

CHILDREN (ABOLITION OF DEFENCE OF REASONABLE PUNISHMENT) (WALES) ACT 2020

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 - Abolition of common law defence of reasonable punishment

9. **Section 1(1)** of the Act abolishes the defence of reasonable punishment in relation to corporal punishment of a child taking place in Wales.
10. Abolition of the defence in accordance with section 1(1) will mean that any act of battery constituting corporal punishment of a child which takes place in Wales will be unable to be justified on the ground that it was reasonable punishment. This will be the case in respect of any civil or criminal proceedings in the jurisdiction of England and Wales.
11. Abolition of the defence also means that any act of assault which involves the apprehension by a child in Wales of the immediate infliction of corporal punishment will be incapable of being justified by reference to the defence. (An example might be a threat to smack a child). This is because the lawfulness of any assault involving corporal punishment depends on the availability of a defence of reasonable punishment.
12. “Corporal punishment” for the purposes of this section means any battery carried out as a punishment (the definition of the expression appears in subsection (4)).
13. In practice this might typically involve a smack given as a telling-off to a child (whether on the child’s bottom, legs or other part of the body). But the definition is not limited to smacking. A case where a parent shook a child, or poked a child in the chest or pulled their hair, as a punishment for perceived wrong-doing, for instance, will also be caught.
14. (There may be other, more ambiguous, instances where a particular physical intervention could amount to a battery carried out as a punishment. This kind of case is perhaps best illustrated by considering the differences between the use of force genuinely necessary to brush an unwilling child’s teeth for the purposes of maintaining good dental hygiene and aggressive tooth brushing intended to cause a child pain as a punishment for failing to co-operate.)
15. Abolition of the defence of reasonable punishment, without more, might leave open the possibility of a person attempting to defend the use of corporal punishment on the basis of its being generally acceptable in the course of ordinary life. For instance, a person might seek to argue that it is acceptable in the course of everyday life to smack a child, just as it is acceptable to brush a child’s teeth. The wording in subsection (3) has been included to avoid this possibility.

*These notes refer to the Children (Abolition of Defence of Reasonable Punishment)
(Wales) Act 2020 (c.3) which received Royal Assent on 20 March 2020*

16. (The current law prohibiting the use of corporal punishment in relation to pupils receiving education is set out in section 548 of the Education Act 1996. This position is not changed by the Act.)
17. Abolition of the defence is not intended to affect the existing law of battery and assault in relation to the use of force otherwise than as a punishment.
18. The common law acknowledges the necessity of certain physical interventions by adults in relation to children, in the exercise of parental authority. This permits the use of force in circumstances which involve physical interactions generally considered to be acceptable, and uncontroversial, in the ordinary course of everyday life.
19. This means that certain physical interventions by a parent in relation to a child are permissible even where, in the context of two adults, those interventions would not necessarily be permitted. The legality of these interventions does not derive from the existence of the defence of reasonable punishment as they are not intended to constitute corporal punishment.
20. Abolition of the defence of reasonable punishment in accordance with subsection (1) means that section 58 of the Children Act 2004 will no longer be relevant to battery or assault of a child which takes place in Wales.
21. (Section 58 limits the availability of the defence of reasonable punishment. By virtue of section 58 the defence cannot be used to justify an act of battery where the harm caused to a child constitutes or exceeds actual bodily harm (deemed to be harm which is more than transitory or trifling: harm which goes beyond temporary reddening of a child's skin), or where the battery amounts to an offence of child cruelty, under section 1 of the Children and Young Persons Act 1933.)
22. In consequence, subsection (5) makes minor amendments to section 58 to make it clear that it will apply in relation to things done in England only.