

# Corporal punishment of children in the Falkland Islands (Malvinas)

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**Child population (0-14)** 465 (Falklands Islands Government, 2012)



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 and day care.

The right of parents to administer “reasonable chastisement” is recognised under English common law. This should be repealed, together with any confirmation of this defence in written legislation, and prohibition should be enacted of all corporal punishment by all persons with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 early childhood care (nurseries, crèches, family centres, etc) and day care for older children (day centres, after-school childcare, childminding, etc).

**Note:** The Falklands Islands is a British Overseas Territory (this is disputed by Argentina). 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.<sup>1</sup> The Islands do not have a complete set of domestic legislation, and where there are gaps English law is applicable but only English law up to 31 July 2004.<sup>2</sup> The process of adopting domestic legislation is under way, including child related legislation.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home. Corporal punishment in the home is governed by the English common law defence of “reasonable chastisement”, applicable against a charge of common assault but not to charges of child cruelty, wounding or assault causing grievous or actual bodily harm.<sup>3</sup>

Following a review of child-related legislation, the Children Ordinance 1994 (modelled on the English Children Act 1989) has been replaced by the Children Ordinance 2014. The new law protects children from “harm” and “ill-treatment” (arts. 4 and 48) and puts a duty on the Crown to “take reasonable steps, through the provision of services under Part 3 of this Ordinance, to prevent children suffering ill-treatment or neglect” (Schedule 2, part I.4) but it does not prohibit all corporal punishment.

In 2012, the Attorney General called for the adoption of a new Criminal Code: we are seeking further information.<sup>4</sup>

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”.<sup>5</sup> A similar statement was made to the Human Rights Committee in 2015.<sup>6</sup> 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**

There is no explicit prohibition of corporal punishment in alternative care settings, where corporal punishment is lawful as for parents. In reporting to the Committee on the Rights of the Child in 2014, the Government stated that foster carers are not permitted to use corporal punishment, but made no reference to prohibition in law.<sup>7</sup>

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

<sup>2</sup> Executive Council (2012), *Review and Consolidation of Criminal Law and Procedure*, Paper No: 247/12, Report of the Attorney General, 24 October 2012

<sup>3</sup> [2014], CRC/C/GBR/5, Fifth state party report, annex

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*, para. 11

<sup>6</sup> [n.d.], CCPR/C/GBR/Q/7/Add.1, Advance Unedited Version, Reply to list of issues, para. 161

<sup>7</sup> [2014], CRC/C/GBR/5, Fifth state party report, annex

## **Day care**

There is no explicit prohibition of corporal punishment in day care.

## **Schools**

Corporal punishment is reportedly prohibited in all schools by the Education (Amendment) Ordinance 2002.<sup>8</sup> It was previously lawful for boys under the age of 11 years, with parental consent, under the Education Ordinance 1989.

## **Penal institutions**

Corporal punishment is unlawful as a disciplinary measure in penal institutions. The provisions under the Prison Ordinance 1966 of the Prison Rules which permitted corporal punishment of prisoners for certain offences against prison discipline were formally revoked in 1989. Article 7 of the Constitution 2008 states: "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 unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Justice Ordinance 1989 and the Criminal Justice (Amendment) Ordinance 1996. Article 3 of the Constitution 2008 states: "No person shall be subjected to torture or to inhuman or degrading treatment or 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:<sup>9</sup>

"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.<sup>10</sup> It accepted the recognition to consider going beyond current legislation in relation to protecting children from violence but

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<sup>8</sup> 25 February 2008, CRC/C/GBR/4, Third state party report to the Committee on the Rights of the Child, paras. 17 and 33

<sup>9</sup> 23 May 2008, A/HRC/8/25, Report of the working group, paras. 56(2), 56(3), 56(4) and 56(5)

<sup>10</sup> 23 May 2008, A/HRC/8/25, Report of the working group, para. 25

rejected “the implication that it is failing in this regard through the application of its policy on corporal punishment”.<sup>11</sup>

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:<sup>12</sup>

“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.<sup>13</sup>

The UK’s third cycle examination took place in 2017 (session 27). The following recommendations were made:<sup>14</sup>

“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

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<sup>11</sup> 25 August 2008, A/HRC/8/25/Add.1, Report of the working group: Addendum, paras. 28, 29 and 30

<sup>12</sup> 6 July 2012, A/HRC/21/9, Report of the working group, paras. 110(78), 10(79) and 110(80)

<sup>13</sup> 17 September 2012, A/HRC/21/9/Add.1, Report of the working group: Addendum, annex

<sup>14</sup> 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.”<sup>15</sup>

## **Recommendations by human rights treaty bodies**

**Note:** According to the UK’s 2014 Common Core Document<sup>16</sup>, the following treaties apply in the Falklands 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. 6, 7, 38, 39, 40, 41 and 42)

“The Committee, while welcoming the State party’s efforts to implement the concluding observations on previous State party’s reports, notes with regret that some of the recommendations contained therein have not been fully implemented, in particular:

- a) with respect to the concluding observations on the second periodic report of the United Kingdom (CRC/C/15/Add.188), those recommendations related, inter alia, to ... corporal punishment (paras. 35-38)...
- c) with respect to the initial report of the United Kingdom – Isle of Man (CRC/C/15/Add.134) those regarding, inter alia, corporal punishment (paras. 26-27)....

“The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the previous reports that have not yet – or

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<sup>15</sup> 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

<sup>16</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418207/human-rights-common-core-document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418207/human-rights-common-core-document.pdf), accessed 19 June 2017

not sufficiently – been implemented as well as those contained in the present concluding observations. In this context, the Committee draws the attention of the State party to its general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child.

“The Committee notes that the State party has reviewed the use of physical restraint and solitary confinement to ensure that these measures are not used unless absolutely necessary and as a measure of last resort. However, the Committee remains concerned at the fact that, in practice, physical restraint on children is still used in places of deprivation of liberty.

“The Committee urges the State party to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished.

“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:

- 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***

(9 October 2002, CRC/C/15/Add.188, Concluding observations on second report, paras. 8, 9, 35, 36, 37 and 38)

“While noting the entry into force of the Human Rights Act 1998, which incorporates the rights enshrined in the European Convention on Human Rights into domestic law, the Committee is

concerned that the provisions and principles of the Convention on the Rights of the Child – which are much broader than those contained in the European Convention – have not yet been incorporated into domestic law, nor is there any formal process to ensure that new legislation fully complies with the Convention. The Committee notes that the devolved administrations have introduced some legal reforms to ensure compatibility with the Convention such as ensuring that the education system in Scotland complies with article 12 and that corporal punishment in the day-care system in Wales is prohibited, but remains concerned that the State party does not ensure that its legislation is compatible with the Convention throughout its territory.

“The Committee encourages the State party to incorporate into domestic law the rights, principles and provisions of the Convention in order to ensure that all legislation complies with the Convention and that the provisions and principles of the Convention are widely applied in legal and administrative proceedings. The State party is also encouraged to provide training in the provisions of the Convention and to disseminate the Convention more widely.

“The Committee welcomes the abolition of corporal punishment in all schools in England, Wales and Scotland following its 1995 recommendations (ibid., para. 32) but is concerned that this abolition has not yet been extended to cover all private schools in Northern Ireland. It welcomes the adoption by the National Assembly for Wales of regulations prohibiting corporal punishment in all forms of day care, including childminding, but is very concerned that legislation prohibiting all corporal punishment in this context is not yet in place in England, Scotland or Northern Ireland.

“In light of its previous recommendation (ibid., para. 31), the Committee deeply regrets that the State party persists in retaining the defence of ‘reasonable chastisement’ and has taken no significant action towards prohibiting all corporal punishment of children in the family.

“The Committee is of the opinion that the Government’s proposals to limit rather than to remove the ‘reasonable chastisement’ defence do not comply with the principles and provisions of the Convention and the aforementioned recommendations, particularly since they constitute a serious violation of the dignity of the child (see similar observations of the of the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.79, para. 36). Moreover, they suggest that some forms of corporal punishment are acceptable, thereby undermining educational measures to promote positive and non-violent discipline.

“The Committee recommends that the State party:

- a) with urgency adopt legislation throughout the State party to remove the ‘reasonable chastisement’ defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;
- b) promote positive, participatory and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, involving children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment.”

### ***Committee on the Rights of the Child***

(15 February 1995, CRC/C/15/Add.34, Concluding observations on initial report, paras. 16, 31 and 32)

“The Committee is disturbed about the reports it has received on the physical and sexual abuse of children. In this connection, the Committee is worried about the national legal provisions dealing with reasonable chastisement within the family. The imprecise nature of the expression of reasonable chastisement as contained in these legal provisions may pave the way for it to be interpreted in a subjective and arbitrary manner. Thus, the Committee is concerned that legislative

and other measures relating to the physical integrity of children do not appear to be compatible with the provisions and principles of the Convention, including those of its articles 3, 19 and 37. The Committee is equally concerned that privately funded and managed schools are still permitted to administer corporal punishment to children in attendance there which does not appear to be compatible with the provisions of the Convention, including those of its article 28, paragraph 2....

“The Committee is also of the opinion that additional efforts are required to overcome the problem of violence in society. The Committee recommends that physical punishment of children in families be prohibited in the light of the provisions set out in articles 3 and 19 of the Convention. In connection with the child’s right to physical integrity, as recognized by the Convention, namely in its articles 19, 28, 29 and 37, and in the light of the best interests of the child, the Committee suggests that the State party consider the possibility of undertaking additional education campaigns. Such measures would help to change societal attitudes towards the use of physical punishment in the family and foster the acceptance of the legal prohibition of the physical punishment of children.

“... Legislative measures are recommended to prohibit the use of corporal punishment in privately funded and managed schools.”

### ***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.”

### ***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.