

Equal Protection from Assault: Evidence from the EIS

13 March 2019

About the EIS

The Educational Institute of Scotland (EIS) welcomes the opportunity to comment on the proposed Children (Equal Protection from Assault) (Scotland) Bill. We are commenting from the perspective of teachers working in all sectors and at all levels of Scottish education. Over 80% of teachers in Scotland are members of the EIS, including teachers in nursery, primary secondary, FE & HE. Our members include teachers, Headteachers and Depute Heads, Educational Psychologists, and ASN Teachers.

Summary of our position

In brief, the EIS supports the proposed Bill and has no concerns about potential impacts on teachers. On the contrary, we would be concerned if physical punishment of children continued, as we believe that children being physically punished at home has a negative impact on their wellbeing and on their behaviour in school; and is contrary to a children's rights approach to public policy, for which we consistently advocate.

Policy context

Scotland has children's rights and wellbeing firmly embedded in its legislative and policy approaches to children's lives. Multiple actors across the public sector are striving to 'Get it Right for Every Child', and GIRFEC is underpinned by the SHANARRI wellbeing indicators, which recognise that wellbeing is central to children's learning and achievement. We believe that this policy architecture is sound in principle; and that happy children, who feel respected and safe, are better able to learn than children who feel unsafe or unhappy. We believe that physical punishment of children is inimical to the GIRFEC agenda.

Relationships are essential to education; and positive relationships promote positive behaviour. We would agree with Finnish educationalist Pasi Sahlberg (a member of the Scottish Government's International Council of Education Advisors) who says, "human relationships and children's emotions...drive learning in schools."¹ We believe that physical punishment of children leads to an erosion of trust in adults who have a role in promoting and safeguarding the wellbeing of children and young people, and can therefore have negative impacts on pupils' learning in school and on their behaviour.

One of the four key capacities of the Curriculum for Excellence relates to young people developing confidence; the evidence is clear that experiencing physical punishment undermines children's wellbeing and as such it is likely to have a detrimental impact on their confidence

¹ <https://pasisahlberg.com/big-data-or-small-data-whats-the-key-to-unlocking-learning-opportunities/>

Further reasons for our view

We support the proposed Bill for reasons primarily relating to equality and rights, but also wish to make remarks relating to indiscipline in schools and our opposition to using physical punishment in response; on the likely effects of a change in the law; and on the mandate for change.

Equality and rights

- We take a children's rights approach to our work, and the proposed Bill is firmly rooted in children's rights.
- We support all efforts to prevent age discrimination, age being a protected characteristic under the Equality Act 2010; we find it unacceptable that children are not protected from assault in the same ways as adults are in Scotland, due to the continuing 'justifiable assault' provisions in law.
- We believe that physical punishment of children runs contrary to universal human rights. Article 3 of the European Convention on Human Rights prohibits inhumane, degrading treatment or punishment and that is an absolute – there are no exceptions.
- We believe that the physical punishment of children, too often referred to as 'smacking', is seriously harmful behaviour that needs to be prevented by a combination of legislative and non-legislative means.
- We would argue that even the paradigm of 'smacking' and the language associated minimises this behaviour. We have supported similar efforts e.g. to prevent and challenge the abuse of women and girls and not allow it to be trivialised or minimised, for example with language like 'a domestic', so our stance on abuse of children is consistent with that belief.

Indiscipline in schools and our opposition to using physical punishment

- As early as 1968, the EIS was advocating the removal of corporal punishment from schools. In the mid 2000's the EIS produced a major report looking at the issue of school indiscipline and how it can be tackled, and not once throughout the writing of the report was a return to corporal punishment even discussed or considered. The EIS view for many years has been that the use of corporal punishment is not a realistic or desirable solution to the issue of classroom indiscipline; nor is it desirable at home.
- We believe that using violence to seek to modify a person's behaviour is never acceptable; teachers employ a wide range of strategies to encourage, promote and reward good behaviour and de-escalate challenging or distressed behaviour.
- We believe the causes of indiscipline in schools and solutions to that (significant) problem are various and complex, and that simplistic notions

that using more physical punishment would reduce indiscipline are entirely wrong.

- We note that the evidence is clear that physical punishment damages children's wellbeing and carries the risk of escalation into physical abuse; for example, "*Equally Protected? A review of the evidence on the physical punishment of children*"², a systematic review of the research literature on the physical punishment of children published in the last ten years, found strong and consistent evidence from 98 pieces of international research that physical punishment:
 - damages children's wellbeing
 - carries the risk of escalation into physical abuse
 - increases aggression, antisocial behaviour, depression and anxiety in children, which may continue into their adult lives.

Effects of legal change

- We note that the research cited above highlights that there is no evidence that a change to the law regarding physical punishment results in increased criminal proceedings, but rather that it facilitates widespread culture change which we think would be valuable.
- We believe that tolerating the physical punishment of children undermines attempts to tackle bullying in schools, because it tells children that violence is sometimes acceptable; the national anti-bullying framework (The National Approach to Anti-Bullying for Scotland's Children and Young People) is clear that bullying is "behaviour that can make people feel hurt, threatened, frightened"; physical punishment can have all of those effects. The proposed law would therefore, we believe, be helpful to efforts to eradicate bullying.
- We believe that tolerating the physical punishment of children undermines attempts to tackle domestic and sexual abuse across our society, because it tells children that violence is sometimes acceptable, depending on who/how old the perpetrator is and what the power balance is between them and the person being hit. The proposed law would therefore, we believe, be helpful to efforts to eradicate domestic and sexual abuse.
- We believe that the new Equal Protection legislation would provide legal clarity and consistency. Presently parents may claim 'reasonable chastisement' or 'justifiable assault' in the context of disciplining their children, but the law specifically prohibits certain acts of physical punishment (being struck with an implement, being struck on the head, and being violently shaken). A clear law that says no physical punishment of children is permissible will aid understanding and certainty.

² www.nspcc.org.uk/equallyprotected

Mandate for change

- Finally, we note that 75% of consultation respondents supported this change so there is clearly an overwhelming majority in support of and a clear mandate for this new law.

Conclusion

The EIS would like to see a step change in how we deal with this issue, so that children are equally protected in law from assault.

We would welcome the passing of the Children (Equal Protection from Assault) (Scotland) Bill and ending the 'justifiable assault' of children in Scotland.

More information

For information about any aspect of this response please contact Jenny Kemp, National Officer (Education and Equality), 0131 2256 6244/ jkemp@eis.org.uk