



Bar Council response to the National Assembly for Wales consultation paper on the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the consultation on the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill issued by the National Assembly for Wales.¹
2. The Bar Council represents over 16,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB).
4. The Bar Council has no observations to make on the decision of the National Assembly to legislate in this area.
5. The Bar Council's response is limited to:

Question 2.1

Do you have any comments about any potential barriers to implementing the Bill?

6. It is agreed that the National Assembly has competence to enact this legislation and in particular to make consequential amendments to the Children Act 2004 by

¹ [Consultation on the Children \(Abolition of Defence of Reasonable Punishment\) \(Wales\) Bill](#)

virtue of the provisions of section 108 and Schedule 7B of the Government of Wales Act 2006 (as amended by the Wales Act 2017).

Question 5.1

Do you have any other points you wish to raise about this Bill?

7. Whilst the Bill as drafted does achieve the intended result of extending the withdrawal of the defence of reasonable punishment to criminal and civil proceedings relating to battery, the National Assembly is invited to consider an alternative Clause 1 as follows:

1 Abolition of the defence of reasonable punishment

(1) In relation to the offences specified in subsection (2), the battery of a child taking place in Wales cannot be justified on the grounds that it constituted reasonable punishment.

(2) The offences referred to in subsection (1) are –

- (a) battery contrary to section 39 of the Criminal Justice Act 1988 and
- (b) battery contrary to common law.

(3) Battery of a child taking place in Wales cannot be justified in any civil proceedings on the ground that it constituted reasonable punishment.

(4) In Section 58 of the Children Act 2004 (c.31) (reasonable punishment) insert –

“(6) Subsections (2) and (3) above have effect subject to Section 1 of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2019 (abolition of defence to battery taking place in Wales)”.

8. The current law in England and Wales (via section 58 of the Children Act 2004) is that the defence of reasonable punishment is not available in criminal and civil proceedings which concern violence which amounts to actual bodily harm or more serious harm. All that is needed to achieve the purpose of the Bill is to extend that provision to battery which takes place in Wales, thereby abolishing the defence in respect of all forms of otherwise unlawful violence in Wales. That could be achieved by simply amending the Children Act. Alternatively, if there is additionally to be a Welsh-specific statute enacting this change in the law, it is not necessary (or

appropriate) for that Act to seek to abolish a defence which does not in law exist (ie. to offences of assault occasioning actual bodily harm or causing more serious harm).

9. Further the current draft clause 1 appears to create a new or enhanced offence amounting to administering corporal punishment, in order then to abolish the common law defence in respect of it. It is submitted that this over-complicates what is necessary to achieve the Bill's purpose. The common law defence of reasonable punishment is only available in circumstances where a child is punished by its parent (and, via section 58 of the Children Act 2004, currently where that punishment constitutes no more than a battery). As drafted clause 1 might suggest that the prosecution has the burden of proving that the offence of violence amounted to corporal punishment in order for the defence to be disallowed.

10. The inclusion of both 'reasonable punishment' and 'corporal punishment', and the abolition of the former by reference to the latter, in the current clause 1 also adds a layer of complexity, and potential confusion, to the Bill which it is submitted is not necessary.

11. If corporal punishment is to be retained in the Bill it is suggested that it should have the same meaning as in section 548 of the Education Act 1996, which abolishes corporal punishment in all schools in England and Wales.

Bar Council²
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² Prepared for the Bar Council by the Law Reform Committee.