

Corporal punishment of children in Ireland

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Child population 1,187,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.

Prohibition of corporal punishment

Home

Corporal punishment is prohibited in the home, following law reform in 2015. The Children Act 1908 had confirmed the common law defence of “reasonable chastisement” in article 37: “Nothing in this Part of this Act [on prevention of cruelty to children] shall be construed to take away or affect 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 such child or young person.” The 1908 Act was repealed by the Children Act 2001, which did not include the right to administer punishment but did not explicitly repeal it: the defence of “reasonable chastisement” remained in common law. In 2015, the common law defence of “reasonable chastisement” was explicitly repealed by way of an amendment to the Offences Against the Person (Non Fatal) Act 1997 by the Children First Act 2015 to insert into the 1997 Act a new article 24A: “(1) The common law defence of reasonable chastisement is abolished...” The Children First Act 2015 was passed by the Irish parliament on 11 November 2015 and came into effect on 11 December 2015.

The achievement of prohibition came after more than a decade of mounting human rights pressure on Ireland to repeal the “reasonable chastisement” defence and give children equal protection from assault. While the Government had stated in the early 2000s a long term commitment to prohibition, it had given no indication of timing. Recommendations to prohibit corporal punishment were repeatedly made by UN and European treaty bodies (see below) but law reform was not forthcoming.

In 2003, a complaint was brought against Ireland by the World Organisation Against Torture under the Collective Complaints procedure of the European Social Charter, following which the European Committee of Social Rights concluded that Ireland was in violation of article 17 of the Revised Charter because corporal punishment of children within the home was permitted by the common law defence of reasonable chastisement, which was also applicable in foster care, residential care and certain childminding settings.¹ By 2011, corporal punishment had still not been prohibited and in

¹ Resolution ResChS(2005)9, Collective complaint No. 18/2003 by the World Organisation against Torture (OMCT) against Ireland, adopted by the Council of Ministers on 8 June 2005

response to the recommendations to prohibit it made during the Universal Periodic Review of Ireland that year, the Government stated that the matter was under continuous review.² This position was reiterated by the Government to the Human Rights Committee in 2014.³

In February 2013, a second collective complaint on the issue – submitted by the Association for the Protection of All Children (APPROACH) Ltd – was registered by the European Committee of Social Rights. The complaint alleged that the existence of the Irish common law of “reasonable chastisement” allowed parents and some other adults to assault children with impunity, and that Ireland had taken no effective action to remedy the violation of article 17 in this respect that was found by the Committee in the previous complaint in 2003.⁴ The complaint was declared admissible on 2 July 2013; the Committee published its decision in May 2015. The Committee concluded that the law in Ireland did not prohibit all corporal punishment of children in the family and in all forms of care and that the common law defence of “reasonable chastisement” continued to exist; this situation was in violation of article 17 of the Charter.⁵ Following publication of the decision in May 2015, Minister for Children James Reilly reported that the “reasonable chastisement” defence would be reviewed.⁶ Abolition of the defence was achieved shortly afterwards.

Alternative care settings

Corporal punishment is prohibited in all alternative care settings by virtue of the repeal of the common law defence of “reasonable chastisement” in 2015.

Prior to the 2015 reform, corporal punishment was prohibited in some but not all forms of alternative care. The Child Care (Special Care) Regulations 2004 regulate Special Care Units which provide secure residential care for a small number of non-offending children in need of special care or protection, and prohibit “corporal punishment or any form of physical violence”. The National Standards for Foster Care 2003 state that corporal punishment should not be used; Health Boards recommend the avoidance of corporal punishment in residential services in favour of “reasonable and humane sanctions”, and the National Standards for Children’s Residential Centres state that young people should not be subjected to humiliating or degrading treatment. Following the publication of the conclusions of the European Committee of Social Rights in May 2015 that Ireland was in breach of the European Social Charter, Minister for Children James Reilly announced that regulations were being drafted to explicitly prohibit corporal punishment in foster care and state care.⁷ In September 2015, the Minister reported that work on these regulations was almost complete.⁸

Day care

Corporal punishment is unlawful in all day care since the repeal of the common law defence of “reasonable chastisement” in 2015. It is explicitly prohibited in pre-school establishments in

² 6 March 2012, A/HRC/19/9/Add.1, Report of the working group: Addendum, paras. 53 and 54

³ 5 May 2014, CCPR/C/IRL/Q/4/Add.1, Reply to list of issues, para. 97

⁴ Collective complaint No. 93/2013, *Association for the Protection of All Children (APPROACH) Ltd v Ireland*

⁵ Collective Complaint No. 93/2013, *Association for the Protection of All Children (Approach) v Ireland*, Decision on the Merits, Adoption 2 December 2014, Notification 26 January 2015, Publication 27 May 2015

⁶ <http://www.rte.ie/news/2015/0527/704082-smacking-law/>, accessed 30 May 2015

⁷ <http://www.rte.ie/news/2015/0527/704082-smacking-law/>, accessed 27 October 2015

⁸ Seanad debate, 23 September 2015, Children First Bill 2015 : Committee Stage,

<https://www.kildarestreet.com/sendebates/?id=2015-09-23a.349#g385%20>, accessed 27 October 2015

Regulation 8 of the Child Care (Pre-School Services) Regulations 1996, under section 58 of the Child Care Act 1991 applicable to carers except for childminders caring for children of relatives, children of the same family or not more than three children of different families were exempt from these regulations.

Schools

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

Penal institutions

Corporal punishment is prohibited as a disciplinary measure in penal institutions. Article 12(2) of the Criminal Law Act 1997 states: "Corporal punishment shall not be inflicted in any place to which the Prisons Acts, 1826 to 1980, or section 13 of the Criminal Justice Act, 1960, apply." Article 201 of the Children Act 2001, as amended in 2007, prohibits corporal punishment in children detention schools: "(1) Any child who breaches the rules of a children detention school may be disciplined on the instructions of the Director of the school in a way that is both reasonable and within the prescribed limits. (2) Without prejudice to the power of the Minister to prescribe limits for the disciplining of children detained in children detention schools, the following forms of discipline shall be prohibited – (a) corporal punishment or any other form of physical violence, (b) deprivation of food or drink, (c) treatment that could reasonably be expected to be detrimental to physical, psychological or emotional wellbeing, or (d) treatment that is cruel, inhuman or degrading." There is no provision for corporal punishment in the Prisons Act 2007 and Prison Rules 2007.

Sentence for crime

Corporal punishment is prohibited as a sentence for crime in article 12(1) of the Criminal Law Act 1997: "No person shall be sentenced by a court to whipping, and so far as any enactment confers power on a court to pass a sentence of whipping it shall cease to have effect."

Universal Periodic Review of Ireland's human rights record

Ireland was examined in the first cycle of the Universal Periodic Review in 2011 (session 12). The following recommendations were made:⁹

"Explicitly prohibit any form of corporal punishment in the family and continue developing awareness-raising campaigns and education for parents and for the public in general (Uruguay);

"Promote forms of discrimination [*sic*] and non-violent discipline as an alternative to corporal punishment, taking into consideration general comment No. 8 (2006) of the Committee on

⁹ 21 December 2011, A/HRC/19/9, Report of the working group, paras. 107(41) and 107(42)

the Rights of the Child on the protection of children from corporal punishment and other cruel or degrading forms of punishment (Uruguay)”

The Government partially accepted the recommendations to prohibit all corporal punishment of children, stating: “This matter is under continuous review. A proposal to either prohibit the defence of reasonable chastisement or to further circumscribe the definitions of what constitutes reasonable chastisement would require careful consideration. Details of any possible future significant developments in this area will be communicated to the UN CRC.”¹⁰ During the later plenary and formal adoption of the Report of the Working Group, Uruguay noted the Government’s partial acceptance of its recommendation and encouraged Ireland “to make progress in ensuring the legal prohibition of all forms of corporal punishment against children”.¹¹

Ireland was examined in the second cycle of the Universal Periodic Review in 2016 (session 25). It was noted that since its previous examination, Ireland had introduced child protection legislation, and that “The defence of reasonable chastisement in relation to corporal punishment had been abolished.”¹² The following recommendation was made and supported by the Government:¹³

“Put an end to corporal punishment in all settings (Honduras)”

Examination in the third cycle is scheduled for 2021.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(29 January 2016, CRC/C/IRL/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, para. 4)

“The Committee notes with appreciation the adoption of the following legislative measures: ...

b) the Children First Act 2015: to improve child protection measures....”

Committee on the Rights of the Child

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

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

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

a) explicitly prohibit all forms of corporal punishment in the family;

b) sensitize and educate parents and the general public about the unacceptability of corporal punishment;

¹⁰ 6 March 2012, A/HRC/19/9/Add.1, Report of the working group: Addendum, para. 53

¹¹ 16 August 2012, A/HRC/19/2 Advance Unedited Version, Draft Report of the Human Rights Council on its nineteenth session, para. 557

¹² 18 July 2016, A/HRC/33/17, Report of the working group, para. 83

¹³ 18 July 2016, A/HRC/33/17, Report of the working group, para. 136(86)

- c) promote positive, non-violent forms of discipline as an alternative to corporal punishment; and
- d) take into account the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment."

Committee on the Rights of the Child

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

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

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

Committee Against Torture

([August 2017], CAT/C/IRL/CO/2, Concluding observations on second report, Advance unedited version, para. 4)

"The Committee also welcomes the following measures taken by the State party since the examination of the previous report: ... (i) ... the adoption of the Children First Act 2015, which removed the defence of "reasonable chastisement" from the laws regarding assaults on children"

Committee Against Torture

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

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

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

Committee on Economic, Social and Cultural Rights

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

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

Human Rights Committee

([July 2014], CCPR/C/IRL/CO/4 Advance Unedited Version, Concluding observations on fourth report, para. 14)

“The Committee is concerned at the lack of legal prohibition of corporal punishment in all settings, and that the common law defence of reasonable and moderate chastisement remains part of its domestic legislation (arts.7 and 24).

The State party should take appropriate steps, including the adoption of suitable legislation, to put an end to corporal punishment in all settings. 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

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

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

European Committee of Social Rights

(January 2012, Conclusions 2011)

“In its previous conclusion the Committee noted that by the common law immunity parents and other persons *in loco parentis* could use reasonable and moderate chastisement in the correction of their children. It asked whether the Government intended to remove this immunity and prohibit all forms of corporal punishment of children.

“In this connection it notes from the report that a prohibition in legislation of corporal punishment within the family has not been brought forward to date. It is the Government’s view that there is a balance to be found in trying to dissuade parents from using physical chastisement, supporting them in effective parenting versus criminalising parents who smack their children.

“The Committee notes from the report of the Commissioner that while corporal punishment in Ireland is prohibited for children in detention and schools as well as all places where a child is in public care, and violence against children is prohibited under the Children Act 2001, parents can still use chastisement under common law. The Committee notes from another source that corporal punishment is lawful in the home. The common law right to use ‘reasonable and moderate chastisement’ in disciplining children was confirmed in Section 37 of the Children Act (1908). The Children Act (2001) repealed Section 37, but removal of the common law defence requires an explicit provision in addition to this repeal. The Government has given a long term commitment to prohibition, but has given no indication of timing.

“In its decision in complaint World Organisation against Torture (OMCT) v. Ireland Complaint No 18/2003, decision on the merits of 7 December 2004 the Committee observed that the corporal punishment of children within the home was permitted in Ireland by virtue of the existence of the common law defence of reasonable chastisement. Although the criminal law protected children from very serious violence within the home, it remained the fact that certain forms of violence are permitted. The Committee therefore held that the situation was in violation of Article 17 of the Charter.

“The Committee considers that the situation has not been remedied. Therefore it reiterates its finding of non-conformity on the ground that corporal punishment is not explicitly prohibited in the home.

“The Committee concludes that the situation in Ireland is not in conformity with Article 17§1 of the Charter on the grounds that: ...

- corporal punishment of children is not explicitly prohibited in the home.”

European Committee of Social Rights

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

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

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

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

Prevalence/attitudinal research in the last ten years

In a 2013 study that involved a nationally representative sample of 1,008 adults including 655 parents, 62% of respondents believed it was illegal to slap a child in Ireland and 57% said they would support a complete ban on slapping in Ireland. Forty-one per cent of all respondents and 62% of parents said they had slapped a child to “discipline” them; 30% of all respondents and 45% of parents said they had done so “rarely”, and 7% of all respondents and 11% of parents said they had done so “sometimes”. Nearly three quarters (73%) of respondents thought slapping was not an effective way to discipline a child.

(McCarthy, D. (2013), *Attitudes to Child Discipline*, Dublin: ISPC)

A study of 9,739 three year olds found that 45% of their primary caregivers “smacked” them sometimes.

(Williams, J. et al (2013), *Growing Up in Ireland: Development from Birth to Three Years – Infant Cohort*, Department of Children and Youth Affairs)

A 2012 survey of nearly 800 adults in Ireland found that 49% thought it was acceptable to slap a child under some circumstances, and 49% said they had done so.

(Reported in IrishCentral, 31 July 2012)

A government-commissioned survey involving 1353 adults aged 21-69, all parents of children under 18, found that only 34% believed “smacking” should remain legal, 42% believed it should become illegal; 24% thought “smacking” should be illegal for children of certain ages. More than two thirds (64.5%) of parents agreed that “smacking is not necessary to bring up a well-behaved child”; 30% agreed that “smacking is wrong and should never be used”; 43% agreed that smacking can damage the relationship between parents and children. The majority (80%) reported feeling guilty or sorry after the last time they had smacked their child; only 5.5% said they felt “better” after smacking. Three quarters of the parents who took part in the survey indicated that they had not used any physical punishment in the past year. Non-aggressive discipline strategies were used much more

frequently than physically or psychologically aggressive strategies. “Discussing the issue calmly” was the most frequently adopted strategy; 80% did this often, and 99% had done it at some point during the past year. However, a quarter had used some form of physical punishment in the past year: 15.8% reported that they had smacked their child on the bottom at some point, with 7.4% having done so “often” or “occasionally”; 7.3% had shaken, grabbed or pushed their child, 2.7% often or occasionally. Parents of younger children were significantly more likely to report using physical punishment than parents of older children, with 37% of parents of 2-4 year olds sometimes using physical punishment.

(Halpenny, A. M. et al (2010), *Parenting Styles and Discipline: Parents’ Perspectives on Parenting Styles and Disciplining Children*. Dublin: The Stationery Office/Office of the Minister for Children and Youth Affairs, available at omc.gov.ie/documents/publications/Parents_Perspectives_on_parenting_styles.pdf)

In a study involving 8,570 children aged 9 and their families and teachers, carried out in 2007-2008, 11% of mothers said they “smacked” their children “now and again”, 32% “rarely” and 57% never; 38% of girls and 39% of boys said they were “sometimes” smacked by their mother, and 31% of girls and 37% of boys said they were sometimes smacked by their father. Four per cent of boys and 3% of girls said they were “always” smacked by their mother and 6% of boys and 4% of girls always by their father.

(Williams, J. et al (2009), *Growing Up in Ireland: National Longitudinal Study of Children – The Lives of 9-Year-Olds*, Dublin: Office of the Minister for Children and Youth Affairs, Department of Health and Children)

In an online poll of 826 people, 67% of parents admitted smacking their children. Most said they do it rarely, but 4% said they do so regularly. A third said they never smack their children. When asked how they would advise their children to deal with violence from another child, one in five said they would tell them to hit back.

(Reported in *Newstalk*, 4 March 2010)

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

(Commission to Inquire into Child Abuse (2009), *Commission Report*, www.childabusecommission.com/rpt)