

# Responding to the review of “reasonable punishment”

D E A D L I N E 1 0 A U G U S T 2 0 0 7

**THE CHILDREN ARE UNBEATABLE! ALLIANCE** believes that children should have the same protection as adults under the law on assault.

The Alliance believes that it is unjust and dangerous to try to define “acceptable” ways of hitting children.

“Smacking”, “slapping” or any physical punishment of children is violent behaviour which is already banned between adults.

Children’s smallness and fragility, their state of development and their dependency, should mean full legal protection.

But the current law on assault gives children less protection than adults take for granted.

Section 58 of the Children Act 2004 allows parents and others to justify common assault of children as “reasonable punishment”.

The Government has launched a review of section 58 which is limited to the “practical consequences” of the “reasonable punishment” provision.

This review will not directly result in a change in the law - it can only recommend “changes to practice”.

We should not need to “prove” children’s entitlement to equal protection from assault. Equal protection is a fundamental human right.

Abolishing “reasonable punishment” is an obligation under United Nations and Council of Europe human rights agreements that cannot be ignored any longer.

**WE MUST TELL THE GOVERNMENT THAT EQUAL PROTECTION FROM ASSAULT IS EVERY CHILD’S HUMAN RIGHT.**



# What is the Government's review?

In 2004, Parliament passed a Children Bill (now the Children Act 2004), which included a provision that allows parents and others to continue to justify common assault of children as "reasonable punishment". This provision is known as section 58 of the Children Act 2004 and came into force in January 2005.

The Government gave a commitment to review "reasonable punishment" two years on from its commencement.

On 15 June 2007, the Government announced the start of this review and launched a consultation on the "practical consequences" of the "reasonable punishment" provision.

The review will not change the law. It can only recommend "changes to practice", but the findings, including the views of contributors to the consultation, will be put before Parliament later in the year.

## CLARITY NOT CONFUSION

### Key messages

Children's fundamental human right to physical integrity and human dignity, and to equal protection under the law, is non-negotiable.

We should move quickly to satisfy human rights obligations under United Nations and Council of Europe treaties.

Section 58 is unjust, unequal and unsafe. It sends out a dangerous message about the acceptability of violence against children and undermines efforts to promote positive, non-violent discipline. It perpetuates inequality and the culture of violence against children.

Section 58 has created:

- + Parental/public confusion
- + Professional uncertainty
- + Legal ambiguity
- + Policy inconsistency

The law should send the clear message that hitting children is as unacceptable and unlawful as hitting anyone else.

Equal protection from assault for children is the only just and safe way to clarify the law and meet human rights obligations.

# What is the format of the review consultation?

The review consultation poses nine questions. You may choose to answer one, several or all of them. Your contribution can be as short or long as you like. The review document with all questions and a response form is available at [www.dfes.gov.uk/consultations](http://www.dfes.gov.uk/consultations)

Question one asks: “To what extent has section 58 improved legal protection for children in cases of alleged assault by their parents?”

*WE SAY... Section 58 cannot improve protection because it perpetuates the “reasonable punishment” defence and creates confusion not clarity.*

Questions two to five are about what, if any, impact section 58 has had on the practice of those working with children and young people (Q2), deterring physical punishment (Q3), promoting effective discipline (Q4), protecting children and supporting parents (Q5).

*WE SAY... There is really only one answer to these questions for those who believe children have a right to equal protection: by re-affirming parents’ and others right to hit children, section 58 undermines child protection and the promotion of positive, non-violent discipline. It prevents those working with children and parents delivering a clear message. And it must be added that it could only make things worse if the Government issued lots of guidance on section 58, because it could only re-emphasise its unjust and dangerous message – that hitting children, unlike hitting anyone else, is lawful. The Government needs to hear this from all those working with children and families, and from parents themselves.*

## How to take part...

Send your written response to:

Consultation Unit  
Department for Children, Schools & Families  
Area 1A, Castle View House  
East Lane  
Runcorn  
Cheshire  
WA7 2GJ

### RESPONSES

REMEMBER THE DEADLINE FOR RECEIPT OF RESPONSES IS 10 AUGUST 2007

- + Please ensure that you include your name and address (and email if you wish).
- + Please mark your response “Review of section 58 of the Children Act 2004”.
- + If you are a practitioner, a parent, or a child or young person, please make this clear.
- + Please also state that you would like your response to be published in the final document.

You can also respond online at [www.dfes.gov.uk/consultations](http://www.dfes.gov.uk/consultations)

# What is evidence?

The review consultation talks about supporting your contribution with “evidence”.

The Children Are Unbeatable! Alliance strongly believes that children should not have to prove “with evidence” that an unjust and unequal law “isn’t working” to have their fundamental human right to physical integrity and human dignity respected.

However, please do give whatever evidence you can to back up what you say. Evidence can be anecdotal. Examples of anecdotal evidence are:

“I saw a child being ‘smacked’. It was disrespectful and demeaning, but I felt unable to say anything because it was lawful.”

“Parents often tell me that it is legal to ‘smack’ children, so they are going to carry on regardless.”

“My young child is fully in favour of a total ‘smacking’ ban because ‘it hurts’.”

“My grown up children don’t hit their children and their family relationships are strong, loving and respectful.”

Professionals working with children and families may have evidence from their day-to-day experience about how the current law undermines efforts to promote positive discipline and sends a dangerous message about the acceptability of violence, or about how physical punishment is a lesson in bad behaviour. Organisations may have research about violence against children or facts about children’s or parent’s views or figures about the prevalence of hitting children.

Evidence about our human rights obligations is equally important. Contributors to the review consultation should be aware of these facts (further information available at [www.childrenareunbeatable.org.uk](http://www.childrenareunbeatable.org.uk)):

The UN Committee on the Rights of the Child has twice recommended equal protection to the UK, in 1995 and 2002. In its 2002 report on the UK, the Committee stated: “...governmental proposals to limit rather than to remove the ‘reasonable chastisement’ defence do not comply with the principles and provisions of the Convention..., particularly since they constitute a serious violation of the dignity of the child.”

In July 2006, the UN Committee on the Rights of the Child reminded all signatories to the Convention on the Rights of the Child, including the UK, that equal protection for children is an “an immediate and unqualified obligation”. The Committee continued: “...the Convention [on the Rights of the Child] requires the removal of any provisions (in statute or common – case – law) which allow some degree of violence against children (eg ‘reasonable’ or ‘moderate’ chastisement or correction), in their homes/families or in any other setting.”

The October 2006 report of the United Nations Secretary-General's Study on Violence against Children called on all countries to prohibit all physical punishment by 2009.

In July 2005, the European Committee of Social Rights, monitoring conformity with the European Social Charter, found UK law in breach of human rights obligations. It concluded: “...since there is no prohibition in legislation of all corporal punishment in the home, the situation [in the UK] is not in conformity with Article 17 of the Charter.”

In their January 2006 joint statement, the UK’s Children’s Commissioners called for urgent action, declaring “there is no room for compromise” on equal protection from assault for children.

Sixteen European countries have legislated to satisfy human rights obligations by giving children equal protection from assault, including Germany, Sweden, Greece, Finland and Holland.

If you wish to discuss your response in detail, please do not hesitate to contact Peter Newell (0208 889 9034) or Tony Samphier (0208 761 8155) or email [info@endcorporalpunishment.org](mailto:info@endcorporalpunishment.org)