Locking up Parents?

A response to the Government's consultation on the **physical punishment of children**

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INFLUENCING PUBLIC POLICY

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Introduction

The Government proposes to change the law on parental discipline. Will ordinary parents risk jail for smacking their own children? Given what has already happened to some parents under the existing law we do not think that this prospect is far fetched.

The Government's own study has found that 88% of people say it is "sometimes necessary to smack a naughty child".[1] The Government says that smacking should continue to be allowed by law.

But despite this, the measures being proposed will seriously infringe the ability of parents and other carers to discipline children.

Parents have always known that there are times when reasoning with a child is not enough. On those occasions, a smack will show the child the seriousness of his misbehaviour. It is the ultimate sanction. And children know it. Often, the mere knowledge that a misdeed could lead to a smack will help a child behave.

But this common sense view is in danger of being set aside. This is why it is vital for ordinary parents to respond now.

Colin Hart
Simon Calvert
Mike Judge
6 April 2000

Smacking: Used by loving parents

Most parents smack their children. They are not child abusers. They do it because they see discipline as part of love. Parents who want the best for their children and who want them to learn right from wrong, normally use physical punishment.

Babies below the age of 15 months have little or no sense of what their parents are telling them to do. But around the age of 15 to 18 months children have a growing sense of right and wrong. They can gently be held accountable for their actions. For example, an 18-month-old boy could be tapped on the hand when he defies a warning and reaches out to a hot radiator.

Children, particularly those aged between 2 and 6 do not tend to rationally assent to what their parents say is good for them. Smacking does have a role in teaching them to obey their parents. It is not the only way of teaching discipline to children, but it is an important way.

By the age of 6 parental use of smacking typically diminishes. By the age of 10 it has often stopped altogether for many parents. A review article by Dr Larzelere published in the major American Journal *Pediatrics*[2] found that of eleven studies of parental discipline, over half (55%) were found to have had beneficial outcomes for children and only 9% had detrimental outcomes. The remaining 36% had neutral outcomes.

The law gives parents the common sense right to discipline children using physical punishment. It gives a defence of “reasonable chastisement” against a charge of assault. Technically, even the slightest tap on another person is an assault if they do not consent to it. Hence the need for a defence. In practice this defence has also been available to other relatives such as grandparents, and to close family friends.

The Biblical View

When it comes to the discipline of children there are profound differences between the Christian and the secular viewpoint. The secularist believes man is corrupted by his environment. Christians hold to Jesus' teaching "*For out of the heart* come evil thoughts, murder, adultery, sexual immorality, theft, false testimony, slander".[3]

There is a problem of the human heart. It has a tendency towards doing what is wrong. That is why we all need constraints: of the law, of social rules and mores and of our parents through their care and nurture.

The duty of a child to "honour your father and your mother" is one of the Ten Commandments.[4] The role of parents and the duty of children to obey them is thereby enshrined in the most central moral teaching of the Bible.

The Judaeo-Christian tradition has always endorsed the parental right to use corporal punishment to teach children to behave well. The Bible says in the book of Proverbs "He who spares the rod hates his son, but he who loves him is careful to discipline him."[5] The use of implements by parents is regarded as legitimate by the Bible.

At the same time as clearly mandating corporal punishment, the Bible warns against harsh and unreasonable discipline: "Fathers do not exasperate your children...".[6]

Political correctness and the campaign to criminalise smacking

Whilst 90% of the British public believe it is right to smack children the same cannot be said of some leading children's charities and the social work establishment.

The NSPCC, Save the Children and Barnardos all want to make parental smacking a criminal offence. Those who press the case for children's rights have an unusual ideology. As well as wanting to ban smacking the NSPCC and Barnardos want homosexual couples to be allowed to adopt children.

EPOCH (End Physical Punishment of Children) has teamed up with these organisations to launch a campaign called '*Children are unbeatable'*. This alliance believes that smacking children teaches them to be violent. The campaign seeks to make parental smacking a criminal offence. [7]

The British Association of Social Workers and the National Institute for Social Work have joined the alliance along with a host of other professional organisations who work with children.

Paul Boateng, a Government Minister has said "The overwhelming majority of parents know the difference

between smacking and beating".[8] We are sure this is so. But the social work establishment cannot tell the difference because they are calling for all smacking to be made a criminal offence.

Even the Government says that its national parent telephone helpline will seek to dissuade parents from using smacking:
"A key element of the advice and support offered to parents will involve helping them to find methods of getting children to co-operate and behave in an acceptable and appropriate manner, using means other than physical punishment."[9]

Child abuse by social workers?

Those who hold the view that all smacking should be criminalised are actually in charge of the child protection system. The question is: are social workers always able to separate their own extraordinary private views (opposed by the vast majority of parents) from their professional responsibilities?

It seems not from the cases we have considered. The judgement of social workers can be coloured by their own prejudice as to how things should be. Social workers, if they abuse their powers, can harm children. When they get things wrong many children can be harmed. This is precisely what has happened in a number of high profile cases.

But there are many more cases where social workers act inappropriately which never make the headlines. The following is a possible scenario of what can happen now when a complaint is made about a parent to Social Services. It is based on accounts of real cases.

An anonymous telephone call is made to a social worker alleging that a parent is 'beating' his child. This triggers a duty under Section 47 of the Children Act requiring the local authority to investigate. The threshold for this duty is very low. The suspicion of significant harm is enough. It is apparently very rare for a court to overrule a social worker's decision to investigate under Section 47.

The social worker pays a visit. The parents deny any beating. They do, however, indicate that they believe in smacking. They add that one of the children was smacked on the bottom the day before, the day of the anonymous complaint.

This particular social worker believes all smacking constitutes child abuse. She tells the parents that they should not smack their children. The parents disagree and indicate they will continue to smack.

The social worker asks if the parents will allow the child

to be examined by a doctor to see if there are any marks on the child's rear. The parents decline, saying it will upset the child too much, assuring the social worker that the smacking resulted in nothing more than a few minutes redness and a bout of tears. The child was hugged and professed to be sorry and went off to play.

The social worker is unhappy with the parents' commitment to smacking. She meets with colleagues who share her disquiet about smacking. They decide to seek an Emergency Protection Order from the court in order to have the child examined by a doctor.

Before the court, the social worker describes a distressed call from a neighbour who heard the child crying after being smacked. She also indicates that the parents were completely unrepentant about the incident, and that they were secretive about the nature of the injuries which the smacking caused.

An Emergency Protection Order is granted and the child is taken from the parents home with the assistance of a police officer. The father is furious. He is warned that his conduct constitutes evidence that he is unable to 'manage his anger' and that the social worker's view of his abilities as a parent are thereby further undermined.

No evidence of any bruising or tenderness is found on the child. The child is returned to the parents. A child protection conference is called involving the local police, the child's teacher, the local health visitor and representatives of social services. In the absence of bruising or any evidence that an implement was used, the police officer advises that a prosecution would not succeed.

However, the parents' admission of the smack and their unwillingness to eschew smacking, combined with evidence of the father's 'poor anger management' result in the child being placed on the local Child Protection Register. The parents are advised that they must attend

parenting classes to learn alternative methods of discipline. They are also warned that any further incidence of physical punishment will be investigated.

A core group meets regularly to monitor progress and all agencies (such as health visitors, teachers etc) are told that they are required to report any concerns immediately to the allocated social worker. Review conferences take place at regular intervals.

The chain of events from when a referral is made to long term social services involvement is inexorable. One Scottish case will now be considered.

The 'F' Case (Scotland)

Mr F did not spend Christmas 1998 with his family. The 48-year-old primary teacher was banned for two weeks from visiting his own home following his arrest by the police. He was allowed three one-hour visits to see his three children accompanied by social workers.

The story began when his eight-year-old daughter had been in pain over a bad tooth for days despite a full dose of Calpol. It was Christmas Eve. There was only one remedy. The tooth had to be pulled. The dentist had to be seen. But after 40 minutes in the waiting room she still refused to have an anaesthetic injection. Mr F "snapped". He later admitted that he had "gone over the top". According to a member of staff at the Health Centre he smacked his daughter's bare bottom six or seven times. Shortly afterwards the girl submitted to having the tooth removed. Meanwhile a telephone call was made to the social work department. It was not long before Mr F found himself in a police cell.

Mr F was released on bail conditions which required that he stay away from his home. After a two week stay with relatives Mr F was allowed to go back. Every week following social workers visited to check up on his ability as a parent.

Mr F was suspended on full pay from his teaching duties. Instead he worked in the school library. On 19 May 1999 the case came to court. He was found guilty of assault. Sheriff Dan Russell said "The blows were clearly sore and must have caused her pain. In my opinion this was unnecessary suffering. I therefore find the accused guilty of the charge."[10] During the trial the eight-year-old girl gave evidence that she was not sore.

Mrs F said that her daughter cried every day her father had been away from home because she missed him so much.[11] The girl was "physically ill" for three days after giving evidence.[12]

After the verdict the Royal Scottish Society for the Prevention of Cruelty to Children and Save the Children called for all parental smacking to be banned.[13]

On 9 June Sheriff Russell formally admonished Mr F who was much relieved. He could have faced a three month jail sentence.[14] A request by social workers to have the children made the subjects of a supervision order was deferred for a Children's Panel report. On 2 July Sheriff MacDonald sitting in the same Hamilton Court abandoned the case. The request to grant a supervision order was initially refused but then subsequently it was granted and social workers still make weekly visits to check up on Mr F's abilities as a parent.[15]

After the trial the girl was afraid to sleep in her own bed and was reluctant to leave her parents' presence.[16]

Mr F's crime was to smack his own daughter. The case attracted worldwide attention. Many parents thought that it could easily have been them. As Mr F's union representative said "If you take this to a logical conclusion, as I see it, if parents were to be locked up for smacking their children then we would be locking up half the parents in Scotland".[17]

Mr F lost his temper, in his own words he went "over the top". That was wrong, but which caused more harm to his daughter, the seven smacks or the even more heavy-handed tactics of social services and the police? An unfortunate incident which could have been easily forgotten by all was turned into an on-going nightmare courtesy of North Lanarkshire Social Work Department.

As the girl herself said to a newspaper reporter, "I would rather my daddy had spanked me fifty times than any of this had happened. Please make them stop it."[18]

Social work blunders

Social Workers have a very difficult job. Judging the best interests of a child is not easy. As one Social Services Department pointed out: "the social services, of course, always have a thankless task. If they are over cautious and take children away from their families they are pilloried for doing so. If they do not take such action and do not take the child away from the family and something terrible happens to the child, then likewise they are pilloried."[19]

There have, nevertheless, been some catastrophic errors of professional judgement that have damaged children and torn families apart. Between February and July 1987 a total of 125 children in the Cleveland area were diagnosed as having been sexually abused.[20] At one stage, the wards of Middlesbrough General Hospital could not cope with all the children that social services wanted to remove from their family homes.[21] By the time the whole tangled mess had been sorted out most children were returned to their parents and only a fraction remained in care.[22]

The extreme situation at Middlesbrough General Hospital attracted much attention not least from Middlesbrough Labour MP, Stuart Bell. He said: "A mass hysteria had enveloped Middlesbrough as children were taken from their homes by social workers."[23] He said the 'crisis' was a latter day witch hunt: "…just as in the Middle Ages and beyond there were those who believed in witch-craft, so there were those in Cleveland who believed that child sex abuse existed on a hitherto unknown scale."[24]

Mr Bell said there were serious problems with the way social services were being run. "The innocent divided families knew little of the wider issues, the clashing of powerful bureaucracies, the deep conviction of the participants, the attitudes of mind that… used place of safety orders as instruments of the state to take children

away from their parents… But not only were children taken away, fathers would be accused of a heinous crime, perhaps the most heinous of them all: molesting their own children. They stood falsely branded, falsely accused. And beyond their indignation was the sorrow of returning to empty homes."[25]

He attacked the way in which parents were forced to defend themselves against unproven allegations. "What he [one father] had discovered, as had others in Cleveland, was that the Anglo-Saxon concept of justice had been reversed. A man was no longer innocent until proven guilty. In the case of alleged child sexual abuse, or where a child had been injured, it became necessary for the alleged perpetrator to *prove* his innocence in a civil court."[26]

In the subsequent inquiry into the Cleveland crisis, Stuart Bell MP claimed that: "in dealing with these matters social workers adopted an attitude of insensitivity and a lack of compassion towards the parents."[27] The inquiry report says: "Mr Bell suggested in his evidence that:- 'Social services have a lack of compassion, a lack of sensitivity, a lack of respect for people and a lack of a sense of social justice.'"[28]

Strong words indeed. After Cleveland, the Government and Social Services Departments throughout the UK were determined to make sure such mistakes were not repeated. However, on Orkney in 1991 they were. Children from five families were removed into care following allegations of sexual abuse.[29] The children were returned weeks later when a Sheriff ruled that proceedings to bring the case to a Children's Hearing were incompetent.[30] Again there was an inquiry and the report of that inquiry concluded that social services on Orkney had failed to learn lessons from Cleveland.[31]

All allegations of child abuse should be taken seriously, and verifiable claims should be pursued vigorously. But not all assertions will be true. The Orkney report

criticises social workers for acting too quickly on allegations.[32] The report said: "The management of the Social Work Department failed to keep a wholly open mind regarding the allegations by the W children and allowed their thinking to be coloured by undefined suspicions which they failed to explore."[33]

The report goes on to say: "There was a failure on the part of members of the staffs of the Social Work Department, the RSSPCC, and the police to distinguish adequately between taking the allegations seriously and believing them."[34]

The scandalous way that Cleveland and Orkney social services dealt with these situations demonstrates the damage that can be done when social workers get it wrong. The proposed new legal rules on smacking can only make matters worse. The new law will encourage, if not require, social workers to make judgements on the motivation of parents in disciplining their own children. It gives them a mandate for more interference in family life. Most serious of all is the fact that the legal changes will encourage social workers to act in an arbitrary and subjective way.

A hard case makes bad law

The Government say that our law needs "modernising" following a case in the European Court of Human Rights.[35]

What the Government do not disclose about the case - known as the "A" case - is that the boy concerned was, according to his stepfather, punished for stealing at school having on a previous occasion threatened his younger brother with a knife.[36] The medical evidence to the court found that the stepfather beat him more than once with a garden cane, leaving marks, some of which may have lasted up to a week.[37] A British jury found the step-father not guilty of assault causing actual bodily harm. He relied on the long-standing defence of "reasonable chastisement". This is intended to protect the right of parents (and those in the place of parents) to administer ordinary, loving discipline.

The Strasbourg court found that this failure to convict by a British court was a breach of Article 3 of the European Convention on Human Rights. The Article outlaws "inhuman or degrading treatment or punishment". The court found that, in this particular case, the use of the "reasonable chastisement" defence of did not provide adequate protection to the boy.[38] The Court awarded the boy £10,000 compensation and £20,000 legal costs.[39]

No need for new laws

The fact is that the British jury seem to have made a mistake. The punishment of the child in this case does not appear to have been "reasonable" given the injuries that were inflicted. There was a miscarriage of justice. The existing law could and should have been used to convict the step-father.

The Government say that the law must be changed as a result of the ruling. In fact, the Government did not even defend the existing law in Strasbourg. It agreed there had been a breach of the Convention before the court hearing even took place.[40]

In reality, *there is no need to amend existing UK law at all*. The laws on assault should have been enough to result in a conviction. In any event, when the Human Rights Act 1998 comes into force in October 2000 all UK courts must take into account judgments from Strasbourg including the 'A' Case.[41]

What is being proposed

The Government says that they just want to stop "harmful and degrading treatment" of children. They do not want to ban all smacking.[42] This sounds good. The problem is that many social workers and childcare "experts" openly believe that ordinary smacking and "harmful and degrading treatment" are one and the same thing. They will be the people who implement the Government's new law. They will be the ones investigating parents. They will be the ones reporting cases to the police. They will be the ones giving evidence in court. That is why we are worried.

Social workers and the courts will be given a list of factors (what we call a "smacking checklist") to determine whether a parent has broken the law.

The smacking checklist (set out in paragraph 5.3 of the Government's paper[43]) requires the court to consider:

- "The nature and context of the treatment;
- Its duration;
- Its physical and mental effects; and, in some instances,
- The sex, age and state of health of the victim."

These are just "the minimum steps" the Government considers necessary to "clarify" the law to bring it in line with the Euro-judgement. Along with the checklist, the Government also suggests three additional options for restricting parents' rights:

Option 1: *Extending the checklist* to include: the parents' reasons for what they did; whether another adult carried out the punishment; how soon after the event the punishment was given; the use of implements (such as a wooden spoon); and, the vulnerability of the child.[44]
Option 2: "*Greatly reducing" the parental defence of reasonable chastisement*.[45] This would effectively classify children as adults, making parents much more vulnerable to prosecution for assault.
Option 3: *Clarifying (and possibly restricting) those who may claim the defence of reasonable chastisement.* [46]

A closer look

Under the regime proposed by the Government, parents would become afraid of smacking their own children. Once the form and circumstance of 'legal smacking' were laid down in detail by successive court cases, and after the public spectacle of parents being locked up, many would feel unable to smack at all for fear of accidentally failing to meet a criterion.

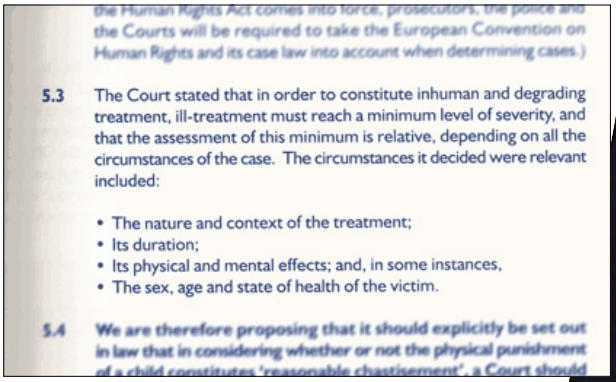
The present law has served us well. There appears to be only one recent case of a parent getting away with unreasonable punishment under the reasonable chastisement defence - the A case. If there had been others, we would no doubt have heard about them. Yet this one case is to result in a wholesale change in the law.

Is there any other instance where this has happened? With the law of murder, for example, there have been injustices under the existing law. But whilst such cases have led to changes in the rules of evidence, they have not led to any change in the law of murder. Murder is still murder. Parliament has not felt it necessary to redefine it. Freak cases do not warrant changing the law.

The fact is that the "A" case would never have made it to the Court of Human Rights if it had not been for the backing of the Children's Rights Lobby. They seized on this one case to further their agenda which is to outlaw all smacking. Ever since the case they have been pressurising the Government to change the law. Now it has acceded to their request.

The Government proposals for England and Wales

The Government have published a consultation paper setting out their proposals for changes in the criminal law. In England and Wales the proposals are the same. The consultation paper asks four questions to which the public are invited to reply. Below we set out these questions together with our response.



the Human Rights Act comes into force, prosecutors, the police and the Courts will be required to take the European Convention on Human Rights and its case law into account when determining cases.)

5.3 The Court stated that in order to constitute inhuman and degrading treatment, ill-treatment must reach a minimum level of severity, and that the assessment of this minimum is relative, depending on all the circumstances of the case. The circumstances it decided were relevant included:

- The nature and context of the treatment;
- Its duration;
- Its physical and mental effects; and, in some instances,
- The sex, age and state of health of the victim.

5.4 We are therefore proposing that it should explicitly be set out in law that in considering whether or not the physical punishment of a child constitutes 'reasonable chastisement', a Court should

Consultation Q. 1)

What, if any, factors *over and above* those factors set out in para. 5.3 should the law require a Court to consider when determining whether the physical punishment of a child constitutes 'reasonable chastisement'?

Answer 1) *None*.

The factors given in para 5.3 themselves would inevitably be used to intrude into the parent-child family relationship. The courts would be given an arbitrary power to restrict the right of parents to discipline their own children. There would be no certainty as to how the law would be applied. For example:

- Could "nature and context" mean a smack in a supermarket, no matter how deserved and how

carefully administered, was "criminal" because it takes place in public?

- Could a child's over-reaction to a smack lead a court to misjudge the "mental effects" of punishment?
- Requiring courts to consider age in every case, could result in a blanket ban on smacking of children below a certain age, regardless of the maturity of the particular child. It may also result on a ban on smacking children *over* a certain age.
- Putting these factors into law is a duplication. Once the Human Rights Act 1998 comes into force in October this year a court looking at a case similar to the "A" case would have to take account of what the European Court said anyway.

Option 1 which suggests extending the factors a court could take into account would make all these matters even worse.

- Getting courts to assess "reasons given for the punishment" and "how soon after the event" punishment was given will result in courts second-guessing the decisions of parents.
- What if a parent thinks swearing is a smacking offence but a judge does not? What if a parent thinks it better to wait to smack the child at home after a tantrum in the supermarket, but the court thinks that delay is too long?

Consultation Q. 2)

Are there any forms of physical punishment which should never be capable of being defended as 'reasonable'? Specifically, should the law state that any of the following can never be defended as reasonable:

- **Physical punishment which causes, or is likely cause injuries to the head (including injuries to the brain, eyes and ears)?**
- **Physical punishment using implements (e.g. canes, slippers, belts)?**

Answer 2) *There is no need for any change in the law.*

- Of course there are punishments which are always *un*reasonable. These would include any punishment which seeks wilfully to inflict injury on a child. Such behaviour is *already* a criminal offence.
- A "reasonable chastisement" defence has never been successfully used, as far as we are aware, to justify punishment which causes injury to or is likely to cause injury to a child's head. There is therefore no need for an additional law on this point.
- Similarly with shaking. If a parent shakes a child (especially a baby) and injures him or her, he will have committed a criminal offence. No new law is necessary.
- A hand can be just as dangerous as an implement. It depends how the implement is used. We strongly reject the proposal for a blanket ban on implements. Many loving parents out of conviction choose not to use their hand for smacking since the hand should be seen as a source of comfort - to hold, hug or caress. Instead they choose a neutral object such as a wooden spoon. Such an approach is adopted by Dr. James Dobson, a psychologist and international best-selling author of *Dare to Discipline*.
- Many adult men (who maintain that they are perfectly well adjusted) were disciplined by their parents using an implement such as a slipper.
- The Judaeo-Christian tradition supports the use of implements. It is even mandated in the Bible. Many religious people believe that it would be infringing their religious liberties to outlaw it.

Consultation Q. 3)

Should we restrict the defence of reasonable chastisement so that it may be used only by those charged with common assault, and not by those charged with causing actual bodily harm, or more serious assaults?

Answer 3) *No.*

- Whilst this legal change would not technically outlaw smacking, Option 2 would certainly lead to a dramatic increase in the number of parents who are prosecuted. It would create massive legal uncertainty for parents.
- Parents would be at the mercy of the prosecutor. If he chose to prosecute for common assault, they would have a defence. If he chose to prosecute for actual bodily harm, they would not.

Consultation Q. 4)
Who should be able to claim the defence of 'reasonable chastisement'?
Should it be:

- **As now, all those acting on behalf of parents in looking after children (except in settings where physical punishment has been outlawed)?**
- **Parents only (defined as those with parental responsibility under the Children Act 1989)?**
- **All those acting on behalf of parents, but only if parents have given their express permission that those acting on their behalf may physically punish their child?**

Answer 4) *The law should be left as it is.*

- Option 3 is simply ridiculous. Even the Government admit restricting who could use the defence would create problems. They give the example of step families[47] where a father might be able to smack his own children but not his step-children.
- Grandparents, relatives and neighbours looking after children would be unable to act *in loco parentis* by disciplining a child in the same way that their parent would. This is an outrageous intrusion into family life.
- Requiring express permission could result in a carer being convicted on a technicality where permission was implicit but not expressed in a way the court recognises.

The proposals from the Scottish Executive

These are broadly along the lines of the proposals in England and Wales. But there are some important differences. We set out the Executive's six questions and give our response below them.

Question 1: Do you agree with the Scottish Executive that parents should continue to be allowed to use reasonable physical punishment for their children?

Answer 1) *Yes.*

Question 2: Do you agree with the Scottish Executive proposals set out below?

Proposal 1: The law should make clear that physical punishment which constitutes 'inhuman and degrading treatment' can never be justified as 'reasonable chastisement'.

Proposal 2: The law should explicitly set out that, in considering whether or not the physical punishment of a child constitutes 'reasonable chastisement', a Court should always have regard to:

- **a. The nature and context of the treatment;**
- **b. Its duration;**
- **c. Its physical and mental effects; and, in some instances,**
- **d. The sex, age and state of health of the victim.**

Answer 2) *No.*
There has never been a case in the Scottish courts, so far as we can establish, where 'inhuman and degrading treatment' has been successfully defended as "reasonable

The Scottish Executive admitted that under Scots law the "A" case might never have arisen. The procurator fiscal could have invited the court to rule that there could be no finding that the punishment was reasonable.[48]

The Executive therefore place less reliance on the "A" case than the UK Government. Instead, they claim that "The need for a change in the law arises from changes in social attitudes since the 1930's and with them the public's attitude to corporal punishment".[49]

chastisement". Proposal 1 has never arisen as an issue. A new law is unnecessary.

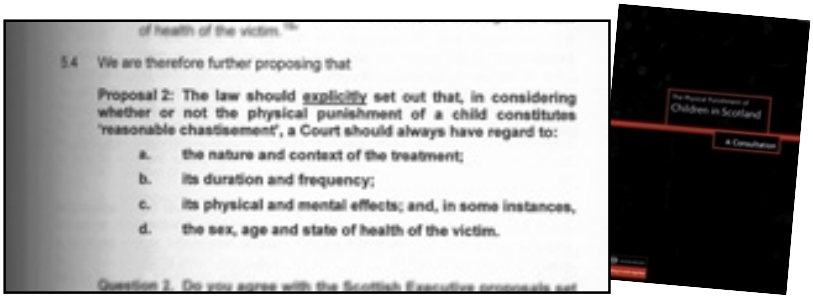
The factors given in Proposal 2 would inevitably be used to intrude into the parent-child family relationship. The courts would be given an arbitrary power to restrict the right of parents to discipline their own children. There would be no certainty as to how the law would be applied. For example:

- Could "nature and context" mean a smack in a supermarket, no matter how deserved and how carefully administered, was "criminal" because it takes place in public?
- Could a child's over-reaction to a smack lead a court to misjudge the "mental effects" of punishment?
- Requiring courts to consider age in every case, could result in a blanket ban on smacking of children below a certain age, regardless of the maturity of the particular child. It may also result on a ban on smacking children *over* a certain age.
- Putting these factors into law is a duplication. The Executive already admit that the procurator fiscal can advise the court to take account of human rights implications. Moreover from October this year all UK courts must take account of judgments of the European Court of Human Rights, including the 'A' case.

Question 3: What, if any, factors should the law require a Court to consider when determining whether the physical punishment of a child constitutes 'reasonable chastisement', over and above those factors set out in para. 5.4?

Answer 3) *None.*

- Getting courts to assess "reasons given for the punishment" and "how soon after the event" punishment was given will result in courts second-guessing the decisions of parents.
- What if a parent thinks swearing is a smacking


of health of the victim.

5.4 We are therefore further proposing that

Proposal 2: The law should explicitly set out that, in considering whether or not the physical punishment of a child constitutes 'reasonable chastisement', a Court should always have regard to:

a. the nature and context of the treatment;
b. its duration and frequency;
c. its physical and mental effects; and, in some instances,
d. the sex, age and state of health of the victim.

Question 2. Do you agree with the Scottish Executive proposals set

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offence but a judge does not? What if a parent thinks it better to wait to smack the child at home after a tantrum in the supermarket, but the court thinks that delay is too long?

Question 4: Are there any forms of physical punishment which should never be capable of being considered as 'reasonable'? Specifically, should the law state that any of the following can never be considered as reasonable:

a. Blows to the head (risking injuries to the brain, eyes and ears)?
b. Shaking children? (risking injuries to the brain)?
c. Using implements (e.g. canes, slippers, belts)?
d. The physical punishment of very young children (and if so, of what age)?

Answer 4) *There is no need for any change in the law.*

- Of course there are punishments which are always *un*reasonable. These would include any punishment which seeks wilfully to inflict injury on a child. Such behaviour is *already* a criminal offence.
- A "reasonable chastisement" defence has never been successfully used, as far as we are aware, to justify punishment which causes injury to or is likely to cause injury to a child's head. There is therefore no need for an additional law on this point.

- Similarly with shaking. If a parent shakes a child (especially a baby) and injures him or her, he will have committed a criminal offence. No new law is necessary.
- A hand can be just as dangerous as an implement. It depends how the implement is used. We strongly reject the proposal for a blanket ban on implements. Many loving parents out of conviction choose not to use their hand for smacking since the hand should be seen as a source of comfort - to hold, hug or caress. Instead they choose a neutral object such as a wooden spoon. Such an approach is adopted by Dr. James Dobson, a psychologist and international best-selling author of *Dare to Discipline*.
- Many adult men (who maintain that they are perfectly well adjusted) were disciplined by their parents using an implement such as a slipper.
- The Judaeo-Christian tradition supports the use of implements. It is even mandated in the Bible. Many religious people believe that it would be infringing their religious liberties to outlaw it.

Question 5: Who should be able to administer 'reasonable chastisement'? Should it be:

a. Only those with parental responsibilities and rights under the Children (Scotland) Act 1995)?
b. As now, all those acting on behalf of parents in looking after children (except in settings where physical punishment has been outlawed)?
c. All those acting on behalf of parents, but only if they have been given explicit permission to physically punish the child?

Answer 5) *The law should stay as it is.*

- The UK Government in their consultation paper admit that restricting who could use the defence would create problems. They give the example of step families[50] where a father might be able to

smack his own children but not his step-children.

- Grandparents, relatives and neighbours looking after children would be unable to act *in loco parentis* by disciplining a child in the same way that their parent would. This is an outrageous intrusion into family life.
- Requiring express permission could result in a carer being convicted on a technicality where permission was implicit but not expressed in a way the court recognises.

Question 6: Should there be a ban on corporal punishment in childcare centres, by childminders and in non-publicly funded pre-school centres?

Answer 6) *No.*

- Good parents have always had the right to assess whether they trust another person to administer punishment to their children on their behalf. Many parents would trust a childminder in just the same way as the would trust a friend or relative.
- Parents are often concerned that their children should be disciplined consistently. They know that prolonged exposure to more lax discipline away from home makes them more difficult when they return. They may therefore wish to stipulate to a carer that certain misbehaviour should meet with a certain physical sanction. The right to do this has already been removed from the area of schools. It should not be restricted even further.

A call to action: How to respond

The consultations in England and Scotland end on **21st April 2000**. According to both the Department of Health and the Scottish Executive it will not matter if responses are a few days late. In Wales the date is **8th May 2000.**

It is vital that as many parents as possible write to the Government before this date. The address to write to is given in the next section.

Some tips for writing:

- When you write, you must be brief, clear and reasoned.
- The purpose of writing is not to express outrage.
- You must say *why* you think the law should not be changed.
- Please respond to each of the questions posed.
- We have said what we think in answer to each of the Government's questions, but it is very important that you write *in your own words*.
- If you are a parent or grandparent, please say so. If you have experience of *unreasonable* interference in your family life, for example by social services, you might include this.

Remember there are different addresses to write to depending on whether you live in England, Wales or Scotland.

- In Scotland and Wales you can send in a response by e-mail.
- In England it is rather more regimented. Responses have to be written with two copies provided. They also want each question to be answered on a separate piece of paper.
- Civil servants will assume that they can quote you unless you inform them otherwise.

Getting hold of the consultation papers

England

Copies of the consultation paper "*Protecting Children, Supporting Parents*" are available on the Internet at http://www.doh.gov.uk/scg/pcspcon.htm or by telephoning 0541 555 455 (when asked choose option 2).

The Government request that two copies of a response be sent and that each question is answered on a separate page. The address to write to is :

SC3C
Response to the Physical Punishment of Children Consultation
Department of Health
Room 122 Wellington House
133-155 Waterloo Road
London SE1 8UG

In England no email responses are accepted.

Wales

The English and Welsh language versions of the consultation paper "*Protecting Children, Supporting Parents*" are available from Gareth Davies of the Children and Families Division at the National Assembly on 029 20 825640. The English version of the paper is the same as that available from the Department of Health where you can also see it on the internet. You can see the letter from the National Assembly inviting responses at www.wales.gov.uk/polinfo/social/consultations/punish/punish_e.htm

In Wales the consultation ends on 8th May 2000. Please send your responses to :

Deborah Davies
Children and Families Division
The National Assembly for Wales
Cathays Park
Cardiff
CF10 3NQ

You can also send a response by e-mail to

deborah.davies@wales.gsi.gov.uk

Scotland

In Scotland the paper "*The Physical Punishment of Children in Scotland : A Consultation*" and is available by telephoning Mary Kendall on 0131 244 3581 or on the internet at
http://www.scotland.gov.uk/library2/doc11/ppcs-00.asp

Please write to :

Perry Clarke
Scottish Executive Justice Department
Civil Law Division
Spur V1, Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD
Telephone : 0131 244 2783
Fax : 0131 244 2195

Email responses can be sent to
civil.law.policy@scotland.gov.uk

Northern Ireland

The consultation in Northern Ireland has yet to be announced. News is expected soon. *The Christian Institute* will be contacting its supporters in the Province as soon as an announcement is made.

References

1 1998 Office for National Statistics Survey, reproduced in Annex A of *Protecting Children, Supporting Parents - A Consultation Document on the Physical Punishment of Children*, Department of Health, January 2000

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3 Matthew 15:19 (New International Version)

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5 Proverbs 13:24

6 Ephesians 6:4

7 "Children are unbeatable" *Leaflet produced by Barnardos on behalf of the alliance,* December 1998

8 The Independent 24 September 1998

9 *Protecting Children, Supporting Parents*, *Op Cit*, Para 2.7

10 *The Independent* 20 May 1999

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20 *Report of the Inquiry into Child Abuse in Cleveland 1987*, HMSO, para 64, page 21

21 *Ibid*, para 48, page 19

22 *Ibid*, para 64, page 21

23 Bell, S *When Salem Came to the Boro*, 1988, Pan Books, page 12

24 *Loc cit*

25 *Ibid*, page 15

26 *Ibid*, page 338-339

27 *Report of the Inquiry into Child Abuse in Cleveland 1987*, *Op Cit*, 9.3.22 1.(d)

[28] *Ibid*, 9.3.22 1.(d) [Note: the report has two different sections with the same numbering]

[29] *The Report of the Inquiry into the Removal of Children from Orkney in February 1991*, part 5 II 1-6

[30] *Ibid*, part 5 II 12

[31] *Ibid*, part 5 III 7

[32] *Ibid*, part 5 III 33

[33] *Ibid*, part 5 III 3

[34] *Ibid*, part 5 III 20

[35] *Protecting Children, Supporting Parents, Op cit.*, Para 1.4

[36] Daily Mail, 24 September 1998

[37] A. v. The United Kingdom (100/1997/884/1096), Judgment, Strasbourg, September 1998, Para 9

[38] *Ibid*, p.ii

[39] *Ibid*, p.9, paras 34 & 37.

[40] *Ibid*, Para 19

[41] Human Rights Act 1998, Section 2(1) states "A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any – (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights…."; Section 3(1) states: "So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights." But even without this change to the law, the Strasbourg court made clear, "the concept of "reasonableness" permits the courts to apply standards prevailing in contemporary society with regard to the physical punishment of children". A. v. The United Kingdom (100/1997/884/1096), Judgment, *Op cit*, para 14

[42] *Protecting Children, Supporting Parents, Op cit.*, Para 1.5

[43] *Protecting Children, Supporting Parents, Op cit.*, Para. 5.4 says "We are therefore proposing that it should explicitly be set out in law that in considering whether or not the physical punishment of a child constitutes 'reasonable chastisement', a Court should always have regard to the factors outlined at para. 5.3 above."

[44] *Protecting Children, Support Parents*, *Op cit.*, Paras 5.6 & 5.7

[45] *Ibid*, Para 5.9

[46] *Ibid*, Para 5.11

[47] *Ibid*, Para 5.14

[48] *The Physical Punishment of Children in Scotland - A Consultation*, Scottish Executive, February 2000, Paragraph 4.7

[49] *Ibid*, Paragraph 4.1

[50] *Protecting Children, Support Parents*, *Op cit.*, Para 5.14

Locking up Parents?

Government proposals to re-write the laws on parental discipline will lead to fear and confusion amongst parents.

The current law is adequate to protect children *and* the rights of parents. Legal changes should not be made simply to placate the vociferous minority who believe that all smacking is child abuse.

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