



Llywodraeth Cymru  
Welsh Government

**Draft Regulatory Impact Assessment for  
Legislative Proposal to  
Remove the Defence of Reasonable Punishment**

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

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## Introduction

This draft Regulatory Impact Assessment has been developed to consider the implications of proposals to achieve the Welsh Government's stated aim of protecting children's rights by removing the defence of reasonable punishment.

On 18 May 2016, the First Minister announced the Welsh Government's intention to introduce legislation to remove the defence of reasonable punishment. This commitment was reaffirmed in "Taking Wales Forward", the Programme for Government published in September 2016.

This draft Regulatory Impact Assessment considers 2 options:

1. "Do nothing". The option of doing nothing would mean that the Welsh Government would not remove the defence of reasonable punishment in law in Wales. Therefore, no legislation would be introduced and the present arrangements would continue.
2. Introduce legislation to remove the defence of reasonable punishment in Wales. In doing so, the Welsh Government would not be proposing to create a new criminal offence, but to remove a defence to the existing offences of assault and battery in law in Wales. The effect of this would be that the physical or corporal punishment of children by parents and those in loco parentis in Wales would be prohibited.

Only 2 options are considered for the purposes of this draft Regulatory Impact Assessment because the removal of the defence of reasonable punishment can only be effected by a change in the law.

Option 2 is the preferred option.

## **Option 1: Do Nothing**

This option would involve leaving the defence of reasonable punishment in place in law in Wales as it currently stands. The costs and benefits analysis of this option are detailed below.

### **Policy Context**

The national strategy “Prosperity for All”, published in September 2017, articulates the Welsh Government’s recognition that the early years (from pre-birth to age 7) of an individual’s life are critical in shaping their future achievement and wellbeing. Confident, positive and resilient parenting is a fundamental factor in this.

The Welsh Government wants to enable parents in Wales to be confident in managing their children’s behaviour without feeling they must resort to physical punishment. There is an already growing change of attitude in the way parents want to raise their children, seeking positive alternatives rather than resorting to physical punishment.

In demonstrating its commitment to supporting families across Wales, the Welsh Government provides a holistic package of services delivered by partners in local government, health, education, social services, social justice and the third sector. Support is delivered at different points in a child’s life (antenatal to teenage) and ranges from support for parents with low levels of need, through to more targeted, intensive support.

Every Local Authority in Wales provides a range of parenting support which encompasses universally available information and advice, parenting groups and targeted and intensive support. Local Authorities have responsibility for deciding the precise nature of local service delivery depending on local circumstances and identified needs within their own areas

For most parents there will be times where they may need information, advice or support to enable them to carry out their role to the best of their abilities.

All families have access to a range of universal services provided by the Family Information Services, GPs, health visitors and midwives. Schools and childcare providers also have a vital role in identifying children who have additional needs and in supporting parents to provide a positive home learning environment.

A key driver for this activity is the Welsh Government’s long standing commitment to children’s rights based on the United Nations Convention on the Rights of the Child (UNCRC). Since the enactment of the Rights of the Children and Young Persons (Wales) Measure 2011, Welsh Ministers must have due regard to the UNCRC when making decisions. This is critical in securing positive outcomes for children and young people in Wales by creating a culture which respects, promotes and upholds children’s rights.

Under option 1, the Welsh Government would continue with its commitment to current investment in the wide ranging support given to parents, carers and families in this Assembly term but nothing more. Key messages about the benefits of positive

parenting would continue to be recommended but the defence of reasonable punishment would remain and therefore the physical punishment of children in Wales would still be lawful. It would not therefore achieve the stated policy aim of protecting children's rights.

## **Costs**

There are no additional costs associated with this option; however, costs are currently incurred by the Welsh Government in its support programmes for parents, carers and families in Wales. In addition, costs are incurred by the Police, Local Authorities, the Crown Prosecution Service and Her Majesty's Courts and Tribunals Service in the investigation and prosecution of parents or carers accused of common assault or battery of their children.

## **Children**

Under this option, children could still be subject to physical punishment in the home. There is evidence from a number of studies, including longitudinal studies, which indicate a relationship between the use of physical punishment and increased childhood aggression and anti-social behaviour<sup>i</sup>. There is also evidence that more frequent physical punishment in one year is significantly related to more frequent child anti-social behaviour in the next year.

Disruptive behaviour disorders, including conduct disorder<sup>1</sup>, affect around 5-10% of children and are the most common reasons for referral to children's mental health services. One study estimated the mean cost of these extra services to children aged 4-8 was £15,282 a year. The cost of supporting children with conduct disorder into adulthood is ten times the cost of provision for children without conduct disorder. Unresolved conduct disorder is strongly associated with poor employment prospects, marriage breakdown and self-harming or antisocial behaviour<sup>ii iii</sup>.

Parenting is the key determinant in child behaviour. Parents who encourage positive behaviour are less likely to have children with behavioural problems. Research indicates that a parenting style, characterised by harsh and inconsistent discipline, is associated with more severe child anti-social behaviour, even after accounting for a range of child and family socio-economic factors<sup>iv</sup>.

The Troubled Families Cost Savings Calculator (CSC) is a tool developed by the UK Government (2014)<sup>v</sup>. It is intended to help Local Authorities who are managing intensive support services for families with multiple problems, to quantify the cost benefits saved by services and agencies from a family at risk undergoing and completing an intensive intervention.

CSC is intended to enable Local Authorities to isolate the money they are spending and saving by separating the different types of savings made – those to the tax

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<sup>1</sup> A conduct disorder is a clinical term and is at the top end of behaviour difficulties after a sustained period of displaying behavioural difficulties.

payer (fiscal savings), savings to the family (economic savings), and savings to the wider community (social savings).

One example of costs provided in the CSC is related to anti-social behaviour. The cost of giving a young person an Anti-Social Behaviour Order (ASBO) is £7805.20<sup>vii</sup> (each time) which includes legal and police costs and Local Authority time. The costs associated with anti-social behaviour which falls short of issuing an ASBO range from £100 - £1,000. These are costs associated with incidents ranging from a call-out together with some remedial action, to significant mediation/remediation. These figures represent only the immediate, short term impact on the taxpayer. The human and social costs are far greater<sup>vi</sup>.

### **Welsh Government**

The current costs involved in supporting families across Wales are detailed below:

<b>Programme / Activity</b>	<b>Cost</b>
The Healthy Child Wales Programme is a professionally led service change programme that provides an all Wales framework for delivery of health visiting and school nursing activity for children from birth to seven years.	The programme itself is cost neutral; however, at 30 September 2016 there were 869.8 full time equivalent Health Visitors employed in the generic service. A further 304.8 full time equivalent <sup>2</sup> Health Visitors were employed in Flying Start areas.
Flying Start is a Welsh Government programme for families with children under 4 years of age who live in disadvantaged communities in Wales. In addition to receiving parenting support, parents and careers in Flying Start areas are entitled to intensive health visiting, good quality part time childcare for 2-3 year olds and support for speech, language and communication.	In 2016/17, the total revenue spend on the Flying Start programme was £74,488,642.
The Families First programme is delivered at a local level with each Local Authority strategically commissioning projects to respond to the needs of local populations. Families First supports parents in a number of ways, from the provision of information and advice to the provision of evidence based parenting interventions. Projects which provide	In 2016/17, the total revenue spend on the Families First programme was £38,315,618.

<sup>2</sup> The number of full-time equivalent Health Visitors is estimated using the actual number of hours worked by Health Visitors and assuming they all work a standard working week of 37.5 hours and have worked each week of the period covered. This method is likely to underestimate the actual numbers of Health Visitors.

access to parenting interventions or parenting support services cover a range of ages, from pre-birth to older children.	
The “Education begins at Home” campaign was launched in May 2014 and aims to encourage parents and carers to take an active interest in their child’s education by doing simple things, like reading with their child and making sure they have a healthy breakfast.	The budget in 2016/17 was £210,000, and in 2017/18 it was £90,000.
<p>The “Parenting. Give it time” campaign was launched in November 2015, and is targeted at all those responsible for raising children from birth to 5 years old. It aims to equip parents with the tools to help them be the best parent they can be, through a website and media campaign providing positive parenting tips and information.</p> <p>Over 80,000 booklets and a suite of information sheets on a range of parenting concerns have been provided to health visitors, parenting professionals and the Family Information Service to distribute to parents. Information has also been made available through childcare settings, GP surgeries and libraries.</p>	<p>In 2015/16, expenditure on the campaign was £170,833 and in 2016/17 it was £258,509.</p> <p>The campaign budget for 2017-18 is £400,000.</p>

### ***Police***

The Welsh Government works closely with the 4 Welsh Police Forces; however, policing remains the responsibility of the UK Government’s Home Office.

The police are familiar with receiving reports of potential incidents of common assault or battery of a child by a parent. When they receive a report, the police seek to speak to the child and the family to ascertain the facts of the case. In most instances, police officers and social workers conduct a joint investigation to build a fuller picture of the family and its situation before taking a decision on how to proceed. Evidence is only passed on to the Crown Prosecution Service (CPS) if the police deem that there is sufficient evidence for a successful prosecution.

If the defence of reasonable punishment remains in place under this option, there would be no additional costs for the police. There would be no change to current operating practices or the process by which investigations are conducted or decisions made about what action should be taken.

### ***Local Authorities***

The Social Services and Well-being (Wales) Act 2014 introduced a strengthened, robust and effective partnership approach to safeguarding. Safeguarding children is

particularly relevant to those working in education, health and social care. Currently, if a child reports to a teacher that their parent has smacked them, or they witness a child being smacked, the teacher is already under a legal duty to report the incident in line with agreed practice. It would then be for Social Services or the Police, depending on the nature of the incident, to investigate and determine what action, if any, to take. It may be that additional support is needed by the parents and that they are offered support through preventative services such as Families First.

There are no additional costs for Local Authorities under option 1 because there would be no change to the current operation of safeguarding or investigating practices. We are working with colleagues in the Welsh Government's social services department and with the Association of Directors of Social Services in order to identify resources required for current practices and numbers of incidents of corporal punishment which may require investigation.

### ***Crown Prosecution Service***

Currently when deciding whether to prosecute, the Crown Prosecution Service (CPS) refers to the "Code for Crown Prosecutors" and legal guidance known as the Charging Standard. The "Code for Crown Prosecutors" sets out the general principles which are considered when deciding whether to prosecute and includes application of the evidential and public interest test stages. The Charging Standard outlines the defence of reasonable punishment and states that:

"Section 58 of the Children Act 2004 has removed the availability of the reasonable chastisement defence for parents or adults acting in loco parentis where the accused is charged with wounding, causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to persons less than 16 years of age. However the reasonable chastisement defence remains available for parents or adults acting in loco parentis against charges of common assault"<sup>vii</sup>.

The UK Government reviewed Section 58 of the Children Act 2004 in 2007. It showed that the defence had been used in 12 cases in England and Wales between January 2005 and February 2007, all resulting in either acquittal or discontinuance. Of these 12, there were:

- 4 where it was explicitly used as a defence to a charge of common assault;
- 4 where the defendant had been charged with common assault, did not explicitly use the defence but where it may have been a factor in acquittal or discontinuance; and,
- 4 where reasonable punishment was put forward by the defence despite the fact that it did not constitute a legal defence to the charge of child cruelty.

The Crown Prosecution Service no longer collects data on the usage of the defence of reasonable punishment during trials for common assault and, therefore, estimating costs associated with it is not possible.



## ***Her Majesty's Courts and Tribunals Service***

Her Majesty's Courts and Tribunals Service is an executive agency of the Ministry of Justice. In order to assess the impact of the use of the defence of reasonable punishment and attribute costs to the current system, we are working with the Ministry of Justice.

### *Legal Aid*

In some instances, Legal Aid may be able to assist with meeting the costs of legal advice or representation in court; however, the defendant would need to meet strict criteria, specified in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and related regulations, in order to qualify and the availability of Legal Aid has in recent years been severely restricted. We are currently working with the Ministry of Justice to identify the potential financial impacts.

### *Appeals*

It may be possible for defendants to appeal against a court decision if they have lost their case. Appeals against a magistrates' court decision in criminal cases are heard by the Crown Court.

### *Civil Claims*

The defence of reasonable punishment exists in both criminal and civil law. Currently in civil law, individuals are able to bring forward all types of claims for financial compensation before the civil courts, including for harmful incidents that occurred during childhood. There are different ways to claim compensation, for example through civil court proceedings, by seeking a criminal compensation order if the perpetrator has already been convicted, and, by making a claim to the Criminal Injuries Compensation Authority. The amount of compensation will be determined by what the offender can afford to pay (up to a set maximum). If a criminal compensation order is made, the court will be responsible for ensuring the offender pays.

It is not possible to claim Legal Aid for Criminal Injuries Compensation Authority claims and for claims of tort (battery).

### ***Parents and those in loco parentis***

In determining sentencing for a crime of common assault against a child, the Sentencing Council has produced an additional definitive guideline containing "Overarching Principles: Assaults on Children and Cruelty to a Child"<sup>viii</sup>. This guideline outlines relevant principles for sentencing where an assault occurred on a child under 16 years of age. It states that "the defence of lawful chastisement is available only in relation to a charge of common assault. Where that defence is not available, or, in relation to a charge of common assault, such a defence has failed, sentence for the offence would normally be approached in the same way as any other assault".

If a parent or carer has used the defence during court proceedings but it has failed and he/she is found guilty of common assault, the magistrates or judge will pass sentence in accordance with the sentencing guidelines. The Sentencing Council provides guidance on determining which category of offence has been committed.

**Offence Categorisation:**

<b>Category 1</b>	Greater harm (injury or fear of injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (injury or fear of injury must normally be present) <b>and</b> lower culpability; <b>or</b> lesser harm and higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

Once the court has agreed on the category of offence, it must then decide on a sentence using the starting points and category ranges provided by the Sentencing Council:

<b>Offence Category</b>	<b>Starting Point</b>	<b>Category Range</b>
<b>Category 1</b>	High level community order	Low level community order – 26 weeks' custody
<b>Category 2</b>	Medium level community order	Band A fine – High level community order
<b>Category 3</b>	Band A fine	Discharge – Band C fine

The 3 categories of fine are:

<b>Fine Band</b>	<b>Starting Point</b>	<b>Category Range</b>
<b>Band A</b>	50% of relevant weekly income	25% - 75% of relevant weekly income
<b>Band B</b>	100% of relevant weekly income	75% - 125% of relevant weekly income
<b>Band C</b>	150% of relevant weekly income	125% - 175% of relevant weekly income

The median full-time gross weekly earnings in Wales in 2017 were £500<sup>ix</sup> per person. Using this figure, the potential penalties for common assault are:

<b>Fine Band</b>	<b>Starting Point</b>	<b>Category Range</b>
<b>Band A</b>	£250	£125-£375
<b>Band B</b>	£500	£375-£625
<b>Band C</b>	£750	£625-£875

The maximum penalty for serious common assault is 26 weeks in custody<sup>x</sup>. While the Welsh Government would not anticipate that an incident of corporal punishment would result in a parent or carer serving a prison sentence, we have, for the purposes of this document considered associated cost implications. Her Majesty's Prison Service is an executive agency of the Ministry of Justice and is responsible for managing prison and probation services. The average cost of holding one person in prison for a year, in 2016-17, was £35,371<sup>xi</sup>.

The Youth Justice system in England and Wales treats young offenders, under the age of 18, differently to adults. Therefore parents under the age of 18 convicted of common assault would be sentenced under different guidance. The Sentencing Council has produced a definitive guideline "Sentencing Children and Young People" which states that the approach to sentencing a young offender should be tailored to the individual and focused on that child or young person, as opposed to on the offence<sup>xii</sup>. For this reason, there are no prescribed penalties for the offence of common assault and judges and magistrates are likely to include restorative approaches within sentencing options to encourage the young offender to take responsibility for their actions and understand the impact the offence may have had on others.

## **Benefits**

A potential benefit of the doing nothing option would be an initial cost saving because option 2 will incur costs on public services, the justice system and on individual parents who can no longer call upon the defence during court proceedings.

## **Dis-benefits**

There are a number of dis-benefits associated with option 1. If the defence of reasonable punishment remains, the anomaly in the law whereby children have less protection with regard to physical punishment than adults also remains. It would therefore fail to meet our stated policy aim of protecting children's rights. This is incompatible with the United Nations Convention on Rights of the Child and will leave Wales, as part of the UK, open to continued criticism from the United Nations Committee on the Rights of the Child for not fulfilling its obligations under Article 19. This Article states that countries should take "all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence...while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

Furthermore, as outlined in the consultation document, there is evidence that the physical punishment of children can have long term negative impacts on a child's life chances and that it is an ineffective punishment. A number of studies have indicated a relationship between the use of physical punishment and increased childhood aggression and anti-social behaviour<sup>xiii</sup>.

There is also evidence that children who are smacked frequently are more likely to be reported as having difficult behaviours, including being over-active, and defiant.

These findings concur with models<sup>xiv</sup> suggesting parents' use of physical discipline promotes children's anti-social behaviour, more often than child anti-social behaviour elicits harsh parenting<sup>xv</sup>.

As outlined above, the cost of giving a young person an Anti-Social Behaviour Order (ASBO) is £7805.20 (each time) which includes legal and police costs and Local Authority time. The costs associated with anti-social behaviour which falls short of issuing an ASBO range from £100 - £1,000. Under option 1, these costs to the taxpayer would remain, as would the human and social costs<sup>xvi</sup>.

Colleagues in social services have highlighted existing concerns that front line professionals are unable to provide unequivocal advice to parents about corporal punishment because of the existence of the defence. Removing the defence would ensure that clear advice could then be given to parents about the discipline of their children and use of positive parenting techniques.

## **Option 2 – Introduce an Assembly Bill to remove the defence of reasonable punishment**

This option considers the costs and benefits which would arise from an Assembly Bill whose provisions removed the defence of reasonable punishment in Wales. The effect of this would be that the corporal or physical punishment of a child by a parent or carer in any circumstance in Wales would be prohibited by law.

The proposed legislation is not about creating a new offence. The defence as it currently exists relates to physical punishment, not everyday interactions between a parent or carer and a child. Therefore the Welsh Government does not believe that removing the defence will have any impact on normal parenting interactions.

As outlined in option 1, the Welsh Government invests significantly in a wide ranging package of support for families across Wales. An integral part of both the Flying Start and Families First programmes is to encourage parents to adopt positive parenting styles, giving them confidence to manage their children's behaviour without resorting to physical punishment. In addition, the Welsh Government's "Parenting. Give it time" campaign provides information about positive parenting and booklets and information sheets have been provided to parents via health visitors and other parenting professionals.

Recent surveys of the Welsh public indicate that parents often dislike the idea of using physical punishment and are choosing to use more positive parenting techniques<sup>xvii</sup>. In 2015, only 5% of current parents in Wales were comfortable with the idea of smacking and did it when they thought it necessary<sup>xviii</sup>. The Welsh Government's intention in removing the defence of reasonable punishment is to further facilitate the already changing attitude towards physical punishment in our modern and progressive society.

While evidence shows that physical punishment is not effective and is potentially harmful, it is still legal. Furthermore, removing the defence would protect the rights of children and ensure that the Welsh Government meets its obligations under the

United Nations Convention of the Rights of the Child by bringing an end to all forms of corporal or physical punishment.

53 countries have ended corporal punishment in all settings, including in the home; however, only 4 of those countries have a common law jurisdiction, as we do in England and Wales, and only 3 of those have ended corporal punishment using the criminal law. It is not possible to draw direct comparisons with other countries but New Zealand, which has a common law system like us and is a commonwealth country, is the most similar.

Following the enactment of the Crimes (substituted section 59) Amendment Act 2007, which prohibited corporal punishment, the New Zealand Police were obliged to monitor the number of reports they received of potential incidents and the outcomes for each of those reports. In November 2009 a Government report<sup>xix</sup> stated Police data showed that, although there had been a rise in the reporting of violence generally, parents had not been prosecuted for “light smacking.” It reported that “[t]he data does not disclose any changes, during the two years the [Amendment] Act has been in force, in the way the New Zealand Police or Child, Youth and Family have responded to reports of light smacking.”

Police also believed that the new law “has had a minimal impact on their business” and there had been no change in the reporting of smacking since it was enacted. This was supported by a further review<sup>xx</sup> that year which found one of the consistent messages from police officers and social workers was that the change in the law did not alter the way they thought about or responded to reports of concerns about child safety and wellbeing.

The review noted in the year ending 30 June 2009, Child, Youth and Family received 110,797 notifications: 49,224 were assessed as requiring further action; and 2,855 cases of physical abuse were substantiated. However, whilst notifications to Child, Youth and Family had been increasing since before the Section 59 Amendment Act took effect (27,507 were received in 2001/02, compared to over 110,000 in 2008/09), the number of notifications that required a further response had not increased to the same extent.

## **Costs**

### ***Welsh Government***

Under option 2, the costs to the Welsh Government outlined in option 1 relating to parenting support would continue and there would also be additional costs.

Experience from other countries tells us that eradicating corporal punishment requires more than just raising public awareness. There is evidence that law reform prohibiting physical punishment, accompanied by public education does lead to a decline in physical punishment and a change in attitudes. Where campaigns have been less intensive, there is a similar trend, but on a lower level<sup>xxi</sup>.

The Welsh Government recognises that a change in law must be accompanied by a large-scale and sustained awareness campaign in Wales. Lessons about how best to do this can be learned from campaigns which have accompanied legislation both in Wales and elsewhere:

- In New Zealand, for example, the SKIP ('Strategies with Kids, Information for Parents'), government funded programme promotes positive parenting through community projects, through a number of media channels and through a website. Qualitative evaluation of the SKIP programme<sup>xxii</sup> found that the campaign had resulted in a strong awareness of the positive discipline message and parents reporting significantly higher levels of parenting efficacy and confidence.
- The second hand smoking in cars campaign ran for a total of 2 years and 1 month, from 2012-2015, at a cost of £1.75 million. This included advertising on TV, radio, in the printed media, through a variety of roadshows and events and a website. Messages were also disseminated amongst existing networks including the Flying Start and Families First Co-ordinators and by the Family Information Service.
- The campaign around the change in law for organ donation in Wales is being conducted on a larger scale over the course of a 10 year period and at a total cost of £3,986,000. Communications activity began in 2012 with the vast majority of spend occurring during the period between Royal Assent of the Human Transplantation (Wales) Act in 2013 and its coming into force in 2015. The public awareness campaign was comprehensive and messages were cascaded across a wide variety of media channels and through supporting documentation delivered to every household in Wales.

The table below represents options for a lower impact and higher impact advertising campaign which could be used to support legislation to remove the defence of reasonable punishment.

	<b>Description</b>	<b>Estimated Cost</b>
Option A	A lower impact campaign including some TV and Radio advertising, outdoor advertising but mainly cascading messages through social media and some supporting literature	£200,000 per year approx.
Option B	A high impact campaign including TV and Radio advertising, outdoor advertising, a high social media presence and publication of supporting literature	£600,000 per year approx.

While it would be expected that campaign activity would be run by an external communications agency, it would be necessary for staff within the Welsh Government to manage and coordinate activity. For the purposes of this option we

estimate that 1 full time Higher Executive Officer (HEO) post and 1 part time Senior Executive Officer (SEO).

The gross cost of one full time HEO per year is £43,200 and the gross cost of one full time SEO per year is £55,248, based on the mid-point of the pay scale. Therefore, the annual gross staffing cost to the Welsh Government would be £70,824. It is anticipated that this resource would be required for 3 -5 years following the change in law and that, after this time, the roles would be subsumed into business as usual activities within existing teams.

### ***Front line public services (Police, Social Services) and the criminal justice system (Crown Prosecution Service, HM Courts and Tribunals Service)***

The process by which the Police and Social Services investigate potential incidents of common assault by parents against children is outlined in option 1. There is no intention that current practices would change following the prohibition of physical punishment of children under option 2. There may, however, be some small transitional costs relating to the updating of guidance or training to ensure that front line professionals are aware of the change in law, although it is expected that this could largely be accommodated within existing resources. There is no intention that the threshold for the Crown Prosecution Service to pursue a conviction, as outlined in the “Code for Crown Prosecutors”, should be amended.

The Welsh Government recognises that there may be additional costs to the Police forces in Wales and to Local Authorities under this option if the amount of reporting of potential incidents of common assault increases following a change of law. We are working with these organisations to assess potential cost implications.

We are also working with the Ministry of Justice to assess potential impacts of the legislation on the justice system.

## **Benefits**

A number of benefits relating to this option have been identified.

If the use of corporal punishment is prohibited in Wales, we will ensure that the rights of children are protected under the law and we will have fulfilled our obligations to the United Nations Convention on the Rights of the Child. Furthermore, removing the defence of reasonable punishment will also remove the anomaly in the law whereby children are not protected from the crime of common assault in the same way as adults are.

Option 2 would also remove a loophole which exists for certain sorts of settings which are not covered by the earlier changes to the law about corporal punishment in educational settings. Whilst corporal punishment has long been banned in schools, there remains a legal loophole that allows adults acting in loco parentis in what are termed ‘non-educational settings’ (such as Sunday schools or Madrassas)

to use the defence of reasonable punishment. This legislative proposal would remove this loophole.

Another key benefit of this option is securing the wellbeing of children and their families by supporting and promoting more effective positive parenting methods. There is no evidence that smacking is associated with improved behaviour in children<sup>xxiii</sup> and there is a sufficient body of evidence that indicates positive styles of parenting are key to successful outcomes for children<sup>xxiv</sup>.

Research suggests that positive, authoritative parenting is beneficial at all points in a child's development<sup>xxv xxvi xxvii xxviii xxix xxx xxxi</sup>. It is recognised that children need, for their healthy development, to be given guidance and direction by their parents, in line with their age and stage of development. Parents caring for children, especially when young, need frequent physical handling and interventions to protect them from harm. There are many alternatives parents may use to discipline a child, which do not require the use of physical punishment, and these would be promoted alongside messages that the law had changed.

Whilst the vast majority of incidents of a parent smacking a child will not present a safeguarding issue, a change in law could potentially mean that wider safeguarding issues are highlighted and families who require additional support would be identified early.

## **Disbenefits**

Under this option, any parent who physically punishes a child in Wales would no longer be able to rely on the defence of reasonable punishment and a successful criminal prosecution for common assault could potentially be brought against them. In this instance, removal of the defence of reasonable punishment would be a dis-benefit to a parent or carer.

## **Post-Implementation Review**

As outlined in the consultation document, a key aim of the legislation is to accelerate the behaviour change in the way parents and carers discipline their children. We will continue to undertake our regular parental attitudes survey to gauge the impact of the legislation in terms of this key aim. We will also work with front line professionals to determine other mechanisms for assessing the impact of the legislation.



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