part of our early engagement, we have met with all four police forces in Wales to understand how they currently operate and how they may be impacted by the changes. In terms of their current involvement with alleged incidents of assault or battery against a child, they told us they already receive reports from members of the public about an adult smacking a child, typically outside a school or supermarket. In responding to such an incident, a police officer would follow their agreed process and record the incident, which they would then investigate. They would seek to identify the child and, following a conversation with the child and the parent, make a decision on how to proceed. The police are experienced in handling this type of incident and work in close partnership with colleagues in Social Services. In most instances, police officers and social workers would conduct a joint investigation to build a fuller picture of the family and its situation before taking a decision on how to proceed.

If the police considered that an offence had been committed and were able to gather sufficient evidence for a successful prosecution, they would refer to the Crown Prosecution Service. It would then be for the Crown Prosecution Service to determine what charge should be brought against an individual and whether to pursue a prosecution.

As the removal of the defence of reasonable punishment would not create a new offence, our proposals would not change the current processes followed by Police Forces in Wales. As outlined in section 2, the offences of battery and common assault are existing offences and would be processed by the police in line with current practice.

A key consideration is the potential impact on police time and resources. It is expected that there might be a short-term increase in the reporting of incidents, as awareness of any change in law grows. In the longer term, however, it is expected that reporting of incidents and the resultant need for investigation would decrease as the acceptance of physical or

corporal punishment as a method of discipline further declined in favour of more positive parenting methods.

## **Local Authorities**

As part of our early engagement work, we have also spoken to representatives of the Association of Directors of Social Services. These discussions have highlighted existing concerns that front line professionals, such as social workers, are currently unable to provide unequivocal advice to parents about smacking due to the existence of the defence.

A clear change in the law would allow social care practitioners and professionals to provide clear advice to parents and carers that physical and corporal punishment are unacceptable and to further advise on positive alternatives.

It is important to make a clear distinction in law between corporal punishment, and child neglect or abuse. They are different in nature and as such they are dealt with under different mechanisms. There are already robust and specific safeguarding and criminal laws in place to protect children from neglect or abuse. The Social Services and Well-being (Wales) Act 2014 introduced a strengthened, robust and effective partnership approach to safeguarding.

A 'child at risk' is already defined within Part 7 of the Act. Supplementary 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. One of the most important principles of safeguarding is that it is everyone's responsibility. Each professional and organisation must do everything they can, to ensure that children at risk are protected from abuse.

Safeguarding children is particularly relevant to those working in education, health and social care. Whilst the vast majority of incidents of a parent smacking a child will not present a safeguarding issue, it could potentially highlight wider safeguarding issues and therefore this legislation has the potential to impact on those with safeguarding responsibilities. If we use teachers as an example, currently, if a child reports to a teacher that their parent has smacked them, or they witness a child being smacked, the teacher is already under a legal duty to 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. It may be that additional support is needed by the parents and that they are offered support through preventative services such as Families First.

Once again, as we are not creating a new offence, the existing procedures in this area will remain unchanged. As is the case with the police, it is expected that there might be a short-term increase in the reporting of incidents to social services, as awareness of any change in law grows. In the longer term, however, it is expected that reporting of incidents and the resultant need for investigation would decrease as the acceptance of corporal punishment as a method of discipline further declined in favour of more positive parenting methods.

This consultation is about informing the development of both the legislative proposals and any supporting mechanisms around it. We would therefore welcome views from frontline professionals on whether additional guidance or training might be required to support the successful implementation of the legislation.

## **Crown Prosecution Service**

We have also had early engagement with the Crown Prosecution Service both in Wales and at the UK level. As outlined above, when deciding whether to prosecute an adult for assault on a child, the Crown Prosecution Service liaises with the police and considers the evidence available and whether a prosecution would be in the public interest.

In deciding whether to prosecute, the Crown Prosecution Service refers to the “Code for Crown Prosecutors” and legal guidance known as the Charging Standard. The “Code for Crown Prosecutors” sets out the general principles which should be considered when deciding whether to prosecute and includes application of the evidential and public interest test stages. The Charging Standard outlines the defence of reasonable punishment and states that:

“Section 58 of the Children Act 2004 has removed the availability of the reasonable chastisement defence for parents or adults acting in loco parentis where the accused is charged with wounding, causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to persons less than 16 years of age. However the reasonable chastisement defence remains available for parents or adults acting in loco parentis against charges of common assault”.<sup>3</sup>

The CPS has consulted on revisions to the Charging Standard and the removal of the defence of reasonable punishment will require further revisions to the Charging Standard to make it clear that it is no longer available in Wales.

## **Her Majesty’s Courts and Tribunal Service**

If the assessment of the Crown Prosecution Service is that there is sufficient evidence for a successful prosecution and there is a public interest then, as is the case at the moment, an individual would be charged with common assault and conviction pursued in the criminal courts. A case of common assault would be heard by a Magistrates Court. Parents aged 17 or under would appear before a Youth Court, where procedures are slightly more informal than in the Magistrates Court.

It is at this stage that the defence of reasonable punishment would no longer be available to parents or those acting in loco parentis. It would then be for the judge or magistrates to determine, based on the evidence and individual facts of the case, whether the individual was guilty of common assault.

It is expected that there may be an initial increase in the numbers of cases being brought to the courts proportionate to the initial increase in numbers of incidents being reported to the police following a change in law. It is also expected, however, that this short term increase would decline in the longer term as attitudes to corporal punishment continued to change.

As outlined in section 6, our intention in removing the defence of reasonable punishment is that the corporal punishment of a child will no longer be justified in any criminal or civil court proceedings. There are already avenues for individuals to claim financial compensation for harm experienced in childhood and removing the defence of reasonable punishment would slightly broaden the scope of these already existing process. A consequence of this may be that the number of civil cases pursued in the courts increases slightly.

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<sup>3</sup> [https://www.cps.gov.uk/legal/l\\_to\\_o/offences\\_against\\_the\\_person/](https://www.cps.gov.uk/legal/l_to_o/offences_against_the_person/)

## **Impact on parents**

The effect of the legislation will be to remove the defence of reasonable punishment so it is no longer available to anyone facing a charge of common assault or battery. Any adult who smacks a child would therefore no longer be able to rely on the defence of reasonable punishment and a successful criminal prosecution for common assault could potentially be brought against them. As outlined above and as is currently the case, it would be a matter for the Crown Prosecution Service to determine whether or not to prosecute. Discussions with the Crown Prosecution Service have indicated that whilst the Charging Standard would be updated to make clear the defence of reasonable punishment no longer applied in Wales, the evidential and public interest tests to determine whether to prosecute would remain unchanged.

Like England and Wales, New Zealand's legal system is based on a common law jurisdiction and legislation to end the use of corporal punishment related to criminal law. Following the enactment of the Crimes (substituted section 59) Amendment Act 2007, which prohibited corporal punishment, the Police were obliged to monitor the number of reports they received of potential incidents and the outcomes for each of those reports. In the 2 years following enactment, the Police received 36 reports of "smacking" and 179 reports of "minor acts of physical discipline"<sup>4</sup>. Of the 36 "smacking" cases, 35 resulted in warnings or no further action and 1 case resulted in a prosecution. Of the 179 cases of "minor acts of physical discipline", 166 cases ended in warnings or no further action and 13 resulted in prosecutions.

This demonstrates that, despite a change in law, the increase in the number of cases heard in court was not significant. As the Deputy Police Commissioner (Operations) at the time stated, "the amendment has had minimal impact on police activity and officers have continued to apply a common sense approach".

### **Consultation Questions**

**4. Do you agree with our understanding of potential impacts on public bodies in Wales arising from the legislative proposal?**

**(Yes/No/Don't know) If not, why not?**

**5. Is there additional guidance or training required to support frontline professionals?**

**(Yes/No/Don't know) If yes, please provide further details.**

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<sup>4</sup> <https://www.police.govt.nz/sites/default/files/publications/2-year-review-of-crimes-section-59.pdf>

## Section 9 – Penalties for offences

The legislative proposal to remove the defence of reasonable punishment does not involve the creation of a new criminal offence. As outlined in section 2, the defence can only be used against a charge in relation to the existing offences of common assault and battery. The existing penalties for the offences of common assault and battery would therefore remain unchanged.

Whilst the National Assembly for Wales has the power to make legislation in a number of areas, there are also aspects of the law which are not devolved but instead rest with the UK Government.

Her Majesty's Courts and Tribunals Service (HMCTS) is an executive agency sponsored by the Ministry of Justice. HMCTS operates in England and Wales and is responsible for the administration of Civil, Criminal and Family Courts and tribunals in England and Wales. While the Welsh Government does not have any responsibility for these courts and tribunals, we do have a remit in matters of Youth Justice in Wales and responsibility for the devolved Welsh tribunals.

The Sentencing Council produces definitive guidelines for judges and magistrates to use in determining sentences for crimes. The Sentencing Council is an independent, non-departmental public body of the UK Government's Ministry of Justice. As is currently the procedure, it will be for judges and magistrates to consider penalties in accordance with the existing sentencing guidelines when the defence has been removed.

In determining sentencing for a crime of common assault against a child, the Sentencing Council has produced an additional definitive guideline containing "Overarching Principles: Assaults on Children and Cruelty to a Child"<sup>xcviii</sup>. This guideline outlines relevant principles for sentencing where an assault occurred on a child under 16 years of age. It states that if the victim of an assault was a child, it "will often mean that the offence involves a particularly vulnerable victim".

It also states that "the defence of lawful chastisement is available only in relation to a charge of common assault. Where that defence is not available, or, in relation to a charge of common assault, such a defence has failed, sentence for the offence would normally be approached in the same way as any other assault".

The penalty for common assault can vary between a nominal fine, of 25% of weekly income, for a category 3 offence, or up to a maximum punishment of 26 weeks in custody, for a more serious category 1 offence<sup>xcix</sup>.

The Youth Justice system in England and Wales treats young offenders, under the age of 18, differently to adults. Therefore parents aged under the age of 18 convicted of common assault or battery would be sentenced under different guidance. The Sentencing Council has produced a definitive guideline "Sentencing Children and Young People" which states that the approach to sentencing a young offender should be individualised and focused on that child or young person, as opposed to on the offence<sup>c</sup>. For this reason, there are no prescribed penalties for the offence of common assault and judges and magistrates are likely to include restorative approaches within sentencing options to encourage the young offender to take responsibility for their actions and understand the impact the offence may have had on others.

As outlined above, our legislative proposals would not have any impact on this existing Sentencing Council guidance for Magistrates or Youth Courts. As is the case with any offence of assault and battery, it would be for a judge or magistrates to determine the most appropriate penalty using the sentencing guidelines and based on the individual facts of the case.

## **Conclusion**

The Welsh Government remains committed to bringing to an end the corporal punishment of children by removing the defence of reasonable punishment in Wales. This consultation is seeking views on the development of the legislative proposal to ensure a solution which best protects children and supports parents.

We hope you will take the opportunity to contribute to this consultation.

### **Additional Consultation Questions**

- 6. Please explain how you believe the proposed policy could be formulated or changed so as to have:
  - i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and**
  - ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.****
  
- 7. We have asked a number of specific questions. If you have any issues related to this consultation, which we have not specifically addressed, please use this space to report them:**

# Legislative Proposal to Remove the Defence of Reasonable Punishment.

## Questionnaire Response Form

Name and/or Organisation:

Address:

Date:

Postcode:

### Publication of responses

Responses to consultations may be made public – on the internet or in a report. Normally the name and address (or part of the address) of its author will be published along with the response, as this helps to show the consultation exercise was carried out properly.

If you would prefer your name and address not be published, please tick here

**Q1. Do you think our legislative proposal to remove the defence of reasonable punishment and prevent the use of corporal punishment will help achieve our stated aim of protecting children's rights?**

Yes  No

Don't know

If no, why not?

**Q2. In addition to our existing parenting support and information campaign are there any other support mechanisms you think we should put in place to support parents, carers and guardians?**

Yes  No

Don't know

If yes, what are they?

**Q3. What types of actions/behaviours would you consider to be “corporal punishment”?**

**Q4. Do you agree with our understanding of potential impacts on public bodies in Wales arising from the legislative proposal?**

Yes  No

Don't know

If not, why not?

**Q5. Is there additional guidance or training required to support frontline professionals?**

Yes  No

Don't know

If yes please provide further details

**Q6. Please explain how you believe the proposed policy could be formulated or changed so as to have:**

- I. Positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language; and**
- II. No adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.**

**Q7. We have asked a number of specific questions. If you have any issues related to this consultation which we have not specifically addressed, please use this space to report them.**

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