

PE2136/C: Make non fatal strangulation a standalone criminal offence in Scotland

Cabinet Secretary for Justice and Home Affairs written submission, 14 April 2025

Thank you for your letter of 21 March 2025 asking for an update on our considerations of [PE2136: Make non-fatal strangulation a standalone criminal offence in Scotland](#). I also understand that the Committee Clerk has already been in touch with my Private Office to ascertain my availability to attend and provide further evidence although the following may well negate that need.

I am sure you will be aware that the issue of non-fatal strangulation was mentioned during the [Stage 1 debate](#) on the Criminal Justice Modernisation and Abusive Behaviour Reviews (Scotland) Bill on Tuesday 1 April.

My comments made during the debate reiterate my position outlined in the correspondence dated 18 February 2025, namely that I am giving serious consideration to the Petition, and I remain committed to that approach.

I fully recognise the serious issue of non-fatal strangulation, which is an abhorrent type of abuse, and can have significant physical and psychological impact on victims, as noted by the Petition.

My officials have had discussions with operational partners on the Petition, and will continue to have further engagement with relevant stakeholders, including the Petitioner, as part of the ongoing work in this area.

There is also merit in looking at alternative approaches, including the use of an aggravation in this context, as a means of delivering the same outcomes - alongside exploring what more the justice system could do within existing procedures. For example, this could include specific sentencing guidelines to ensure that following conviction for an offence involving non-fatal strangulation, the court reflects this behaviour within the sentence. In that context I am also following your consideration of the Petition as you look to conclude your views, which is an important part of the process.

As the Committee is aware, conduct amounting to non-fatal strangulation is of course already a criminal offence in Scotland under the common law of assault. This offence carries maximum penalties up to life imprisonment.

I note that the Committee would welcome further information to illustrate how such offences are handled in practice. In the discussions my officials have had with COPFS they have confirmed that cases involving non-fatal strangulation are approached in the same way as all other forms of serious offending. Where non-fatal strangulation occurs in the context of sexual offending the case will be dealt with within specialist units in COPFS and the presence of non-fatal strangulation within the offending will be reflected in the prosecutorial action taken.

There are a range of crime types under which a physical attack involving non-fatal strangulation (at least in part) could be recorded. Examples include attempted murder, serious assault, common assault, robbery, rape/attempted rape and sexual assault. However, I understand that there is currently no individual marking used to record and monitor instances where non-fatal strangulation is present in an offence.

Instances of non-fatal strangulation may be labelled in a variety of different ways within a charge depending on the facts of the case and offence. This is an area where further discussions are progressing.

[The Scottish Crime Recording Standard](#) includes further guidance for police officers on considering the severity of strangulation, to determine the appropriate crime to record (for example an assault versus attempted murder). Should any case of strangulation result in the death of a victim, information is available from the Homicide in Scotland Official Statistics (which show 10 victims of strangulation or asphyxiation over the five years of 2019-20 to 2023-24).

In the context of sexual offences, information is not available that specifically identifies where a sexual offence included non-fatal strangulation. If it occurred as part of any non-consensual sexual activity, this would form part of the offence (e.g. rape). If the offence happened separately, then both a crime of rape and a second crime for the non-fatal strangulation would be recorded (such as an attempted murder, assault etc.). If it was established that there was consent to sexual activity, but not the strangulation, any non-fatal strangulation would most likely be recorded as a sexual assault given the sexual element.

Discussions between my officials and SCTS also confirmed that while SCTS hold data on convictions and disposals, the foundation of the data sets is charge codes and whilst cases can be identified in relation to common assault, there appears to be no specific charge code(s) for common assault where non-fatal strangulation was a component of the offence.

While I have yet to conclude on a way forward, I hope it is evident that I am giving this matter serious consideration and wholly recognise the desire by some to explore the current legislative opportunities to do so.

I will ensure you are kept advised as that work moves forward.

Yours sincerely,

ANGELA CONSTANCE