

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

Cabinet Secretary for Justice and Home Affairs written submission, 18 February 2025

I want to thank the Committee for the opportunity to provide an early response to PE2136: Make non-fatal strangulation a standalone criminal offence in Scotland, as part of its evidence gathering.

The Committee will be aware that this Petition has been raised within the Scottish Parliament during First Minister's Questions. The Scottish Government has been clear that it will give serious consideration to the Petition, and I remain committed to that approach.

Firstly, I want to make absolutely clear that I fully recognise the serious issue of non-fatal strangulation. This type of abuse is abhorrent, and as noted with the Petition, can have significant physical and psychological impact on victims.

Whilst I am fully aware of the arguments outlined within the Petition and by some MSPs and stakeholders, for a standalone criminal offence, in my capacity as Cabinet Secretary for Justice and Home Affairs I 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.

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

I note that the Petitioner outlines the standalone crime of non-fatal strangulation in England and Wales, which the UK Government acknowledged at the time does not actually change the law in relation to non-fatal strangulation but simply codifies it.

In the context of the wish to create a new criminal law in respect of non-fatal strangulation, I remain open minded towards the proposal, whilst being alert to any potential unintended consequences in creating new laws. For example, understanding how any new law would interact with the operation of the domestic abuse offence is a particularly important aspect. The domestic abuse offence is of course a course of behaviour offence where an item of behaviour may be an incident of non-fatal strangulation. While some non-fatal strangulation incidents may occur not in the context of a relationship, we are aware many do and how new laws would complement the operation of domestic abuse law is a key consideration.

That said, and 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.

My officials will continue to progress considerations in this area, including discussion with operational partners, and I will ensure you are kept advised as that work moves forward. In the meantime I will consider any further written submissions you receive on the Petition.

Yours sincerely

Angela Constance