The Christian Institute
Supplementary Submission

Further to our previous submission to the EHRiC, we would like to note the following.

In January last year, the Welsh Government published its consultation document on a similar proposal to remove the defence of reasonable chastisement from law. This provided a summary description of countries which are held to have smacking bans in place. It stated:

“Of the 53 countries quoted by the Global Initiative, only 4 are common law jurisdictions. The other 49 are civil law jurisdictions with the basis of their legal system being so different to the UK’s it is not possible to draw any useful comparisons in the drafting of legislation.”

Explaining the difference between common law and civil law jurisdictions, it said:

“…the common law is a body of law developed by judges and common law systems (such as the UK) which places great weight on court decisions, which are considered "law" with the same force of law as statutes. By contrast, in countries with civil law systems, courts lack authority to act if there is no statute. The decisions of judges are therefore given less interpretive weight. This means that a judge deciding a given case has more freedom to interpret the text of a statute independently, and less predictably, as they don’t have to worry about creating precedent.”

The document continued:

“Of the 4 countries which operate in a common law system, only 3 have ended corporal punishment using the criminal law. These are the Republic of Ireland, New Zealand and Malta. In developing our legislative proposals we have therefore looked closely at the examples provided by these 3 countries. Whilst there are some potential lessons, the differences in how our laws have developed means that exact comparisons cannot be drawn. For example, in the Republic of Ireland legislation had already been introduced amending aspects of the common law of assault and battery, prior to the removal of the defence of reasonable punishment. This therefore provided them with a different starting point to England and Wales.”

The claim that Scotland will be joining dozens of countries worldwide if Parliament passes Mr Finnie’s Bill is not accurate as it fails to take account of the uniqueness of our legal system and our approach to enforcing criminal law.

12 March 2019