Protecting Children, Supporting Parents

A Consultation Document on the Physical Punishment of Children

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ANNEXES

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PART 1: INTRODUCTION AND OVERVIEW

1.1 One of the most difficult skills for parents to exercise is to apply consistent and effective guidance to their children, to enable them to develop an understanding of what is acceptable and appropriate behaviour and grow up into responsible and social adults. On the one hand, applying appropriate discipline – in the sense of responding consistently to a child's behaviour, and setting clear boundaries – is part of bringing up children well. A failure to provide guidance and set boundaries is in itself a form of neglect that can be very damaging to a child. On the other hand, discipline that is harsh can be damaging to a child both physically and emotionally.

1.2 Parents use many methods to guide and discipline their children, including showing and explaining what is right or wrong; physically restraining a child from harming themselves or others; encouraging and rewarding what is felt to be good behaviour; and punishing what is felt to be bad or dangerous behaviour.

1.3 The law recognises that there may be occasions when moderate and reasonable physical punishment of a child by a parent may be appropriate. Currently, where a parent – or somebody acting on their behalf[1] – physically punishes a child and is charged with assault, they may raise a defence of 'reasonable chastisement'. If a Court agrees that the punishment does amount to reasonable chastisement, then the accused person cannot be convicted of the assault.

[1] Except in all schools, nursery education, children's homes and foster care (other than private fostering). Physical punishment is not permitted under the law in any of these settings.

1.4 The concept of 'reasonable chastisement' has its origins in Victorian times. A case taken to the European Court of Human Rights has exposed that the law needs modernising to make sure that children are protected from harsh physical punishment. The European Court ruled that, because of the way in which the defence of 'reasonable chastisement' was applied, UK law had failed to protect a boy from 'inhuman or degrading treatment' in the form of severe beatings, in contravention of the European Convention on Human Rights. As a result of this ruling, we are obliged to change UK law in a way which takes account of the Court's judgment.

1.5 The Government fully accepts the need for change. The harmful and degrading treatment of children can never be justified. We have made it quite clear, however, that we do *not* consider that the right way forward is to make unlawful all smacking and other forms of physical rebuke and this paper explicitly rules out this possibility. There is a common sense distinction to be made between the sort of mild physical rebuke which occurs in families and which most loving parents consider acceptable, and the beating of children. The law needs to be clarified to make sure that it properly reflects this common sense distinction.

1.6 The purpose of this consultation paper is to explore how we can modernise the law relating to the physical punishment of children, so that it better protects children from harm. The aim of the consultation is to address two specific issues. First, within the context of a modern family policy in a responsible society, where should we draw the line as to what physical punishment of children is acceptable within the family setting? Second, how do we achieve that position in law?

1.7 The paper sets the issue of physical punishment in the context of the Government's wider policy aims in support of families, and summarises current prevailing attitudes towards this issue. It outlines the existing law; explains in more detail why change is needed; sets out our proposed way forward and options for change; and invites your views.

1.8 Today's children will shape tomorrow's future society. As parents, family members, friends, neighbours and citizens, we all have an interest in making sure that children thrive, and are helped to grow up into healthy and socially responsible adults. We need to achieve a balance between the right of parents to exercise their parental responsibilities and bring up their children as they think best, without undue interference from Government, the responsibility of parents to bring their children up safely, and the right of children to be protected from harm. We would welcome your views.

1.9 This consultation paper covers England. The Secretary of State for Wales will, with the assistance of the Welsh Assembly, carry out a similar consultation in Wales. Northern Ireland will produce its own consultation document, adapted to suit the Northern Ireland context. In Scotland, this issue now falls within the legislative competence of the Scottish Parliament. The Scottish Executive will therefore carry out its own consultation for Scotland.

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PART 2: SUPPORTING PARENTS AND FAMILIES – THE GOVERNMENT'S POLICY

The Government's Approach

2.1 The success of families in bringing up children will shape the future not only of those individual children, but of our whole future society. However, being a parent, whatever the circumstances, can be hard work as well as tremendously rewarding. And today, many families feel under stress, often linked to family breakdown and social disadvantage.

2.2 This Government has recognised the importance of the family and its key influence on our society, and strengthening the family has been at the heart of much of our policy development. Our consultation document, *Supporting Families*, issued in November 1998, sets out a realistic programme of sensible and pragmatic measures aimed at strengthening the family, principally through support for families with children. The programme concentrates on five areas:

- Providing better Services and Support for Parents;
- Providing better Financial Support for Families;
- Helping Families Balance Work and Home
- Strengthening Marriage;
- Providing better Support for Serious Family Problems

2.3 Many parents have indicated that they would welcome practical advice and support to help them with the difficult job of parenting. We are therefore setting up:

- A new National Family and Parenting Institute to provide advice and information to Government, parents, and those working to help families at a local level;

- A new national parent helpline based on the existing *ParentLine* service, to provide a first point of contact and support for parents, enabling them to talk through the problems they face or to use it as a gateway to finding local support or specialist services.

2.4 Our approach throughout has been to avoid heavy-handed intrusion into family life, but rather to put in place policies which are supportive of families, to make available help and encouragement to parents in their often complex role and to help parents recognise that asking for help is all part of responsible parenting. This consultation paper continues within that approach.

Support to Parents: Guiding and Disciplining Children

2.5 Some parents have difficulty forming positive relationships and communicating with their children. Many parents experience difficulties at some stage in gaining their children's co-operation, setting boundaries, or maintaining effective authority.

2.6 The national parent helpline, and the work of the National Family and Parenting Institute will offer new sources of advice and support to parents who are looking for help with teaching their children to behave safely and responsibly. We are also encouraging the wider availability of help and advice through parenting education in schools, and other national and local advice and support groups. These groups will form an integral part of all Government initiatives to support families, including the Sure Start programme, which is aimed at improving the life chances of vulnerable children under the age of 4, in the most deprived areas.

2.7 Many parents would welcome support in learning effective methods of disciplining their children that do not involve physical punishment. A key element of the advice and support offered to parents will involve helping them to find methods of getting children to co-operate and behave in an acceptable and appropriate manner, using means other than physical punishment. This might include, for example, keeping the child in, sending the child to his or her room, or stopping the child doing something he or she likes (such as watching the television). This is likely to be the most satisfactory and desirable way of resolving most conflict situations, for both parents and children. Children need to be helped to develop their own sense of right and wrong, to guide them as to how to behave when their parents are not present.

2.8 There may still be occasions, however, when parents may consider it appropriate to discipline a child through physical punishment.

Social Attitudes towards physical punishment

2.9 In this sensitive area involving family life, we consider it very important that the law commands public acceptance. Social surveys monitoring public attitudes are one barometer of public mood. To help prepare for this consultation, the Government commissioned an opinion survey through the Office for National Statistics (ONS) Omnibus Survey 1998.

2.10 The results of this survey suggest that public opinion would very much defend the right of parents to use physical punishment: 88% of respondents were of the view that it was sometimes necessary to smack a naughty child, while only 8% disagreed. The survey indicated very little support, however, for the law allowing punishment that was harsh or potentially harmful to a child. Fewer than 1% of respondents thought punishment 'reasonable' if it left marks and bruises which lasted for more than a few days, and only 2% considered that the law should allow parents to smack a child on the head. There was also very little support for the law allowing the use of things like canes, sticks, belts or slippers to punish a naughty child, with only 4% supporting their use on children over 5 years old, rising to 7% supporting their use on children over 7 years old.

2.11 A summary of the survey findings is presented at Annex A.

Making Physical Punishment Unlawful

2.12 In eight European countries[2] there are explicit bans on physical punishment by parents and all other carers. A number of UK organisations representing children's rights and interests have argued that the most appropriate, and indeed the easiest, way to protect children from harm is to follow the example set in these countries. As a first step, they are proposing that the defence of reasonable chastisement should be removed, thereby putting children in broadly the same position as adults in respect of the law on assault. A second step would be to introduce a law (which need not have criminal sanctions attached) which would specifically ban physical punishment of children by their parents.

[2] Sweden, Finland, Denmark, Norway, Austria, Cyprus, Croatia, Latvia

2.13 These organisations argue that in cases of assault between adults, cases of a minor nature are not taken forward by the Crown Prosecution Service (CPS). So with children, they believe, the removal of the "reasonable chastisement" defence would not result in a light smack by a parent leading to prosecution. They argue that the possibility of prosecution and the existence of a law prohibiting the physical punishment of children, would not lead to an increase in cases of assault, but would signal the unacceptability of physical punishment, help to influence social attitudes, and encourage the use of alternatives to physical punishment.

2.14 The Government's view is that it would be quite unacceptable to outlaw all physical punishment of a child by a parent. Nor, we believe, would the majority of parents support such a measure. It would be intrusive and incompatible with our aim of helping and encouraging parents in their role. There could clearly be no guarantee that there would not be charges of assault brought in relation to minor cases. This could victimise parents unfairly and compromise public confidence in the legal system. We do not, therefore, consider the options of withdrawing the defence entirely or introducing a new offence outlawing all physical punishment of children in Part 5 of this paper, which sets out our proposed way forward and options for change.

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PART 3: THE EXISTING LAW

Offences under which an Adult may be Charged

[3] Offences Against the Person Charging Standard, April 1996 (paragraph 4 on S39 revised in 1998)

3.1 Currently, an adult who is deemed to have assaulted a child may be charged by the police under a number of different provisions of the law in England and Wales. The Crown Prosecution Service (CPS) will decide whether or not it is in the public interest to prosecute, depending on the particular facts of the case in question. The police and the CPS have agreed a 'Charging Standard'[3] in respect of cases of alleged offences against the person, which offers guidance to police officers and Crown Prosecutors on the most appropriate charge to bring in such cases.

Non-Fatal Violent Offences Against the Person

The Offences Against the Person Act 1861

3.2 *Section 18* creates the offence of "wounding/causing grievous bodily harm with intent".

3.3 *Section 20* creates the offence of "unlawful wounding/inflicting grievous bodily harm".

3.4 *Section 47* creates the offence of "assault occasioning actual bodily harm". The offence is committed when a person assaults another, thereby causing actual bodily harm to that other person. The prosecution are not obliged to prove that the defendant intended to cause actual bodily harm, or was reckless as to whether harm would be caused. The maximum penalty is six months imprisonment and/or a fine not exceeding the statutory maximum, on conviction in the Magistrates Court; and five years imprisonment and/or an unlimited fine on conviction in the Crown Court.

3.5 The Offences Against the Person Charging Standard sets out the types of injuries which should normally be prosecuted under Section 47.

These include: loss or breaking of a tooth; temporary loss of sensory functions including loss of consciousness; extensive or multiple bruising; displaced broken nose; minor fractures; minor cuts requiring medical treatment (e.g. stitches); and psychiatric injury which is more than fear, distress or panic.

The Criminal Justice Act 1988

3.6 Under *Section 39* of the Act, a person may be charged with common assault. An offence of common assault is committed when a person either assaults or inflicts battery upon another person. An assault is committed when a person "intentionally or recklessly causes another to apprehend the immediate infliction of unlawful force." A battery is committed when a person "intentionally or recklessly inflicts unlawful force upon another." Cases of common assault may only be tried in the Magistrates Court. The offence incurs a maximum penalty of 6 months imprisonment and/or a fine not exceeding the statutory maximum available to magistrates.

3.7 What distinguishes this offence from one brought under Section 47 of the Offences Against the Person Act, is the degree of injury which results. The Offences Against the Person Charging Standard states that common assault will be the appropriate charge where injuries amount to no more than the following: grazes, scratches, abrasions, minor bruising and swellings, reddening of the skin, superficial cuts or a black eye. The Standard states that where the injuries amount to no more than those outlined any decision to charge an offence contrary to Section 47 "may be justified in exceptional circumstances or where the maximum sentence available in the Magistrates' Court would be inadequate."

Proposals for Change

3.8 The existing law on offences against the person has been criticised as being archaic and unclear. The Government has already consulted[4] on ways of clarifying and rationalising the law through a new set of straightforward offences comprising:

- assault;
- intentionally or recklessly causing injury;
- recklessly causing serious injury;
- intentionally causing serious injury.

[4] Proposals were set out in the Home Office consultation paper 'Violence: Reforming the Offences Against the Person Act 1861'. Consultation has now closed and responses are being considered.

Specific Offences Against a Child

The Children and Young Persons Act 1933

3.9 *Section 1(1)* of this Act creates the offences of "wilful assault, wilful ill-treatment, wilful neglect, wilful abandonment, wilful exposure or wilful causing or procuring of a child to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement." The penalty is a maximum of six months imprisonment and/or a fine on conviction in a Magistrates Court, or a maximum of ten years imprisonment and/or a fine on conviction in the Crown Court.

3.10 In practice, a charge under Section1(1) would rarely be brought against a parent who was alleged to have physically assaulted a child. This charge is usually brought in cases of neglect.

Civil Law

3.11 In civil law, an action may be brought for assault as a form of trespass against the person. This allows the aggrieved person to sue for damages. An injunction preventing further assaults can also be sought.

The Defence of Reasonable Chastisement

3.12 If a parent, or somebody acting in a parental role (e.g. a grandparent), physically punishes a child and is charged with assault as a consequence, under any of the provisions outlined above, they may call upon a defence of 'reasonable chastisement' of the child. In criminal proceedings for assault, where the defence of reasonable chastisement is raised, it is for the prosecution to satisfy the Court beyond reasonable doubt that the punishment was not, in all the circumstances, reasonable or moderate. In civil actions, the burden of proof for establishing whether the punishment was reasonable rests with the defendant, on the balance of probabilities.

3.13 The defence of 'reasonable chastisement' dates back to a judgment in 1860 which explicitly recognised a common law right of parents to administer physical punishment to their children, but established for the first time that such punishment must be "moderate and reasonable".

3.14 The Children and Young Persons Act 1933 subsequently gave statutory recognition to what had hitherto existed only as a common law right. Section 1(7) of the Act provides that (nothing in Section 1 see para. 3.9 above) shall be construed as affecting the right of any parent, teacher, or other person having the lawful control or charge of a child or young person to administer punishment to him."

3.15 The defence of 'reasonable chastisement' is available generally to adults acting *in loco parentis*, but it may not be used by teachers and others working in schools and nurseries, staff in children's homes, or foster carers (other than in private fostering arrangements). Corporal punishment has been outlawed in all of these settings.

3.16 **What constitutes 'reasonable chastisement' is not defined in the law.** Whether a defence succeeds in a UK Court depends upon the facts of that case. The concept of 'reasonableness' enables the Courts to apply standards prevailing in contemporary society.

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PART 4: THE NEED FOR CHANGE

4.1 The need for a change in the law arises from a case heard by the European Court of Human Rights. The Court ruled that UK law had failed to protect a boy, who had suffered repeated and severe beatings with a cane, from "inhuman or degrading treatment", in contravention of Article 3 of the European Convention on Human Rights. The case is referred to as *A. v the United Kingdom*.

4.2 The case arose after A.'s brother reported that A. had been beaten with a garden cane by their stepfather-to-be. The man was subsequently charged with assault occasioning actual bodily harm contrary to Section 47 of the Offences Against the Person Act 1861 (see paragraph 3.4). He was tried in February 1994 and used the defence of reasonable chastisement. He was found not guilty by a jury.

4.3 A. then applied to the European Commission of Human Rights which found, and the Government accepted, that there had been a violation of the boy's rights under Article 3. There was subsequently a full hearing before the Court. In a judgment delivered in September 1998, the Court held that the beating suffered by the boy reached the level of severity prohibited by Article 3 of the Convention, which states that:

"No one shall be subjected to torture or to inhuman or degrading treatment".

4.4 The Court found that although the United Kingdom was not responsible for the actions of the stepfather-to-be, because of the way in which the UK defence of 'reasonable chastisement' had been applied, UK law had failed to protect A. from the severe beatings which he had received. The Court ruled that States are required to take measures to protect children against such treatment. The Court concluded that, in this case, the UK was in breach of Article 3 of the Convention.

4.5 The Court's decision was based on the facts of the case before it. The ruling applied to that case only. No general statement was made about

the physical punishment of children, although the boy's legal representative had invited the Court to make such a statement.

4.6 As a party to the European Convention on Human Rights, the United Kingdom has undertaken to abide by the judgement of the court in a case to which it is a party. This ruling requires us to change the law, to ensure that it does protect children from 'inhuman and degrading treatment'. The Government accepts the need for change, and has made a public commitment to consult on the best way forward. Quite apart from our obligations under the European Convention, physical punishment which is harsh or violent can harm children, and it cannot be right that it should be protected under the law.

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PART 5: PROPOSAL AND FURTHER OPTIONS FOR CHANGE

1. PROPOSAL

Set out the defence of reasonable chastisement on a statutory basis

5.1 In order to meet the criticism made by the European Court that the current law fails to protect children from harsh or violent physical punishment, we need to change the law to ensure that physical punishment which constitutes 'inhuman and degrading treatment' can never be justified as 'reasonable chastisement'.

5.2 The Government considers that the best way to do this is to outline in legislation the factors which should be taken into account by a Court when considering whether physical punishment has been moderate and reasonable. (It is worth noting that after 2 October 2000, when the Human Rights Act comes into force, prosecutors, the police and the Courts will be required to take the European Convention on Human Rights and its case law into account when determining cases.)

5.3 The Court stated that in order to constitute inhuman and degrading treatment, ill-treatment must reach a minimum level of severity, and that the assessment of this minimum is relative, depending on all the circumstances of the case. The circumstances it decided were relevant included:

- The nature and context of the treatment;
- Its duration;
- Its physical and mental effects; and, in some instances,
- The sex, age and state of health of the victim.

5.4 **We are therefore proposing that it should explicitly be set out in law that in considering whether or not the physical punishment of a child constitutes 'reasonable chastisement', a Court should always have regard to the factors outlined at para. 5.3 above.**

2. OPTIONS FOR CHANGE

5.5 The proposal outlined at 5.2 – 5.4 above sets out what we consider to be the minimum steps needed to clarify the law in light of the European Court's ruling. However, the 1998 ONS public opinion survey on physical punishment (see paragraphs 2.9 to 2.11 and Annex A) suggested that the public would like to see children have much greater protection. We have therefore set out below a further three options for ways in which the use of the defence of reasonable chastisement might be further limited. These would in be *addition* to implementation of the proposal above. We would welcome your comments on these options, to help us frame the law so that it best reflects a modern society's view of what constitutes the 'reasonable' physical punishment of children.

Option 1: Further expand upon the factors to be taken into account when considering a defence of 'reasonable chastisement'

5.6 It would be possible to add to, or elaborate upon, the relevant factors outlined at para. 5.3 in setting out the factors which a Court must consider in determining whether physical punishment constitutes 'reasonable chastisement'. For example, additional factors might include the reasons given for the punishment, how soon after the event it was given, the persons involved, the vulnerability of the child. We would welcome your views on the factors which should be set out in the law as needing to be considered by a Court, over and above those outlined in para. 5.3 above.

5.7 It would also be possible for the law to state that some forms of punishment could *never* be deemed 'reasonable'. This might exclude as 'reasonable' any physical punishment which causes, or is likely to cause injury to the head (including damage to the brain, eyes and ears). Drawing on the views expressed in the ONS survey of public opinion, it might also exclude as reasonable the use of implements (e.g. canes, belts, slippers). We would welcome your views on whether there are any forms of physical punishment which should never be deemed 'reasonable' under the law.

Questions for Consultation

1. What, if any, factors *over and above* those factors set out in para. 5.3, should the law require a Court to consider when determining whether the physical punishment of a child constitutes 'reasonable chastisement'?

2. Are there any forms of physical punishment which should never be capable of being defended as 'reasonable'? Specifically, should the law state that any of the following can never be defended as reasonable:

- Physical punishment which causes, or is likely to cause, injury to the head (including injuries to the brain, eyes and ears)?
- Physical punishment using implements (e.g. canes, slippers, belts)?

Option 2: Retain the defence of reasonable chastisement for lesser assault charges only

5.8 This option proposes that the law should be changed so that the defence of reasonable chastisement is not available in response to the more serious assault charges. In respect of the existing law on violent offences against the person, the defence would be available *only* to those charged with common assault under Section 39 of the Criminal Justice Act 1988, and *not* to those charged with actual bodily harm (Section 47) or grievous bodily harm (Section18 and Section 20) under the Offences Against the Person Act 1861 (see paragraphs 3.2 to 3.5). In respect of the Government's proposals for a reformed law on violent offences against the person, the defence would be available *only* to those charged with assault, and *not* to those charged with intentionally or recklessly causing injury, recklessly causing serious injury, or intentionally causing serious injury.

5.9 This option would harmonise most offences of assault for children and for adults (i.e. children would receive exactly the same protection under the law as adults in respect of suffering actual bodily harm and more serious assaults). It would have the effect of greatly reducing the extent to which the defence of reasonable chastisement may be used.

5.10 . The main point at issue is whether a defence of 'reasonable chastisement' can, in some cases, be justified in respect of alleged assaults on children which attract a charge of causing actual bodily harm. In reaching a view, you may wish to consider the Charging Standard guidelines at para. 3.5. Should parents and others charged with causing the sort of injuries outlined in the Standard, be able to claim that their actions constituted 'reasonable chastisement'? On the other hand, would removing the defence in these circumstances be too restrictive in respect of parents' ability to physically punish their children within the law?

Questions for Consultation

1. Should we restrict the defence of reasonable chastisement so that it may be used only by those charged with common assault, and not by those charged with causing actual bodily harm or more serious assaults?

Option 3: Clarify (and possibly restrict) who may claim the defence of reasonable chastisement

5.11 This option considers the issue of who should be able to claim the defence of reasonable chastisement in future. It asks whether the defence should be available only to parents (which would significantly restrict its application); to those acting with parents' express permission; or to all those acting in a parental role, as the defence applies at present (It should be noted that this Consultation relates to the issue of physical punishment in the home only. The issue of behaviour management in regulated day care and childminding is currently being taken forward as part of the reform of Part X of the Children Act 1989.)

5.12 Currently, the defence of reasonable chastisement may be claimed not only by parents, but also by those acting in a parental role (*in loco parentis*), except in those settings where the physical punishment of children has been specifically outlawed (see para. 3.15). There is an *implied* delegation, from parents to those in lawful charge of their children, of the parents' right to apply moderate and reasonable physical punishment. If a relative or neighbour were looking after a child, for example, they would be able to claim the defence of reasonable chastisement even if a parent had not explicitly authorised them to smack their child.

5.13 A parent may be defined as a person who has parental responsibility under the Children Act 1989 (see Annex B). What this option raises is:

- Whether the defence should be available *only* to those with parental responsibility or whether it should be available, as now, to those *in loco parentis* (e.g. relatives, and others in lawful charge of a child (except in those settings where physical punishment has been outlawed)?

- If the defence is available to those *in loco parentis*, should it be under an *implied* delegation from parents (see para. 5.12 above) as now, or should it be under an *express* delegation i.e. parents must have given their explicit permission that a specific person may physically punish their child?

5.14 These matters are not, however, as straightforward as they may first appear. For example, restricting the right to use reasonable chastisement to those with parental responsibility under the Children Act 1989 would have implications for a number of individuals who might have a significant role in a child's life. This would, for example, exclude unmarried fathers without parental responsibility. It would also exclude others who may be in loco parentis on a permanent basis where no residence order has been made, perhaps step-parents or grand parents. In family proceedings the courts are required to operate the "no order principle": they do not make an order unless doing so would be better for the child than making no order at all.

5.15 There might also lead to complications within re-formed families, where for example there will be a distinction between the rights of a father in respect of his own children born within marriage, his own children born outside marriage where he has no parental responsibility, and unrelated children of the mother, where the position will vary depending on the status of the father. Mothers would be in a similar position in relation to children in the family who are not their own offspring.

5.16 There is a further issue to consider in respect of the question of restricting the right to use reasonable chastisement to those acting on behalf of parents who have received the express permission of the parents, where parent is defined as those with parental responsibility. What happens if those with such responsibility disagree? Should all those with parental responsibility be required to agree the express delegation of the right to use reasonable chastisement? These are all important issues which must be taken into account.

Questions for Consultation

1. Who should be able to claim the defence of 'reasonable chastisement'? Should it be:

- **As now, all those acting on behalf of parents in looking after children (except in settings where physical punishment has been outlawed)?**
- **Parents only (defined as those with parental responsibility under the Children Act 1989)?**
- **All those acting on behalf of parents, but only if parents have given their express permission that those acting on their behalf may physically punish their child?**

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PART 6: SUMMARY OF QUESTIONS FOR CONSULTATION

1 What, if any, factors *over and above* those factors set out in para. 5.3 should the law require a Court to consider when determining whether the physical punishment of a child constitutes 'reasonable chastisement',?

2 Are there any forms of physical punishment which should never be capable of being defended as 'reasonable'? Specifically, should the law state that any of the following can never be defended as reasonable:

- **Physical punishment which causes, or is likely cause injuries to the head (including injuries to the brain, eyes and ears)?**
- **Physical punishment using implements (e.g. canes, slippers, belts)?**

3 Should we restrict the defence of reasonable chastisement so that it may be used only by those charged with common assault, and not by those charged with causing actual bodily harm, or more serious assaults?

4 Who should be able to claim the defence of 'reasonable chastisement'? Should it be:

- **As now, all those acting on behalf of parents in looking after children (except in settings where physical punishment has been outlawed)?**
- **Parents only (defined as those with parental responsibility under the Children Act 1989)?**
- **All those acting on behalf of parents, but only if parents have given their express permission that those acting on their behalf may physically punish their child?**

HOW TO SEND US YOUR VIEWS

Please return two written copies of your response, by 21 April 2000, to:

SC3C
Response to the Physical Punishment of Children Consultation
Department of Health
Room 122 Wellington House
133-155 Waterloo Road
London SE1 8UG

If you have accessed this consultation paper through the internet please note that we would like to hear from you in writing and *not* through e–mail.

Please ensure that:

- Each question is answered on a separate page;
- Your reply to each question is clearly numbered to correspond with the numbering as set out in the summary of questions above;
- Your response is clearly marked with your name, address, and (if relevant) the organisation on whose behalf you are writing.

We may wish to cite, or quote from, some of the responses we receive. Please make clear whether or not you would be willing to have your views published, on a named basis, in any subsequent document that may be produced. We will assume that you are happy to be quoted unless you tell us to the contrary.

Thank you for your help with this important issue.

A

ANNEX A: THE PHYSICAL PUNISHMENT OF CHILDREN: A CONSULTATION

The 1998 Office for National Statistics Survey

1 The Department of Health included questions on the Office for National Statistics (ONS) Omnibus Survey to gather information on people's views on the physical punishment of children. The ONS Omnibus Survey is a national representative survey carried out monthly throughout the year. The questions were included in April 1998 and a random probability sample of approximately 2,000 adults were interviewed.

2 The key survey findings are summarised below.

- 88% of respondents agreed that it is sometimes necessary to smack a naughty child while 8% disagreed.
- 85% agreed that parents should be allowed, by law, to smack a naughty child who is over five years old with 9% disagreeing.
- There were no significant differences in the views on smacking held by men and women or by parents in different age groups.
- 4% of respondents said that parents should be allowed, by law, to use a cane, stick or a similar implement to punish a naughty child who is over five years old while 7% said that parents should be allowed, by law, to use a cane to hit a child who is over seven years old.
- Over 90% of respondents said that parents should be allowed, by law, to 'ground' or keep a naughty child at home as a punishment.
- A minority said that parents should be allowed, by law, to punish children by depriving them of a meal or part of a meal (16%) or to shake or smack them on the head (2-3%).
- 60% considered physical punishment that leaves no mark at all to be reasonable from the options presented. 36% would not specify any level of punishment as reasonable.
- Nearly all respondents considered punishment that leaves a red mark or bruising to be unreasonable (96% and over 99% respectively).

A

	Agree	Disagree
Opinion statements on smacking		
Parents should be allowed, by law, to smack a naughty child who is over five years old	85	9
Parents should be allowed, by law, to smack a naughty child who is over two years old	53	34
Parents should be allowed, by law, to smack a naughty child who is less than two years old	13	76
It is sometimes necessary to smack naughty children	88	8
Opinion statements on using canes or other instruments		
Parents should be allowed, by law, to use things like canes, sticks, belts or slippers to punish a naughty child who is over seven years old	7	89
Parents should be allowed, by law, to use things like canes, sticks, belts or slippers to punish a naughty child who is over five years old	4	93
Parents should be allowed, by law to use things like canes, sticks, belts or slippers to punish a naughty child who is over two years old	1	97
It is sometimes necessary to use things like canes, sticks, belts or slippers to punish a naughty child	9	87

On this card is a list of other methods that some parents have used to punish a naughty child. Which of them do you think parents should be allowed to use, by law?	
'Grounding' or keeping the child in	91
Smacking the child on the head	2
Shaking the child	3
Not allowing the child a meal or part of a meal	16
Others (eg. sending the child to his/her room or stopping the child from doing something he or she likes to do)	35
None of the above	5

Which of the items on this card would you consider to be a reasonable level of punishment? Physical punishment that:	
Leaves no mark at all on the child	60
Leaves a red mark that lasts for a few days	4
Leaves a bruise that lasts for a few days	<1
Leaves marks and bruises that last for more than a few days but which does not result in permanent physical injury	<1
None of the above	36

B

ANNEX B: PARENTAL RESPONSIBILITY

1 In Option 3, we ask whether the defence of 'reasonable chastisement' should be available only to parents, and define a parent as a person who has parental responsibility under the Children Act 1989.

2 Section 3 of the Children Act 1989 sets out the meaning of parental responsibility as:

"all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property" (Section 3)

3 Section 2 says that the following automatically have parental responsibility:

- The child's mother and father if they are married at the time of the child's birth;
- The child's mother if the parents are not married.

4 Section 4 says that where the parents are not married at the birth the father may acquire parental responsibility for the child:

- By making an agreement with the child's mother;
- By applying to the Court for a parental responsibility order;
- By subsequently marrying the child's mother.

5 Parental responsibility may also be aquired by a person who obtains a residence order under Section 12. Any person with whom a child has lived for three years is entitled to apply for a residence order. Anyone else may apply with the leave of the court. There is no provision for step-parents or grandparents to acquire parental responsibility unless a residence order has been granted in their favour.

6 A person who adopts a child automatically takes on parental responsibility for that child. A parent may appoint a person to be guardian to the child in the event of the parent's death. A guardian will have parental responsibility for the child.

B

The Government has announced its decision to introduce a provision that unmarried fathers who sign the birth certificate jointly with the mother will acquire parental responsibility without further formality. This provision will be introduced when Parliamentary time allows.