



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 28 March 2019

Session 5



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EQUALITIES AND HUMAN RIGHTS COMMITTEE

9th Meeting 2019, Session 5

CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

DEPUTY CONVENER

*Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Oliver Mundell (Dumfriesshire) (Con)

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Finnie (Highlands and Islands) (Green)

Maria Gray (Scottish Government)

Scott Matheson (Scottish Government)

Simon Stockwell (Scottish Government)

Maree Todd (Minister for Children and Young People)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 28 March 2019

[The Convener opened the meeting at 09:00]

Children (Equal Protection from Assault) (Scotland) Bill: Stage 1

The Convener (Ruth Maguire): Good morning, everyone, and welcome to the Equalities and Human Rights Committee's ninth meeting in 2019. I ask everyone to please ensure that all mobile devices are switched to silent and put away. I welcome John Finnie.

Agenda item 1 is our final evidence session on the Children (Equal Protection from Assault) (Scotland) Bill. I welcome Maree Todd, the Minister for Children and Young People, who is supported by Scottish Government officials Simon Stockwell, who is the head of the family law unit; Sarah Meanley, who is from the family law unit; Scott Matheson, who is from the legal services directorate; and Maria Gray, who is from the parenting, play and baby box team. I invite the minister to make an opening statement of up to five minutes.

The Minister for Children and Young People (Maree Todd): Thank you for inviting me to give evidence on the bill's general principles. The Scottish Government supports the removal of the defence of reasonable chastisement in Mr Finnie's bill for a number of reasons. We believe that children should have the same legal protection from assault as adults. The bill will achieve that, so Scotland will lead the way in the United Kingdom in providing such protection for children—as I am sure the committee is aware, the Welsh Government has just introduced its bill on the subject.

Removing the defence is consistent with international treaties, best practice and human rights. The removal reflects the growing body of evidence that physical punishment of children is ineffective and harmful. The bill will bring helpful clarity to the law that relates to the use of physical punishment, and it will send a clear message that it is unnecessary for parents and carers to use physical punishment to discipline children.

Our aim is for Scotland to be the best place in the world for our children to grow up in, and the bill will contribute to that. The Scottish Government recognises the need to raise awareness about the bill's effect and to support parents and

organisations in relation to the change that it will bring. That could build on existing work that is underpinned by our national parenting strategy.

This is not about telling parents how to parent; we will continue to support them and to provide information about positive parenting. Resources are tight, but we have formed an implementation group, which is considering the steps that will need to be taken if the Parliament passes the bill, including what will need to be done on public awareness. We will take on board any points that members of the implementation group and of the committee raise about steps to raise awareness.

I welcome questions from the committee.

The Convener: Thank you, minister. You said that the Scottish Government supports the bill's principles. Why is public opinion on the topic so mixed?

Maree Todd: We support the removal of the defence of reasonable chastisement because we believe that children should have the same legal protection as adults. Public support for that principle is extremely strong—about 92 per cent of people who were asked agreed that children should have the same protection from assault as adults and only 2 per cent of the population would oppose that.

The Convener: The committee received quite a body of evidence from individuals who oppose the proposal. Why is that?

Maree Todd: The committee also heard evidence from people who said that the bill goes to the heart of how we were parented and how we behave as parents. The issue is difficult, but there is reasonable evidence that, since the Parliament previously discussed the matter, there has been a trend towards understanding that physical punishment is ineffective, that it is not a useful parenting strategy and that there are much more effective alternatives.

The Convener: Can the bill help to change how parents discipline their children?

Maree Todd: Certainly.

Oliver Mundell (Dumfriesshire) (Con): How do you feel about the vehicle that is being used to introduce the measure? I am not sure how closely you have looked at the law in New Zealand but, in that context, does the bill represent the correct way in which to make the legal change?

Maree Todd: I think that it is an appropriate way of making the legal change. I have followed the committee's evidence sessions, and I know that you and Conservative colleagues have asked questions about that a number of times. Ireland and New Zealand have made assault an offence in statute, whereas in Scotland assault is a

common-law offence. I do not think that it makes much difference in practice. The aim of Mr Finnie's bill is to remove a defence, and the relevant offence in Scotland is a common-law offence.

Oliver Mundell: My point, which I am putting as openly as I can, is that, although violence against children is wrong and not to be encouraged, what worries me about removing the defence—this is where we see a difference between the 92 per cent that you have pointed to and the 75 per cent figure that comes out of surveys—is that there seems to be a grey area between what people would see as being assault and what they would see as parents probably acting in the best interests of the child. There seems to be some confusion about what the tests and thresholds would be. The New Zealand law sets out a number of situations in which it would be okay to use force—for example, to prevent or minimise immediate harm to a child or another person, or where it would prevent a criminal act from taking place. Do you think that things like that should be considered by the committee?

Maree Todd: The bill's approach brings helpful clarity to the legislation. Instead of increasing confusion, the bill will make it clearer to parents what they can and cannot do. There will be a clear message in the legislation that physical punishment of children is not an acceptable strategy. I am very pleased to hear that there is Conservative support for the principle that physical punishment is not acceptable.

Oliver Mundell: In that case, if the bill is passed, will parents legally be allowed to physically punish their children in certain circumstances?

Maree Todd: The defence of reasonable chastisement—

Oliver Mundell: I asked a yes or no question, minister. If the bill is passed, will there still be circumstances in which, under Scots law, parents will be permitted to physically punish their children?

Scott Matheson (Scottish Government): I can perhaps assist with that. It is not the role of the Scottish Government to determine what the outcome of a particular criminal case should be; that is a matter for the courts. The decision whether to prosecute will be for the prosecution authorities to take, independently of ministers. The bill is removing a defence that has formed part of the common law of Scotland for a very long time and that has been modified by statute—a defence to a common-law crime of assault. There are other defences that Scots law recognises in relation to crimes involving assault, of which self-defence is one example. Other jurisdictions may have traditions of legislating specifically. As we do not

have a codified criminal law in Scots law, that is generally not the approach in Scotland. The outcome of a particular case will depend on the facts and circumstances of the case; the Scottish Government could not really say in advance what the outcome would be.

Oliver Mundell: I guess that, if the aim is to provide clarity—or increased clarity—for parents, surely it would be helpful to set out some thresholds or tests in statute, or to provide some guidance as to where those tests would be met.

You talk about the defence, but my understanding—I am happy to accept that I could be wrong—is that the presence of a defence often influences the decision whether to prosecute. Therefore, removing a defence opens up the possibility of prosecution for behaviour that might previously not have been prosecuted. Am I right or wrong?

Scott Matheson: I do not know that I can go much beyond saying that, in circumstances in which, under the current law, parents or other people exercising a similar role would be able to rely on the defence of reasonable chastisement, under the bill, they simply will not be able to do that. The prosecution authorities would, no doubt, take that into account when deciding whether going ahead with a prosecution would result in the necessary likelihood of a successful conviction and whether a prosecution would be in the public interest.

Oliver Mundell: What about the thresholds question? Do you not think that it would be reasonable to set out thresholds so that parents would know what type of behaviour would be captured by assault and what would not?

Simon Stockwell (Scottish Government): Any guidance on prosecutorial matters would be a matter for the Lord Advocate and the Crown, not for the Scottish Government.

Oliver Mundell: I am talking about the Scottish Parliament passing legislation. Do you not think that it would be helpful to provide clarity for parents—as we do in other criminal law—by setting out in black and white, in statute, the tests that one would expect to be met if the use of force by parents was to constitute assault? Would that not provide clarity?

Simon Stockwell: I think that you would end up with something close to what you already have. That is exactly what Mr Finnie's bill is trying to remove. It is trying to take away the defence of reasonable chastisement and make it clear to parents—as the minister said—that physical punishment is wrong. If members added material to the bill, the result would be something pretty close to the current law, which would be contrary to what the bill is trying to achieve.

Alex Cole-Hamilton (Edinburgh Western) (LD): Thank you for coming to see us today, minister. I have some questions about rights, and then I will test some of the arguments against the bill.

In her programme for government speech, the First Minister gave a commitment to incorporate the principles of the United Nations Convention on the Rights of the Child, and you know that I support that measure. Could we incorporate the principles of the UNCRC without the bill?

Maree Todd: That is a bit of a theoretical question, because the Government is supporting the bill, which incorporates the principles of the UNCRC.

Alex Cole-Hamilton: My question was not a trap. Every time that the UN Committee on the Rights of the Child visits us, the concluding observations refer to the fact that we still allow the physical punishment of children. It was a loaded question to determine whether continuing to allow physical punishment in the home is compatible with incorporating the UNCRC to an internationally recognised standard.

Maree Todd: I think that removing the defence of reasonable chastisement is absolutely in line with international treaties, our obligations and international best practice. As I said in my opening statement, many countries around the world have already taken that step. Although, as the member knows, Scotland likes to lead the way in human rights, we are following on this issue.

Alex Cole-Hamilton: Do you recognise any conflict between children's rights, as inscribed in the UNCRC, and so-called parents' rights—the right to family life and so on? We have heard some evidence on that from people who do not support the bill.

Maree Todd: I listened carefully to that evidence and I understand their concern, but I do not see a conflict. The bill will bring helpful clarity that the physical punishment of children is not acceptable. There is no conflict between the rights of a child and the right to family life on that issue.

Alex Cole-Hamilton: I will briefly test some of the arguments against the bill that we have heard. In several evidence sessions, the suggestion has been made that removing the right to physical punishment—or, rather, the legal defence that allows physical punishment—could endanger some children, because physical punishment is sometimes necessary to prevent harm, as in situations such as when they are pulling down a boiling pan of water from the stove or running out into traffic. Are you concerned that, by removing that parenting tool, we are putting children at risk of hurting themselves?

Maree Todd: No. I watched the evidence on that issue carefully, and I agree with the evidence that the committee heard, which is that physical punishment is not necessary to prevent harm in those circumstances and that the usual strategy for a parent would be to put themselves between the child and the harm and to hold the child close. Parents do not need to punish children in those circumstances. Some of the evidence suggests that punishing a child in those circumstances adds to their confusion and does not help them to learn a lesson.

09:15

Alex Cole-Hamilton: An argument that came out of that discussion related to adults with learning disabilities. Some adults with learning disabilities never have a mental age above that of a child, so is it incongruous that we currently allow one form of discipline for three-year-olds and a different form of discipline for people who are 24 but who might have a mental age of three?

Maree Todd: That is an interesting argument. In the committee's previous evidence, somebody asked whether we would use physical punishment to prevent an elderly person with dementia from crossing the road and putting themselves in harm's way. That would be inconceivable for most of us, so why would we use that strategy for a small child? There is a growing body of evidence that physical punishment harms children and that it is an ineffective strategy for discipline. The time is right for us to take this step, because the argument that using physical punishment can prevent harm is weak.

Alex Cole-Hamilton: We have heard conflicting evidence from panel members on the impact that such behaviour has on the use of violence as a tool of punishment. On the one hand, the police and Scottish Women's Aid have said that, for as long as we allow violence in the home, we will not be able to eradicate domestic violence and that it will spill over into our streets because children will have learned that behaviour. However, on the other hand, last week, Professor Larzelere, from America, cited the case of Sweden and said that, since the removal of the defence for smacking in Sweden, in 1979, there has been a huge increase in the number of assaults and rapes by juveniles. He suggested that that is because children have never been taught to accept the answer, "No." Where do you sit on that divide?

Maree Todd: Last week's evidence from the American professor was not at all convincing. There was no causal association between the two findings. We could say equally that, since 1979, when the defence was removed, there has been a massive increase in the number of moose road

traffic accidents, but there is no link between those two things.

The most convincing body of evidence has come from health professionals, including the paediatrician who gave evidence to the committee, the American Academy of Pediatrics and our body of paediatricians and public health organisations in the United Kingdom, who have all said that it is harmful to use physical punishment against children. When Lucy Reynolds gave evidence to the committee, she made it very clear that children learn by mimicry and gave evidence of children who had witnessed violence using violence themselves in play.

In science, there are always voices that challenge the evidence, but I am very clear that the body of evidence supports the idea that using physical violence in the punishment of children leads to a greater likelihood of those children using violence when they are older. There is a strong link between someone having been physically punished and their having behavioural problems later in life.

Alex Cole-Hamilton: On Skye, and during questioning from Gordon Lindhurst in our various evidence sessions, we heard that physical punishment is regarded almost as an article of faith by some Christian groups and that some passages of scripture suggest that such behaviour is normal parenting and part of the lived faith of Christians. Is the bill an assault on their right to parent their children as their faith suggests they should?

Maree Todd: I do not think so. I listened with interest to the evidence that was given by the various faith groups. There does not seem to be consensus even within the Christian faith, because the Church of Scotland and the Quakers strongly support the bill. I do not think that we can put forward the argument that the bill will prevent people from partaking in their religious practices. There is growing evidence that smacking is harmful to children and that it is an ineffective form of discipline, so it is right that we are bringing clarity to the situation and the bill is an effective tool with which to do that.

Annie Wells (Glasgow) (Con): I have just one question for the minister. We have heard from a lot of witnesses who believe that the bill should not criminalise parents. Do you feel the same?

Maree Todd: I think that the evidence in other countries that have introduced such a measure is that it does not lead to a large number of prosecutions. As you know, in Scotland, we take a GIRFEC—getting it right for every child—approach. We are very keen to provide, at an early stage, support to families from the right person at the right time. If anything, I suspect that the bill will

lead to increased support for families, not increased criminalisation.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I will follow up on two lines of questioning that I have been pursuing throughout the evidence sessions.

The first is about current child protection processes. When we first started taking evidence, there was some concern that there could be criminalisation of parents—as Annie Wells said—an increase in child protection processes and more interference from the state in families' lives. However, we heard good evidence from both the police and social work that they do not think that those things would happen. Has the Government thought about the implications for child protection processes?

Maree Todd: Yes, and, like the police and Social Work Scotland, we do not think that there is going to be a huge impact on current practice. We already take a GIRFEC approach in Scotland. We are keen to offer support to families and to get support in at an early stage, from the right people at the right time, in order to support families to parent well.

Fulton MacGregor: So you do not envisage an increase in child protection measures being taken—child protection registrations—as a direct result of the bill alone.

Maree Todd: I do not think that that will happen, but the implementation group will look at those issues, which involve Social Work Scotland and Police Scotland. If issues arise during the passage of the bill that we need to pay attention to, we will pay attention to them, but I do not think that there will be an increase.

Fulton MacGregor: If there is an increase in child protection registrations, could it be argued that that is happening because of the earlier identification of children who are at risk?

Maree Todd: That is the approach that we take in Scotland anyway. We are very keen to identify children who might be at risk and offer support at an early stage, so that things do not deteriorate for them. In Scotland, our approach is very much predicated along those lines—getting it right for every child is about getting the right help from the right person at the right time, ideally at an early stage to avert a crisis.

Fulton MacGregor: My other question relates to something that was first raised when the committee visited Skye, and which I had not particularly thought about beforehand. We heard evidence that the bill, if passed, could have a disproportionate effect on vulnerable families who maybe already have agencies involved. Have you followed that point through the evidence sessions,

and does the Government have any thoughts on it?

Maree Todd: I saw that evidence, but I do not think that there is any particularly strong evidence to support it. As I said, the approach in Scotland is around getting it right for every child. Where there is already state involvement with families, the aim is to support those families and to improve the situation for the children.

Mary Fee (West Scotland) (Lab): My first question follows on quite nicely from Fulton MacGregor's final question and relates to an issue that has been raised throughout the evidence sessions. Are you aware of any evidence that suggests that children from specific equality groups are more likely to experience physical punishment?

Maree Todd: I have looked for evidence of that, but there is no particularly solid evidence from which we can draw conclusions on the issue. There is some international evidence, but I am not sure how applicable it is to the Scottish situation.

Mary Fee: That is helpful. You say that there is no solid evidence on the issue. If the bill is passed, the Government will do some awareness raising, and I know that other members want to explore the broader issue of what the Government will do in that regard. Will you tailor that awareness raising and the support that you offer so that it includes families that have social work involvement or in which there are children from specific equality groups?

Maree Todd: Absolutely. We are keen to ensure that all families are aware of the legislation. We already have really good channels for getting information to such families. We have the useful parent club website, which is well used and appreciated and which provides a great deal of information on positive parenting. We also have support packages in place. The level of health visiting has increased, and we have family nurse partnerships. There is a good level of support for such families already, so they should be well informed about the proposed change.

Maria Gray might want to say a bit more about the ways in which we provide information on positive parenting to parents in Scotland.

Maria Gray (Scottish Government): As the minister said, we have the parent club website, which is a resource that we would like to develop as a one-stop shop for families with a range of information and advice on issues such as healthy eating and sleep and on using positive parenting techniques to manage behaviour. The development of information for the website is being done in partnership with parents. Behaviour management is definitely one of the key tasks on which parents need information.

We also publish resources such as "Ready Steady Baby!", which has recently been refreshed and relaunched, and "Ready Steady Toddler!", which provide a wealth of information from health professionals about positive parenting techniques.

Mary Fee: That is helpful.

I want to ask about restraint, which I have raised in other evidence sessions. Could the bill deal with restraint? If not, is restraint on the Government's horizon to pick up at a later stage?

Maree Todd: I have noted the points that have been made—I recognise that they are very serious—about the use of restraint in residential care settings. I do not think that the bill is the appropriate place to consider the issue, because restraint is very different from punishment. Restraint is about prevention. It is used in narrowly defined circumstances and is about keeping the individual and those around them safe. Although I do not think that the bill is the appropriate place to consider the use of restraint, I would be happy to consider separately any points on the matter that you wish to raise.

Mary Fee: That is helpful. Restraint is not used only in looked-after settings; it can also be used with young adults who have additional support needs. Although I accept that restraint is used for protection, there is a very fine line between protection and harm when it comes to the degrees of restraint that are used. I would be keen to explore that with the minister at a later stage.

Gail Ross (Caithness, Sutherland and Ross) (SNP): A concern that has been put to us is that the bill might result in an increase in the burden on public services, but we have heard in evidence that, in countries that have implemented similar legislation, there has been only a slight increase, if any, in the number of prosecutions. Do you think that the bill will result in an increase in the burden on public services?

Maree Todd: No. I agree with you. I think that the evidence from around the world is quite convincing in showing that such legislation does not increase the number of prosecutions or the burden on public services. There is very strong evidence from Ireland, where the change following the introduction of the legislation was nowhere near as dramatic as had been foreseen, because it fitted with where parents were at the time.

Gail Ross: One of the aims of the bill is to encourage a cultural change. Is the bill the right way to do that? We have been told in evidence that an education and public awareness-raising campaign might be enough on its own. What is your opinion on that?

09:30

Maree Todd: I do not think that it is a choice of one or the other. Education and awareness raising are a necessary part of the cultural change that we wish to achieve. It is difficult to educate and raise awareness if the legislation allows people to do something else, and that is where you see an unhelpful ambiguity. We will see the most successful cultural change if we go down the route of education and awareness raising as well as changing the legislation so that it is absolutely clear that physical punishment is not allowed in Scotland.

Gail Ross: If, for whatever reason, the bill does not pass, does the Scottish Government have any plans to go ahead with an awareness-raising or education campaign anyway?

Maree Todd: Maria Gray talked about parent club and we have a range of supports, information and awareness-raising programmes from parent club and “Ready Steady Baby!” to the types of support that are available to parents from professionals, such as health visitors and family nurse partnerships. There is also new information on the new perinatal mental health strategy. All those supports are in place around families already.

It would be difficult to achieve the cultural change without making the law absolutely clear. You cannot have an educational strategy that says one thing and a law that says another.

Gail Ross: In one of our evidence sessions, we heard about an organisation that works with families and single mothers who do not have English as a first language. It was put to us that, if the bill was not backed up with the right amount of awareness raising in that sector, it might have an adverse effect on those women, who are already under quite an amount of stress. How would we reach them?

Maree Todd: The last time that we brought out written guidance in 2003, it was published in a number of different languages. We are more than happy to look at doing that again. I would like to think that the implementation group will pick up on those issues. We are keen to ensure that every parent in Scotland recognises that the law is changing and that physical punishment is not acceptable in Scotland.

Gail Ross: The point was also about the lack of interpreters in various languages. You mentioned the implementation group. Could you tell us a little bit about that? For example, what is its remit and membership?

Maree Todd: Simon Stockwell will deal with that question.

Simon Stockwell: The implementation group has met twice. Its remit is to look at what needs to be done to implement the bill, if enacted—what guidance might be required for professionals such as social workers and what awareness-raising and marketing campaigns might be needed.

The group’s members include Police Scotland, Social Work Scotland, the Crown Office and Parenting Across Scotland, among others. We publish the minutes on the website once they have been approved.

At its first two meetings, the main points that the group looked at were the guidance that might be needed for professionals and possibly mainstreaming that into other guidance, particularly for social workers, and initial thinking about what might be needed by way of awareness-raising and marketing campaigns.

Gail Ross: Thank you. That leads me nicely to my final question. In his financial memorandum, John Finnie estimated that the cost of a campaign would be around £300,000. The Scottish Government’s estimated cost is £20,000. That is quite a big discrepancy. Can you explain how you got to that figure?

Maree Todd: There will always be differences in costs. We are reasonably confident that we already have strong lines of communication and that it would be reasonable to consider using those communication channels to raise awareness initially.

There is a range of views, and we will certainly take on board what the implementation group discovers during the passage of the bill. I was also interested to note that Jillian van Turnhout said that there was no budget in Ireland to raise awareness of the issue.

The Convener: The plan is for the bill to be implemented 12 months after royal assent. Are you confident that that is achievable?

Maree Todd: Yes.

The Convener: That was a good, quick answer.

Can you foresee any circumstances in which the Scottish Government might have to use its delegated powers in relation to the bill?

Maree Todd: I do not think so.

Alex Cole-Hamilton: We have discussed public opinion, and you were right to say that 92 per cent of people agree that children should enjoy the same protection from assault as adults. However, when you spell out to people that that means that parents will not be able to physically punish their children, things change quite dramatically in the polling. It all comes down to the wording. In other countries that have gone down this route before, there has been similar public resistance to

legislation. In Belgium, for instance, 75 per cent were against a ban on smacking—even though that is not necessarily what the bill does—which is roughly similar to the figure here. As politicians, should we be worried by that? Should we always follow public opinion in the policies that we devise, or should we seek to lead public opinion?

Maree Todd: That is an interesting question. I read the papers accompanying the bill last night and was very interested to see that 80-odd per cent of parents of small children do not believe that smacking is an effective disciplinary tool. I do not think that the bill is wildly out of step with public opinion. The important thing for us to do is to bring clarity to the situation and say that physical punishment is not acceptable in Scotland. The body of evidence around the physical punishment of children is that it is harmful to their emotional and mental health and that it is not an effective disciplinary strategy. It is important that we put forward strong alternative positive and effective discipline strategies and empower parents to use them.

Oliver Mundell: You have used two different forms of words throughout the meeting, but you have just said that physical punishment is not acceptable. I come back to the point about whether there is a difference between something being acceptable and something being legal. Does the bill ban smacking?

Maree Todd: The bill does not introduce a new criminal offence; it removes a defence. I do not know—

Oliver Mundell: That does not sound very clear to me.

Maree Todd: I think that you are dancing on the head of a pin here. I think that it is clear—

Oliver Mundell: If I am dancing on the head of a pin—

The Convener: Mr Mundell, please address your comments through the chair. We will listen to the answers.

Oliver Mundell: Sorry, convener. I know that I am dancing on the head of pin, but for people who go to court and go through these processes, decisions often turn on the head of a pin, if that is the measure of it. I just want an honest answer. Does the bill, as introduced, ban smacking—or behaviour that is commonly known as smacking—or does it just point people in a direction that says that smacking is not acceptable?

Maree Todd: The bill removes the defence that says that smacking is reasonable chastisement. I will not comment on individual cases—there may well be circumstances that have to be taken into account in decisions about whether to prosecute. A number of other defences can be used, but the

defence of reasonable chastisement will be removed, which I think will make a clear statement that the physical punishment of children in Scotland is not acceptable.

Oliver Mundell: In your view, does that mean that physical punishment will, to all intents and purposes, amount to assault? Is that how you would hope the courts would interpret it?

Maree Todd: As I have said, we are not creating a new offence. Physical punishment already amounts to assault, and a defence is in place that can be used. We are removing that defence. I think that that is clear.

The Convener: Minister, I thank you and your officials for your evidence. We will suspend briefly to allow the witness panels to change over.

09:39

Meeting suspended.

09:44

On resuming—

The Convener: I welcome panel 2, which comprises John Finnie, the member in charge of the bill, who is supported by Steven Dehn, researcher; Nick Hawthorne, senior assistant clerk in the Scottish Parliament's non-Government bills unit; and Catriona McCallum, from the office of the solicitor to the Scottish Parliament. I invite John Finnie to make a statement of up to five minutes.

John Finnie (Highlands and Islands) (Green): I will be brief. I thank the committee for inviting me to give evidence on my bill, for its diligent examination of the issue and for the support from the team. I am grateful for the Scottish Government's support for my bill and for the minister's support since the initial consultation in 2017. I thank the people who are with me—Nick Hawthorne and his colleague Kate Blackman from the Parliament's NGB unit; Catriona McCallum from the office of the solicitor to the Scottish Parliament; and my colleague Steven Dehn, who is my office manager—for their tireless work.

I was approached after the election by a coalition of children's organisations—Barnardo's Scotland, the NSPCC in Scotland, Children 1st and the Children and Young People's Commissioner Scotland—about introducing a member's bill on the simple proposal that children should have the same legal protection from assault as adults have. I am immensely grateful to those organisations for their support and encouragement since then.

The growing body of international evidence shows that the physical punishment of children harms their development and is an ineffective

means of discipline. Through the bill, I intend to bring clarity to the law by removing the defence of reasonable chastisement, which is sometimes referred to as justifiable assault, and to send the clear message that the physical punishment of children is unacceptable. The bill is a vital step in achieving the necessary change in our society's culture, much as the smoking ban was a necessary legislative step in making Scotland a healthier place to live in.

My bill will bring Scotland into line with what is becoming the international standard, which applies in 54 countries—from Sweden in 1979 to Ireland in 2015, Nepal last year and Jersey this year. I am sure that all parties agree that we should work together to ensure that Scotland becomes the best country in the world for children to grow up in. I strongly believe that, if it is passed, my bill will play a vital part in making that aim come to pass.

I was pleased to note the minister's comment that the Scottish Government is working closely with organisations to ensure that, if the bill is passed, its implementation will run smoothly. I welcome questions.

The Convener: On committee visits to grandparent groups and parent groups and in work that we have done with children and young people, we have heard mixed opinions about the proposal. Some people have campaigned passionately against changing the law. What are your reflections on why that is the case?

John Finnie: The issue draws strong opinions, for various reasons. A number of people have touched on the notion that the change would be a historical judgment on them and their parents.

A person's response often depends on how the question is framed. In the consultation on the proposal, 75 per cent of respondents supported it. In a significant survey of 70,000-plus young people in Scotland whom the Scottish Youth Parliament consulted, support was way up in the high 80 per cents.

How the question is asked matters. If people are asked whether children should have the same protection from assault as adults have, the overwhelming majority say that they should. That is about the framing.

Oliver Mundell: I am interested in how the bill is drafted. If you think that physical punishment is fundamentally wrong, why did you not choose to make it unlawful and make the position clearer in the bill?

John Finnie: I was present during the previous evidence session, so I heard your comments then. Clarity is required, which the bill will deliver. There is widespread public awareness of the proposal. As the committee has heard, many people think

that smacking children is already illegal. The bill will build on that.

You are entirely right that people need to understand the parameters, which should make it clear that the physical punishment of children is unacceptable. Clarity can be provided elsewhere in relation to the concerns that many people have raised about children running on to the road and being exposed to boiling water. As a parliamentarian, you will know that there is often a clamour to put things in a bill. Such issues do not require to be addressed in the bill, which deals with a specific issue—the deletion of a statutory defence to a common-law crime. That is a clear proposal.

Oliver Mundell: When a similar defence was removed in New Zealand, it was made clear that nothing in law would justify the use of corrective force. If that is your belief and you want to make that intention clear to parents, why would you not want to make it clear in the bill and thereby avoid leaving what the Law Society described as a grey area, albeit a small one? In the previous evidence session, the minister and two legal representatives of the Scottish Government said that there could be difficult cases and suggested that it will be for courts to decide. Do you not think it would be better for Parliament to make that clear?

John Finnie: I do not wish to appear pedantic, but I do not know what you mean by the term "correct force."

Oliver Mundell: It was "corrective force", which I think is their equivalent to physical punishment. The force would be used to correct behaviour.

John Finnie: That is interesting. I come armed with lots of information, including references to different legal systems. The reality is that I can deal only with the system that is here—that is my obligation as a parliamentarian. I think that there is clarity. Given your helpful comments about not seeing a role for the physical punishment of children, it would be unhelpful to suggest that anything other than clarity will come out of this. However, pivotal to that is public awareness. There is a lot of support available already, which you heard briefly about. I have with me a lengthy document that covers the very targeted support that is appropriate; that would continue and would pick up on this proposal if it were adopted by Parliament.

Oliver Mundell: What concerns me as a legislator and a member of Parliament is not knowing what the threshold would be. I have a bit of discomfort about that. You think that the threshold should be zero. In your understanding, would all physical punishment be assault?

John Finnie: Yes, indeed.

Oliver Mundell: That is helpful. When I hear the Scottish Government's legal team say that it would be up to the courts to decide where the threshold is, I find that concerning, because at the moment we do not have any case law on that.

John Finnie: With respect, I think that we are maybe talking about slightly different things. Judgments are made on a daily basis by professionals, be they teachers in schools, social workers or Police Scotland staff. You heard compelling evidence about how those organisations work together. Judgments are made about interests—the interest of the child is foremost. I think that there is clarity, but of course that needs to be reinforced.

Oliver Mundell: That is helpful. Thank you very much.

Alex Cole-Hamilton: Before I ask similar questions to those that I asked the minister, I want first to thank John Finnie for being here today and for the bill. He knows that I am a fellow traveller in this area. I thank him also for the inclusive approach that he has taken.

I want to ask a brief supplementary to Oliver Mundell's questions. John Finnie mentioned weighing up interests. I agree that the threshold should be zero—that physical punishment should always be viewed as assault—but is it fair to say that a second judgment is taken by the police or procurator fiscal as to whether it is in the public interest to raise criminal proceedings against a parent who has been accused of assault?

John Finnie: There is a proportionality test, which relates to the duration of the matter, the status at the time and the impact that it had. The authorities consider a whole load of factors on a daily basis.

Alex Cole-Hamilton: Do you agree that in other jurisdictions that have already brought in this restriction on physical punishment, such as New Zealand and Belgium, the application of it seems to be quite light touch and there has not been a huge number of prosecutions?

John Finnie: Indeed—quite the reverse is true. There has generally been a slight increase in reporting, which you can understand, and which is not problematic, but not in prosecutions. It goes back to the purpose of this. The purpose is not to prosecute people; it is to set a clear direction of travel. That happened previously and future generations will wonder that this establishment discussed whether it was appropriate to strike a blow to the head of a toddler with an implement, for instance—that will seem strange. What is proposed is a progression of that—setting a clear direction of travel while providing appropriate support.

Alex Cole-Hamilton: I want to ask about rights. We know that the Government made a commitment to incorporate the principles of the UNCRC into Scots law, as stated by the First Minister in her programme for government speech. Would not making this change be compatible with incorporating the UNCRC? Would the UN say, "Yes, Scotland, you have incorporated the UNCRC," if we were still punishing children physically in the home?

John Finnie: That would be completely incompatible with the UNCRC. We have heard of the international concern about the position in Scotland and indeed elsewhere in the UK and in some other countries. That situation would be incompatible with the UNCRC and it is for that reason that I hope that Parliament will pass my bill.

Alex Cole-Hamilton: Do you recognise the tension that exists between children's rights and parents' rights—or a parent's right to family life and to bring up their children in the way that they see fit?

John Finnie: I understand that people perceive there to be a tension. I think that we all have rights; I do not think that there is a hierarchy. Very simply, it is about how the whole issue is framed. If you say to people, "Do the most vulnerable people in our communities deserve equal protection?", many would say, "No, they deserve better protection." I do not see the conflict that some people do.

Alex Cole-Hamilton: May I test some of the arguments against your bill with you? We have heard a lot about protective punishment—physical intervention and chastisement to prevent a child from coming to harm, whether that is because of a pan of boiling water on the stove or running into traffic. Are you concerned that by removing that parenting tool, we are exposing to harm children who would otherwise have been protected via a slap on the wrist or the bum to prevent them from harming themselves?

John Finnie: A committee witness at an earlier meeting gave the example of a child running into the road and then expressed some incredulity that the response would be to strike them. They said, "No, I would put a protective arm around them and reassure them." People need to be aware that in the home, there are hazards everywhere and it is the duty of all of us to make homes as child proof and child friendly as possible. I do not think that there are issues around that at all.

Alex Cole-Hamilton: If we agree that behaviour is a product of mental process, is it incongruous that a three-year-old might receive physical punishment as a tool of sanction for their behaviour or to protect them, but an adult with

incapacity who has a mental age of three would not? Do you feel that we should not apply something just because somebody is smaller and less developed than an adult?

John Finnie: Absolutely. Physical punishment also causes confusion and it sends a peculiar message. You have heard previously from professionals that if the answer to a difficulty, whatever that difficulty might be, is to apply violence—and that is what smacking, as people would call it, is—it sends a peculiar message to children, who are at the most formative point of their development. This is about child development and brain development and the signals and messages that are sent by parents, carers and, indeed, the community.

Alex Cole-Hamilton: You mentioned violence, and there is a debate in the evidence that we have heard about the causal link between smacking—physical punishment—in the home and violence. Scottish Women's Aid cites the link with domestic violence, as do the police, who also cite the link with violence on our streets, where children exhibit learned behaviour to one another through the use of violence as a tool of coercion, sanction or revenge.

The converse of that is what we heard from Professor Larzelere from America last week. He cites a potential causal link between the smacking ban in Sweden and an increase in assaults by young people. Where do you sit in relation to that debate?

John Finnie: The least said about last week's evidence from that professor the better. I understand that the committee is in receipt of a very direct letter from a fellow academic in North America, who has confined her comments to the professor's four most outrageous assertions. There is no credibility associated with those assertions.

I could leave it there, but the issue touches on a concern in relation to the bill. It is to do with people's perceptions about the historic application of smacking. The example of smoking is used. People now accept that smoking causes harm but point out that if you were exposed to smoking as a child, that does not mean you will get lung cancer in later life. However, if you get lung cancer in later life, it is very likely that you have had that level of exposure.

There is a connection between physical punishment in childhood and subsequent violence, and it is appropriate to point out that it is not just the academics who have said that. When we have people from Scottish Women's Aid and the violence reduction unit, who are at the front line of dealing with issues of violence in our communities, saying that there is a link, we should listen.

Alex Cole-Hamilton: You joined us on our road trip to Skye and heard that some faith communities in the west of Scotland regard a parent's right to physically chastise their child as an article of faith, citing scripture to defend that right. Would removing that right be an assault on their religious freedoms?

10:00

John Finnie: It most certainly would not. I respect people's right to hold views, but I thought that the evidence that the committee heard from the reverend from the Church of Scotland and the Quaker representative was very compelling. They said that it is a matter of interpretation. I do not wish to be offensive to anyone, but no one's individual views trump the collective view of the community.

Fulton MacGregor: Like Alex Cole-Hamilton, I say well done to John Finnie for taking the bold move of introducing the bill. I will ask similar questions to those that I asked the minister, and I know that you were here for that session. If the bill is passed by Parliament, what impact will it have on existing child protection arrangements and processes?

John Finnie: Last week, the committee heard compelling evidence from a front-line practitioner—indeed, he is the gentleman who is responsible for looking at the daily reports in Edinburgh, our capital city—that there will be no impact. You also heard that from the chief superintendent of Police Scotland, who has had previous involvement in the area. Front-line services deal with issues on a daily basis, and the provisions in the bill will be another aspect that they will need to address. The issue is about the support that is put in place, and there is a lot of support out there.

Fulton MacGregor: You touched on this point earlier, but is it fair to say that the bill is intended not to increase state intervention in family life or the number of prosecutions, but to change the culture?

John Finnie: It is. Passing the bill will show that the Parliament has listened to the overwhelming evidence—such as that from Dr Anja Heilmann and the vast amount of research on equal protection—that says that any exposure to violence in a child's formative years will have a negative effect. A lot of parliamentarians talk about adverse childhood experiences—that phrase has become part of our everyday parlance—and the physical punishment of children must be regarded in a similar way. It would be very strange if Parliament did not respond to that overwhelming research.

Fulton MacGregor: I know that you will have heard this issue being raised, because you have attended every evidence session. In Skye, we heard that the bill, if it is passed, might have a disproportionate effect on families who are already vulnerable. However, since then, we have heard evidence that does not back up that argument. Do you have a view on that point?

John Finnie: Many academics have expressed the view that physical punishment is sometimes used by people who are under pressure, and there is no doubt that we have families who are under considerable pressure for a number of reasons. Those are the families who are targeted for specific additional support by social work services and health boards.

It is wrong to suggest that there is a particular geographic area or social stratum that punishes its children physically; such behaviour happens across the board.

I have no concerns that the targeted support that exists could not be ramped up if that was required. A broad range of support is available, from someone simply being able to seek advice by going online or picking up a phone to parentline, to very targeted support for young mothers.

Annie Wells: Some witnesses have said that the bill should not criminalise parents. Do you agree?

John Finnie: The bill's intention is not to criminalise parents, but to set out a direction of travel about child welfare and child upbringing. At the moment, parents can be criminalised for using excessive force against a child, so the bill is about sending guidance and putting support in place. We should be saying that all the evidence tells us that there are better ways of disciplining children. The bill is not about criminalising anyone, but about supporting children.

Mary Fee: I want to ask about equality groups, which you will have heard me ask about in a number of evidence sessions. Rather than ask the specific question that I asked the minister, can I ask you to give us some information about the equality groups that support the people to whom you spoke while you were taking evidence? You said that you spoke to a number of children's organisations, but did you speak to the organisations that specifically provide support to families that have children who require additional support?

John Finnie: We had engagement with a considerable number of people, and I understand the particular pressures that are associated with some communities. We heard earlier about the cultural challenges that might be faced by people who have moved to Scotland from a place where certain levels of punishment are appropriate.

I have also listened to the evidence about parents of children who have additional needs. It is clear that we need to be sensitive to the different ways in which support might need to be provided, but I do not think that any group is going to be disadvantaged, which is what equality legislation is about. It is about ensuring that everyone is treated equally. To do that, we do not necessarily treat people the same way, but we might have to put additional mechanisms in place, for instance to support hard-to-reach communities.

Mary Fee: I will be quite specific. Did you speak to organisations, such as the National Autistic Society Scotland, that support families of children who can be quite challenging and difficult, and were any issues raised that there may be a higher prevalence of physical punishment in particular groups?

John Finnie: I have not personally spoken to that particular organisation, but, as an MSP, I am aware of the many issues that are associated with autism. We are liaising closely with children's charities that have regard to a whole range of issues, including autism.

Mary Fee: Was there any discussion around the use of restraint? I accept that the bill is not the place to include provisions relating to restraint but, in the discussions that you had with children's organisations, were there any concerns around the use of restraint?

John Finnie: It is an issue that comes up. You are right that the bill is not the vehicle for dealing with it, because we are talking invariably about institutions where different rules and regulations apply. There is no doubt that, however well meaning, the use of restraint can sometimes be considered as assault. Those issues have come up in our engagement.

Mary Fee: That is helpful; thank you.

Gail Ross: What steps should the Scottish Government take to promote awareness and education if the bill is passed?

John Finnie: There has been some discussion about the wide disparity between the Government's figure and the figure that we came up with for the financial memorandum, which was an average of the cost of a range of campaigns that had taken place. It came out at £303,000, so we called it £300,000, to be fair. I think that it is entirely fair to consider what the minister says, but there is already an extensive network through which information is relayed to parents, and there is no reason why that could not be used.

Sorry, could you repeat your question?

Gail Ross: If the bill is passed, what steps should the Scottish Government take to promote it and educate parents that there are other methods

of discipline and that they do not need to resort to smacking?

John Finnie: The Scottish Government's position is that it does not support physical punishment as an effective means of disciplining children. The committee has heard from a number of witnesses that a campaign is not sufficient on its own but has to be backed up with a legislative framework, and it is important that there is awareness.

The implementation group that the minister touched on is key to this: it is about social work services and the police and the—hopefully minimal—role that the Crown would play. There is also the public campaign, because there needs to be public awareness. Some of the concerns that have been shared with us are about how a member of the public would react if they saw someone disciplining their child in public.

Gail Ross: Thank you. I see that you have been listening intently, because you have just answered about four of my follow-up questions.

Have you had any interaction with the implementation group, or is it separate from what you are doing?

John Finnie: I have not. I do not want to be in any way presumptive of the parliamentary process and it is important that there is a separation. We are aware of the group and of who is involved in it, and we would be very happy to engage with it, but it is for Parliament to decide whether it wishes to progress the legislation. Hopefully it will and, if it does, I would be very happy to formally engage with the group thereafter.

The Convener: That brings us to the end of the session. I thank the witnesses for their evidence.

Our next meeting will be on 4 April, when we will consider in private the evidence that we have heard at stage 1. The committee has already agreed to consider evidence in private, so we will move into private session.

10:10

Meeting continued in private until 10:55.

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