

Corporal punishment of children in the Cayman Islands

LAST UPDATED October 2017

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Child population (0-14) 9,782 (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, some alternative care settings, day care, schools and penal institutions.

The right of parents to administer “reasonable chastisement” is recognised under English common law and article 226(7) of the Penal Code confirms “the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to him.” These defences should be repealed and prohibition enacted of all corporal punishment by all persons with authority over children.

Alternative care settings – Legislation prohibits corporal punishment in community homes, children’s homes, voluntary homes and in state arranged foster care. Prohibition should now be enacted in relation to private foster care arrangements.

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

Schools – Provisions in the Education Law which authorise corporal punishment in schools should be repealed and prohibition of corporal punishment enacted in relation to all educational settings, including public and private, full and part time.

Penal institutions – Legislation should prohibit corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law. Provisions for corporal punishment in the Prison Rules should be repealed.

Note: The Cayman 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 under the English common law defence of “reasonable chastisement”. Articles 225 and 226 of the Penal Code (2013 Revision) punish cruelty to children under 16 years of age but article 226(7) states: “Nothing in section 225 shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to him.” This provision was also included in the Juveniles Law 1990 (art. 41(8)), but this Law was repealed by the Children Law (2012 Revision); the new Children Law does not refer to a right to “administer punishment” and it protects children from ill-treatment and abuse, but it does not prohibit all corporal punishment.

The Protection from Domestic Violence Law 2010 protects children from abuse, defining physical abuse as “any act or omission which causes or threatens physical injury” (art. 3), but it does not prohibit 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

Recent law reform prohibited corporal punishment in some but not all alternative care settings. The Children Law (2012 Revision) provides for the Government in Cabinet to make regulations for the “control and discipline” of children in community homes (art. 4), voluntary homes (art. 7) and registered children’s homes (art. 10).

Corporal punishment is prohibited in community homes in the Community Homes Regulations 2012 (reg. 8): “(1) The responsible authority of a community home shall only apply those disciplinary measures within the home as are approved by the Department. (2) The following acts shall not be practised in a community home – (a) corporal punishment....” There are similar prohibitions in children’s homes (Registered Children’s Homes Regulations 2012, reg. 8) and in voluntary homes (Voluntary Homes Regulations 2012, reg. 8). All children’s homes must be registered (Children Law, art. 64).

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

According to regulation 5 of the Foster Placement (Children) Regulations 2012, a person approved by the Department as a foster parent will not have a child placed with him/her unless there is agreement with the matters and obligations listed in Schedule 2 of the Regulations, which includes the obligation “not to administer corporal punishment to any child placed with him”. However, there is no prohibition in the Children (Private Foster Care) Regulations 2012: corporal punishment of privately fostered children is lawful under the “reasonable chastisement” defence in English common law and the right “to administer punishment” in article 226(7) of the Penal Code (see under “Home”).

Day care

Corporal punishment is lawful in early childhood care and in day care for older children under the “reasonable chastisement” defence in English common law and the right “to administer punishment” in article 226(7) of the Penal Code (see under “Home”). The Children Law (2012 Revision) regulates day care and childminding and does not prohibit corporal punishment in these settings.

The Education Bill 2016 includes prohibition of corporal punishment in early childhood care and education centres (art. 22): “(1) Corporal punishment and acts which are cruel, inhumane or degrading to a student shall not be administered in any early childhood care and education centre. (2) Reasonable use of force is acceptable in an early childhood care and education centre for the purpose of preventing a student from doing, or continuing to cause danger, personal injury or death to, or damage to the property of, any person, including the relevant student, but use of force shall be necessary, reasonable and proportionate.”

Schools

Corporal punishment is lawful under article 30 of the Education Law (2010 Revision): “(1) Notwithstanding any other law to the contrary, corporal punishment may be administered to a pupil only where no other punishment is considered suitable or effective by the principal, and only by the principal or any teacher appointed in writing by him for that purpose. (2) Whenever corporal punishment is administered an entry shall be made in a punishment book which will be kept in each school for such purpose with a statement of the nature and extent of the punishment and the reasons for administering it.” Article 226(7) of the Penal Code also applies (see under “Home”).

Prohibition is included in the Education Modernisation Law 2009, article 26 of which states: “(1) Corporal punishment shall not be administered in any schools. (2) Subsection (1) does not prohibit action taken for reasons that include averting an immediate danger of personal injury to, or death of, any person, including the students himself. (3) A teacher or any other employee authorized under this Law may physically restrain a student where restraint is necessary for the physical protection of the student or any other child in the school and not as a punishment.” The Law similarly prohibits corporal punishment in early childhood institutions (art. 24). However, as at 5 August 2015, this law was not yet in force.⁴

The Education Bill 2016 would repeal the Education Law (2010 Revision) and the Education Modernisation Law 2009. The Bill includes prohibition of corporal punishment in schools (art. 25): 25. “Corporal punishment and acts which are cruel, inhumane or degrading to a student shall not be administered in an educational institution.” The Bill would allow the use of “such force as is necessary, reasonable and proportionate in the circumstances for the purpose of preventing a

⁴ Law Revision Commissioner (2015), *Consolidated Index of Laws and Subsidiary Legislation as at 5th August, 2015*, Cayman Islands Government, <http://www.gov.ky/portal/pls/portal/docs/1/12277808.PDF>, accessed 18 February 2016

student from doing, or continuing to do, any of the following - ... prejudicing the maintenance of good order and discipline at the school or any educational activities or provision associated with the school” but clarifies that this “does not authorize anything to be done in relation to a student which constitutes the giving of corporal punishment” (art. 29). The Bill was introduced to the Legislative Assembly in April 2016 (in the 2015/16 session); at its second reading the Bill was deferred to the next (2016/17) session.⁵

Penal institutions

There appears to be no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. According to the Government’s fourth/fifth report to the Human Rights Committee, provisions for the court to order corporal punishment for offences against prison discipline were repealed in the Prisons (Amendment) Law (1998).⁶ However, the Prison Rules (1999 Revision) provide for corporal punishment (art. 47): as at July 2016 it would appear that these Rules are still in force.⁷ There is no prohibition of corporal punishment in the Children (Secure Accommodation) Regulations 2012.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Penal Code (2013 Revision), the Criminal Procedure Code (2014 Revision) or the Youth Justice Law (2005 Revision).

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:⁸

“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.⁹ It accepted the recognition to consider going beyond current legislation in relation to protecting children from violence but rejected

⁵ Cayman Islands Legislative Assembly, *Official Hansard Report Electronic Version, 2015/16 session, 6 May 2015*, at <http://www.legislativeassembly.ky>, accessed 13 August 2016

⁶ 11 April 2000, CCPR/C/UKOT/99/5, Fourth/fifth state party report, para. 66

⁷ <http://www.mha.gov.ky/resources/laws-and-regs/>, accessed 6 July 2016

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

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

“the implication that it is failing in this regard through the application of its policy on corporal punishment”.¹⁰

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:¹¹

“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);

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

The Government rejected the recommendations.¹²

The UK’s third cycle examination took place in 2017 (session 27). The following recommendations were made:¹³

“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

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

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

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

¹³ 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)

explore alternative measures, including the development of positive parenting strategies and effective behaviour management techniques.”¹⁴

Recommendations by human rights treaty bodies

Note: According to the UK’s 2014 Common Core Document¹⁵, the following treaties apply in the Cayman 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.

¹⁴ 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

¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418207/human-rights-common-core-document.pdf, accessed 19 June 2017

“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:

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.