

# **UNITED KINGDOM**

## **BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 13<sup>th</sup> session, 2012**

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Global Initiative to  
**End All Corporal Punishment  
of Children**

*Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.*

*In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.*

*The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.*

**Corporal punishment of children is lawful in the UK and its Overseas Territories and Crown Dependencies, despite repeated recommendations made by human rights treaty bodies and during the review of the UK by the Human Rights Council in the first cycle of the UPR.**

**We hope the Human Rights Council will highlight with concern the UK’s record of ignoring treaty body recommendations and strongly recommend that legislation be introduced as a matter of urgency to prohibit corporal punishment of children in the home and in all settings throughout the UK and its Crown Dependencies and Overseas Territories, including through fully repealing all legal defences for its use.**

## **1 The initial review of the UK by the Human Rights Council**

1.1 The UK was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 1). The issue of corporal punishment was raised in advance questions by Finland, Italy and Sweden, and the following recommendations were made during the review:

“To consider further measures in order to address the problem of violence against children, including corporal punishment. (Italy)

“To reconsider its position about the continued legality of corporal punishment against children. (Sweden)

“To consider going beyond current legislation and to ban corporal punishment, also in the private sector and in its Overseas Territories. (France)”<sup>1</sup>

1.2 The Government stated that it sees no need for law reform since it believes the current law is working well, parents should be allowed to discipline children and surveys show that the use of corporal punishment in childrearing has declined.<sup>2</sup> It accepted the recognition to consider going beyond current legislation in relation to protecting children from violence but rejected “the implication that it is failing in this regard through the application of its policy on corporal punishment”.<sup>3</sup> The mid-term report, dated March 2010, repeats this assertion and draws attention to the prohibition of corporal punishment in education and care settings and to the review being undertaken of corporal punishment in some education settings which fall outside of the legal framework.<sup>4</sup> The report refers to previous law reforms which limited the application of the “reasonable punishment” defence so that it can no longer be relied upon in cases of assault occasioning cruelty or actual or grievous bodily harm. However, it then attempts to defend the continued legality of a certain degree of physical punishment in childrearing, stating that the Government “does not condone” physical punishment but “does not want to criminalise decent parents who decide to administer a mild smack”: the Government considers the promotion of positive discipline techniques to be sufficient to address the issue.

1.3 In sum, the legality of corporal punishment of children in the UK has not changed since the review in 2008. While it is prohibited in schools, the penal system and some alternative care settings, it continues to be lawful in the home and in some forms of care. Section 2 below provides details of the legality of corporal punishment in all settings in England, Wales, Scotland and Northern Ireland and in the Crown Dependencies and Overseas Territories.

## **2 Legality of corporal punishment in the UK**

2.1 Corporal punishment is lawful in the **home**. In England and Wales, section 58 of the Children Act (2004) provides for “reasonable punishment” of children. In Northern Ireland,

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<sup>1</sup> 23 May 2008, A/HRC/8/25, Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland, paras. 56(2), 56(3), 56(4) and 56(5)

<sup>2</sup> 23 May 2008, A/HRC/8/25, *Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland*, para. 25

<sup>3</sup> 25 August 2008, A/HRC/8/25/Add.1, Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, paras. 28, 29 and 30

<sup>4</sup> United Kingdom Mission to the Office of the United Nations and Other International Organisations at Geneva, Human Rights Council 13<sup>th</sup> session Universal Periodic Review, Mid-term progress update by the United Kingdom of Great Britain and Northern Ireland on its implementation of recommendations agreed in June 2008, para. 7

article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order (2006) provides for “reasonable punishment”. In Scotland, “justifiable assault” of children is lawful under section 51 of the Criminal Justice (Scotland) Act (2003), defining blows to the head, shaking and use of implements as unjustifiable. Corporal punishment is lawful in the home in the Crown Dependencies and in the Overseas Territories under the common law right to administer “reasonable chastisement”, with the exception of the Pitcairn Islands, where it is prohibited in section 7 of the Children Ordinance (2003).

2.2 Numerous studies have revealed the extent to which children are physically punished in their homes, including research published since the UK’s initial review by the Human Rights Council in 2008. For example, in large scale research carried out by the National Society for the Prevention of Cruelty to Children (NSPCC) in 2009 and published in 2011, 41.6% of the parents/ guardians interviewed said they had physically punished or “smacked” their child in the past year.<sup>5</sup> In a survey of 1,000 parents of children aged 0-10 in Northern Ireland, 47% said they had physically punished their children at some point and 45% had done so in the last year, most commonly smacking their child with a bare hand but 2.2% had hit their child with an implement.<sup>6</sup>

2.3 Corporal punishment was prohibited in all state **schools** in the UK 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. However, it is not prohibited in schools in the majority of the Crown Dependencies and Overseas Territories, including Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Guernsey, Jersey, Montserrat and the Turks and Caicos Islands.

2.4 In the **penal system**, corporal punishment is unlawful as a sentence for crime throughout the UK and the Crown Dependencies and Overseas Territories. It is unlawful as a disciplinary measure in all penal institutions except in Gibraltar, the Isle of Man and Montserrat.

2.3 With regard to **alternative care settings**, 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). It is prohibited in foster care arranged by local authorities or voluntary organisations but is lawful in private foster care. In day care institutions and childminding, it is prohibited 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. There is no prohibition of corporal punishment in care settings in the Crown Dependencies and the Overseas Territories except in the Pitcairn Islands (see above).

### **3 Recommendations by human rights treaty monitoring bodies**

3.1 The **Committee on the Rights of the Child** has recommended three times that the UK prohibit corporal punishment of children – in 2008 in its concluding observations on the state party’s third/fourth report,<sup>7</sup> in 2002 on the second report<sup>8</sup> and in 1995 on the initial report.<sup>9</sup> In

<sup>5</sup> Radford, L. et al (2011), *Child abuse and neglect in the UK today*, London: NSPCC

<sup>6</sup> Bunting, L., Webb, M. A. & Healy, J. (2008), *The ‘smacking debate’ in Northern Ireland: messages from research*, Barnardo’s Northern Ireland, NICCY and NSPCC Northern Ireland

<sup>7</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>8</sup> 9 October 2002, CRC/C/15/Add.188, Concluding observations on second report, paras. 8, 9, 35, 36, 37 and 38

making these recommendations, the Committee has repeatedly stated that the “reasonable chastisement” defence should be repealed.

3.2 The **Committee on Economic, Social and Cultural Rights** has twice recommended that the UK prohibit corporal punishment of children in the home – in 2002 following examination of the state party’s fourth report<sup>10</sup> and again in 2009 in its concluding observations on the fifth report.<sup>11</sup>

3.3 In 2008, the **Committee on the Elimination of Discrimination Against Women** expressed concern at corporal punishment of children in the home and recommended prohibition in legislation.<sup>12</sup>

3.4 In 2008, the **Human Rights Committee** recommended prohibition of corporal punishment in schools in all Overseas Territories and Crown Dependencies.<sup>13</sup>

3.5 In 2005, the **European Committee of Social Rights** concluded that the situation in the UK is not in conformity with article 17 of the European Social Charter because corporal punishment in the home is not prohibited.<sup>14</sup>

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November 2011

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<sup>9</sup> 15 February 1995, CRC/C/15/Add.34, Concluding observations on initial report, paras. 16, 31 and 32

<sup>10</sup> 5 June 2002, E/C.12/1/Add.79, Concluding observations on fourth report, para. 36

<sup>11</sup> 12 June 2009, E/C.12/GBR/CO/5, Concluding observations on fourth/fifth report, para. 24

<sup>12</sup> 18 July 2008, Part of A/63/38, Concluding observations on fifth/sixth report, paras. 280 and 281

<sup>13</sup> 30 July 2008, CCPR/C/GBR/CO/6, Concluding observations on sixth report, para. 27

<sup>14</sup> July 2005, Conclusions XVII-2