

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2136](#): Make non-fatal strangulation a standalone criminal offence in Scotland, lodged by Fiona Drouet

Brief overview of issues raised by the petition

The petition calls for the Scottish Parliament to urge the Scottish Government to make non-fatal strangulation a standalone criminal offence in Scotland.

It states that non-fatal strangulation is increasingly recognised as a severe form of domestic abuse and was made a standalone crime in England and Wales in 2022 and in Ireland in 2023. It notes that the vast majority of victims are women and that the act can cause brain damage, organ failure and mental ill health.

Background information

The [Institute for Addressing Strangulation](#) (IFAS) states that strangulation is an “obstruction or compression of blood vessels and/or airways by external pressure to the neck impeding normal breathing or circulation of the blood”. Non-fatal strangulation is “where such strangulation has not directly caused the death of the victims”.

An IFAS publication in 2023, [UK Prevalence of Strangulation & Suffocation](#), found that 1 in 4 women accessing community and refuge services reported that they had experienced strangulation or suffocation.

A further [IFAS report](#) published in 2024 contained an analysis of Domestic Homicide Reviews, which found that 19% (74/396) included a history of non-fatal strangulation having taken place.

Current legislation – Scotland

Assault

In Scotland, assault is a common law offence. Common law comes from the decisions of courts rather than being offences which are set out in legislation.

For recording purposes, Police Scotland differentiate between a serious assault and a common assault, however this distinction does not alter the common crime of assault. Serious assault is where the victim sustains an injury which results in detention in hospital as an inpatient to treat the injury, or involves fractures, internal injuries, severe concussion or injuries which may lead to impairment or disfigurement.

Assaults can have aggravating factors attached to them, for example, assault to severe injury or danger to life. These make them more serious and can result in higher sentences. More information on the [sentencing process](#) can be found on the Scottish Sentencing Council's website.

Where victims have a less severe physical injury or even where there is no visible physical injury at all, the perpetrator can still be charged with common assault.

The common law of assault means that the crime can be prosecuted under either summary or solemn procedure¹, so the penalties available depend on the procedure under and court in which the accused is prosecuted:

- Sheriff Court
 - Summary – up to 12 months imprisonment and/or a £10,000 fine
 - Solemn – up to 5 years imprisonment and/or an unlimited fine
- High Court – up to life imprisonment and/or an unlimited fine.

Domestic Abuse (Scotland) Act 2018

The [Domestic Abuse \(Scotland\) Act 2018](#) created a new statutory offence of domestic abuse. It covers behaviour which was already criminal, such as assault, as well as that which may not previously have been captured by existing offences.

It sets out three conditions, all of which must be proven for a conviction:

- the accused engaged in a course of behaviour which was abusive of the accused's partner or ex-partner
- a reasonable person would consider the course of behaviour to be likely to cause the partner/ex-partner to suffer physical or psychological harm
- the accused either intended the course of behaviour to cause such harm or was reckless as to whether it would.

Someone guilty of the offence of domestic abuse under this legislation could receive a maximum sentence of 14 years imprisonment (if prosecuted in the High Court).

Current legislation – Rest of the UK and Ireland

¹ Summary procedure is for relatively less serious and solemn for more serious offences.

England and Wales

Section 70 of the Domestic Abuse Act 2021 came into force on 7 June 2022 and created the standalone offence of strangulation or suffocation by amending the Serious Crime Act 2015. [Section 75A](#) of the Serious Crime Act 2015 sets out what this offence consists of and includes a defence for consensual strangulation (although there are limits to when the defence can be relied upon). The penalty for this offence on a summary conviction is up to 12 months imprisonment and/or a fine, and on conviction on indictment up to 5 years imprisonment and/or a fine.

IFAS have published reports based on data from the 12 months following the introduction of these offences in England and Wales:

- [Strangulation and Suffocation Offences: June 2022 - June 2023 – An Analysis of Police Report Data](#)
- [Prosecution and Sentencing of Strangulation and Suffocation Offences: An analysis of data from Ministry of Justice June 2022 – June 2023](#)

Key findings are that there have been:

- 23,817 non-fatal strangulation and non-fatal suffocation offences recorded by the 33 police force areas who provided data
- 1,367 prosecutions and 650 convictions for non-fatal strangulation
- 70 prosecutions and 28 convictions for non-fatal suffocation.

These figures should be read in the context that not all the offences recorded during this period will have reached a final outcome by the time the prosecution data was requested. Therefore, the number of prosecutions and convictions may increase.

Northern Ireland

[Section 28 of the Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022](#) created a new offence of non-fatal strangulation or asphyxiation, coming into effect on 26 June 2023. Again, it sets out what the offence consists of and a defence for consensual strangulation as above. The penalty for this offence on summary conviction is up to 2 years imprisonment and/or a fine, and on indictment up to 14 years imprisonment and/or a fine.

Ireland

[Section 21 of the Criminal Justice \(Miscellaneous Provisions\) Act 2023](#) created the standalone offence of non-fatal strangulation or non-fatal suffocation, with a commencement date of 1 November 2023. The penalty for this offence on summary conviction is up to 12 months imprisonment and/or a fine, and on indictment up to 10 years imprisonment and/or a fine.

The reason for introducing the standalone offence in all of these countries [has been noted](#) as ensuring that perpetrators could be charged and prosecuted with a sufficiently serious offence even in the absence of physical injuries.

Scottish Government action

Parliamentary Questions

The First Minister recently responded to a parliamentary question by Michelle Thomson MSP ([S6F-03622](#)) asking him what plans the Scottish Government had to bring forward legislation to criminalise non-fatal strangulation. He answered this question in the Chamber on 12 December 2024 stating:

“Conduct amounting to non-fatal strangulation is already a criminal offence under the common law of assault, and carries maximum penalties of up to life imprisonment. However, we constantly keep the law under review. For a stand-alone offence to be put in place, we would need to be confident that there is a gap in the law. We will give the proposal serious consideration.”

Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill

The Scottish Government introduced the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill on 24 September 2024, with a Stage 1 deadline of 4 April 2024. Important issues of scope would require to be considered should any amendments be received that wished to include a standalone offence of non-fatal strangulation within this Bill.

Scottish Government response to the Petition

The [response to this petition from Angela Constance MSP, the Cabinet Secretary for Justice and Home Affairs](#), notes that non-fatal strangulation is already a criminal offence in Scotland under the common law of assault and can carry a maximum penalty of life imprisonment.

The response states that when looking at arguments for creating a standalone criminal offence the Cabinet Secretary “must also balance this with the challenges that are presented when looking at proposals for new pieces of legislation, alongside the operation of the existing legislative framework”. It goes on to highlight the need to be alert to potential unintended consequences in creating new laws, for example in this case, how any new law would interact with the operation of the domestic abuse offence.

Finally, the Cabinet Secretary notes that, in recognition of the issues raised by the Petition:

“...we do also consider that there would be merit in looking at what more the justice system could do within existing procedures. This could include specific sentencing guidelines which may be considered which would ensure that following conviction for an offence involving non-fatal strangulation, the court reflects this behaviour within the sentence. There may also be merit in looking at alternative approaches, including

the use of an aggravation in this context, as a means of delivering the same outcome.”

Kirsty Deacon
Senior Researcher
25 February 2025

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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