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Children (Equal Protection from Assault) (Scotland) Bill Stage 1 Report



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Equalities and Human Rights Committee

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Background

This report represents the work of the Equalities and Human Rights Committee. The alternative views of a minority of the Committee (Oliver Mundell MSP and Annie Wells MSP), who dissented from this report, can be found in the Minority Statement at [Annex A](#).

Proposal for a Members' Bill

1. On 11 May 2017, John Finnie MSP lodged a draft proposal for a Members' Bill to give children equal protection from assault by prohibiting the physical punishment of children by parents and others caring for or in charge of children. This was accompanied by a [consultation document](#).
2. The consultation closed on 4 August 2017 and received 660 responses, 84 of which were from organisations. 93% of organisations were supportive of the proposed Bill, including charities and groups representing children, families and women; parent organisations; local authorities; human rights organisations; health and social work bodies; police and legal organisations; universities and research groups; and equality groups. In total, 78 organisations were fully or partly supportive and 493 individuals supported the Bill. A [summary of consultation responses](#) was produced.
3. A final proposal for the Bill was lodged on 24 October 2017 and received cross party support from 31 MSPs, thereby securing the right to introduce a Bill. John Finnie MSP introduced the Children (Equal Protection from Assault) (Scotland) Bill on 6 September 2018. The Equalities and Human Rights Committee was subsequently appointed the lead committee on the Bill.

Purpose of the Bill

4. The Bill's purpose is to abolish the defence of reasonable chastisement, and drive a cultural change to discourage the use of physical punishment. The defence of reasonable chastisement can currently be used by parents and others caring for or in charge of children if they are prosecuted for assaulting a child. The defence allows for physical force to be used to discipline a child, with some restrictions set out in the [Criminal Justice \(Scotland\) Act 2003, s.51](#).
5. The Bill has five sections:
 - Section 1 contains the essence of the Bill. It abolishes the common law defence that physical punishment of a child can be justified (reasonable chastisement). It also repeals s.51 of the Criminal Justice (Scotland) Act 2003 which restricts the scope of the common law rule by prohibiting punishment of a child with an implement, hitting on the head, or by shaking. The 2003 Act also set out factors a court must consider when determining if an assault on a child was justifiable.
 - Section 2 places a duty on Scottish Ministers to promote public awareness and understanding of the effect of Section 1 of the Bill. The Explanatory Notes to the Bill suggest this might include a publicity campaign, aimed at parents and carers, promoting a move to non-physical methods of child discipline, and that children and young people are also made aware of their rights.
 - Section 3 covers transitional arrangements and sets out that the Bill has no retrospective effect: a parent or carer charged with physical assault of a child after Section 1 comes into force, for an assault that took place before Section 1 comes into force, would still be able to use the defence of reasonable chastisement or justifiable assault.
 - Section 4 deals with commencement. Section 1 of the Act would come into force 12 months after the Act has achieved Royal Assent, allowing time for Scottish Ministers to raise awareness.
 - Section 5 names the title of the Act.
6. Section 1 would mean that a parent,ⁱ or anyone in charge of a child, will no longer be able to claim a defence of reasonable chastisement or justifiable assault if accused of assaulting a child. This will apply in criminal and civil cases. The [Explanatory Notes](#) to the Bill state that children will therefore have the same protections as adults, in terms of the law on assault.

Definition of physical punishment

7. The definition of physical punishment used in the consultation for the Bill, and in the Bill's Policy Memorandum, is that used by the UN Committee on the Rights of the Child. It defines corporal or physical punishment as —

ⁱ Parent is used to refer to any parent (biological, step or adoptive) and to any other adult who is (at the relevant time) caring for or in charge of children.

” ... any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ('smacking', 'slapping', 'spanking') children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee,¹ corporal punishment is invariably degrading.

Current law on assault in Scotland

8. The Criminal Justice (Scotland) Act 2003 prohibits blows to the head, shaking or the use of an implement.²
9. Under the common law, an attack upon one person by another is an assault,³ whether the person attacked is an adult or a child. In a written submission to the Committee, the Crown Office and Procurator Fiscal described assault as “any deliberate attack” on a person. They explained—

” Attack has a wide meaning and covers more than a forcible attack. There need not be substantial violence or any injury. For example, it can be an assault to slap or tap someone on the back, or to spit on someone. The deliberate use of threatening gestures in order to place a person in a state of fear and alarm for their safety can also constitute an assault even if there is no actual physical contact.⁴
10. To secure a conviction for assault, the prosecution has to show that there was criminal intent on the part of the accused. The [Explanatory Notes](#) to the Bill state that this would prevent “trivial physical contact being treated as an assault.” The use of physical force in medical treatment or to remove a person from danger would likewise not be considered assault, unless criminal intent was present.

Call for views

11. The Equalities and Human Rights Committee ran a call for views from November to January 2019. We received over 440 written submissions. 39 of these were from organisations while the remainder were from individuals.
12. The majority of submissions from individuals did not support the aims of the Bill. Many of the individual submissions followed arguments set out by the Christian Institute, namely:
 - Banning smacking could overwhelm police and social workers with trivial reports so that real cases of child abuse are missed.
 - Loving parents should not be criminalised. A smacking ban would turn thousands of parents into potential criminals overnight while doing little to stop bad parents abusing children.
 - It should be the role of a parent to decide whether to smack their child, not the Government. The state should not use the criminal law to regulate parenting.
 - Supporters of the Bill say the law should be the same for children as it is for adults, but children are not adults. Parents do many things for their children that they would not do for an adult.
 - Smacking is not child abuse. There is a clear difference between child abuse and loving parental discipline.
 - The law already protects children from assault. It is completely misleading to describe a loving smack as assault.
 - A ComRes poll last year found that 74% of Scottish adults were against criminalising smacking, while only 14% were in favour.
 - It's bad for children, families and society when children are not properly disciplined.
 - Most adults were smacked when they were children - polls routinely show over 80%. They do not think their parents were child abusers.
 - Smacking is used to warn children of dangers before they are old enough to understand a verbal warning. Criminalising it will actually endanger child safety.
 - Child-on-child violence in Sweden increased after smacking was banned in 1979.⁵
13. Those that gave their support for the Bill were primarily organisations. A total of 39 supported the Bill through the original call for views. A number of other organisations later wrote in with supplementary submissions. Several individual responses also expressed support for the Bill. A [summary of written responses](#) is available.

14. Among the key points made by organisations and individuals in support of the Bill were:
- Physical punishment of children is not acceptable
 - Retention of the defence of reasonable chastisement is contrary to Scotland's commitment to human rights and ambition to be the best place for a child to grow up
 - At present adults and children do not have equal protection under the law relating to assault
 - Children are more vulnerable and therefore need additional protections
 - Corporal punishment is degrading to children
 - There are other more effective alternatives to smacking children
 - Children's behaviour is worsened by physical punishment
 - Evidence shows physical punishment of children causes them both short and long-term harm
 - Ending physical punishment of children sends a clear message that violence is not tolerated in Scotland
 - There is a lot of international precedent and Scotland is behind in its approach
 - The Bill would clarify the existing law
 - Bill aligns the law with existing Scottish Government policies, like GIRFEC (Getting it Right for Every Child)
 - Legislation has already made it unacceptable to use physical punishment in other environments, for example education and care settings.

Engagement

15. Given the subject matter of the Bill, and its potential to impact on groups that are less likely to engage with the Parliament, we prioritised our engagement activities to hear directly from children, parents, grandparents and carers with a variety of backgrounds and experiences. A full account of our engagement work can be found in [Annex B](#).

Acknowledgements

16. We would like to thank all those who wrote to us about the Bill and who took part in our engagement activities. These personal experiences and expertise have been an enormous help in understanding the impact of the Bill and informing our consideration of the Bill.

Need for a Bill

17. The purpose of the Bill, as set out in the policy memorandum, is to give children equal protection from assault. This would mean that an adult prosecuted for assault against a child would not have access to the legal defence of “reasonable chastisement.”
18. Human rights bodies have stated that by maintaining the defence of reasonable chastisement Scotland is in breach of the human rights of the United Nations Convention on the Rights of the Child (UNCRC). Article 19 says State Parties must take all appropriate legislative, administrative, social and educational measures to protect children from all forms of violence from any person caring for them.
19. We explored with witnesses whether a Bill was necessary to make the social changes desired by the Bill, or whether its aims could be achieved through a public awareness campaign instead. The Bill as drafted also sets out a requirement for Scottish Ministers to undertake awareness raising should the Bill pass.
20. A number of organisations considered both legislation and public awareness raising is needed. Throughout our evidence taking, we discussed whether the changes desired by the Bill could be achieved without legislation, simply through a public education campaign.
21. Joanna Barrett, Children 1st/Barnardo's/NSPCC said, “it has to be both” public education and legislation, adding “all the evidence says that a change in the law⁶ alone will not achieve the behavioural and cultural change that we want.”
22. Dr Lucy Reynolds, representing the Royal College of Paediatrics and Child Health, agreed a Bill was required, saying—

” the law gives an opposite view to what we would put across as the public health message. How can we tell parents and caregivers that there is no good, reasonable, justifiable reason to hit a child and there are plenty of good, justifiable, reasonable reasons not to- and get that public health message across effectively- when we have a law that says that it is justifiable?”⁷
23. The Minister for Children and Young People thought both measures were needed—

” I do not think that it is a choice of one or the other...It would be difficult to achieve the cultural change without making the law absolutely clear. You cannot have an educational strategy that says one thing and a law that says another.”⁸
24. Scottish Women’s Aid wrote “a change to the law will help to reduce the risk of ‘milder’ physical punishment escalating into child abuse” while the Faculty of Public Health said the Bill reinforced “the public health message that violence is harmful”.⁹
25. However, many of the written submissions we received from individuals thought using legislation to achieve cultural change was like “using a sledgehammer to

crack a nut". They worry the Bill will result in the criminalisation of parents. This is [discussed further below](#).

Is smacking assault?

26. We received many submissions from individuals which questioned the use of the term "assault"—

” I have heard Mr Finnie MSP refer to smacking as assault which makes it sound like child abuse which it is not. Loving parental exercising smacking as part of family discipline cannot in any sense be compared with child abuse. Mr Finnie MSP knows that the law already protects children from assault.¹⁰

” We all agree that children need to be protected from assault. Using a smack as a reasonable means of discipline is NOT assault.¹¹

” Is it not true that the law already protects children from assault? It is very wrong to say a loving smack is an assault.¹²

27. In our visits, submissions and evidence sessions, some people questioned the title of the Bill and the use of the word "assault". At Midlothian Sure Start Grandparents' Group we heard that while most grandparents there were supportive of the Bill, they thought assault was not a good term and criminalised parents¹³. At the Messy Church, parents thought the term was heavy-handed and potentially inflammatory.¹⁴

28. However, assault does not need to involve substantial violence or injury. Michael Sheridan, Scottish Law Agents Society, wrote "assault does not draw a clear distinction between actions such as mild physical intervention, forcible restraint, striking with an open palm, a tap on the wrist and smacking."¹⁵ The policy aim of the Bill is to extend the same protection to children as adults currently receive in terms of legal protection from assault.

29. Clare Simpson, Parenting Across Scotland, said—

” the intent of this bill is to provide equal protection for children and adults...there is currently a ground of assault, whether the offence concerns adults or children...if I were to assault my child, there would be a defence— even though, to me, such action would be indefensible—whereas there would be no defence if I assaulted an adult.¹⁶

30. John McKenzie, Police Scotland, told us, "The terms 'smacked' and 'whacked', which have been used in the media, are not that helpful. The term 'assault' is more accurate."¹⁷

31. In contrast, Professor Tommy MacKay criticised the use of the term, writing—

” what was previously described simply as physical chastisement, physical punishment or smacking is now described in much more emotive terms which imply a value judgement and which effectively almost criminalise the matter without further discussion. It is therefore common now to refer to smacking as ‘hitting children’, a term often associated with aggressive motivation or uncontrolled impulse, or ‘assault’, a term implying a criminal action. These in my view are not appropriate or balanced descriptions of actions which include the considered, proportionate and remedial acts and intentions of loving parents.¹⁸

32. The Minister for Children and Young People clarified that “physical punishment already amounts to assault.”¹⁹

Potential harm to children

Violence

33. Similar distinctions were made as to whether physical punishment was violence. All submissions to the Committee agreed that violence towards children is wrong and should not be tolerated. However, views differed as to whether “smacking” was a violent act. The Christian Institute told us the UNCRC—

” states that children should be protected from violence. We absolutely agree with that, but Christians would say that the current law already protects children from violence. Smacking, as used by many thousands of loving parents—Christians and others—across Scotland is not violence against children. It is not abusive.²⁰
34. In evidence to the Committee, James Gillies of the Christian Institute elaborated, saying “the scriptures would never condone violence against children”²¹ but that section 51 of the Criminal Justice (Scotland) Act 2003 distinguishes between “violence and smacking that is used by loving parents, which is light and moderate.”²²

He added there is a “distinction between violence and the smacking that, to thousands of parents, is loving discipline.”²³ The Rev. Gordon Matheson, Evangelical Alliance, stated smacking is communicating with a child through “light pain,”²⁴ while James Gillies described it as a “slightly painful thing.”²⁵
35. Dr Stuart Waiton, School of Social and Health Science, Abertay University, told us he did not “accept that slapping a three, four or five-year-old child on the wrist should be understood as violence. That is completely confused.”²⁶
36. Christian Action Research and Education (CARE) also wrote of a distinction, saying that while Article 19 of the UNCRC is clear on a desired prohibition of violence towards children, “the Convention makes no reference to the physical punishment of children and we consider it misleading to cite Article 19 of the Convention as doing so when in fact that article refers to physical or mental violence which is clearly different to physical discipline.”²⁷ However, the Committee on the Rights of the Child made clear in 2006 that corporal punishment is included in “physical or mental violence” (see [Human Rights](#)).
37. However, in his written submission, Bruce Adamson, the Children and Young People’s Commissioner wrote, “There is no such thing as a ‘reasonable level of violence’.”²⁸ Scottish Women’s Aid told us “Physical punishment of children sits within the wider continuum of violence within society, and undermines the message that violence in all its forms will not be tolerated.”²⁹
38. NHS Greater Glasgow and Clyde wrote, “The evidence could not be clearer that the use of physical pain to discipline children is harmful (even in the context of high

levels of maternal warmth), is associated with levels of violence in society and does not work in positively shaping a child's behaviour."³⁰

39. Neil Hunter, Scottish Children's Reporter Administration, said evidence "overwhelmingly" suggests "the existence of a spectrum of violence in children's lives—particularly in the household—has a very adverse impact on their wellbeing and outcomes...the empirical evidence is stark and overwhelming, and makes up by far the majority of evidence."³¹

40. Some witnesses warned that what can begin as "mild" smacking can escalate. Amy Johnson, Zero Tolerance, highlighted evidence from the [Equally Protected?](#) report, saying it found—

” parents do not often start off abusing or seriously assaulting their children, but start with lighter or milder physical punishment. That is not to say that abuse will necessarily happen if someone smacks a child, but if we are trying to minimise the risk of that, it is necessary to say that we should not raise our hands to children at all.”³²

41. Considerable research has been done on whether physical punishment is harmful to children. In Scotland, the main body of research referred to is the 2015 [Equally Protected? A review of the evidence on the physical punishment of children](#) report. The report summarised the findings of 98 international studies and concludes physical punishment is detrimental to the well-being of a child and likely to lead to an increase in negative outcomes, including child maltreatment and abuse. Dr Anja Heilmann, principle author of the report, gave evidence to the Committee on her work and told us, "the evidence for detrimental effects of physical punishment is vast and importantly, it is consistent."³³ This view was shared by many of our witnesses.

42. American academics Dr Elizabeth Gershoff and Dr Andrew Grogan-Kaylor wrote to the Committee, "There is a large body of research linking smacking with negative outcomes for children. There are almost no studies showing smacking is effective or beneficial to children."³⁴

43. NHS Ayrshire and Arran – Infant Children and Young People's Transformational Change Programme wrote there was "clear evidence of its harm and its contravention of the rights of the child."³⁵ NHS Tayside agreed the evidence physical punishment is harmful to children is strong, and associated with—

” a range of adverse outcomes including emotional and behavioural problems, anxiety and depression, physical abuse and anti-social behaviour and violence in childhood and adulthood. Additionally, the evidence is that physical punishment doesn't work – it is ineffective in achieving moral internalisation of the values and behaviours the discipline is trying to encourage.”³⁶

44. Triona Lenihan, Global Initiative to End All Corporal Punishment of Children, told us that in 2016 over 250 studies showed associations between the use of physical punishment and a "wide range of negative health and behavioural outcomes," including aggression and antisocial behaviour. She said, "an enormous body of

evidence supports that view, and there is no comparable body of evidence against it.”³⁷ Dr Lucy Reynolds, Royal College of Paediatrics and Child Health, told us physical punishment can lead to “long standing difficulties with aggressive and antisocial behaviours” or problems with self-esteem and depression.³⁸

45. Dr Reynolds told us that children learn through mimicking, giving an example of Bandura’s Bobo doll experiment. Young children were divided into two groups, one of which was shown a film of an adult hitting a clown doll with a mallet. The children were then let into a room with toys, and those who had seen the film were more likely to imitate the behaviour they had seen and hit the clown doll. She said, “Children learn by mimicry, and if you hit children you are teaching them to expect either to dominate or to be dominated through physical violence.”³⁹

46. On our visit to the Midlothian Sure Start Grandparents’ Group⁴⁰, one grandparent told us that while they were supportive of the Bill, they didn’t like the arguments made about smacking being damaging to children because they didn’t want people who had been smacked to think there was something wrong with them as a result. This point was also raised in many written submissions from individuals, who pointed out that either they have been smacked, or had smacked their children, with no negative consequences.

47. Joanna Barrett, Children 1st/Barnardo’s/NSPCC clarified that—

” Nobody is suggesting that the link in question is causal—that because someone has been physically punished, they will experience X, Y or Z...However, so strong and consistent is the link that the evidence shows [of potential harm] that it undermines what we have on the statute book and⁴¹ makes the proposed change really urgent.

48. However, others disagree with the body of evidence. Prof. Tommy MacKay wrote he was “disturbed” by “claims about smacking” which—

” assert that they are based on evidence. I cannot avoid feeling that often people start with a particular viewpoint or ideological position, and then seek evidence which they believe supports it...There are many factors which require careful analysis...Instead what I find is an immediate interpretation of associated⁴² findings being interpreted as if they were causal findings.

49. James Gillies of the Christian Institute told us—

” The central question on the bill is whether smacking is harmful to children, and the research evidence does not show that it is harmful...I do not think that there is any research evidence to show a logical connection between a light smack used by parents and violence. I do not think that there is a link between⁴³ smacking and violence in children.

50. Many individuals’ submissions to the Committee, and that from the Christian Institute, referenced the work of Professor Robert Larzelere, an American academic who has worked extensively on parenting research, smacking, and alternatives to

smacking. On 21 March, we held a video conference with Prof. Larzelere to explore his research and views. He told us—

” In my summary of all the research I could find that examined not just smacking but alternatives, physical punishment led to worse outcomes only if it was used too severely or as the primary means of discipline...⁴⁴

51. Professor Larzelere told us he advocates a method called “back-up smacking”, where physical punishment is used as a threat or a last resort when other methods of discipline have failed. He explained “research has shown that smacking is adverse only if it is continued past age nine or 11.”⁴⁵ He stated smacking “should certainly not be done for any child under the age of 12 months” and “should be discouraged for children up to the age of two years.” He argued, however, that smacking is effective for children from age two.⁴⁶

52. Dr Waiton differentiated between “advocacy research, which is where people have already made their minds up,” and Prof. Larzelere’s work which “actually tries to look at” the evidence. He says Prof. Larzelere found—

” there have been nine studies that take an overview of all the research and that seven of them do not come to the conclusion that smacking—particularly back-up smacking—is harmful to children. He concludes that back-up smacking...ends up being the best form of discipline. The idea that there is proof or evidence that a light form of smacking damages children is not borne out.⁴⁷

53. However, the Committee received a submission from Professor Joan Durrant, University of Manitoba which refuted Prof. Larzelere’s arguments. She wrote—

” Most of the arguments made by Dr Larzelere are not supported by evidence. To the contrary, there is a great deal of evidence demonstrating that prohibitions are followed by positive change.⁴⁸

54. Many of the written submissions we received described a “loving smack”, and differentiated between that and physical punishment administered in anger. However, Professor Jane Callaghan, University of Stirling wrote—

” Whilst some parents might justify their use of smacking suggesting that smacking ‘done with love’ is not the same as abuse, this was not borne out in [a 2017 multinational] study, which found that neither severity of the punishment, not perceptions of whether the punishment was fair, moderated its impact.⁴⁹

55. The Faculty of Public Health agreed that “The majority of studies that investigated the effects of physical punishment in the context of a loving family found that the harmful effects of physical punishment were the same even when levels of maternal warmth were high.”⁵⁰

56. John Finnie MSP told us—

- ” There is a connection between physical punishment in childhood and subsequent violence, and it is appropriate to point out that it is not just the academics who have said that. When we have people from Scottish Women’s Aid and the violence reduction unit, who are at the front line of dealing with issues of violence in our communities, saying that there is a link, we should⁵¹ listen.

Restraint in the home

57. Over the course of evidence, we heard the example of children running into a road, or endangering themselves in another way, as an instance when parents and carers may have to intervene physically to prevent greater harm. Some called this restraint, and questioned whether it would be allowed should the Bill pass. Others thought that this would be a situation where physical punishment would be justified, in order to prevent greater harm.

58. Witnesses, however, differentiated between physical punishment and preventing harm. Joanna Barrett, Children 1st/Barnardo’s/NSPCC, said—

- ” The idea that the bill would not let parents stop children running in front of a car, touching a hot iron or touching a plug is often used, so it is incumbent on us to be absolutely clear about what the bill seeks to do. It is my understanding that such action is not assault and we are here to talk about removing a defence for assault. The purpose of such action is to stop a child coming to⁵² immediate harm.

59. Andy Jeffries, Social Work Scotland, agreed—

- ” Restraint is sometimes necessary for the safety of the child or somebody else—if children are punching each other you would put yourself between them—but that is not the same as hitting a child, which is the bit that we are⁵³ saying is inconsistent with children’s rights.

60. Dr Louise Hill, CELCIS, questioned the response of physically punishing a child in these situations, saying, “as a parent of young children, if they run into traffic, my immediate response is to hold them. I get hold of my children and I keep them⁵⁴ safe.” Martin Canavan, Aberlour, said the same instance might arise with adults with impairments such as dementia, adding, “we would not then physically punish them afterwards to reprimand them or show them that they had done something⁵⁵ that they should not have done.”

61. However, where there may be some confusion in relation to this Bill is where restraint is used in the home, to contain children or keep them from harm. The Care Inspectorate wrote—

- ” There are groups of children, such as some disabled children or those whose behaviour can be challenging, where parents or carers may use forms of restraints or temporary exclusion as means of containment rather than punishment. It is likely that some of these means may be subsequently interpreted as forms of physical punishment covered by the Bill. Guidance should take account of their particular vulnerability, especially for those whose verbal communication is limited, and consider how such children can be equally protected without being overly intrusive into family life.⁵⁶

62. We do not agree physical punishment is required to protect children from harm. We conclude that the Bill as drafted will not change a parent's or carer's ability to restrain a child to keep him or her from harm.

Restraint in care

63. In other contexts, such as residential care facilities, restraint means something different and can involve a child or young person being physically dominated by multiple adults. While children and young people in foster or residential care are already protected from physical punishment,ⁱⁱ we heard moving evidence from Amy-Beth Miah, a care-experienced young person and member of the Who Cares? Scotland collective, that in her experience physical restraint was a violent and degrading experience. She said the Bill “raises a grey area” as—
- ” When a child is removed from their family home to be placed in care, the state becomes the child’s corporate parent, and it is suddenly okay for the state to restrain the child and to act in an almost assault-like manner that breaches human rights.⁵⁷
64. Guidance says that this restraint should be used in exceptional circumstances. However, Cheryl-Ann Cruickshank, Who Cares? Scotland, told us restraint “quickly became an accepted part of [young peoples’] experience of care” and was “used for behavioural management and to compel a child to comply.”⁵⁸
65. The Care Inspectorate noted that Scottish Ministers and public bodies have corporate parenting responsibilities for young people in care and welcomed the fact the Bill would “extend the same protection to those looked after children living at home, as well as those living with friends or relatives in kinship care arrangements.”⁵⁹
- However, the Independent Care Review noted that, “If Scotland is to embrace the challenge of addressing physical interventions within the family home then it needs

ii Paragraph 18 of the Policy Memorandum explains, “Legislation has outlawed the use of corporal punishment in certain contexts other than at school, e.g. foster care and kinship care agreements further to the Looked After Children (Scotland) Regulations 2009 (S.S.I. 2009/210) and also in respect of a provider of day care of children, child minding or a child care agency within the meaning of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011(S.S.I. 2011/210).”

to better understand how physical interventions are employed by those caring for Scotland's looked after children.”⁶⁰

66. The Children and Young People's Commissioner also published a [report on restraint and seclusion](#) in Scotland's schools in December 2018.

67. The Minister for Children and Young People noted the “very serious” points about restraint in residential care settings, but agreed with other witnesses that this Bill was not the place to address them as—

” restraint is very different from punishment. Restraint is about prevention. It is used in narrowly defined circumstances and is about keeping the individual and those around them safe. Although I do not think that the bill is the appropriate place to consider the use of restraint, I would be happy to consider separately any points on the matter that you wish to raise.⁶¹

68. We note the difference between the restraint used to keep a child from running into the road, or from reaching for a pan of boiling water, and the restraint described by Who Cares? Scotland and Amy-Beth Miah. Restraint in care settings is an area we believe requires much wider scrutiny, although we do not think that this Bill is the vehicle for that scrutiny.

69. We welcome the Minister's commitment to further discuss issues around restraint. We note the Scottish Government is planning to review the Mental Health (Care and Treatment) (Scotland) Act 2003⁶² and is currently reviewing the Adults with Incapacity (Scotland) Act 2000.⁶³ We ask the Scottish Government to look at the issue of restraint in care and education settings, and to take account of restraint when it undertakes its legislative reviews, with a view to ensuring the human rights of vulnerable individuals are paramount in any guidance, procedure and legislation. We seek an explanation of how the Scottish Government intends to take forward this work, including relevant timescales.

70. We also intend to look at the issue of restraint further when our work programme allows.

Human rights

71. According to the policy memorandum, Scotland needs to remove the defence of “reasonable chastisement” to meet its international human rights obligations. The UN Convention on the Rights of the Child (1989) (UNCRC) sets out the fundamental human rights of children and young people. It was ratified by the UK in 1991. Article 19 (1) of the UNCRC states:
- ” 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.
72. Every five years, the UN Committee on the Rights of the Child (an elected body of international experts) monitors implementation of the UNCRC for each State Party that has ratified it. The UN Committee can also make “general comments” relating to its interpretation of specific provisions in the UNCRC. The UNCRC makes no explicit reference to corporal punishment, but in 2006 the UN Committee provided further interpretation of the UNCRC regarding corporal punishment—
- ” ...the Convention, like all human rights instruments, must be regarded as a living instrument, whose interpretation develops over time. In the 17 years since the Convention was adopted, the prevalence of corporal punishment of children in their homes, schools and other institutions has become more visible...it is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.
73. With specific reference to Article 19, the UN Committee said:
- ” There is no ambiguity: ‘all forms of physical or mental violence’ does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.
74. In 1995, 2002 and 2008, the UN Committee on the Rights of the Child recommended the UK give children equal protection from assault. In 2016 it recommended all members—
- ” Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as ‘reasonable chastisement’; ... Strengthen its efforts to promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.

75. There is strong support from the international human rights community for the ending of physical punishment of children. The following table sets out various calls for the ending of physical punishment from international bodies and Committees.⁶⁴

Statements from international bodies and Committees on the use of physical punishment

UN Convention on the Rights of the Child	
United Nations Convention on the Rights of the Child (UNCRC) 1989 (ratified by the UK in 1991)	Because of their physical and mental immaturity, children need special safeguards and care.
Article 19	State parties must take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence from any person who has the care of the child.
Committee on the Rights of the Child, General Comment 8 (2006)	“There is no ambiguity: ‘all forms of physical or mental violence does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.”
Article 37	No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
European Convention on Human Rights	
European Convention on Human Rights (1950) (ECHR) (Article 3)	Prohibits inhuman or degrading treatment or punishment. This is an absolute right so infringement cannot be justified.
Recommendations from UN committees	
The Committee on the Rights of the Child, Concluding Observations (1996)	The prevention of this violation of children's rights requires further attitudinal changes in society, not only as regards the non-acceptance of corporal punishment and physical and psychological abuse but also greater respect for the inherent dignity of the child.
The Committee on the Rights of the Child, Concluding Observations (2002)	The Committee deeply regrets that the State party persists in retaining the defence of “reasonable chastisement” and has taken no significant action towards prohibiting all corporal punishment of children in the family.
The Committee on the Rights of the Child, Concluding Observations (2008)	“reasonable chastisement” – Committee is concerned that this defence has not been removed and said “Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, in England and Wales, Scotland, and Northern Ireland.”
The Committee on the Rights of the Child, Concluding Observations (2016)	Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement.”
Committee Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) (2013)	The Committee recommends that the State party prohibits corporal punishment of children in all settings.
UN Human Rights Committee - International Covenant on Civil and Political Rights (2015)	The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings, including the home, throughout United Kingdom.
Universal Periodic Review	
Universal Periodic Review (2017)	Recommendations from several countries to change current law in the UK and ensure that physical punishment of children is prohibited in all settings, including the home.
Council of Europe	
Parliamentary Assembly of the Council of Europe (2004)	Recommended a Europe wide ban on the corporal punishment of children.
European Committee of Social Rights	Recommends prohibition in legislation against any form of violence against children UK in breach of the European Social Charter (2005 and 2012) due to failure to prohibit all physical punishment in the home.
UN Secretary General	

Study on Violence against
Children report ([2006](#))

Calls for global prohibition of all violence towards children, including corporal punishment in the home.

Children's rights

76. Most witnesses supported the idea that the realisation of children's human rights, could not be fully achieved without taking legislative steps to remove the defence of reasonable chastisement. They pointed out that due to their physical and mental immaturity, children are entitled to greater protection under human rights laws. The Children and Young People's Commissioner said, "The international community has been very clear that children have not only rights, but additional rights."⁶⁵

77. However, Dr Stuart Waiton, Abertay University, told us—

” The idea of children's rights is a bit of a nonsense concept. Children do not have rights. They do not have the same framework of rights as adults; they have protections. In essence, when we talk about children's rights, we are really talking about the right of professionals to make decisions on their behalf.⁶⁶

78. Martin Canavan, Aberlour, disagreed saying—

” children require more, not less, protection from violence than adults do. There naturally exists an imbalance of power in adult/child relationships, and as a result it is critical that children are provided with as much protection in law as possible.⁶⁷

79. The Minister for Children and Young People said, "removing the defence of reasonable chastisement is absolutely in line with international treaties, our obligations, and international best practice."⁶⁸

80. Jean Miller, Education Institute Scotland (EIS), spoke of measures to promote children's rights in other areas, such as rights-respecting schools, and UNICEF's position that children and young people have the right to be heard. Speaking with her experience as a head teacher she said, "You cannot say that that stops at the school gate; it has to go beyond that. Children should feel safe in all environments."⁶⁹

81. Prof Jane Callaghan wrote, "As a country committed to recognising children's rights, it is bewildering to me to see such an overt violation of children's right to physical integrity and protection from harm is so routinely overlooked."⁷⁰

82. Amy Johnson, Zero Tolerance, spoke of the status of children saying—

” At the core of the issue is the idea that the parent is inflicting pain in an attempt to manage behaviour. The fact that we do not do that to adults in Scotland raises the question why we still think that it is okay to do it to children and—if we are doing that—how we place children in society.⁷¹

83. Triona Lenihan, Global Initiative to End All Corporal Punishment of Children, agreed saying the Bill could, “mark a turning point and a significant step away from the dominant view of children as possessions and the property of parents towards the more progressive view of children as being entitled to a full range of rights.”⁷²
84. The Children and Young People (Scotland) Act 2014, Part 1(1)(a) places a duty on Scottish Ministers to keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements. When asked about whether the Scottish Government’s pledge to incorporate the UNCRC would be jeopardised if this Bill was not passed, Mr Finnie MSP replied, “that situation would be incompatible with the UNCRC.”⁷³

Right to private and family life

85. The rights of the child are often contrasted with the right to respect for private and family life, as set out in Article 8 of the European Convention on Human Rights. In his written submission, the Children and Young Person’s Commissioner explained that Article 8 “is a qualified right, which means that an interference with the right can be justified in certain circumstances.”⁷⁴ These circumstances must be “lawful, necessary and proportionate” and can include if there is a need to protect public safety, health or morals, prevent disorder or crime, or protect the rights and freedoms of other people.⁷⁵
86. NHS Greater Glasgow and Clyde wrote that—
- ” If passed this legislation will uphold Article 19 of the UN Convention on the Rights of the Child by protecting children from physical violence, injury and maltreatment. As undertaken ‘for the protection of the health [and] rights and freedom of others’ this legislation does not contravene the rights to no interference in family life by a public authority or freedom of thought, conscience or religion.”⁷⁶
87. Diego Quiroz, Scottish Human Rights Commission, gave examples of multiple cases decided by the European Court of Human Rights which determined—
- ” the right to family life is not interfered with by protecting the child from corporal punishment, which would clearly interfere with the child’s right to dignity. There are several cases that support the prohibition of physical punishment of children and rebut the idea that that measure would interfere with family life and the right of parents to discipline their children.”⁷⁷
88. The Children and Young Person’s Commissioner explained Article 5 of the UNCRC states the rights and duties of parents, and Article 18 explains the state must provide support to parents. Article 8 of the ECHR covers respect for private and family life. However, “there is absolutely no right to use physical violence as part of respect for private and family life.”⁷⁸ Nora Uhrig, Equality and Human Rights

Commission, confirmed, “People have the right to family life, but that right does not include a right to use physical punishment.”⁷⁹

89. On a perceived tension between the rights of children and adults, Joanna Barrett, Children 1st/Barnardo’s/NSPCC, explained that “rather than children’s and parents’ rights being in conflict, they are actually totally complementary...The job of adults, Parliament and society is to realise children’s rights.”⁸⁰ Fraser Sutherland, Humanist Society Scotland, agreed, pointing out “Parents are guardians of their children’s rights; they are not arbitrators of what rights those children should enjoy.”⁸¹

90. However, James Gillies, Christian Institute told us “children, parents and adults have different legal standing in existing law,”⁸² while the Rev. Richard Ross, Free Church of Scotland (Continuing), said—

” Children are given to the parents to bring them up. It does not belong to the state to tell parents at what level they are to deal with their children...We are talking about a God-given right.⁸³

91. Others disagreed. Mairi Campbell-Jack, Quakers in Britain, thought—

” seeing it as a children-versus- parents issue is not helpful, as that is very much a lose-lose situation...Rather than looking at parents’ rights and children’s rights as being separate, it might be better to include them all in the one group—that of human rights. All humans deserve to be free from violence.⁸⁴

92. The Rev. Peter Nimmo, Church of Scotland, said while he agreed it looked as though there was a tension between the rights of children and parents, “as a society, we have long accepted that parents’ rights over their children do not exclude the involvement of the rest of the community.”⁸⁵

93. The Minister for Children and Young People told us she did not see a conflict between parents’ rights and children’s⁸⁶ and John Finnie MSP said—

” I understand that people perceive there to be a tension. I think that we all have rights; I do not think that there is a hierarchy...If you say to people, ‘Do the most vulnerable people in our communities deserve equal protection?’ many would say, ‘No, they deserve better protection.’⁸⁷

94. We accept the assurances that children’s and parent’s rights do not have to be seen as in conflict, and agree with Clare Simpson, Parenting Across Scotland, who said—

” often, people see the issue in an oppositional way, with the rights of the child being pitched against the rights of families. In fact, the UNCRC places the child very firmly in the context of the family and says that family is the best place for the child. It goes on to say that the state has a responsibility to provide help and support to parents in that role.⁸⁸

95. We agree there is no right in international treaties for parents to physically discipline children. The right to family life does not include the right to physically punish children.

Right to religious freedom

96. In written submissions, and in our committee meeting on Skye, we heard from some faith and belief groups. As Humanist Society Scotland wrote, “with all religious arguments there can be differing perceptions and interpretations within faith communities of a common base.”⁸⁹

97. Through the faith and belief groups from which we heard, we encountered differing views of how the Bill would impact their communities and congregations, and whether the Bill was in conflict with their right to freedom of thought, belief and religion ([Article 9 of the Human Rights Act 1998](#)).

98. The Rev. Richard Ross, Free Church of Scotland (Continuing) told us “the bill is an open attack on the authority of God to tell us how to live, and it will smash the very foundation of Scottish society” adding that “the scriptures teach that parents have that right [to use physical punishment].”⁹⁰ He quoted Hebrews 12 (“for whom the Lord loveth, He chastens them”), adding the Bible “says that God lovingly chastens his people.”⁹¹

99. However, the Rev. Peter Nimmo, Church of Scotland, said—

” To parents who worry that the approach might not be in parallel with their faith commitments, we say that our denomination thinks—and other faith communities could feel the same way—that it is possible to explain why the change and the promotion of a non-violent approach to parenting resonate with their values as part of a faith community. We certainly felt that such a change in the law would resonate in that way, and our General Assembly agreed with us. The approach is fine grained; there is the ability to say to people with different faith outlooks and philosophies that such a change would be in line with their most deeply held values.⁹²

100. We explored whether the Bill was in conflict with the right to live out one’s faith or religion as they believe it. The Rev. Peter Nimmo, Church of Scotland, told us it was not unusual for limits to be placed on practices that were deemed to be in conflict with “the wellbeing of society as a whole”.⁹³ Fraser Sutherland, Humanist Society

Scotland, agreed, saying European Court of Human Rights case law has shown this right can be restricted if needed to protect others' rights. He added—

” We should not go down the road of saying that we should allow young people to be hit because they are young people and their parents have decided that that is within their faith protection so young people's other rights are eroded. I am afraid that there is no hierarchy of rights whereby freedom of religion and belief protects people and erodes young people's right to be free from violence.

94

101. Mairi Campbell-Jack, Quakers in Britain, concluded—

” As we develop our understanding of rights, there will be tricky questions and situations that we will have to tease out as a society, and we will have to work out how we are going to deal with them. The important point is ...we are talking about children, and their vulnerability must be put at the centre of this.

UK and international experience

102. At the time of the Bill's introduction, 54 countries had prohibited the physical punishment of children in all settings, with 56 more countries committed to reforming their laws to achieve a complete legal ban in all settings. During the course of evidence, Japan announced that it would move to end physical punishment of children, and Wales introduced legislation to do the same. At present, the United Kingdom is one of only four countries in the EU not to legislate against the physical punishment of children in all settings.

Rest of the UK

England and Wales

103. Parents in England and Wales can use the defence of "reasonable punishment" under the Children Act 2004 (s.58). This applies as long as the defendant is charged with common assault, the victim is a child and the defendant is the parent of the child, or a person acting *in loco parentis*. Section 58 of the 2004 Act states: "battery of a child causing actual bodily harm to the child cannot be justified in any civil proceedings on the ground that it constituted reasonable punishment".
104. During the course of our Stage 1 evidence, the Welsh Government introduced legislation to end the defence of reasonable punishment. A consultation, launched in January 2018, found just over half of respondents (50.3%) agreed with the statement that the legislative proposal will achieve the aim of protecting children's rights.
105. There have been calls to introduce a ban on the physical punishment of children in England, but there are no plans to date.

Northern Ireland

106. Northern Ireland has similar legal provisions to those in England and Wales. The defence of reasonable punishment is regulated in article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006. The Policy Memorandum to the Bill states that this effectively enacted section 58 of the Children Act 2004 in Northern Ireland.

Other countries

107. Through our scrutiny of the Bill, witnesses have referred to other countries which have ended the physical punishment of children. Dr Lucy Reynolds, Royal College of Paediatrics and Child Health, told us, "I hear from paediatricians in New Zealand, Sweden, Iceland, Spain, Germany and Austria, and all of them have absolutely no regret about changing the law. They are looking to us to be next."⁹⁵

108. Evidence to the Committee focused on the experiences of New Zealand, Sweden, and Ireland.

New Zealand

109. In 2007, the legal defence for the use of reasonable force “by way of correction”⁹⁶ was repealed⁹⁶. It was replaced by a new provision allowing parents to use reasonable force for the purposes of protection from danger or prevention of damage to people or property. The law states that nothing justifies the use of force for the purpose of correction.
110. Research on attitudinal change over the last three decades found a substantial decline in approval of physical punishment from 89% in 1981 to 58% in 2008, to 40% in 2013.⁹⁷ A two year review of police activity since the legislation was enacted found an increase in reported cases of “smacking” or “minor acts of physical discipline”. However, there was a negligible increase in the number of prosecutions.⁹⁸
111. James Gillies, Christian Institute, disagreed saying—
- ” Before the law in New Zealand changed, politicians said that the law would not result in parents being criminalised, but that is what has happened. A legal report that was released last year said that parents in New Zealand have, in effect, been criminalised. With respect, your assertion that good parents will not be criminalised has not been the case abroad.⁹⁹
112. However, the Children and Young Person’s Commissioner said the experience in other countries showed any increase in prosecution had been “nominal. In New Zealand, for example, there were, I think, eight cases over the 10 year period, and some of those would have fallen foul of the law in Scotland anyway.”¹⁰⁰

Sweden

113. Corporal punishment in the home was prohibited in Sweden in 1979.¹⁰¹ The Children and Penal code was amended to provide that—
- ” Children are entitled to care, security and a good upbringing. Children shall be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment.
114. While this prohibition does not itself carry penalties, actions that meet the legal criteria of assault are subject to a fine or imprisonment of up to two years.
115. A thirty-year review of the change in law showed that there has been a consistent decline in the use of physical punishment, and the number of adults who are in favour of it. However, many submissions to our call for views stated that child on child violence in Sweden had increased since 1979. The reporting of cases of

assault on children has increased since the 1980s, which may reflect less tolerance towards the physical punishment of children.

116. The report on the 30 year review stated:

” Contrary to what the law’s critics predicted in 1979 – and contrary to what today’s opponents of law reform continue to predict, the proportion of reported assaults that are prosecuted has not increased. This is partly due to the fact that it is extremely difficult to obtain convictions for crimes committed within the four walls of a home where there are no witnesses other than the perpetrator and the child. The legal system does not allow a lower burden of proof in cases of assault on children than in other criminal cases.”¹⁰²

117. Triona Lenihan, Global Initiative to End All Corporal Punishment of Children, told us of a 2000 study done in Sweden on the impact of the change in law, which found it had helped provide opportunities for “increased early intervention and early identification of children and families who were at risk of violence, as well as providing increased support to families. The number of interventions that required out-of-home care declined by a third and there were a range of other positive benefits.”¹⁰³

118. However, a submission from the pastor of the River of Life Church said—

” Our family lived in Sweden for a year, in 1990; ten years after the introduction of a smacking ban. We witnessed first-hand the damage it was doing to the confidence of parents and the fear that they could be reported for the slightest physical contact which might be perceived as physical chastisement.”¹⁰⁴

Ireland

119. The Committee took evidence from Jillian van Turnhout, former Irish senator, who introduced the amendment that led to the prohibition of corporal punishment in Ireland in 2015.¹⁰⁵

120. Ireland had a common law defence of “reasonable chastisement”, which was unanimously repealed in 2015, under the Children First Act 2015. This came into effect in December 2015. Since the implementation of the law, Jillian van Turnhout told us “we have not seen a dramatic increase in prosecution of parents. Let me absolutely clear on that.”¹⁰⁶ In evidence, she spoke of many benefits seen by service providers and those working with families.¹⁰⁷

Increased clarity of Scots Law

121. Many witnesses told us that the Bill would bring clarity to the law, which would in turn provide increased clarity for parents and service providers.
122. The Law Society of Scotland wrote, “The Bill, as proposed, would introduce clarity of the law on what amounts to assault on children as far as children and adults are concerned. Assaults on children would not be justified. Children would therefore be afforded the same protection as currently available to adults.”¹⁰⁸
123. Mhairi McMillan, Law Society of Scotland, said “the law is not clear or easily understood by people.”¹⁰⁹ Clare Simpson, Parenting Across Scotland, told us about a survey¹¹⁰ they undertook which asked parents what they thought the law currently said, “whether it was illegal to hit a child around the head, whether it was illegal to use an implement and so on, and there was a hugely confused response...We need clarity.”¹¹¹
124. Some witnesses told us the restrictions set out in the Criminal Justice (Scotland) Act 2003 led to further confusion. Joanna Barrett, Children 1st/Barnardo’s/NSPCC said:

” If you ask a parent on the street whether smacking is banned, they will probably say that it already is. There is not a lot of clarity, and legal change would bring absolute clarity for parents, professionals seeking to support parents and, ultimately, children, on how they can expect to be treated.”¹¹²
125. Fraser Sutherland, Humanist Society Scotland, said that while the restrictions in the 2003 Act were welcome—

” they opened up bit of confusion about what is reasonable. It seemed that, if you really wanted to know what a reasonable chastisement would be, you had to become a legal expert and look at all the case law to decide. Removing the defence sends a clear message, which means that we do not have to define what is meant by reasonable punishment.”¹¹³
126. Mairi Campbell-Jack, Quakers in Britain agreed that “‘Reasonable’” is a really tricky word. Everyone thinks that they are reasonable, but not everybody is reasonable to everybody else.”¹¹⁴
127. Alison Davis, Saheliya, spoke of the work her organisation does with women from black and minority ethnic communities who have faced significant trauma—

” We should not lift our hand to children. If someone has been tortured or raped in parts of Africa or the Mediterranean, for example, or simply had no sleep or had a bad day, what is meant to be a slight tap on the back of the hand could be a very heavy slap—they might not be in a state to be able to measure that. An absolute ban makes far more sense and is a lot easier to follow.”¹¹⁵

128. Almost all witnesses agreed with the Children and Young People's Commissioner that, "If the current law is changed through the Bill, it will provide much needed clarity in the law."¹¹⁶ The Minister for Children and Young People said, "The bill's approach brings helpful clarity to the legislation."¹¹⁷

Clarity for service providers

129. Other witnesses spoke of the difficulty for service providers, such as health visitors, paediatricians, and social workers who have the evidence of harm physical punishment can cause, but are stymied by the existing defence of reasonable chastisement. Dr Anja Heilmann said—

” The important issue is that the bill will bring clarity about what is and is not okay. The social worker or police officer could therefore start the conversation at a different point and say that physical punishment is not acceptable. They could then find different ways. I do not think that that would mean that trivial physical punishment would be prosecuted, but there would be a different conversation.¹¹⁸

130. Health care professionals agreed. The Academy of Medical Royal Colleges and Faculties in Scotland wrote to us—

” paediatricians continue in daily practice to encounter parents/carers who are unaware of the evidence relating to the use of physical punishment. Having a legal framework which states that assaulting a child can be 'justifiable' is hampering those who work with children and families from delivering clear, evidence-based advice.¹¹⁹

131. Children's Hospices Across Scotland told us "When society accepts this evidence and removes the option of physical punishment, everyone can feel more confident in discussing other, non-violent ways of discipline with parents and carers." Joanna Barrett, Children 1st/Barnardo's/NSPCC agreed the Bill would provide clarity to those who work with families. She said—

” this is tricky territory. If a health visitor goes into a home and the parent asks, "Is this okay?", they cannot really answer that question unequivocally; at the moment, it is a value judgement, and the response is usually, "Well, not really, but ...".¹²⁰ The bill would provide absolute clarity.

132. Jillian van Turnhout spoke of the clarity the Irish legislation provided for state agencies and civil society organisations, saying they were all positive about the clarity that had been achieved. Social workers could now have an authoritative rather than moral conversation with parents about physical punishment, and could now focus on positive parenting methods.¹²¹ Triona Lenihan, Global Initiative to End All Corporal Punishment of Children, echoed the benefits of the Irish experience, saying that, "If it is clear that physical punishment is never acceptable,¹²² people can then talk about the positive things that they can do."

Alignment with Scottish Government initiatives

133. Getting it Right for Every Child (GIRFEC) supports families by making sure children and young people receive the right help, at the right time, from the right people. The aim is to help children and young people “grow up feeling loved, safe and respected so that they can realise their full potential”. It is underpinned by the principles set out in the UNCRC.

134. Children’s Hospices Across Scotland wrote—

” By continuing to allow children to be subjected to physical punishment, and not offering the same protection as adults, Scotland is not complying with the terms of the UNCRC and is at odds with its own government’s policy in GIRFEC;

*‘Every child and young person has the right to be, and feel, safe and protected from any avoidable situation or acts of commission or omission by others that might affect their wellbeing, Such as: being physically, sexually or emotionally harmed in any way; being put at risk of physical, sexual or emotional harm, abuse or exploitation.’*¹²³

135. Several witnesses pointed out the existing defence of reasonable chastisement is at odds with another Scottish Government initiative, [Equally Safe](#), a national strategy to prevent and eradicate violence against women and girls. Amy Johnson, Zero Tolerance, said the restrictions in the Criminal Justice (Scotland) Act 2003 and the lack of clarity around what is “justifiable” makes it “difficult for children to understand what is okay”, adding—

” The idea that some forms of assault, especially of the most vulnerable people, are justifiable, and that pain can be inflicted as a form of behaviour management, sends a confusing message and sits in opposition to a lot of other messages about combating violence against women in society through the equally safe approach, for example.¹²⁴

136. Rape Crisis agreed that Equally Safe, with its key messages of consent, respect, and a right to bodily autonomy, is undermined by—

” Having a legal framework which states that young people, who are inherently more vulnerable, have fewer rights and that their physical chastisement [is] state sanctioned and morally justifiable.¹²⁵

Criminalisation of parents

137. A key concern of those who wrote to us and who we met in our engagement visits was the Bill would criminalise parents. Although the Bill does not create any new offences, there is a fear from many that large numbers of parents would face prosecution should the Bill pass.
138. Diego Quiroz, Scottish Human Rights Commission, said, “We are not criminalising any conduct; what we are doing is removing a defence for not treating children equally to other groups. That is quite an important and significant difference.”¹²⁶
139. In evidence to the Committee, John McKenzie, Police Scotland, asked, “Will the bill criminalise parents?...The bill aims to remove the statutory defence of justifiable assault, and I cannot see how that, in itself, would criminalise parents.”¹²⁷ The Law Society of Scotland and the Scottish Children’s Reporter Administration agreed.
140. The Scottish Government explained the decision whether to prosecute will be for the prosecution authorities to take, who would “no doubt” take into account the lack of a defence for parents “when deciding whether going ahead with a prosecution would result in the necessary likelihood of a successful conviction and whether a prosecution would be in the public interest.”¹²⁸
141. The Rev. Gordon Matheson, Evangelical Alliance, questioned this saying—
- ” is it reasonable for our society to prosecute a reasonable level of smacking in homes, where we might be talking about a one-off incident or where such smacking happens not in anger but as a loving, careful and considered response to a very pressing situation that needs reinforcement?¹²⁹
142. John Finnie MSP told us—
- ” The bill’s intention is not to criminalise parents, but to set out a direction of travel about child welfare and child upbringing...The bill is not about criminalising anyone, but about supporting children.¹³⁰

143. We are reassured by the evidence we heard from other countries that changes in legislation do not lead to a notable increase in the criminalisation of parents. We are particularly reassured by the evidence from Jillian van Turnhout of the positive changes legislation has led to in Ireland.

Use of the defence

144. Following the introduction of the Bill in September 2018, the Scottish Government responded to a Freedom of Information request on the physical punishment of children which asked—

” how many arrests, prosecutions and convictions have taken place in Scotland specifically in connection with section 51 of the Criminal Justice (Scotland) Act 2003 since it was introduced and what the Government’s prediction of this was when this legislation was being considered.¹³¹

145. The response refers to the Criminal Justice (Scotland) Bill and notes that the [Explanatory Notes](#) to the Bill said, “It is not expected that changes to the law on physical punishment of children will lead to substantial increases in numbers of prosecutions and convictions for assaulting children.”¹³²
146. The Scottish Government wrote it did not hold this information because “Section 51 of the Criminal Justice (Scotland) Act 2003 did not create a specific new offence. Instead, it made changes to a defence to existing criminal offences. As a result, there are no arrests, prosecutions and convictions which relate specifically to section 51.”
147. John McKenzie, Police Scotland told us he had seen the defence used in his career and mentioned the two pieces of case law where the defence was used in 1988 and 1989.¹³³ However, figures are not held on how often it is used.

Increase in prosecutions

148. While some thought the Bill would lead to an increase in parental prosecutions, most witnesses stated otherwise. Dr Louise Hill, CELCIS, told us that “international research indicates that there is no increase in prosecutions as a result of a change in legislation. There is, however... a decrease in the use of physical punishment and a decrease in physical abuse.”¹³⁴ She went on to say, “we think that there could be a reduction in prosecutions as a result of the bill, because of the culture change that will happen.”¹³⁵
149. Clare Simpson, Parenting Across Scotland, agreed, saying prosecutions had not increased in other countries¹³⁶, while Matthew Sweeney, COSLA, said international experience showed a slight increase in reporting but not in the number of prosecutions.¹³⁷
150. The Crown Office and Procurator Fiscal wrote—
- ” It is unknown whether the number of reports from the police to the Procurator Fiscal relating to assaults on children committed as a form of physical punishment is likely to increase. Since the Bill removes a defence which would currently be available, that is quite possible. It is also not unusual for the publicity and awareness-raising which generally accompanies new legislation and the resultant changes in societal attitudes to result in increased reporting. On the other hand, evidence from other jurisdictions which have banned physical punishment of children suggests that such a change did not result in a significant increase in prosecutions.¹³⁸

151. However, they added, “there would only be a prosecution where prosecution – as opposed to one of the other actions available to a prosecutor – was considered to be merited in the public interest.”¹³⁹
152. Andy Jeffries, Social Work Scotland said—
- ” it is very rare for a case in which a parent has assaulted a child to proceed to prosecution unless there is evidence of real intent to harm or something that we are very worried about. With most parents who hit children, there has been a loss of control, a poor relationship and stress, and I am clear that we need to help them with those things rather than criminalise them.”¹⁴⁰
153. The Rev. Gordon Matheson, Evangelical Alliance, worried that although an increase in convictions is not envisaged, “we are still talking about changing a defence in criminal law. Inevitably, there will be some impact.” He added—
- ” In my experience, such situations devastate family life. They have a remarkable impact on the experience of families. I therefore wonder about the balance of harm when mild chastisement, which is being exercised in a loving context, unfortunately results—perhaps without any deliberate desire on the part of our legislators—in a criminal conviction.”¹⁴¹
154. Mhairi McMillan, Law Society of Scotland, explained how the courts currently deal with cases of assault—
- ” For a prosecution, there needs to be evidence of the intention to harm, which is looked at in various ways...ultimately, a prosecutorial decision will be made on whether it is in the public interest to prosecute.”¹⁴²
155. She added “There is a good understanding of what assault is and what it means.”¹⁴³
156. We explored in correspondence with the Crown Office and Procurator Fiscal whether a presumption against prosecution of parents should be written into the Bill. They replied they would “oppose the enactment of a presumption which would necessarily impinge on the exercise of the independent prosecutorial function” and “a presumption of this sort would be a constitutional novelty.”¹⁴⁴
157. The Minister for Children and Young People did not consider the change in legislation would lead to an increase in prosecutions or a burden on public services, saying, “There is very strong evidence from Ireland, where the change following the introduction of the legislation was nowhere near as dramatic as had been foreseen, because it fitted with where parents were at the time.”¹⁴⁵

Child protection processes

158. Witnesses from Police Scotland, Scottish Children’s Reporter Administration, and Social Work Scotland were clear that the Bill would not impact on existing child protection processes.
159. Dr Lucy Reynolds told us, “for paediatricians, the bill will not change the threshold at which child protection procedures are implemented.”¹⁴⁶ Neil Hunter, Scottish Children’s Reporter Administration, said “Ostensibly, the process around child protection, GIRFEC and referral to the reporter will be the same,”¹⁴⁷ while Andy Jeffries, Social Work Scotland, said processes “would not change at all.”¹⁴⁸
160. Police Scotland also agreed.¹⁴⁹ John McKenzie explained—
- ” If there is evidence to support the allegation that a child has been assaulted, that will be reported, we will determine whether there is evidence to support a charge and it will be for the procurator fiscal to decide whether there is evidence in law to support a case. Ultimately, a report might be produced on the wider wellbeing of the child...The removal of the defence of justifiable assault should not impact on the processes that are adopted, unless wider guidance documents, clarification notes or Crown guidance are produced.¹⁵⁰
161. Andy Jeffries, Social Work Scotland, explained that “no agency is in the business of wanting to interfere” and time would continue to be spent “where there is a need for us to intervene”.¹⁵¹ He added—
- ” We already have quite a low threshold for dealing with assault against children as a child protection concern... we try to take a GIRFEC approach with those families, so we are not bringing them to child protection case conferences or prosecuting parents in situations in which a relationship is struggling, there is a lack of capacity or there is a set of stresses within the family that has led to someone losing control. We need to get alongside those families and do the right thing with them rather than over-intervening with them.¹⁵²
162. The Minister for Children and Young People said—
- ” like the police and Social Work Scotland, we do not think that there is going to be a huge impact on current practice. We already take a GIRFEC approach in Scotland. We are keen to offer support to families and to get support in at an early stage, from the right people at the right time, in order to support families to parent well.¹⁵³

Public opinion

163. Public opinion on the Bill appears to be divided. While a ComRes poll ¹⁵⁴ is often cited as showing 74% against the Bill, John Finnie MSP's consultation received 75% support.
164. Our engagement visits showed equally mixed results. Most, but not all, young people were supportive of the Bill. Many of the parents we met also agreed with its general principles. However, there were concerns about potential criminalisation and impacts on services.
165. Clare Simpson, Parenting Across Scotland, told us—
- ” Opinion polls are quite a blunt tool, and quite often when we see them we start asking other questions. Some of the public concern is about fear of criminalisation. We have to get the message over that that is not the intent; the bill is about support, not criminalisation. ¹⁵⁵
166. However, John McKenzie, Police Scotland, said, “I am not convinced that public opinion is so polarised among the public in Scotland” as opinion polls might suggest. ¹⁵⁶ The Minister for Children and Young People also did “not think that the bill is wildly out of step with public opinion,” ¹⁵⁷ citing evidence that 80% of parents of small children do not believe smacking to be an effective form of discipline and “about 92 per cent of people who were asked agreed that children should have the same protection from assault as adults.” ¹⁵⁸
167. John Finnie MSP said the Bill creates strong opinions for various reasons, including a concern from some that the Bill would be a “historical judgement on them and their parents.” He added, “A person's response often depends on how the question is framed...If people are asked whether children should have the same protection from assault as adults have, the overwhelming majority say that they should.” ¹⁵⁹
168. The policy memorandum accompanying the Bill states that one of the aims of the Bill is to help achieve a culture change. The Children and Young People's Commissioner supported this, saying—
- ” There is great evidence internationally, in particular from New Zealand, that, over time, people's opinions change, once they see that the approach works. Generally, what is required is human rights leadership, which uses the legislation to deliver the culture change. ¹⁶⁰
169. Many witnesses urged Parliamentarians to be aware of public opinion but legislate based on evidence. Martin Canavan, Aberlour, said, “Although it is important to be aware of and to take note of public opinion, consideration of public opinion should not outweigh a strong and robust evidence base.” ¹⁶¹ Clare Simpson, Parenting Across Scotland, agreed legislation should be evidence informed, and represent the best interest of constituents. She added—

” Given what we know and given the compelling evidence that we heard from Dr Heilmann about the harm that physical punishment causes, it is entirely fitting and appropriate to legislate to prevent harm and send a clear message to ¹⁶² parents.

170. The Rev. Peter Nimmo, Church of Scotland, said, “At times, Parliament leads public opinion, but sometimes it is behind it. In a democracy, we want to hear the voices of those who are saying what is perhaps radical now, but might eventually become something that the rest of us catch up with.” ¹⁶³ Mairi Campbell-Jack, Quakers in Britain, urged leading with kindness and compassion, saying “We cannot always go with public opinion, but it is really important to make sure that everybody is listened to.” ¹⁶⁴

Children and young people

171. The views of young people also need consideration. The Scottish Youth Parliament included the issue of physical punishment in their consultation in 2016, receiving over 72,000 responses from young people around the country. 82% agreed that “All ¹⁶⁵ physical assault against children should be illegal.”
172. Joanna Barrett, Children 1st/Barnardo’s/NSPCC explained that the oft-cited ComRes poll showed a “huge disparity between older people, who are more likely not to support the bill, and younger people, who overwhelmingly support it. We need to look at the views of children and young people... there is increasing support ¹⁶⁶ from younger generations.”
173. Mairi Campbell-Jack said, “young Quakers in Scotland...strongly feel that they want this law to be passed. They think that it will make children less anxious and that it might help them know what sort of punishment is wrong and where they can go for ¹⁶⁷ help, because that can be confusing for children.”
174. We heard a range of views from children and young people in the course of our engagement activities. Some comments from children were:
- If you’re hit once and you’ll never do it again
 - A smack would correct behaviour because I’d be afraid.
 - I think that smacking children should be illegal. Punishments should not have physical pain.
 - I think that smacking should be illegal because adults can’t smack other adults. Why should it be different with children?
 - Some kids might not take constant smacking seriously. They might become immune, and parents might start smacking harder
 - It’s okay to smack kids if they’re doing something dangerous like playing with electricity, but not too much.

- You can smack, but better to take something away from them.
 - Every child should feel safe with their parents, but if parents smack all the time their kids won't feel safe.
 - The naughty corner is better.
 - Parents are much bigger—they could really hurt them.
175. On balance, most children and young people we engaged with were in favour of the Bill. Our engagement work is set out in more detail at [Annex B](#).

Equality groups

176. In our call for views, we asked whether the Bill would have any additional impact on groups with protected characteristics. We followed this up by taking evidence from representatives of different equality groups. John Finnie MSP also commissioned a full [Equality Impact Assessment](#).

177. John Finnie MSP told us in his consultation, he had engagement from a number of people and heard the “particular pressures that are associated with some communities”, including cultural challenges and those faced by parents of children with additional needs. He said while support must be provided sensitively and in different ways to reach all these communities—

” I do not think that any group is going to be disadvantaged, which is what equality legislation is about. It is about ensuring that everyone is treated equally. To do that, we do not necessarily treat people the same way, but we might have to put additional mechanisms in place, for instance to support hard-to-reach communities.¹⁶⁸

Women and girls

178. The Policy Memorandum states that—

” the Bill could have a positive impact on helping to reduce instances of domestic abuse, and cycles of violence in the home, by reducing instances, and acceptance, of violence in the home. This may particularly have a positive effect on women and girls, who disproportionately suffer from domestic violence.¹⁶⁹

179. The Educational Institute of Scotland wrote they believe “tolerating the physical punishment of children undermines attempts to tackle domestic and sexual abuse across our society, because it tells children that violence is sometimes acceptable, depending on who/how old the perpetrator is and what the power balance is between them and the person being hit.”¹⁷⁰

180. However, Scottish Women’s Aid and Zero Tolerance both disputed this as “problematic”¹⁷¹ with Zero Tolerance saying, “We advise against making causal links between physical punishment in childhood and the perpetration of abuse in adult intimate relationships.”¹⁷²

Disability

181. The Children and Young People’s Commissioner wrote that a 2013 international study using UNICEF data on 45,000+ children between age two and nine found

” children with disabilities were more likely to be physically punished and more likely to experience severe physical punishment than children without disabilities. Caregivers of children with disabilities were also more likely to believe that they needed to use physical punishment than caregivers of children without disabilities.¹⁷³

182. He added that children with additional communications needs “are at a heightened risk of assault...and have less ability to express themselves or to seek justice if they are subjected to physical violence.”¹⁷⁴ This was echoed by the Deaf Children’s Society who wrote—

” Deaf children are two times as likely to experience abuse as hearing children...This perceived inability of deaf children to communicate can make them a target for abuse...Disclosure of physical punishment is therefore an area which should be given close attention by professionals working with deaf children.¹⁷⁵

183. However, Nora Uhrig, Equality and Human Rights Commission, cautioned that while “International studies show that disabled children are more likely to be punished physically”, we do not have evidence to show the same in Scotland.

ADHD and autism

184. We heard additional evidence on the use of physical punishment on children with ADHD and autism. The Scottish ADHD Coalition wrote to us—

” Children with ADHD who display challenging behaviour may be more likely than others to be assaulted by their parents who are at a loss as to how to manage them...Children with ADHD may be more likely to assault their parents than others, and parents need to be able to defend themselves and not criminalised if they act in self defence. Again, the availability of ADHD parenting training is an important preventative measure.”¹⁷⁶

185. They suggested a greater focus on earlier diagnosis and treatment of ADHD and tailored parenting support offered via the NHS could help prevent “parents being criminalised for their inability to cope with their children.”¹⁷⁷

186. Lucy Chetty, Scottish Autism, agreed “wraparound support for families is vital. Often, families with whom we work are at the point of crisis, and the level of stress that the parents are feeling contributes to how well they are able to cope and to manage, and to how resilient they are.”¹⁷⁸

187. The Committee received a submission from a mother who wrote:

” My eldest son is diagnosed as autistic. His behaviour from birth was not normal, and some saw it as a problem. My mother was insistent that I ‘discipline’ him... I did not ‘discipline’ him. Instead I tried to understand what was going on, and to try and help him... Autistic children behave badly unless they can function in their environment. Physical chastisement to these children not only compounds the problem, it is cruel...Allowing them to be hurt is allowing cruelty to an already disadvantaged child.¹⁷⁹

188. Maureen Phillip, PAMIS, agreed that a “slight tap on the hand for somebody with a complex sensory disorder could escalate to a full-blown incident”¹⁸⁰ while Lucy Chetty, Scottish Autism, said—

” when a young person is in a high level of distress and showing some form of what could be deemed violent behaviour, physically intervening could cause the stress transaction to multiply and make the situation a lot worse.¹⁸¹

Race

189. The Scottish Children’s Reporter Administration evidence to the Committee suggested those who had “grown up with different cultural and behavioural norms may find it difficult to modify their parenting behaviour...which may mean that they are more likely to be impacted by this legislative change.”¹⁸² They went on to highlight that these adults may have been affected by their own adverse childhood experiences.

190. Alison Davis, Saheliya, spoke of the challenges of working with people from different communities who may have faced significant trauma. In particular, Saheliya works with women, many of whom have undergone female genital mutilation—

” We are talking about there being no understanding that a thing that is as severe as FGM—never mind smacking a child—is illegal... we are concerned about the implementation without some kind of support for parenting, especially in relation to young women who are left alone with children. A lot of the children with whom Saheliya Glasgow is involved are the result of rape. Trauma creates barriers to positive parenting, and the mix is dangerous for children. To take a punitive approach to such families—specifically to the mothers—does not work. It criminalises women and puts pressure on women who are already suffering and have already survived violence.¹⁸³

191. She elaborated on the challenges of implementing this Bill among the communities with which she works, without “culturally aware and trauma-informed”¹⁸⁴ support—

” when the women whom we support begin their journey with us, they have huge fear about social work, the police and the state. Refugees have to prove a well-founded fear of persecution in order to get their asylum application recognised. They have come from environments in which they should not trust anybody—certainly not the state or anyone who is seen as representing an arm of the state. There are degrees of terror about social worker and police¹⁸⁵ intervention.

192. Nora Uhrig, Equality and Human Rights Commission, cautioned against a presumption that certain communities use physical punishment more than others, saying while US studies may show ethnic minorities are more likely to, “a Joseph Rowntree Foundation study in 2006 found that that was not the case in the United Kingdom.”¹⁸⁶

Socioeconomic

193. At our meeting on Skye, the Rev. Gordon Matheson raised a concern that, if passed, the Bill could impact disproportionately on “vulnerable families in areas of deprivation...areas where the police and social services are already present...areas of our communities where, because of other factors of deprivation, there is already frequent intervention.”¹⁸⁷ This idea was also raised in one of our Meeting in a Box submissions.¹⁸⁸
194. Mairi Campbell-Jack, Quakers in Britain, agreed that “Sometimes, when laws and other things in society change, the poorest are the hardest and worst hit.” However, she pointed out, “That does not mean that they are the only people who are smacking their children; plenty of middle-class and upper-class families do it, too. However, we have an unequal society, and such things impact on people unequally.”¹⁸⁹
195. Andy Jeffries, Social Work Scotland, agreed there may be areas where it will be harder to communicate the Bill’s aims but said “Nobody wants to punish people who already have an adverse life experience because of poverty, domestic abuse or whatever else they have to live with... we need to get alongside those people and help them not to hit their children. It is as simple as that.”¹⁹⁰
196. Dr Lucy Reynolds, Royal College of Paediatrics and Child Health, thought the Bill could have a positive impact in these areas, saying, “If there is a difference across the socioeconomic spectrum in the prevalence of children being hit, that is all the more reason why the more deprived communities should get the benefit.”¹⁹¹
197. John Finnie MSP agreed with a view that “physical punishment is sometimes used by people who are under pressure.” He explained families under considerable pressure—

” are targeted for specific additional support by social work services and health boards. It is wrong to suggest that there is a particular geographic area or social stratum that punishes its children physically; such behaviour happens across the board. I have no concerns that the targeted support that exists could not be ramped up if that was required.

192

198. While we agree that this Bill will be a helpful step in improving the lives of all children in Scotland, for this Bill to be a success, extra, targeted support must be available to all parents and families. This support should be developed in partnership with those working in the field, to ensure the diverse needs of communities are reflected.
199. Evidence from Alison Davis, Saheliya, highlighted the challenges of ensuring that, if passed, this Bill is understood, implemented, and supported throughout Scotland. We note her suggestion of culturally aware, trauma informed support for the communities with which she works. For many minority groups in Scotland, we do not consider that simply using existing channels to raise awareness will be sufficient.
200. We also consider there is more to be done to ensure sufficient support for the families of children with additional support needs. We ask the Scottish Government to bring this to the attention of the implementation group charged with considering awareness raising of the Bill. We ask for an outline of how they plan to address this, and the other concerns raised by equality groups.

Costs

201. We discussed with witnesses the disparity in costs presented by the Scottish Government and John Finnie MSP. While John Finnie MSP suggests that an accompanying awareness campaign would require approximately £300,000, the Scottish Government's figure is £20,000 as they expect to be able to use existing channels to raise awareness of the Bill.¹⁹³
202. In addition to the costs required to raise awareness of the Bill, the Financial Memorandum indicates there are potential additional costs to services like Police and Social Work Scotland and the courts, all of which may face some increased demand for services following the implementation of the Bill.

Work of the Finance and Constitution Committee

203. The Finance and Constitution Committee invited views on the Financial Memorandum until 25 January 2019 and received [one submission](#). The Committee agreed that it would give no further consideration to the Financial Memorandum.

Awareness raising

204. We heard a range of views on what sort of spend would be required. Alison Davis, Saheliya, told us—
- ” A figure of £20,000 was mentioned earlier. We would need that to provide one month of language support to reach only the women with whom we work and provide wraparound parenting support. When resources allow it, we provide parenting support, and we do so in six languages. We provide other support in 14 languages.¹⁹⁴
205. Dr Louise Hill, CELCIS, agreed, “If you are looking to achieve culture change, that is a very small sum. I worry that the bill's aim and aspiration, which are in its policy memorandum, will not have the success that we would all hope for, because it cannot lead to that level of culture change without all the other necessary parts.”¹⁹⁵
206. However, Jillian van Turnhout told us the change in Ireland was not accompanied by any budget, and awareness was raised solely through existing channels.¹⁹⁶
207. Views ranged on whether a campaign like that used for the smoking in public places ban was required, or whether existing channels could be primarily used. Clare Simpson, Parenting Across Scotland told us—
- ” When the smoking ban was introduced, we allocated £3 million for publicity for the first year and £1 million for each of the subsequent years...As a country, we were able to divert people from the harmful behaviour of smoking. We need to do the same thing with this bill and offer proper support to parents.¹⁹⁷

208. Joanna Barrett, Children 1st/Barnardo's/NSPCC thought existing resources would be helpful: "We have a range of resources already. Every parent receives *Ready Steady Baby!*, and there is a toddler edition. Health visitors visit families a minimum of eight times, I think. These messages should be communicated through our existing resources as much as through any additional resources."¹⁹⁸
209. The Minister for Children and Young People agreed, "We are reasonably confident that we already have strong lines of communication and that it would be reasonable to consider using those communication channels to raise awareness initially."¹⁹⁹
210. However, witnesses also pointed out that the work must be sustained and not a one-off message.²⁰⁰
211. Amy Johnson, Zero Tolerance, said that parents want what is best for their child but do not have the time to read all the evidence of the harms of physical punishment. She thought that information needed to be made accessible for parents "through public campaigns and other work involving conversations and engaging with the public."²⁰¹
212. The Scottish Human Rights Commission²⁰² and Scottish Women's Convention pointed out that The Children and Young People (Scotland) Act 2014 Act already places a duty on Ministers to "promote public awareness and understanding about the rights of children." The Scottish Women's Convention thought that awareness around the Bill should be included in this, and involve traditional media formats as well as social media to ensure children are aware of their rights.²⁰³ Scottish Women's Aid also thought awareness campaigns should be developed with a "gender-sensitive lens" and focus on children's rights.²⁰⁴
213. The Rev. Peter Nimmo, Church of Scotland, said that "Faith communities would have a role to play"²⁰⁵ in raising awareness.
214. Alison Davis, Saheliya, raised the difficulties of awareness raising in marginalised communities, highlighting—
- ” Awareness raising is done in one language—two in Scotland—based on the assumption that everybody understands and buys into equality, social justice and human rights issues. Awareness raising does not reach the people who are already vulnerable and being approached in a punitive way, so there would be a disproportionate impact on marginalised, new, ethnic minority communities—asylum-seeking and refugee communities—which would be a dangerous position to be in. We are already in a difficult position on that, but we would be in a more difficult position if we did not take the preventative measures seriously. That means costing them properly, ensuring that first languages are used and ensuring that there is a culturally aware and trauma informed approach.²⁰⁶
215. John Finnie MSP told us—

” There has been some discussion about the wide disparity between the Government’s figure and the figure that we came up with for the financial memorandum, which was an average of the cost of a range of campaigns that had taken place...there is already an extensive network through which information is relayed to parents, and there is no reason why that could not be used.²⁰⁷

216. We ask the Scottish Government to provide us with their current routes for communicating with parents, and their consideration of what guidance is needed for each. We also ask for an outline of how they plan to reach families who are not currently involved in any services, and where support will be made available to them.

Impact on existing services

217. Many of the written submissions we received were concerned the Bill would increase pressures on services like police, courts and social work, leading to cases of child abuse being neglected. Others spoke of a concern that teachers would face increased pressures due to unruly children who were not disciplined.

Social work

218. In their written submission, Social Work Scotland raised concerns that the Bill’s Financial Memorandum “underestimates the potential impact on local authorities and their partners, particularly around the investigation of allegations”, training for staff and support for parents. The Bill would require “investment of new resources; [and] an implementation programme which is cognisant of the varied needs of different families.”

219. On cost implications, Social Work Scotland encouraged us and the Scottish Government to consider:

- Undertaking a more detailed assessment of the impact and costs on local authorities (and their partners) in the investigation of allegations and providing services.
- Development of practice guidance for professionals working with children and families (including schools, health visitors, social work, police, etc).
- A public information campaign, profiling the changes in the law, and where information and support is available.
- Ongoing monitoring of the impact of the legislation, through data collection and analysis.²⁰⁸

220. Andy Jeffries, Social Work Scotland, said—

” It is not necessarily just about more social workers knocking on doors. Getting this right needs a number of things to be in place, including a communications campaign and parenting support. There might need to be consideration of communities that are harder to reach...It is not just me saying, “I need another social worker for these six extra cases.” The work will be broader than that, which is why we are saying that the financial impact needs to be assessed in a wee bit more detail.²⁰⁹

Local government

221. Matthew Sweeney, COSLA, agreed that on costings—

” there is probably a bit more work to be done to understand what the impact on local government will be. Currently, the financial memorandum suggests that everything can be dealt with within the current costs, but I think there is more to be done through the Scottish Government and local government working together to bottom out what the costs will be. I do not think that the costs will be prohibitively high, but we need a deeper understanding of what they will look like.²¹⁰

222. He highlighted potential additional costs in relation to family social work, support for families and parenting, and questioned whether promotion of the Bill should be done at local level, which would require additional resources for councils.

Police Scotland and the Children's Reporter

223. In their written submission, Police Scotland agreed there is already a duty on them to investigate any assault on a child but said the Bill “would have little impact” on their response to a report of an assault on a child by a parent.²¹¹

224. However, they envisage the removal of the reasonable chastisement defence “will result in an increase in reporting. This would have potential cost/resource implications for Police Scotland and partner agencies.” They suggested however, the costs could be moderated—

- ” if definitions were clear and some form of Police and/or Social Work order was introduced which allowed referral to a diversion from prosecution scheme involving parental guidance/training with consideration given to providing
- The available provision of diversion from prosecution schemes involving guidance/training (good parenting classes).
 - The design and delivery of a national training product would be essential to ensure any change in legislation is understood and expectations in terms of operational practical application.
 - A national, long term public awareness/information campaign to support societal awareness and change.

225. John McKenzie, Police Scotland, added that increased reporting should not necessarily be seen as a disadvantage, saying “There is a body of evidence to suggest the opposite. Increased reporting might be a good thing to support parents and children.”²¹³
226. The Scottish Children’s Reporter Administration wrote they did not anticipate increased referrals, and “we would expect very little change to professional referral practices.” However, they noted if the referral practice of Police Scotland was to change, then “SCRA’s position may also change in relation to resourcing.”²¹⁴

Legal system and courts

227. Christian Action Research and Education (CARE) echoed the concerns of many who wrote to us, saying—
- ” If the Parliament makes it a criminal offence to lightly smack your child, the police and the Procurator Fiscal will be required to treat parents who lightly smack their children with all the seriousness that comes from breaking the criminal law...[The Bill] will take scarce resources away from enforcing the law in relation to cases of genuine abuse.”²¹⁵
228. However, as discussed above ([Criminalisation of parents](#)), the Bill does not create a criminal offence. Witnesses were clear that the Bill removes a defence for what is already regarded as a criminal act of assault.
229. At present, if the police believe that a crime has been committed they will make a report to the Procurator Fiscal. The Procurator Fiscal²¹⁶ must decide if there is sufficient evidence, which must be reliable and credible, to justify court proceedings. If it meets these criteria, the Procurator Fiscal must then consider if it is in the public interest to prosecute. The Crown Office and Procurator Fiscal described existing processes—

” if there is sufficient evidence of a crime, prosecutors consider what action, if any, best serves the public interest. In considering the public interest, the [Scottish Prosecution] Code requires prosecutors to take into account a range of factors, including the nature and gravity of the offence, the impact of the offence on the victim, the personal circumstances of the accused, the attitude of the victim, the age of the offence, any mitigating circumstances, the effect of a prosecution on the accused, and the risk of further offending.²¹⁷

230. They also pointed out that prosecutors have options available to them other than prosecution, including “diversion from prosecution, a formal warning, and the various direct measures (fiscal fine, fiscal compensation order, fiscal work order, and combined order) which a prosecutor may, by statute, offer to an accused person instead of prosecuting them”.²¹⁸

231. While there have been no reported court cases where the defence of reasonable chastisement has been used since the 2003 Act, the Scottish Government in responding to a UNCRC “list of issues” report²¹⁹ in 2016, referred to two cases²²⁰ where parents had been convicted of an offence for hitting their children.²²¹

232. However, a potential for increased resource could be in training requirements, as we note the submission from the Care Inspectorate which highlighted in Austria “particular training for the legal profession was required in order to ensure that where necessary, prosecutions and convictions were upheld.”²²²

Health services

233. We heard from health services that demand for parenting support could require an increased budget. NHS Ayrshire and Arran – Infant Children and Young People’s Transformational Change Programme considered funding would be needed for additional positive parenting provision in terms of resource, staff training for health visitors, early years’ staff and schools, and making such support “accessible for ALL families.”²²³

234. NHS Greater Glasgow and Clyde wrote “There is likely to be increased demand on parenting programmes as parents seek information and advice on alternative, positive disciplinary techniques.”²²⁴

Education

235. Despite many of the written submissions citing a potential for a significant and negative impact on teachers and classrooms should parents no longer use physical punishment at home, the Educational Institute of Scotland (EIS) had no such concerns. Rather, they noted that “children being physically punished at home has a negative impact on their wellbeing and on their behaviour in school” and “tolerating

the physical punishment of children undermines attempts to tackle bullying in schools.”²²⁵

236. They added that in the mid 2000s they had produced a major report on how to deal with school indiscipline and “not once throughout the writing of the report was a return to corporal punishment even discussed or considered. The EIS view for many years has been that the use of corporal punishment is not a realistic or desirable solution to the issue of classroom indiscipline; nor is it desirable at home.”²²⁶

Preventative spend

237. When looking at potential long-term savings to public services should the Bill be implemented, witnesses agreed the allocated budget could be seen as preventative spend. The Children and Young People’s Commissioner said evidence from other countries showed it could be “a very good economic decision”, adding that early intervention, even with an increased number of families, creates an economic benefit that is “exponentially greater than the amount of money that is spent on it.”²²⁷

238. NHS Tayside agreed that research in these countries showed significant change over time “likely to result in cost savings for both child protection services and the police in the longer term” and a decrease in “adverse outcomes (e.g. emotional and behavioural problems)” which would lead to an anticipated reduction other publicly funded services.²²⁸

239. Parenting Across Scotland,²²⁹ the Children’s Commissioner,²³⁰ Royal College of Paediatrics and Child Health,²³¹ Aberlour,²³² and Police Scotland²³³ all agreed the budget spent on the Bill would be preventative spend. Nora Uhrig, Equality and Human Rights Commission, summarised—

” because the measures are preventative, costs will be saved in the long term. The work might require more than £20,000, but to reach the communities that Alison Davis talked about, that work should be done anyway and should be linked to wider issues about violence in society and in the home.”²³⁴

240. We note that while Police Scotland and Social Work Scotland agree the impact on their current processes will be minimal, there is the potential for increased resource requirements. We also note the concerns of health services that parental support will require an increase in funds.

241. We appreciate that the Member in Charge of a Bill has provided an estimate of the costs likely to be incurred by the Bill. This is a difficult task given the lack of information in the public domain on the likely number of reports to police and the number of prosecutions and we note the divergence on costs for public

awareness raising. As such, we ask the Scottish Government's implementation group for the Bill to investigate the potential cost implications the Bill could have on the police, social work, health boards and third sector organisations that provide parenting support.

242. According to the Financial Memorandum, we note the Bill is unlikely to require a Financial Resolution. It would be helpful if further costing work could be completed in advance of Stage 2 to inform the Parliamentary authorities.

Work of Delegated Powers and Law Reform Committee

243. The Delegated Powers and Law Reform Committee (DPLRC) considered the Bill's delegated powers on 25 September and 23 October.
244. The Committee considered the one delegated power in the Bill: Section 3(3) - power to make such further transitional, transitory or saving provision as is considered necessary or expedient in connection with the coming into force of section 1. The Committee agreed it did not need to draw the attention of the Parliament to the delegated power and [reported](#) to us that it is content with the delegated powers provision contained in the Bill.
245. In evidence to the Committee, the Minister for Children and Young People confirmed she could not foresee any circumstances in which the Scottish Ministers²³⁵ may have to use their delegated powers in relation to the Bill.

246. We note the findings of the Delegated Powers and Law Reform Committee

Conclusion

247. John Finnie MSP's Bill aims to remove the defence of reasonable chastisement when prosecuting assault of a child. The Member hopes the Bill will also help to drive forward a change in societal attitudes regarding the use of physical punishment in the home as a form of discipline. In Scotland the use of corporal punishment is already prohibited in other settings, such as schools and foster care. Over 50 countries in the world have already taken the step to address the use of physical punishment in the home, with a similar number indicating their commitment to address this issue.
248. The Bill has stimulated a lot of public discussion, with one of the main points being that many law-abiding citizens will, as a result of the Bill, find themselves involved with the justice and child protection systems. Others express the view that Scotland is failing to protect children and must act now. In coming to our view, we would like to put on record that we have unequivocally heard all the concerns raised with us. Our engagement work, where we have listened to the varied views of children, parents, grandparents, carers and faith groups, has ensured that we have had these views articulated first-hand from people who would be impacted by the Bill, but would not necessarily engage with the Committee on a formal basis. The challenge for us as Parliamentarians is to weigh up these concerns and identify where the balance of evidence rests, for the benefit of individuals, particular groups and communities including those with protected characteristics, and Scottish society more generally. It is on this basis, alongside our formal evidence taking, that we have come to an overall conclusion on the general principles of the Bill.
249. The following paragraphs (250-254) were added to the report following the receipt of the Minority Statement.
250. We worked diligently in our approach to formal oral and written evidence to ensure there was a balance and range of views reflected in the evidence presented to us. Every effort has been made to ensure full and thorough scrutiny of the issues raised on the Bill. We note the fact that the Lord Advocate did not attend to give evidence, and will be invited again to attend before Stage 2 consideration of amendments.
251. As a Committee, we agreed collectively our approach to evidence taking on [25 October 2018](#). All Members were free to suggest witnesses. As our scrutiny progressed, we were responsive when our questioning raised issues that required further evidence to allow for in depth exploration of topics. When some Members considered more information was needed around the use of "back up" smacking - a possible alternative approach to the Bill - we achieved this through a video conference with the expert in this area, Prof. Larzelere. The [Official Report](#) records which Members took part in that opportunity.ⁱⁱⁱ
252. The approach we agreed on 25 October also included holding an external meeting and fact-finding visits on Skye. This evidence session was vital to our scrutiny as it enabled some of the most vocal critics of the Bill to present their views directly to

ⁱⁱⁱ [Minutes of the Meeting](#), 21 March 2019

the Committee. The [Official Report](#) records which Members took part in that important scrutiny work. Not all Members attended.^{iv}

253. On the legal aspects of the Bill, we made additional requests for oral evidence and written evidence where some Members had expressed outstanding concerns. Although we did not manage to secure an additional oral evidence session when sought on 31 March, the majority of those contacted submitted written evidence that clearly expressed their views on the specific questions posed by those Members.
254. The Committee heard the views of children, parents and grandparents, and questioned human rights experts, academics, lawyers, police, religious communities, paediatricians, psychologists and social workers. This has given Committee Members who participated fully a comprehensive understanding of the arguments, and ample opportunity to test and challenge the evidence.
255. Our consideration of the Bill raised a number of fundamental questions that we needed to explore to come to a view. These are:
- Is smacking assault?
 - Will more parents be criminalised?
 - Are individuals' or certain groups' rights being infringed?
 - Do we need legislation to change society's views on physical punishment?
256. Related to these questions, we have also considered the financial implications of the Bill if enacted. Our conclusions are set out below.

Smacking and assault

257. Many of the submissions we received referred to the use of a "light smack", or "tap" to alter a child's behaviour. Evidence from the legal profession, such as from the Scottish Law Agents Society, clarified for us that "assault does not draw a clear distinction between actions such as mild physical intervention, forcible restraint, striking with an open palm, a tap on the wrist and smacking." We were not persuaded that physical punishment is necessary to keep children from harm.
258. In response to the claims that mild physical intervention should not be treated in the same way as other behaviour, such as serious child abuse, we draw on the evidence from academics and health professionals that explained that the intention behind physical punishment is to correct behaviour through some degree of pain. Multiple witnesses told us about the compelling research evidence of long-term harm resulting from the use of physical punishment, for example on educational attainment.
259. Conversely, we also heard from many parents who had been smacked, or used physical punishment on their children, that they had not seen lasting, detrimental effects.

^{iv} Oliver Mundell MSP arranged for Gordon Lindhurst MSP to attend the meeting.

260. We believe the evidence is strongest that parents, children, and family support services are best served by adopting methods that do not involve physical punishment. We believe the potential harm to children from physical punishment greatly outweighs any perceived benefits.

Will more parents be criminalised?

261. Smacking, depending on the facts and circumstances of the case, can already constitute an assault with which parents and or carers can be charged and prosecuted. The Bill would remove the defence of reasonable chastisement which would prevent someone who is being prosecuted from relying on that defence in court.
262. We consider the crucial factor as to whether there would be an increase in the criminalisation of parents relates to how the Bill would be enforced through policing and prosecution. The Bill does not make changes to policing or prosecution procedures or practices. We have been assured by Police Scotland that they would continue to take a view as to whether there is enough evidence to charge a person and the prosecution authorities would decide whether there is sufficiency of evidence to support a case. The Crown Office and Procurator Fiscal Service also provided us with reassurances that the public interest factors would continue to be taken into consideration before deciding whether to prosecute, as well as the appropriateness of the use of alternatives to prosecution. In addition, international experience from those countries that have already addressed the use of physical punishment suggests that prosecutions would not notably increase following implementation.
263. Notwithstanding this, an increase in public awareness that smacking is an assault will, we recognise, lead to some increase in the level of reporting to police and social work services, which might then have an impact on resources. We consider this increase will be short-lived, as public education about use of alternatives to smacking will become ingrained. We also share the views of Police Scotland and Social Work Scotland that increased reporting can bring with it opportunities to support families at an early stage. In the long-term, we consider this is likely to have better outcomes for children and their families' health and wellbeing and ultimately reduce pressures on public services, including police and social services.

Are individuals or certain groups rights impacted by the Bill?

264. In relation to the various human rights issues raised with us, we are mindful that courts are the ultimate arbiters as to whether this Bill is a justifiable interference with the qualified rights to respect to private and family life, and to freedom of thought, belief and religion. As law makers, it is completely legitimate for us to take a view on whether the interests of the wider community or the protection of other people's rights are better served by the policy proposals presented in the Bill. Also, we have a role to consider what alternative approaches might deliver the outcomes sought or

where we feel an appropriate balance has not been struck and people or groups are unfairly or unnecessarily impacted upon.

265. In relation to the physical punishment of children, three main sets of rights are relevant: children's rights, the right to respect for private and family life, and the right to freedom of thought, belief and religion. To put our considerations in context, we do not see these rights as conflicting and nowhere is a parent's right to physically punish their child enshrined in international treaties or conventions. Judgement is required to determine where legislative change is needed. Some of the evidence we received contrasted the rights of the child with those relating to respect of private and family life and the ability of parents to chastise their children in a loving manner. The Scottish Human Rights Commission provided emphatic evidence that a number European Court of Human Rights cases have determined that the right to family life is not interfered with by protecting the child from corporal punishment.
266. Additionally, we heard overwhelming evidence that the continued existence of the defence of reasonable chastisement means Scotland is failing to meet its international human rights obligations by not providing children and adults with equal protection in the law from assault. Some of the evidence we took argued that children should have additional protections. We are firmly of the view that children and young people are deserving of additional protections due to their vulnerability. Children and young people should be helped to understand their rights and assisted to have their rights realised, including by way of legislation. Children should be protected from violence, feel safe, respected and heard in all environments.
267. Furthermore, we consider that not removing the defence of reasonable chastisement could potentially undermine the Scottish Government's planned incorporation of the principles of the United Nations Convention on the Rights of the Child into Scots Law. We note the Scottish Government supports this Bill, and would caution that if this anomaly is not addressed through this Bill, the Scottish Government would, we believe, need to tackle this issue at some later date. We also note the current position on physical punishment is incompatible with the Scottish Government's commitment to "getting it right for every child", and to the promotion of the ideas of bodily autonomy, respect and consent through Equally Safe and its underlying ethos.
268. Another human rights' aspect we explored was whether the Bill impacted unduly on the right to freedom of thought, belief and religion. Views on this issue were evenly split, with some faith groups criticising the Bill as interfering with parents right to bring up children according to their faith and seeing the Bill as an attack on the authority of God. Other faith and belief groups were more relaxed about the Bill, and considered, as violence against children was not part of their doctrine, it did not present a barrier to living out their faith or belief. On balance, taking account of the human rights evidence presented, we believe there is scope for children's rights to coalesce with the right to freedom of thought, belief and religion and substantial benefit to be gained from the Bill's objective. This legislation is a means to effect culture change in the same way that the ban on smoking in public places and legislation requiring the use of seatbelts has done - not to criminalise, but to encourage positive change.

Do we need a Bill to change society's views on physical punishment?

269. Certainly, from the evidence we have gathered, a growing number of parents are less likely to use physical punishment to discipline their children than in the past. But, we also recognise there is a lack of clarity around the law which has led to confusion amongst parents and carers, and has also made it harder for public services to have confidence in their approach when working with parents. We acknowledge the Minister's view that, "You cannot have an educational strategy that says one thing and a law that says another".²³⁶ Therefore, we agree that a legislative solution is needed alongside a comprehensive public education and awareness campaign.

Potential financial implications

270. On the financial implications of the Bill, we ask the Scottish Government to reflect, in partnership with the principal bodies responsible for implementation of the Bill, on costings. We note the requests for tailored support from organisations like Saheliya, Scottish ADHD Coalition and Scottish Autism, who asked for this support to be available in multiple formats. We have asked the Scottish Government to bring this to the attention of the implementation group charged with considering implementation and awareness raising of the Bill.

General principle

271. This Bill has attracted strongly held views on both sides of the debate. We welcome the time that organisations and individuals have taken to express those views. On the balance of evidence received, and the strength of arguments made, the Committee recommends that the general principles of the Children (Equal Protection from Assault) (Scotland) Bill are approved.

Annex A: Minority statement by Oliver Mundell MSP and Annie Wells MSP

272. We believe that violence against children is wrong. However, we remain unconvinced by the written evidence and oral evidence before the committee that most people living in Scotland would see parental smacking as constituting the level of sinister and serious violence that the criminal law should be addressing, and very few indeed would equate it with the existing common law crime of assault.
273. The Bill represents a heavy-handed approach and is in our view a distraction from our overriding responsibility to support parents and families rather than seek to punish them.
274. We are also deeply concerned by the overly simplistic attempt to suggest that children's rights are the same as those of adults. We believe, as we heard in evidence, that children's rights are different. Recognising the vulnerability of children in our view also logically extends to protection from the unnecessary or disproportionate interference from the State. We believe that parents are best able to decide what is in the interests of their children and that their right to exercise parental judgment where child welfare is not at risk should also be protected. It is important to remember that no matter how benign or well-intentioned any intervention of the Government or the Criminal Justice System may be, it does not automatically follow that it is in the best interests of the child, the wider family or for that matter the public interest.
275. The fundamental problem is that behind all the virtue signalling, this Bill in reality does precious little to deliver on the promise of making our young people safer, nor does it provide the legal clarity for parents that its proponents suggest.
276. Instead, it attempts to commandeer our legal system to drive forward a national advertising campaign around preferred parenting methods with insufficient thought or regard to the real world or legal consequences. In our view, by focusing on the wrong priorities, this Bill lets children and families down.
277. While the Bill may have the feel-good factor, it will not stop the serious and pernicious child abuse which is already unlawful and will, if anything, divert the focus of police and prosecutors onto good and loving parents who choose to use - often only very occasionally - mild physical intervention to discipline their own children. Worse still, it will in our view create a small but not insignificant grey area where the use or perceived potential use of physical force to protect a child's safety or for the purposes of restraint by parents may be misconstrued or reported to the police as assault.
278. Instead of setting out clear thresholds for state intervention in family life and putting objective tests on the face of the Bill, we as legislators are opting to have cases dealt with and assessed individually. This is something which sounds reasonable but in practice means that in order to make a judgment as to whether the necessary criminal intention is present when a parent physically disciplines their child, there would have to be at the very least some form of police investigation into the circumstances, potentially a referral to the Procurator Fiscal and at worst a full

blown criminal trial. This question, as the Crown Office acknowledges, “would arise in particular when the physical contact is of an extremely minor or trivial nature.”^v It is also unclear when the Crown Office or Lord Advocate would consider the public interest test to be met. This is a particular problem as there is very limited and arguably in fact no case law in this area, as the presence of the existing defence has in effect prevented such issues being considered. We believe this is unacceptable and represents a backwards step in efforts to modernise our criminal law. As a bare minimum we would have expected an acceptance that Lord Advocate’s Guidelines or a joint protocol with Police Scotland would enhance clarity and we believe there is clear precedent for this.^{vi}

279. Worryingly many witnesses, and indeed at times fellow Members, have appeared to suggest that parents would not and should not be criminalised, prosecuted, fined or sanctioned for smacking. Indeed, Minister for Children and Young People Maree Todd did not seem keen to answer this question directly. This seems naive at best and disingenuous at worst given the legal evidence we have received. There can be no doubt this Bill will criminalise actions or behaviours which are currently lawful. It therefore seems somewhat odd to hope for one outcome and legislate for another.
280. In that context, we are particularly concerned about the lack of foreseeability and the potential for disproportionate interference in the right to family life as a result of very low thresholds. We believe this may leave the Bill, if passed as drafted, open to potential future legal challenge. This has the potential to undermine the reputation of the Parliament as a whole and would undoubtedly lead to confusion around the law, as we have seen with other legislation that has been taken through the courts.
281. In our view, the committee has focused too much on discussing the perceived merits and demerits of physical punishment and by comparison too little time listening to legal experts and exploring more robust and legally sound alternatives to the current proposal. We believe that artificial time limits have prevented the committee from receiving best evidence and, while the supplementary written evidence is helpful, it does not address the perception and perhaps reality that the majority of committee members had decided to support this Bill as currently drafted before we heard the evidence.
282. Finally, we are concerned at attempts to compare this change to those in other legal systems. Worryingly when detailed analysis is undertaken, there are significant differences in the legislative approach taken in some of these jurisdictions, as well as vastly different legal cultures and criminal justice processes and systems. We are not satisfied by these arguments and are concerned at the number of witnesses who relied upon such arguments but who were unable to speak in detailed terms about what happens in the other jurisdictions they referenced.
283. Poor scrutiny and a failure to take the best evidence is how bad legislation is made.
284. We therefore do not feel able to support this Bill at Stage 1 and would recommend that alternatives including but not limited to the following are explored:

^v Crown Office and Procurator Fiscal, Supplementary Written Submission.

^{vi} The range of existing Prosecution Policy and Guidance for other offences can be found at <http://www.copfs.gov.uk/publications/prosecution-policy-and-guidance?showall=1&start=0>

- (a) retaining the status quo
- (b) including a clear statutory threshold for prosecution within the existing Bill, accompanied by clarification within the Bill around the acceptable use of physical restraint
- (c) creating a new statutory offense covering the use of excessive force by those acting with parental authority; or
- (d) creating a new statutory defence covering actions which do not give rise to child welfare concerns and where no lasting physical injury occurs.

Annex B: Engagement

285. Our work on the Bill began in November 2018. Recognising the wide public interest in the Bill, and the sensitivities involved, we gathered views in a variety of ways. We prioritised engagement as a way of hearing from parents and grandparents, who were a key audience because of the subject matter. To ensure we heard their views, and those of young people, Committee Members held four visits around the country, to [Dads Rock \(Sighthill, Edinburgh\)](#) , [Midlothian Sure Start Grandparents' Group](#) , [Messy Church Pollokshields](#) , and [YMCA Juniors \(Kirkcaldy\)](#).
286. In Kirkcaldy, Committee members met with young people to hear their views. The young people wrote and enacted a drama centred around a scenario involving parents with a young child who ran across the road for an ice cream. The young people then discussed appropriate responses to the situation, and their thoughts on the Bill. Notes of the visits are all available on our website. We held a further four visits on Skye ([detailed below](#)).

Gail Ross MSP and Fulton MacGregor MSP visit Dads Rock, Edinburgh.



Hearing young people opinions on the Bill at Kirkcaldy YMCA Juniors



Meeting in a Box

287. From December 2018 to March 2019, the Committee invited responses to a “Meeting in a Box”. The “Meeting in a Box” contained information and tools for members of the public to host a meeting in a community setting and gather views on the Bill. The kit was available to download on the website, or in hard copy by contacting the Committee clerks.
288. Ten responses were received. One came from the National Parenting Forum covering 26 members from 25 local authorities.
289. Nine responses came from schools. Approximately 260 students participated, ranging in age from P5 to S6. Of those who responded directly to the question of whether they supported the Bill, 127 did, 47 opposed it, and 20 were unsure.
290. A brief [summary of responses, and the responses in full](#), are available on the Committee website. Classes and groups discussed the Bill in the format that most suited them, so not all responses are in the same format or focus on the same questions.

Scottish Youth Parliament

291. The Committee worked with the Committee Engagement Unit to deliver a workshop at the Scottish Youth Parliament’s sitting in March 2019. Eight members of the SYP

Equalities and Human Rights Committee discussed four statements related to the Bill:

- Not all physical punishment is the same as assault and abuse
- Children should have the same rights as adults in being protected from assault
- The government should not interfere in what parents/carers do
- Physical punishment can lead to long-lasting emotional and physical difficulties and damage.

292. A [note of discussion](#) is available on the Committee's website.

Skye

293. We visited Skye on 15 March to meet with community groups and hold a Committee meeting in Portree. We are very grateful to all those we met with on Skye, and to those who took the time to attend the public Q&A session and the formal meetings. Notes of visits undertaken, with the exception of the young carers group, are available on our [website](#).

Public question and answer session in Portree



Young Carers

294. Alex Cole-Hamilton MSP and Gail Ross MSP met with a group of young carers to discuss the Bill. To ensure the comfort of the young people attending, and enable

full and free discussion, a note of the visit was not taken. The young people discussed their views of the Bill, and physical punishment generally.

Portree parents and faith groups

295. Alex Cole-Hamilton MSP and Gail Ross MSP then met with parents and carers and some members of religious communities for an informal discussion. A [note of the discussion](#) is available on our website.

Schools

296. Ruth Maguire MSP, Fulton MacGregor MSP, and Mary Fee MSP visited Bun-Sgoil Ghàidhlig Phort Rìgh to meet with P4/5 students, and Portree High School to meet an S2 Modern Studies class. We would like to thank the students and teachers for the preparation they put into our visit, and the welcome we received. It was extremely helpful to hear the views of young people.

Bun-Sgoil Ghàidhlig Phort Rìgh

297. At Bun-Sgoil Ghàidhlig Phort Rìgh, the children discussed the following statements and indicated whether they agreed or disagreed with them:
- It is important that families have rules
 - It is important that there are punishments or consequences if rules are broken
 - Offering rewards for good behaviour is a good way to get children to follow rules
 - No screen time for a day/week is a good way of getting children to behave
 - Giving children a slap on the leg will stop them misbehaving again
 - Children and parents both have rights, but parents' rights are more important at home
298. Children then discussed the Bill with Members and gave their views. A note of the visit is available on our website in both [Gaelic](#) and [English](#).

The Committee meets students at Bun-Sgoil Ghàidhlig Phort Rìgh



Portree High School

299. At Portree High School, we met an S2 Modern Studies class and heard their views on the Bill. A [note of what was discussed](#) is available on our website.

Members of the Committee meet with Modern Studies students at Portree High School



Annex C: Extract from minutes of meetings

300. [5th Meeting 2019 \(Session 5\) Thursday 28 February 2019](#)

1. Children (Equal Protection from Assault) (Scotland) Bill: The Committee reported back on engagement undertaken with Midlothian Sure Start Grandparents group, Dads Rock, Messy Church Pollokshields and YMCA Kirkcaldy.

2. Children (Equal Protection from Assault) (Scotland) Bill; The Committee took evidence on the Bill at Stage 1 from—

- Prof. Jane Callaghan, Director, Child Wellbeing and Protection, University of Stirling;
- Dr Stuart Waiton, Senior Lecturer, School of Social and Health Sciences, Abertay University;
- Dr Anja Heilmann, Lead author, "Equally Protected?" report;
- Diego Quiroz, Policy Officer, Scottish Human Rights Commission;
- Clare Simpson, Manager, Parenting Across Scotland;
- Dr Louise Hill, Policy Implementation Lead, Centre for Excellence for Looked After Children (CELCIS), University of Strathclyde;
- Amy-Beth Mia, Member, Who Cares? Scotland Collective;
- Cheryl-Ann Cruickshank, Director of Operations, Who Cares? Scotland.

3. Children (Equal Protection from Assault) (Scotland) Bill (in private): The Committee considered the evidence heard

301. [6th Meeting 2019 \(Session 5\) Thursday 7 March 2019](#)

1. Children (Equal Protection from Assault) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Bruce Adamson, Children and Young People's Commissioner Scotland;
- Joanna Barrett, Policy and Public Affairs Manager, representing Barnardo's Scotland, Children 1st and NSPCC Scotland;
- Triona Lenihan, Advocacy and Communications Manager, Global Initiative to end All Corporal Punishment of Children;
- Martin Canavan, Policy & Participation Officer, Aberlour;
- Amy Johnson, Policy Officer, Zero Tolerance;
- Alison Davis, Chief Executive Officer, Saheliya;

- Maureen Phillip, Senior Family Support Director, PAMIS;
- Nora Uhrig, Senior Associate, Equality and Human Rights Commission;
- Lucy Chetty, Head Teacher, New Struan School, on behalf of Scottish

2. Children (Equal Protection from Assault) (Scotland) Bill (in private): The Committee considered the evidence heard.

302. [**7th Meeting 2019 \(Session 5\) Friday 15 March 2019**](#)

1. Children (Equal Protection from Assault) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- James Gillies, Public Policy Assistant, The Christian Institute;
- Rev. Gordon Matheson, Minister, Evangelical Alliance;
- Rev. Richard Ross, Minister, Free Church of Scotland (Continuing);
- Rev. Peter Nimmo, Minister of Old High St Stephen's Church of Scotland, Inverness, Church and Society Council, Church of Scotland;
- Mairi Campbell-Jack, Scottish Parliamentary Engagement Officer, Quakers in Britain;
- Fraser Sutherland, Campaigns and Communications Manager, Humanist Society Scotland.

303. [**8th Meeting 2019 \(Session 5\) Thursday 21 March 2019**](#)

1. Children (Equal Protection from Assault) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Dr Lucy Reynolds, Consultant Paediatrician, Royal College of Paediatrics & Child Health (Scotland);
- Jillian van Turnhout, Former Irish Senator;
- Matthew Sweeney, Policy Officer, Children and Young People, COSLA;
- Andy Jeffries, Senior Manager, Children and Families, City of Edinburgh Council, Social Work Scotland;
- Jean Miller, Head Teacher, EIS;
- John McKenzie, Chief Superintendent, Head of Safer Communities, Police Scotland;
- Mhairi McMillan, Criminal Law Committee, Law Society of Scotland;
- Neil Hunter, Principal Reporter, Scottish Children's Reporter Administration.

2. Children (Equal Protection from Assault) (Scotland) Bill: consideration of evidence (in private)

The Committee considered the evidence received and agreed to hold an additional evidence session to hear further views, should witnesses be available. The Committee discussed and agreed by division whether to continue with Agenda Item 3: For 5 (Alex Cole-Hamilton, Mary Fee, Fulton MacGregor, Ruth Maguire, Gail Ross), Against 2 (Oliver Mundell, Annie Wells), Abstentions 0.

3. Children (Equal Protection from Assault) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Prof. Robert Larzerlere, Human Development and Family Science, Oklahoma State University

304. [9th Meeting 2019 \(Session 5\) Thursday 28 March 2019](#)

1. Children (Equal Protection from Assault) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Maree Todd, Minister for Children and Young People, Simon Stockwell, Head of Family Law Unit, Scott Matheson, Scottish Government Legal Directorate, and Maria Gray, Parenting, Play & Baby Box Team, Scottish Government, supported by Sarah Meanley, Family Law Unit;
- John Finnie MSP, Member in Charge, supported by
- Steven Dehn, Researcher to John Finnie MSP;
- Nick Hawthorne, Senior Assistant Clerk, Non-Government Bills Unit, Scottish Parliament;
- Catriona McCallum, Office of the Solicitor to the Scottish Parliament.

2. Children (Equal Protection from Assault) (Scotland) Bill (in private): The Committee considered the evidence heard.

305. [10th Meeting 2019 \(Session 5\) Thursday 4 April 2019](#)

1. Children (Equal Protection from Assault) (Scotland) Bill (in private): The Committee considered the evidence taken on the Bill at Stage 1.

306. [11th Meeting 2019 \(Session 5\) Thursday 25 April 2019](#)

1. Children (Equal Protection from Assault) (Scotland) Bill (in private): The Committee considered the evidence taken on the Bill at Stage 1.

2. Children (Equal Protection from Assault) (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were proposed and decided upon.

307. [13th Meeting 2019 \(Session 5\) Thursday 16 May 2019](#)

4. Children (Equal Protection from Assault) (Scotland) Bill (in private):

The Committee discussed and disagreed by division to seek to extend the Stage 1 deadline to allow further evidence to be taken: For 2 (Oliver Mundell, Annie Wells),

Against 5 (Alex Cole-Hamilton, Rhoda Grant, Fulton MacGregor, Ruth Maguire, Gail Ross), Abstentions 0.

The Committee agreed by division to invite the Lord Advocate to give oral evidence before Stage 2 consideration of amendments: For 5 (Alex

Cole-Hamilton, Rhoda Grant, Fulton MacGregor, Ruth Maguire, Gail Ross), Against 0, Abstentions 2 (Oliver Mundell, Annie Wells).

Discussion on the report's content continued until 11:54. The meeting was suspended until 13:30.

The Committee continued consideration of its draft Stage 1 report. Various changes were agreed to, and the report was agreed for publication.

Annex D: Written evidence and Official Report

Written submissions

308. Supplementary submissions

- [Prof. Jane Callaghan](#)
- [Who Cares? Scotland](#)
- [Dr Anja Helimann](#)
- [Saheliya](#)
- [Robert Larzelere](#)
- [Parenting Across Scotland](#)
- [Scottish ADHD Coalition](#)
- [Humanist Society Scotland](#)
- [Educational Institute of Scotland](#)
- [The Christian Institute](#)
- [Scottish Courts and Tribunals Service](#)
- [Jillian van Turnhout](#)
- [Law Society Scotland](#)
- [Dr Elizabeth Gershoff and Dr Andrew Grogan-Kaylor](#)
- [Prof. Joan Durrant](#)
- [Prof. Patricia Ferguson](#)
- [Michael Sheridan](#)
- [Crown Office and Procurator Fiscal](#)

309. Official Reports

[Official Report of 28 February 2019](#)

[Official Report of 07 March 2019](#)

[Official Report of 15 March 2019](#)

[Official Report of 21 March 2019](#)

[Official Report of 28 March 2019](#)

- 1 [The United Nations Committee on the Rights of the Child](#). Forty-second session, Geneva, 15 May-2 June 2006 - General Comment no. 8 (2006).
- 2 [Criminal Justice \(Scotland\) Act 2003, section 51](#)
- 3 Further discussion of assault in Scots law can be found in the [supplementary SPICe briefing](#)
- 4 [COPFS, written submission](#)
- 5 [Letter from The Christian Institute, written submission 163](#)
- 6 [Official Report, 7 March, col.11](#)
- 7 [Official Report, 21 March, col. 2](#)
- 8 [Official Report, 28 March, col. 11](#)
- 9 [Faculty of Public Health, written submission](#)
- 10 [Anonymous, written submission 249](#)
- 11 [Anonymous, written submission 252](#)
- 12 [Anonymous, written submission 253](#)
- 13 [Note of visit to Midlothian Sure Start Grandparents' Group](#)
- 14 [Note of visit to Messy Church](#)
- 15 [Michael Sheridan, written submission](#)
- 16 [Official Report, 28 February, col. 40](#)
- 17 [Official Report, 21 March, col. 31](#)
- 18 [Prof. Tommy MacKay, written submission](#)
- 19 [Official Report, 28 March, col. 14](#)
- 20 [Official Report, 15 March, col. 2](#)
- 21 [Official Report, 15 March, col. 18](#)
- 22 [Official Report, 15 March, col. 6](#)
- 23 [Official Report, 15 March, col. 10](#)
- 24 [Official Report, 15 March, col. 14](#)
- 25 [Official Report, 15 March, col.12](#)
- 26 [Official Report, 28 February, col. 8](#)
- 27 [CARE, written submission](#)
- 28 [CYPC, written submission](#)

- 29 Scottish Women's Aid, written submission
- 30 [NHS Greater Glasgow and Clyde, written submission](#)
- 31 [Official Report, 21 March, col. 29](#)
- 32 [Official Report, 7 March, col. 36](#)
- 33 [Dr Anja Heilmann, written submission](#)
- 34 [Dr Elizabeth Gershoff and Dr Andrew Grogan-Kaylor, written submission](#)
- 35 NHS Ayrshire and Arran – Infant Children and Young People’s Transformational Change Programme, written submission
- 36 [NHS Tayside, written submission](#)
- 37 [Official Report, 7 March, col. 12-13](#)
- 38 [Official Report, 21 March, col. 9](#)
- 39 [Official Report, 21 March, col. 9](#)
- 40 [Note of visit to Midlothian Sure Start Grandparents’ Group](#)
- 41 [Official Report, 7 March, col. 13](#)
- 42 [Prof. Tommy MacKay, written submission](#)
- 43 [Official Report, 15 March, col. 10](#)
- 44 [Official Report, 21 March, col. 52](#)
- 45 [Official Report, 21 March, col. 48](#)
- 46 [Official Report, 21 March, col. 51](#)
- 47 [Official Report, 28 February, col. 7-8](#)
- 48 [Prof. Joan Durrant, written submission](#)
- 49 [Prof. Jane Callaghan, written submission](#)
- 50 [Faculty of Public Health, written submission](#)
- 51 [Official Report, 28 March, col. 19](#)
- 52 [Official Report, 7 March, col. 7](#)
- 53 [Official Report, 21 March, col. 8](#)
- 54 [Official Report, 28 February, col. 30](#)
- 55 [Official Report, 7 March, col. 8](#)
- 56 [Care Inspectorate, written submission](#)

- 57 [Official Report, 28 February, col. 26](#)
- 58 [Official Report, 28 February, col. 28](#)
- 59 [Care Inspectorate, written submission](#)
- 60 [Independent Care Review, written submission](#)
- 61 [Official Report, 28 March, col. 10](#)
- 62 <https://news.gov.scot/news/review-of-the-mental-health-act>
- 63 <https://consult.gov.scot/health-and-social-care/adults-with-incapacity-reform/>
- 64 [Drawn from submissions by the Children and Young People's Commissioner, Together Scotland, Scottish Human Rights Commission](#)
- 65 [Official Report, 7 March, col. 3](#)
- 66 [Official Report, 28 February, col. 6](#)
- 67 [Official Report, 7 March, col. 2](#)
- 68 [Official Report, 28 March, col. 5](#)
- 69 [Official Report, 21 March, col. 13](#)
- 70 [Prof. Jane Callaghan, written submission](#)
- 71 [Official Report, 7 March, col. 32](#)
- 72 [Official Report, 7 March, col. 18](#)
- 73 [Official Report, 28 March, col. 18](#)
- 74 [CYPC, written submission](#)
- 75 [Equality and Human Rights Commission website](#)
- 76 [NHS Greater Glasgow and Clyde, written submission](#)
- 77 [Official Report, 28 February, col. 5](#)
- 78 [Official Report, 7 March, col. 4](#)
- 79 [Official Report, 7 March, col. 24](#)
- 80 [Official Report, 7 March, col. 4](#)
- 81 [Official Report, 15 March, col. 19](#)
- 82 [Official Report, 15 March, col. 2](#)
- 83 [Official Report, 15 March, col. 9](#)
- 84 [Official Report, 15 March, col. 19-20](#)

- 85 [Official Report, 15 March, col. 20](#)
- 86 [Official Report, 28 March, col. 5](#)
- 87 [Official Report, 28 March, col. 18](#)
- 88 [Official Report, 28 February, col. 30](#)
- 89 [Humanist Society Scotland, written submission](#)
- 90 [Official Report, 15 March, col. 3-4](#)
- 91 [Official Report, 15 March, col. 3](#)
- 92 [Official Report, 15 March, col. 30](#)
- 93 [Official Report, 15 March, col. 31-32](#)
- 94 [Official Report, 15 March, col. 32-34](#)
- 95 [Official Report, 21 March, col. 8](#)
- 96 [Global Initiative to end all Corporal Punishment of Children. \(2016\) New Zealand](#)
- 97 [Global Initiative to end all Corporal Punishment of Children. \(2016\) New Zealand](#)
- 98 [Scottish Parliament. \(2018\) Children \(Equal Protection from Assault\) \(Scotland\) Bill: Financial Memorandum.](#)
- 99 [Official Report, 15 March, col. 6](#)
- 100 [Official Report, 7 March, col. 15-16](#)
- 101 [Global Initiative to end all Corporal Punishment of Children. \(2018\) Sweden](#)
- 102 [Global Initiative to end all Corporal Punishment of Children. \(2018\) Sweden](#)
- 103 [Official Report, 7 March, col. 16](#)
- 104 [River of Life Church, written submission](#)
- 105 [Global Initiative to end all Corporal Punishment of Children. \(2017\) Ireland](#)
- 106 [Official Report, 21 March, col. 6](#)
- 107 [Official Report, 21 March](#)
- 108 [Law Society of Scotland, written submission](#)
- 109 [Official Report, 21 March, col. 25](#)
- 110 [Parenting Across Scotland, supplementary submission](#)
- 111 [Official Report, 28 February, col. 38](#)
- 112 [Official Report, 7 March, col. 6](#)

- 113 [Official Report, 15 March, col. 25](#)
- 114 [Official Report, 15 March, col. 24](#)
- 115 [Official Report, 7 March, col. 36](#)
- 116 [CYPC, written submission](#)
- 117 [Official Report, 28 March, col. 3](#)
- 118 [Official Report, 28 February, col. 18](#)
- 119 [Academy of Medical Royal Colleges and Faculties in Scotland, written submission](#)
- 120 [Official Report, 7 March, col. 18](#)
- 121 [Official Report, 21 March, col. 5-6](#)
- 122 [Official Report, 7 March, col. 12](#)
- 123 [Children's Hospices Across Scotland, written submission](#)
- 124 [Official Report, 7 March, col. 25](#)
- 125 [Rape Crisis, written submission](#)
- 126 [Official Report, 28 February, col. 19](#)
- 127 [Official Report, 21 March, col. 34](#)
- 128 [Official Report, 28 March, col.3-4](#)
- 129 [Official Report, 15 March, col. 12](#)
- 130 [Official Report, 28 March, col. 21](#)
- 131 [Official Report, 21 March, col. 34](#)
- 132 [Explanatory Notes, paragraph 403](#)
- 133 [Official Report, 21 March, col. 31](#)
- 134 [Official Report, 28 February, col. 34](#)
- 135 [Official Report, 28 February, col. 34-35](#)
- 136 [Official Report, 28 February, col. 38](#)
- 137 [Official Report, 28 February, col. 38](#)
- 138 [COPFS, written submission](#)
- 139 [COPFS, written submission](#)
- 140 [Official Report, 21 March, col. 11](#)
- 141 [Official Report, 15 March, col. 15](#)

- 142 [Official Report, 21 March, col. 26](#)
- 143 [Official Report, 21 March, col. 26](#)
- 144 [COPFS, written submission](#)
- 145 [Official Report, 28 March, col.10](#)
- 146 [Official Report, 21 March, col. 12](#)
- 147 [Official Report, 21 March, col. 32](#)
- 148 [Official Report, 21 March, col. 17](#)
- 149 [Official Report, 21 March, col. 31](#)
- 150 [Official Report, 21 March, col. 31](#)
- 151 [Official Report, 21 March, col. 12](#)
- 152 [Official Report, 21 March, col. 2-3](#)
- 153 [Official Report, 28 March, col. 8](#)
- 154 [ComRes Be Reasonable survey 2017](#)
- 155 [Official Report, 28 February, col. 35](#)
- 156 [Official Report, 21 March, col 25](#)
- 157 [Official Report, 28 March, col. 13](#)
- 158 [Official Report, 28 March, col. 2](#)
- 159 [Official Report, 28 March, col. 15](#)
- 160 [Official Report, 7 March, col. 9](#)
- 161 [Official Report, 7 March, col. 12](#)
- 162 [Official Report, 28 February, col. 27](#)
- 163 [Official Report, 15 March, col. 29](#)
- 164 [Official Report, 15 March, col. 29](#)
- 165 [Scottish Youth Parliament, written submission](#)
- 166 [Official Report, 7 March, col. 11](#)
- 167 [Official Report, 15 March, col. 25](#)
- 168 [Official Report, 28 March, col. 22](#)
- 169 [Policy Memorandum, paragraph 84](#)
- 170 [EIS, written submission](#)

- 171 [Scottish Women's Aid, written submission](#)
- 172 [Zero Tolerance, written submission](#)
- 173 [CYPC, written submission](#)
- 174 [Official Report, 7 March, col. 14](#)
- 175 [Deaf Children's Society, written submission](#)
- 176 [Scottish ADHD Coalition, written submission](#)
- 177 [Scottish ADHD Coalition, written submission](#)
- 178 [Official Report, 7 March, col. 25](#)
- 179 [Anonymous, Written submission 248](#)
- 180 [Official Report, 7 March, col. 36](#)
- 181 [Official Report, 7 March, col. 36](#)
- 182 [SCRA, written submission](#)
- 183 [Official Report, 7 March, col. 24](#)
- 184 [Official Report, 7 March, col. 24-25](#)
- 185 [Official Report, 7 March, col. 31](#)
- 186 [Official Report, 7 March, col. 28](#)
- 187 [Official Report, 15 March, col. 16](#)
- 188 [Meeting in a Box, North Berwick High School](#)
- 189 [Official Report, 15 March, col. 27](#)
- 190 [Official Report, 21 March, col. 20](#)
- 191 [Official Report, 21 March, col. 20](#)
- 192 [Official Report, 28 March, col. 21](#)
- 193 [Financial Memorandum](#), paragraph 29-30
- 194 [Official Report, 7 March, col. 24-25](#)
- 195 [Official Report, 28 February, col. 36](#)
- 196 [Official Report, 21 March, col. 15](#)
- 197 [Official Report, 28 February, col. 27](#)
- 198 [Official Report, 7 March, col. 19](#)
- 199 [Official Report, 28 March, col. 12](#)

- 200 [Official Report, 28 February, col. 29](#)
- 201 [Official Report, 7 March, col. 26](#)
- 202 [Scottish Human Rights Commission, written submission](#)
- 203 [Scottish Women's Convention, written submission](#)
- 204 [Scottish Women's Aid, written submission](#)
- 205 [Official Report, 15 March, col. 30](#)
- 206 [Official Report, 7 March, col. 35](#)
- 207 [Official Report, 28 March, col. 22](#)
- 208 [Social Work Scotland, written submission](#)
- 209 [Official Report, 21 March, col. 15](#)
- 210 [Official Report, 21 March, col. 14](#)
- 211 [Police Scotland, written submission](#)
- 212 [Police Scotland, written submission](#)
- 213 [Official Report, 21 March, col. 30](#)
- 214 [SCRA, written submission](#)
- 215 [CARE, written submission](#)
- 216 [Crown Office and Procurator Fiscal Service \(2001\) Prosecution Code](#) .
- 217 [COPFS, written submission](#)
- 218 [COPFS, written submission](#)
- 219 [Scottish Government \(2016\) UN Convention on the Rights of the Child: Additional Evidence](#)
- 220 [STV \(2013\) Father ended up in court for slapping son who 'threw a tantrum'.](#)
- 221 [The Courier \(2013\) Perthshire stepdad in court for smacking youngster](#)
- 222 [Care Inspectorate, written submission](#)
- 223 [NHS Ayrshire and Arran – Infant Children and Young People's Transformational Change](#)
- 224 [NHS Greater Glasgow and Clyde, written submission](#)
- 225 [EIS, written submission](#)
- 226 [EIS, written submission](#)
- 227 [Official Report, 7 March, col. 19](#)

- 228 [NHS Tayside, written submission](#)
- 229 [Official Report, 28 February, col. 36](#)
- 230 [Official Report, 7 March, col. 19](#)
- 231 [Official Report, 21 March, col. 15](#)
- 232 [Official Report, 7 March, col. 19](#)
- 233 [Official Report, 21 March, col. 36](#)
- 234 [Official Report, 7 March, col. 35](#)
- 235 [Official Report, 28 March, col. 12](#)
- 236 [Official Report, 28 March, col. 11](#)

