



Law Society
of Scotland

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Stage 3 Briefing

Children (Equal Protection from Assault) (Scotland) Bill

30 September 2019



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We refer to the Children (Equal Protection from Assault) (Scotland) Bill (the Bill) which is scheduled for the Parliament's scrutiny at the Stage 3 Debate on Thursday 3 October 2019.

The Bill aims to:

- Abolish the defence of reasonable chastisement
- End the physical punishment of children by parents and others caring for them or in charge of them
- Drive behavioural change in Scotland

We would make the following comments which we hope are helpful for your purposes which concern:

- Support for the increased clarification of the law which these changes promote
- Helping in changing societal attitudes
- Stressing the importance of education and training in promoting and supporting behavioural change.

Clarification of the Law

As the current law stands, there is a lack of clarity for the public about what parents and others can and cannot do by way of physical punishment of children. That has "led to confusion amongst parent and carers."¹

We support the aim of this Bill to provide that much needed clarity. This change is important and advantageous in the public interest. This change is relevant when considering the potential consequences of the criminal law for those who may face prosecution for punishing children and ultimately, if convicted,

¹ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12122>

the negative implications for them personally and professionally. People should be aware when their behaviour towards children is criminal.

The Bill is not about easing the prosecutorial burden or increasing convictions.

Decisions as to prosecution in the relevant circumstances will continue to be taken by Crown Office and Prosecution Fiscal Service (COPFS) in accordance with their Prosecution Code² and the facts in each case. Cases will only be prosecuted where sufficient admissible criminal evidence exists to initiate a prosecution. Considerations as to any possible diversion (be it no proceedings, the issue of warning letters or other alternatives to prosecution such as Fiscal fines) or prosecution being undertaken in the public interest lie fully within the discretion of COPFS.

Currently, it is a challenge to determine when the defence of reasonable chastisement is made out, based on the qualifying factors under section 5(1) of the Criminal Justice (Scotland) Act 2003. Removing the defence of reasonable chastisement provides consistency in the law with children being placed in the same position as adults. Assaults on children will not be capable of being justified.

Changing attitudes

Law is never static; it requires to change in accordance with different societal mores, attitudes and outdated practices. Bringing forward the changes in the Bill will bring Scots law into line with the UN Convention on the Rights of the Child³ which makes it clear that there should be “an end to corporal punishment in all settings including the home.”⁴

Scotland would now join a number of countries who fully protect children from physical punishment.⁵

Driving Behavioural Change in Scotland

Driving meaningful behavioural change requires much more than changing the law. The Stage 1 Report⁶ reflected that running alongside the proposed implementation of the Bill, there needs to be “a

² <http://www.copfs.gov.uk/publications/prosecution-policy-and-guidance>

³ We note the Scottish Government’s intention to incorporate the UNCRC into Scots law, including the recent consultation on how this can be achieved.

⁴ <https://www.unicef.org/what-we-do/un-convention-child-rights/>

⁵ Over fifty countries already do.

⁶ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12122>

comprehensive public education and awareness campaign.⁷ The importance of this campaign cannot be over-emphasised.

If and when the Bill becomes legislation, there needs to be a co-ordinated campaign message sent out to all involved with children from teachers to social workers so that they are aware of the implications of the changes being made to the law. That involves ensuring that they are all aware of their respective responsibilities in seeking to raise awareness and ensuring compliance with the legislation. The legal profession has its role too in providing client organisations with advice on the legislative provisions and how they affect their organisations.

We have highlighted that there may be significant pressures to reach out effectively to certain groups within the community that may face specific cultural challenges, those involved with children that involve with additional support needs and the vulnerable within society. Account is needed to ensure that those who are themselves vulnerable may be supported in undertaking their responsibilities and fulfilling their caring duties in relation to children. Vulnerability may, for instance, include “age” in supporting grandparents who may have been brought up under a different regime when such punishments were the norm or health or poverty where those with medical conditions or suffering from stress may face specific issues in caring for their children.

Sensitivity is required in avoiding any emotive language that may reflect any deeply held and opposing views on this topic heard during the Bill’s debate.

Planning just how the message is conveyed is vital for the success of the Bill.

We would welcome the publication of plans on how that message will to be disseminated. This might include the publication of any supporting prosecutorial guidance from the Lord Advocate which was a focus in the Stage 2 debate.⁸ We recognise that much information regarding prosecution policy is already provided by COPFS. However, raising awareness and promoting these resources more widely should form an important part of a co-ordinated education and information sharing approach adopted by the Scottish Government.

For further information, please contact:

Gillian Mawdsley
Policy Executive
Law Society of Scotland
DD: 01314768206
gillianmawdsley@lawscot.org.uk

⁸ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12201>



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