

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

Tystiolaeth i'r Pwyllgor Plant, Pobl Ifanc ac Addysg ar gyfer craffu Cyfnod 1 (Saesneg yn unig)	Evidence submitted to the Children, Young People and Education Committee for Stage 1 scrutiny
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Organisation: Joint response from the Welsh Local Government Association (WLGA), the Association of Directors of Social Services (ADSS Cymru) and the Association of Directors of Education in Wales (ADEW)

1 The Bill's general principles

1.1 Do you support the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill?

Yes

1.2 Please outline your reasons for your answer to question 1.1

(we would be grateful if you could keep your answer to around 1000 words)

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

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

Welsh Government's attempt to progress the legislation separately in the Fifth Assembly, is a natural and logical public policy progression.

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

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

(we would be grateful if you could keep your answer to around 500 words)

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

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

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

2 The Bill's implementation

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

(we would be grateful if you could keep your answer to around 500 words)

In the report, *Legislating to Prohibit Parental Physical Punishment of Children*, one of the clear lessons learned by other jurisdictions that have already legislated in this field is there will be a need for on-going publicity campaigns and awareness raising about the law and its implications, as well providing parents with information and support about alternative disciplinary techniques or positive parenting. That information may have to be tailored to support sections of society where there are strong religious or cultural factors which support physical discipline. However, what must be made very clear to parents, guardians and the public - particularly given the narrow margin in favour of the legislation, as evidenced in the

public feedback to the Government's consultation document - is this legislation is not looking to necessarily criminalise parents or guardians, or undermine their role in the on-going development and education of the children in their care; it's about protecting all children from harm.

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

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

(we would be grateful if you could keep your answer to around 500 words)

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

3 Unintended consequences

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

(we would be grateful if you could keep your answer to around 500 words)

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

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

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

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

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

4 Financial implications

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

(we would be grateful if you could keep your answer to around 500 words)

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

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

5 Other considerations

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

(we would be grateful if you could keep your answer to around 1000 words)

As we have already stated, it will be important to have absolute clarity regarding the definition of 'corporal punishment' that will fall under the scope of the legislation. As professional leaders in the sector, we must have a consistent and unambiguous understanding of the exact nature of the physical punishment which is no longer to be defended in legislation. Once that clarity is in place, we can then utilise the skills and training

of our members to identify where the lines between acceptable discipline and child abuse are. It will then be important that our members, and our front-line colleagues in education and social care receive the necessary training and guidance on the processes involved in reporting and investigating suspected use of physical punishment, as well as how to support families' wellbeing during the investigation process.

Information about the WLGA, ADSS Cymru and ADEW

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

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

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

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

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



ADSS Cymru

Yn arwain Gwasanaethau
Cymdeithasol yng Nghymru
Leading Social Services in Wales



CLILC • WLGA

WLGA and ADSS Cymru Position Statement on Children's Services

Key Facts and Figures



There are about 630,000 children and young people living in Wales.


This includes:

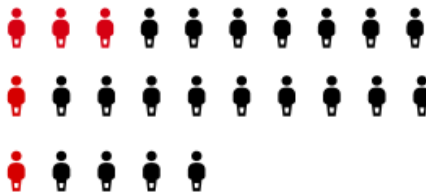
- Nearly 16,000 children receiving care and support from Welsh Councils
- Just under 6,000 who are looked after by Welsh Councils



Every day last year:

- 78 children and families received advice or assistance from Councils
- 106 assessments were carried out
- 23 care and support plans were put in place

 Every 4 hours a child or young person was brought into care in Wales last year



3 in 10 children in Wales are living in poverty

1 in 10 children in Wales will have a diagnosable mental health condition

Around 1 in 5 children have been exposed to domestic abuse

 15%

increase in children looked after since 2010, with a 5% increase on last year

 149%

increase in the number of court applications to remove children into care over the last nine years

 12%

increase in children on child protection register between 2010-16

 22%

reduction in Council funding since 2010 impacting on a wide range of preventative services vital in supporting children and families

 30%

real terms increase in expenditure on LAC services by LA's since 2010

 £3,500

the average cost per week of placing a child in residential services

Nearly **16,000** children received care and support from local authorities in Wales last year. Just under **6,000** children were 'looked after' by local authorities, a figure that has increased by nearly a quarter over 10 years. Over the same period Council's expenditure on Children's Services has increased to meet the increasing demand, with a real term increase of 30% spend on Looked After Children's Services. This comes despite Council's core grant funding reducing by **22%** after adjusting for inflation. If you take schools out, core funding has fallen by **35%**.

Rapidly increasing and complex needs, along with constrained funding is placing significant pressure on children's social care services. Councils and social care staff have coped extremely well up to now despite the exceptional pressures, however this is not sustainable in the face of further budget cuts.

With a statutory duty to safeguard and promote the well-being of looked after children and support some of our most vulnerable in our communities, Councils have committed to providing as much resource as possible to safeguard and support children and their families continuing to deliver vital services. But this commitment leaves some challenging choices elsewhere and it is important that decision makers recognise the current situation and the impact that it is having.

Key Messages



- ⇒ **Over the last decade the number of children in the care system in Wales has increased significantly.** The reasons why children become looked after and their needs while in the care system are complex and multifactorial.
- ⇒ **Recent years have seen an increase in expenditure on Children's Services at a time when Councils overall budgets have been cut.** This demonstrates the commitment that has been made by local authorities to meet the demands being placed on services by the rising numbers of looked after children. However, this is becoming unsustainable, with most local authorities now anticipating significant overspends on their children's services.
- ⇒ **Services for the care and protection of vulnerable children are now, in many areas, being pushed to breaking point.** The huge financial pressures councils are under, coupled with the spike in demand for child protection support, mean that the limited money councils have available is increasingly being taken up with the provision of urgent help for children and families already at crisis point, leaving very little to invest in early intervention. Hence a spiral of uninterrupted and increasing need for services is driving a mounting complexity of challenges for the most vulnerable children.

Pressures on Children's Services

WLGA and ADSS Cymru have identified four key areas where significant pressures are being experienced in relation to children's services in Wales:

- 1) **External demands and complexities** The on-going introduction of welfare reforms and a decade of austerity has amplified the pressures on families. Increased public awareness and reporting of potential abuse, the impact of poverty and deprivation on families and a lack of funding to help families early on before problems escalate all contribute to this. There is an increased awareness and understanding of issues such as Child Sexual Exploitation (CSE) and an increase in the number of initiatives that are aimed at early identification and intervention such as the evidence based work in respect of Adverse Childhood Experiences (ACEs), Flying Start and Families First.
- 2) **Placements** The increasing complexity of cases and the growing numbers of children coming into care are negatively impacting on both the availability of appropriate placements and the cost of placements. An ageing foster carer population and the increasing costs of providing residential care has a significant impact on the sector.
- 3) **Legislation and work with the Courts** The last few years have seen a substantial increase in the number of care applications that have been made, with a significant increase in the number of children subject to care proceedings. Increasing expectations from legal judgements create a challenging environment.
- 4) **Workforce** Child and family social work is challenged by high turnover and vacancy rates and a reliance on agency staff, with demand for permanent, experienced workers outstripping supply.



Urgent action is required to reduce the number of families relying on the children's social care system for support and so we are calling on Welsh Government to:

- ⇒ Urgently address the growing funding gap being seen in Children's Services and reinforce our shared commitment to improving the life chances of children and young people.
- ⇒ Use the recent announcement of additional consequential funding coming into Wales to identify new, non-ring-fenced money, that allows local authorities flexibility to best meet local demand and needs, focussed on improving outcomes for children, young people and their families and helping to ensure that children who leave the looked after system have properly planned and supported exits so that they also achieve their outcomes. Recent funding made available for Children's Services from Welsh Government has only been for specific pieces of work and to support new initiatives rather than to be able to meet increasing demand and current pressures.
- ⇒ Establish a new Preventative Care Fund for Wales. There is a need for a strategy of investment focused upon achieving a coherent preventative approach to improving children's outcomes. A Preventative Care Fund, focussed throughout the life-course, would enable some double running of new investment in preventative services alongside 'business as usual' in the current system until savings are realised and reinvested back into the system. This would help to stem the decline of local preventative services and provide a way to make some significant investment into new and existing preventative services.
- ⇒ Ensure that the funding currently provided for children's mental health and wellbeing services is used to best effect. Supporting us in tackling mental health issues and building resilient, emotionally and mentally healthy children and young people and making this a national priority.

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