

Corporal punishment of children in Isle Of Man

LAST UPDATED July 2020

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Child population 16,214 (Government of the Isle of Man, 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 and day care.

The right of parents to administer “reasonable chastisement” is recognised under English common law and in article 1 of the Children and Young Persons Act 1966. This defence should be repealed, together with any confirmations of this right in written legislation, and prohibition should be enacted of all corporal punishment by all persons with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 all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day care, after-school childcare, childminding, etc).

Note: The Isle of Man 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 UK Government is responsible for the Isle of Man's defence and international relations. The British Crown, acting through the Privy Council, is ultimately responsible for the good government of the Isle of Man.¹

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home, where parents may exercise "reasonable chastisement" under English common law. This is confirmed in the Children and Young Persons Act 1966: article 1 punishes cruelty to persons under 16 but also states: "(7) Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person having the lawful control or charge of a child or young person to administer punishment to him." Provisions against violence and abuse in the Children and Young Persons Act 2001 and in criminal law are not interpreted as prohibiting corporal punishment in childrearing.

The UK's state party report to the Committee on the Rights of the Child in 2014 states that in the Isle of Man there are currently "no plans to reconsider the position in relation to corporal punishment by parents or legal guardians in the home".² The UK Government states in the report 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".³ A similar statement was made to the Human Rights Committee in 2015.⁴ The UK Government has on three occasions rejected recommendations to prohibit all corporal punishment of children made during the Universal Periodic Review of the UK (see below).

Alternative care settings

Corporal punishment is prohibited in some but not all forms of care. Under article 53 of the Children and Young Persons Act 2001 – which applies to children's homes, fostering, childminding and day care – the Department may make regulations to provide "for the control and discipline" in children's homes but it does not specify that these should exclude corporal punishment and is silent on the issue with respect to other forms of care. The Children's Home Regulations 2002 under the Act state in article 13: "... the following measures shall not be used on a child accommodated in a children's home – (a) any form of corporal punishment..."

The Regulation of Care Act 2013, which includes provisions including registration requirements aimed at protecting children in children's homes, residential family centres, foster care, voluntary adoptions schemes and health-related settings does not prohibit corporal punishment. However, it states in article 9 that all registered persons "must ensure that the care service meets all minimum standards applicable to the care service". The Fostering Services Minimum Standards state that it must be made clear to the foster carer(s) "that corporal punishment is not acceptable and that this includes smacking, shaking and all other humiliating forms of treatment or punishment" (standard 9.4).

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

³ *ibid.*, para. 11

⁴ [n.d.], CCPR/C/GBR/Q/7/Add.1, Advance Unedited Version, Reply to list of issues, para. 161

Day care

Corporal punishment is possibly unlawful in preschools under the Education (Miscellaneous Provisions) Act 2009 (unconfirmed) (see under “Schools”) but it is not prohibited in other early childhood care and in day care for older children. Under article 53 of the Children and Young Persons Act 2001 – which applies to children’s homes, fostering, childminding and day care – the Department may make regulations to provide “for the control and discipline” in children’s homes but it does not specify that these should exclude corporal punishment and is silent on the issue with respect to other forms of care.

The Regulation of Care Act 2013, which includes provisions including registration requirements aimed at protecting children in day care centres and childminding settings does not prohibit corporal punishment. However, it states in article 9 that all registered persons “must ensure that the care service meets all minimum standards applicable to the care service”. Minimum standards state that physical punishment must not be used in day care centres (Child Day Care Centres Minimum Standards 2014, standard 11.4) and childminding (Childminding Minimum Standards 2014, standard 9.2).

Schools

Corporal punishment is prohibited in state schools in article 10 of the Education Act 2001: “School discipline. The articles of government of a provided school or maintained school ... (b) shall specify the penalties (which shall not include corporal punishment) which may be imposed on a pupil for any misbehaviour...” The Education Act was subsequently amended by the Education (Miscellaneous Provisions) Act 2009 with the insertion of a new article 53A which extends the prohibition to all schools, including private schools: “(1) Corporal punishment given by, or on the authority of, a teacher to a minor — (a) for whom education is provided at any school, or (b) for whom education is provided, otherwise than at school, under any arrangements made by the Department, cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the teacher by virtue of his or her position as such. (2) Subsection (1) applies to corporal punishment so given to a minor at any time, whether at the school or other place at which education is provided for the minor or elsewhere. (3) For the purposes of this section — (a) any reference to giving corporal punishment to a minor is to doing anything for the purpose of punishing that minor (whether or not there are other reasons for doing it) which, apart from any justification, would constitute battery; but (b) corporal punishment shall not be taken to be given to a minor by virtue of anything done for the purpose of preventing personal injury to, or damage to the property of, any person (including the minor himself or herself). (4) In this section ‘teacher’, in relation to a minor, means a teacher who works at the school or other place at which education is provided for the minor, and includes any person who works or otherwise provides services there (whether or not for payment) and has lawful control or charge of the minor.”

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. Article 16(1) of the Custody Act 1995, provides for the Department of Home Affairs to make rules (“custody rules”) “for the regulation and management of every institution”. Article 17(1) of the Act states: “Custody rules shall not ... (d) authorise corporal punishment to be inflicted in an institution.” Article 37 of the Secure Care Home Custody Rules 2002, pursuant to the Custody Act 1995, states: “(1) Order and discipline shall be maintained in the home, but with no more restriction than is required in the

interests of security and well-ordered community life. (2) In the control of detainees, care workers shall seek to influence them through their own example and leadership, and to enlist their willing cooperation.” Article 40 addresses the use of force: “(1) A care worker in dealing with a detainee shall not use force unnecessarily and, when the application of force to a detainee is necessary, no more force than is necessary shall be used....” Article 41(1) states that physical restraint may be used only to prevent the detainee from “(a) escaping from custody, (b) injuring himself or others, (c) damaging property, or (d) inciting another detainee to do anything specified in (a), (b) or (c)”.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. Provisions allowing the higher criminal courts to impose a sentence of corporal punishment on male offenders as young as 10 years of age were repealed in article 61 of the Criminal Justice Act 2001: “Abolition of whipping. (1) The power of the Court of General Gaol Delivery to sentence a person to be whipped is abolished. (2) The following enactments (which deal with the sentence of whipping) are repealed — (a) sections 14, 15 and 20 of the Criminal Justice Act 1963; and (b) section 31(8) of the Criminal Jurisdiction Act 1993.” There is no provision for judicial corporal punishment in the Administration of Justice Act 2008 or the Children and Young Persons Act 2001.

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:⁵

“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.⁶ 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”.⁷

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:⁸

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

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

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

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

“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.⁹

The UK’s third cycle examination took place in 2017 (session 27). The following recommendations were made:¹⁰

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

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

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

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

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

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

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

The Government rejected all seven recommendations, stating: “the UK does not condone any violence towards children and has clear laws to deal with it. The ‘reasonable chastisement’ defence in s.58 Children Act 2004 cannot be used when someone is charged with assault causing actual or grievous bodily harm, or with child cruelty. Parents should not be criminalised for giving a child a mild smack in order to control their behaviour. The Crown Dependencies currently follow a similar approach to the UK. The decision on whether to prohibit corporal punishment and in what settings in the Overseas Territories is a decision, ultimately, for Territory governments. The UK Government is keen to support those Territories who wish to move away from the use of corporal punishment and explore alternative measures, including the development of positive parenting strategies and effective behaviour management techniques.”¹¹

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

¹⁰ 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)

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

Recommendations by human rights treaty bodies

Note: According to the UK's 2014 Common Core Document¹², the following treaties apply in the Isle of Man: the European Convention on Human Rights, the European Social Charter, 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.

Committee on the Rights of the Child

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

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

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

Committee on the Rights of the Child

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

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

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

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

¹² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418207/human-rights-common-core-document.pdf, accessed 19 June 2017

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

Committee on the Rights of the Child

(16 October 2000, CRC/C/15/Add.135, Concluding observations on initial report, paras. 35 and 36)

"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."

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.”

European Committee of Social Rights

(March 2020, Conclusions 2019)

“In its previous conclusion (Conclusions XX-4, 2015) the Committee found that the situation was not in conformity with the Charter as not all forms of corporal punishment were explicitly prohibited in the home.

“According to the report there has been no change to the situation. The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of non-conformity on the ground that not all forms of corporal punishment of children are prohibited in the home.

“However the Committee notes that the report states that the Welsh Government has announced plans to remove the ‘reasonable chastisement’ defence. Legislation is intended between Sept 2018 and July 2019. If passed, this legislation will prohibit the physical punishment of children by parents and those acting in loco parentis within Wales.

“In Scotland, the Children (Equal Protection from Assault) (Scotland) Act 2019 was adopted by the Scottish Parliament in October 2019 (outside the reference period). This removes the common law defence of “reasonable chastisement”.

“The Committee asks to be kept informed of all developments in the situation.

...

“The Committee concludes that the situation in the United Kingdom is not in conformity with Article 17 of the 1961 Charter on the ground that: • not all forms of corporal punishment are prohibited in all settings; • the ages of criminal responsibility across the different entities of the UK are too low; • pain inducing restraint techniques are used in Young Offender Institutions.”

European Committee of Social Rights

(January 2012, Conclusions XIX-4 (2011))

“In its previous conclusion (Conclusions XVII-2) the Committee held that the situation in the United Kingdom was not in conformity with Article 17 of the Charter as corporal punishment was not prohibited in the home.

“The Committee notes from another source that despite the amendments to legislation in England, Wales, Scotland and Northern Ireland which restrict the application of the defense of ‘reasonable chastisement’, this defense has not been removed. The UN-CRC is concerned at the failure to explicitly prohibit all corporal punishment in the home and emphasises 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 on the Rights of the Child, since it would suggest that some forms of corporal punishment are acceptable.

“The Committee notes from the report of the Governmental Committee of the Social Charter to the Committee of Ministers (TS-G (2005) 24, § 230) that while domestic law provides a defence to an alleged crime of violence against a child if the person against whom the allegation is made is a parent administering physical punishment, this applies only if it is deemed to be ‘reasonable’ in manner. This defence, termed ‘reasonable punishment’, has been restricted by Section 58 of the Children Act 2004, to the least serious category of assault. The defence is not absolute, and may be accepted or rejected by a jury. Revised guidance to prosecutors by the Director of Public Prosecutions has clarified the kind of action that may be construed as an assault, and in effect, only a mild smack is likely to be excluded.

“The Committee further notes from another source that corporal punishment is lawful in the home. In England and Wales, section 58 of the Children Act (2004) provides for ‘reasonable punishment’ of children. In Northern Ireland, Article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order (2006) provides for ‘reasonable punishment’. In Scotland, ‘justifiable assault’ of children is lawful under section 51 of the Criminal Justice (Scotland) Act (2003), defining blows to the head, shaking and use of implements as unjustifiable. In rejecting the recommendations of the Universal Periodic Review, the Government stated 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.

“The Committee takes note of the Government's arguments against the conclusion of nonconformity. Firstly, the Government states that when Article 17 was accepted by the UK in 1961 it did not require the banning of all corporal punishment of children. Article 17 was revised in 1996 to expressly require that State prohibit all forms of violence against children but the UK did not ratify the later version. It is not clear whether a definition of violence that the Committee has applied to the later 1996 version of Article 17, which the UK did not ratify, is also now applied to the 1961 version.

“Secondly, according to the Government, the UK does not sanction violence that would be likely to affect the physical integrity, dignity, development or psychological well being of children. Therefore, the UK does not consider that it would be in breach of Article 17 even when the latter is interpreted as prohibiting corporal punishment. In the Government's view, punishment for which the defence of reasonable punishment is available in England and Wales and Northern Ireland does not constitute violence within the meaning of Article 17. The Government is pleased that research in English and Wales shows that fewer parents now choose to use physical punishment and that more parents use alternative approaches to discipline, and hope that trend continues. According to the report, since 2006 significant resources have been invested in helping parents to access behaviourally based parenting courses which have a proven record of helping parents to manage their children's behaviour more effectively and without resorting to physical punishment. The Committee also takes note of the amendments to the Crown Prosecution Service Charging Standard.

“As regards the Government's first argument, the Committee recalls that its interpretation of Article 17 of the Charter in 2001 (General Introduction to Conclusions XV-2) equally applies to all states having accepted either Article 17 of the 1961 Charter or Article 17§1 of the Revised Charter.

“As regards the Government's second argument, the Committee recalls that the Charter was envisaged as a human rights instrument to complement the European Convention on Human Rights. It is a living instrument dedicated to certain values which inspired it: dignity, autonomy, equality, solidarity and other generally recognised values (FIDH v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, § 27). It must be interpreted so as to give life and meaning to fundamental social rights (FIDH v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, § 29).

“In its General Observation to Conclusions XV-2, regarding Articles 17 and 7§10, the Committee held that it attached great importance to the protection of children against any form of violence, illtreatment or abuse, whether physical or mental. It stated in this General Observation that when interpreting the scope of Article 17 it was influenced by an emerging international consensus on the issue. As regards its reference to the UN Convention on the Rights of the Child, the Committee recalls that the treaty is one of the most ratified treaties, and has been ratified by all member states of the Council of Europe including the United Kingdom and therefore, it was entirely appropriate for it to have regard to it as well as the case law of the UN Committee on the Rights of the Child (Complaint No 18/2003, World Organisation against Torture (OMCT) v. Ireland, decision on the merits of 7 December 2004, §61).

“The Committee does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence. The Committee did not consider that there can be any educational value in corporal punishment of children that cannot be otherwise achieved. The Committee holds that to prohibit any form of corporal punishment of children, is an important measure for the education of the population in this respect in that it gives a clear message about what society considers to be acceptable. It is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable corporal punishment and what is not (General Introduction to Conclusions XV-2).

“The Committee further recalls (Complaint No 18/2003, World Organisation against Torture (OMCT) v. Ireland, decision on the merits of 7 December 2004, § 64) that its case law is to the effect that the prohibition of all the forms of violence must have a legislative basis. The sanctions available must be adequate, dissuasive and proportionate.

The Committee considers that in the instant case, although the criminal law will protect children from very serious violence in the home, it remains the fact that certain forms of violence, which fall under the definition of 'reasonable chastisement' are permitted. Therefore, the Committee holds that the situation is not in conformity with the Charter as not all forms of corporal punishment are explicitly prohibited in the home.

...

“The Committee concludes that the situation in United Kingdom is not in conformity with Article 17 of the Charter of 1961 on the grounds that:

- not all forms of corporal punishment are prohibited in the home....”

European Committee of Social Rights

(July 2005, Conclusions XVII-2)

“The Committee recalls that Article 17 of the Charter requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It furthermore considers that this prohibition must be combined with adequate sanctions in penal or civil law.

“The Committee notes that information from the report on the Regulations on Children’s Homes which do not allow corporal punishment as a disciplinary measure in children’s homes, in England, Wales and Scotland. It asks whether such a regulation exists for Northern Ireland.

“It notes from another source that legislation prohibiting corporal punishment in all forms of day care, including child minding, has not yet been put in place in England, Scotland or Northern Ireland. Since the precise situation is not clear, the Committee asks that the next report contain detailed information on the prohibition of corporal punishment in all child-care settings, including private ones.

“The Committee further notes from the same source that the abolition of corporal punishment in all schools in England, Wales and Scotland, has not yet been extended to cover all private schools in Northern Ireland. It asks that the next report provide more information on this.

“The Committee notes that corporal punishment within the family is not prohibited. It further notes from the abovementioned source that the defence of ‘reasonable chastisement’ still exists and the State has taken no significant action towards prohibiting all corporal punishment of children in the family. Therefore, it considers that since there is no prohibition in legislation of all corporal punishment in the home, the situation is not in conformity with Article 17 of the Charter.

...

“The Committee concludes that the situation in the United Kingdom is not in conformity with Article 17 of the Charter on the grounds that:

- corporal punishment in the home is not prohibited....”

European Committee of Social Rights

(1 January 2001, Conclusions XV-2 vol. 2, pages 612-617)

“As regards corporal punishment, the Committee notes that it was prohibited in private schools by the School Standards and Framework Act 1998, with the result that corporal punishment is now prohibited in all schools. The Committee wishes to be informed whether legislation prohibits corporal punishment in other institutions caring for children. It notes that not all forms of corporal punishment are prohibited within the family. The Committee refers to its general observations on Article 17 in the General introduction and decides to defer its conclusion on this point pending more information from the British Government on the situation and on its intentions in this regard. It also wishes to receive information on the situation in Northern Ireland and Scotland....

...

“Pending the information requested ... on corporal punishment, the Committee defers its conclusion.”

Prevalence/attitudinal research in the last ten years

None identified.