



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

IRELAND – COUNTRY REPORT

Child population: 1,101,000 (UNICEF, 2009)

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, alternative care

Is there a legal defence for corporal punishment which must be repealed?

Yes – The right to use “reasonable and moderate chastisement” is not confirmed in written legislation but exists under common law. The near universal acceptance of corporal punishment in childrearing necessitates a clear statement in law that all forms of corporal punishment and other cruel and degrading treatment are unacceptable, however light.

Other legislative measures necessary

Alternative care – Explicit prohibition should be enacted in legislation applicable to all alternative care settings, including public and private day care, residential institutions, foster care, etc, in addition to explicit repeal of the common law right of parents and those with parental authority to administer “reasonable and moderate chastisement”.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is lawful in the home. The common law right to use “reasonable and moderate chastisement” in disciplining children was confirmed in article 37 of the Children Act (1908). The Children Act (2001) repealed article 37, but removal of the common law defence requires an explicit provision in addition to this repeal.

Following a complaint against Ireland brought in 2003 by the World Organisation Against Torture under the Collective Complaints procedure of the European Social Charter, the European Committee of Social Rights concluded that Ireland was in violation of Article 17 of the Revised Charter because corporal punishment of children within the home is permitted by the common law defence of reasonable chastisement, which is also applicable in foster care, residential care and certain childminding settings (Resolution ResChS(2005)9, Collective complaint No. 18/2003 by the World Organisation against Torture (OMCT) against Ireland, adopted by the Council of Ministers on 8 June 2005).

The Government has stated a long term commitment to prohibition but has given no indication of timing. In December 2012, media reports stated that Minister for Children Frances Fitzgerald was considering prohibiting all corporal punishment by parents (e.g. *Irish Times*, 28 December 2011). As at January 2012, the Government’s formal response to recommendations to prohibit all corporal punishment made during the Universal Periodic Review of Ireland in 2011 is not available (A/HRC/19/9, Report of the Working Group, paras. 107(41) and 107(42)).

Schools

Corporal punishment is prohibited in schools. In 1982, Department Circulars 9/82 and 5/82 stated that it should not be used, and teachers’ immunity from criminal prosecution was removed in article 24 of the Offences Against the Person (Non Fatal) Act (1997), which states: “The rule of law under which teachers are immune from criminal liability in respect of physical chastisement of pupils is hereby abolished.”

Penal system

Corporal punishment is prohibited as a **sentence for crime** in article 12 of the Criminal Law Act (1997).

Corporal punishment is prohibited as a **disciplinary measure** in penal institutions, including industrial and reformatory schools, in article 12 of the Criminal Law Act and article 201 of the Children Act.

Alternative care

Corporal punishment is explicitly prohibited in pre-school establishments in Regulation 8 of the Child Care (Pre-School Services) Regulations (1996), but under section 58 of the Child Care Act (1991), childminders caring for children of relatives, children of the same family or not more than three children of different families are exempt from these regulations. Guidance (National Standards) relating to foster care states that corporal punishment should not be used, but there is no prohibition in legislation. Similarly, Health Boards recommend the avoidance of corporal punishment in residential services in favour of “reasonable and humane sanctions”, and the National Standards for Children’s Residential Centres state that young people should not be subjected to humiliating or degrading

treatment, but there is no prohibition of corporal punishment in legislation. The Child Care (Special Care) Regulations (2004) regulate Special Care Units which provide secure residential care for a small number of non-offending children in need of special care or protection, and prohibit “corporal punishment or any form of physical violence”.

Prevalence research

A Government-commissioned telephone survey of 1,353 parents asked them to self-report on the discipline methods they had used in childrearing during the past year. A quarter (25%) reported physically punishing their child, most frequently smacking on the bottom (16%) and on the hand, arm or leg (11%), and more commonly on children aged 2-9. Just under half (48%) said they had shouted or yelled at a child in the past year; 27% said they had threatened to smack or hit the child but had not carried it out. In general, parents lacked a clear understanding about current legislation on physical punishment of children. When asked about law reform, 42% thought smacking should be made illegal, 24% felt it should depend on the age of the child, and 34% said it should remain legal. (Halpenny, A. et al (2010), *Parenting Styles and Discipline: Parents’ Perspectives, Summary Report*, Dublin: The Stationery Office / Office of the Minister for Children and Youth Affairs)

The report of the Commission to Inquire into Child Abuse, established in 2000 to investigate abuse of children in industrial and reform schools between 1914 and 2000, was published in 2009. Industrial schools were for children who were poor, neglected or orphaned; reform schools were for children guilty of offences. The Commission also examined children’s homes (for children without parental care, generally smaller than industrial schools), foster homes, hospitals, facilities attended by disabled children and other forms of residential care. The Commission uncovered the routine use of severe and arbitrary corporal punishment. Punishments reported by witnesses included being beaten with wooden sticks and other implements, having their heads submerged underwater, being force fed, being lifted by the ears and hair, isolation and being burned. They reported being punished for no reason, as well as for “offences” such as running away, bed-wetting, not knowing lessons, having torn or worn clothes, talking, speech and writing difficulties, being left-handed and disclosing sexual abuse. They described an environment of pervasive fear of physical punishment. (Commission to Inquire into Child Abuse (2009), *Commission Report*, www.childabusecommission.com/rpt)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(29 September 2006, CRC/C/IRL/CO/2, Concluding observations on second report, paras 39 and 40)

“While noting that the prohibition of corporal punishment within the family is under review and that parental educational programmes have been developed, the Committee is deeply concerned that corporal punishment within the family is still not prohibited by law.

“The Committee reiterates its previous recommendation (CRC/C/15/Add.85 para. 39) and urges the State party to:

- a) explicitly prohibit all forms of corporal punishment in the family;
- b) sensitize and educate parents and the general public about the unacceptability of corporal punishment;
- c) promote positive, non-violent forms of discipline as an alternative to corporal punishment; and
- d) take into account the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.”

Committee on the Rights of the Child

(4 February 1998, CRC/C/15/Add.85, Concluding observations on initial report, paras. 16 and 39)

“The Committee is concerned about the lack of prohibition in legislation of corporal punishment within the family. In the view of the Committee, this contravenes the principles and provisions of the Convention. The Committee is also concerned about the existence of child abuse and violence within the family and the lack of mandatory reporting mechanisms for cases of child abuse.

“The Committee suggests that the State party take all appropriate measures, including of a legislative nature, to prohibit and eliminate the use of corporal punishment within the family. The Committee also suggests that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention....”

Committee against Torture

(17 June 2011, CAT/IRL/CO/1, Concluding observations on initial report, para. 24)

“While taking note that corporal punishment is prohibited in schools and in the penal system, the Committee is gravely concerned that such punishment is lawful in the home under the common law right to use ‘reasonable and moderate chastisement’ in disciplining children and also in certain alternative care settings (arts. 2 and 16).

The Committee recommends that the State party prohibit all corporal punishment of children in all settings, conduct public campaigns to educate parents and the general public about its harmful effects, and promote positive non-violent forms of discipline as an alternative to corporal punishment.”

Committee on Economic, Social and Cultural Rights

(5 June 2002, E/C.12/1/Add.77, Concluding observations on second report, para. 7)

“The Committee also commends the State party for the legislative measures taken to combat domestic violence and to eradicate corporal punishment in schools.”

Human Rights Committee

(24 July 2000, A/55/40, paras. 422-451, Concluding observations on second report, para. 8)

“The Committee welcomes the Child Trafficking and Pornography Act 1998 and the Sexual Offenders (Jurisdiction) Act 1996, which allows prosecution in respect of offences committed outside Ireland. It also notes with satisfaction the abolition of corporal punishment in public and private schools.”

European Committee of Social Rights

(10 January 2001, Second Addendum to Conclusions XV-2, pages 33-37)

“The corporal punishment of children in schools is prohibited. The Committee wishes to know whether corporal punishment is prohibited in institutions caring for children.

“There is a common law immunity, which permits parents and other persons *in loco parentis* to use reasonable and moderate chastisement in the correction of their children. The Committee refers to its general observations on Article 17 in the General introduction on this issue. It decides to defer its conclusion on this point pending information as to whether the Government intends to remove this immunity and prohibit all corporal punishment of children....

“The Committee defers its conclusion pending information requested on corporal punishment....”

Universal Periodic Review

Ireland was examined in the first cycle of the Universal Periodic Review in 2011. Recommendations were made to prohibit all corporal punishment of children including in the home (A/HRC/19/9, Report of the Working Group, paras. 107(41) and 107(42)); the Government's response is due no later than March 2012. Examination in the second cycle is scheduled for 2016.

Report prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org
January 2012