

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: Crown Prosecution Service

1 The Bill's general principles

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

Don't have a view

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)

The Crown Prosecution Service will prosecute in accordance with legislation in England and in Wales. Our perspective is influenced by prosecuting in accordance with the restricted availability of the defence due to section 58 of the Children Act 2004 and the outcome of the UK Government review of its operation in 2007.

The Welsh Explanatory Memorandum quotes surveys that highlight the extent to which parental attitudes towards the way children are raised and disciplined are changing. There is however very little research that clarifies the extent to which changing parental attitudes may be attributed to the restrictions imposed by section 58.

The UK Government reviewed the operation of section 58 of the Children Act 2004 in 2007. Its analysis of the evidence resulted in findings that:

- section 58 has improved legal protection for children by restricting the use of the reasonable punishment defence in court proceedings;
- there are no reported significant practical problems with its operation;

- The Crown Prosecution Service's Charging Standard (raised in 2018) has clarified the boundary between what constitutes common assault and what constitutes assault occasioning actual bodily harm;
- Attitudes and behaviour amongst parents are changing, with younger parents less likely to use smacking as a method of discipline than older parents.

Section 58 was passed to ensure compliance with Article 3 of the European Convention on Human Rights (ECHR), which provides: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

Against this however the same review quoted the Parliamentary Joint Committee on Human Rights (JCHR) in 2004 that "there is a risk that in a future case the European Court of Human Rights will find that the continued availability of the reasonable chastisement defence to the offence of common assault is in breach of a child's right to dignity and personal integrity under Article 3, their right to physical integrity under Article 8, and/or their right not to be discriminated against compared to adults in relation to their enjoyment of those rights on grounds of their age. No such incompatibility exists at present, however".

We note that the UK Government review is now of some age.

Further, we support the comprehensive approach being taken by the Welsh Government with considerable thought being given to changing attitudes to parenting in Wales. This all embracing approach is to be complemented by monitoring and reviewing the effect of the legislation.

At this early stage it is too early for the Crown Prosecution Service to determine what success might be achieved in Wales. We are encouraged by the comprehensive approach being taken in securing data after the legislation comes into force. In our view that such data will assist in determining whether the Welsh Government's approach delivers on the principles behind the legislation.

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)

Changing attitudes to parenting in the manner desired will be supported by appropriate legislation. This is because the existing legislation provides a defence and so permits the assault of a child by a person with parenting responsibility albeit limited to common assault.

We welcome the Welsh Government recognition that simply enacting legislation is unlikely to achieve the desired aim. We support the wider intention to provide information, support to parents and to raise awareness both of positive alternatives to physical punishment and the legislative change. It is within this context that prosecutions, together with alternatives to prosecution, can meaningfully assist in delivering the desired aim.

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)

We foresee difficulties in collecting and collating meaningful data establishing what difference the Act will make. It is difficult to estimate the number of children who will be affected by the proposed legislation. Data is to be collected to identify the number of reasonable punishment cases that come to the attention of social services, police and the courts. Surveys may provide an insight into the extent of change in parenting attitudes. However attempts to determine a baseline for comparison with future data simply appear to be producing educated guesses due to the lack of any meaningful data. Paragraph 5, Annexe 7 of the Explanatory Memorandum sets this out as it states that " The figures produced are indicative due to the current non-recording or measurement of the defence of 'reasonable punishment' within policing. All the Welsh forces have not easily been able to produce these figures". This raises a concern as to how meaningful any future assessment of the impact of the Bill will be.

A potential barrier could be found in the expression of public opinion that the Bill would result in criminalising parents for actions in Wales that would in England have a defence within the criminal law.

Wales intends to abolish a defence that will still apply in England. The geographical proximity, single prosecuting authority and court structure covering England and Wales create potential barriers. Further the easy interaction between the populations of England and Wales may result in attitudes in England creating an influence on that in Wales.

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)

The Bill and its Explanatory Memorandum does take some account of these barriers. There appears to be a real commitment to generate data after the Bill is implemented. Annex 6 of the Explanatory Memorandum sets out a useful analysis of New Zealand where data has been relied on in the absence of data within the United Kingdom. Annex 7 sets out work

that has been done with Welsh Police to generate some tangible data for use as a baseline for future comparison although we have referred to some doubt on this data's reliability by referring to paragraph 5 of Annex 7 in our answer to the previous question.

The Welsh Government has worked with the Ministry of Justice to estimate the impact of the Bill's implementation on the Justice system.

As regards the concern about criminalising parents, Annex 4 of the Explanatory Memorandum sets out ongoing work exploring diversion. We note paragraph 18 at page 75 that anticipates out of court disposals possibly being offered to the parent, depending on the circumstances of the case while indicating that in some cases, referring immediately to the CPS for prosecution may be the preferred option. This is complemented by support that will be provided to parents that is discussed within Chapter 4 of the Memorandum. Paragraph 4.11 at page 25 of the Explanatory Memorandum sets out that the police and CPS agrees that a proportionate response in the best interests of the child is essential.

There is no indication of plans for awareness raising in England. We note the sentence at page 42 of the Explanatory Memorandum that sets limits on the geographical spread of the awareness raising campaign where it states that; "the Welsh Government recognises that a change in law must be accompanied by sustained awareness raising in Wales". There may be an assumption by those in England that the same laws that apply in England continue to apply in Wales in the absence of such action. However if a person from England is being prosecuted in Wales as a result of the legislative change a question could arise about the lack of knowledge about the different provisions that apply in Wales.

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)

The impact on otherwise law-abiding parents. We raise the scenario of prosecuting a person from England who administers corporal punishment to a child when in Wales. Such action would have a separate defence if committed in England, and that person did not have an opportunity to benefit from the awareness raising campaign in Wales. There may be an assumption by those in England that the same laws that apply in England continue to apply in Wales. This may be mitigated somewhat as CPS will amend its legal guidance to reflect legislative change and our guidance is published online so that it is widely available in Wales and in England. However we consider that further action is required in England – whether through advertising in national newspapers or other such action decided on in planning the awareness raising campaign.

Persons convicted for administering corporal punishment in Wales will have different life prospects when compared to otherwise law-abiding persons in England who have the benefit of the defence.

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)

We support the intention of the Welsh Government to provide financial support for awareness raising and support for parents. A measure of success will be a reduction in need for such financial support as attitudes change.

We do not consider that the costs of prosecuting cases made possible by the Bill will be of great significance to the Crown Prosecution Service.

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)

We welcome the indication at page 24 of the Explanatory Memorandum that "A reasonable period after Royal Assent and before the new arrangements are brought into force is proposed" to allow provision of information and support to parents and to raise awareness of the legislative change.