

Section 58 of Children Act 2004 Review (Consultation)

Consultation Response Form

The closing date for this consultation is: **10 August 2007**

Your comments must reach us by that date.

department for

education and skills

creating opportunity, releasing potential, achieving excellence

THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online or offline response facility available on the Department for Education and Skills e-consultation website (<http://www.dfes.gov.uk/consultations>).

The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by the Department. This does not necessarily mean that your response can be made available to the public as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. You may request confidentiality by ticking the box provided, but you should note that neither this, nor an automatically-generated e-mail confidentiality statement, will necessarily exclude the public right of access.

Please tick if you want us to keep your response confidential.

Name	Rachel Matthews (Co-ordinator)
Organisation (if applicable)	'Sdim Curo Plant! / Children Are Unbeatable Alliance (Cymru)
Address:	'Sdim Curo Plant / Children Are Unbeatable! c/o Children in Wales 25 Windsor Place Cardiff CF10 3BZ

If your enquiry is related to the policy content of the consultation you can contact the Section 58 team on:

Telephone: 0207 273 5673

e-mail: section58.consultation@dfes.gsi.gov.uk

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 01928 794888

Fax: 01928 794113

e-mail: consultation.unit@dfes.gsi.gov.uk

Please insert an 'x' into one of the following boxes which best describes you as a respondent.

<input type="checkbox"/> Parent	<input type="checkbox"/> Teacher	<input type="checkbox"/> School
<input type="checkbox"/> Local Authority	<input type="checkbox"/> Charity/Voluntary organisations	<input type="checkbox"/> Social Worker
<input type="checkbox"/> Police/Legal Professional	<input type="checkbox"/> Local Safeguarding Children's Board	<input type="checkbox"/> Medical/Healthcare Professional
<input checked="" type="checkbox"/> Other (please specify)		

<p>Please Specify:</p> <p>Campaigning Alliance of organisations</p>

1 To what extent has section 58 improved legal protection for children in cases of alleged assault by their parents?

Please explain your answer in detail and provide evidence for your view

- Children have not received improved protection as a result of Section 58. Section 58 could not improve protection, even with more guidance to all those involved.
- Parents and others can continue to justify common assault on children as “reasonable punishment” because of Section 58. This means children have less legal protection from assault than any other population group.
- Technically, section 58 removes the (previous) defence of “reasonable chastisement” in relation to charges of wounding, actual and grievous bodily harm and cruelty – but there is no evidence that courts have accepted use of that defence in relation to those charges for some years. So section 58 represents no improvement, even in a technical sense.
- Section 58 plainly undermines protection of children in the broader sense: it is not useful to separate out “legal” protection from overall protection. The law needs to set the standard and provide the foundation for other measures.
- Section 58 dangerously encourages parents who want to use physical punishment to use forms of it, which, although extremely dangerous to the child, do not leave marks – such as shaking or hitting the head.
- Section 58 appears to widen use of the “reasonable punishment” defence to anyone not specifically prohibited from using physical punishment, not just parents and other close carers.
- “Legal protection” includes protection under international human rights law: the UK’s human rights obligations demand complete removal of the “reasonable punishment” defence: children’s equal right to protection from all forms of violence is confirmed in the Convention on the Rights of the Child and other international and European instruments which the UK is signed up to respecting.
- The only just, safe and common sense legal solution is complete removal of the defence to fulfil children’s right to equal protection.

Information and Evidence

1. Human Rights Obligations

It is obvious to CAU!/SCP! That Section 58 contravenes

- The UN Convention on the Rights of the Child
- The European Convention on Human Rights
- The European Social Charter
- The ruling of the European Court of Human rights in the case of “A vs. UK (1998)

Despite protestations by the UK government, and the dubious opinion of Lord Lester, the bodies monitoring compliance with the treaties and rulings listed

above have been repeatedly unequivocal in their call for the UK, and other states, to prohibit all corporal punishment, which the UK fails to do with Section 58.

1995: UN Committee on the Rights of the Child, after examining the UK's first report under the UN Convention on the Rights of the Child, expresses concern at the existence of the "reasonable chastisement" defence and the level of violence against children in the UK; recommends **prohibition of all corporal punishment in the family**.

1998: European Court of Human Rights finds that the beating of a young English boy by his stepfather breaches the boy's right to protection from degrading punishment and that the UK Government is responsible because current law - the defence of "reasonable chastisement"- fails to provide "adequate protection" including "effective deterrence". Court orders the UK to pay the boy £10,000 damages and his legal costs.

2001: European Committee of Social Rights, responsible for monitoring compliance with the European Social Charter, tells Council of Europe member-states, including UK, that the Charter requires **prohibition of all corporal punishment**.

2001: European Committee of Social Rights decides to defer its conclusion on the latest report from UK until it receives more information on the legality of corporal punishment. The Committee notes that "not all forms of corporal punishment are prohibited within the family".

2002: UN Committee on Economic, Social and Cultural Rights recommends UK should **prohibit corporal punishment** in the family "given the principle of the dignity of the individual that provides the foundation for international human rights law".

2002: UN Committee on the Rights of the Child, after examining the UK's second report under the UN Convention on the Rights of the Child, "deeply regrets that the UK persists in retaining the defence of 'reasonable chastisement' and has taken no significant action towards prohibiting all corporal punishment of children in the family". Recommends UK "with urgency adopt legislation throughout the State party to remove the 'reasonable chastisement' defence and **prohibit all corporal punishment** in the family and in any contexts not covered by existing legislation".

2004: Parliamentary Assembly of the Council of Europe adopts a recommendation stating that: "The Assembly considers that any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended". The Assembly proposes "a co-ordinated and concerted campaign in all the member states for the **total abolition of corporal punishment** of children. The Assembly notes the success of the Council of Europe in abolishing the death penalty and the

Assembly now calls on it to make Europe, as soon as possible, a corporal punishment-free zone for children."

2 June 2006, the UN Committee on the Rights of the Child issued a "General Comment" on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment". The authoritative Committee "emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation" for states which have ratified the Convention on the Rights of the Child.

The Committee explained that hitting children "directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence".

October 2006 The report of the United Nations Secretary-General's Study on Violence against Children called on all countries to prohibit all corporal punishment in the family, at school and everywhere else by 2009.

Submitted to the UN General Assembly, the report prepared by Professor Paulo Pinheiro who headed up the four-year study notes: "In every region, in contradiction to human rights obligations and children's developmental needs, violence against children is socially approved, and is frequently legal and State-authorized."

The report continues: "The Study should mark a turning point - an end to adult justification of violence against children, whether accepted as 'tradition' or disguised as 'discipline'. There can be no compromise in challenging violence against children. Children's uniqueness - their potential and vulnerability, their dependence on adults - makes it imperative that they have more, not less, protection from violence..."

"...The core message of the Study is that no violence against children is justifiable; all violence against children is preventable. There should be no more excuses. Member States must act now with urgency to fulfil their human rights obligations and other commitments to ensure protection from all forms of violence."

2. Legal Evidence

- There are few, if any cases, immediately before 2004/5 in which parents or others who had significantly injured children successfully used the defence of "reasonable chastisement". There is therefore no evidence on this score. It has not been possible to document cases post 2005, because statistics are not collected in such a way as to determine the age of victims.
- Changing the law is about giving children their full human rights, and creating a culture where it is understood that violence towards anybody – child or adult – is not acceptable.

In conclusion, it remains extremely difficult in Wales to deter parents from using physical punishment while doing so remains legal.

2 To what extent have the changes brought about by section 58 altered the practice of those working with children and families in considering incidents involving an alleged assault by a parent upon a child? Please explain your answer in detail and provide evidence for your view.

- The content and context of section 58 cannot alter practice positively.
- Those working with families did not tell parents before 2004 that it was OK for them to injure their children. They still cannot tell them that it is unlawful to hit and hurt children as a form of punishment.
- Section 58 undermines child protection and the promotion of positive discipline, because it re-affirms parents' "right" to assault their children; this inevitably makes it more difficult to clearly deter and prevent assaults on children.
- The law is confused and confusing, for parents and all others – but because it is unjust and unsafe, explaining it more through guidance and public education could only make things worse.
- The only solution is complete removal of the defence to fulfil children's right to equal protection.

Information and Evidence

1. Confusion over Definitions

There remains a good deal of confusion about the definitions of "Reasonable punishment" and "reasonable chastisement". As the following examples show, there is confusion in the media, including the specialist media, where the topic has been researched.

The following are quotations from reputable media sources:

- Under The Children Act 2004, physical punishment, other than 'reasonable chastisement' is against the law,
(The smacking debate, " I smack and I'm proud of it")
<http://www.itv.com/page.asp?partid=6465>
- Restrictions were toughened in 2004 to stop parents and carers who assaulted children from using "reasonable punishment" as a defence.
(BBC news Article <http://news.bbc.co.uk/1/hi/education/6757041.stm>)
- Under the Children Act 2004, parents are allowed to "reasonably chastise" their children. This means a child can be smacked as long as it does not leave a mark or cause lasting physical damage.
(“Children now” article, May 9th 2007)
<http://www.childrennow.co.uk/news/index.cfm?fuseaction=details&UID=7101e0b6-b52f-4e81-9b7b-11683e88e5e4>

This shows that specialists in the media do not note, understand, or make distinction between “reasonable chastisement” and “reasonable punishment”.

If this is the case, how can the public be expected to understand the distinction – or indeed, either of the concepts?

In the current situation, public education would have to highlight what a parent **is** permitted to do, that is, they are permitted to smack a child. This would be offensive, and would only serve to reinforce the belief that it is acceptable and appropriate to hit children. It is a ridiculous situation.

2. Policy and Practice

CAU!/SCP! are not aware of any significant changes to the policy or practice of organisations as a result of Section 58. We have a wide range of membership (Appendix 1), and enquiries amongst our members have not found any who have changed as a result of Section 58.

We believe that policy and practice would change if the law were changed to give children equal protection. Organisations in Wales who now promote positive non-violent parenting and are against smacking would be able to reinforce these straightforward messages with staff and service users.

As far as we are aware, practitioners and organisations here in Wales take incidents involving an alleged assault by a parent upon a child seriously, and would treat them according to agency child protection guidelines. However, those guidelines require staff to exercise discretion as to what constitutes “significant harm”. In a context where the law permits assault upon children, it is very difficult for practitioners to judge what constitutes a “legal” and an “illegal” assault.

3. Public/practitioner Responses to assaults upon children

CAU!/SCP! also has a body of anecdotal evidence which suggests that members of the public who witness assaults upon children by their parents are less likely to take action than when they witness assaults by one adult upon another. See Appendix 2.

There is little evidence here to suggest that people take assaults on children more seriously than they did prior to 2005.

4. Protection in the Supermarket

One of the most common discussion points in the smacking debate is “what do you do if you see a child being smacked in a supermarket”. This was highlighted by the recent NSPCC survey about working with retailers to create smack free shopping. (NSPCC April 10th 2007).

http://www.nspcc.org.uk/whatwedo/mediacentre/pressreleases/2007_10_april_nspcc_looks_to_work_with_retailers_to_create_smackfree_shopping_wdn44261.html

The survey found that “86% of adults would be happy to shop in a smack-free shop”, with 40% actively preferring it. The survey also indicated that “77% of adults believe smacking is becoming less acceptable”

The survey caused a great deal of media debate, most of which missed the point, that retailers could do more to support parents and children who are shopping.

Some major retailers have introduced a range of child-friendly measures in recent years, but there is no doubt they could do more. If there was a complete ban on smacking, there is no doubt that the staff in shops and other public places would have to be more proactive about preventative measures. Staff would be more willing to support parents, and would feel more confident to challenge smacking when it does occur.

There may be concerns about this, but the UK has learnt over the years to challenge people about smoking, about drink driving, about seat belts, about child car seats, about use of mobile phones when driving, or in “Quiet Areas” on the train.

People would feel increasingly able to challenge, or take other appropriate action, about adults who smack children, if it was clearly illegal.

Retailers and other employing organisations would have to take the issues seriously, train staff, and would become more creative with preventative measures so that they don't have to employ the challenging ones.

3 To what extent have the changes to the law deterred parents from using unacceptable levels of physical punishment in the upbringing of children?

Please explain your answer in detail and provide evidence for your view.

- CAU!/SCP! believe that Section 58 cannot deter because the major message of the change, including media coverage of it, has been to reaffirm parents' “right” to hit their children.
- The question, like section 58, suggests there are “acceptable” levels of punishment, which contradicts the Westminster Government's statement that it does not “condone” physical punishment by parents.
- It also contradicts the Westminster Government's stated position on domestic violence.

“The Government does not consider “domestic violence” to be justifiable. Clearly, the sort of action that would be recognised as domestic violence is illegal without qualification, and should be dealt with before the courts, regardless of the age or gender of the victim. There is nothing in English law or prosecution practice that prevents this.” (Letter from Wendy Saunders, Public Communications Unit, DfES, March 29th 2007 to individual CAU! supporter)

This is clearly not the case.

“Domestic violence is any incident of threatening behaviour, violence or abuse between adults who are or have been in a relationship together, or between family members, regardless of gender or sexuality” (Home office web site)
<http://www.homeoffice.gov.uk/crime-victims/reducing-crime/domestic-violence/>)

- The Government has not commissioned accurate prevalence studies involving detailed interviews with parents and children since 1995, so there are no figures to compare before and after ‘incidence’ rates.

Information and Evidence

1. Parents who use Physical Punishment

We have no studies of prevalence in the UK, but the research we do have indicated that many parents smack their children. There is no reliable recent study, but studies show that the majority of children (91%) experience some form of physical punishment in the home. (Smith 1995, “Community Study of Physical Violence to Children in the Home and Associated Variables”. Department of Health)

CAU!SCP! believe that the current law, and the thinking behind it, does not deter those parents who smack from smacking.

“.....ordinary law-abiding families should be able to have a sensible framework of discipline without unnecessary interference from outsiders. Respect for private family life is part of our law. This is why the Government is committed not to impose a blanket ban on smacking....” (Letter to CAU!SCP! supporter from Jill Sewell, Public Communications Unit, DfES, January 4th 2007)

CAU!SCP! strongly reject this standpoint, both from a human rights perspective, as detailed above, and because the Westminster government has done nothing to deter parents from smacking by the enactment of Section 58..

CAU!SCP! consists of a broad range of professionals who work with children, young people and their families, as well as parents, carers and other concerned individuals and organisations.

In our experience, drawn from this diverse membership, we can determine four broad groups of parents/carers who smack their children. These are detailed below.

We believe that groups b, c, and d would all change their behaviour given

- a change in the law accompanied by:

- a good public education campaign,
- the provision of good quality, universal, non-stigmatising parenting support.

However, the current situation provides no incentive for any of these actions to happen, and is therefore failing children and young people.

Groups of parents who smack

- a. There are a small minority of parents/carers who are not able (for one reason or another to care appropriately for their children, and for whom smacking is one of a range of abusive treatment towards their children. Whatever the law, these parents would be deemed to be at risk of causing significant harm to their children, and would be dealt with according to normal child protection routes.
- b. There appears to be a second group of parents (another minority) who smack out of a belief that smacking is a necessary part of raising children. This includes some religious groups who claim a religious imperative to smack, and a group of people who are committed to smacking as the only way of effectively disciplining children.

These people will not stop smacking their children while they still have the legal power to do so. They will not consider the full range of alternatives because they do not need to.

“As long as it is legal, I will be quite happy to say that I smack my children”.
-Mrs Stokes, Redditch

Blog entry - Have your say, “ I smack and I’m proud of it” September 2006
<http://www.itv.com/page.asp?partid=6487>

The programme “I smack and I’m proud of it” showed parents who were willing to justify their smacking of children on national TV, because they did not consider this as problematic. (ITV September 2006)
<http://www.itv.com/page.asp?partid=6458>

- c. There is then what we believe to a larger, group of parents who smack because they have learned that this is an appropriate way of disciplining their children. This may be because that is what was done to them – research evidence shows 70% of parents who were physically punished as a child repeat the behaviour with their children. (NSPCC MORi Survey (NSPCC May 8th 2002)). This includes parents from a wide range of educational and social backgrounds.

This group have typically, not received any specific help or intervention to encourage them to think differently. Many of these people have never been exposed to the thought that smacking is not an appropriate form of discipline.

Most, if not all of them, are likely to change their behaviour, and use positive, non-violent methods of discipline, if they receive helpful information.

We think that Martin Ayers in “I smack and I’m proud of it” is a good example of this. Martin Ayers uses smacking because he thinks it is the only way of getting his son to behave. Martin uses smacking very inappropriately, without due regard for the age, ability and understanding of his son. This family benefited from parenting intervention, and moved successfully to a non-violent form of positive parenting.

d. A fourth group of parents smack because they have “reached the end of their tether”. There is no doubt that parenting can be a tough job, and can leave parents feeling angry and frustrated with their children. These are parents who do not want to smack their children; who know it is not right to smack their children.

An NSPCC MORi Survey (NSPCC May 8th 2002) showed that 44% of parents who have ever punished their children say it is the wrong way to discipline children. It also showed that:

Of parents who have ever physically punished their children:

- Half report doing so out of anger and frustration.
- 73% feel sad afterwards
- 37% feel tearful
- 79% feel upset
- 67% feel regretful
- 65% feel guilty
- and notably, 69% apologised to them afterwards.

This reinforces CAU!/SCP!’s view that the purpose of legal change is to change the culture, not to criminalize parents. It would obviously not be in the interests of the child or the public to prosecute parents in groups b, c or d, if they continued to smack after a legal ban was enforced. CAU!/SCP! believe that, in giving children their full human rights, the legislation would, over time, change attitudes and the prevailing culture that it is “acceptable” or “reasonable” to hit children.

The same NSPCC survey shows that only 20% of parents who were not physically punished as a child are likely to use physical punishment, compared to 70% of parents who were physically punished.

This suggests that, over two or three generations, the incidence of physical punishment should significantly reduce, provided there is an impetus for those parents who do use physical punishment to stop in the first place.

This is borne out by research from Sweden, where physical punishment was outlawed in 1979 (with previous measures dating back to 1928 to reduce corporal punishment). In 1965, 50% of the population believed that corporal punishment was necessary in childrearing, by 1994, this figure had reduced to 11%. Estimates of the use of corporal punishment suggest that in the late

1950's/early 1960's, 90% of mothers had struck their pre-school age children. By 1994, only half of adults reported being struck, with a smaller proportion among younger rather than older adults. ("A Generation without Smacking", Joan Durrant, Save the Children 2000)

2. Help at Hand (Appendix 3)

Evidence from "Help at Hand" suggested that in the community, the general opinion is that smacking is not effective, and that other methods are effective.

- 75% of people thought that smacking children does not stop them being naughty
- 85% of people thought that you can stop children being naughty without smacking them

However, members of the community remain confused about what constitutes hitting/smacking.

- Nearly 80% of people thought that it should be against the law to hit children in the same way that it is against the law to hit adults
- 51% of people thought that parents have the right to smack their children

This indicates that people feel children deserve the same protection as adults, but somehow that it's still OK for parents to smack children. People do not always see "smacking" and "hitting" as the same thing. This is a very ambiguous situation, and clarification will only come, as it did in the realm of domestic violence, when all physical assault of children is illegal.

4 To what extent have the changes to the law stimulated local agencies to help parents in knowing how to establish effective boundaries for their children?

Please provide evidence for your view.

- The organisations who are signed up the CAU!SCP! (see Appendix 1) oppose physical punishment and support legal change. All these agencies, and many others who are not signed up supporters already promoted positive, non-violent discipline, and discouraged the use of physical punishment prior to 2005.
- These organisations have not, to our knowledge changed either policy or practice in response to the legal change in 2005. A sample of organisations which we know have not changed policy include:
 - NCH Cymru
 - Save the Children Cymru
 - Barnardo's Cymru
 - NSPCC Cymru
 - Cymdeithas Tai Hafan
 - Torfaen Children and Young People's Framework Partnership
 - Incredible Years Training Programme (Webster Stratton) Wales

- Pembrokeshire Local Education Authority
- CAU!SCP! could find no evidence of any organisations which had changed their policy, practice or training as a result of the introduction of Section 58.
- Section 58 does the opposite: the law's defence of violent punishment and reaffirmation of parents' right to hit ties hands of agencies and undermines any positive discussions or promotion of positive discipline: hitting children is a lesson in bad behaviour
- Section 58, by endorsing some arbitrary level of physical punishment, cannot help with the development of effective discipline.
- Section 58 perpetuates lack of respect for children as people and rights-holders.
- The only solution is complete removal of the defence to fulfil children's right to equal protection.

Welsh Assembly Government

The Welsh Assembly Government has been committed to legal reform since January 2004 and is the first UK country to take a principled stand on the issue.

Details of the actions they have taken can be found in Appendix 4

As evidenced in Appendix 4, the Welsh Assembly Government, supported by the National Assembly for Wales, has been unambiguous in its belief that the defence of reasonable punishment should be removed.

The WAG is working to promote the message both of positive parenting, and its opposition to any legal justification of violence towards children.

However, the developments that have taken place in Wales to promote positive, non-violent parenting are constantly undermined by the legal position whereby parents receive a dangerous (and confusing) message about the acceptability of violence against children.

We have are in early discussions with the Welsh Assembly Government to explore whether there could be opportunity for them to request legislative powers under the new Government of Wales Act, to enable Wales- only legislation to give children equal protection.

5 In your experience have the changes to the law assisted those working with children and families to protect children and support parents? Please explain in detail and provide evidence for your view.

- Section 58 does not assist practitioners. It undermines child protection and support for positive parenting by re-affirming parents' right to hit;
- Practitioners find it difficult to talk to parents about issues to do with physical punishment because it is still legal. Legal change has made no difference.

- Section 58 could not help even with detailed guidance and public education: you cannot protect children and support children effectively in the context of an unjust and undermining legal framework.
- The only solution is the complete removal of the “reasonable punishment” defence to fulfil children’s right to equal protection.

Information and Evidence

The changes in the law have not assisted those working with children and families to protect children and support parents. The only change in the law that would assist is a clear, unambiguous law that gives children equal protection.

Those working with children and families to protect children and support parents do not understand the law well. They did not understand “reasonable chastisement” and they do not understand “reasonable punishment”

CAU! Cymru ran trainings for people working with children and families in September/October 2006. A questionnaire was given to all delegates at the start and end of the training to find out their knowledge and attitudes, and how these changed as a result of the training. The results are included in Appendix 5 , and are hereafter referred to as CAU!CTQ.

The CAU!CTQⁱ shows that only 49% of those working with children and families to protect children and support parents know what the law says.

If there was legal change to give children equal protection, there is no doubt that training would need to take place to ensure practitioners are fully informed and equipped to take the “no physical punishment” message forward, complimented by a government funded public education campaign.

Staff in general know that smacking is ineffective, harmful, and have some understanding of children’s – and adults – rights in this area. The CAU!CTQⁱ shows what professionals think (prior to training/after training)

- It is not OK for parents to smack children sometimes (84%/97%)
- A smack is a hit (82%/94%)
- Smacking cannot stop children behaving badly at the time (82%/88%)
- If a child knows they will be smacked, they will usually **not** behave better (90%/98%)
- Smacking does long term harm to a child (56%/74%)
- Adults should never smack children (64%/74%)
- Parents have a right to smack their children (6%/3%)
- Smacking is a necessary and positive part of bringing up children (0%)
- Smacking is a demonstration of love (0%)
- Children have a right not to be smacked (77%/86%)

The government view

“that protects the right of a parent to smack their own child”.

(<http://www.number-10.gov.uk/output/Page6065.asp>) is clearly not held by 94% of practitioners working with children and families, and 100% do not see it as a necessary and positive part of bringing up children.

6 To what extent is the legal position on the physical punishment of children widely understood by those working with children and families?

Please explain your answer in detail and provide evidence for your view.

- Section 58 has increased a dangerous confusion; the basic message of the law and media coverage has been “carry on smacking”.
- Promoting further “understanding” through guidance, public education, etc. could not avoid explaining the legality of physical punishment, so would make situation even worse.
- The only solution is the complete removal of defence to fulfil children’s right to equal protection and to send the clear, just and common sense message that hitting children is as unlawful and unacceptable as hitting anyone else.

The current legal position is poorly understood by those working with children and families.

CAU!CTQ. showed that:

Only 49% of delegates understood the legal position prior to training.

While it is arguable that training of staff could improve this position – after training, 87% said Yes, they knew what protection children currently have, and the remaining 13% said they thought they knew. (CAU!CTQ).

However, it is very difficult to see the value of training staff to understand a law that denies children their human rights and goes against the policy of the organisation they work for.

7 If your answer to question 6 above was that the legal position was not widely understood, please tell us what would be your preferred way of improving this situation?

The only way to improve this situation is by changing the law to give children equal protection from assault as that enjoyed by adults. This would

- Give children their full human rights as laid down by the UN Convention on the Rights of the Child and the European convention on Human Rights by removing the defence of “Reasonable Punishment” and give children the same protection from assault as adults.

- Send a clear message to parents and carers that hitting/smacking/physical abuse is not acceptable.
- Allow those who work with children and families to promote positive, non-violent parenting in a clear and non-ambiguous way.
- As already stated, promoting better understanding of Section 58 through public education and guidance can only lead the situation to deteriorate
- Child protection would be undermined as it could not avoid promoting the message that parents and others have a legal right to assault their children.
- Educating people about a flawed law which conflicts with basic human rights cannot be helpful.
- The only solution is complete removal of defence to fulfil children's right to equal protection, thus sending clear, simple and just message.
- Any other approach just causes confusion and uncertainty, and perpetuates a belief that it is OK to hit children.

Information and Evidence

The change in the law in 2004 did not help professionals to promote positive, non-violent parenting any more than they were doing already. It merely provided a different set of ambiguities to deal with.

The information from CAU!CTQ shows that: 91% of professionals after training, and 83% before, agree that changes in the law change what people think and what they do. This demonstrates that most professionals in this field think legal change is a useful tool for changing behaviour.

This has been borne out by legislation such as that on drink driving, wearing seat belts, use of child car seats, and currently, smoking in enclosed public places. It is clear from the actions of successive governments that public education alone has not changed individual behaviour on these issues, but legal reform has.

In support of improving the situation by giving children equal protection, the CAU!CTQ shows that:

- 78% before training, and 82% after training agree that smacking constitutes domestic abuse.

The DfES said (29th March 2007, case ref 2007/0005186:), that

The Government does not consider "domestic violence" to be justifiable. Clearly, the sort of action that would be recognised as domestic violence is illegal without qualification, and should be dealt with before the courts, regardless of the age or gender of the victim. There is nothing in English law or prosecution practice that prevents this.

This is clearly not the case. “Domestic violence is any incident of threatening behaviour, violence or abuse between adults who are or have been in a relationship together, or between family members, regardless of gender or sexuality” (Home office web site <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/domestic-violence/>)

Smacking a child is clearly an “incident of threatening behaviour/violence” which **cannot** currently be prosecuted, and age does prevent prosecution. Additionally, the government acknowledges and understands that witnessing domestic violence can have long-term, detrimental effects upon children whilst seeming to say that the perpetration of violence upon children is acceptable.

“Kitzmann *et al.* (2003) found from a meta-analysis of 118 studies of psychosocial outcomes of children exposed to domestic violence, that there was a significant association between exposure to domestic violence and child problems. Group comparison studies showed that children who had witnessed domestic violence had significantly worse psychosocial outcomes relative to children who had not witnessed domestic violence. Children who had witnessed domestic violence had similar outcomes to those of physically abused children.” (“Tackling Domestic violence; providing support for children who have witnessed domestic violence” Home Office Development and Practice Report 2004, ISBN 1 84473 493 5)

The government has expressed concerns that “banning smacking” would criminalize parents.

“We do not want to criminalise parents, which was why we have always been opposed to an outright ban on smacking” (<http://www.number-10.gov.uk/output/Page6065.asp>).

The stance of the Children are Unbeatable! Campaign has always been that this would in no way be the aim of legal change. Evidence from other countries demonstrates that prosecutions for “smacking”, and, indeed, other forms of child abuse, have reduced since legal change that gave children equal protection. (“A Generation without Corporal Punishment in Sweden”; Save the Children, Sweden, 2005)

Evidence from the CAU!CTQ shows that those who work with children and families have very few fears on this score.

When asked “If the law changed in the UK to give children the same protection as adults in relation to physical assault, would you....”, answers were as follows:

- a. worry that my work would become harder,
87% said **no** at the start, 90% at the end
- b. Worry that I would have to tell the police if I saw an adult smack a child
82% said **no** at the start, 90% at the end

- c. Worry that I would have to tell the police if I know an adult is smacking a child

79% said **no** at the start 90%at the end

- d. Worry that my clients will trust me less if they think I will tell the police that they smack their child

66% said **no** at the start 74% at the end

8 Have the changes to the law had a differential effect on different groups of children and parents, including on the grounds of gender, race and disability, and if so, to what extent?

Please explain your answer in detail and provide evidence for your view.

- Section 58 discriminates against children as a group, in contrast to any other population group, by denying them their basic human right to equal protection under the law and equal respect for their human dignity and physical integrity.
- Section 58 represents fundamental discrimination by age, with no possible justification for denying children equal protection: the special vulnerability of children to violence is obvious.

9 What are the key pieces of evidence that should be considered as part of this Review?

Please provide details and/or links if appropriate.

All sources as cited in the text. In addition:

1. Treaties and Conventions

- The UN convention on the Rights of the Child
- The European Social Charter
- The European Convention on Human Rights
- “The Right of the Child to protection from corporal punishment and other cruel or degrading forms of punishment” UN Committee on the Rights of the Child - “General Comment” 2 June 2006
- The report of the United Nations Secretary-General's Study on Violence against Children – Paul Pinhero, October 2006

2. Information from CAU!SCP!

These are enclosed with this submission.

- Appendix 1a – CAU!SCP! Supporting individuals List
- Appendix 1b – CAU!SCP! Supporting organisations List
- Appendix 2 – Scenario discussion from CAU!SCP! trainings/presentations

- Appendix 3a - “Help at Hand - An evaluation report of a programme of activities promoting alternatives to smacking children” Full Report

<http://www.childreninwales.org.uk/areasofwork/endingphysicalpunishment/childrenareunbeatable/cauacheivements/index.html>

- Appendix 3b - “Help at Hand - An evaluation report of a programme of activities promoting alternatives to smacking children” Executive summary

<http://www.childreninwales.org.uk/areasofwork/endingphysicalpunishment/childrenareunbeatable/cauacheivements/index.html>

- Appendix 4 – Welsh Assembly Government initiatives against the use of physical punishment
- Appendix 5 – CAU!CTQ

3. Additional Material not directly cited in the text

- Appendix 6 - “Hitting People is Wrong and Children are People Too!” Report on Torfaen Children and Young People’s Framework Partnership Seminar – January 2005

- Appendix 7 - “Listen Up – Children Talk about Smacking” Anne Crowley and Cea Vulliamy Save the children (Wales) 2003

<http://www.childreninwales.org.uk/2423.html>

- Appendix 8 - Research Review Briefing 6 – March 2004. CAU!

<http://www.childreninwales.org.uk/2423.html>

- Appendix 9 - Listening to Children in Pembrokeshire – Pembrokeshire Children and Young People’s Framework Partnership. Available from Pembrokeshire County Council.

- Appendix 10 - Parenting Action Plan – Welsh Assembly Government; Department for Training and Education, December 2005. Note section 1:14

<http://www.childreninwales.org.uk/policy/documents/strategies/5161.html>

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply x

Here at the Department for Education and Skills we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

xYes

No

All UK national public consultations are required to conform to the following standards:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Further information on the Code of Practice can be accessed through the Cabinet Office Website: <http://www.cabinetoffice.gov.uk/regulation/consultation-guidance/content/introduction/index.asp>

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 10 August 2007

Send by post to: Consultation Unit, Area 1A, Castle View House, East Lane, Runcorn, Cheshire WA7 2GJ

Send by e-mail to: section58.consultation@dfes.gsi.gov.uk
