



# Protecting Northern Ireland's Families

A guide to responding to

*'Physical punishment in the home - thinking about the issues, looking at the evidence'*  
- the Northern Ireland consultation paper on the Physical Punishment of Children

January 2002

**O**n 11 September 2001, the Northern Ireland Office of Law Reform published a consultation document on the physical punishment of children. This is not merely an academic exercise designed to find out what the public thinks out of interest. It is far more serious than that.

*The Northern Ireland Executive has already decided to change the law on how parents may discipline their children. The object of the consultation is to help the Executive decide precisely how it will change the law. To retain the existing law is not regarded as an option.*

The Executive wants to hear from everyone - parents, grandparents, uncles, aunts, church leaders, youth workers, teachers, neighbours etc. It is also particularly keen to hear from children and young people, and has produced separate consultation documents with younger people specifically in mind.

For some time there has been a determined lobby intent on imposing an anti-smacking law on every family in the country. EPOCH (End Physical Punishment of Children) are now claiming to have the support of well over 250 organisations and companies for their Children are Unbeatable alliance. Among those who have signed up to their campaign are Barnardo's, the NSPCC, Save the Children, Child Care NI, the Children's Law Centre NI, and Relate NI. They will be mustering their forces to press for a complete ban and for the criminalisation of

any parents who smack their children for any reason.

It is therefore of vital importance that the Executive hears from ordinary people who have experienced and proved the value of loving corporal discipline as children and as parents. The outcome of this consultation could pose a serious threat to the freedom of parents to bring up their children in a loving way and according to their religious convictions. But don't feel you have to be a parent to respond.

We hope that this leaflet will encourage you to respond to the questions asked by the Executive in the consultation document. Details of how to obtain a copy will be found on the back page. As you read it, we would like to encourage you to look beyond yourself and how you have disciplined your own children. Remember that this exercise is not simply another episode in the 'smacking debate'.

We are no longer sitting in the comfort of our armchairs talking about what *we* think is the best way to discipline children.

We are now entering the realm of the law, the courts, criminal records, and the possible breaking up of families. We want to see children protected, but, just as important, we want to see families protected too.

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# THE BACKGROUND

**The current consultation in Northern Ireland has been prompted by an extreme and unusual case which was referred to the European Court of Human Rights (ECHR).**

A 9 year-old boy who had been found stealing and threatening his 2 year-old brother with a six-inch kitchen knife, was physically punished by his stepfather-to-be with a garden cane 'applied with considerable force on more than one occasion'. A jury at Lincoln Crown Court in 1994 heard all the evidence and considered that the punishment was 'moderate and reasonable' taking all the circumstances into account.

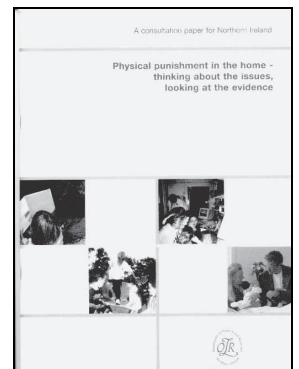
However, the boy and his natural father, assisted by the lobby group EPOCH (End Physical Punishment of Children), took a case to the ECHR, which ruled that the boy had suffered 'inhuman and degrading treatment', in contravention of Article 3 of the European Convention on Human Rights. Since the boy's stepfather-to-be had been acquitted of charges of assault, the ECHR judged that, in this particular case, UK law had failed to protect the boy.

It is very important to emphasise that the judgment of the ECHR was limited to the facts of this one particular, and unusual, case. The ruling did not say that the existing UK legislation is in breach of the Convention. Rather:

*'The Court's decision was based on the facts of the case before it. The ruling applied to that case only. No general statement was made about the physical punishment of children, although the boy's legal representative had invited the Court to make such a statement.'*<sup>1</sup>

The fact that the ECHR was invited to make a general statement about the physical punishment of children confirms the politically-motivated aspect of this case which has been completely overlooked by the media. The boy was represented by EPOCH sponsor Allan Levy QC, and the official advisor to the legal team was EPOCH's co-ordinator, Peter Newell.

Government consultations were conducted in other parts of the UK during the year 2000. The Scottish Executive is currently proposing to outlaw the physical correction of children under the age of three, and the use of any object in discipline for any child. However, the government in Westminster has concluded that the current law provides adequate protection and has declined to introduce any further legislation in England and Wales.



## **A common sense approach from Westminster**

When the Department of Health embarked on its consultation process back in January 2000, it did so with the clear intention of changing the law. However, having received over 900 responses, the government at Westminster decided to leave the law in England and Wales as it is.

On 8 November 2001, health minister Jacqui Smith announced: 'We do not believe that any further change in the law at this time would be appropriate - it would neither command widespread public

support nor be capable of consistent enforcement.'

The Department's analysis of responses reveals that while local authorities and organisations working with children were largely in favour of a legal ban on any form of physical correction, they were far outnumbered by the majority of individuals who were in favour of maintaining the status quo.

**Families First** welcomed the news: 'The government is absolutely right to resist pressure from the children's

rights lobby which has been set on criminalising parents for smacking their children.

'The court hearings, care proceedings and case conferences which would inevitably follow any change in the law would be infinitely more damaging to a child than a disciplinary smack.

'The government has recognised that responsibility for the care, guidance and protection of children belongs to parents, not to the state. It's a common sense approach.'

# THE NORTHERN IRELAND EXECUTIVE'S POSITION

**The character of the consultation paper published by the Northern Ireland Office of Law Reform is quite different from the documents produced in other parts of the UK.**

The document for England and Wales was 23 pages long, factually based, and posed four questions in relation to possible options for legal reform. The Scottish consultation paper was 32 pages long, and raised six similar questions

The Northern Ireland document, however, runs to a total of 60 pages, contains a number of significant factual inaccuracies, is characterised by a clear ideological bias, relies entirely on opinion-driven research, and uses emotive and negative language. It also raises no less than 25 questions which are not numbered or separately listed, but which are scattered throughout the paper.

The whole tone of the document is distinctly anti-smacking. The content could be summarised as follows: Physical correction is on its way out. Fewer parents use it now. Fewer still approve of it. Research proves its adverse consequences. There is a worldwide movement to legislate against it. It is contrary to human rights treaties and equality obligations. The experience of countries which have already banned it has been positive. There is a clear need to promote more positive and effective ways of disciplining children.

The assumption throughout is that physical correction is a bad thing and has to go; it's all a question of how to go about it. While this may be the kind of approach one would expect from a lobby group, it is not what one would expect from a government agency embarking on a public consultation with far-reaching implications for every family in Northern Ireland.

In his Foreword, Mark Durkan MLA, the Minister for Finance and Personnel, states that: 'This paper does not take sides.' Unfortunately, that is precisely what it does do. It may not overtly say that 'parents who use physical punishment are bad parents', but it certainly more than implies that 'physical punishment' is a bad method of discipline. The document is fundamentally flawed.

*Families First* therefore submitted a critique of the consultation paper to Mr Durkan back in November 2001.<sup>2</sup> We put it to him that the people of Northern Ireland deserve better. They should be presented with an accurate, fair, unbiased, objective presentation of the facts, and asked questions that are both straightforward and unambiguous. Mr Durkan has conceded that the document contains a few 'proofreading errors', but has declined to withdraw it.

In the following pages, we have suggested some points you may wish to make in responding to the consultation document.

## The Arkansas Model (see page 6)

The law relating to child abuse in the American state of Arkansas is worthy of emulation. It protects children, while at the same time protecting families from unnecessary state intrusion.

'Abuse' shall not include physical discipline of a Child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the Child.

The following actions are not reasonable or moderate when used to correct or restrain a Child:

- (a) Throwing, kicking, burning, biting, or cutting a Child;
- (b) Striking a Child with a closed fist;
- (c) Shaking a Child under age three (3);
- (d) Striking or other actions which result in any nonaccidental injury to a Child under the age of eighteen (18) months;
- (e) Interfering with a Child's breathing;
- (f) Threatening a Child with a deadly weapon;
- (g) Striking a Child on the face; or
- (h) Doing any other act that is likely to cause, and which does cause, bodily harm greater than transient pain or minor temporary marks.

Ark. Stat. Ann. §12-12-503 (1997)

# ANSWERING THE EXECUTIVE'S QUESTIONS

For the purpose of this guide, we have divided up the Northern Ireland Executive's questions under seven headings and suggested points you may wish to make in responding to them. *We would emphasise that you do not have to respond to every question. You may prefer to limit your response to a single question or group of questions.*

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## **The Goal of Discipline**

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- ***What is the goal of effective discipline of children?***

To bring up children to be kind, honest, thoughtful, productive and self-disciplined members of families and communities, and to provide a model of how they, in turn, should bring up their own children.

- ***What are the ways in which this goal is achieved?***

By providing a warm, secure upbringing, where children are valued and cherished, setting clear boundaries and by being clear and consistent in expectations and in the enforcement of standards.

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## **The Place of Physical Correction**

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- ***In the light of the evidence and your experience, do you think that physical punishment by parents is an effective form of discipline? Please give reasons for your view.***

Yes, very much so.

The consultation document presents a very biased perspective, based on opinion-driven studies by

Penelope Leach and Christina Lyon, both of whom are well-known for their ideological opposition to the physical correction of children.

However, recent reviews of the relevant research have shown that the best studies, methodologically speaking, demonstrate the beneficial effects of moderate physical correction.<sup>3</sup> In August 2001, Diana Baumrind of the University of California stated that 'a blanket injunction against disciplinary spanking is not warranted by causally relevant scientific evidence'.<sup>4</sup> Dr Baumrind explained that her study spanning three decades had led her to the conclusion that: 'What really matters is the child rearing context. When parents are loving and firm and communicate well with the child, the children are exceptionally competent and well-adjusted, whether or not their parents spanked them as pre-schoolers.'<sup>5</sup>

Used with care, in the context of a warm and secure parent-child relationship, and in association with a verbal explanation, physical correction is highly effective in preventing a recurrence of misbehaviour and leads to a reduction in the necessity of a physical sanction as children grow older.

You may wish to give examples from your own experience or observation of the effectiveness of physical correction, either as an adult or a child.

- ***In the light of the evidence and your experience, do you think that physical punishment by parents is an acceptable form of discipline? Please give reasons for your view.***

Yes, very much so.

Research demonstrates that parents who use appropriate moderate physical correction in the overall discipline of their children use ridicule, and verbal put-downs less than other parents.<sup>6</sup>

# ANSWERING THE EXECUTIVE'S QUESTIONS

A well-timed smack can prevent a little disobedience from growing into a fully-fledged tantrum or a little spitefulness developing into a major battle zone. Wisely used, physical correction may often be a kinder and more merciful way of correcting certain types of misbehaviour rather than resorting to other methods which may be more drawn-out and risk causing emotional damage.

You may wish to give examples from your own experience and/or observation.

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## Sources of Help for Parents

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### Page 17

- ***If you are a parent, please tell us about the people or organisations who have been most helpful to you in helping you to deal with any discipline problems you have faced.***

The most practical support is frequently given by other family members, or through friends at church or some other community group. In many cases, the memory of how you were disciplined by your own parents will be a help, as will the example of friends who have raised well-disciplined children.

- ***In your view, what services (whether provided by the private, public or voluntary sectors) are or would be most useful in helping parents to deal effectively with discipline issues?***

Any service which proceeds to offer advice on the assumption that physical correction is ineffective and unacceptable is unlikely to help parents to deal effectively with discipline issues. In particular, those who propose to criminalise parents for the use of loving physical correction would be a hindrance rather than a help in this area.

- ***What more needs to be done to ensure that all parents have access to these services?***

It would be helpful if health professionals, social workers and others working with families were made more aware of the positive value of moderate physical correction, so that they become less inclined to impose a false sense of guilt upon parents who use it as a method of discipline.

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## Human Rights Law

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- ***Consultees are invited to comment on this analysis of the requirements of international human rights law.***

The analysis presented in chapter 5 of the consultation document is inaccurate and shows evidence of bias at a number of points.<sup>7</sup>

The government at Westminster took into account the European Court of Human Rights ruling in *A v UK*, together with its obligations under the various human rights conventions and concluded that there was no need to change the law on the physical correction of children.

International human rights law does not place the Northern Ireland Executive under any obligation to change the law.

# ANSWERING THE EXECUTIVE'S QUESTIONS

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## Options for Law Reform

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- **Does this chapter contain the full range of law reform options open to us?**

No. The consultation document does not consider keeping the law as it is. This option would best serve to grant protection both to children and to families.

Another option would be to follow the model of the American state of Arkansas (see page 3).

- **Do you agree with the assessment of the Office of Law Reform that further reform in addition to the limited amendment of the defence of reasonable chastisement in the criminal law in R v H is needed to bring us in Northern Ireland into line with our human rights and equality obligations?**

No. This was considered by the government in Westminster, but it concluded that no further reform was required.

- **Which option for reform of the defence of reasonable chastisement (removing or limiting the defence) do you think represents the best way forward? Please give reasons for your choice.**

There should be no change in the law.

- **If you think that limiting the defence represents the best way forward, please state which of the elements outlined you would wish to see included in any reform.**

The current defence of reasonable chastisement should not be limited in any way.

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## Statement of Rights and Responsibilities

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- **In your view, is there merit in including a statement of rights and responsibilities of the type outlined in this chapter in our family law?**

No. Talk of 'rights' in the context of the family will tend to engender a spirit of conflict between parents and children. It would be seriously damaging to families if parents and children could call each other to account for claimed breaches of duty.

- **If so, is the place for that statement in the definition of parental responsibility in the Children (NI) Order 1995, whether as it now stands or as amended?**

There should be no such statement of rights and responsibilities. The state should not attempt to legislate for private family relationships.

- **If such a statement were to be included, what should it say?**

There should be no such statement.

- **What, in your view, would be the effect of such a statement in law?**

It would be disastrous and would be used by children's rights activists in a further attempt to impose an entire philosophy of bringing up children by force of law. It would also have the effect of damaging family relationships and would have the potential of breaking up families.

# ANSWERING THE EXECUTIVE'S QUESTIONS

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## Equality Issues

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- **Do you agree that the main equality impacts of this issue are on children and those with dependants?**
- **Do you have any comments on the other equality impacts identified or anticipated?**
- **Are there, in your view, any further equality impacts which have not been identified?**
- **In relation to what objectives is there a need to promote equality of opportunity in relation to physical punishment?**
- **In order to mitigate the equality impacts identified, or to better promote equality of opportunity in relation to the objectives you have identified, which of these options do you think has a role to play?**
  - (a) **abolishing the defence of parental reasonable chastisement of children in Northern Ireland;**
  - (b) **limiting the defence of parental reasonable chastisement;**
  - (c) **including a statement of rights and responsibilities in the legal definition of parental responsibility;**
  - (d) **encouraging the development of parenting programmes.**
- **Would you consider any other ways of mitigating the equality impacts of physical punishment or better promote equality of opportunity?**

The chapter entitled 'Equality Impact Assessment' does not appear to appreciate the fundamental differences that exist between children and their parents. Leaving aside the question of methods of discipline, it is parents who are responsible for the discipline of their children and not the other way around.

If 'equality' means that a parent may not do anything to a child that a child cannot do to his/her parent, there is a sure recipe for serious child neglect, not to mention anarchy in the family which will inevitably spill over into society.

The logical extension of this way of thinking would lead to the imposition of a single view of parenting and family life on all children to give them all an 'equal opportunity' in life. Not only would this be completely unrealistic and unattainable, but it would also represent a serious breach of personal liberties.

One relevant factor not considered in the consultation paper is the fact that many parents use physical correction on the basis of religious conviction. Such parents should not be discriminated against but granted equality of opportunity to bring up their children in accordance with their religious and philosophical convictions.

- **Please indicate any additional sources of data or research on physical punishment which could be used to develop the knowledge base and monitor any reform of the law.**

It is not clear why this question appears in the section on the Equality Impact Assessment.

Nevertheless, we would encourage the Office of Law Reform and the Northern Ireland Executive to abandon their reliance on opinion-driven research and to make a thorough study of the non-partisan work of academics such as Dr Robert Larzelere and Dr Diana Baumrind, whose research we have referred to earlier.

### Notes

<sup>1</sup> *Protecting Children, Supporting Parents: A Consultation Document on the Physical Punishment of Children*, Department of Health, 2000, para 4.5

<sup>2</sup> *Consultation or Campaign?* Available on request from Families First, or from our website at [www.families-first.org.uk](http://www.families-first.org.uk) (select 'Briefings').

<sup>3</sup> Larzelere R E, A Review of The Outcomes of Parental Use of Nonabusive or Customary Physical Punishment, *Pediatrics* 98(4), 1996; Larzelere R E, Child Outcomes of Nonabusive and Customary Physical Punishment by Parents: An Updated Literature Review, *Clinical Child and Family Psychology Review*, vol 3, no 4, 2000

<sup>4</sup> Baumrind D, *Does Causally Relevant Research Support a Blanket Injunction Against Disciplinary Spanking by Parents?* An invited address delivered at the 109th Annual Convention of the American Psychological Association, 24 August 2001.

<sup>5</sup> University of California, Berkeley Campus Press Release 24 August 2001, 'UC Berkeley Study finds no lasting harm among adolescents from moderate spanking earlier in childhood'.

<sup>6</sup> Larzelere, A Review of the Outcomes, *op. cit.*

<sup>7</sup> *Consultation or Campaign?* *op. cit.*

# HOW TO RESPOND

**T**here is no doubt that the responses of over 500 ordinary parents and individuals in England and Wales was a decisive factor in the government's decision not to change the law. We would therefore encourage as many as possible to take part in the consultation process in Northern Ireland, for the protection of children and families throughout the country.

## 1. Obtain a copy of the consultation paper

Copies of the consultation document, *Physical punishment in the home - thinking about the issues, looking at the evidence*, are available from:

The Director of Law Reform  
Office of Law Reform,  
Lancashire House,  
5 Linenhall Street,  
Belfast BT2 8AA

(Tel: 028 9054 2900; Fax: 028 9054 2909)

In addition to the full 60-page version of the consultation document, there is a 21-page summary version. Both of these documents are available on the website of the Office of Law Reform at: [www.olrni.gov.uk](http://www.olrni.gov.uk) (select 'Consultations'). There are also separate consultation papers for children and young people, available from the above address or at: [www.olrni.gov.uk/youngpeople](http://www.olrni.gov.uk/youngpeople)

## 2. Respond to the consultation paper

Responses may be posted to the Office of Law Reform at the address opposite, or sent by email to: [info@olrni.gov.uk](mailto:info@olrni.gov.uk)

**Please note that all responses must be received by the Office of Law Reform before Thursday 31 January 2002.**

## 3. Write to your Member of the Northern Ireland Assembly

**at: The Northern Ireland Assembly,  
Parliament Buildings, Belfast BT4 3XX**

You may wish to send him/her a copy of your response to the Office of Law Reform and express your concerns at the tone of the consultation document.

For further information or additional copies of this leaflet, please write to:

Families First  
"Penny Farthing"  
192 New Road  
Chilworth  
Guildford  
Surrey GU4 8LX

email: [info@families-first.org.uk](mailto:info@families-first.org.uk)  
website: [www.families-first.org.uk](http://www.families-first.org.uk)

*Families First* is a family advocacy group, committed to supporting parents and children in the family unit. We support the rights and responsibilities of parents to protect and guide their children and to bring them up in a reasonable manner, according to their religious and philosophical convictions.