

Corporal punishment of children in the British Virgin Islands

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Child population (0-14) 4,983 (CIA World Factbook, 2011 est.)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care and schools; it is unlawful in penal institutions but some provisions authorising it are still to be formally repealed.

Article 192 of the Criminal Code 1997 confirms the right of any parent, teacher or other person having the lawful control or charge of a child or young person to administer punishment to him. This provision should be repealed and prohibition should be enacted of all corporal punishment by all persons with authority over children.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – There is no provision for corporal punishment in education law, but it is not explicitly prohibited and teachers' right "to administer punishment" is confirmed in criminal law: this defence should be explicitly repealed.

Penal institutions – Provisions authorising corporal punishment in the Prisons Act 1956 and the Prisons Rules 1999 should be formally repealed.

Note: The British Virgin Islands is a British Overseas Territory. As such, it has its own constitution and domestic laws and substantial responsibility for its internal affairs, including responsibility for the protection and promotion of human rights and a duty to ensure that local law complies with the relevant convention and court judgments and is non-discriminatory. The UK Government has responsibility for international relations, internal security, defence, good governance and the wellbeing of the people.¹

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 192 of the Criminal Code 1997 makes it an offence to wilfully assault or ill-treat a child or young person in a manner likely to cause unnecessary suffering or injury to health, but it also states: “Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child or young person to administer punishment to him.”

Children have limited protection from violence and abuse under the Children and Young Persons Act 2005, the Criminal Code 1997, the Domestic Violence Act 2011 and the Constitution 2007. Article 2 of the Domestic Violence Act 2011 defines domestic violence as “any controlling or abusive behaviour that harms or may harm the health, safety or well-being of a person or any child” but this is not interpreted as prohibiting corporal punishment in childrearing.

In its 2014 state party report to the Committee on the Rights of the Child, the UK Government states that it “does not condone any violence towards children and has clear laws to deal with it” but “our view is that a mild smack does not constitute violence”.² A similar statement was made to the Human Rights Committee in 2015.³ The UK Government has on three occasions rejected recommendations to prohibit all corporal punishment of children made during the Universal Periodic Review of the UK (see below).

Alternative care settings

Corporal punishment is lawful in alternative care settings under the right “to administer punishment” in article 192 of the Criminal Code 1997 (see under “Home”). The Government has stated that corporal punishment is not allowed in institutions and care settings⁴ but this appears to be a matter of policy rather than law.

Day care

Corporal punishment is lawful in day care under the right “to administer punishment” in article 192 of the Criminal Code 1997 (see under “Home”).

¹ [2014], CRC/C/GBR/5, Fifth state party report, annex, para. 2

² [2014], CRC/C/GBR/5, Fifth state party report, annex, para. 11

³ [n.d.], CCPR/C/GBR/Q/7/Add.1, Advance Unedited Version, Reply to list of issues, para. 161

⁴ Parliamentary answer to question asked by Baroness Walmsley, 19 December 2011

Schools

Corporal punishment is lawful in schools under article 192 of the Criminal Code (see under “Home”) and article 55 of the Education Act 2004, which states that in public and private schools “degrading or injurious punishment shall not be administered” but also states: “(2) Corporal punishment may be administered where no other punishment is considered suitable or effective, and only by the principal or deputy principal and one senior teacher appointed in writing by the principal for that purpose, in a manner that is in conformity with guidelines issued in writing by the Chief Education Officer.”

The Education (Amendment) Act 2014 repeals the provisions for corporal punishment in the Education Act, replacing article 55 with the following: “In the enforcement of discipline in public schools, assisted private schools and private schools degrading or injurious punishment shall not be administered.” However, the Act does not explicitly prohibit all corporal punishment or repeal the defence in the Criminal Code allowing teachers “to administer punishment”. According to a Government source, in “administering punishment” to students, teachers are governed by the Education (Student Code of Conduct) Rules 2006, which outline the punishments that may be imposed and do not include corporal punishment, and the Government is considering whether to remove “teacher” from article 192 of the Criminal Code.⁵

Penal institutions

Corporal punishment as a disciplinary measure in penal institutions was abolished in 2000 under the Corporal Punishment (Abolition) Act 2000.⁶ However, it appears that provisions for corporal punishment in the Prison Act 1956 and the Prison Rules 1999 are yet to be formally repealed.⁷ Article 11 of the Prison Act 1956 provides for up to 12 strokes of a tamarind for a male under 21 years of age; the Code of Discipline in Schedule One to the Prison Rules 1999 regulates corporal punishment in prison (section A arts. 6 and 19, section B, art. 10, and section C, art. 19). In 2014 it was announced that the Prison Act and Prison Rules would be amended.⁸ As at August 2016, it appears that this reform had not yet been achieved.⁹

Article 17 of the Constitution states that all persons deprived of their liberty “have the right to be treated with humanity and with respect for the inherent dignity of the human person”.

Sentence for crime

Corporal punishment is prohibited as a sentence for crime in the Corporal Punishment (Abolition) Act 2000. There is no provision for judicial corporal punishment in the Children and Young Persons Act 2005 or the Criminal Code 1997. Judicial corporal punishment was previously lawful under article 98(2) of the Magistrate’s Code of Procedure Act, which provided for a Magistrate’s Court or Juvenile

⁵ Ministry of Health and Social Development, Correspondence with the Global Initiative, July 2015

⁶ <http://www.onepaper.com/deals/?v=d&i=&s=Caribbean%3AParadise+News&p=22726&f=p>, accessed 18 February 2016

⁷ The Act and Rules are available on the Government website, <http://www.bvi.gov.vg/departments/her-majestys-prison>, accessed 18 February 2015

⁸ <http://www.bvi.org.uk/government/pressreleases/speechfromthethrone2014>, accessed 1 February 2016

⁹ <http://www.bvi.gov.vg/departments/her-majestys-prison>, accessed 14 August 2016

Court to order whipping against a male child or young person in addition to or in lieu of any other punishment.

Universal Periodic Review of the UK's human rights record

The UK was examined in the first cycle of the Universal Periodic Review in 2008 (session 1). The following recommendations were made:¹⁰

“To consider further measures in order to address the problem of violence against children, including corporal punishment. (Italy)

“To reconsider its position about the continued legality of corporal punishment against children. (Sweden)

“To consider going beyond current legislation and to ban corporal punishment, also in the private sector and in its Overseas Territories. (France)”

The Government rejected the recommendations, stating that it sees no need for law reform since it believes the current law is working well, parents should be allowed to discipline children and surveys show that the use of corporal punishment in childrearing has declined.¹¹ It accepted the recognition to consider going beyond current legislation in relation to protecting children from violence but rejected “the implication that it is failing in this regard through the application of its policy on corporal punishment”.¹²

The mid-term report, dated March 2010, repeats this assertion and draws attention to the prohibition of corporal punishment in education and care settings and to the review being undertaken of corporal punishment in some education settings which fall outside of the legal framework.¹³ The report refers to previous law reforms which limited the application of the “reasonable punishment” defence so that it can no longer be relied upon in cases of assault occasioning cruelty or actual or grievous bodily harm. However, it then attempts to defend the continued legality of a certain degree of physical punishment in childrearing, stating that the Government “does not condone” physical punishment but “does not want to criminalise decent parents who decide to administer a mild smack”: the Government considers the promotion of positive discipline techniques to be sufficient to address the issue.

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:¹⁴

“Reconsider its position about the continued legality of corporal punishment of children (Sweden);

“Take measures to ensure the freedom of children from physical punishment in accordance with the Convention on the Rights of the Child (Norway);

¹⁰ 23 May 2008, A/HRC/8/25, Report of the working group, paras. 56(2), 56(3), 56(4) and 56(5)

¹¹ 23 May 2008, A/HRC/8/25, Report of the working group, para. 25

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

¹³ Mid-term progress update by the United Kingdom of Great Britain and Northern Ireland on its implementation of recommendations agreed in June 2008, para. 7

¹⁴ 6 July 2012, A/HRC/21/9, Report of the working group, paras. 110(78), 10(79) and 110(80)

“Introduce a ban on all corporal punishment of children as recommended by the CRC and other treaty bodies (Finland)”

The Government rejected the recommendations, stating: “... The law in the UK only permits physical punishment of children in very limited circumstances. Corporal punishment is unlawful in state and full-time independent schools, in nursery and childminding settings, children’s homes and secure establishments.... The UK Government does not accept that it is in breach of the UNCRC with regard to physical punishment; and believe [sic] that UK is compliant with Articles 19 and 37 in relation to abuse and violence towards children.”¹⁵

The UK’s third cycle examination took place in 2017 (session 27). The following recommendations were made:¹⁶

“In all devolved administrations, overseas territories and Crown dependencies, prohibit all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement” (Liechtenstein);

“Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care (Liechtenstein);

“Prohibit corporal punishment in all settings, including the family (Ireland);

“Reconsider its position on the legality of corporal punishment of children (Mongolia);

“Ban corporal punishment of children to ensure the full protection and freedom from violence for all children (Sweden);

“Consider prohibiting corporal punishment against children and ensure that it is explicitly prohibited in all schools and educational institutions, and all other institutions and forms of alternative care (Croatia);

“Take further actions in protecting the rights of the child by prohibiting all corporal punishment of children as required by the convention of the Rights of Child (Estonia)”

The Government rejected all seven recommendations, stating: “the UK does not condone any violence towards children and has clear laws to deal with it. The ‘reasonable chastisement’ defence in s.58 Children Act 2004 cannot be used when someone is charged with assault causing actual or grievous bodily harm, or with child cruelty. Parents should not be criminalised for giving a child a mild smack in order to control their behaviour. The Crown Dependencies currently follow a similar approach to the UK. The decision on whether to prohibit corporal punishment and in what settings in the Overseas Territories is a decision, ultimately, for Territory governments. The UK Government is keen to support those Territories who wish to move away from the use of corporal punishment and explore alternative measures, including the development of positive parenting strategies and effective behaviour management techniques.”¹⁷

¹⁵ 17 September 2012, A/HRC/21/9/Add.1, Report of the working group: Addendum, annex

¹⁶ 8 May 2017, A/HRC/WG.6/27/L.7, Draft report of the working group, unedited version, paras. 6(193), 6(194), 6(195), 6(196), 6(197), 6(198) and 6(199)

¹⁷ 7 September 2017, A/HRC/36/9/Add.1, Report of the working group: addendum, para. 3; see also 29 August 2017, Annex to the response to the recommendations received on 4 May 2017

Recommendations by human rights treaty bodies

Note: According to the UK's 2014 Common Core Document¹⁸, the following treaties apply in the British Virgin Islands: the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Convention against Torture, the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination Against Women. The European Social Charter does not apply.

Committee on the Rights of the Child

(3 June 2016, CRC/C/GBR/CO/5, Concluding observations on fifth report, para. 40)

“With reference to its general comment No. 8 and its previous recommendations, the Committee urges the State party, in all devolved administrations, Overseas Territories and Crown Dependencies, to:

- a) prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement”;
- b) ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;
- c) strengthen its efforts to promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.”

Committee on the Rights of the Child

(20 October 2008, CRC/C/GBR/CO/4, Concluding observations on third/fourth report, paras. 40, 41 and 42)

“The Committee, while noting amendments to legislation in England, Wales, Scotland and Northern Ireland which restrict the application of the defence of ‘reasonable chastisement’, is concerned that this defence has not been removed. The Committee welcomes the commitment of the National Assembly in Wales to prohibiting all corporal punishment in the home, but notes that under the terms of devolution it is not possible for the Assembly to enact the necessary legislation. The Committee is concerned at the failure of State party to explicitly prohibit all corporal punishment in the home and emphasizes its view that the existence of any defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention, since it would suggest that some forms of corporal punishment are acceptable.

“The Committee is further concerned that corporal punishment is lawful in the home, schools and alternative care settings in virtually all overseas territories and crown dependencies.

“The Committee, reiterating its previous recommendations (CRC/C/15/Add.188, para. 35), in the light of its general comment No. 8 on ‘the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment’, as well as noting similar recommendations made by the Human Rights Committee; the Committee on the Elimination of Discrimination Against Women; and the Committee on Economic, Social and Cultural Rights, recommends that the State party:

¹⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418207/human-rights-common-core-document.pdf, accessed 19 June 2017

- a) prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, in England and Wales, Scotland, and Northern Ireland, and in all Overseas Territories and Crown Dependencies;
- b) ensure that corporal punishment is explicitly prohibited in schools and all other institutions and forms of alternative care throughout the United Kingdom and in the overseas territories and crown dependencies;
- c) actively promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to raising public awareness of children's right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing;
- d) provide parental education and professional training in positive child-rearing."

Committee on the Rights of the Child

(16 October 2000, CRC/C/15/Add.135, Concluding observations on initial report on Overseas Territories and Crown Dependencies, paras. 35, 36, 55 and 57)

"The Committee expresses grave concern that corporal punishment is still widely practised in many of the Overseas Territories and that domestic legislation generally does not prohibit and eliminate its use in schools, care institutions and homes. It also notes with concern that the British Virgin Islands is the only remaining Territory that has not yet prohibited by law the use of judicial corporal punishment.

"The Committee recommends that all appropriate measures, including of a legislative nature, be taken to prohibit and eliminate all forms of corporal punishment within the school, juvenile justice and alternative care systems and in the home. The Committee further suggests that awareness raising and education campaigns be conducted to change public attitudes and ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention, especially articles 19 and 28.2.

"The Committee notes that legislation relating to juvenile justice has been enacted in all of the Overseas Territories. While the Committee appreciates that the legal abolition of judicial corporal punishment in most of the Overseas Territories, it is concerned that the bill to abolish it in the British Virgin Islands has not yet been enacted....

"The Committee further recommends that the British Virgin Islands reinforce efforts to enact the bill introduced into the Legislative Council to abolish the use of judicial corporal punishment in the islands."

Committee on the Elimination of Discrimination Against Women

(30 July 2013, CEDAW/C/GBR/CO/7, Concluding observations on seventh report of UK, paras. 34 and 35)

"The Committee ... recalls its previous concluding observations (A/63/38, paras. 280 and 281) and is concerned that corporal punishment remains lawful in the home.

"Recalling its general recommendation No. 19, on violence against women, and its previous recommendation, the Committee urges the State party: ...

- e) to revise its legislation to prohibit corporal punishment of children in the home."

Committee on the Elimination of Discrimination Against Women

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

“... The Committee also notes with concern that corporal punishment is lawful in the home and constitutes a form of violence against children, including the girl child.

“The Committee urges the State party to accord priority attention to the adoption of comprehensive measures to address violence against women in accordance with its general recommendation No. 19 on violence against women.... The Committee further recommends that the State party include in its legislation the prohibition of corporal punishment of children in the home.”

Committee on Economic, Social and Cultural Rights

(12 June 2009, E/C.12/GBR/CO/5, Concluding observations on fourth/fifth report, para. 24)

“The Committee ... also remains concerned that corporal punishment of children in the home is not yet prohibited by law.

The Committee ... reiterates its recommendation that physical punishment of children in the home be prohibited by law.”

Committee on Economic, Social and Cultural Rights

(5 June 2002, E/C.12/1/Add.79, Concluding observations on fourth report, para. 36)

“Given the principle of the dignity of the individual, which provides the foundation for international human rights law (see paragraph 41 of the Committee’s General Comment No.13) and in the light of article 10.1 and 10.3 of the Covenant, the Committee recommends that the physical punishment of children in families be prohibited, in line with the recommendation of the Committee on the Rights of the Child (see paragraph 31 of the 1995 concluding observations of that Committee (CRC/C/15/Add.34)).”

Committee on Economic, Social and Cultural Rights

(4 December 1997, CESCR/E/C.12/1/Add.19, Concluding observations on third report, paras. 16 and 28)

“The Committee is alarmed by the fact that corporal punishment continues to be practised in schools which are privately financed, and at the statement by the delegation that the Government does not intend to eliminate this practice.

“The Committee recommends that the State party take appropriate measures to eliminate corporal punishment in those schools in which this practice is still permitted, i.e. privately financed schools.”

Committee Against Torture

(24 June 2013, CAT/C/GBR/CO/5, Concluding observations on fifth report, para. 29)

“The Committee takes note of amendments to legislation in England, Wales, Scotland and Northern Ireland, which limit the application of the defence of “reasonable punishment” (or “justifiable assault” in Scotland), but remains concerned that some forms of corporal punishment are still legally

permissible in the home by parents and those in *loco parentis*. In addition, it is concerned that some forms of corporal punishment are lawful in the home, schools and alternative care settings in almost all overseas territories and Crown dependencies.

The Committee recommends that the State party prohibits corporal punishment of children in all settings in the Metropolitan territory, Crown dependencies and overseas territories, repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.”

Committee Against Torture

(17 November 1998, A/54/44, Concluding observations on third report, para. 74)

“Positive aspects:

d) the removal of corporal punishment as a penalty in several of the Dependent Territories.”

Committee Against Torture

(9 July 1996, A/51/44, Concluding observations on second report, para. 65)

“The Committee recommends that the Government of the United Kingdom take the following measures:

i) reconsidering corporal punishment with a view to determining if it should be abolished in those dependencies that still retain it.”

Committee Against Torture

(26 June 1993, A/48/44, Concluding observations on initial report, para. 283)

“... The territories appeared to be governed in accordance with the obligations on the Convention and the Committee congratulated the Government of the United Kingdom in this respect. The Committee was, however, interested in receiving more detail pertaining to cases of corporal punishment in the territories retaining it. The nature and incidence of such punishment, together with details of the crime and the characteristics of the offender, should be forwarded to the Committee when the information is gathered....”

Human Rights Committee

([July 2015], CCPR/C/GBR/CO/7 Advance Unedited Version, Concluding observations on seventh report, para. 20)

“The Committee remains concerned that corporal punishment is still not fully outlawed in the home and certain educational and alternative care facilities in the United Kingdom and in almost all British Crown Dependencies and Overseas Territories. It is further concerned about the lack of explicit prohibition of corporal punishment in the home and the existing legal defences of ‘reasonable punishment’ in England, Wales and Northern Ireland or ‘justifiable assault’ in Scotland (arts. 7 and 24).

The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings, including the home, throughout United Kingdom and all Crown Dependencies and Overseas Territories, and repeal all existing legal

defences across the State party's jurisdiction. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and conduct public information campaigns to raise awareness about its harmful effects."

Human Rights Committee

(30 July 2008, CCPR/C/GBR/CO/6, Concluding observations on sixth report, para. 27)

"The Committee notes with concern that corporal punishment of children is not prohibited in schools in Bermuda, the British Virgin Islands, Gibraltar, Montserrat and the Crown Dependencies. (arts. 7 and 24)

The State party should expressly prohibit corporal punishment of children in all schools in all British Overseas Territories and Crown Dependencies."

Human Rights Committee

(27 July 1995, CCPR/C/79/Add.55, Concluding observations on fourth report, para. 8)

"The Committee recommends that corporal punishment administered to privately funded pupils in independent schools be abolished."

Prevalence/attitudinal research in the last ten years

None identified.