



Response to Call for Evidence: Justice (Sexual Offences and Trafficking Victims) Bill

**Children's Law Centre
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Introduction

The Children's Law Centre (CLC) is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children and young people and their parents and carers called CHALKY as well as a Live Chat service for young people accessed through a Chat Bot, REE Rights Responder. We have a youth advisory group called Youth@clc. Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health problems and complex physical health needs and children and young people from ethnic minority backgrounds. We lead in this jurisdiction in reporting to the UN Committee on the Rights of the Child on the implementation of the United Nations Convention on the Rights of the Child (UNCRC) in NI.

Our organisation is founded on the principles enshrined in the UNCRC, in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

From its perspective as a children's rights organisation working with and on behalf of children, CLC is grateful for the opportunity to make a submission of evidence to the Justice Committee on the Justice (Sexual Offences and Trafficking Victims) Bill, hereafter referred to as "the Bill".

International Human Rights Standards

United Nations Convention on the Rights of the Child

The following articles of the UNCRC are relevant (inter alia) to the Bill:

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

The [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#) will also be of relevance.

European Convention on Human Rights

Article 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.

Article 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 13

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Provisions to widen the scope and strength of the current law on abuse of trust

CLC endorses the response to this Call for Evidence provided by the National Society for the Prevention of Cruelty to Children (NSPCC) in relation to their 'Close the Loophole' Campaign.

CLC supports the principle of the Bill to strengthen protections for 16 and 17 year olds in non-statutory settings. This provision should include as broad a range of environments and extracurricular activities as possible to ensure that 16 and 17 year olds are protected from potential grooming and child sexual exploitation.

It is imperative that the amendment provides clarity in relation to all settings that it should apply to and should also ensure that the provision is broad enough to capture a wider range of settings where adults have influence and power over children, and to make sure that there is certainty in its application.

CLC welcome the further expansion of protection, enabled by the power to add or remove fields of activity by way of affirmative instrument. To further strengthen and future proof the provision, it is recommended that consideration should also be given to the inclusion of a statutory review mechanism.

Equal Protection

The UN Convention on the Rights of the Child specifies the rights of children in relation to freedom from violence in Article 19 as outlined above.

Furthermore, the [UN Committee on the Rights of the Child's General Comment No 13: The right of the child to freedom from all forms of violence](#)¹ states that there should be no exceptions to the right of the child to freedom from all forms of violence:

"The Committee has consistently maintained the position that all forms of violence against children, however light, are unacceptable. "All forms of physical or mental violence" does not leave room for any level of legalized violence against children. Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but definitions must in no way erode the child's absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable".²

¹ CRC/C/GC/13

² CRC/C/GC/13 Para 17

General Comment No 13 also states that State parties that have not already done so must:

*“Review and amend domestic legislation in line with article 19 and its implementation within the holistic framework of the Convention, establishing a comprehensive policy on child rights and ensuring absolute prohibition of all forms of violence against children in all settings and effective and appropriate sanctions against perpetrators”.*³

The UN Committee on the Rights of the Child have expressed concern and highlighted the need for legislative reform on numerous occasions in its examination of the UK government in its implementation of the UNCRC. Concluding Observations and Recommendations from the UN Committee on the Rights of the Child in 2002 stated that:

*“The Committee is of the opinion that the Government’s proposals to limit rather than to remove the “reasonable chastisement” defence do not comply with the principles and provisions of the Convention and the aforementioned recommendations, particularly since they constitute a serious violation of the dignity of the child (see similar observations of the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.79, para. 36). Moreover, they suggest that some forms of corporal punishment are acceptable, thereby undermining educational measures to promote positive and non-violent discipline.”*⁴

In 2008, the Committee stated in their Concluding Observations and Recommendations:

“The Committee, reiterating its previous recommendations (CRC/C/15/Add.188, para. 35), in light of its General Comment no. 8 on “the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, as well as noting similar recommendations made by the Human Rights Committee; the Committee on the Elimination of Discrimination Against Women; and the Committee on Economic, Social and Cultural Rights, recommends that the State party:

- a) prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, in England and Wales, Scotland, and Northern Ireland, and in all overseas territories and crown dependencies;*
- b) ensure that corporal punishment is explicitly prohibited in schools and all other institutions and forms of alternative care throughout the United Kingdom and in the overseas territories and crown dependencies;*
- c) actively promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to raising*

³ CRC/C/GC/13 Para 41

⁴ Para 37 CRC/C/15/Add.188

public awareness of children's right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing;
d) provide parental education and professional training in positive child-rearing".⁵

Again, in 2016 the Committee expressed concern and reiterated the need for legislative change:

"With reference to its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and its previous recommendations, the Committee urges the State party, in all devolved administrations, overseas territories and Crown dependencies, to:

- (a) Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as "reasonable chastisement";*
- (b) Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;*
- (c) Strengthen its efforts to promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing".⁶*

In Northern Ireland, the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 provides for a defence of 'reasonable punishment' for parents and carers who are accused of assault against a child:

Physical punishment of children

2.—*(1) In relation to any offence specified in paragraph (2), battery of a child cannot be justified on the ground that it constituted reasonable punishment.*

(2) The offences referred to in paragraph (1) are—

- (a) an offence under section 18 of the Offences against the Person Act 1861 (c. 100) (wounding, or causing grievous bodily harm, with intent);*
- (b) an offence under section 20 of that Act (malicious wounding or grievous bodily harm);*
- (c) an offence under section 43 of that Act (aggravated assault);*
- (d) an offence under section 47 of that Act (assault occasioning actual bodily harm and common assault); and*
- (e) an offence under section 20(1) of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34) (cruelty to persons under 16).*

⁵ Para 42 CRC/C/GBR/CO/4

⁶ Para 41 CRC/C/GBR/CO/5

(3) 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.

(4) For the purposes of paragraph (3), “actual bodily harm” has the same meaning as it has for the purposes of section 47 of the Offences against the Person Act 1861.

(5) In section 20 of the Children and Young Persons Act (Northern Ireland) 1968, subsection (6) is hereby repealed.

The provisions of Article 2 Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 are demonstrably incompatible with international human rights obligations. Further it is our view that this is a key public protection issue and it is in the best interests of children that the removal of the defence is brought forward as an amendment to this Bill.

Northern Ireland is lagging behind the, Scotland, Wales, the Republic of Ireland and over 60 other countries around the world⁷ in relation to legislation for the equal protection of children against assault.

Furthermore, research commissioned by the Children’s Commissioners Office in 2017⁸ demonstrate that perceptions about physical punishment and the acceptability of hitting or smacking children have changed in this jurisdiction. Importantly, the findings should that the majority of adults think it is time that children in Northern Ireland were given equal protection from assault under the law.

This Bill offers an extremely important opportunity to change the law in Northern Ireland to better protect our infants, children and young people from the harmful physical and psychological effects of physical punishment.

The international research is unequivocal that the physical punishment of children is harmful. There is a strong international evidence that sets out the negative, long term affects that physical punishment has on children and young people.⁹

⁷ Global Initiative to End all Corporal Punishment of Children <https://endcorporalpunishment.org/global-progress/>

⁸NI Commissioner for Children and Young People (NICCY) Changing Perceptions: Equal Protection for Children <https://www.niccy.org/media/2839/niccy-changing-perceptions-equal-protection-for-children-report-2017.pdf>

⁹ In 2015, an international literature review on the impact of physical punishment on children, found strong and consistent evidence that physical punishment increases aggression, antisocial behaviour, depression and anxiety in children, which may continue into their adult lives. In addition, harsh forms of discipline and physical forms of abuse in particular can have long-lasting impacts on future behaviour and mental health. Sources: Heilmann, A, Kelly, Y and Watt. R.G. (2015) Equally Protected - A review of the evidence on the physical punishment of children. Edinburgh: Children and Young People’s Commissioner Scotland, NSPCC Scotland, Children 1st, Barnardo’s Scotland and Gershoff, E.T. and Grogan-Kaylor, A. (2016). Spanking and child outcomes: old controversies and new meta-analyses. *Journal of Family Psychology*, Volume 30, Issue 4, pp. 453-469; Farrington, D.P. (2005) Childhood origins of antisocial behaviour. *Clinical Psychology and antisocial behaviour*, Vol. 12, Issue 3, p. 177-190; Fergusson, D.M., Boden, J.M. and Horwood, L.J. (2008) Exposure to childhood sexual and physical abuse and adjustment in early adulthood. *Child Abuse and Neglect*, 32, 607–619; Gross, A.B. and Keller, H.R. (1992) Long term consequences on childhood physical and psychological maltreatment. *Aggressive Behavior*, 18(3), 171–185.

Physical punishment also carries a worrying and serious risk of escalation into injurious physical abuse and maltreatment in some instances. While it is recognised that not all physical punishment results in child abuse, many child abuse deaths across the UK are from physical assaults which began as physical punishment. The death of Victoria Climbié, for example, involved harsh physical punishment. Victoria Climbié's 'carers' initially punished her with slaps and smacks which escalated into horrific torture that led to her death. An international literature review carried out in 2015 on the impact of physical punishment on children, which reviewed seven studies into the link between punishment and abuse concluded that: *"...the association between corporal punishment and physical abuse was statistically significant and considered moderate."*¹⁰

Evidence also shows that widespread criminalisation of parents has not been the effect in any of the 62 countries that have passed laws to ensure equal protection from assault for children. The intention in removing the defence of reasonable chastisement is not to seek to criminalise parents, but instead it is to provide clarity and to ensure children enjoy the same protection against assault as adults. It also ensures children living with their parents in home settings enjoy the same protection as children in the care of the state who either live in domestic home settings (fostered) or other facilities.¹¹

For example, New Zealand banned all forms of physical punishment in 2007. State organisations carefully monitored the amount and responses to cases of parental physical punishment. Regular police reports to the government show that there were just 8 prosecutions between 2007 and 2012.¹²

We recognise that alongside legislating for equal protection from assault government must give parents support and encouragement to find alternative means of discipline for their children. The Northern Ireland Executive should adopt a twin track approach to supporting parents through the removal of the legal defence and a widespread public education campaign on positive parenting.

The removal of the defence of reasonable punishment in Northern Ireland would be a key legislative amendment which would lead to better public protection and greater legal protections for children from the extremely damaging impacts of physical punishment as outlined above. Affording children equal protection from assault as

¹⁰ Gershoff E. (2016) Should parents' physical punishment of children be considered a source of toxic stress that affects brain development? *Family Relations*, 65, 151 – 162

¹¹ Children who are looked after, including those fostered in a home setting, enjoy better protection than children living with their parents. The Children and Young Persons (Voluntary Homes) Regulations (NI) 1975 sets out that corporal punishment should be avoided as far as possible and prohibited completely under the Children's Homes Regulations (NI) 1996. Similarly, the Foster Placement (Children) Regulations (NI) 1996 explicitly states that foster carers: "Not to administer corporal punishment to any children placed with him"

¹² See: <http://www.police.govt.nz/sites/default/files/resources/10-review-section-59.pdf>

adults, and their peers in other parts of the UK and Ireland, will send out a clear message from our Government that no form of physical violence is acceptable in any of our homes. It clearly falls within the scope of the Bill and should therefore be brought forward and supported as an amendment to this Bill.

Minimum Age of Criminal Responsibility

CLC are extremely disappointed that the opportunity has not been utilised when bringing forward this Bill to increase the Minimum Age of Criminal Responsibility in this jurisdiction.

The age of criminal responsibility in Northern Ireland at 10 years old is one of the lowest in the world and one of the lowest of any European country.

The United Nations Committee on the Rights of the Child has repeatedly said that the minimum age of criminal responsibility in the UK is not compatible with the government's obligation under international standards of juvenile justice and the UN Convention on the Rights of the Child.

In interpreting NI's obligations under the UNCRC in relation to the minimum age of criminal responsibility Professor Yanghee Lee the then Chair of the UN Committee on the Rights of the Child said, when delivering CLC's Annual lecture in 2008 that:

*"the Committee clearly expressed the importance of raising it to 12, with a view of eventually raising it even further... In order to persuade State parties to seriously raising the age of criminal responsibility... 12 was decided as the absolute minimum age by the Committee... Furthermore, it was the general understanding of the Committee that industrialized, democratic societies would go even further as to raising it to even a higher age, such as 14 or 16."*¹³

There is no shortage of research linking criminal behaviour of young people with poverty, mental ill health, being in care or experience of neglect/ abuse within their families, misuse of drugs or alcohol, and having learning and behavioural difficulties.¹⁴ It is important to note that children in areas of high socio-economic deprivation are more likely to be at risk of offending and prosecution and in this jurisdiction, this is particularly true of communities affected by the conflict. All evidence indicates that the children who are in contact with the criminal justice system are often children in need who have been failed by statutory services.

¹³ Professor Yanghee Lee, Chairperson of the UN Committee on the Rights of the Child – The Convention on the Rights of the Child: From Geneva to Northern Ireland, Bringing Children's Rights Home, CLC Annual Lecture, 13th March 2008

¹⁴ Howard League for Penal Reform (2011), 'Response to Breaking the Cycle: Effective Punishment, rehabilitation and sentencing of offenders', London: The Howard League for Penal Reform; Prison Reform Trust, (2009), 'Seen and Heard, supporting vulnerable children in the youth justice system'.

The snapshot obtained in June 2020 revealed that over half of the Woodlands Juvenile Justice Centre population were care experienced children, 64% were receiving support for mental health needs and 57% were receiving support for drug and alcohol misuse.

The Youth Justice Review makes specific reference to a number of groups of young people that are over represented in the youth justice system: *“A variety of specific groups of young people, especially looked after children and those with mental health and substance misuse problems, are over-represented in the criminal justice system and in custody.”*¹⁵

A low age of criminal responsibility that seeks a criminal justice solution to welfare, health and poverty issues simply accelerates already vulnerable children further into the criminal justice system and ultimately custody.

CLC would therefore encourage the Committee to support an amendment to raise the age of criminal responsibility in NI.

Conclusion

The Children’s Law Centre is grateful to have the opportunity to provide a submission to the Committee on the Justice (Sexual Offences and Trafficking Victims) Bill. We hope that our comments are been useful and constructive.

If the Committee requires any further detail or clarification, we would be happy to assist the Committee in any way that is helpful. CLC would be keen to discuss the issues included in this submission, in particular in relation to Equal Protection and the Minimum Age of Criminal Responsibility in more detail with the Committee and would be happy to provide evidence to the Committee when this Bill is being considered at Committee Stage.

CLC again thanks the Committee for this opportunity to engage with it on these important issues.

¹⁵ A Review of the Justice System in NI
<https://restorativejustice.org.uk/sites/default/files/resources/files/Report%20of%20the%20Youth%20Justice%20System%20in%20Northern%20Ireland.pdf>