

# NEW CLAUSE TABLED TO THE CHILDREN & YOUNG PERSONS BILL TO ACHIEVE EQUAL PROTECTION FOR CHILDREN

TABLED BY Rt Hon Kevin Barron MP, Julie Morgan MP, John Bercow MP, Annette Brooke MP, Elfyn Llwyd MP, Dr Richard Taylor MP

## Abolition of corporal punishment of children

**(1) The common law rules permitting the use of force for the purpose of punishing a child are abolished.**

**(2) Section 58 (Reasonable Punishment) of the Children Act 2004 (c.31) is repealed.**

## EXPLANATORY NOTES

The purpose of this new clause is to remove the “reasonable punishment” defence to give children equal legal protection from assault.

Its aims are to:

- fulfil human rights obligations to children
- reduce violence against children
- improve the effectiveness of child protection
- provide a foundation for promotion of positive, non-violent discipline that works

Existing law (section 58 of the Children Act 2004) allows parents and some other carers to justify common assault as “reasonable punishment”. (Section 58 limited use of the defence so that it could not be used by those charged with more serious offences of violence – actual and grievous bodily harm, wounding and cruelty.)

The “reasonable punishment” defence (formerly “reasonable chastisement”) exists in common (case) law as well as statute. So sub-clause (1) of the New Clause makes clear that the common law no longer justifies any use of force for punishment and sub-clause (2) repeals section 58.

The new clause does not interfere in any way with normal parenting – with parents’ ability to use force for other purposes – to protect their children or other people or property, to prevent crime, etc. There are other common law defences for such actions by anyone and they remain entirely unaffected.

The effect of the new clause is to give children the same protection that adults have under the criminal law on assault – no more and no less. So even minor assaults on children will, technically, be a criminal offence. Minor assaults on adults do not get prosecuted, and the same will be true of minor assaults on children. Decisions on charging and prosecution are made by the Crown Prosecution Service and prosecutions only go ahead when judged to be in the public interest and in the best interest of the child victim. There is also the de minimis principle – that the law does not concern itself with trivial matters.

Organisations representing the key professional elements in the child protection system – including the NSPCC, the Association of Directors of Children’s Services and the Royal College of Paediatrics and Child Health – have issued a detailed statement supporting this reform as “the only safe, just and workable way forward”. They confirm that if the reform is accompanied by appropriate guidance, its implementation in children’s best interests can be assured; there will be no change to the “significant harm” threshold for formal investigation, and parents will not be prosecuted for “minor” assaults.