



Global Initiative to
**End All Corporal Punishment
of Children**

**BRIEFING ON THE UNITED KINGDOM AND ITS CROWN DEPENDENCIES
AND OVERSEAS TERRITORIES FOR THE COMMITTEE ON THE
ELIMINATION OF DISCRIMINATION AGAINST WOMEN
PRESESSIONAL WORKING GROUP – October 2012**

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The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006),¹ addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

This briefing describes the legality of corporal punishment of children in the UK and its Crown Dependencies and Overseas Territories. In light of General Recommendation No. 19 on Violence against women (1992) and the links between corporal punishment of children and all other forms of violence including gender-based violence, as well as the repeated recommendations to the UK made by treaty monitoring bodies including CEDAW and during the UPR, we hope the Committee on the Elimination of Discrimination Against Women will:

- **raise the issue of corporal punishment in its List of Issues for the UK, asking what progress has been made towards prohibiting and eliminating all corporal punishment in the home and other settings throughout the UK and its Crown Dependencies and Overseas Territories, and**
- **recommend to the UK, in the concluding observations on its seventh report, that corporal punishment be explicitly prohibited in the home and all forms of care throughout the UK, and that the Government encourage similar law reform in its Crown Dependencies and Overseas Territories.**

¹ General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” is available at www2.ohchr.org/english/bodies/crc/comments.htm.

1 The UK's seventh report to CEDAW

1.1 Following examination of the UK's fifth/sixth report in 2008, the Committee on the Elimination of Discrimination Against Women expressed concern that in the UK corporal punishment in the home is lawful, confirmed that it "constitutes a form of violence against children, including the girl child" and recommended its prohibition in law (18 July 2008, Part of A/63/38, Concluding observations on fifth/sixth report, paras. 280 and 281). The UK Government responds directly to this recommendation in para. 249 of its seventh report (15 June 2011, CEDAW/C/GBR/7), stating that it has "no plans" to repeal the legal defence for the use of corporal punishment in childrearing. Paradoxically, in describing its approach to violence against women and girls the Government also states that "no level of violence against women and girls is acceptable in the UK" (para. 251).

This refusal to comply with the Convention on the Elimination of All Forms of Discrimination Against Women by acting on the recommendations of the Committee (as with other treaties and their monitoring bodies on this issue), demonstrates a lack of respect for international human rights law. The unwillingness to acknowledge corporal punishment as a form of violence against girls that must be prohibited and eliminated supports a legal system which continues to discriminate against children, including the girl child: there is a legal defence to a charge of common assault when the victim is a girl or a boy and the assault is at the hands of a parent/carer. This can only undermine efforts to address domestic and other forms of violence against women and girls.

1.2 The UK's report notes in para. 255 that measures to address violence are guided by the following definition of gender-based violence, as accepted by the Committee: "Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

That corporal punishment, even in its lightest forms, is harmful or potentially harmful is well-documented, and the bank of research confirming this continues to grow.² Based on this definition of gender-based violence, there can be no justification for the UK to exclude corporal punishment from its efforts to challenge violence against women.

1.3 The report fails to provide information regarding the position on prohibiting corporal punishment taken by successive Welsh Governments and the National Assembly in Wales, which differs significantly from the UK Government's position, or on the law in Scotland and Northern Ireland. Furthermore, no information is provided concerning corporal punishment in the Crown Dependencies and Overseas Territories, where corporal punishment is not only lawful in the home but in many cases may also be lawfully imposed on girls and boys in schools and other contexts.

The legality of corporal punishment throughout the UK and its Crown Dependencies and Overseas Territories is described in the following sections.

² Further information is available at www.endcorporalpunishment.org or email info@endcorporalpunishment.org

2 The legality of corporal punishment in the United Kingdom of England and Wales, Scotland and Northern Ireland

Corporal punishment is unlawful in schools, the penal system and some care settings but it is lawful in the home and in some forms of care.

Home: In England and Wales, section 58 of the Children Act (2004) provides for “reasonable punishment” of children. In Northern Ireland, article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order (2006) provides for “reasonable punishment”. In Scotland, “justifiable assault” of children is lawful under section 51 of the Criminal Justice (Scotland) Act (2003), defining blows to the head, shaking and use of implements as unjustifiable.

Care settings: Corporal punishment is unlawful in residential care institutions throughout the UK. It is prohibited in foster care arranged by local authorities or voluntary organisations but it is lawful in private foster care. In day care institutions and childminding, it is unlawful in England, Wales and Scotland. Guidance states that physical punishment should not be used in day care institutions and childminding in Northern Ireland, but there is no explicit prohibition in law.

3 The legality of corporal punishment in the British Crown Dependencies (CDs): Guernsey, Jersey, Isle of Man

Corporal punishment is unlawful in the penal system but it is lawful in the home and care settings in all CDs and in schools in Guernsey and Jersey.

Home: The right to administer “reasonable chastisement” under English common law applies in the Crown Dependencies. It is confirmed in legislation in Guernsey and Jersey as “the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment” in Guernsey (Child Protection (Alderney) Law 1953, art. 2) and Jersey (Children (Jersey) Law 2002, art. 3).

Schools: In Guernsey and Jersey there is no explicit prohibition of corporal punishment in schools; it is lawful under the above mentioned provisions confirming the right of teachers “to administer punishment”.

Care settings: In Guernsey and Jersey there is no explicit prohibition of corporal punishment; it is lawful under the above mentioned provisions confirming the right of persons having the lawful control or charge of a child “to administer punishment”. In the Isle of Man, corporal punishment is prohibited by law in residential homes, in homes run by voluntary organisations and in foster care, but it is not prohibited in day care.

4 The legality of corporal punishment in the British Overseas Territories (OTs): Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St Helena, Turks and Caicos Islands

With the exception of the Pitcairn Islands – where the common law defence for the use of force in disciplining children has been explicitly repealed – corporal punishment is lawful in the home and in almost all care settings in all OTs and in schools in all but the Falkland Islands and St Helena.

Home: The right to administer “reasonable chastisement” under English common law applies in the Overseas Territories. It is confirmed as “the right of any parent, teacher or other person having the lawful control or charge of a child or young person to administer punishment” or similar provision in the British Virgin Islands (Criminal Code, art. 192), the Cayman Islands (Penal Code, art. 226; Juveniles Law 1990, art. 41), Gibraltar (Criminal Offences Act 1960, art. 82; Crimes Act 2011, art. 172), Montserrat (Penal Code 1983, art. 193; Juveniles Act 1982, art. 37), St Helena (Welfare of

Children Ordinance 2008, art. 144) and the Turks and Caicos Islands (Juveniles Ordinance 1968, art. 5). In Bermuda, it is confirmed as the right to use “reasonable” force “by way of correction” (Criminal Code 1907, art. 74).

Schools: In addition to the above mentioned legal defences for the use of corporal punishment by teachers, education laws in many OTs explicitly provide for corporal punishment in schools, including in Anguilla (Education Act, art. 74), Bermuda (Education Rules 2006, arts. 23 and 24), British Virgin Islands (Education Act 2004, art. 55), Cayman Islands (Education Law, art. 30),³ Montserrat (Education Act 2004, art. 49) and the Turks and Caicos Islands (Education Ordinance 1989, art. 33).

Care settings: Corporal punishment is explicitly prohibited in children’s homes in St Helena (Welfare of Children Ordinance 2008, art. 36) but in other forms of care and in all forms of care in the other OTs, the English common law defence of “reasonable chastisement” and confirmation of it in the above mentioned laws legalise corporal punishment by all persons *in loco parentis*. There is no explicit prohibition of corporal punishment in all care settings in any of the OTs.

5 Recommendations by human rights treaty bodies and during the UPR

5.1 UN treaty bodies have made numerous recommendations to the UK to prohibit corporal punishment of children in the home and/or other settings throughout the state party. Recommendations on corporal punishment have been made three times by the Committee on the Rights of the Child,⁴ once by the Committee on the Elimination of Discrimination Against Women,⁵ three times by the Committee on Economic, Social and Cultural Rights⁶ and twice by the Human Rights Committee.⁷

5.2 Recommendations to prohibit corporal punishment were also made during the Universal Periodic Review of the UK in 2008 (the Government rejected the recommendations⁸) and again in 2012 (the Government is yet to respond⁹).

5.3 The European Committee of Social Rights has twice concluded that the situation in the UK is not in conformity with the European Social Charter because corporal punishment of children in the home is not prohibited.¹⁰

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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³ Education Modernisation Law 2009 prohibits corporal punishment but appears not to have been brought into force

⁴ 20 October 2008, CRC/C/GBR/CO/4, Concluding observations on third/fourth report, paras. 6, 7, 38, 39, 40, 41 and 42; 9 October 2002, CRC/C/15/Add.188, Concluding observations on second report, paras. 8, 9, 35, 36, 37 and 38; 15 February 1995, CRC/C/15/Add.34, Concluding observations on initial report, paras. 16, 31 and 32

⁵ 18 July 2008, Part of A/63/38, Concluding observations on fifth/sixth report, paras. 280 and 281

⁶ 12 June 2009, E/C.12/GBR/CO/5, Concluding observations on fourth/fifth report, para. 24; 5 June 2002, E/C.12/1/Add.79, Concluding observations on fourth report, para. 36; 4 December 1997, CESCR/E/C.12/1/Add.19, Concluding observations on third report, paras. 16 and 28

⁷ 30 July 2008, CCPR/C/GBR/CO/6, Concluding observations on sixth report, para. 27; 27 July 1995, CCPR/C/79/Add.55, Concluding observations on fourth report, para. 8

⁸ 25 August 2008, A/HRC/8/25/Add.1, Report of the Working Group: Addendum, paras. 28, 29 and 30

⁹ 29 May 2012, A/HRC/WG.6/13/L.7, Draft report of the Working Group, paras. 110(78), 10(79) and 110(80)

¹⁰ January 2012, Conclusions XIX-4 (2011); July 2005, Conclusions XVII-2