

Section 58 of Children Act 2004 Review (Consultation)

Consultation Response Form

The closing date for this consultation is: 10
August 2007

Your comments must reach us by that date.

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THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online or offline response facility available on the Department for Education and Skills e-consultation website (<http://www.dfes.gov.uk/consultations>).

The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by the Department. This does not necessarily mean that your response can be made available to the public as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. You may request confidentiality by ticking the box provided, but you should note that neither this, nor an automatically-generated e-mail confidentiality statement, will necessarily exclude the public right of access.

Please tick if you want us to keep your response confidential.

Name Debbie Ariyo
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London N1 3QP

If your enquiry is related to the policy content of the consultation you can contact the Section 58 team on:

Telephone: 0207 273 5673

e-mail: section58.consultation@dfes.gsi.gov.uk

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 01928 794888

Fax: 01928 794113

e-mail: consultation.unit@dfes.gsi.gov.uk

Please insert an 'x' into one of the following boxes which best describes you as a respondent.

<input type="checkbox"/> Parent	<input type="checkbox"/> Teacher	<input type="checkbox"/> School
<input type="checkbox"/> Local Authority	<input checked="" type="checkbox"/> Charity/Voluntary organisations	<input type="checkbox"/> Social Worker
<input type="checkbox"/> Police/Legal Professional	<input type="checkbox"/> Local Safeguarding Children's Board	<input type="checkbox"/> Medical/Healthcare Professional
<input checked="" type="checkbox"/> Other (please specify)		

Please Specify:

AFRUCA is a children's charity working nationally across the UK to promote the rights and welfare of African children. We are actively engaged within the African community, campaigning against key issues, including cultural and traditional practices, affecting the welfare of African children in the country.

1 To what extent has section 58 improved legal protection for children in cases of alleged assault by their parents?

Please explain your answer in detail and provide evidence for your view

Comments:

Our position at AFRUCA is that Section 58 has not improved protection for children, in particular, children in the Black and African community. We are also of the viewpoint that Section 58 could not improve protection to children, even with more guidance to practitioners and others involved.

Our viewpoint is predicated on the following:

1. Section 58 allows parents and others to justify common assault on children as reasonable punishment. In particular, we would like to highlight the vulnerability of children in the black and African community where the use of physical punishment as a culturally acceptable form of discipline is rampant and the risk this poses and has posed to child safeguarding and child protection.
2. Section 58 undermines protection of children in the broader sense. We do not think it is helpful or useful to separate out legal protection from overall protection. We believe the law should set standard and provide the foundation for other measures.
3. Our viewpoint at AFRUCA is that Section 58 dangerously encourages parents committed to physical punishment, or those with the intention of harming children, to use forms of it which although highly dangerous, do not leave marks on victims. In addition, the specific vulnerability of black and African children needs to be highlighted. This is simply because black skin pigmentation and tone does not easily show bruising and marks unless extreme force is applied. Section 58 therefore hampers protection for children of black and African origin.
4. We believe Section 58 appears to widen use of the “reasonable punishment” defence to anyone not specifically prohibited from using physical punishment, not just parents and other close carers. In this instance, it is important to highlight the vulnerability of children living away from home, in domestic servitude situation as well as in private fostering situations.
5. In this instance, we believe the only just, safe and common sense legal

solution is complete removal of the defence to fulfil children's right to proper and equal protection.

Our Evidence

AFRUCA's position on this issue has been informed by our work in the UK African community on promoting the welfare of children. In particular, it is important to draw from our work in the following areas:

1. The cultural practice of beating children is very prevalent among different African communities across the country. Because of this, there has been a steady increase in the number of African children ending up in temporary as well as permanent local authority care based on their terrible experiences of physical abuse at the hands of parents and/or carers. African children are most likely to end up in local authority care as a result of physical abuse than any other forms of abuse. Figures from different agencies – including the Metropolitan Police Service in London, for example, highlight the prevalence of this practice and the negative impact on children. In this sense, Section 58 has not helped to improve legal protection for children but has helped to foster and encourage the physical abuse of children in the African community to the detriment of children in those communities.
2. Our viewpoint is that Section 58 mistakenly assumes that parents will reasonably apply “reasonable punishment” when disciplining children. Our experience at AFRUCA points otherwise:
 - Children accused of demonic possession and witchcraft and subjected to undue physical abuse, including beatings with implements, shaking, putting pepper in the eyes, in private parts and other extreme forms of physical abuse which might not necessarily leave marks on the body. Section 58 hampers the provision of adequate legal protection for such victims because there is “little evidence” or not enough evidence to prosecute perpetrators – who might or might not be carers or parents of the child concerned.
 - Children trafficked into the UK to be used as domestic servants are at risk of extreme forms of abuse including emotional and mental abuse, extreme forms of physical abuse as well as sexual abuse. In many cases that we have worked on at AFRUCA, Victims of domestic servitude suffer a double whammy because there is often not enough evidence to demonstrate the impact of long term physical abuse on them. This again is linked to the failings of Section 58 which encourages “reasonable punishment”. Long term “reasonable punishment”, in our viewpoint will result in long term damage to victims without necessarily leaving telling marks and other evidence on the body.

2 To what extent have the changes brought about by section 58 altered the practice of those working with children and families in considering incidents involving an alleged assault by a parent upon a child?

Please explain your answer in detail and provide evidence for your view.

Comments:

Our viewpoint is that the context and content of Section 58 cannot and has not altered practice positively. This is based on the fact that Section 58 undermines child protection and the promotion of positive discipline since it re-affirms the rights of parents in our community to assault children. It gives undue protection to child exploiters and child abusers who will inflict pain and harm on children, as part of their abusive acts, and not as acts of discipline.

Evidence

See One above. Also:

Our experience is that many cases of child abuse and exploitation either by parents, carers and other third parties are ignored by practitioners because of a lack of adequate evidence. Such evidence is often based on the presence of bruises and marks on the child's body. Many African children have been failed by the system meant to protect them because of the colour of their skin which does not show marks of abuse. In this sense, Section 58 has not altered practice for the betterment of African children in the country who are at risk of physical abuse.

3 To what extent have the changes to the law deterred parents from using unacceptable levels of physical punishment in the upbringing of children?

Please explain your answer in detail and provide evidence for your view.

Comments:

Section 58 has not deterred parents from using unacceptable levels of physical punishment in the upbringing of their children. Our viewpoint is that Section 58 has encouraged a lot of parents in our community to use unacceptable levels of physical punishment – as long as no bruises and marks are left on the child's body.

Evidence:

See One above

All cases of child trafficking for domestic servitude we have come across in the course of our work involve gross physical abuse of victims. All 200 victims we have worked with since our inception in 2001, one way or another, highlight the physical torture they have experienced over a period of time. However, such abuse is difficult to detect because little or no marks are left on the bodies. This means that the "reasonable punishment" clause has given credence to the abusive acts of perpetrators to the detriment of the child victims

4 To what extent have the changes to the law stimulated local agencies to help parents in knowing how to establish effective boundaries for their children?

Please provide evidence for your view.

Comments:

Our viewpoint is that Section 58, by endorsing some arbitrary level of physical punishment, cannot help with the development of effective discipline. In actual fact, our position is that Section 58 does the opposite. The law's defence of violent punishment and reaffirmation of parents' rights to hit ties the hands of agencies and undermines positive discussions or promotion of positive discipline.

Evidence

See One, Two and Three above

5 In your experience have the changes to the law assisted those working with children and families to protect children and support parents?

Please explain in detail and provide evidence for your view.

Comments:

See one, two, three and four above

6 To what extent is the legal position on the physical punishment of children widely understood by those working with children and families?

Please explain your answer in detail and provide evidence for your view.

Comments:

We are of the viewpoint that Section 58 is not widely understood by most frontline workers working with children and families and as such has created much confusion among them to the detriment of vulnerable children.

We believe it undermines child protection and support for positive parenting by affirming parents' right to hit. Also, Section 58 cannot help with detailed guidance and public education. This is because it is extremely difficult to protect children and support children effectively in the context of an unjust and undermining legal framework

Evidence

As an organisation working in the African community, it is extremely difficult to conduct our campaigning work on the promotion of the rights of children and highlight the need to safeguard children, while also mentioning the position of the law regarding physical punishment. Section 58 defeats the whole purpose of promoting the rights of children because parents who know they can hit or beat their children continue to do so unabated

7 If your answer to question 6 above was that the legal position was not widely understood, please tell us what would be your preferred way of improving this situation?

Comments:

See Six above.

Our strict position on this is simply that the only solution is complete removal of defence to fulfil children's right to equal protection, thus sending simple and just message to parents that child abuse is child abuse and will not be tolerated.

8 Have the changes to the law had a differential effect on different groups of children and parents, including on the grounds of gender, race and disability, and if so, to what extent?

Please explain your answer in detail and provide evidence for your view.

Comments:

Section 58 has a discriminatory impact on children as a group, in contrast to any other population group as it denies them their basic human rights to equal protection under the law and equal respect for their human dignity and physical integrity.

Section 58 discriminates against children from black and African communities as we have indicated in different ways above:

The Commission for Racial Equality has stated that Section 58 uses bruising as an indication of unlawful assault. It therefore discriminates against children whose skin is not white.

There is little protection given children in various exploitative situations. Children trafficked into the UK for exploitative purposes are denied access to protection because their exploiters hide under the veneer of Section 58 to

perpetuate abuse

Children accused of witchcraft and demonic possession are discriminated against as they often fail to get the protection they need from various exorcism rites and other abusive practices because of the protection given parents and others by Section 58

9 What are the key pieces of evidence that should be considered as part of this Review?

Please provide details and/or links if appropriate.

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply X

Here at the Department for Education and Skills we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

X Yes	<input type="checkbox"/>	No
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All UK national public consultations are required to conform to the following standards:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Further information on the Code of Practice can be accessed through the Cabinet Office Website: <http://www.cabinetoffice.gov.uk/regulation/consultation-guidance/content/introduction/index.asp>

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 10 August 2007

Send by post to: Consultation Unit, Area 1A, Castle View House, East Lane, Runcorn, Cheshire WA7 2GJ

Send by e-mail to: section58.consultation@dfes.gsi.gov.uk