Thank you for your email of 14 June addressed to Neil Robertson asking for the Scottish Government’s views on the petition which seeks to make it a specific offence to assault any employee within NHS Scotland whilst that employee is carrying out any patient service in the Scottish NHS. This email has been redirected to Carole Finnigan, Committee Liaison Officer, and I am replying on her behalf.

Firstly, I would like to reassure you that any violence or aggression against NHSScotland staff is unacceptable and we have policies in place to provide and continuously improve a safe working environment. We encourage NHSScotland organisations to commit to supporting appropriate action against anyone who assaults a staff member.

The Staff Governance Standard for NHS Scotland commits all Boards to providing a continuously improving and safe working environment, promoting the health and wellbeing of staff, patients and the wider community. We encourage NHSScotland organisations to commit to supporting criminal proceedings against anyone who assaults a staff member.

As you will be aware in 2008 we extended the Emergency Workers (Scotland) Act 2005 (“the 2005 Act”), which already provided legal protection to ambulance workers, doctors, nurses and midwives working in a hospital or responding to an emergency, to cover GPs, other doctors, nurses and midwives whenever they were working in the community.

The penalty applicable is up to 12 months imprisonment or a £10,000 fine or both.

Turning to the provisions of the 2005 Act in context of wider criminal laws and the aim of the petition. It is already an offence to assault anyone under the common law of assault. The maximum penalties available to our courts include life imprisonment and an unlimited fine. These laws operate for everyone including NHS workers.

Sentencing is of course a matter for the court, but where a court decides a tough penalty is appropriate in any given case, the Scottish Government fully supports that approach.

In summary we would be inclined to note that the existing common laws already cover assault to any member of the public (which would include all NHS workers) under common assault.

Any proposal to extend the legislation would need to be considered in relation to the necessity and proportionality of doing so and supported by evidence of the effectiveness of any change. Changes to legislation would also need to give consideration to the wider public sector and workers covered within other settings.

The Scottish Government’s view would therefore be that the existing legislative framework provides the requested protections within the petition and that the priority
area of focus at this time should be on public education and ensuring enforcement of existing legislation.

I note the Committee agreed to write to the Scottish Government, the Law Society of Scotland, the British Medical Association, NHS Scotland’s Partnership Information Network, the Royal College of Nursing, the Crown Office and Procurator Fiscal Service, the Health and Safety Executive, Unison and Unite.

We will be keen to hear the further evidence from these organisations in relation to this important subject.

I hope this clarifies the Scottish Government position.