



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

Non-Fatal Strangulation: A public consultation

July 2021

| Contents | Page No |
|---|----------------|
| Consultation Process | 4 |
| Responding to this consultation | 4 |
| Introduction | 6 |
| What makes strangulation a particular problem? | 7 |
| Impact of strangulation | 8 |
| Current position in Northern Ireland | 9 |
| Position in other jurisdictions | 14 |
| Discussion | 16 |
| Consultation Options | 20 |
| Next Steps | 21 |
| Annex A: Freedom of Information and Privacy Notice | 22 |

The Consultation Process

In developing this public consultation, the Review Team considered developments in jurisdictions around the world and the contributions from a group of experts in the field. The Team also followed developments in England and Wales. On 29 April 2021, the England and Wales Domestic Abuse Bill, which included a late amendment to create a new strangulation offence, received Royal Assent.

Responding to this Consultation

The Department is seeking your views on the issues raised by this consultation and any other comments on non-fatal strangulation policy that you consider relevant. If you require a hard copy of this consultation document or have any other enquiries please email your request to nfs.consultation@justice-ni.gov.uk or you can write to us at:

Criminal Justice Policy and Legislation Division,
Department of Justice,
Massey House,
Stormont Estate,
Belfast, BT4 3SX.

The Department will publish a summary of responses to the consultation.

Duration and Closing Date

UPDATED INFORMATION REGARDING THE EXTENSION OF CLOSING DATE:

PLEASE NOTE THAT THE CLOSING DATE FOR THIS CONSULTATION HAS BEEN EXTENDED BY ONE WEEK TO FACILITATE THE PROVISION OF RESPONSES. THE CONSULTATION WILL CLOSE ON 24 SEPTEMBER 2021.

Alternative Formats

Copies in alternative formats can be made available on request. If it would assist you to access the document in an alternative format or language other than English please let us know and we will do our best to assist you.

Privacy, Confidentiality and Access to Consultation Responses

For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity may be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we may publish them in full. For more information about what we do with personal data please see our consultation privacy notice at Annex A.

Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). Any such disclosures will be in line with the requirements of UK Data Protection legislation.

If you want the information that you provide to be treated as confidential, please explain why you regard it as confidential so that your explanation may be considered if the Department receives a request for the information under the FOIA or EIR.

Equality and Rural Proofing

The Department of Justice has conducted a rural needs impact assessment and equality screening exercise on the decision to consult and has identified that there is no potential adverse impact on any of the identified groups. Further screening exercises will be undertaken in relation to proposals following consideration of responses to the consultation.

Introduction

1. In June 2019, Criminal Justice Inspection Northern Ireland (CJINI) published a report entitled “No Excuse: Public Protection Inspection II: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland”.¹
2. The report highlighted ever increasing levels of domestic abuse incidents in Northern Ireland. Latest statistics show 31,196 incidents recorded in 2020-21, the third highest since the current reporting method was introduced. Of these- incidents 19,036 were crimes.²
3. The report noted the Department of Justice’s then draft bespoke domestic abuse legislation, which has now been enacted in the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021.³
4. The report also detailed the existing legislation and sentencing options surrounding the specific offence of non-fatal strangulation or choking. While these offences can occur in a domestic abuse context they are not exclusively domestic abuse issues, and so may not always be caught by the domestic abuse legislation. The report recommended that the Department of Justice address perceived inadequacies in the legislation regarding the act of choking or strangulation.
5. The Minister accepted this recommendation and commissioned a review of the current position in Northern Ireland.
6. Early in this process the tragic death of a Newry woman in the summer of 2020 highlighted the issue of consent to serious harm for the purpose of sexual gratification. Consent to “rough sex”, often involving strangulation, has been put forward as a defence in a number of high profile cases.
7. There are obvious links between consent to “rough sex” and non-fatal strangulation, and the question of whether the rough sex defence should be outlawed was prioritised. A public consultation ran over the winter 2020/21 and the report on the way forward on that issue can be found at [Consent to serious harm for sexual gratification: not a defence. Summary of responses and way forward.](#)

¹ <http://cjini.org/getattachment/079beabb-d094-40e9-8738-0f84cd347ae8/picture.aspx>

² <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2020-21/q4/domestic-abuse-bulletin-mar-21.pdf>

³ [Domestic Abuse and Civil Proceedings Act \(Northern Ireland\) 2021](#)

8. This consultation paper summarises the Review Team’s findings on the wider question of non-fatal strangulation legislation, and reflects input from informed key stakeholders.

9. The consultation seeks your views on the way forward.

What makes strangulation a particular problem?

10. Research carried out in the USA and published in 2021⁴ found that up to 10% of the population has experienced strangulation. It also reported that strangulation is a highly gendered act illustrated by forensic records from San Diego, which show that of 300 instances 298 were women choked by men.

11. Strangulation can occur in one of two distinctly different contexts: the most common is in a domestic abuse or violent context; it can also occur in consensual intimate relationships, where rough sex is practised. Increasingly social media is depicting rough sex and in particular strangulation as a normal part of intimate relationships.

12. Taking a cue from such depictions, and without an understanding of the risks involved, incidences of rough sex going wrong has the potential to continue to rise. In addition, raising the defence of rough sex may mask other coercive behaviours involving non-fatal strangulation as a means of asserting dominance or control.

13. Strangulation, whether harm is intended or not, can result in significant injury. However, despite that potential risk, non-fatal strangulation frequently leaves no visible marks. This is one of explanations for its prevalence in the domestic abuse context, where it can be used as a coercive and controlling tool.

14. The lack of marks may result in a failure to recognise the seriousness of the harm done. Medical and legal professionals are traditionally prompted to respond upon the presentation of visible injury rather than apparently discrete or psychological damage.

⁴ Helen Bichard , Christopher Byrne , Christopher W. N. Saville & Rudi Coetzer (2021): The neuropsychological outcomes of non-fatal strangulation in domestic and sexual violence: A systematic review, Neuropsychological Rehabilitation

Impact of strangulation

15. Research shows that loss of consciousness can occur within 4 seconds, and that pathological problems include:

- dissection of the main neck arteries;
- blocking of blood flow to and from the brain;
- brain swelling;
- cardiac arrest;
- miscarriage; and
- stroke.

16. There can also be neurological consequences. These can include:

- loss of consciousness (which indicates at least mild brain injury);
- paralysis;
- movement disorders;
- speech disorders;
- incontinence; and
- seizures.

17. The 2021 study linked a number of cognitive and psychological outcomes to strangulation including:

- amnesia;
- PTSD;
- dissociation;
- suicidality;
- depression;
- anxiety; and
- personality change.

18. The UK campaign group ‘We Can’t Consent to This’⁵, which focuses on the difficulties associated with consent to rough sex, highlights this list of potential injuries

⁵ <https://wecantconsenttothis.uk/blog/2020/12/>

and reports that victims of non-fatal strangulation in relationships are up to 8 times more likely to be murdered by their partner.

Current position in Northern Ireland

Legislation

19. The offence of strangulation/choking/suffocation is found at section 21 of the Offences Against the Person Act 1861. It states:

“Whosoever shall, by any means whatsoever, attempt to choke, suffocate, or strangle any other person, or shall by any means calculated to choke, suffocate, or strangle, attempt to render any other person insensible, unconscious, or incapable of resistance, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life.”⁶

20. This is an indictable only offence, meaning it can only be tried in the Crown Court. The maximum sentence is life imprisonment. However, the requirement that the offence can only be prosecuted if there is evidence of intention to commit another indictable offence can present significant difficulties. In many cases a demonstrable intention to commit a further indictable offence may not be present or can be difficult to prove.

21. Charging and prosecution statistics in Northern Ireland illustrate the nature of the difficulty: From 2002 to the end of 2019 there were 502 suspects charged by PSNI with choking/strangulation, however this translated into only 20 prosecutions for that offence. The decision to prosecute relies heavily on there being evidence to support a reasonable likelihood of securing a conviction. It can be difficult to satisfy the evidential test for prosecution without compelling evidence of all elements of the offence. This may explain the significant disparity between the numbers charged and prosecuted.

22. The enactment of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 will provide new protections for those suffering abuse or coercive control, which may include strangulation, whilst in a relationship.

23. Under the Act, a domestic abuse offence is committed if:

⁶ [Section 21 Offences against the Person Act 1861](#)

- a person engages in a course of behaviour (that is on two or more occasions) that is abusive of another person;
- the parties are personally connected to each other;
- a reasonable person would consider the behaviour likely to cause physical or psychological harm; and
- the perpetrator intends to cause harm or is reckless as to whether harm is caused.

24. In the context of the new offence, psychological harm includes fear, alarm and distress.⁷

Alternative charges

25. Where strangulation cannot be charged under the Offences Against the Person Act, alternative charges, such as assault or unlawful detention, are commonly used and may be tried summarily in the magistrates' courts. This prosecution of alternative charges has been criticised by victims of such assaults and others, as the offence charged may not reflect the harm caused, and the available sentence may not fully address all the circumstances of the case.

26. The courts recognise strangulation as an aggravating factor and can increase the sentence they impose to reflect the seriousness of all the circumstances presented in evidence. However, sentences are constrained by the maximum penalty available for the offence charged.

27. For example, in the magistrates' courts the normal maximum penalty is 6 months' imprisonment; the maximum sentence in the Crown Court for the offence of assault occasioning actual bodily harm is 7 years' imprisonment; and for indictable common assault the maximum is 2 years.

28. Any increase in sentence to reflect strangulation as an aggravating factor in another offence can therefore be limited. This fuels the criticism that the courts may be unable, where an alternative charge is before them, to fully reflect the strangulation aspect of the offence.

29. The court which deals with the alleged offender will have a direct relevance to the sentence. Assault is an offence which can be charged either in the magistrates' courts or in the Crown Court. This means that, in some cases, offences which include an element of strangulation may be charged in the magistrates' courts.

⁷ [Domestic Abuse and Civil Proceedings Act \(Northern Ireland\) 2021](#)

30. The mode of trial decision is made by the Public Prosecution Service for Northern Ireland and is determined taking all the circumstances of the offence into consideration.

31. In the magistrates' courts, sentencing is normally restricted to a maximum of 6 months' imprisonment, or to 12 months for a small range of indictable offences that can be tried summarily⁸ or, exceptionally, 2 years. The normal 6 month maximum has been reported, most notably by District Judge McElholm, as being inadequate.

32. As well as the concerns expressed about the courts' sentencing powers, there is an absence of provision which would record strangulation as an element of an offence. While alternative charges may include strangulation as an aggravating factor, there is no mechanism to record this aspect of the offending on the offender's criminal record. As a result, patterns of offending are not identified and the need for appropriate preventative and rehabilitative measures are not identified.

33. In light of the identified risk of future and more significant strangulation this is perceived as raising a particular issue of concern.

Non-legislative developments

34. With growing campaigns for action on strangulation has come a recognition that change is needed. Criminal justice agencies recognise the lack of public awareness of the seriousness of harm caused by, and possible injuries associated with, non-fatal strangulation.

35. Concerted efforts are under way in conjunction with experts in the field to raise awareness. This has included:

- judicial training, with a strangulation tool-kit now available on the judicial studies website;
- refreshed training for prosecutors;
- the publication of information leaflets; and
- the PSNI using its "power to tell" to make new partners of those previously guilty of domestic violence aware of that violence.

36. Women's Aid in particular has proactively championed awareness raising and training, to educate all those potentially dealing with strangulation complaints.

37. In response to the Gillen Review Report into the law and procedures in serious sexual offences in Northern Ireland, an Education and Awareness Group was

⁸ [The Magistrates' Courts \(Northern Ireland\) Order 1981- Schedule 2](#)

established to take forward an awareness campaign targeting all of society in Northern Ireland and providing people with the knowledge and tools that they need to protect themselves and others from sexual violence. In conjunction with the Department for Education, the Group is also working on the provision of consistent and comprehensive Relationships and Sexual Education programmes for schools.

38. One of the decisions emanating from the earlier consultation on the rough sex defence was that the Review Team would work with the Education and Awareness Group in support of its education and awareness raising campaign, with a view to helping address the misconceptions prevailing in social media.

39. The Courts in Northern Ireland have also recognised the seriousness of these issues. As well as District Judge McElholm’s public criticism of the sentencing powers available to the magistrates’ courts, there have been two recent Northern Ireland Court of Appeal cases which have explicitly taken into account the important research (and resulting developments in other jurisdictions) regarding this type of offending.

40. The first was in May 2020,⁹ where the Court examined the nature of strangulation and recognised its impact on victims. The relevant passage from the judgment reads as follows:

“[47] Strangulation is a form of asphyxia (lack of oxygen) characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck. The neck is an unprotected and vulnerable part of the body. Relatively modest pressure is required over a short period of time to cause problems which can be fatal or non-fatal. On occasions when fatal the offender may not have had an intention to kill. Strangulation is an effective and cruel way of asserting dominance and control over a person through the terrifying experience of being starved of oxygen and the very close personal contact with the victim who is rendered helpless at the mercy of the offender. The intention of the offender may be to create a shared understanding that death, should the offender so choose, is only seconds away. The act of strangulation symbolizes an abuser’s power and control over the victim, most of whom are female.

[48] It is a feature of non-fatal strangulation that it leaves few marks immediately afterwards and this paucity and in some cases lack of observable physical injuries to the victim leads to its seriousness not being correctly

⁹ R-v-Campbell Allen [2020] NICA 25;
<https://www.judiciaryni.uk/sites/judiciary/files/decisions/Summary%20of%20judgment%20-20R%20v%20Campbell%20Allen.pdf>

assessed. Furthermore, in general there is no inevitable commensurate relationship between signs of injury and the degree of force used.

[49] Non-fatal strangulation can lead to physical and psychological problems. For instance it can result in damage to anatomical structures within the neck, such as the muscles, blood vessels, vocal cords, hyoid bone or thyroid gland.

[50] Non-fatal strangulation may be a predictor of the future use of lethal force. Studies in both Australia and New Zealand found that strangulation is a significant factor in risk assessment for homicide of women in the domestic context.

[51] We note that the seriousness of strangulation has led to the introduction of legislation in other jurisdictions criminalising the act of strangulation as a stand-alone offence and increased sentencing where it is a feature. For instance a new offence came into operation in New Zealand on 3 December 2018 and there are 44 states in the USA which have such an offence. In this jurisdiction there is no stand-alone offence but rather section 21 of the Offences against the Person Act 1861 criminalises attempting “to choke, suffocate or strangle ... with intent ... to commit, ... any indictable offence.”

[52] Both those representing the prosecution and the appellant in this case recognised that strangulation should be an aggravating feature to be taken into account by courts when imposing sentence. We agree and consider it to be a substantial aggravating factor. We consider that the use of body force to strangle is not less heinous than the use of a weapon. We also emphasise the need to give consideration to that feature when forming a view as to future risks.”

41. In December 2020, the Court considered the case of *R v Stewart*.¹⁰ Stewart was found to have choked his partner, but the case was prosecuted on the basis of an offence of assault occasioning actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861.

42. In the course of the judgment the Lord Chief Justice, Sir Declan Morgan, made the important observation that potential injury rather than harm actually caused must be considered. He also alluded to the legislative position, remarking as follows:

“[9] This was a very bad case of its type. The victim lost consciousness. She wet herself. She had visible blood injuries to her eyes and ears, rupture of the eardrum and bruising to the neck and left arm. The applicant could easily have

¹⁰ [Judiciary NI Decision\(s\) - R v Stewart \(Jason Robert William\)](#)

unintentionally killed the victim. ... We also take the view that there is much to be said for consideration of a specific offence dealing with this conduct.

[10] We do not consider that there is much assistance to be gained from the other examples of the many ways in which this offence can be committed. We also consider in a case of strangulation it is entirely inappropriate to judge the harm caused by looking at the residual injuries. The more important issue is consideration of the potential arising from an attack of this nature. That potential was considerable in this case.”

Position in other jurisdictions

England and Wales

43. The legislative position in England and Wales was the same as in Northern Ireland until 29 of April 2021 when the Westminster Domestic Abuse Bill received Royal Assent and became an Act.¹¹

44. The Act adds a new offence of strangulation or suffocation to the Serious Crime Act 2015, aimed at addressing the same problems highlighted in this consultation. This provision was included as a late amendment to the Bill following a long campaign for new legislation.

45. Section 70 details the new offence as follows:

- “(1) A person (“A”) commits an offence if—
- (a) A intentionally strangles another person (“B”), or
 - (b) A does any other act to B that—
 - (i) affects B’s ability to breathe, and
 - (ii) constitutes battery of B.”

46. The section goes on to provide that it is a defence, provided intentionally or recklessly inflicted serious harm does not result, for a person to show that the other person consented to the strangulation:

47. “Serious harm” is defined as meaning:

- grievous bodily harm, within the meaning of section 18 of the Offences Against the Person Act 1861,
- wounding, within the meaning of that section, or

¹¹ [Domestic Abuse Act 2021](#)

- actual bodily harm, within the meaning of section 47 of that Act.

48. The offence may be tried in a magistrates' court, where the normal maximum penalty will apply¹², or in the Crown Court, where the maximum custodial penalty will be 5 years' imprisonment.

49. The Act also makes provision for offences committed outside the UK, and for a number of consequential amendments to other legislation.

Scotland

50. In Scotland there is no offence of choking/strangulation with common law assault being used instead. This carries with it a maximum sentence of life imprisonment.

Republic of Ireland

51. Ireland has no offence dedicated to the crime of non-fatal strangulation. Currently an incidence of non-fatal strangulation could be classified as an assault under section 2 or section 3 of the Non-Fatal Offences against the Person Act 1997.

52. The offence under section 2 can only be tried in a magistrates' court and carries a maximum sentence of 6 months' imprisonment. The offence under section 3 deals with more serious assaults causing harm, and can be tried in either a magistrates' court or the Crown Court. It has a maximum penalty in the magistrates' courts of 12 months' imprisonment or 5 years in the Crown Court.

53. Ireland is currently considering the situation regarding non-fatal strangulation.

Other jurisdictions

54. Australia, New Zealand and the majority of US States have introduced offences of non-fatal strangulation. The 2019 CJINI report highlights that in New York strangulation became a crime in 2011, leading to some 2,000 arrests in the first 15 weeks under the new law. Thirty seven states in the US have now enacted specific strangulation legislation, in some cases limited to a domestic setting. All but one of the states treat strangulation as a felony rather than the less serious misdemeanour category of offence.

55. The New Zealand Law Commission published a report in 2016¹³ examining whether there was a need for a stand-alone non-fatal strangulation offence and concluded that there was a case for that offence. Research had shown that of 63 women killed by their intimate partner in New Zealand the act of strangulation was

¹² In England and Wales the normal maximum custodial penalty on summary conviction is currently 6 months' imprisonment. Provision has been made for this to increase to 12 months, but it is not known when this provision will be commenced.

¹³ [NZLC R138 - Strangulation: The Case for a New Offence.](#)

involved in nine deaths. The offence was brought into legislation in December 2018¹⁴, with a maximum sentence of 7 years' imprisonment.

56. In Australia non-fatal strangulation is an offence in Queensland, Western Australia, South Australia, the Australian Capital Territory and New South Wales with maximum penalties ranging from 5 to 10 years' imprisonment. Other states are considering following suit.

Discussion

57. In December 2020 the Department of Justice launched a consultation entitled 'Consent to Serious Harm for Sexual Gratification: Not a Defence'. The consultation asked questions about the so called "rough sex defence", and in particular, whether it needed to be specifically outlawed.

58. The results of the consultation indicated a strong correlation between the defence and strangulation. A number of respondents made the point that consent should not be a defence to non-fatal strangulation, and if a new offence was created, the legislation should make this clear.

59. In light of a number of high profile cases where death has occurred, the New Zealand case of Grace Millane being an example, a number of responses to the consultation also called for a new offence of causing death by sexual violence.

60. The Department has considered these responses but does not believe the case has been made for the introduction of such an offence. The existing murder and manslaughter offences are considered adequate to address this offending behaviour. However, the Department will continue to monitor the need for such an offence.

61. A further proposal was advanced that there could be two offences of non-fatal strangulation, intended to reflect the different circumstances of its commission: on the one hand those cases where the defendant uses strangulation to exert control over the victim and to cause fear; and on the other hand, where physical harm is caused, either intentionally or not. Since that proposal was put forward, the creation of the domestic abuse offence, and making domestic abuse a statutory aggravating factor,¹⁵ has provided new protections for victims of abuse which is intended or likely to cause harm, including fear.

62. The domestic abuse offence will apply where there is a personal connection between the two individuals and a course of abusive behaviour. Where the domestic

¹⁴[New Zealand Legislation - Crimes Act 1961: 189A Strangulation or suffocation](#)

¹⁵ Domestic Abuse and Civil Proceedings Act (NI) 2021. At the time of writing, the domestic abuse provisions had not come into operation.

abuse offence does not apply, the new provisions provide for any other offence to be aggravated by domestic abuse. This statutory aggravation does not require there to be a course of abusive behaviour. Taking the new legislation into account, the Department is of the view that creation of a further single offence of strangulation causing any harm, whether physical or other, and whether intentional or not, would address any remaining gap in the legislation.

63. This is the approach which has recently been adopted in England and Wales, where new separate offences of domestic abuse and non-fatal strangulation have been introduced via the Westminster Domestic Abuse Act 2021.

64. In that Act, the non-fatal strangulation offence is broad enough to address offending in whatever context it occurs, allowing prosecutors to determine the appropriate court to charge the offence in.

65. The new provisions also aim to strike a balance between those cases where individuals' freedom of choice should not be interfered with, and those cases where, due to the level of harm done, it is appropriate for the legislature to intervene. In this regard, as can be seen from the text of section 70 of the Act (set out above), where serious harm occurs, consent will not be a defence.

66. This aligns with the new provision on the rough sex defence, which follows at section 71 of the Act, and which, following our earlier consultation, the Minister for Justice has undertaken to reflect in Northern Ireland legislation.

67. An alternative to creating a new offence would be to make strangulation a statutory aggravating factor.

68. As outlined above, strangulation is already recognised by the courts as an aggravating factor in sentencing guidance. Courts are not required to take sentencing guidance into account, but in practice, where guidance exists, they normally do.

69. Putting this into legislation would mean that the courts would be required to take strangulation into account, if occurring as part of an alternative offence, and reflect it in the sentence calculation. An accompanying requirement that the court record the aggravation could be introduced, making strangulation more visible in criminal records; increasing awareness of the impact of strangulation on sentences; and potentially increasing opportunities to target appropriate rehabilitation work on those who would benefit the most from it.

70. This approach has a significant limitation compared to the creation of a new bespoke offence: Whereas a new offence allows consideration of the appropriate maximum penalty, creation of a statutory aggravation does not allow any increase in the existing maximum sentences for the alternative offences.

71. The Review Team considered the option of amending the existing strangulation offence found in the Offences Against the Person Act 1861, to remove the requirement for proof of intention to commit a further indictable offence. There was evidence of the offence still having a place on the statute book, with records of 20 prosecutions for the offence in recent years. In light of the specific elements of this offence and the existence of a life sentence as the maximum penalty for it, strangulation was considered to be a distinct offence and it was not appropriate to change it.

72. The Review Team considers that there is sufficient evidence to support the creation of a new offence of non-fatal strangulation (without intention to commit a further indictable offence) in Northern Ireland, and that the offence created in the Domestic Abuse Act 2021 may well provide an appropriate template.

73. The creation of a new dedicated offence, with an appropriate maximum sentence, would allow the courts to record the nature of the offence, allowing vital information to be captured on criminal databases and acted upon when appropriate.

74. Preventing and influencing such offending through a parallel programme of public education may reduce avoidable or naïve offending. Awareness raising within the criminal justice system may also improve recognition of this type of offending, ensuring offenders can be dealt with appropriately and providing reassurance to victims that their complaints will be treated seriously.

75. The Review Team considers that the ongoing support of the Gillen Education and Awareness Team, and continued development of training and awareness materials are important facets of tackling the problem at its root, and considers that the Department should continue to support these initiatives.

76. The 2021 Act makes provision for trial of the new offence to take place either in a magistrates' court or in the Crown Court which raises two important questions for consideration in Northern Ireland.

77. Firstly, is it appropriate that a similar offence could be tried in Northern Ireland either in the magistrates' courts or the Crown Court? The existing offence of strangulation is an indictable only offence, which can only be charged where there is intention to commit a further indictable offence. However, alternative offences which include an element of strangulation are charged in the magistrates' courts and in the Crown Court, the choice of charge and court venue depending on the nature of the offending behaviour.

78. Having the option of an "either way" offence would allow for strangulation, where it does not meet the threshold of being considered to be an indictable offence, being dealt with relatively quickly in the magistrates' courts, and more serious cases to be charged in the Crown Court.

79. The second question is what the appropriate maximum sentence should be in each court.

80. The maximum sentence of 6 months' imprisonment when dealing with alternative charges which include strangulation as an element has been the subject of criticism. While the normal maximum sentence available in the magistrates' courts is 6 months, a small number of offences carry a higher maximum to reflect their seriousness. Where this occurs, the maximum is normally 12 months or exceptionally 2 years imprisonment. It may be appropriate for a new offence of non-fatal strangulation to attract one of these higher maximum sentences when tried summarily in a magistrates' court.

81. The maximum sentence available in the Crown Court is life, as is the case for the existing strangulation offence. A life sentence is reserved for the most serious cases, including murder, manslaughter and rape. In England and Wales the maximum sentence for the offence of non-fatal strangulation is 5 years. Australia and New Zealand have chosen higher maximums, up to 10 years.

82. Recognising the serious harm non-fatal strangulation can inflict, and that strangulation is a strong indicator of possible future homicide, the Review Team considers there is a case for a maximum sentence equivalent to the offence of assault occasioning actual bodily harm. In Northern Ireland that is 7 years' imprisonment

83. The Department is seeking your views on whether a change to the law is required and, if so, what the changes should be.

Consultation Questions

Q1. Do you think the law in Northern Ireland is sufficient as it stands?

Please give reasons for your response.

Q2. Which of the following is your preferred option?

- (a) No change?
- (b) Make strangulation a statutory aggravating factor to be taken into account by the courts when sentencing for any offence?
- (c) Create a new stand-alone offence of non-fatal strangulation with appropriate maximum sentence?
- (d) Other?

Please give reasons for your response.

Q3. If a new strangulation offence is developed, should it be capable of being tried in the magistrates' courts and in the Crown Court?

Please give reasons for your response.

Q4. If a new offence could be tried in the magistrates' courts should the maximum sentence be (a) 6 months; (b) 12 months; or (c) 2 years?

Please give reasons for your response.

Q5. If a new offence could be tried in the Crown Court, should the maximum sentence be (a) 5 years; (b) 7 years; or (c) other?

Please give reasons for your response.

Q6. Do you agree that expenditure on a programme of education to increase awareness of the problems associated with non-fatal strangulation is required?

Q.7 If yes to Question 6, what should such a programme cover?

Q8. Do you consider something more/different is required to address non-fatal strangulation in Northern Ireland?

If yes, please give details.

Next Steps

84. The consultation closes on **Friday 24 September 2021**. Any comments or suggestions received by that date will be fully considered by the Department and a summary published, with any further appropriate revisions then made to the strategy before final publication, subject to approvals.

Annex A

Freedom of Information and Privacy Notice

FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS

For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full. For more information about what we do with personal data please see our consultation privacy notice.

Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR) (EU) 2016/679.

If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR.

Privacy Notice

Data Controller Name: Department of Justice

Address: Department of Justice
CJPLD
Massey House
Stormont Estate
Belfast BT4 3SG

Email: nfs.consultation@justice-ni.gov.uk (tbc)

Data Protection Officer Name: DOJ Data Protection Officer

Telephone: (028) 90378617

Email: DataProtectionOfficer@justice-ni.x.gsi.gov.uk

Being transparent and providing accessible information to individuals about how we may use personal data is a key element of the Data Protection Act (DPA) and the EU

General Data Protection Regulation (GDPR). The Department of Justice (DoJ) is committed to building trust and confidence in our ability to process your personal information and protect your privacy.

Purpose for processing

We will process personal data provided in response to consultations for the purpose of informing the development of our policy, guidance, or other regulatory work in the subject area of the request for views. We will publish a summary of the consultation responses and, in some cases, the responses themselves but these will not contain any personal data. We will not publish the names or contact details of respondents, but will include the names of organisations responding.

If you have indicated that you would be interested in contributing to further Department work on the subject matter covered by the consultation, then we might process your contact details to get in touch with you.

Lawful basis for processing

The lawful basis we are relying on to process your personal data is Article 6(1)(e) of the GDPR, which allows us to process personal data when this is necessary for the performance of our public tasks in our capacity as a Government Department.

We will only process any special category personal data you provide, which reveals racial or ethnic origin, political opinions, religious belief, health or sexual life/orientation when it is necessary for reasons of substantial public interest under Article 9(2)(g) of the GDPR, in the exercise of the function of the department, and to monitor equality.

How will your information be used and shared

We process the information internally for the above stated purpose. We don't intend to share your personal data with any third party. Any specific requests from a third party for us to share your personal data with them will be dealt with in accordance the provisions of the data protection laws.

How long will we keep your information?

We will retain consultation response information until our work on the subject matter of the consultation is complete, and in line with the Department's approved Retention and Disposal Schedule [DoJ Retention & Disposal Schedule](#).

What are your rights?

You have the right to obtain confirmation that your data is being [processed, and access to your personal data](#)

You are entitled to have personal data [rectified if it is inaccurate or incomplete](#)

You have a right to have personal data [erased and to prevent processing](#), in specific circumstances

You have the right [to 'block' or suppress processing](#) of personal data, in specific circumstances

You have the right to [data portability](#), in specific circumstances

You have the right to [object to the processing](#), in specific circumstances

You have rights in relation to [automated decision making and profiling](#).

How to complain if you are not happy with how we process your personal information

If you wish to request access, object or raise a complaint about how we have handled your data, you can contact our Data Protection Officer using the details above.

If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you can complain to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
casework@ico.org.uk