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EUROPEAN SOCIAL CHARTER

Addendum to the 30th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF THE UNITED KINGDOM

(Article 17 for the period 01/01/2003 – 31/12/2009)

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CYCLE XIX-4 (2011)

Response to the Conclusion of the European Committee of Social Rights on Article 17 of the European Social Charter.

Introduction

1. The UK Government has been asked to respond to the Conclusions of the Council of Europe Committee of Social Rights (ECSR) on the European Social Charter (ESC). The Conclusions were published in 2005. They raise concerns about the UK's compliance with Article 17 of the Charter with regard to its domestic law on the corporal punishment of children.

Summary

2. The ECSR claims the UK is not complying with Article 17 in its 1961 form because it has not prohibited all corporal punishment of children. The version of Article 17 that was ratified by the UK in 1961 did not require the banning of all corporal punishment of children. Article 17 was revised in 1996 to expressly require that States 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.

3. However, the UK Government's position is that it is not in breach of Article 17 in either form, as the law in the UK provides no defence for physical punishment that amounts to violence. It sets out the legal position on physical punishment by parents in England and Wales and indicates that there are similar legal restrictions on the use of physical punishment in Scotland and Northern Ireland.

4. The response also makes clear that the UK Government and the devolved administrations do not advocate the use of physical punishment and note that, during the period covered by this report (1 January 2005 - 31 December 2009) measures have been taken to educate parents in alternative approaches to discipline.

5. The UK Government supports human rights, does not tolerate violence against children and has taken steps to strengthen its child protection measures across a range of policy areas, as have the devolved administrations. Keeping children safe is a top priority

and the UK Government is absolutely clear that no child should be subjected to violence or abuse. It has tightened the law in a number of areas to give greater protection to children

Article 17

6. Article 17 as set out in the European Social Charter, a treaty adopted by the Council of Europe in 1961, requires States to ensure “the right of mothers and children to social and economic protection”.

7. In 1996 Article 17 was revised to expressly require all States to take all appropriate and necessary measures to protect children and young persons against violence. The Committee has since stated that “To comply with Article 17, states’ domestic law must prohibit all forms of violence against children, that is acts of behaviour likely to affect the physical integrity, dignity development or psychological well being of children.”¹

8. It is not clear whether the definition of violence that the Committee applies to the 1996 version of Article 17 is also applied to the 1961 version. The UK is of the view that it is in compliance with Article 17 in both its 1961 form and its 1996 form because it does not sanction any violence which would “affect the physical integrity, dignity, development or psychological well being of children”. The UK also notes that a member of the ECSR, Mr Lucien François, has repeatedly expressed a dissenting opinion to the effect that this interpretation is excessive

Conclusion of the ECSR concerning the UK’s compliance with Article 17

9. In its report on the United Kingdom in 2005 with respect to Article 17 of the Charter, the European Committee of Social Rights stated that Article 17 requires a prohibition in legislation against any form of violence against children ... in their home or elsewhere ... [and] that this prohibition must be combined with adequate sanctions in penal or civil law.²

10. The Committee noted that corporal punishment within the family is not prohibited. It

¹ World Organisation against Torture (OMCT) v Portugal, 34/2006 Decision on the Merits paragraph 19

² European Committee of Social Rights; Conclusions XVII-2, volume 2, United Kingdom, Article 17, page 835.

further noted that the defence of “reasonable chastisement” still exists. It considered that since there is no prohibition in the legislation of all corporal punishment in the home, the situation is not in conformity with Article 17 of the Charter.³ The Conclusion further requests “detailed information on the prohibition of corporal punishment in all child-care settings, including private ones”. The Committee also requests information on the position with regard to corporal punishment in private schools in Northern Ireland.

The UK’s compliance with Article 17

11. The UK does not accept that it is in breach of Article 17 of the ESC, on the basis that punishment for which the defence of reasonable punishment is available in England and Wales and Northern Ireland (and for which the equivalent defence of justifiable assault is available in Scotland) does not constitute violence within the meaning of Article 17. The UK Government explains this assertion further below and in the sections of this response describing domestic law in relation to physical punishment in different parts of the UK.

12. The UK does not sanction violence that would be “likely to affect the physical integrity, dignity development or psychological well being of children” and therefore the UK does not consider that it would be in breach of the 1996 version of Article 17.

13. The UK Government is pleased that research in England 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. It would not wish to criminalise parents for administering a mild smack which does not amount to violence meriting social protection as required by the 1961 version of Article 17 of the ESC.

Human rights and child protection

14. The UK Government would also draw the ECSR’s attention to the fact that the European Court of Human Rights has not condemned physical punishment per se. In the case of *A v UK*⁴, the European Court did not determine that all physical punishment of

³ European Committee of Social Rights; Conclusions XVII-2, page 836.

⁴ This was a case about a stepfather who had beaten a boy with a garden cane and was acquitted by a UK court of actual bodily harm in 1994. In 1998 the European Court of Human Rights found that the UK government was in breach of the ECHR because its law, allowing the ‘reasonable chastisement’ defence, failed to provide adequate protection.

children is contrary to Article 3 of the European Convention on Human Rights. Instead, it applied its usual test under Article 3: that is, before finding a violation of Article 3, it must be persuaded that the “minimum level of severity” has been attained.

15. The UK Government supports human rights, does not tolerate violence against children and has taken steps to strengthen its child protection measures across a range of policy areas, as have the devolved administrations. Keeping children safe is a top priority and the UK Government is absolutely clear that no child should be subjected to violence or abuse. It has tightened the law in a number of areas to give greater protection to children.

Parenting measures

16. The UK Government has invested significant resources since 2006 in helping parents to access behaviorally-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.

Corporal punishment in various settings outside the home

17. With regard to the concern in the Conclusion that corporal punishment has not been prohibited in all forms of daycare including childminding, the UK Government confirms that corporal punishment has been prohibited in nursery, childminding and local authority foster care settings in England Wales and Scotland and details are found for each country below. The position in Northern Ireland is set out in the section below on Northern Ireland.

18. For many years corporal punishment has been banned in both state and full-time independent schools. Details on the position in Northern Ireland are provided as requested in the section on Northern Ireland.

England and Wales

Government's position on Article 17

19. The Government believes that the law in England and Wales on corporal punishment is compliant with Article 17 for the reasons given above.

Legal position in England and Wales

20. In 2004 the law in England and Wales was amended⁵ so that parents (and those acting in loco parentis) who cause physical injury to their children can no longer use the "reasonable punishment" defence where they are charged with assaults occasioning cruelty, actual or grievous bodily harm. This means that the defence of "reasonable punishment" is only available to parents (or those acting in loco parentis) where the charge is one of common assault.

21. Linked to this amendment of the legislation, the Crown Prosecution Service amended its Charging Standard⁶ on offences against the person. The Charging Standard states that, although any injury that is more than transient or trifling can be classified as actual bodily harm, the appropriate charge will be common assault, contrary to section 39 of the Criminal Justice Act 1988, where injuries amount to no more than the following: grazes, scratches, abrasions, minor bruising, swelling, superficial cuts or a black eye (paragraph 13 of the Charging Standard).

22. The Charging Standard also indicates that there may be cases where the actual injuries suffered by a victim would normally amount to common assault, but due to the presence of serious aggravating features, they could more appropriately be charged as

⁵ Section 58 of the Children Act 2004 states that the defence of reasonable punishment cannot be used to any of the following charges:

- a. an offence under section 18 or 20 of the Offences against the Person Act 1861 (c.100) (wounding or causing grievous bodily harm);
- b. an offence under section 47 of that Act (assault occasioning actual bodily harm);
- c. an offence under section 1 of the Children and Young Persons Act 1933 (c.12) (cruelty to persons under 16).

⁶ Published by the Crown Prosecution Service: http://www.cps.gov.uk/legal/l_to_o/offences_against_the_person/

actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861. This includes circumstances where the assault was committed by an adult against a child, the injury is more than “transient and trifling” and “causes more than a reddening of the skin”. In practice, this means that the reasonable punishment defence should only be capable of being pleaded in relation to a mild smack that causes no more than a temporary reddening of the skin or some other form of assault where the injury is no more than “transient and trifling”.

23. It is also the case that even if a parent causes no actual injury to a child, some acts such as shaking a child, dragging a child by their hair, using a belt, cane, slipper or other implement may not be accepted by the courts as ‘reasonable punishment’.

Government’s position on the use of corporal punishment by parents

24. The Government is pleased that fewer parents now choose to use physical punishment and that more parents use alternative approaches to discipline, and it hopes that trend continues.

Discouraging corporal punishment through parenting measures

25. Between 2006 and the end of the period covered by this report (December 2009) the National Academy for Parenting Practitioners was set up to work with the workforce supporting parents to improve the quality and supply of parenting support. It had a clear mission to expand the use of evidence-based parenting programmes, which specifically addressed parental smacking within sessions focused on teaching and practising alternative approaches.⁷ The ‘Parent Know How’ (now Family Information Direct (FID)) programme was established to expand the availability of online and telephone advice for parents. FID services are provided by a range of specialist voluntary and charitable sector organisations. Up to 20% of the “calls” to some FID services are from parents seeking help with discipline and behaviour issues – they are provided with support to help them address these without smacking.

⁷ As cited in the UK response to the Commissioner for Human Rights of the Council of Europe October 2008

26. In conjunction with the Department the FID service providers produced a booklet, *Parenting in the Real World*, which discouraged smacking and provided important information about the law on smacking. 1.6 million copies were distributed free with a national newspaper in England in September 2009.

27. The present Government supports parents receiving advice and practical help to manage behaviour.

Corporal punishment in various settings outside the home

28. Detailed information on the prohibition of corporal punishment in **daycare including childcare** is set out on the following page:

Smacking bans by setting in England and Wales

Setting/person	Ban/effect	Legislation	Extent
Schools ⁸ ; education provided under arrangement by LEA; nursery provision by or arranged by LA	Corporal punishment given to a child by staff cannot be justified in any proceedings – i.e. teacher or any other worker who has lawful charge of a child cannot use reasonable punishment defence	s548 Education Act 1996	England and Wales (though definitions slightly different)

⁸ Section 92 of the Education and Skills Act 2008 refines the definition to comprise (i) schools (ii) independent schools and (iii) other institutions which provide education to one or more persons of compulsory schools age for at least 12.5 hours a week for at least 28 weeks if person is under the age of 12 or for at least 15 hours a week for at least 28 weeks if person is aged 12 or over. This refined definition is not yet in force.

Private nursery, childminders etc	<p>Registered early years providers must not use corporal punishment on a child and, so far as is reasonably practicable, must ensure that corporal punishment is not used on any such child by (a) any person who cares for, or is in regular contact with, children; or (b) any person living or working on the premises on which the early years provision is provided. Breach is an offence by the registered provider; HMCI takes proceedings though provider has opportunity to make representations.</p> <p>Same restriction applies to later years providers (age 5-8). Breach is an offence by the registered provider. [CPS prosecution]</p> <p>Same restriction also applies to childminders (early years and later years, include. 8+) who are voluntarily registered. HMCI takes breach into account (e.g. for deregistration; incentives to be registered are (i) reassurance to parents and (ii) can accept childcare vouchers)</p>	<p>Early Years Foundation Stage (Welfare Requirements) Regulations 2007</p> <p>Childcare (General Childcare Register) Regulations 2008</p>	England
Foster parent	Fostering service provider must take all reasonable steps to ensure that no form of corporal punishment is used on any child placed with a foster parent; foster care agreement must specify that foster parent is not to administer corporal punishment.	Reg, 13 and reg 28 and Schedule 5, of the Fostering Services Regulations 2002	England
Children's home	Corporal punishment is prohibited in children's homes	Regulation 17(5) Children's Homes Regulations 2001	England

Scotland

Compliance with Article 17

29. The Scottish Government does not agree with the conclusion the Committee came to (Mr François' comments excepted); that the UK is not conforming with Article 17 on the grounds that corporal punishment in the home is not prohibited.

Legal position

30. From 27 October 2003, in Scotland, it has been illegal under Section 51 of the Criminal Justice (Scotland) Act 2003, to punish children by shaking, hitting on the head, using a belt, cane, slipper, wooden spoon or other implement.

31. The legislation is not confined to banning the specific types of behaviour mentioned above. In addition, if a court were looking into the physical punishment which a child had received, it would consider:

- The child's age
- What was done to the child, for what reason and what the circumstances were
- The duration of the punishment and the frequency
- How it affected the child (physically and mentally)
- Other issues personal to the child, such as their gender and state of health

32. The legislation was informed by detailed consultation and research carried out with groups of parents across Scotland:

The Physical Punishment of Children in Scotland: A Consultation (Scottish Executive, 2000)

Disciplining Children: Research with Parents in Scotland (NFO System Three for Scottish Executive, 2002)

33. Previously, the law allowed parents the right of 'reasonable chastisement' in

disciplining their children. Parents were able to administer moderate physical punishment to their children without being liable for damages or a criminal conviction for assault.

34. The changes to legislation in 2003 clarified and brought the law up-to-date to protect children from harsh physical punishment, while reflecting the public attitude garnered from our extensive research that the public did not support smacking to be banned altogether. However, there was near total agreement for the more dangerous forms of physical punishment to be banned. The Scottish public and the Scottish Government do not want to criminalise parents who administer a mild smack.

Corporal punishment in various settings outside the home

35. In Scotland, corporal punishment is not allowed in schools, pre-schools or any school education provided or paid for by local authorities and may not be administered or permitted by providers of day care, child minding or a child care agency under section 16 of the Standards in Scotland's Schools Act 2000 and The Regulation of Care (Requirements as to Care Services) Scotland Regulations (Reg. 4(3))

Parenting measures to discourage physical punishment

36. The Scottish Government does not support the physical punishment of children and the Scottish Government is fully committed to supporting and educating parents about other forms of discipline.

37. In 2003, in tandem with the legislative changes, the Scottish Government produced a publication entitled *Children, Physical Punishment and the Law – A Guide for Parents in Scotland*. This publication was disseminated throughout Scotland. It explains the changes to the law on physical punishment and promotes alternative ways of disciplining children; these included suggesting methods for disciplining young and older children. The Scottish Government provides support to voluntary organisations such as Parentline who provide free, confidential, non judgmental support to parents who promote communication as the key to sorting out conflict and encourage parents to resolve conflict without shouting or resorting to violence.

Northern Ireland

Legal position

38. In September 2006, the law on physical punishment in Northern Ireland was changed in line with England and Wales, so that the defence of “reasonable chastisement” cannot be used by parents when charged with serious offences against their children. Likewise, the Charging Standards allow, in certain circumstances, for the charging of the more serious offence of actual bodily harm, in which case the defence of “reasonable punishment” will not be available.

Parenting measures

39. The change to the law was underpinned by the establishment of the Inter-Disciplinary Group on Positive Parenting (IDGPP), which was tasked with raising public awareness of the changes to the law and the benefits of positive parenting. The IDGPP, which is comprised of representatives from the voluntary sector and Government Departments within Northern Ireland, has produced booklets with the aim of providing support, advice and useful contacts for the parents or carers of young children and teenagers. The booklets have been widely distributed through schools, libraries, health centres and dental practices and the feedback has indicated that they are extremely well received by parents and professionals alike. DHSSPS has also issued a Safe Parenting Handbook, which contains advice for new and existing parents on a range of issues, including positive parenting.

40. Positive parenting is also a key aspect of Northern Ireland’s Family and Parenting Strategy and, as such, is being promoted through specific projects, which offer training and information to parents on alternatives to physical punishment and anger management and through funding to organisations which develop and run parenting programmes.

Corporal punishment in settings outside the home

41. By virtue of **Article 36 of the Education and Libraries (NI) Order 2003**, the use of corporal punishment is prohibited in any school or institute of further education or in respect

of any child for whom education is provided, other than at school, under any arrangements made by a board.

42. The Children's Homes Regulations (Northern Ireland) 2005, which were implemented in April 2005, prohibit corporal punishment as a disciplinary measure in children's homes.

43. In accordance with the Foster Placement (Children) Regulations (Northern Ireland) 1996, foster care agreements must include a prohibition on the use of corporal punishment.

44. In relation to day care (including childminding), all persons involved in this area are advised at the outset that corporal punishment is not allowed.