

Corporal punishment of children in Jersey

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Child population (0-19) 20,664
(Government of Jersey, 2011)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

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

Note: Jersey 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 Jersey.¹

Prohibition of corporal punishment

Home

Corporal punishment is prohibited in the home, under the Children and Education (Amendment) (Jersey) Law 2019. The 2019 Law repeals article 35(5) of the Children (Jersey) Law 2002 which previously recognised the right of “any parent, teacher or other person having the lawful control or charge of a child to administer punishment to the child”. This right of parents to administer “reasonable chastisement” was also recognised under English common law. The Law also replaces article 79 of the Children (Jersey) Law 2002 with a new article 79 entitled “Abolition of defence of reasonable corporal punishment” which states: “(1) Any defence of reasonable corporal punishment of a child under customary law is abolished. (2) Accordingly, corporal punishment of a child cannot be justified in any civil or criminal proceedings on the grounds that it constituted, for the purposes of any rule of customary law – (a) reasonable punishment; or (b) acceptable conduct. (3) In this Article, “corporal punishment” means, in relation to a child, administering a physical act on the person of a child for the purpose of punishing that child (whether or not there are other reasons for administering the act) which would constitute assault.”.

The Bill was brought forward by the Minister for Children and Housing following the January 2019 adoption by the States Assembly of a proposition (Proposition No. 144/2018) calling for Jersey to repeal the defence of “reasonable punishment”. The Minister for Children and Housing had at the time clearly expressed his support for the proposition, stating that “The UN Committee on the Rights of the Child (“UN Committee”) have made it clear that the United Nations Convention on the Rights of the Child (“UNCRC”) requires the prohibition in law, and elimination in practice, of all corporal

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

punishment in all settings, including the home. (...) If this Assembly chooses not to adopt P.144/2018, Jersey will continue to fall short of its international obligations in this regard.” The Government of Jersey is planning to conduct a public awareness campaign before the implementation of the ban, which will come into force in April 2020.

Alternative care settings

Corporal punishment is prohibited in all alternative care under the Children and Education (Amendment) (Jersey) Law 2019.

It is also prohibited in residential homes in article 9 of the Residential Homes (General Provisions) (Jersey) Order 1995: “(4) The person registered shall ensure that corporal punishment is not used as a sanction in relation to any child in the home.” It is prohibited in homes run by voluntary organisations in article 7 of the Children (Voluntary Homes) (Jersey) Order 2005: “(1) The voluntary organization shall ensure that only its approved disciplinary measures are used on the children. (2) ... the following measures shall not be used – (a) any form of corporal punishment....” It is prohibited in foster care in Regulation 14(6) of the Children (Placement) (Jersey) Regulations 2005, which lists the “matters and obligations to be covered in foster care agreements”, including “a prohibition on the foster parent administering corporal punishment to any child placed with the foster parent”.

Day care

Corporal punishment is prohibited in early childhood care and in day care for older children under the Children and Education (Amendment) (Jersey) Law 2019.

Schools

Corporal punishment is prohibited in schools under the Children and Education (Amendment) (Jersey) Law 2019, which also repealed the right of a teacher “to administer punishment” previously included in article 35 of the Children (Jersey) Law 2002.

Penal institutions

Corporal punishment is prohibited as a disciplinary measure in penal institutions under the Children and Education (Amendment) (Jersey) Law 2019.

Under the Prison (Jersey) Law 1957, the Minister may make rules for discipline and control of persons detained in prisons and other institutions (art. 29): there is no provision for corporal punishment in the Prison (Jersey) Rules 2007.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Justice (Jersey) Law 1957 or the Criminal Justice (Young Offenders) (Jersey) Law 1994. The Human Rights (Jersey) Law 2000 incorporates the European Convention on Human Rights into domestic law, 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:²

“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.³ 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”.⁴

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:⁵

“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.⁶

The UK's third cycle examination took place in 2017 (session 27). The following recommendations were made:⁷

“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);

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

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

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

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

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

⁷ 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)

“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.”⁸ As stated above, Jersey prohibited all corporal punishment of children in 2019.

Recommendations by human rights treaty bodies

Note: According to the UK’s 2014 Common Core Document⁹, the following treaties apply in Jersey: 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 and the UN Convention on the Rights of the Child. 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.”

⁸ 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

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418207/human-rights-common-core-document.pdf, accessed 19 June 2017

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:

- 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 Economic, Social and Cultural Rights

(12 June 2009, E/C.12/GBR/CO/5, Concluding observations on fourth/fifth report, para. 24)

“The Committee ... also remains concerned that corporal punishment of children in the home is not yet prohibited by law.

The Committee ... reiterates its recommendation that physical punishment of children in the home be prohibited by law.”

Committee on Economic, Social and Cultural Rights

(5 June 2002, E/C.12/1/Add.79, Concluding observations on fourth report, para. 36)

“Given the principle of the dignity of the individual, which provides the foundation for international human rights law (see paragraph 41 of the Committee’s General Comment No.13) and in the light of article 10.1 and 10.3 of the Covenant, the Committee recommends that the physical punishment of children in families be prohibited, in line with the recommendation of the Committee on the Rights of the Child (see paragraph 31 of the 1995 concluding observations of that Committee (CRC/C/15/Add.34)).”

Committee on Economic, Social and Cultural Rights

(4 December 1997, CESCR/E/C.12/1/Add.19, Concluding observations on third report, paras. 16 and 28)

“The Committee is alarmed by the fact that corporal punishment continues to be practised in schools which are privately financed, and at the statement by the delegation that the Government does not intend to eliminate this practice.

“The Committee recommends that the State party take appropriate measures to eliminate corporal punishment in those schools in which this practice is still permitted, i.e. privately financed schools.”

Committee Against Torture

(24 June 2013, CAT/C/GBR/CO/5, Concluding observations on fifth report, para. 29)

“The Committee takes note of amendments to legislation in England, Wales, Scotland and Northern Ireland, which limit the application of the defence of “reasonable punishment” (or “justifiable assault” in Scotland), but remains concerned that some forms of corporal punishment are still legally permissible in the home by parents and those in *loco parentis*. In addition, it is concerned that some forms of corporal punishment are lawful in the home, schools and alternative care settings in almost all overseas territories and Crown dependencies.

The Committee recommends that the State party prohibits corporal punishment of children in all settings in the Metropolitan territory, Crown dependencies and overseas territories, repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.”

Committee Against Torture

(17 November 1998, A/54/44, Concluding observations on third report, para. 74)

“Positive aspects:

d) the removal of corporal punishment as a penalty in several of the Dependent Territories.”

Committee Against Torture

(9 July 1996, A/51/44, Concluding observations on second report, para. 65)

“The Committee recommends that the Government of the United Kingdom take the following measures:

i) reconsidering corporal punishment with a view to determining if it should be abolished in those dependencies that still retain it.”

Committee Against Torture

(26 June 1993, A/48/44, Concluding observations on initial report, para. 283)

“... The territories appeared to be governed in accordance with the obligations on the Convention and the Committee congratulated the Government of the United Kingdom in this respect. The Committee was, however, interested in receiving more detail pertaining to cases of corporal punishment in the territories retaining it. The nature and incidence of such punishment, together with details of the crime and the characteristics of the offender, should be forwarded to the Committee when the information is gathered....”

Human Rights Committee

([July 2015], CCPR/C/GBR/CO/7 Advance Unedited Version, Concluding observations on seventh report, para. 20)

“The Committee remains concerned that corporal punishment is still not fully outlawed in the home and certain educational and alternative care facilities in the United Kingdom and in almost all British Crown Dependencies and Overseas Territories. It is further concerned about the lack of explicit prohibition of corporal punishment in the home and the existing legal defences of ‘reasonable punishment’ in England, Wales and Northern Ireland or ‘justifiable assault’ in Scotland (arts. 7 and 24).

The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings, including the home, throughout United Kingdom and all Crown Dependencies and Overseas Territories, and repeal all existing legal defences across the State party’s jurisdiction. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and conduct public information campaigns to raise awareness about its harmful effects.”

Human Rights Committee

(30 July 2008, CCPR/C/GBR/CO/6, Concluding observations on sixth report, para. 27)

“The Committee notes with concern that corporal punishment of children is not prohibited in schools in Bermuda, the British Virgin Islands, Gibraltar, Montserrat and the Crown Dependencies. (arts. 7 and 24)

The State party should expressly prohibit corporal punishment of children in all schools in all British Overseas Territories and Crown Dependencies.”

Human Rights Committee

(27 July 1995, CCPR/C/79/Add.55, Concluding observations on fourth report, para. 8)

“The Committee recommends that corporal punishment administered to privately funded pupils in independent schools be abolished.”

Prevalence/attitudinal research in the last ten years

None identified.