

Corporal punishment of children in St Helena, Ascension and Tristan da Cunha

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Child population [not available]



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 article 144(5) of the Welfare of Children Ordinance 2008 confirms “the right of any parent, teacher or other person having lawful control or charge of a child to administer reasonable punishment to him.” These defences should be repealed, and prohibition enacted of all corporal punishment, however light, by all persons with authority over children.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).

Note: St Helena, Ascension and Tristan da Cunha is a British Overseas Territory. As such, it has its own constitution and domestic laws and substantial responsibility for its internal affairs, including responsibility for the protection and promotion of human rights and a duty to ensure that local law complies with the relevant convention and court judgments and is non-discriminatory. The UK Government has responsibility for international relations, internal security, defence, good governance and the wellbeing of the people.¹ The islands are able to enact their own legislation but as at 2008 neither Ascension or Tristan da Cunha had done so in relation to children;² rather, the St Helena legislation applies throughout the Territory. The Constitution of St Helena, Ascension and Tristan da Cunha 2009 applies throughout the Territory with some exceptions (art. 1): the bill of rights is the same for all three. According to article 2 of the English Law (Application) Ordinance 2005 in St Helena, both English common law and Acts of Parliament in force in England at 2006 are applicable in St Helena.

Current legality of corporal punishment

Home

St Helena: Corporal punishment is lawful in the home. In reporting to the Committee Against Torture in 2013, the Government stated that corporal punishment is prohibited in the home.³ However, while article 144 of the Welfare of Children Ordinance 2008 punishes cruelty to children it also states: “(5) Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having lawful control or charge of a child to administer reasonable punishment to him.” Legal provisions against violence are not interpreted as prohibiting corporal punishment in childrearing.

Ascension Islands: As for St Helena.

Tristan da Cunha: As for St Helena. In its 2014 report to the Committee on the Rights of the Child, the Government stated that “there are no known reported cases of cruelty to children in Tristan da Cunha [but] corporal punishment remains the practical exception”. The report confirmed that parents may use corporal punishment “within the reasonable limits of chastisement”.⁴

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”.⁵ A similar statement was made to the Human Rights Committee in 2015.⁶ 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

St Helena: Corporal punishment is prohibited in children’s homes in the Welfare of Children Ordinance 2008, article 36 of which states: “No measure of control, restraint or discipline which is excessive, unreasonable or contrary to subregulation (5) shall be used at any time on children accommodated in a children’s home.... (5) ... the following shall not be used as disciplinary measures

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

² 25 February 2008, CRC/C/GBR/4/Add.1, paras. 48 and 92

³ 27 March 2013, Reply to list of issues, para. 43.36

⁴ [2014], CRC/C/GBR/5, Fifth state party report, annex

⁵ *ibid.*, para. 11

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

on children accommodated in a children's home— (a) any form of corporal punishment....” There is no explicit prohibition of corporal punishment in other alternative care settings, where it is lawful under article 144(5) of the Welfare of Children Ordinance (see under “Home”).

Ascension Island: As for St Helena.

Tristan da Cunha: As for St Helena.

Day care

St Helena: Corporal punishment is prohibited in preschool education in article 47 of the Education Ordinance 2008 (see under “Schools”). It is not explicitly prohibited in other early childhood care and in day care for older children, where it is lawful under article 144(5) of the Welfare of Children Ordinance (see under “Home”).

Ascension Island: As for St Helena.

Tristan da Cunha: As for St Helena.

Schools

St Helena: Corporal punishment is prohibited in schools, public and private, in the Education Ordinance 2008. Article 47 states: “(1) A member of staff of a school may use, in relation to any student at the school, such force as is reasonable in the circumstances for the purpose of preventing the student from doing (or continuing to do) any of the following: (a) committing any offence; (b) causing personal injury to, or damage to the property of, any person (including the student himself); or (c) engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its students, whether that behaviour occurs during a teaching session or otherwise: Provided that any such force shall where practically possible be exercised by a member of staff of the same sex as the student.... (3) Nothing in this section authorises anything being done in relation to a student which constitutes the giving of corporal punishment....” Article 49 states: “In the enforcement of discipline in public or private schools, degrading or injurious punishment (which includes corporal punishment) shall not be administered.”

Ascension Islands: As for St Helena.

Tristan da Cunha: As for St Helena.

Penal institutions

St Helena: Corporal punishment is unlawful as a disciplinary measure in penal institutions. Article 6(3) of the Gaols Ordinance 1960 (amended 1978) states: “The Governor in Council may make rules for the regulation and management of gaols, the maintenance of good order therein, the classification, treatment, employment, discipline and control of persons required to be detained therein, and the punishment of offences against such rules: Provided that any rules made under this section shall not contain provision for the infliction of corporal punishment.” Article 11 of the Constitution 2009 states: “(1) All persons deprived of their liberty ... shall have the right to be treated with humanity and with respect for the inherent dignity of the human person. (2) Every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status as such. (3) Every juvenile prisoner shall be treated in a manner appropriate to his or her age and legal status....”

Ascension Island: As for St Helena except that the relevant article of the Constitution is 128.

Tristan da Cunha: As for St Helena except that the relevant article of the Constitution is 193.

Sentence for crime

St Helena: Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Summary Offences Ordinance 1975, the Magistrates Court Ordinance 2011, the Criminal Procedure Ordinance 1976, the Criminal Damage Ordinance 1979. Article 7 of the Constitution 2009 states: “No person shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Ascension Island: As for St Helena except that the relevant article of the Constitution is 124.

Tristan da Cunha: As for St Helena except that the relevant article of the Constitution is 189.

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:⁷

“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.⁸ 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”.⁹

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:¹⁰

“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)”

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

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

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

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

The Government rejected the recommendations.¹¹

The UK's third cycle examination took place in 2017 (session 27). The following recommendations were made:¹²

“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.”¹³

Recommendations by human rights treaty bodies

Note: According to the UK's 2014 Common Core Document¹⁴, the following treaties apply in St Helena, Ascension and Tristan da Cunha: 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.

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

¹² 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)

¹³ 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

¹⁴ 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

(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:

- 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.