Thank you for the opportunity to respond to this petition.

Any assault committed against any person in the course of their employment is taken seriously by the Crown Office and Procurator Fiscal Service.

Existing common law and statutory offences already provide for the prosecution of assaults, or threatening behaviour, committed against any NHS employees regardless of whether their particular employment status brings them within one of the capacities defined in the Emergency Workers (Scotland) Act 2005.

For example, physical attacks against people in the course of any employment can be prosecuted using the common law offence of assault at both summary level and on indictment.

Furthermore, section 3 (1) of the Emergency Workers (Scotland) Act 2005 provides that it is a criminal offence to assault, obstruct or hinder someone who is assisting another person working in their capacity as an emergency worker responding to an emergency situation. This offence has been used, for example, to prosecute an accused for an assault committed in a hospital against security staff whilst that member of staff was assisting a nurse.

Existing guidance to prosecutors makes clear that, an assault committed against a person in the course of their employment is an aggravating factor which requires to be taken into account, along with all other relevant aggravating and mitigating factors, when deciding on the appropriate action to take.

Prosecutors will make the court aware that an assault was committed against a person in the course of their employment whether during a trial or as part of a narration to the court when an accused person pleads guilty. Whilst sentencing is of course a matter for the courts the overall circumstances of an offence, including whether an individual was attacked in the course of their employment, and the nature of that employment, is something which courts, can and do take into account in determining an appropriate sentence.

The Committee may wish to note that the maximum sentence of 12 months in the proposed legislation is less than the maximum sentence that the courts can directly impose in respect of any of the aforementioned existing common law offences when prosecuted on indictment.