

Children (Equal Protection from Assault) (Scotland) Bill

Briefing for Equalities and Human Rights Committee

Stage 2

June 2019

Assaulting a child for the purposes of punishment should always be against the law. Scotland's current law is untenable in international human rights law terms. As the preamble to the United Nations Convention on the Rights of the Child (UNCRC) outlines, children have a right to legal protections which recognise their particular vulnerability and Article 19 of the UNCRC requires states to take legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence. The UN Committee on the Rights of the child has affirmed that this includes protection from all forms of corporal punishment. At present, Scottish children have less legal protection than adults from assault, as Scots law currently allows a defence of "justifiable assault" to be used where a parent has assaulted a child for the purposes of physical punishment.

The Commissioner fully supports the Children (Equal Protection from Assault) (Scotland) Bill which will ensure children's right to be protected from all forms of physical violence.

The Commissioner does not support any of the amendments proposed at Stage 2, however this briefing focusses on Amendments 1, 2, 5 and 9.

During evidence at Stage 1, the Committee heard evidence from a range of experts, including the Commissioner, about the importance of providing legal clarity that children have the same protection against assault as adults. We feel that the bill in its current form achieves this.

Amendment 1

In evidence to the Committee, the Lord Advocate, the Crown Office and Procurator Fiscal Service and others stated that the justice system has a strong understanding of what constitutes assault and that no further clarification is needed. Sections beginning "for the avoidance of doubt" create the impression that doubt exists where there is currently none.

This amendment may create an impression that a best interests case could be made for an assault of a child. International Human Rights bodies, including the UN Committee on the Rights of the Child (in paragraph 26 of General Comment 8¹) are clear that there can be no best interests justification for any form of corporal punishment.

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https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f8&Lang=en

Amendment 2

This amendment appears to be based on a concern that the bill as drafted interferes in some way with parents' ability to fulfil their legal responsibilities. It does not and this amendment is therefore unnecessary.

Amendment 5

The Lord Advocate stated that prosecutors already consider the best interests of the child when making decisions and we do not feel that this bill requires additional clarification on this point.

Amendment 9

The Commissioner has emphasised the importance of a public awareness and advice campaign to support the implementation of this legislation however, we do not believe this amendment is a useful way of achieving this as it would be better addressed via secondary legislation.

If you require any further information, please contact:

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