



Moving on from smacking:

Children are unbeatable!

An alliance of organisations and individuals seeking legal reform to give children the same protection under the law on assault as adults and promoting positive, non-violent discipline.

Response to the Department of Health's Consultation Document on the Physical Punishment of Children.

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Background: the UK-wide consultations on physical punishment of children

On January 18 2000 the Department of Health launched Protecting children, Supporting Parents: A Consultation Document on the Physical Punishment of Children. The consultation period ended on April 21 2000. The consultation covered England and the document is available on the Department of Health website www.dh.gov.uk. This response was submitted on behalf of the Children are unbeatable! Alliance. Members of the Alliance were encouraged to submit individual responses.

Following the consultation the Government will in due course prepare legislative proposals and present them to Parliament. Traditionally, a free vote has been allowed when corporal punishment reforms have been debated, as an issue of conscience. The Children are unbeatable! Alliance will continue to lobby for children to have the same protection as adults under the law on assault.

Scotland, Wales and Northern Ireland

The Department of Health Consultation Paper indicated that the Secretary of State for Wales would, with the assistance of the National Assembly for Wales, carry out a similar consultation in Wales. This used the same consultation paper, and in addition a Welsh version was made available on the National Assembly website www.wales.gov.uk.

The Scottish Executive Justice Department issued its own consultation document, The Physical Punishment of Children in Scotland - a Consultation in February 2000 (available at www.scotland.gov.uk). The Scottish Parliament will be responsible for any legislation on this issue for Scotland.

In Northern Ireland the Office for Law Reform and other departments are developing a consultation paper suited to the Northern Ireland context; this is due to be issued in summer 2000.

For more information about the Children are unbeatable! Alliance, the consultations and further developments, contact:

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See Appendix B, page 27 for a list of other relevant documents and how to obtain them.

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Introduction

This Government has introduced a variety of positive and far-reaching programmes to support parents and families, to protect children, to promote their health and early development and to reduce crime and violence including domestic violence. It has also made unprecedented progress towards developing a culture of human rights, with the incorporation of the European Convention of Human Rights into domestic law. In this context, the proposals in “Protecting children, Supporting parents” appear an unworthy, contradictory and anachronistic aberration.

In its Green Paper Supporting Families the Government asserts that “a modern family policy needs to be founded on clear principles. First, the interests of children must be paramount. The Government’s interest in family policy is primarily an interest in ensuring that the next generation gets the best possible start in life”.

In the Government’s cross-departmental report on domestic violence, Living without fear, it strongly commends the public attitude campaigns advocating “zero tolerance” of violence in the family, commenting: “It is a common misconception that violence within relationships is not a crime, or that the victim is in some way to blame for it. We need to challenge this in order to build a more respectful and responsible society”. It also notes: “The attitudes with which our children grow up are our investment in the future. Adolescence in particular is a crucial time to establish the foundations for the successful formation of healthy, non-violent relationships later in life. But it is far better not to wait until children reach adolescence to start teaching them about healthy relationships”.

These are worthy principles. But the Government has deserted them in putting forward the limited options in this consultation, all of which assume the preservation of the defence of “reasonable chastisement”. If enacted, the proposals will seriously undermine its positive policies for strengthening and supporting families, for child protection and for crime and violence prevention.

The proposals are incompatible with the Government’s commitment to human rights and with its obligations under international law. The legality of physical punishment of children plainly breaches the child’s fundamental rights to respect for human dignity and physical integrity; the existence of the defence of “reasonable chastisement” breaches the right to equality of protection under the law.

More than a century ago similar legal defences were used to justify physical punishment of wives and servants. This is unthinkable today. Why should it be more acceptable to retain legal defences to justify some level of violence to children? The concept of “reasonable chastisement” had its roots in traditional views of children as the property of their parents, as chattels. It has no place whatsoever in a society which respects the child as an independent individual, a holder of human rights alongside all other people. That children, who are smaller and more vulnerable than the rest of us, should have less protection from being hit than adults contradicts common humanity.

The Alliance recognises that parents who smack are usually acting with good intentions according to social expectations. Inevitably, many Alliance members have smacked their own children. Our objective is not to denounce or undermine parents, but to support them and move society along - just as society moved on from condoning husbands hitting wives, or masters beating servants.

“A modern family policy... needs to be founded on clear principles. First, the interests of children must be paramount. The Government’s interest in family policy is primarily an interest in ensuring that the next generation gets the best possible start in life”.

*“Supporting Families”,
Government Consultation
Document, 1998*

The Government has accepted that as a result of the European Court judgment the law has to be changed to give children better protection. The broad membership of the Alliance (see lists in Appendix A, page 22) indicates that professional opinion - the opinion of those working with children and families - overwhelmingly favours giving children the same protection as adults under the law on assault and coupling this reform with public education on effective, non-violent forms of discipline.

This should give the Government confidence to lead public opinion on from smacking to positive, non-violent forms of discipline which work. Successive polls have shown that most parents regret smacking their children. Most parents acknowledge that smacking is not effective in promoting good behaviour or in teaching the difference between right and wrong. Children - and particularly young children who are smacked the most - do not distinguish between smacking and hitting. They find that smacking hurts and distresses them.

Comparing research into the prevalence of physical punishment with opinion polls of parental attitudes shows that parents' aspirations are well ahead of their practice. Most starkly, the ONS poll quoted in the Consultation Document found that 76 per cent believed it should not be legal to smack under two year-olds. Yet three quarters admit to smacking their child before the age of one. Similarly, an overwhelming majority reject shaking, using implements and any hitting which leaves any significant bruises or marks. Yet more than a third of children receive "severe" physical punishment.

If the Government is to effectively protect children and support parents it must place children's interests first and build on parents' aspirations.

The "Children are unbeatable!" Alliance

A meeting of organisations working with and for children and families was convened at the NSPCC in March 1998 to discuss the Government's response to the Report of the European Commission of Human Rights in the case of "A v UK". The Government had indicated that it accepted the decision of the Commission and agreed that the law on parental discipline must be clarified to give children better protection. But Ministerial statements also suggested "the overwhelming majority of parents know the difference between smacking and beating" and that the Government did not believe a ban on physical punishment was the right response. The Government promised a consultation to find the best way forward.

In that context, organisations agreed to form a new Alliance with a detailed statement of aims.

"Children are entitled to care, security and a good upbringing. Children are to be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment".

Parenthood and Guardianship Code, Sweden 1979

"As spokespeople for the children of Europe, we believe that eliminating violent and humiliating forms of discipline is a vital strategy for improving children's status as people, and reducing child abuse and all other forms of violence in European societies. This is a long overdue reform, with huge potential for improving the quality of lives and family relationships. Hitting children is disrespectful and dangerous. Children deserve at least the same protection from violence that we as adults take for granted for ourselves."

European Network of Ombudsmen for Children, 1998

The Alliance's Statement of Aims

All members of the Alliance have signed up to the following statement of aims:

An alliance of organisations and individuals seeking legal reform to give children the same protection under the law on assault as adults, and promoting positive, non-violent discipline:

“The Alliance welcomes the Government’s intention to clarify the law on parental discipline. The traditional defence of “reasonable chastisement” works against the aims which we and the Government of a modern Britain share: the encouragement of positive parental discipline in all families, and assurance of effective child protection in the few cases where it is needed.

“We believe it is both wrong and impracticable to seek to define acceptable forms of corporal punishment of children. Such an exercise is unjust. Hitting children is a lesson in bad behaviour.

“Removing the defence of “reasonable chastisement” and thus giving children in their homes and in all other settings equal protection under the law on assault is the only just, moral and safe way to clarify the law. While technically this would criminalise any assault of a child, trivial assaults, like trivial assaults between adults, would not be prosecuted. There already exist adequate means to prevent unwarranted or unhelpful prosecutions. It would on the other hand ease prosecution in serious cases. It would eliminate the current dangerous confusion over what is acceptable and provide a clear basis for child protection.

“There is ample evidence from other countries to show that full legal reform, coupled with the promotion of effective means of positive discipline, works rapidly to reduce reliance on corporal punishment and reduces the need for prosecutions and other formal interventions in families. Using positive forms of discipline reduces stress and improves relationships between children, their parents and other carers.”

The Consultation Document describes the Alliance (para. 2.12) as “a number of organisations representing children’s rights and interests”. In fact it is a uniquely large and broad Alliance - unprecedented in the UK - which brings together over 260 organisations and many prominent individuals (see lists in Appendix A, page 22).

The collective concerns of Alliance supporters range very widely. They cover, for example, the fields of health and mental health; crime and violence prevention including domestic violence; disability; churches and faith groups; mediation, counselling and the promotion of positive relationships; human rights and the law; early years care and education, children and young people in care and youth work.

In particular, the Alliance includes many organisations working directly with families and promoting positive parenting. The Alliance’s membership demonstrates that protecting children from all corporal punishment is regarded from many different perspectives as a key and necessary strategy for achieving fundamental social goals, for building a better society.

This paper develops the collective aims of the Alliance in response to the Government’s current position as reflected in the Consultation Document.

“The absence of violence in relations with children cannot be limited to a self-imposed obligation nor to a personal style of child-rearing practised by certain people. The absence of violence should be a norm respected by the whole of society, not only because even today too many children are the victims of acts of violence, but because children and their integrity as persons should be always and everywhere respected... Respect for children and violence against them can never go together. If one of the characteristics of a society which thinks of itself as civilised is the absence of violence, there can be no justification for violence against children”.

National Commission on Sexual Exploitation of Children, Belgium, 1997

The Consultation Document

This response first comments on various points that arise in the early sections of the Consultation Document before addressing the questions asked.

Positive discipline (para. 2.7)

The Alliance welcomes the Government's commitment to support parents in "learning effective methods of disciplining their children that do not involve physical punishment". We welcome Ministerial agreement to a meeting between Alliance representatives and Department of Health and Home Office officials to discuss collaborative approaches to public education. Many Alliance organisations are already involved in disseminating information on positive discipline (see Appendix B, Key documents, page 27).

The Document mentions the Sure Start Programme (para. 2.6). All the Sure Start "Trailblazer projects" working with children and families promote positive discipline without smacking.

The approach described in this paragraph of the Document is inadequate because it focuses on alternative ways of punishing children rather than on the elements of positive discipline which stress co-operation, keeping children safe and above all modelling and encouraging good behaviour (acknowledged in para. 1.2).

The Alliance's linked aims are to achieve for children equal protection under the law on assault and to promote positive, non-violent discipline. Legislation without consistent and comprehensive public education will achieve little. But equally, public education promoting positive discipline in the context of a legal framework of the kind proposed in the Government's "options", which condones "reasonable chastisement" and inevitably promotes the message "Carry On Smacking", cannot be effective.

Social attitudes towards physical punishment (para. 2.9)

The Consultation Document suggests that one of the main reasons for rejecting the option of outlawing all physical punishment is that this would not be supported by public opinion, that the Government believes that "the majority of parents" would not support such a measure and that: "In this sensitive area involving family life, we consider it very important that the law commands public acceptance".

But the survey results summarised in Annex A of the Document do not support the general statement in para. 2.10 "... that public opinion would very much defend the right of parents to use physical punishment". The position is far more complex.

First, this is an issue rooted in the human rights of vulnerable young children on which Government must lead, not follow, public opinion. None of the countries that has banned physical punishment has had the prior support of opinion polls, nor could they have achieved this reform through referenda. If we wait for smacking children to wither away while the law continues to support it, we may wait forever.

However, this does not mean that public opinion is immovable. We have seen attitudes change on such issues as gender equality, racism, homosexuality, capital punishment, use of safety belts and drink driving. Similarly, once a legal ban on smacking is enacted and implemented, the experience of other countries shows that public opinion changes rapidly, particularly if the new law is accompanied by a public education campaign. For example, before the 1979 ban in Sweden only 35% of parents thought that children should be raised without corporal

"The time has come to break bad habits that tend to be passed from one generation to the next. Legal and other affirmative action should be taken against all physical punishment and deliberate humiliation of children. Their rights apply as much within the family as outside".

General Rapporteur's Concluding statement at a Council of Europe conference on "Evolution of the role of children in family life", 1994

punishment. Three years after the ban (which was accompanied by a massive education campaign) that figure had doubled to over 71%. Today, only 6% of Swedes under the age of 35 support the use of corporal punishment. These attitudes are reflected in practice. Prosecutions for assault of children have declined in Sweden, most markedly in younger parents who themselves had a violence-free upbringing. Surveys of discipline show that reasoning, instruction and pre-emptive action are the most common methods of ensuring the good behaviour of children. Comparative studies of crime and anti-social or self-destructive behaviour by Swedish youth show that they have not suffered from being protected from smacking - quite the reverse. For authoritative information on the Swedish experience, see *A Generation Without Smacking - The impact of Sweden's ban on physical punishment*, Joan E Durrant, Save the Children, 2000.

Second, the Government suggests it will act only with public support, but so far it has sought only to discover parents' views on smacking, not children's. When polling opinion on domestic violence against women, or marital rape, would it only canvass men's views? There have been positive examples recently of Government departments seeking children's views on a variety of issues (including implementation of the Convention on the Rights of the Child). This issue is of primary importance to children. The Government has stated its commitment to developing a modern family policy, founded on clear principles of which the first is that the interests of children must be paramount (*Supporting Families*, Introduction, page 4).

We note that the Scottish Executive is proposing to consult children on this issue. This is highly commendable and it is important that there is consultation with children who most experience smacking - that is, with children under seven years of age (see views of five to seven year-old children canvassed in a joint National Children's Bureau/Save the Children research project, *It hurts you inside: children talking about smacking*, Carolyne Willow and Tina Hyder, NCB/SCF, 1998.)

Third, we consider that, in any event, the Government is misreading public opinion on this issue. Polls have made clear that majority public opinion is in crude terms still opposed to the idea of making smacking unlawful. However, when discussing such a ban, Alliance members discovered that parents' primary misgiving was that outlawing physical punishment would lead to parents being charged for trivial smacks.

We therefore tested in a representative poll the hypothesis that if people were reassured on this point they would support a legal ban. A MORI poll of 1000 adults commissioned in 1999 confirmed this theory. 73% of those polled (and 78% of those who were parents with dependent children) supported a ban "if they could be sure that parents would not be prosecuted for trivial smacks" (see summary in Appendix C, page 29).

The Government's Opinion Poll, quoted in the consultation, did not offer this proviso when asking whether smacking should be unlawful and we believe that there would have been a very different result had it done so. Even so, we note that an overwhelming majority believed it should not be lawful to smack under two year-olds (76 per cent - with just 13 per cent believing it should be lawful) and only a slight majority (53%) thought that smacking should be lawful for over two year olds. Only in relation to the smacking of over-five year-olds did a significant majority (85%) support a law allowing this. This finding strikingly contrasts with the findings of Smith's and Nobes's prevalence studies which show

"The law now forbids all forms of physical punishment of children, including smacking etc, although it goes without saying that you can still snatch a child away from a hot stove or open window if there is a risk of its injuring itself".

Swedish Ministry of Justice pamphlet distributed to all homes, 1979

that 75% of mothers start smacking before their child's first birthday and that four-year olds are smacked more frequently than any other age group.

Polls reflect differences between parental aspirations and their practice. Given the ambivalence about this issue, the wording of the questions is particularly likely to influence the outcome. Thus the consultation quotes 88% of its poll agreeing that "it is sometimes necessary to smack a naughty child". And yet, only months earlier, the National Family and Parenting Institute quoted its MORI poll showing that four out of five parents thought that smacking was not a good way to teach a child the difference between right and wrong (The Millennial Family, National Family & Parenting Institute Survey conducted by MORI, October 1999).

"A child shall be brought up in the spirit of understanding, security and love. He shall not be subdued, corporally punished or otherwise humiliated. His growth towards independence, responsibility and adulthood shall be encouraged, supported and assisted".

Finland's Child Custody and Right of Access Act 1983

Paul Boateng, when Minister of Health, was quoted as saying that "the overwhelming majority of parents know the difference between smacking and beating". Certainly the consultation's Opinion Poll shows over 95% condemning as unreasonable smacks which leave lasting bruises or marks. However Smith's and Nobes's study shows that over a third of children in ordinary families receive "severe" punishment (punishments "that were intended to, had the potential to, or actually did cause physical and/or psychological injury or harm to the child") - suggesting that the Minister's confidence was misplaced and that perhaps adults are not the best judges of how hard they smack children.

This issue suffers uniquely from judgments based on personal experience rather than rational consideration of evidence. Part of the irrationality stems from people's tendency to excuse and justify their parents' behaviour in a process of internalisation. The most extreme example of this can be shown from a 1994 survey of 11,600 adults in the US which found that 74% of those who had been punched, kicked or choked by their parents did not consider this type of behaviour was abusive, and even 38% of those who had required two different types of medical intervention for injuries from physical punishment did not see their parents' behaviour as abusive.

Parents also often tell themselves or researchers that they only 'tap' their children, and that smacks are not intended to cause pain. Young children, on the other hand, confirm the Nobes and Smith finding that much smacking is far from mild. A study of 76 five to seven year-olds conducted by the National Children's Bureau and Save the Children asked: "What does it feel like to be smacked?". Only one of the 76 said that a smack was "a tap", and she added "only harder". Other descriptions included: "It feels like someone banged you with a hammer"; "It's like breaking your bones"; "It really hurts"; "It's like someone punched you or kicked you or something." Although teenagers may adopt adult internalised attitudes, very young children are clear that smacking does not help them behave well and "sets a wrong example".

In summary, the Government should lead, not lag behind public opinion on this issue, because it is first and foremost a human rights issue. It should also recognise that public opinion is confused, contradictory and fluid on the subject and that the movement is clearly towards rejecting physical punishment and supporting legal reform as long as it does not lead to prosecutions for "trivial" assaults. The Government should note that only a tiny minority explicitly defend hitting children; more or less everyone knows that hitting people is wrong.

Making physical punishment unlawful (paras. 2.12 - 2.14)

Within the UK, all physical punishment in all schools, all nursery education, residential child care and foster-care arranged by local authorities or voluntary organisations is already unlawful. There has been no suggestion that “reasonable chastisement” by teachers or carers should be limited rather than rejected entirely. What is more, these reforms have the backing of the overwhelming majority of teachers and carers, including all their professional organisations. Successive governments since the late 1980s have stated their policy that “corporal punishment has no place in the public child care setting”, although this policy is still not consistently implemented. Yet the Government describes extending the ban on physical punishment to cover parents as “quite unacceptable” (para. 2.14). We note and welcome the fact that in Scotland, while the Scottish Executive does not at present support a ban on all physical punishment, it has at least invited views on this option in the parallel consultation.

The Government acknowledges that eight other European countries have explicitly banned all physical punishment by parents and other carers. But it has given no serious consideration to the effects of a ban on parental physical punishment in the countries which have implemented one. The Alliance has closely examined developments in other countries and it knows that these reforms - implemented invariably ahead of public opinion - quickly come to command public confidence and support. Coupled with public education campaigns they are effective in changing attitudes and practice. Parents do not get prosecuted for trivial assaults of their children and state intervention in families does not increase. The experience of Sweden, where an explicit ban was implemented 21 years ago, has been analysed in detail. We encourage Ministers and officials to visit Sweden and to consider the evidence (see *A Generation Without Smacking - The impact of Sweden’s ban on physical punishment*, Joan E Durrant, Save the Children, 2000).

The Government should recognise that there is an accelerating trend towards prohibiting all physical punishment worldwide in the context of implementation of the UN Convention on the Rights of the Child. Supreme courts in Italy and Israel have recently declared it to be illegal. There is a constitutional challenge to all corporal punishment under way in Canada. Germany and other European countries are progressing towards a clear ban.

In the UK the law on assault protects everyone except children equally. There is no problem about public confidence in a law which already criminalises all assaults of adults, including in the “private” context of the family. There has been no problem in implementing the law which similarly criminalises all assaults of children in the context of schools and nursery education and other care settings. A clear distinction is possible between physical punishment and physical actions taken for protective reasons. In relation to schools and care settings, detailed guidance has been issued on “reasonable restraint”. Similar guidance could form part of public education on keeping children safe and promoting positive discipline.

The Document (para. 2.14) suggests that outlawing physical punishment would be “intrusive and incompatible with our aim of helping and encouraging parents in their role”. Seeking to define how parents can hit their children - where, with what, at what age - is not only intrusive but also confusing. It fails to deliver any clear message and is incompatible with the first principle of the Government’s

“In the opinion of the advocates of the change in the law, it is important for those groups who work with families to have firm, clear and unequivocal legal grounds for being able to say that under no circumstances may one use violence in the upbringing of a child... Doctors, the police and social workers come into contact with families where children are regularly beaten. These groups will - if the law is changed - be able to point out that it is wrong to hit a child and instead give advice on other ways to resolve conflicts... Clear legislation and a plainly worded explanation of the reasons for it are vital if we are to change public opinion...”.

Proposer of Denmark’s ban on all corporal punishment, 1997

“modern family policy” - that children’s interests must be paramount. It undermines existing and developing parenting education and support which focuses on positive parenting.

Prosecution policy (para. 2.14)

The Document states: “There could clearly be no guarantee that there would not be charges of assault brought in relation to minor cases”. This suggests a system of public prosecution which is random or out of control, which could not be further from the truth.

The first hurdle to prevent prosecutions which are not in the interests of children or family policy could be guidance issued to all those involved in child protection, including the police. It would emphasise the primacy of children’s best interests, the educational purpose of the law and possibilities for diversion from charging and prosecution, which could involve cautioning and the provision of parenting education and support.

Where the police refer cases to the Crown Prosecution Service, the Code for Crown Prosecutors sets out the basic principles to be applied by Crown Prosecutors when making case decisions. Together with the Charging Standards agreed by CPS and police for the various offences of assault, these effectively prevent the charging of adults for trivial assaults on other adults. Under the Code, there are two stages to the decision to prosecute. First, there is the evidential test: it is plain that there are particular difficulties in passing the evidential test in relation to charges involving young children as victims. It is less likely that such cases would pass the evidential test than those involving trivial assaults of adults. Secondly, there is the public interest test (which the Document refers to in para. 3.1). The Code lists non-exclusive “common public interest factors”. Consideration of these illustrates that they would cumulatively provide further hurdles to prevent prosecution in trivial cases.

If it is felt to be necessary in order to build public confidence in the new law, further specific guidance could be issued to define more closely particular public interest considerations in relation to prosecutions of parents and other carers for common assault of children. We note that guidance was issued to prosecutors following the European Human Rights Commission’s decision in “A v UK”; there is nothing to prevent specific guidance being issued.

In relation to possible civil actions for “trivial” assaults, it is our understanding that under the Prosecution of Offences Act 1985, the Attorney General has the power to take over any private prosecutions and either continue them or stop them.

It is in the Alliance’s view plainly in the interests of children that they should have the same protection as adults under the law on assault. This means that the defence of “reasonable chastisement” should no longer be able to be used to justify any assault which would be unlawful if directed at an adult. The Alliance believes that this change in the law would need to be widely publicised throughout society and to all generations and accompanied by on-going public education promoting positive, non-violent forms of discipline. But it certainly does not follow that it would be in children’s or the public’s interests to pursue a policy of invariably prosecuting parents and others for all alleged assaults, however trivial.

Anything short of a clear ban does inevitably promote mixed messages, including the dangerous message “Carry On Smacking”, and thus undermines the promotion of positive discipline. The existence of the defence prevents those

“It was the Committee’s experience that difficulties arose whenever a “reasonable” level of corporal punishment was permitted under a State’s internal law. To draw an analogy, no-one would argue that a “reasonable” level of wife-beating should be permitted. His [the Vice-Chair’s] conclusion was that the United Kingdom position represented a vestige of the outdated view that children were in a sense their parents’ chattels. In the Scandinavian countries and Austria, stricter legislation had resulted in fewer cases going to court than in the United Kingdom, rather than the reverse... The notion of a permissible level of corporal punishment was thus best avoided”.

Official Report of examination of UK report by Committee on the Rights of the Child, January 1995

working in child protection and seeking to support parents at risk of abusing their children from giving a clear message that hitting and hurting children is unlawful. The existence of the defence may encourage parents who are harming their children not to admit it, thus inhibiting positive interventions by social services, health professionals and others.

In addition, preservation of the existing defence makes more difficult prosecution of parents and others in cases where prosecution is plainly necessary in the interests of child protection.

The many inquiries into abuse of children in their homes and in alternative care settings throughout the UK have demonstrated how often victims do not report abuse. A highly significant contributory factor must be living in a culture in which hitting children is condoned by the law.

It is clear from the experience of other countries which have implemented a ban that giving children the same protection as adults under the law on assault will reduce, not increase, prosecution of parents for assaulting their children because of the change in attitudes and practice which will follow.

The Government needs to promote the positive aims of banning physical punishment and develop clear policy and guidance on prosecution for all those involved in child protection, with the best interests of children as the paramount consideration.

The Alliance's proposal for legal reform (para. 2.12)

The Document states that organisations seeking to ban physical punishment propose "as a first step" that the defence of reasonable chastisement should be removed, "thereby putting children in broadly the same position as adults in respect of the law on assault. A second step would be to introduce a law (which need not have criminal sanctions attached) which would specifically ban physical punishment of children by their parents".

This is the pattern of reform followed in a number of other European countries: any existing defence similar to that of "reasonable chastisement" or "lawful correction" has been removed from the criminal law on assault, thus giving children the same protection as adults, and then family - civil - law has been used to include an explicit ban. Hence Sweden's Children and Parents Code now reads: "Children are entitled to care, security and good upbringing. They shall be treated with respect for their person and their distinctive character and may not be subjected to corporal punishment or any other humiliating treatment".

In the UK the defence of "reasonable chastisement" exists in common law. Its confirmation in statute occurs in section 1(7) of the Children and Young Persons Act 1933. Simply repealing section 1(7) would not in itself remove the common law defence, although it would imply a message about the use of that defence. When such a repeal was proposed during the Parliamentary passage of what became the Children Act 1989, it was strongly criticised by the then Lord Chancellor, Lord Mackay of Clashfern, on both practical grounds and principle. He argued that the effect would be to create "serious ambiguity where none exists at the moment... to create complete obscurity" (House of Lords Hansard 23 January 1989 col 548). In a later debate the Lord Chancellor re-emphasised that "to remove section 1(7), unless one is going to abolish the right (to moderate chastisement) altogether, would be to cause confusion". If the law was to be altered, "it should be altered in a principled way" (House of Lords Hansard 16 February 1989 col 351).

"It is the very assumption that corporal punishment is legitimate that opens the way to all kinds of excesses and makes the traces and symptoms of such punishment acceptable to third parties".

Council of Europe Committee of Ministers Recommendation R1985/4, Explanatory Memorandum

When Parliament decided to abolish corporal punishment in schools, it was not regarded as sufficient to remove the reference to “teachers” in section 1(7). A provision which explicitly removes the defence was included in education law and section 1(7) of the 1933 Act amended accordingly.

In most of the countries which have now passed explicit bans on physical punishment, there were earlier partial legal reforms to amend or remove statements in the law which confirmed parents’ rights to use it. In every case they proved unsatisfactory. Thus in Sweden in 1957 the provision in the criminal law on assault which excused parents who caused minor injuries through physical punishment was removed, and in 1966 a further legal reform deleted the provision allowing “reprimands” from the Parenthood and Guardianship Code. In Finland in 1969 an amendment to the Criminal Code removed a provision stating that a petty assault was not punishable if committed by parents or others exercising their lawful right to chastise a child. A similar provision was removed from the Norwegian Criminal Code in 1972.

Reports show that these changes, intended to end the legality of physical punishment, in fact caused confusion for the public, for child protection professionals and for the courts. In each country, courts continued to uphold the legality of “traditional” physical punishment until the matter was put beyond doubt by an explicit reform: this confirms the former Lord Chancellor’s view, quoted above. In Denmark, where a provision requiring parents to protect their children from all violence and other harmful treatment was enacted in 1986, the law was further amended in 1997 to include explicit prohibition of corporal punishment along Swedish lines.

Once the Government - or Parliament - accepts the policy of providing children with equal protection under the law on assault, it will instruct its Parliamentary Draftsmen accordingly. If it is regarded as desirable to maintain consistency with existing legislation on corporal punishment, then the Alliance believes the best way forward may be to amend section 1(7) of the Children and Young Persons Act 1933, using the form of the provision which has abolished corporal punishment in schools (section 131 of the School Standards and Framework Act 1998 (see draft in Appendix D, page 31).

Major recent reports (including most recently Sir William Utting’s Report of the Review of the Safeguards for Children Living Away from Home - People like us) have proposed that parental responsibilities should be clearly defined in the law. When this happens, it would be appropriate to include a prohibition of physical punishment and other humiliating treatment of children, as it exists in the family law of other European countries. Scottish law - the Children (Scotland) Act 1995 - includes a more detailed statement of parental rights and responsibilities than that in the Children Act 1989. The 1992 Report on Family Law from the Scottish Law Commission, which preceded the Act, suggested that it should include strict limits on the use of physical punishment (see Scottish Executive’s Consultation Document, available on Scottish Parliament’s website <www.scotland.gov.uk>, para. 2.8 et seq and Annex A).

The need for change (Part 4): UK human rights obligations

The legality of physical punishment plainly breaches the child’s fundamental rights to respect for human dignity and physical integrity. In addition, the existence of the defence of “reasonable chastisement” breaches the right to equality of protection under the law, upheld in the International Covenant on

“The motive for this reform is our knowledge of the immeasurable harm children suffer when parents are not willing or able to avoid physical punishment as a way of bringing up their children. I hope other countries will follow us in ruling out physical punishment”.

Austrian Minister for Environment, Youth and the Family, 1989

Civil and Political Rights. The UK has taken on obligations under international law to respect these rights.

The Document acknowledges in Part 4 the need for a change in the law, following the European Court judgment. But it makes no reference to the UK's obligations under the United Nations Convention on the Rights of the Child and other international human rights instruments. In 1995 the Committee on the Rights of the Child, the international human rights Treaty Body for the Convention, expressed concern at the existence of the defence of "reasonable chastisement" and recommended prohibition of physical punishment in its Concluding Observations on the UK's initial report under the Convention: "The Committee is disturbed about the reports it has received on the physical and sexual abuse of children. In this connection, the Committee is worried about the national legal provisions dealing with reasonable chastisement within the family. The imprecise nature of the expression of reasonable chastisement as contained in these legal provisions may pave the way for it to be interpreted in a subjective and arbitrary manner. Thus, the Committee is concerned that legislative and other measures relating to the physical integrity of children do not appear to be compatible with the provisions and principles of the Convention, including those of its articles 3, 19 and 37..."

"The Committee is also of the opinion that additional efforts are required to overcome the problem of violence in society. The Committee recommends that physical punishment of children in families be prohibited in the light of the provisions set out in articles 3 and 19 of the Convention. In connection with the child's right to physical integrity, as recognised by the Convention, namely in its articles 19, 28, 29 and 37, and in the light of the best interests of the child, the Committee suggests that the State party consider the possibility of undertaking additional educational campaigns. Such measures would help to change societal attitudes towards the use of physical punishment in the family and foster the acceptance of the legal prohibition of the physical punishment of children" (CRC/C/15/Add.34, February 15 1995, paras. 16 and 31).

The Committee on the Rights of the Child has consistently held that social and legal acceptance of any corporal punishment of children is incompatible with the Convention. It has particularly singled out for censure legal concepts like "reasonable chastisement" or "lawful correction" which condone some arbitrary level of violence to children. It has recommended prohibition of all corporal punishment to many states in all continents.

In its second report to the Committee, published in August 1999, the Government describes the case of "A v UK" and indicates that it will consult on how to change the law, but does not refer to or make any response to the Committee's recommendation (para. 7.12).

There is no enforcement procedure under the Convention on the Rights of the Child. But ignoring recommendations of a human rights Treaty Body is inconsistent with the Government's commitment to uphold and promote human rights internationally. There is no doubt that if the Government does not follow up its prohibition of all school corporal punishment with prohibition of all corporal punishment by parents and other carers, it will receive further censure when the Committee on the Rights of the Child examines the UK's second report, in 2001 or 2002. And the other key human rights Treaty Bodies, which in recent years have criticised the UK for retaining the right to use corporal punishment in private schools - the Human Rights Committee, Committee on Economic, Social and Cultural Rights and the Committee Against Torture - are

"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..."

UN Convention on the Rights of the Child, article 19

likely to interpret human rights obligations consistently with the Committee on the Rights of the Child, and thus add their censure.

Effects of physical punishment

Even if research suggested that physical punishment was an effective way of promoting children's good behaviour and health and positive development - which it certainly does not - it would still be wrong and in breach of children's fundamental human rights. A debate on the positive and negative effects of hitting women or servants or prisoners is now unthinkable and it is plain that soon the same will be true of children. But meanwhile, it is clear that the overwhelming weight of research findings suggests that there are significant short and longer-term dangers in hitting children.

The Document acknowledges (para. 4.6) that "punishment which is harsh or violent can harm children". This is the only reference to the substantial research evidence of the harmful effects of physical punishment. There are a number of reviews of this research evidence, including that prepared by Penelope Leach and published by the NSPCC, *The Physical Punishment of Children - some input from recent research*, NSPCC Policy Practice Research Series, 1999.

The Department of Health has itself acknowledged the direct physical dangers of smacking or shaking babies (see, for example, the NSPCC's "Handle with Care" leaflet, sponsored by the DH, with its clear message: "It's never OK to shake or smack a baby"). The Home Office has acknowledged that harsh or erratic discipline is a significant factor in the development of violent and delinquent attitudes and actions. The Health Education Authority, in advising strongly against smacking, tells all new parents that "children who are treated aggressively by their parents are more likely to be aggressive themselves and to take out their angry feelings on others who are smaller and weaker than they are" (Birth to Five, HEA).

The Government's "Proposal" (paras. 5.1 - 5.4)

The Government's "Proposal" for the "minimum steps needed" to remedy its breach of children's human rights is to set out the defence of "reasonable chastisement" in statutory form and to require courts to have regard to a short checklist of factors ("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") when deciding whether or not physical punishment is "reasonable". The Document does not seek views on this "Proposal", which it suggests would be sufficient to meet the "criticism made by the European Court".

The Alliance has commissioned expert legal opinion which confirms that the proposal is inadequate to meet the terms of the judgment. The proposal does nothing whatsoever to strengthen the protection of children. Nor does it provide any guidance to parents or other carers, leaving, even intensifying, the current confusion over what forms of punishment are "reasonable".

The Document does not indicate in what form it is proposed to set out the defence of "reasonable chastisement" in statute. Doing so plainly will not reduce the likelihood of the defence being used to justify assaults of children and could well increase it. The Government should note that an attempt by an MP to introduce a Bill "to allow parents to use reasonable force or chastisement when exercising authority over their children" was defeated by 118 votes to 48 in the House of Commons on January 25 2000.

"As for corporal punishment, few countries have clear laws on this question. Certain States have tried to distinguish between the correction of children and excessive violence. In reality the dividing line between the two is artificial. It is very easy to pass from one stage to the other. It is also a question of principle. If it is not permissible to beat an adult, why should it be permissible to do so to a child? One of the contributions of the Convention is to call attention to the contradictions in our attitudes and cultures."

Concluding statement to Committee on the Rights of the Child General Discussion on Children's Rights in the Family, October 1994

Requiring courts to have regard to a non-prescriptive checklist of the kind proposed does nothing to fulfil the Government's intention of "drawing a line as to what physical punishment of children is acceptable". It does nothing to protect children from assaults that breach their human rights. It does nothing to provide the practical and effective protection, including "effective deterrence", required by the European Court. It does not change the situation in which the burden of proof is on the prosecution to establish beyond reasonable doubt that the assault went beyond the limits of lawful punishment.

It will further inhibit prosecutions of parents and other carers for assault in cases where prosecution is considered by child protection workers and the prosecuting authorities to be in the public interest and the interests of the child.

In the case of "A v UK" the English court did indeed consider all these factors (and noted that the boy was very young, an asthmatic and particularly vulnerable) and additional factors - and yet found the repeated caning to be "reasonable" chastisement.

The Government's proposal, if enacted, would not even have guaranteed a remedy to the boy in this particular case.

If the proposal is implemented it will undoubtedly lead to substantial litigation under the Human Rights Act and further applications to the European Court. In the last few months there have been a number of potential cases: for example, the acquittal of a man who smacked his fifteen-year-old stepson four times on the buttocks (for school truancy), and the acquittal of a mother who slapped her six year-old son across the neck causing red marking. It is plain from its jurisprudence that the European Court would have no hesitation in finding these acquittals in breach of Article 3 and/or Article 8, and that the Government's proposals for reform would in no way prevent them from re-occurring.

As indicated above, the proposed reforms if implemented will also provoke further strong criticism from international human rights Treaty Bodies.

Implications of decisions of the European Commission and Court

The European Court of Human Rights has not as yet determined that corporal punishment of children is, per se, in breach of the Convention. In "A v UK" both Commission and Court unanimously found that the repeated caning causing bruising breached Article 3. The Commission stated that "this finding does not mean that Article 3 is to be interpreted as imposing an obligation on States to protect, through their criminal law, against any form of physical rebuke, however, mild, by a parent of a child" (Report, para. 55). The Court, although asked to do so by the Government's representative, did not confirm this statement. And the Delegate of the Commission told the Court at the hearing of the case (June 1998) that the statement could not be taken as condoning the use of physical violence against children. Indeed, in its Report the Commission stated that it "attaches importance to the international recognition of the need for the protection against all forms of physical ill-treatment of children" and went on to underline the implications of Article 19 of the UN Convention on the Rights of the Child, and to quote the criticism of the UK by the Committee on the Rights of the Child (paras. 49 and 52).

Almost 10 years ago in *Costello Roberts v UK* the Court found by the narrowest margin of five votes to four that punishment of a seven year old boy by a teacher,

"Spanking or slapping a child is an act of violence, just as slapping a wife is an act of violence. In both cases the perpetrator can say, as one man told me, 'I didn't hurt her'. Almost all parents say the same thing about slapping their children... The main difference between hitting children and hitting spouses is that hitting children is still legal and that parents do not realise the harmful side-effects of corporal punishment because these do not show up until later in life..."

Murray A Straus, Beating the devil out of them: corporal punishment in American families, Lexington Books, 1994

"The greatest chance we have to prevent violence in society is to raise children who reject violence as a method of problem-solving, who believe in the right of the individual to grow in a safe environment".

National Committee on Violence, Australia, 1989

"By the prohibition of physical punishment, the legislator wanted to show that a child is an independent individual who can command full respect for his or her person, and who should thus have the same protection against physical punishment or violence as we adults see as being totally natural for ourselves".

Swedish Ministry of Justice official, explaining the ban on physical punishment, 1979

"In the judicial, social and educational circumstances in which we live, we must not make compromises that can endanger the welfare and physical well-being of minors... If we allow 'light' violence, it might deteriorate into very serious violence. We must not endanger the physical and mental well-being of a minor with any type of corporal punishment. A truth which is worthy must be clear and unequivocal and the message is that corporal punishment is not allowed".

Israel Supreme Court judgment, January 2000

using a slipper on his clothed buttocks which left no visible marks or bruising whatsoever, failed to reach the level of severity then considered to be required to breach Article 3. A concurring statement from the UK judge Sir John Freeland described this punishment as "at or near the borderline" and the Court unanimously stated that it did not wish "to be taken to approve in any way the retention of corporal punishment as part of the disciplinary regime of a school" (and in that case the Commission had found a breach of Article 8). Previously, in the 1980s and early 1990s the Commission found breaches of Article 3 in cases of school corporal punishment including one in which a 16 year-old girl was hit once on the hand with a cane, leaving marks visible for over a week (*Warwick v UK*, Report 18 July 1986) and another in which the caning of a 15 year old four times through trousers left marks "for some time".

In another relevant decision almost 20 years ago the Commission found that Sweden's ban on all corporal punishment, exposing parents who use physical punishment to criminal prosecution for assault "by the same standards as assault of a person outside the family" could not be considered to breach parental rights to family life guaranteed by Article 8 (*Seven Individuals v Sweden*, Admissibility Decision, 13 May 1982).

The Court has determined that "the Convention is a living instrument which must be interpreted in the light of present day conditions" (*Tyrer v UK*). The highest authority of the Council of Europe, home of the European Court of Human Rights, is the Committee of Ministers. In 1985 the Committee recommended that member states should prohibit physical punishment in a formal recommendation to which the UK was a party (Recommendation R85/4); there have been two further recommendations in 1990 (R90/2) and 1993 (R93/2) also condemning physical punishment. As noted above, the human rights Treaty Body for the UN Convention on the Rights of the Child (the most widely accepted of all human rights treaties - ratified by all European States and by 191 States worldwide), the Committee on the Rights of the Child, has stressed that physical punishment, however light, is incompatible with the Convention and has consistently recommended prohibition.

There is a clear trend towards prohibition of all physical punishment of children across Europe and further afield. At least eight countries have implemented a clear ban. A ban is currently before the German Parliament and has been formally recommended in other countries. Italy's highest Court, in a 1996 judgment, effectively prohibited all parental corporal punishment. In January 2000 Israel's Supreme Court similarly banned all parental corporal punishment, however light. One of the three judges wrote: "In the judicial, social and educational circumstances in which we live, we must not make compromises that can endanger the welfare and physical well-being of minors... If we allow 'light' violence, it might deteriorate into very serious violence. We must not endanger the physical and mental well-being of a minor with any type of corporal punishment. A truth which is worthy must be clear and unequivocal and the message is that corporal punishment is not allowed".

No other European country has even considered going down the path of seeking to define how parents can hit their children. The UK has not thought of seeking to define how teachers, or foster-carers, or residential care workers can hit children: it has simply removed their ability to use the defence of "reasonable chastisement" and thus given children when in their care the same protection as adults under the law on assault.

The approach promoted in this Consultation Document exposes the UK to international ridicule.

Responses to the questions posed in the Consultation Document:

Question 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”?”

Response

In registering our detailed response to this question, we want it recorded that:

- We do not support any approach which condones physical punishment
- We believe that children have a right to the same protection under the law on assault as adults.

As noted above in our comments on the Government’s “Proposal” to meet the criticisms of the European Court, we do not believe that requiring courts to consider any checklist of “factors” - no matter how long - will help to protect children or to support parents. The only general guidance it provides to parents is that it is legitimate to use physical punishment. The approach provides no other guidance to parents and thus does not contribute to prevention. As noted above, we do not accept the Government’s view that this proposal meets the requirements of the European Court judgment in “A v UK”. A checklist of this kind would not significantly reduce courts’ discretion.

In response to the detail of the proposal, it seems extraordinary that the Government should propose that courts should only “in some instances” consider sex, age and state of health. “Vulnerability” of children is plainly a key additional factor. Also, case law of the European Court (Tyrer v UK) rules out justifying degrading punishment by relating it to the offence or the reasons for giving it, so this would have to be explicitly ruled out as a “factor” to be considered.

Question 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 to cause injuries to the head (including injuries to the brain, eyes and ears)?*
- *Physical punishment using implements (e.g. canes, slippers, belts)?”*

Response

In registering our detailed response to this question, we want it recorded that:

- We do not support any approach which condones physical punishment
- We believe that children have a right to the same protection under the law on assault as adults.

There are three questions here:

A *Are there any forms of physical punishment which should never be capable of being defended as “reasonable”?*

In the Alliance’s view no forms of physical punishment of children should be capable of being defended as reasonable. Hitting people does not become reasonable because the people concerned are smaller or younger.

More than a century ago similar legal defences were used to justify physical punishment of wives and servants. This is unthinkable today. In removing these disreputable “rights” of husbands and masters, there was no attempt to define “acceptable” hitting. Why should it be more acceptable to have legal defences of violence to children? The concept of “reasonable chastisement” has no place whatsoever in a society which views the child as an independent individual, a holder of human rights alongside all other people. As noted in the Introduction to the Alliance’s response, that children, who are smaller and more vulnerable than the rest of us, should have less protection from being hit than adults contradicts common humanity.

The legislation prohibiting all corporal punishment in schools defines giving corporal punishment as “doing anything for the purpose of punishing a child (whether or not there are other reasons for doing it) which, apart from any justification, would constitute battery” (section 131 of the School Standards and Framework Act 1998). This legislation - and the common law - of course allows physical actions which are protective of children and others.

The Alliance believes that Government’s task in relation to social issues is to have regard to its human rights obligations and to listen to expert opinion. There are many examples of issues where appropriate responses have demanded leading, rather than following, public opinion and challenging tradition and discrimination: this is one of them.

On this issue, it is plain that majority public opinion has already moved a long way - well beyond the options set out in the Consultation Document. Overwhelming public opinion, according to the poll carried out by the Office of National Statistics (ONS) on behalf of the Department of Health, already favours banning all physical punishment of under two year-olds: why is this option not proposed, as it is in the Scottish Executive consultation document?

Overwhelming public opinion, reflected in the results of the ONS poll, supports not only the options presented here but also no shaking of children and no

smacking which leaves bruises or marks lasting more than a very short time. The Alliance's own MORI poll indicates that if parents can be reassured that there will not be prosecutions for "trivial smacks" they overwhelmingly support giving children the same protection as adults under the law on assault (see Appendix C, page 29).

B *Should the law state that physical punishment which causes, or is likely to cause injuries to the head (including injuries to the brain, eyes and ears) can never be defended as reasonable?*

Yes of course, but what about physical punishment which causes or risks causing injury to mouth, nose, teeth, genitals and all other erogenous zones, fingers, toes, central nervous system, heart, lungs, kidneys and so on? What about any physical punishment which causes or risks causing injury or discomfort or pain lasting more than a very short time (see results of the Government's own Opinion Poll noted above)? What about punishment which causes psychological harm - bedwetting, loss of confidence and self-esteem, anxiety attacks and so on?

In a document that purports to be about child protection, this is an extraordinary question - the Government is actually asking whether punishment which causes injury to the brain, eyes and ears of a child can be reasonable.

C *Should the law state that physical punishment using implements (eg canes, slippers, belts) can never be defended as reasonable?*

Yes of course. Successive opinion polls including the Government's own poll have found that an overwhelming majority of the public favours banning any use of implements to punish children. A broader definition of implements would be "stick, belt or other object". But what about physical punishment administered with a closed fist, or by biting, pinching or kicking children, by forced ingestion, or by shaking? The Government should note that 97 per cent of respondents to its own poll believe parents should not be allowed by law to shake children, compared with a mere three per cent disagreeing with this view.

Question 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?”

In registering our detailed response to this question, we want it recorded that:

- We do not support any approach which condones physical punishment
- We believe that children have a right to the same protection under the law on assault as adults.

This proposal draws attention to the inequality of protection currently afforded to children by the law. The defence should be restricted so that it cannot be used by anyone charged with any category of assault. It is a fundamental principle of human rights, upheld in the Universal Declaration (article 7) and the International Covenant on Civil and Political Rights (article 26) that every person is entitled without any discrimination to the equal protection of the law.

The Government indicates that the types of injuries which are normally prosecuted as “assault occasioning actual bodily harm” are “loss or breaking of a tooth; temporary loss of sensory functions including loss of consciousness; extensive or multiple bruising; displaced broken nose; minor fractures; minor cuts requiring medical treatment (eg stitches); and psychiatric injury which is more than fear, distress or panic”.

It is quite extraordinary that the Government should be asking whether punishment which causes or risks causing such injuries can ever be defended as reasonable. It is plain from the results of the Government’s own Opinion Poll that an overwhelming majority of the public would wish the definition of “reasonable” punishment to be far, far narrower than punishment causing these sorts of injuries.

In the case of “A v UK”, the caning of the boy had caused some bruising but no other injuries. The European Court unanimously found that this amounted to “inhuman or degrading punishment”, in breach of the European Convention on Human Rights. Thus it is plain that the judgment requires the Government to ban punishment far less severe than that which would be regarded as “assault occasioning actual bodily harm”.

And in relation to the Government’s extraordinarily narrow proposal, in any case the defence should not be available in relation not only to punishment which causes actual bodily harm, but also to punishment which risks causing it.

The Crown Prosecution Service Charging Standard (quoted in the document, para. 3.7) states that common assault is the appropriate charge when injuries “amount to no more than ... grazes; scratches; abrasions; minor bruising; swellings; reddening of the skin; superficial cuts; a “black eye””. It is plain from the Government’s own Poll that an overwhelming majority of the public do not regard physical punishment which amounts to common assault to be reasonable - for example, less than one per cent accept punishment which leaves “a bruise that lasts for a few days” (ie, virtually all bruises).

Were the Government to follow its proposal and remove the defence only in relation to actual bodily harm and more serious charges, it would create a dangerous presumption - unsupported by overwhelming public opinion - that physical punishment causing injuries normally categorised as common assault was “reasonable”.

We emphasise again that a ban on physical punishment would lead to fewer prosecutions and that trivial smacks would not be prosecuted (see page 10).

Question 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?”*

In registering our detailed response to this question, we want it recorded that:

- We do not support any approach which condones physical punishment
- We believe that children have a right to the same protection under the law on assault as adults.

Nobody should be able to claim the defence.

In relation to carers other than parents, the Government should be aware of the clear and long-standing consensus amongst all organisations concerned with child care that physical punishment should be prohibited throughout the child care system. And indeed successive governments have stated for more than a decade that this is already their policy (see, for example, the UK’s initial report to the Committee on the Rights of the Child, para. 5.135 and the second report, para. 7.13.1; also the DfEE’s recent Guide for parents - *Need a Nanny?* states “a trained childcare worker would never use physical punishment as a form of discipline”). Physical punishment is prohibited in nursery education under the School Standards and Framework Act, but at present its use is not prohibited by childminders and in certain early years settings providing day care but not education; nor is it prohibited by private foster-carers. A particular advantage of the Alliance proposal for law reform is that protection against all physical punishment would be, as it were, attached to the child instead of varying, as it does now, according to the particular setting the child is in and the status of the perpetrator.

While categorically rejecting the Government’s approach, within the narrow options proposed we of course press for the defence only to be available to those with parental responsibility. Research shows that perpetrators of abuse are often adults in the child’s household without parental responsibility.

Appendix A

Supporters of the Children are unbeatable! Alliance

Alliance aims and statement

The organisations and individuals listed below welcome the Government's intention to clarify the law on parental discipline. The traditional defence of "reasonable chastisement" works against the aims which we and the Government of a modern Britain share: the encouragement of positive parental discipline in all families, and assurance of effective child protection in the few cases where it is needed.

We believe it is both wrong and impracticable to seek to define acceptable forms of corporal punishment of children. Such an exercise is unjust. Hitting children is a lesson in bad behaviour.

Removing the defence of "reasonable chastisement" and thus giving children in their homes and in all other settings equal protection under the law on assault is the only just, moral and safe way to clarify the law. While technically this would criminalise any assault of a child, trivial assaults, like trivial assaults between adults, would not be prosecuted. There already exist adequate means to prevent unwarranted or unhelpful prosecutions. It would on the other hand ease prosecution in serious cases. It would eliminate the current dangerous confusion over what is acceptable and provide a clear basis for child protection.

There is ample evidence from other countries to show that full legal reform, coupled with the promotion of effective means of positive discipline, works rapidly to reduce reliance on corporal punishment and reduces the need for prosecutions and other formal interventions in families. Using positive forms of discipline reduces stress and improves relationships between children, their parents and other carers.

Organisations:

Aberlour Child Care Trust	Boys and Girls Welfare Society	Portsmouth and Southwark)	Children's Trust, The
Action for Sick Children	Bridge Child Care Development Service, The	Catholic Children's Society (R.C. Diocese of Nottingham)	Childwatch
ADHD Family Support Group UK	Brighton Unemployed Centre Families Project	Catholic Children's Society (Westminster)	Chiltern College
Adlerian Society (of the United Kingdom) and the Institute for Individual Psychology	Bristol Early Years & Childcare Partnership	C.E.D.C. Community Education Development Centre	City of York Early Years Childcare and Development Partnership
Adolescent and Children's Trust, The	British Agencies for Adoption and Fostering UK - BAAF	Centre for Fun and Families	Community Housing and Therapy
Advisory Centre for Education	British Association for Community Child Health - BACCH	Centre for Personalised Education	Community Practitioners' and Health Visitors' Association (CPHVA)
African Caribbean Family Mediation Service	British Association for Early Childhood Education - Early Education	Centre for Studies on Inclusive Education - CSIE	Contact a Family
After Adoption	British Association for the Study & Prevention of Child Abuse & Neglect - BASPCAN	Centrepoint	Coram Family (formerly Thomas Coram Foundation for Children)
Alliance of Parents & Schools, The Anna Freud Centre, The	British Association of Psychotherapists, Child & Adolescent Training Committee	Child Advocacy International	Corporal Punishment Survivors
Antidote: Campaign for Emotional Literacy	British Association of Social Workers - BASW	Child Base Ltd	Council for Disabled Children
Article 12	British Epilepsy Association	Child Care N.I.	Crime Concern
Article 31 Action Network	British Juvenile and Family Courts Society	Child Concern	Croydon Playcare Company
Association for Family Therapy	Cambridgeshire Probation Service (Family Court Welfare Service)	Child Poverty Action Group	CSV - Community Service Volunteers
Association of Advisers for Under Eights and their Families - AAUEF	Canterbury Children's Centre	Child Safe Wales	Daycare Trust
Association of Lawyers for Children	Carers National Association	Child's Play (International) Ltd. Publishers	Disabled Children's Foundation
Barnardo's	Caring for Children	Children 1st: The Royal Scottish Society for the Prevention of Cruelty to Children	Durham Initiative Support in the Community (Youth Care Project)
BAWSO Women's Aid - Black Association of Women Step Out Ltd.	Catholic Child Welfare Council	Children in Scotland	Early Years & Childcare Partnership Bradford
Behaviour Management Ltd.	Catholic Children's Society (Arundel & Brighton,	Children in Wales - Plant yng Nghymru	Early Years Trainers Anti-Racist Network - EYTARN
"Being Yourself"/ Parenting Press Ltd.	Catholic Children's Society (Arundel & Brighton,	Children's Law Centre	East Anglia Diocesan Children's Society
Bottesford Youth Town Council	Catholic Children's Society (Arundel & Brighton,	Children's Legal Centre	Education Now Ltd.
		Children's Play Council	End Physical Punishment of Children - EPOCH
		Children's Rights Office	
		Children's Rights Officers and Advocates - CROA	

Enuresis Research and Information Centre	Kids' Clubs Network	National Campaign for Nursery Education	Parents for Children
Fair Play For Children	Kidsactive (formerly HAPA)	National Childminding Association (including Childminding in Business Ltd)	Parents for Inclusion
Family Care (Scotland)	Kidscape	National Children's Bureau	Parkhill Publishing
Family Caring Trust	Kinderquest Limited	National Children's Centre	Peace Pledge Union
Family First Ltd	Kingston-upon-Hull & East Riding of Yorkshire ACPC	National Council of Women of Great Britain	PEEP - Peers Early Education Partnership
Family Links	Kith and Kids	National Early Years Network, The	People First
Family Mediation Scotland:- Counselling and Family Mediation - Western Isles; Family Mediation Borders; Family Mediation Highland; Family Mediation Lothian; Family Mediation Tayside; Family Mediation West; NCH Action for Children Dumfries & Galloway Family Mediation Service; NCH Action for Children Family Mediation Fife;	Knowsley EYDCP	National Family Mediation	PIPPIN - Parents in Partnership; Parent Infant Network
Family Nurturing Network,	Language Alive Theatre in Education & Catalyst Theatre in Health Education, Birmingham	National Foster Care Association UK	Play Wales
The Family Rights Group	Learning Through Action Trust	National Institute for Social Work	Playgroup Network
Family Service Units	Liberty	National NEWPIN	Playlink
Family Welfare Association	Living Well Ltd	National Playbus Association	Play-Train
First Key - The National Leaving Care Advisory Service	Local Government Association (Social Affairs and Health Committee)	National Portage Association, The	Pop-Up Theatre Ltd
First Key (NI)	London Rape Crisis Centre	National Society for the Prevention of Cruelty to Children - NSPCC	POPANVA: Promotion of Parenting: A Non - Violent Approach
FLAME Network (Family Life and Marriage Education)	Maternity Alliance	National Standing Committee of Advisers, Inspectors and Consultants: Personal and Social Education	Positive Change Associates
Forum for the Advancement of Educational	Mediation UK	National Union of Students United Kingdom (NUS UK)	Post Adoption Centre
Therapy and Therapeutic Teaching	Medical Foundation for the Care of Victims of Torture	National Youth Advocacy Service	Premier Crèche Services Ltd
Forum on Children & Violence	Medical Women's Federation	Natural Nurturing Network	Pre-school Learning Alliance
Grandparents Federation	Mental Health Foundation,	Natural Parent Magazine	Promoting Effective Parenting (PEP)
Greenwich Women's Aid	The Merseyside Access to Play - MAP	NCH Action for Children (Scotland)	Promoting Parenting Skills
GRUMPY - The Greater Manchester Play Resources Unit	Methodist Church,	NIPPA - The Early Years Organisation (NI)	Quarriers
Hackney Parenting Project	The Middlesbrough, Redcar & Cleveland Youth Offender Team	Norland College, The	Relate: Marriage Guidance
Happy Child Nurseries Ltd	Mind - The Mental Health Charity	North Lincolnshire Early Years Development and Childcare Partnership	Relate NI, Family Mediation Service
Hartley Brewer Parenting Projects	Mind - City and Hackney	Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO)	Relate Teen
Hartley Wintney Youth Council	Mudiad Ysgolion Meithrin	Northern Ireland Childminding Association	Religious Society of Friends
Health Services Research Unit at Department of Public Health, University of Oxford	Multiple Births Foundation	Northern Ireland Foster Care Association	Rescue Foundation for the Brain Injured Infant, The
High/Scope Institute	Muscular Dystrophy Group	Northern Ireland Women's Aid Federation	Richmond Fellowship
Highland Pre-school Services	NAPAC - National Association for People Abused in Childhood, The	Norwood Ravenswood	Right From The Start
Howard League for Penal Reform, The	National Association	One Parent Families Scotland	Rights of Women
Hyperactive Children's Support Group	for Integrating Early Years Services - NAIEYS, formerly known as NANC	Oxfordshire Counselling Service	RoadPeace
Institute of Community Studies	National Association for Maternal and Child Welfare Family Development Studies	Oxfordshire Green Pages	Royal College of General Practitioners
Inter-Action Trust	National Association for Primary Education	Parent Pack	Royal College of Midwives
International Association for the Child's Right to Play (IPA)UK Branch	National Association for the Care and Resettlement of Offenders - NACRO	Parenting Education and Support Forum	Royal College of Paediatrics and Child Health
International Council for Self Esteem (UK)	National Association for the Education of Sick Children	Parentline Plus (incorporating Parent Network and National Stepfamily Association)	Royal College of Psychiatrists, Child and Adolescent Psychiatry Faculty
Joint National Committee on Training for Playwork	National Association of Guardians ad Litem and Reporting Officers - NAGALRO	Parents Advice Centre (NI)	Royal College of Speech and Language Therapists
KIDS	National Association of Social Workers in Education - NASWE	Parents at Work	Royal Cornwall Hospitals Trust, Child Health Directorate
Kids Unlimited	National Association of Toy and Leisure Libraries		Royal Institute of Public Health and Hygiene and Society of Public Health, The
	National Association of Youth & Community Education Officers		RPS Rainer - The Royal Philanthropic Society Incorporating The Rainer Foundation
			Runnymede Trust, The
			SACRO, Safeguarding Communities Reducing Offending
			Save the Children Fund
			SCADU - The National Centre for Student Volunteering

Scope
 Scottish Childminding Association
 Scottish Early Years and Family Network
 Scottish Independent Nurseries Association
 Scottish Out of School Care Network
 Scottish Pre-school Play Association
 Scottish Women's Aid
 Shelter
 Social Care Association
 Special Parenting Service
 Sprito Playwork Unit
 St. Francis Children's Society
 St. John Ambulance, National Headquarters
 Stepfamily Scotland
 Stepping Stones in Scotland
 Stockport EYDCP
 Suzy Lamplugh Trust, The
 TACADE
 TACTYC (The Professional Association of Early Childhood Educators)
 The New Learning Centre
 The New School, Butterstone
 Thurrock Early Years and Childcare Development Partnership
 Tower Hamlets Early Years Development & Childcare Partnership
 UK Committee for UNICEF
 UK Public Health Association
 Ulster Quaker Service Committee
 United Reformed Church
 Victim Support
 Voice for the Child in Care
 Voice of Young People in Care, NI
 Wearside Women in Need
 WelCare Service for Parents and Children:- Welcare Parent and Children Centre, Twickenham
 Welsh Women's Aid:- Aberconwy Women's Aid; Bangor & District Women's Aid; Blaenau Ffestiniog Women's Aid; Cardigan Women's Aid; Rhymney Valley Women's Aid
 West Oxford Centre for Counselling & Psychotherapy
 Who Cares? Scotland
 Who Cares? Trust, The
 Women Together For Peace
 Women's Aid Federation of England
 Woodcraft Folk, The

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Leeds

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Dewhurst Dent Plc

Jo Young, Counsellor,
Sex Therapist, Agony Aunt

Lord Young of Dartington

Benjamin Zephaniah,
Poet/Writer

Appendix B: Key documents

A Generation Without Smacking - The impact of Sweden's ban on physical punishment, Joan E Durrant, Save the Children, 2000; available from Save the Children, 17 Grove Lane, London SE5 8RD: £4.50.

It hurts you inside: children talking about smacking, Carlyne Willow and Tina Hyder, National Children's Bureau, Save the Children, 1998; available from NCB Book Sales, 8 Wakley Street, London EC1V 7QE: £8.50 members, £13.00 non-members (020 7843 6029).

National Children's Bureau, Highlight No 166, *Physical Punishment of children in the home*, Penelope Leach, January 1999; free from NCB.

The Physical Punishment of Children - some input from recent research, Penelope Leach, NSPCC Policy Practice Research Series, 1999; available from NSPCC Publications and Information Unit, National Centre, 42 Curtain Road, London EC2A 3NH: price £12.50.

Loving smack or lawful assault? A contradiction in human rights and law, Christina M Lyon, Institute for Public Policy Research, 2000, available from Central Books, 99 Wallis Road, London E9 5LN (020 8986 5488), price £7.50.

The following key background documents related to the Alliance's aims are available from the Children are unbeatable! secretariat - many of them electronically:

- a) Children are unbeatable! leaflet and briefing - the basic arguments for the legal reform the Alliance is seeking
- b) European Court of Human Rights Judgment in case concerning parental corporal punishment - "A v UK", Wednesday September 23 1998, full judgment and summary available
- c) Governmental statements against smacking, and summary of progress towards ending corporal punishment outside the home (includes extracts from Birth To Five, Health Education Authority, 1997, *Need a Nanny? A guide for parents*, DfEE, 1999, etc.)
- d) Research into prevalence of physical punishment in the UK: various papers by Marjorie Smith, Gavin Nobes and others
- e) United Nations Committee on the Rights of the Child, formal recommendation to the UK Government to prohibit all physical punishment, 1995
- f) *How to respond to false claims about Sweden's smacking ban*, Children are Unbeatable! briefing
- g) *Legal Reforms Against all Corporal Punishment of Children in European States - a Summary*, CAU! briefing
- h) For more detailed information on the smacking ban in Sweden, see *Children are People Too: The Case Against Physical Punishment*, Peter Newell, APPROACH, 1989
- i) *Can You Bring Up Children Successfully without Smacking and Spanking?* Justice Department, Sweden, 1979: pamphlet distributed to all families in Sweden to accompany the 1979 ban

Also, a wide selection of materials promoting positive, non-violent forms of discipline are available from Barnardo's, EPOCH, NSPCC and Save the Children. For example:

Handle with care: Babies are fragile and precious and *Behave Yourself!: A guide to better parenting*, available free from NSPCC, 020 7825 2775

We Can Work it Out: Parenting with confidence, and other materials: Save the Children, 020 7703 5400; also available on SCF Web-site www.savethechildren.org.uk/onlinepubs/workitout

Getting positive about discipline a guide for today's parents and *Why speak out against smacking? Questions and answers from the physical punishment debate*, available at £1 each from Barnardo's (01268 520224).

The No smacking guide to good behaviour, and *Think before you smack!*, available free from EPOCH, 020 7700 0627.

Children are unbeatable! Secretariat, 77 Holloway Road, LONDON N7 8JZ

Tel: 020 7700 0627; Fax: 020 7700 1105

email : epoch-worldwide@mcr1.poptel.org.uk

Appendix C: Attitudes towards smacking children

Research Study conducted by MORI for Children are unbeatable!, January 1999

Summary

- Respondents were given the following information before being asked whether or not children should have the same legal protection as adults against assault:

We would like to ask you some questions about corporal punishment of children. The Government has agreed that the law should be changed to give children better protection. In eight European countries children have the same protection under the law on assault as adults and more countries are now following suit. This means that hitting children is against the law in these countries, just as it is against the law to hit an adult. However, parents are not prosecuted for trivial smacks, nor are they prevented from restraining their children for safety reasons.

- In total, three in four people (73%) support children having the same legal protection against assault as adults, if they could be sure that parents would not be prosecuted for trivial smacks. One in five (21%) oppose such a proposal and 6% do not know.
- Those most likely to support the proposal include parents with dependent children and young people (each 78%), as well as those in higher social classes (ABC1: 76%). Opposition is strongest from those aged 45-54 (27%).
- Almost all of the public (93%) believe that parents should not be allowed to hit children with belts, sticks or other implements, including over three in four (78%) who strongly feel it should not be allowed. Similarly, most people (89%) think that parents should not be allowed to smack children under the age of one (65% strongly agree).
- The public's views are less emphatic about whether people other than parents should be allowed to smack children. Two in three (65%) feel that other people should not be allowed to smack children and this view is particularly strong among parents with dependent children and younger people (77% and 74%). There is also stronger agreement among Labour than Conservative voters (69% versus 59%). However, one in four members of the public (25%) disagree that other people should not be allowed to smack children.
- Opinion is divided over whether smacking children is a good way of improving their behaviour. Just under half (46%) agree it is, while over a third (37%) disagree, however, this position is reversed for parents with dependent children - slightly more disagree than agree (45% versus 39%). Those most likely to say it is a good way of improving behaviour are more likely to have no formal qualifications and to be over 55 (62% and 58%), while more affluent respondents (ABs) are much less likely to agree (32%).

- One in four (25%) say that in the past they would have considered smacking an appropriate form of discipline, but they don't feel that way any more, while 57% disagree with this statement. Parents with dependent children are most likely to agree with this statement (30%).
- Parents with dependent children were asked whether or not they usually regret having smacked their children. Nearly twice as many say they do regret than do not (44% versus 23%), with a further 23% who say they do not smack their children. Around half of the parents (52%) say they hope that if their children have children they will not smack them, 16% hope they will smack their children and around one in three (32%) do not know.
- People aged under 45 who do not have children were asked if they would try not to smack any children they may have in the future. The majority (70%) say they would try not to smack their children; however, 19% disagree with this.

Appendix D

Draft amendments to Children and Young Persons Act 1933 (and equivalent Acts for Northern Ireland and Scotland: Children and Young Persons (Northern Ireland) Act 1950, section 20(6); Children and Young Persons (Scotland) Act 1937, section 12(7))

“Section 1(7) of the Children and Young Persons Act 1933 (saving for right of parents etc. to administer punishment) is amended as follows:

7.- Subject to sub-section 8, nothing in this section shall be construed as affecting the right of any parent, or any other person having the lawful control or charge of a child or young person, to administer punishment to him.

New sub-section 8:

8.- (1) Corporal punishment given to a child by, or on the authority of, any person including a parent or guardian, cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the person.

(2) Any reference to giving corporal punishment to a child is to doing anything for the purpose of punishing that child (whether or not there are other reasons for doing it) which, apart from any justification, would constitute battery.

(3) However, corporal punishment shall not be taken to be given to a child by virtue of anything done for reasons that include averting-

(a) an immediate danger of personal injury to, or

(b) an immediate danger to the property of, any person (including the child himself).

(4) “Child” means a person under the age of 18.

After amendment by the School Standards and Framework Act 1998, section 1(7) of the Children and Young Persons Act 1933 currently reads:

“Nothing in this section shall be construed as affecting the right of any parent, or (subject to section 548 of the Education Act 1996) any other person having the lawful control or charge of a child or young person to administer punishment to him.”

Further copies of this report are available from:

Publications and Information Unit

NSPCC National Centre

42 Curtain Road

London EC2A 3NH

Fax: 020 7825 2763

email: infounit@nspcc.org.uk

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