

# **Corporal punishment of children in the United Kingdom: Briefing for the Universal Periodic Review, 41<sup>st</sup> session, Oct./ Nov. 2022**



*From the Global Partnership to End Violence Against Children, March 2022*

This submission provides an update on the legality of corporal punishment of children in the United Kingdom since its review in the third cycle UPR in 2017. Corporal punishment prohibition is still to be fully achieved in the home, some alternative care settings, day care and penal institutions, in England and Northern Ireland.

**The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.**

**In the UK, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and during the 2<sup>nd</sup> and 3<sup>rd</sup> cycle UPR of the UK, respectively in 2012 and 2017, which the Government rejected.**

**We hope the Working Group will note with concern the legality of corporal punishment of children in the UK. We hope states will raise the issue during the review this year and make a specific recommendation that the UK enact a legislation to clearly prohibit all corporal punishment of children in England and Northern Ireland, in every setting of their lives and repeal section 58 of the Children Act 2004 (England) and article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006, as a matter of priority.**

## **1 Review of the UK in the 3<sup>rd</sup> cycle UPR (2017) and progress since**

1.1 The UK was reviewed in the third cycle of the Universal Periodic Review in 2017 (session 27). Seven recommendations to prohibit corporal punishment in all settings were made.<sup>1</sup>

<sup>1</sup> 8 May 2017, A/HRC/WG.6/27/L.7, Draft report of the working group, unedited version, paras. 6(193), 6(194), 6(195), 6(196), 6(197), 6(198) and 6(199)

The Government rejected all seven recommendations, stating: “the UK does not condone any violence towards children and has clear laws to deal with it. The ‘reasonable chastisement’ defence in s.58 Children Act 2004 cannot be used when someone is charged with assault causing actual or grievous bodily harm, or with child cruelty. Parents should not be criminalised for giving a child a mild smack in order to control their behaviour.”<sup>2</sup>

- 1.2 Since the review, corporal punishment was prohibited in Scotland under the Children (Equal Protection from Assault) (Scotland) Act, which was adopted in October 2019. Corporal punishment was also prohibited in Wales under the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act, adopted in January 2020 and which came into force in March 2022.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in the UK. We hope states will raise the issue during the review this year and make a specific recommendation that the UK enact a legislation to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal section 58 of the Children Act 2004 (England) and article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006, as a matter of urgency.**

## 2 Legality of corporal punishment in the UK

### ***Summary of current law and opportunities for achieving prohibition***

Corporal punishment is prohibited in all settings in Scotland and Wales. In England and Northern Ireland, prohibition is still to be achieved in the home, some alternative care settings, day care and penal institutions.

Legal defences for the use of corporal punishment are found in section 58 of the Children Act 2004 in England and article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006. These provisions must be explicitly repealed, and prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

**Note:** The UK comprises England, Wales, Scotland and Northern Ireland, each of which has certain law-making powers under the terms of devolution, though the UK Parliament (“Westminster”) remains sovereign and retains the right to legislate on all matters. The following report describes the legality and practice of corporal punishment in England, Wales, Scotland and Northern Ireland.

<sup>2</sup> 7 September 2017, A/HRC/36/9/Add.1, Report of the working group: addendum, para. 3; see also 29 August 2017, Annex to the response to the recommendations received on 4 May 2017

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home in England and Northern Ireland. In England, section 58 of the Children Act 2004 provides for “reasonable punishment” of children. In Northern Ireland, article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 provides for “reasonable punishment”.
- 2.2 The UK’s 2017 report to the Committee on the Elimination of Discrimination Against Women declares that “violence towards children is not condoned” but then highlights that “the “reasonable chastisement” defence is only available when the charge is one of *common assault*” (emphasis added).<sup>3</sup> The Government later stated that it “should not interfere in how parents bring up their children as long as the child is not at risk of abuse”.<sup>4</sup> In response to a question from the Shadow Minister for Children, the Government stated in February 2020 that it had no plans to bring legislation to prohibit corporal punishment as it did not wish to “interfere in how loving families bring up their children” and legislation already bans the “beating of children by their parents”.<sup>5</sup>
- 2.3 Corporal punishment of children is prohibited in Scotland under the Children (Equal Protection from Assault) (Scotland) Act, which was adopted in October 2019 to repeal section 51 of the Criminal Justice (Scotland) Act 2003 which had provided for ‘justifiable assault’ and abolish the common law defence of ‘reasonable chastisement’. The Act also puts a duty on Scottish Ministers to take measures to raise public awareness and understanding around the effects of the new legislation. The ban came into force in November 2020.
- 2.4 Corporal punishment is also prohibited in Wales under the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act, adopted in January 2020. The Act states that “corporal punishment of a child taking place in Wales cannot be justified in any civil or criminal proceedings on the ground that it constituted reasonable punishment.” The Act received Royal Assent on 20 March 2020, and the ban came into force on 21 March 2022.
- 2.5 **Alternative care settings (lawful):** Corporal punishment is prohibited by regulation in residential care institutions throughout the UK (Children’s Homes Regulation Act 2001; Residential Establishments Child Care (Scotland) Regulations 1996). Residential care workers have been prohibited from smacking since 1991 (Children’s Homes Regulations 1991, SI 1991/1506, reg. 8). It is prohibited in foster care arranged by local authorities or voluntary organisations but is lawful in private foster care. It is prohibited in all alternative care settings in Scotland and Wales (see under “Home”).

The Government recognised in May 2018 that nurses and staff acting in loco parentis in health settings (including mental health inpatient units) would be able to invoke the “reasonable chastisement” defence as there is no legislation explicitly prohibiting it.<sup>6</sup> Concerns have also been raised over the use of restraint in health institutions, including in Assessment and Treatment Units (ATUs). As of September 2018, 230 children, including children with autism or

<sup>3</sup> 18 December 2017, CEDAW/C/GBR/8, Eighth report, para. 179

<sup>4</sup> 16 November 2018, CEDAW/C/GBR/Q/8/Add.1, Reply to list of issues, para. 69

<sup>5</sup> See the UK Parliament’s website, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-02-04/12407/>, last accessed 12 March 2020

<sup>6</sup> See Written Question No. 138474 to the Secretary of State for Education, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-04-26/138474/>, accessed 27 June 2018

learning disabilities, were being cared for in ATUs, where practices such as segregation and seclusion in padded cells and face-down restraints are still common.<sup>7</sup> A review has been called by the Health Secretary.

2.6 **Day care (lawful):** Corporal punishment is prohibited in day care institutions and childminding by regulations issued in 2002 for Wales and Scotland and in 2003 for England (Day Care and Child Minding (National Standards) (England) Regulations 2003, SI 2003/1996). Guidance states that physical punishment should not be used in day care institutions and childminding in Northern Ireland, but there is no explicit prohibition in law.

2.7 **Schools (unlawful):** Corporal punishment was prohibited in all state-supported education in 1986. The prohibition was extended to cover private schools in England and Wales in 1998, in Scotland in 2000, and in Northern Ireland in 2003. But in 2014 the Government confirmed that legislation does not prohibit corporal punishment in “unregistered independent settings providing part-time education”.<sup>8</sup> The Government reported in 2017 that, with regard to “settings where children receive some form of education/training, but which are not ‘schools’”, a call for evidence on “a range of issues relating to such settings” had been conducted in 2015-2016.<sup>9</sup> It is prohibited in all educational settings in Scotland and Wales (see under “Home”).

2.8 **Penal institutions (lawful):** Corporal punishment is regarded as unlawful as a disciplinary measure in penal institutions, but there is no explicit prohibition throughout the UK.

In secure training centres (privately-run centres for young offenders), the Secure Training Centre Rules 1998 (as amended in 2007) allow for the use of force (in the name of physical restraint) in maintaining order and discipline, including the infliction of physical pain (nose, rib and thumb “distractions”). The Rules were declared unlawful by the Court of Appeal in July 2008 but they have yet to be repealed. In 2018, the Ministry of Justice announced a review of the use of “pain-inducing restraint” in secure training centres and young offender institutions.<sup>10</sup>

2.9 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in criminal law.

### 3 Recommendations by human rights treaty bodies

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<sup>7</sup> See <https://rightsinfo.org/minister-orders-urgent-investigation-into-autistic-and-learning-disabled-patients-being-locked-up/>, <https://rightsinfo.org/use-of-restraints-widespread-on-nhs-patients-with-learning-difficulties/> and <https://www.accessable.co.uk/articles/hancock-announces-seclusion-and-segregation-review-after-70-years-of-concerns>, accessed 13 November 2018

<sup>8</sup> [2014], CRC/C/GBR/5, Fifth state party report, para. 12

<sup>9</sup> 29 August 2017, Annex to the response to the UPR recommendations received on 4 May 2017

<sup>10</sup> See [https://amp.theguardian.com/society/2018/jun/07/moj-to-review-use-of-pain-inducing-restraint-on-young-offenders?\\_twitter\\_impression=true](https://amp.theguardian.com/society/2018/jun/07/moj-to-review-use-of-pain-inducing-restraint-on-young-offenders?_twitter_impression=true), accessed 8 June 2018; see also <https://article39.org.uk/2018/10/19/chair-of-youth-justice-board-to-lead-review-of-pain-inducing-restraint-on-children/>, accessed 26 October 2018

- 3.1 **CRC:** The Committee on the Rights of the Child has expressed concern at corporal punishment of children in the UK and recommended it be explicitly prohibited in the family and other settings – in its concluding observations on the state party’s initial report in 1995,<sup>11</sup> on the state party’s second report in 2002,<sup>12</sup> on the state party’s third-fourth report in 2008<sup>13</sup> and on the state party’s fifth report in 2016.<sup>14</sup>
- 3.2 **CEDAW:** The Committee on the Elimination of Discrimination Against Women expressed concern at the fact that corporal punishment remains lawful in the home and recommended that the Government introduce legislation to explicitly prohibit corporal in the home, in its concluding observations on the state party’s fifth-sixth report in 2008<sup>15</sup> and on the state party’s seventh report in 2013.<sup>16</sup>
- 3.3 **CESCR:** The Committee on Economic, Social and Cultural Rights recommended that the Government take appropriate measures to eliminate corporal punishment in all schools, in its concluding observations on the state party’s third report in 1997.<sup>17</sup> The Committee recommended that physical punishment is prohibited by law in its concluding observations on the state party’s fourth report in 2002<sup>18</sup> and on the state party’s fourth-fifth report in 2009.<sup>19</sup>
- 3.4 **CAT:** The Committee Against Torture recommended the Government prohibit corporal punishment in all settings, in all its territories, in its concluding observations on the state party’s initial report in 1993<sup>20</sup>, on the state party’s second report in 1996,<sup>21</sup> on the state party’s third report in 1998<sup>22</sup> and on the state party’s fifth report in 2013.<sup>23</sup>
- 3.5 **HRC:** The Human Rights Committee recommended that the Government prohibits corporal punishment in all settings, in its concluding observations on the state party’s fourth report in 1995,<sup>24</sup> on the state party’s sixth report in 2008<sup>25</sup> and on the state party’s seventh report in 2015.<sup>26</sup>
- 3.6 **ECSCR:** The European Committee on Social Rights found that the UK was not in conformity with Article 17 of the Charter as corporal punishment is not prohibited in the home, in its conclusions XVII-2 of 2005,<sup>27</sup> conclusions XIX-4 of 2011,<sup>28</sup> conclusions XX-4 of 2015<sup>29</sup> and conclusions of 2019.

<sup>11</sup> 15 February 1995, CRC/C/15/Add.34, Concluding observations on initial report, paras. 16, 31 and 32

<sup>12</sup> 9 October 2002, CRC/C/15/Add.188, Concluding observations on second report, paras. 8, 9, 35, 36, 37 and 38

<sup>13</sup> 20 October 2008, CRC/C/GBR/CO/4, Concluding observations on third/fourth report, paras. 6, 7, 38, 39, 40, 41 and 42

<sup>14</sup> 3 June 2016, CRC/C/GBR/CO/5, Concluding observations on fifth report, paras. 38, 39 and 40

<sup>15</sup> 18 July 2008, Part of A/63/38, Concluding observations on fifth/sixth report, paras. 280 and 281

<sup>16</sup> 30 July 2013, CEDAW/C/GBR/CO/7, Concluding observations on seventh report of UK, paras. 34 and 35

<sup>17</sup> 4 December 1997, CESCR/E/C.12/1/Add.19, Concluding observations on third report, paras. 16 and 28

<sup>18</sup> 5 June 2002, E/C.12/1/Add.79, Concluding observations on fourth report, para. 36

<sup>19</sup> 12 June 2009, E/C.12/GBR/CO/5, Concluding observations on fourth/fifth report, para. 24

<sup>20</sup> 26 June 1993, A/48/44, Concluding observations on initial report, para. 283

<sup>21</sup> 9 July 1996, A/51/44, Concluding observations on second report, para. 65

<sup>22</sup> 17 November 1998, A/54/44, Concluding observations on third report, para. 74

<sup>23</sup> 31 May 2013], CAT/C/GBR/CO/5 Advance Unedited Version, Concluding observations on fifth report, para. 29

<sup>24</sup> 27 July 1995, CCPR/C/79/Add.55, Concluding observations on fourth report, para. 8

<sup>25</sup> 30 July 2008, CCPR/C/GBR/CO/6, Concluding observations on sixth report, para. 27

<sup>26</sup> July 2015], CCPR/C/GBR/CO/7 Advance Unedited Version, Concluding observations on seventh report, para. 20

<sup>27</sup> July 2005, Conclusions XVII-2

<sup>28</sup> January 2012, Conclusions XIX-4 (2011)

<sup>29</sup> January 2016, Conclusions 2015

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