



## **Response to Stage 1 Consultation on the Social Services and Well-being (Wales) Bill**

**from Peter Newell, Coordinator, Global Initiative to End All Corporal Punishment of  
Children**

**[peter@endcorporalpunishment.org](mailto:peter@endcorporalpunishment.org)**

**March 12 2013**

*The Global Initiative was launched in 2001, aiming to map the legality and prevalence of corporal punishment in every state and to act as a catalyst for its prohibition and elimination across the world. Its aims are supported by UNICEF, UNESCO and many other international, regional and national organisations (see [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)).*

This submission urges the Health and Social Care Committee and the Children and Young People's Committee to recommend in the Stage 1 Report that the Bill should include a provision to remove the "reasonable punishment" defence in relation to common assault on children in Wales (amending section 58 of the Children Act 2004).

The UK Government is increasingly isolated in Europe in defending the legality of violent punishment of children. Among the 27 EU member states, the UK is now one of only five states which have neither prohibited all physical punishment of children nor committed themselves to achieve this soon.

Successive Welsh Governments for more than 10 years have, unlike the UK Government, been committed to achieving a complete ban on physical punishment. In October 2011 the First Minister confirmed that the National Assembly can now legislate on this, given its devolved powers over social welfare, including the protection and well-being of children.

The Social Services and Well-being (Wales) Bill arises from these devolved powers and is the obvious vehicle for this reform. Surely, given the enactment of the Rights of Children and

Young Persons (Wales) Measure in 2011, there cannot be any further hesitation or delay in quickly enacting this long-overdue reform for children in Wales?

The Government of Wales is committed to “Inclusive Policy-Making”, placing “a citizen focus based on the principles of human rights; fairness, respect, equality and dignity at the centre of all our policy actions.” The Explanatory Memorandum to the Bill asserts that the principle of promoting well-being for people including children is central to this legislation.

Physical punishment of children is the only form of inter-personal violence which remains legalised. This is an archaic anomaly which undermines the well-being of children and their safety and protection. For the Assembly to consider a Bill focussed on social services and care including safeguarding and well-being, without addressing this anomaly, would conflict with and undermine the implementation of the Bill’s general principles. It would also directly conflict with successive Welsh governments’ and the Assembly’s long-standing commitments to respect children’s rights.

The persisting legality of violent punishment of children is a fundamental equality and human rights issue. Enabling parents and some others to justify common assault as “reasonable punishment” reflects a view of children as possessions rather than individual people and rights-holders.

The Explanatory Memorandum rightly highlights the obligations of the Welsh Government under the Rights of Children and Young Persons Measure. It suggests (para. 191) that “the Bill takes forward Wales distinctive and internationally regarded rights based approach to children’s social care”. But the absence of a simple amendment to remove the “reasonable punishment” defence in relation to assaults on children in Wales is not mentioned, let alone explained in the assessment.

The Welsh Government’s long-standing commitment to ban all physical punishment has been reported to United Nations and European human rights monitoring bodies. The Committee on the Rights of the Child was told of the Welsh Government’s strong commitment to remove the “reasonable punishment” defence, and thus accept the Committee’s repeated recommendations to the UK Government, in the Government’s report to the Committee in 2007. In its 2008 concluding observations, the Committee noted that it “welcomes the commitment of the National Assembly in Wales to prohibiting all corporal punishment in the home, but notes that under the terms of devolution it is not possible for the Assembly to enact the necessary legislation”. The Committee went on to express its concern at the failure of the UK to explicitly prohibit all corporal punishment in the home, “and emphasises its view that the existence of any defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention, since it would suggest that some forms of corporal punishment are acceptable.”

This was the Committee’s third recommendation to the UK to remove any defences and thus prohibit all physical punishment (included in the Committee’s concluding observations issued following examination of the UK’s reports in 1995, 2002 and 2008).

There can be no possible doubt about the Committee’s interpretation of the requirements of the Convention in relation to the prohibition and elimination of violent punishment: these are reiterated with detailed guidance to states in two General Comments from the Committee, on

the right of the child to protection from corporal punishment (No. 8 2006) and on the right of the child to freedom from all forms of violence (No. 13 2011).

There have been similar recommendations to the UK from two other UN human rights monitoring bodies:

- from the Committee on Economic, Social and Cultural Rights twice, in 2002 and 2009;
- from the Committee on the Elimination of Discrimination against Women, in 2008.

The UK has also received repeated recommendations to prohibit during its examinations in the first and second cycles of the Universal Periodic Review in the Human Rights Council.

The international human rights pressure on the UK to prohibit all physical punishment is thus long-standing and intense. It is also reinforced by European human rights monitoring mechanisms: in 2005, the European Committee of Social Rights, reviewing compliance with Article 17 of the European Social Charter, found that the UK was in breach because it had not prohibited all corporal punishment in the family and the Committee repeated this finding in 2012.

In 2008, the Commissioner for Human Rights of the Council of Europe, following formal visits to the UK, stated in a Memorandum to the UK Government: “The Commissioner is very concerned about section 58 of the Children Act 2004 in England and Wales, which reflects the availability of the ‘reasonable punishment’ defence for parents charged with common assault, removing use of the defence from those charged with more serious assaults (actual and grievous bodily harm, wounding, etc)... The Commissioner emphasises that laws allowing ... ‘reasonable punishments’ on children are not compliant with international human rights standards. That children, uniquely, should have *less* protection under the criminal law from assault is additionally discriminatory and unimaginable, given children’s obvious special vulnerability.” The Commissioner, like the Committee on the Rights of the Child, had been informed of the distinctive policy of Wales, in favour of banning smacking. He noted in his Memorandum that at the time of his visit the National Assembly did not have devolved power to legislate, but that he understood that “the Welsh Assembly Government has expressed strong support for full removal of the reasonable punishment defence to give equal protection”.

**It is the UK Government which ratifies international and European human rights instruments and thus takes on legal obligations under them. But the National Assembly, by enacting the Rights of Children and Young Persons Measure, is the first part of the UK to incorporate into its legislation direct obligations to give “due regard” to the Convention on the Rights of the Child in developing legislation and policy.**

In setting out the arrangements they have adopted for complying with their duty under the Rights Measure, Welsh Ministers are required to have regard to reports of the Committee on the Rights of the Child (eg the concluding observations and general comments as referred to above), and also (section 3(1)(a) of the Measure) to reports of studies undertaken under article 45 (c) of the CRC. The UN Secretary General’s Study on violence against children, requested by the Committee under article 45(c), reported to the General Assembly in 2006; a key recommendation was prohibition of all forms of violence against children, explicitly including all corporal punishment.

Wales now has the legislative power and opportunity to maintain its leadership within the UK in fulfilling children's rights. As Paulo Pinheiro, the UN Secretary-General's Independent Expert who led the UN Study on violence against children stated when he delivered a follow-up report to the General Assembly in 2007: "Children are sick of being called 'the future'; they want to enjoy their childhood, free of violence, now".