

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

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act which was passed by the National Assembly for Wales on 28 January 2020 and received Royal Assent on 20 March 2020. They have been prepared by the Department for Education and Public Services of the Welsh Government to assist the reader of the Act.
2. The Explanatory Notes should be read in conjunction with the Act but are not part of it. They are not meant to be a comprehensive description of the Act and where an individual section does not seem to require any explanation or comment, none is given.

SUMMARY OF THE ACT

3. The Act abolishes the defence of reasonable punishment in relation to corporal punishment of a child taking place in Wales; and makes provision in connection with the defence's abolition.

KEY CONCEPTS: ASSAULT AND BATTERY

4. In criminal law, assault and battery are forms of offence against the person. In civil law, assault and battery constitute a tort, or civil wrong: the tort of trespass against the person.
5. The expression "assault" is commonly used to describe acts involving the application of force against a person. But the concepts of "assault" and "battery" have different, specific meanings in the law of England and Wales.
6. A "battery" for these purposes means the intentional or reckless application of unlawful force to the body of another person. This would include an adult punching another adult, for example. But a battery may also include what might be considered more minor incidences of physical contact, such as a pat on the shoulder. Whether this would constitute a battery would depend on the circumstances of the case.
7. An "assault" occurs where one person causes another person to apprehend the immediate infliction of unlawful force (a face-to-face threat by an adult to punch another adult during a disagreement, for example).
8. The defence of reasonable punishment makes certain acts constituting battery or assault of a child *potentially* defensible in legal proceedings on the basis that the acts were reasonable – and therefore lawful.

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.
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.

Section 2 – Promoting public awareness of the coming into force of section 1

23. Section 2 of the Act places a duty on the Welsh Ministers to take steps to promote public awareness of the abolition of the defence of reasonable punishment. The duty will require steps to be taken during a two-year period, starting with the day after the day the Act receives Royal Assent. Once section 1 – which abolishes the defence – is in force, the duty in this section ceases to apply.
24. It will be for the Welsh Ministers to determine what steps to take for the purposes of this section; and different steps may be required in relation to different groups of people, to ensure effective communication with parents, children and the wider public.
25. The steps taken to raise public awareness are likely to include many different strands of activity; including advertising (for example on television, radio, the internet and through other digital media); and communication with professionals who work with parents and children to ensure they know about the change to the law.

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

Section 3 – Reporting requirements

26. Section 3 of the Act places a duty on the Welsh Ministers to prepare, publish and lay before the National Assembly for Wales two reports on the effect of the abolition of the defence. The reports will reflect on first a three and then a five-year period, starting with the day on which the defence is abolished (as set out in section 5).
27. Each report is likely to examine, among other things, any impact on public services; levels of awareness of the change to the law made by section 1; and any changes in public attitudes towards the physical punishment of children.
28. The reports are likely to draw on monitoring and evaluation activities carried out by the Welsh Government; for example, surveys carried out to assess attitudes towards the legislation, and levels of public awareness of the legislation.

Section 5 – Coming into force

29. This section deals with when the sections of this Act come into force. With the exception of section 1, the Act's provisions, including this section, will come into force on the day after the day the Act receives Royal Assent.
30. Section 1, which provides for the abolition of the defence, will come into force at the expiry of the period of two years, beginning with the day after the day on which the Act receives Royal Assent.

RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

31. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IIId=24674>

Stage	Date
Introduced	25 March 2019
Stage 1 – Debate	17 September 2019
Stage 2 Scrutiny Committee – consideration of amendments	24 October 2019
Stage 3 Plenary – consideration of amendments	21 January 2020
Stage 4 Approved by the Assembly	28 January 2020
Royal Assent	20 March 2020