

Removing the “Reasonable Punishment” Defence in Wales

Sally Holland, PhD

Former Children’s Commissioner for Wales

Professor of Social Work

School of Social Sciences

Cardiff University

Maindy Road, Cathays, Cardiff, CF24 4HQ

hollands1@cardiff.ac.uk

Abstract

In January 2020, the Welsh parliament passed the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act to repeal the “reasonable punishment” defence. 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 also compels the Welsh Government to promote public awareness and to monitor and report on the impacts of the ban three and five years after coming into force. The Act received Royal Assent on March 20, 2020 and came into force two years later. This article traces the history of the campaign to prohibit corporal punishment by parents and those acting in loco parentis. Factors relating to the government, the population and civil society which may have contributed to success in Wales are laid out. Some factors are addressed that may explain the lack of progress so far in Wales’s nearest neighbour, England.

Keywords: *corporal punishment, child, rights, prohibition, Wales*

Acknowledgement

Grateful thanks are due to Dr. Anne Crowley, who worked tirelessly to change the law on physical punishment in Wales over the two decades prior to the legislative change. She reviewed a first draft of this article and gave valuable advice on both the history and the analysis.

Introduction

In this article, I trace the history of legislation prohibiting all corporal punishment of children in Wales in 2020 and identify some factors that contributed to that success. I address the question of why Wales finally succeeded in this endeavour when its larger neighbour, England, has not progressed in this area for nearly two decades. I conclude with a discussion of the law's implementation and the supportive measures put in place to optimize its impact. As the founding member of Academics for Equal Protection, and then Children's Commissioner for Wales in the years leading up to and following the passing of the legislation, I was also a participant in these events. This is *my* analysis, as someone with first-hand knowledge of the long journey, which continues today.

The Current Law

In January 2020, the Welsh Parliament – the Senedd - passed the *Children (Abolition of Defence of Reasonable Punishment) (Wales) Act* to remove the “reasonable punishment” defence to the common law offences of common assault or battery against a child. With corporal punishment having been previously prohibited in most institutional settings, the defence was by 2020 mainly available only to parents, and persons acting in a parental capacity. 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 also compels the Welsh Government to promote public awareness and to monitor and report on the impacts of the ban three and five years after coming into force. The Act received Royal Assent on the 20th of March 2020 and came into force two years later. This reform marked the first time that the Welsh Parliament legislated for a difference in core criminal law between Wales and England (Welsh Government, 2022a, p.78).

For a prosecution to occur, there must be sufficient evidence that an offence has taken place, prosecution must be in the public interest, and it must be proportionate to the circumstances in which the incident took place. An out-of-Court disposal may be decided by the police as being more appropriate than referring the case to the Crown Prosecution Service (CPS) and even if a case is referred, the CPS may determine that an out-of-Court disposal is more appropriate. All these conditions were in place for reports of physical punishment prior to the law change. The key difference is that the defence of ‘reasonable punishment’ may no longer be used to justify the assault (Crown Prosecution Service, 2022).

The Welsh government placed the rationale for the law change firmly within a child rights framework (Cornish, 2022). When Julie Morgan, Deputy Minister for Health and Social Services, introduced the Bill in Cabinet, she clearly identified its primary rationale as fulfilling a commitment under the *UN Convention on the Rights of the Child* (UNCRC; UN General Assembly, 1989). Her statement read:

As a government, we have a long-standing commitment to children's rights, based on the United Nations Convention on the Rights of the Child (UNCRC). We are committed to Wales being a nation where children and children's rights are respected, protected and fulfilled. The UNCRC, together with other international human rights conventions and declarations, recognise that children have the right to have their dignity and physical integrity respected under the law. The Children (Abolition of the Defence of Reasonable Punishment) (Wales) Bill will seek to protect children's rights in relation to the duty set out in article 19 of the UNCRC – the right to protection from all forms of violence. In doing so, children in Wales will be offered the same legal protection from physical punishment as adults (Morgan, 2019).

The Struggle to Bring Legislation Forward: A Chequered History

It is remarkable to see the government's enthusiasm for the law, and its certainty that this will further Wales's commitments to children's rights under the UNCRC (Welsh Government, 2022a), considering the chequered history of previous Welsh and UK Governments' attitudes towards the matter.

Context: The Devolution of Welsh Governance

The Bill was introduced by the Welsh Government, which (along with Scotland and Northern Ireland) has been devolved for a little more than 20 years. Devolution has been an ongoing process. The first devolved administration in Wales – the Welsh Assembly Government created in 1998 - did not have a separation of executive and legislature. It had no primary legislative powers. The *Government of Wales Act 2006* empowered it to draft primary legislation known as 'Measures' and legally separated the government from the legislature, forming a Welsh Government and Welsh Assembly (more recently re-named the Welsh Parliament/Senedd Cymru or Senedd). Despite this seeming progress in terms of the devolution of powers, legislative proposals were required to be scrutinized by Westminster,

meaning that proposals could be blocked by the UK government (Davies and Williams, 2009).

As of 2013, the Senedd has had legislative authority over devolved matters and can pass full Acts of the Welsh Parliament in areas including health and social care, education, and social services. This provided more scope for Wales to act on issues like corporal punishment. The UK Government retains control over issues like tax and most welfare benefits, defence and immigration.

Government at a Welsh level is still, therefore, a relatively new phenomenon and the gradual acquiring of powers in the first two decades has meant that for a period there was some confusion and debate about whether Wales had the powers to change the law about corporal punishment independently of England.

A Turning Point: A v UK

A critical turning point in the history of legal reform in Wales and the rest of the UK followed the 1994 case of *A v UK* (Council of Europe, 1998). ‘A’ was a 9-year-old boy who had been beaten by his stepfather. A paediatrician assessed the boy’s injuries as “consistent with the use of a garden cane applied with considerable force on more than one occasion” (para. 9). The stepfather did not dispute that he had beaten the boy and was charged with assault occasioning actual bodily harm, which “need not be permanent but must be more than transitory or trifling” (para. 12). The stepfather contended that his actions amounted to necessary and reasonable punishment of a “difficult” boy. In his advice to the jury, the judge stated:

What does 'unjustifiably' mean in the context of this case? It is a perfectly good defence that the alleged assault was merely the correcting of a child by its parent...provided that the correction be moderate in the manner, the instrument and the quantity of it. Or, put another way, reasonable. It is not for the defendant to prove it was lawful correction. It is for the prosecution to prove it was not. This case is not about whether you should punish a very difficult boy. It is about whether what was done here was reasonable or not and you must judge that (para. 10).

The British jury acquitted A’s stepfather. His action had amounted to nothing more than reasonable chastisement of the child.

‘A’ appealed the ruling in the European Court of Human Rights (Council of Europe, 1998). He argued that the State had failed to protect him from ill-treatment by his stepfather,

breaching Article 3 of the European Convention on Human Rights (ECHR): “No-one shall be subjected to torture or to inhuman or degrading treatment or punishment” (Council of Europe, 1950). The Court ruled that the assault A experienced “reaches the level of severity prohibited by Article 3” of the ECHR (para. 21) and that “the law did not provide adequate protection to the applicant against treatment or punishment contrary to Article 3” (para. 24). Thus, the common law defence of reasonable chastisement undermined the State’s ability to protect children’s rights to protection from violence and abuse.

This ruling forced the UK Government to reconsider the defence. In 2004, the UK Government brought forward a *Children’s Bill* covering a wide set of reforms to children’s services, including strengthening child protection arrangements. The Bill proposed the removal of the reasonable chastisement defence, generating lengthy debate in Parliament. One of those who voted to remove the defence was Julie Morgan, MP Cardiff North, arguing that the debate harkened back to the 1970s, during the campaigns for legislation to prohibit domestic violence:

We were told that such legislation would be unworkable and that in any case, "She must have done something to deserve it." In the early days of Women's Aid, domestic violence was considered a trivial issue and we had to campaign to get it up the political agenda. Of course, there was also the question of not interfering in family life (UK Parliament, 2004b, col. 257).

She argued that by removing the defence, “the Government would be giving a clear lead on what is acceptable” (UK Parliament, 2004b, col. 257).

Forty-five backbench Welsh MPs voted in favour of the proposal. But ultimately, the UK Parliament rejected it. Instead, the UK Government chose to narrow the circumstances in which the defence could be used, namely in situations where physical injury had been sustained. Section 58 of the *Children Act 2004* states:

Battery of a child causing actual bodily harm to the child cannot be justified in any civil proceedings on the ground that it constituted reasonable punishment ... “actual bodily harm” has the same meaning as it has for the purposes of section 47 of the Offences against the Person Act 1861 (UK Parliament, 2004a).

Three years later, the UK Government released a report reviewing the impact of s58 (Department for Children, Schools and Families, 2007). It concluded that, while the new law had improved legal protection for children, it was difficult for many to understand. “Assault is a criminal offence. But a parent who is prosecuted for common assault after smacking a child can [still] raise the defence of reasonable punishment” (para. 42). The report stated that

many were confused about whether s58 allows or prohibits parents from hitting their children. Professionals who wanted to advise parents not to smack their children found it difficult to do so.

It seems that practitioners who tell parents that they shouldn't smack their children sometimes struggle to get this message across because although the reasonable punishment defence is restricted by section 58, it is still allowed in some cases and this can be used by parents as a justification for smacking. Some practitioners are concerned that this leaves the door open not just to mild smacking but to more severe punishment that would in fact not be covered by the reasonable punishment defence (para. 49).

However, the UK Government continued to resist full repeal of the defence. All subsequent attempts have failed, including a cross-party amendment in 2008 (UK Parliament, 2008). This situation highlights the difficulty in passing legislation that is not backed by the government within the UK's system of parliamentary democracy, both in Westminster and in the devolved administrations.

The Political Climate

In 2004, the UK and Welsh Assembly Governments were both Labour administrations. However, political differences were emerging: the 'New Labour' government in Westminster was positioning itself towards the centre-ground while Welsh Labour maintained a more traditional Labour Party agenda based on universal public services, a resistance to marketisation of public services and a focus on reducing inequalities. The Welsh Labour Party's move to distance itself from the UK Labour Party became known as 'Clear Red Water' (Davies and Williams, 2009).

In January 2004, the Welsh Government published *Children and Young People: Rights to Action*, which set out a comprehensive plan to make policy changes within a child rights framework (Welsh Assembly Government, 2004). The document noted some progress already made in the first four years of devolved government including: the establishment of an independent Children's Commissioner for Wales - the first such post within the UK; a new young people's consultation body called 'Funky Dragon' to facilitate child and youth participation; and the prohibition of corporal punishment in all day-care settings including childminding. This last action, set out in regulations, meant that the only corporal punishment now sanctioned in Wales was that inflicted by parents and those acting in parental roles. The

2004 document called for many changes in areas that were not within the Welsh Assembly Government's limited remit, including removal of the 'reasonable chastisement' defence:

The Assembly Government believes that the current legal defence of 'reasonable chastisement' should be ended. We wish to encourage respect for children's rights to human dignity and non-violent forms of discipline, including through public education programmes. We have made representations to the UK Government about this (p. 4).

In 2007, the Welsh Government informed the UN Committee on the Rights of the Child that it was committed to ending corporal punishment (Welsh Government, 2019). The Government asked the Westminster Parliament to allow it the right to legislate on vulnerable children under a Legislative Competence Order - the only legislative means available to Wales at that time under the devolved settlement. The request was declined by Westminster, on the grounds that it would impinge on criminal law, which remained under UK jurisdiction (BBC News, 2008, January 18).

By 2011, much had changed. That year, the *Rights of Children and Young Persons (Wales) Measure* was passed, making Wales the first of the UK nations to implement the UNCRC in law (National Assembly for Wales, 2011). Under this Act, Welsh Ministers must pay due regard to the UNCRC when exercising any of their functions, including policy-making and new legislative proposals. Also in 2011, Julie Morgan, the MP who had supported removal of the defence in the UK House of Commons in 2004, was elected to the Welsh Senedd. And in the same year, the powers of the Welsh Assembly were set to increase following a referendum. First Minister Carwyn Jones stated that he believed that legislation regarding corporal punishment could now be passed in Wales (Morris, 2011).

Nonetheless, as late as February 2014, the Welsh Deputy Minister for Social Services, Gwenda Thomas, spoke against a cross-party amendment to the Social Services and Well-being (Wales) Bill, fearing that the UK Government would challenge to their right to legislate on the matter, which could derail the wider Bill (National Assembly for Wales, 2014). In these years Welsh Assembly members found legislative attempts to prohibit corporal punishment thwarted, usually through arguments that amendments were not the best vehicles for a potentially controversial change in the law. A 2014 promise by the Government to its backbenchers to establish a cross-party committee to consider how to proceed with legislation never came to fruition.

The Tide Turns

March 2015 saw the last unsuccessful attempt to change the law through a backbench amendment in Wales that was supported by a strong and united civil sector, including charities, academics and faith leaders. Julie Morgan's amendment to the *Violence Against Women, Domestic Abuse and Sexual Violence Bill* was defeated when the Labour Government did not support it, on the grounds that the public had not been properly consulted. Only two Labour Party representatives, Julie Morgan and Christine Chapman, defied the whip and voted for the amendment, alongside Liberal Democrat and Plaid Cymru representatives. As with previous amendments, the argument was made that the Bill was not the best vehicle for the legislative change, an argument that several members found difficult to fathom as the Bill was primarily focused on preventing and responding to violence in family settings.

Despite this setback, in 2015 there were unofficial reports to the press that some cabinet members were pushing for the party to take a more proactive stance on the matter before the 2016 election (Shipton, 2015). Sustained pressure from NGOs, the Children's Commissioner and some politicians kept the issue in the forefront. Welsh Ministers sometimes argued that public support to change the law should be sought through an election. The salience of the issue at that time was highlighted by the fact that removing the defence was included in three party manifestos: Welsh Labour, Plaid Cymru and the Welsh Liberal Democrats. The likelihood that the next government would be formed by Welsh Labour on its own or in coalition with one of the other two parties was high.

Following the May 2016 elections, Welsh Labour formed a government alongside the sole Liberal Democrat representative, Kirsty Williams, who previously had brought and supported amendments to end the reasonable punishment defence. The Welsh Government included a plan to seek cross-party support to remove the defence in its 2016 Legislative Programme. The following year saw the passage of the *Wales Act 2017*, which shifted the administration from a "conferred powers" model to a "reserved powers model" (Welsh Government, 2022c). Under the latter model, "a legislature is able to legislate on any matter unless it is expressly prevented from doing so" (Welsh Government, 2022c). The Act established the Welsh Government's legislative competence to legislate on 'parental discipline' (sL12).

On March 25, 2019 Julie Morgan, now Deputy Minister for Health and Social Services, introduced the *Children (Abolition of Defence of Reasonable Punishment (Wales))*

Bill along with an *Explanatory Memorandum* which set out guidelines for implementation, including prosecution (Welsh Government, 2020). The Bill was referred to the Children, Young People and Education Committee for consideration of its general principles. The Committee carried out a 6-week public consultation, receiving 650 online responses (National Assembly for Wales, 2019). Then they held 12 oral evidence sessions, ensuring that parents and carers with differing views on the Bill were invited, as well as the Welsh Youth Parliament. The Committee examined evidence and opinions on issues including legal clarity, the developmental impact of physical punishment, the role of the state in family life, the potential impact of law reform on families, and children's rights. After analysing all of the material presented, the Committee made several recommendations, including that: 1) the National Assembly support the Bill; 2) sufficient time be allocated to provide public information about the change, provide support to parents, and update relevant training and guidance; 3) the Welsh Government, police, Crown Prosecution Services, and relevant departments develop a pathway to diversion away from the criminal justice system and toward parent support; and 4) the Welsh Government, police and relevant departments develop clear guidelines for investigating allegations of physical punishment of children (National Assembly for Wales, 2019).

Ultimately, in March 2020, the Welsh Parliament passed the *Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020* (National Assembly for Wales, 2020). The legislation abolished the reasonable punishment defence in Wales.

Ingredients of Success

After years of highs and lows in this long journey, it is important to reflect on which factors coalesced to move the government and legislature in Wales towards removing the defence of reasonable punishment. This is particularly important considering that England, our nearest neighbour and with which, until 1999, Wales had a wholly shared its government and legal system, has not yet prohibited physical punishment in the home.

The Role of Civil Society

Like many other nations, Wales had a long-standing coalition of children's charities and individuals supporting law reform. All leading children's charities were part of this coalition, including the Welsh arm of the highly respected National Society for the Protection of Children (NSPCC) who brought calls for removal of the defence into the mainstream. The

umbrella campaign group, Children are Unbeatable (Wales), which was partly funded by the NSPCC, provided a stream of informed, bilingual briefings for press and legislators.

A powerful voice in the effort was that of Archbishop Barry Morgan, who was Archbishop of the Anglican Church of Wales between 2003 and 2017. He was able to address any suggestion that beating children may be endorsed or even required by Biblical teaching. In his words:

Jesus believed that children were not just an asset for the future, or a commitment to be undertaken for the sake of society. They were of infinite value as children. They deserved as much respect and care as any other human being (Church Times, 2012). While it was disappointing that some other large faith groups did not speak up in favour of the law change, they did not provide any form of organised opposition.

In contrast to the USA (Miller-Perrin and Perrin, 2018), there was no real academic debate within Wales on the evidence around physical punishment and no senior academic in Wales publicly opposed the law change. Indeed, a group of senior academics formed ‘Academics for Equal Protection’ with leading researchers in social work, education, developmental psychology, paediatrics, family law and criminology presenting a united view that the evidence is overwhelming that physical punishment is harmful to children. With a web page and a few spokespeople, the group provided a consistent message about the research evidence on physical punishment’s outcomes.

As I was the founding member of Academics for Equal Protection, my 2015 appointment as the independent Children’s Commissioner for Wales meant that the issue received considerable media attention at the time of my appointment. The previous two Children’s Commissioners in Wales had expressed support for law reform but had not made it a leading issue for their offices. In my meetings with Ministers, including First Minister Carwyn Jones, I made it clear that the reasonable punishment defence was a clear breach of children’s rights under the UNCRC and that it was the only law in Wales which gave children less protection from harm than adults. The role of independent national human rights institutions like a Children’s Commissioner is different from most other members of civil society in that governments are often bound by law to respond to them. In frank and open conversations with ministers, I was able to explore concerns about policing and prosecutions, seek answers from the criminal justice system, and continue the discussion in follow-up meetings.

By no means was my role as Children’s Commissioner the deciding factor in persuading the Welsh Government to change the law, but in that role, I was able make them

publicly defend what was increasingly becoming indefensible in a government that promoted itself as a proud defender of children's rights. By the 2010s, the government was finding it increasingly challenging to dismiss the largely united voice of civil society and those of committed, persistent back-bench politicians.

The Role of Government

It is virtually impossible to bring forward legislative change without the support of the incumbent government. In UK legislatures, backbench-led Bills and amendments generally require government support due to the system of 'whipping' votes by political parties. Several governmental factors may have influenced Wales's success. It is important to point out, however, that none of these automatically led to success; there were a few years of resistance despite these conditions being in place since 1999. Nonetheless, once the political decision had been made to move forward, these factors strengthened government resolve and confidence in situating the proposed legislation as an inevitable step in the journey of a nation that fully upholds children's human rights.

Political Composition of Welsh Assemblies and Governments

There has been an unbroken series of left-leaning governments in Wales, since devolution in 1999. Conservative governments can, of course, take socially progressive steps, such as the legalisation of same-sex marriage under the Conservative UK Prime Minister David Cameron in 2013, and the ban on corporal punishment in state-funded schools in 1986 under Thatcher's Conservative government, although the latter example was a response to a European Court of Human Rights judgement, rather than a proactive initiative by the government. Conversely, socially progressive parties have not always been prepared to act on corporal punishment, as in 2004 when the Labour Government refused to endorse the removal of the defence for England and Wales. Nonetheless, left-leaning governments tend to be more prepared to 'intervene in family life' than conservative ones (Stubbs & Lendvai-Bainton, 2019). Since devolution, all governments in Wales have been Labour governments, sometimes in coalition with other parties, but always with Labour First Ministers. Welsh governments have been willing to intervene in people's everyday lives in the pursuit of public and environmental health. For example, they were the first UK government to charge consumers a fee for single-use plastic bags and introduced 'deemed consent' for organ donation in 2015. These actions undoubtedly gave the government confidence that public

health measures that may face ideological opposition were possible without losing political capital.

High Proportion of Female Elected Members

The Welsh Assembly, later Parliament, has featured a much higher proportion of female elected members than the UK Parliament throughout its history, achieving 50% representation in 2003. The first cabinet had a female majority and the life of this young legislature saw a series of inclusive measures such as avoiding evening sittings. An analysis of contributions during the early years of the Welsh Assembly found that women spoke twice as often as their male counterparts on topics such as domestic abuse and childcare; there is evidence of a ‘cross-party sisterhood’ on gendered matters (Chaney, 2006, p. 704). While concern about physical punishment of children is not limited to women, in this legislature, women were more prepared to speak on matters affecting families.

Overt Commitment to Children’s Human Rights

Early in the life of the new devolved government, under the leadership of First Minister Rhodri Morgan, the Welsh Assembly Government committed to upholding children’s rights. The 2011 *Rights of Children and Young Persons (Wales) Measure* required ministers to pay due regard to children’s rights when developing or reviewing policy. This remains the strongest step any UK nation has taken to integrate the UNCRC more firmly into legislation. In 2016, the UN Committee on the Rights of the Child (2016) urged the UK in all devolved administrations to “prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as ‘reasonable chastisement’”(para. 41(a)). The Government’s lack of action was becoming a matter of embarrassment for some Ministers, and one that was no longer possible to blame on the UK government.

Ministers’ Professional Backgrounds

When the legislation was passed, the government included at least three Ministers who were qualified social workers: the First Minister Mark Drakeford had been a social policy professor and probation officer; Julie Morgan, Deputy Minister for Social Services was an experienced child social worker; and Jane Hutt, Deputy First Minister, had been a community development worker and a founder of Welsh Women’s Aid. These Ministers

understood the difficulties caused by grey areas and the lifelong harm that childhood violence can cause.

Relationships with Civil Society

Building relationships with civil society has been a political aim of the government since devolution (Chaney, 2002). In a small nation of three million people, where government ministers know key civil society actors due to their professional backgrounds, there is an openness to meetings among civil society leaders, ministers and senior civil servants. The Children's Commissioner, for example meets regularly with ministers and annually with the First Minister. During the COVID-19 pandemic, the First Minister met with civil partners in regular online meetings to hear about issues facing the population and brief them on policy decisions. Given this level of engagement, by 2015 it had become uncomfortable for several government ministers to defend to a civil society their refusal to move forward on the removal of the reasonable punishment defence.

Societal Factors

Several societal factors facilitated a positive public reception of the law change.

Public Attitude Shifts

Welsh attitudes were changing quickly. In a 2015 survey of a large representative sample of parents of young children, 71% disagreed (55% strongly disagreed) that 'it is sometimes necessary to smack a naughty child'; by 2017, 81% disagreed (68% strongly disagreed) (Timmins & Knight, 2018). Annual surveys of the general adult population conducted between 2018 and 2020, show that about one-third agreed that "it is sometimes necessary to smack a child"; only 20% of 16- to 34-year-olds agreed (Timmins, 2021). While legislative change to further public health and/or human rights should not wait for attitude change, it undoubtedly aids the courage of politicians.

Increasing Secularisation

In Wales, 56% of the population has 'no religion', the highest proportion of the UK nations (Bullivant, 2017). With the Anglican Church in Wales supporting law reform and others not opposing it, Biblical arguments for physical punishment did not enter the debate.

A Competitive Spirit

While perhaps not a strong factor, many politicians and some of the population take pride in being pioneers within the UK, and particularly being ahead of England. In the media, First Minister Mark Drakeford said, “Wales joins Scotland in being the first parts of the UK to see through a positive change to this key piece of legislation” (Middleton, 2020). A Conservative member of the Welsh Parliament who suggested that the law might discourage English tourism (Middleton, 2020) faced widespread ridicule on social media channels. Many commented that English visitors who wished to smack their children were not the tourists that Wales wished to encourage.

Opposition to the Law Reform

While there was no public outcry following the government’s announcement of its plan to change the law, there was some limited opposition that may have helped to strengthen the implementation plans.

Opposition to the changes came from two sources. The first was the Be Reasonable¹ campaign, which operates in other countries considering law reform (Be Reasonable Wales, 2023). Styling itself a ‘grass roots’ campaign, it appeared to be at least partially funded by a non-Welsh organisation, the England-based Christian Institute², which funds legal challenges on issues contrary to conservative Christian beliefs, including the elimination of corporal punishment of children (Christian Institute, 2019). As Biblical arguments were unlikely to be persuasive in Wales, the Be Reasonable campaign did not mention religion. Instead, it perpetuated myths such as that ‘mild smacking’ has no ill effects. Despite having little popular following in Wales, the group garnered a fair amount of media coverage because publicly funded media must present a balanced view and could find few commentators who opposed the law change.

The second source of opposition was several Conservative and Independent members of the Welsh Parliament. With Labour, Plaid Cymru and Liberal Democrat members united in support of the legislation, a majority vote was never in doubt. It could be argued that questions raised by opposition members strengthened plans for implementation, as the government sought to respond to concerns about public awareness and how authorities would respond if physical punishment was reported.

Why Has England Not Progressed with Law Reform?

The UK Government's remit covers non-devolved matters for all of the UK, such as most taxes and welfare benefits, defence and border control, and England-only matters in areas otherwise governed by the devolved governments. England does not have a separate government. For England to remove the reasonable punishment defence will require an act of the UK Government. The lack of progress on the matter is puzzling, as English public support for corporal punishment shows a similar decline to Wales (NSPCC, 2022) and religiosity is also largely in decline.

Governmental factors are the most likely reason for the lack of progress. In Scotland and Wales, governments supported law reform within a framework of children's rights. At a UK level, the last few years have seen increasingly hostile language from a succession of Conservative Prime Ministers (Bowcott, 2020). It seems unlikely that a child rights argument would persuade the current government to remove the defence for England.

Like in Wales and Scotland, there have been many calls by charities and children's rights organisations and individual academics in England for a change in the law, but unlike in Wales, there is no organised academic voice on the issue. Most Children's Commissioners for England have stated their support for a change in the law, but more recently have tended to prioritise other pressing matters. In April 2023 the UK Government responded to renewed civil society calls for reform by ruling out prohibition (BBC News, 2023, April 12).

Implementation of the Welsh Law: Plans and Progress

Lansford et al. (2017) found inconsistent attitudinal changes following legal bans on parental corporal punishment across 7 nations, concluding that strong educational campaigns are required to optimize the positive impacts of law reform. The Welsh Act, passed in March 2020, required Ministers to promote public awareness prior to its coming into force in March 2022. A survey conducted in November 2020 found that 68% of adults already believed that 'smacking' was illegal and only 27% were aware of the law change at that time (Timmins, 2021). By early 2022, 84% of adults believed that 'smacking' was illegal and 66% were aware of the law change (Timmins, 2023).

Prior to the Act's passage, Government had a positive parenting initiative, *Parenting: Give it Time*,³ which provided information on non-violent parenting and sources of help. Linked to this, a new campaign was started with £2.8m (CAD\$4.6m) of government funding. An accessible information leaflet⁴ was delivered to every household in Wales and

advertisements appeared in bus shelters and on billboards. Leaflets, videos, posters, factsheets and training sessions are available to parents, professionals in all children's sectors, police and prosecutors⁵.

A set of television and radio announcements using the slogan 'The Sound of Change' turned what sound like slaps into joyful interactions between parents and children⁶, conveying a sense that Wales has moved on and it is time to embrace change. Three months after the legislation took effect, the Welsh Government organized a series of 'summer roadshows.'⁷ These were public drop-in sessions at supermarkets and other public locations, where parents could get practical advice and learn about the new law. Additionally, the existing 'Flying Start' programme for children up to the age of three and their parents, which provides boosted health visitor contact, parenting classes (including information on non-violent parenting) and high-quality childcare in areas of higher socio-economic need, was further expanded (Welsh Government, 2022b).

While criminal prosecution is possible, it has remained rare – fewer than 5 cases were referred to the Crown Prosecution Service in the year after the law came into force (Welsh Government, 2023). Over four years, local authorities have access to £2.9m (CAD\$4.9m) to provide tailored parenting support as an alternative to prosecution, known as an out-of-court disposal (Cornish, 2022). In the first 6 months after the Act came into force, police across Wales made 55 referrals to out-of-court parenting support; all referrals were taken up and 30 have completed the sessions (Welsh Government, 2023). To date, 35 individuals have reported a positive outcome, defined as improved child behaviour or increased parental wellbeing or efficacy. Data are not yet available on changes in referrals to social services since the Act came into force.

Wales's relatively comprehensive public awareness strategy, alongside an unambiguous legal prohibition of physical punishment and waning public acceptance of "smacking" should create the ideal conditions for a rapid decline in physical punishment and a non-punitive system response. It is vitally important that professional responses to physical punishment reports and trends in attitudes and behaviours are regularly evaluated to document the impact of providing full legal protection to children.

References

- BBC News (2023, April 12). *Government rejects call to ban smacking in England*.
<https://www.bbc.com/news/uk-politics-65243518>
- BBC News (2008, January 18). *Parent smacking ban is ruled out*.
http://news.bbc.co.uk/2/hi/uk_news/wales/7194015.stm
- Be Reasonable Wales (2023).
[https://www.bereasonable.wales/#:~:text=We%20opposed%20the%20Children%20\(Ab%20olition,parental%20smacking%20a%20criminal%20offence.](https://www.bereasonable.wales/#:~:text=We%20opposed%20the%20Children%20(Ab%20olition,parental%20smacking%20a%20criminal%20offence.)
- Bowcott, O. (2020). Former appeal court judge to lead UK review of Human Rights Act. *The Guardian*, December 7. <https://www.theguardian.com/law/2020/dec/07/former-appeal-court-judge-lead-uk-review-human-rights-act-peter-gross>
- Bullivant, S. (2017). The “no religion” population of Britain: Recent data from the British Social Attitudes Survey (2015) and the European Social Survey (2014). *Catholic Research Forum Reports 3*. London: St Mary’s University.
<https://www.stmarys.ac.uk/research/centres/benedict-xvi/docs/2017-may-no-religion-report.pdf>
- Chaney, P. (2002). Social capital and the participation of marginalized groups in government: A study of the statutory partnership between the third sector and devolved government in Wales. *Public Policy and Administration*, 17(4), 20-8. [10.1177/095207670201700403](https://doi.org/10.1177/095207670201700403)
- Chaney, P. (2006). Critical mass, deliberation and the substantive representation of women: Evidence from the UK’s devolution programme. *Political Studies*, 54(4), 691–714. doi.org/10.1111/j.1467-9248.2006.00633.x
- Christian Institute (2019). *Smacking briefing*. August. Newcastle-upon-Tyne: Author.
https://www.christian.org.uk/wp-content/uploads/Smacking_Briefing_Aug_2019_web.pdf
- Church Times (2012). *Morgan: End smacking*.
<https://www.churchtimes.co.uk/articles/2012/23-november/news/uk/morgan-end-smacking>
- Cornish, K. (2022). Circular from Deputy Director, Children and Families Division, Welsh Government Regarding *Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020*. <https://www.gov.wales/sites/default/files/publications/2022-03/children-wales-act-circular.pdf>

- Council of Europe (1950). *European Convention on Human Rights*. Strasbourg: Author.
https://www.echr.coe.int/documents/convention_eng.pdf
- Council of Europe (1998). *Case of A. v. United Kingdom*. 100.1997/884/1096. Strasbourg: Judgment. <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-58232&filename=001-58232.pdf>
- Crown Prosecution Service (2022). *Offences against the person, incorporating the charging standard*. London: Author. <https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard>
- Davies, N., & Williams, D. (2009) *Clear red water: Welsh devolution and socialist politics*. London: Francis Boutle.
- Department for Children, Schools and Families (2007). *Review of Section 58 of the Children Act 2004*. Report presented to Parliament by the Secretary of State for Children, Schools and Families by Command of Her Majesty.
<https://www.gov.uk/government/publications/review-of-section-58-of-the-childrens-act-2004>
- Lansford, J. E., Cappa, C., Putnick, D. L., Bornstein, M. H., Deater-Deckard, K., Bradley, R. H. (2017). Change over time in parents' beliefs about and reported use of corporal punishment in eight countries with and without legal bans. *Child Abuse & Neglect* 71, 44-55. doi.org/10.1016/j.chiabu.2016.10.016
- Middleton, J. (2020). Wales joins Scotland in BANNING smacking but use of 'reasonable chastisement' remains legal in England. *Daily Mailonline*, January 28.
<https://www.dailymail.co.uk/news/article-7939859/Ministers-Wales-vote-introduce-smacking-ban.html>
- Miller-Perrin, C., & Perrin, R. (2018), Physical punishment of children by US parents: moving beyond debate to promote children's health and well-being. *Psicologia: Reflexão e Crítica*, 31(16), doi.org/10.1186/s41155-018-0096-x
- Morgan, J. (2019, March 25). *Cabinet statement. Written statement: Introduction of the Children (Abolition of the Defence of Reasonable Punishment) (Wales) Bill*.
<https://www.gov.wales/written-statement-introduction-children-abolition-defence-reasonable-punishment-wales-bill>.
- Morris, S. (2011). Wales debates ban on smacking. *The Guardian*. October 18.
<https://www.theguardian.com/uk/2011/oct/18/wales-debates-end-smacking>
- National Assembly for Wales (2011). *Rights of Children and Young Persons (Wales) Measure 2011*. <https://www.legislation.gov.uk/mwa/2011/2/contents>

- National Assembly for Wales (2014). *The record of proceedings*. Plenary, Fourth Assembly, Tuesday 11 February 2014 13.30.
<https://business.senedd.wales/mgChooseDocPack.aspx?ID=2270>
- National Assembly for Wales (2019). *Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill: Committee stage 1 report*. Cardiff Bay: Children, Young People and Education Committee. <https://senedd.wales/laid%20documents/cr-ld12708/cr-ld12708-e.pdf>
- National Assembly for Wales (2020). *Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020*. <https://www.legislation.gov.uk/anaw/2020/3>
- NSPCC (2022). *Majority believe it's unacceptable to physically punish a child*. NSPCC News, March 2022. <https://nspcc.org.uk/about-us/news-opinion/2022/equal-protection-wales-england>
- Shipton, M. (2015). Welsh labour rift as party considers putting smacking ban in manifesto. *WalesOnline*, July 10. <https://www.walesonline.co.uk/news/wales-news/welsh-labour-rift-party-considers-9634330>
- Stubbs, P., & Lendvai-Bainton, N. (2019). Authoritarian neoliberalism, radical conservatism and social policy within the European Union: Croatia, Hungary and Poland. *Development and Change*, 51(2), 540-560. doi.org/10.1111/dech.12565
- Timmins, C. (2021). Public attitudes to physical punishment of children: Wave 3 survey, 2020. *Social Research Number 59/2021*. Cardiff: Welsh Government. <https://www.gov.wales/sites/default/files/statistics-and-research/2021-09/public-attitudes-to-physical-punishment-of-children-wave-3-survey-2020.pdf>
- Timmins, C. (2023). Public attitudes to physical punishment of children: Wave 5 survey, March 2022. *Social Research Number 13/2023*. Cardiff: Welsh Government. <https://www.gov.wales/sites/default/files/statistics-and-research/2023-02/public-attitudes-to-physical-punishment-of-children-wave-5-survey-march-2022.pdf>
- Timmins, C., & Knight, O. (2018). Parental attitudes towards managing young children's behaviour 2017. *Social Research Number 42/2018*. Cardiff: Welsh Government. <https://www.gov.wales/sites/default/files/statistics-and-research/2019-03/parental-attitudes-towards-managing-young-childrens-behaviour-2017.pdf>
- UK Parliament (2004a). *Children Act 2004*. <https://www.legislation.gov.uk/ukpga/2004/31/contents>
- UK Parliament (2004b). *Hansard of House of Commons Debates for November 2, 2004*. Cols 257-264.

<https://publications.parliament.uk/pa/cm200304/cmhansrd/vo041102/debtext/41102-33.htm>

UK Parliament (2008). *Hansard of House of Lords Debates for October 16, 2008*. Cols 822-824. <https://publications.parliament.uk/pa/ld200708/ldhansrd/text/81016-0002.htm>

UN Committee on the Rights of the Child (2016) *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*. CRC/C/GBR/CO/5.

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAq hKb7yhskHOj6VpDS%2F%2FJqg2Jxb9gncnUyUgbnuttBweOlylfyYPkBbwffitW2Jur gBRuMMxZqnGgerUdpjxij3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0GL>

UN General Assembly (1989). *Convention on the Rights of the Child*. Treaty Series, vol. 1577. Geneva: United Nations. <https://www.unicef.org/child-rights-convention>

Welsh Assembly Government (2004). *Children and young people: Rights to action*. Cardiff: Children's Framework Team. <https://dera.ioe.ac.uk/7717/1/090415rightstoactionen.pdf>

Welsh Government (2019). *Ending physical punishment: The journey to protecting children from physical punishment*. <https://www.gov.wales/sites/default/files/publications/2021-09/journey-through-time-to-protecting-children-from-physical-punishment-1860-2022.pdf>

Welsh Government (2020). *Children (Abolition of Defence of Reasonable Punishment) (Wales) Act: Explanatory memorandum incorporating the regulatory impact assessment and explanatory notes*.

<https://www.gov.wales/sites/default/files/publications/2020-03/explanatory-memorandum.pdf>

Welsh Government (2022a). *Delivering justice for Wales*.

<https://www.gov.wales/sites/default/files/publications/2022-06/delivering-justice-for-wales-may-2022-v2.pdf>

Welsh Government (2022b). *Flying Start expanded in Wales*. Welsh Government Press Release. <https://www.gov.wales/flying-start-expanded-wales>

Welsh Government (2022c). *Law Wales: Wales Act 2017*. <https://law.gov.wales/constitution-and-government/constitution-and-devolution/wales-act-2017>

Welsh Government (2023). *The Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020: First data release*. Cardiff: Government Social Research.

<https://www.gov.wales/monitoring-data-children-abolition-defence-reasonable-punishment-wales-act-2020>

¹ See <https://www.bereasonable.wales/>

² See <https://www.christian.org.uk/campaign/reasonable-chastisement/>

³ <https://www.gov.wales/parenting-give-it-time#:~:text=start%20in%20life.-,Parenting.,and%20alternatives%20to%20physical%20punishment.>

⁴ It was similar to this leaflet: <https://www.gov.wales/sites/default/files/publications/2022-05/ending-physical-punishment-campaign-leaflet.pdf>

⁵ <https://www.gov.wales/ending-physical-punishment-wales>

⁶ <https://www.exchangewales.org/sound-of-change-end-of-physical-punishment-in-wales/>

⁷ <https://www.childreninwales.org.uk/news/summer-roadshows-across-wales-provide-positive-parenting-support/>