The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland’s solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Criminal Law Committee welcomes the opportunity to provide a further submission to the Scottish Parliament’s Equalities and Human Rights Committee’s call for views on the Children (Equal Protection from Assault) (Scotland) Bill (the Bill).

General

We refer to our submission dated 25 January 2016 that sets out our response to the Bill. The aim of the Bill is to help bring an end to the physical punishment of children by parents and others caring for, or in charge of, children by repealing section 51 of the Criminal Justice (Scotland) Act 2003.

We emphasise that it is not for the Society to comment on the social policy change outlined in the Bill.

We recognise that the terms “reasonable chastisement” and “justified assault” as defences may not always be fully understood by the public when considering if an assault on a child may be legally justified.

The Bill, as proposed, would introduce clarity of the law on what amounts to assault on children as far as children and adults are concerned. Assaults on children would not be justified. Children would therefore be afforded the same protection as currently available to adults. Whether prosecution for an assault on a child results

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would follow a decision by the Crown Office and Procurator Fiscal Service as to prosecution being appropriate in the public interest.

There are several points on which we would comment:

This change proposed in the Bill would bring Scotland in line with a number of other countries. We understand that 54 countries have a ban on physical punishment in all settings with Scotland being only one of only five (now four) European Union member states that still permits the physical punishment of children.\footnote{2}

If the Bill is passed, there is a need to ensure that there is effective communication of the change to all involved. That has to seek effective ways to ensure that those groups representing “protected characteristics” are fully considered. That would ensure that all fully understand the significance and effect of the change being made. To that extent, we recognise exactly what Police Scotland\footnote{3} has stated that behaviour that has been accepted for “generations” may no longer be appropriate. That message would have to be stated very clearly.

Section 2 of the Bill refers to notification procedures. Scottish Ministers require to take such steps as they consider appropriate to promote public awareness and understanding about the effect of the change made by section 1. How any change is rolled out is part of the implementation of the third policy objective of ‘driving behaviour change’. It may be worth considering at the outset to whom and how such awareness, training and education should be directed. We would suggest that it would include those involved in education, care and community settings.

\textbf{15 March 2019}

\footnote{2} SPICE briefing to be added

\footnote{3} https://www.christian.org.uk/news/police-scotland-smacking-ban-will-be-costly/