

This document relates to the Children (Equal Protection from Assault) (Scotland) Bill (SP Bill 38) as introduced in the Scottish Parliament on 6 September 2018

Children (Equal Protection from Assault) (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by the Non-Government Bills Unit on behalf of John Finnie MSP, in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Children (Equal Protection from Assault) (Scotland) Bill. It describes the purpose of the (single) subordinate legislation provision in the Bill and outlines the reasons for seeking the proposed power. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill Provisions

2. The Bill abolishes the common law defence, in cases of alleged assault, of "reasonable chastisement". A person charged with the assault of a child will no longer be entitled to claim that a use of physical force was justifiable on the basis that it was physical punishment administered in exercise of a parental right or a right derived from having care or charge of a child.

3. Section 1 of the Bill abolishes the defence of reasonable chastisement, and repeals associated statutory provision in section 51 of the Criminal Justice (Scotland) 2003 (the "2003 Act"). Section 51 of the 2003 Act set out matters a court was required to have regard to in considering the application of the common law defence, and prohibited certain forms of physical punishment. Section 2 places an awareness raising duty on the Scottish Ministers with regard to the effect of section 1. Section 3 of the Bill deals with transitional, transitory and saving matters. Sections 4 and 5 deal with commencement and short title respectively.

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Rationale for Delegated Powers

There is one power to make subordinate legislation in the Bill, which is delegated to the Scottish Ministers. The delegated power is new, with no existing power being amended or repealed. It is explained more fully in the following paragraph.

Delegated Power

Section 3(3) – power to make such further transitional, transitory or saving provision as is considered necessary or expedient in connection with the coming into force of section 1

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative procedure

Provision

4. Section 3(3) permits the Scottish Ministers, by regulations, to make such further transitional, transitory or saving provision as they consider necessary or expedient in connection with the coming into force of section 1 (abolition of the reasonable chastisement defence and repeal of section 51 of the 2003 Act).

Reason for taking the power

5. Sections 3(1) and 3(2) make some transitional and saving provision, in connection with the abolition of the reasonable chastisement defence and the repeal of section 51 of the 2003 Act. Subsection (1) makes clear that section 1 does not apply to anything done before the day on which section 1 comes into force. Subsection (2) saves the common law defence and section 51 for the purposes of proceedings relating to an alleged assault of a child committed before the day on which section 1 comes into force (whether those proceedings are ongoing on, or brought on or after, that day). It is possible that the Scottish Ministers may identify additional transitional, transitory or saving issues arising from the abolition of the common law defence (and the repeal of section 51), particularly given their wider policy responsibilities for the subject matters in the Bill. In light of that, and to give the Scottish Ministers some flexibility to respond to such

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issues, this power has been included in the Bill. It is limited to provision that the Scottish Ministers consider necessary or expedient in connection with the coming into force of section 1.

Choice of procedure

6. The power is limited in nature – its exercise being confined to what is necessary or expedient in connection with the coming into force of section 1 – and is considered to be uncontroversial. Accordingly, the application of negative procedure (as provided for at section 3(4)) is regarded as offering an appropriate level of scrutiny so far as any exercise of the power is concerned.

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