

Corporal punishment of children in Guernsey

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Child population (0-15) 10,167 (Island of Guernsey Census, 2016)



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.

The right of parents to administer “reasonable chastisement” is recognised under English common law; article 2 of the Child Protection (Alderney) Law 1953 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These defences should be repealed and prohibition enacted of all corporal punishment by all persons with authority over children.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 – 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, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition of corporal punishment should be enacted in legislation applicable to all schools, public and private.

Note: Guernsey is a British Crown Dependency. As such, it is not part of the UK and has no representation in Parliament. It is internally self-governing, with its own legislative assembly responsible for making primary and secondary domestic legislation, the former requiring Royal Assent or Sanction. It has its own administrative, fiscal and legal system and its own courts of law. The British Crown, acting through the Privy Council, is ultimately responsible for the good government of Guernsey.¹

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home, where “reasonable chastisement” is permitted under English common law. Article 2 of the Child Protection (Alderney) Law 1953 punishes assault and ill-treatment of children but states: “(4) 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 to administer punishment to him.” There appears to be no such confirmation of this “right” in the Child Protection (Guernsey) Law 1972. The Children (Guernsey and Alderney) Law 2008 states that parental responsibility includes the duty “to provide care, direction, guidance and control, in a manner appropriate to the age and understanding of the child” (art. 5(a)(ii)). The same statement is contained in the Children (Sark) Law 2016 (art. 4(a)(ii)).

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

There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful under the common law right to impose “reasonable chastisement” and article 2(4) of the Child Protection (Alderney) Law 1953 (see under “Home”). Policy states that corporal punishment should not be used in care institutions and foster care but there is no prohibition in law. In reporting to the Committee Against Torture in 2013, the Government stated that consideration had been given to enacting legislation to explicitly prohibit corporal punishment in all alternative care settings and that this “remains under review”.⁴

Day care

There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children, where it is lawful under the common law right to impose “reasonable chastisement” and article 2(4) of the Child Protection (Alderney) Law 1953 (see under “Home”).

¹ [2014], CRC/C/GBR/5, Fifth state party report, annex, paras. 4 and 5

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 27 March 2013, Reply to list of issues, para. 43.15

Schools

There is no explicit prohibition of corporal punishment in schools, where it is lawful under the common law right to impose “reasonable chastisement” and article 2 of the Child Protection (Alderney) Law 1953 (see under “Home”). A Government Directive under the Education (Guernsey) Law 1970 reportedly prohibits corporal punishment in state schools⁵ but we have been unable to identify this and to ascertain whether it is law or policy/guidance.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in prisons. The Prison Administration (Guernsey) Ordinance 1959 authorised the infliction of corporal punishment (arts. 37, 38 and 39). This Ordinance was repealed by the Prison Administration (Guernsey) Ordinance 1998, which did not provide for corporal punishment. This Ordinance was subsequently repealed by the Prison (Guernsey) Ordinance 2013, which again does not make provision for corporal punishment. The Ordinance provides for regulations to be made concerning the punishment of disciplinary offences (art. 43) though it does not explicitly state that this must exclude corporal punishment. We have yet to confirm that corporal punishment is prohibited in other institutions accommodating children in conflict with the law.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. The Corporal Punishment (Guernsey) Law 1957 authorised the court to impose a sentence of whipping on male offenders aged 12-17, up to 12 strokes with a birch rod. This Law was repealed by article 11 of the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law 2006. There is no provision for judicial corporal punishment in the Children (Guernsey and Alderney) Law 2008, the Children and Young Persons (Guernsey) Law 1967, the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law 2008 or the Juvenile Court (Guernsey) Law 1989. The Human Rights (Bailiwick of Guernsey) Law 2000 incorporates the European Convention on Human Rights into domestic legislation, including the prohibition of torture or inhuman or degrading treatment or punishment (art. 3).

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:⁶

“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)”

⁵ 27 March 2013, Reply to list of issues, 43.13

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

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.⁷ 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”.⁸

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:⁹

“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.¹⁰

The UK’s third cycle examination took place in 2017 (session 27). The following recommendations were made:¹¹

“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

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

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

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

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

¹¹ 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)

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.”¹²

Recommendations by human rights treaty bodies

Note: According to the UK’s 2014 Common Core Document¹³, the following treaties apply in the Guernsey: the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the UN Convention against Torture. The European Social Charter does not apply.

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.

¹² 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

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418207/human-rights-common-core-document.pdf, accessed 19 June 2017

“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.