

CHILDREN ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Advisory and Support Services for Family Proceedings

Other provisions

Section 58: Reasonable punishment

236. **Section 58** removes the defence of reasonable chastisement in any proceedings for an offence of assault occasioning actual bodily harm, unlawfully inflicting grievous bodily harm, causing grievous bodily harm with intent, or cruelty to a child. It also prevents the defence being relied upon in any civil proceedings where the harm caused amounted to actual bodily harm, which has the same meaning as it has for the purposes of section 47 of the Offences Against the Person Act 1861. The defence would still be available in proceedings before the Magistrates Court for common assault on a child.
237. The section removes the defence by providing that battery of a child cannot be justified as reasonable punishment. Battery is any unwanted application of force to the body of another and is more commonly called “assault”. However it has long been recognised by the law that a parent or person with parental authority may use reasonable punishment to correct a child. This is the defence of reasonable chastisement or “reasonable punishment”. Other defences to battery are not affected by section 58.
238. *Subsections (1) and (2)* remove the defence in relation to the offences mentioned above. The parent is thus in the same position as if he had assaulted an adult or a child over whom he exercised no parental role.
239. *Subsection (3)* removes the defence in civil proceedings for any battery if the battery caused actual bodily harm. *Subsection (4)* provides that ‘actual bodily harm’ in *subsection (3)* has the same meaning as has been established in relation to criminal proceedings.
240. *Subsection (5)* repeals section 1(7) of the Children and Young Persons Act 1933 in consequence of *subsection (2)(c)*.

Section 59: Power to give financial assistance

241. This section amends section 14 of the **Education Act 2002 (c. 32)** to extend the powers of the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) to give, or make arrangements for the giving of, financial assistance. *Subsections (2) and (3)* detail the purposes of the new powers: the promotion of welfare of children and their parents, and the provision of support for parenting. Children are defined for these purposes as under twenty. These new purposes add funding powers for children’s services to the existing broad education funding powers. The effect (in relation to England) is to provide a statutory basis for giving financial assistance to activity across the new wider responsibilities of the Secretary of State for Education and

*These notes refer to the Children Act 2004 (c.31)
which received Royal Assent on 15th November 2004*

Skills. These include responsibilities for children's services and parenting following the creation of the position of Minister for Children, Young People and Families.