

Written submission

Make non-fatal strangulation
a standalone criminal
offence in Scotland

PE2163

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Criminal Justice Committee call for views on the public petition PE2136: Make non-fatal strangulation a standalone criminal offence in Scotland¹. The Committee has the following comments to put forward for consideration.

General comments

Currently in Scotland, non-fatal strangulation (NFS) incidents are mainly treated under the common law offence of assault, defined as “an attack on another person with evil intent”². Assaults can only be committed intentionally, and the perpetrator’s motive is irrelevant³.

We note that NFS incidents can produce severe consequences in the physical and mental health of victims. We also note that according to the public petition document, NFS incidents are strongly related to domestic abuse cases, affecting women disproportionately.

We have a neutral view on the creation of a standalone offence of NFS. As indicated above, these types of incidents are already covered by the common law offence of assault. However, some evidence from comparable jurisdictions demonstrates that introducing a standalone offence may impact positively in community education on the serious effects of NFS and the safety of victims⁴.

The creation of a standalone offence of NFS could produce available statistics that may contribute to understand the scale of the problem. However, as we have indicated in other legislative initiatives related to the creation of new offences⁵,

¹ [Make non-fatal strangulation a standalone criminal offence in Scotland | parliament.scot](#)

² Macdonald, J., 1867. *A practical Treatise on the Criminal Law of Scotland*. Edinburgh: W. Paterson., included in [Scottish Sentencing Council Sentencing Assault Offences – Literature Review \(October 2022\) | scottishsentencingcouncil.org.uk](#)

³ [Sean Kirkup v. HMA \[2025\] HCJAC 9 HCA/2024/85/XC](#)

⁴ H Bows and J Herring. *Non-Fatal Strangulation: An Empirical Review of the New Offence in England and Wales*. The Journal of Criminal Law. Volume 88, Issue 5-6 (2024).

⁵ [Dog Theft \(Scotland\) Bill written evidence | lawscot.org.uk](#)

the allocation of appropriate resources is critical to ensure the enforcement of new provisions.

Evidence from other UK jurisdictions

NFS offences have been introduced in many comparable jurisdictions including England and Wales⁶ and Northern Ireland⁷. A recent study showed that between 7 June 2022 and 14 August 2023, 32 police forces in England and Wales recorded 29,767 NFS cases⁸. While researchers found some limitation with the data, they found a charging rate of around 12%. However, they also found that 20% of the cases charged were charged with an alternative offence.

The Institute for Addressing Strangulation (IFAS) has made some analysis of non-fatal strangulation in England and Wales. In their research published in February 2024, they analysed 396 Domestic Homicide Reviews (DHR) which occurred between 2011 and 2023. It was found that in 53% of the cases, the victim of NFS was killed by a person who non-fatally strangled them⁹.

Defence of consent

We consider that the introduction of a NFS offence may produce a discussion on the availability of the defence of consent. In England and Wales, consent is a statutory defence for the offence of strangulation or suffocation. However, the defence will not apply if the perpetrator intended to cause serious harm to the victim or was reckless as to whether the victim would suffer serious harm. A similar defence was defined in Section 28(6) of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022.

As currently defined in Scotland, when NFS incidents are treated under the common law offence of assault, consent is not an available defence. In *Kirkup vs. HMA*, the High Court of Justiciary stated that consent is not a defence to a charge of assault and “the Sexual Offences (Scotland) Act has no effect on the requirements of, or defences to, assault”.

We consider that some consideration should be given to the issue of consent if a NFS offence is introduced.

⁶ [Section 70\(1\) of the Domestic Abuse Act 2021](#).

⁷ [Section 28 of the Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022](#)

⁸ H Bows and J Herring. *Non-Fatal Strangulation: An Empirical Review of the New Offence in England and Wales*.

⁹ M McGowan, IFAS. [Domestic Homicide Review Series Part Two: An analysis of Domestic Homicide Reviews with a history of non-fatal strangulation](#).



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