

DOMESTIC ABUSE ACT 2021
STRANGULATION AND SUFFOCATION
CIRCULAR 2022/01



Ministry
of Justice

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**This circular is
addressed to**

Lord Chief Justice, Justices of the Supreme Court, President of the Queen's Bench Division, Master of the Rolls, Senior Presiding Judge, Lords Justices of Appeal, Chairman of the Judicial College, High Court Judges, Presiding Judges, Resident Judges, Crown Court Judges, District Judges (Magistrates' Courts), Chairmen of the Justices, Director of Public Prosecutions, HM Chief Inspector of Constabulary, Chief Officers of Police in England and Wales, Director General of the National Crime Agency, Police Service Scotland, Police Service of Northern Ireland, Director-General of HM Prison Service, Chief Executive of HM Courts and Tribunals Service, Chief Executive of the Youth Justice Board for England and Wales, Chief Crown Prosecutors, Heads of Division Revenue and Customs Prosecution Office, Chief Probation Officers, Director of Crime, Heads of Crime, Cluster Managers, Regional Support Units, Court Managers Crown Courts, Court Managers Magistrates' Courts, Clerks to the Justices, DVLA, DOENI, DVA Northern Ireland, Northern Ireland Courts Service. Sentencing Council.

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The Purpose of this Circular

1. The purpose of this circular is to notify recipients of the commencement of a new criminal offence of non-fatal strangulation or suffocation. The new offence, which is set out at section 75A of the Serious Crime Act 2015 (“the 2015 Act”), as inserted by section 70 of the Domestic Abuse Act 2021 (“the 2021 Act”),¹ will be brought into force by the Domestic Abuse Act 2021 (Commencement No. 4) Regulations 2022² on 7 June 2022.

Background

2. In April 2020, the campaign groups - *We Can't Consent to This* (WCCTT) and the *Centre for Women's Justice* (CWJ) - called for a free-standing offence of non-fatal strangulation or asphyxiation. A new criminal offence was also strongly supported by both the Domestic Abuse and Victims' Commissioners and numerous domestic abuse charities from around England and Wales.
3. CWJ reported that strangulation was a common factor experienced by survivors of domestic abuse and that it was often a measure used by an abuser to instil fear, power and control over their victim, rather than being a failed homicide attempt. Strangulation and asphyxiation were, as reported by CWJ, the second most common method of killing in female homicides - 29% or 17% - compared to only 3% of male homicides. Non-fatal strangulation offences were significantly under-charged across the UK notwithstanding they were a well-known risk indicator, specifically in cases of domestic abuse.
4. CWJ were also concerned that such cases were often not prosecuted at all, and when they were prosecuted, were charged as battery rather than a more serious crime such as ABH because of the lack of physical marks on the victim to show they had been non-fatally strangled. They also noted that neither was it always possible to prove choking or strangulation under section 21 of the Offences against the Person Act 1861 as this offence required further proof that the offender had intended to carry out an indictable offence.

¹ [Domestic Abuse Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

² <https://www.legislation.gov.uk/ukSI/2022/553/contents/made>

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5. It was also the case that victims, who may only report cases of non-fatal strangulation to the police at a later date because at the time they were afraid of further attacks by the perpetrator, found that their case could not be progressed under a charge of battery where they made their complaint more than 6 months after the incident (due to the effect of section 127 of the Magistrates' Courts Act 1980).
6. CWJ therefore believed that the Government should create a new standalone offence of non-fatal strangulation that reflected the serious consequences and experience suffered by the victim from such behaviour. Other jurisdictions, such as Australia (all states except Tasmania) and New Zealand for example, had recognised this as a serious crime and had created a standalone offence to ensure the abuser, in inflicting a terrifying ordeal on the victim, was prosecuted under an appropriate charge that carried an appropriate penalty, thereby enabling justice to be effectively served.
7. Consideration was given by the Government to the information provided by WCCTT and CWJ, including the position taken on non-fatal strangulation internationally and the application of current offences in England and Wales that could apply to non-fatal strangulation, which covered a range of seriousness from battery to attempted murder. Non-fatal strangulation can also be part of a course of action for the purposes of the offence of coercive and controlling behaviour in an intimate or family relationship (set out at s.76 of the 2015 Act). In addition, there was also a specific offence under section 21 of the Offences against the Person Act 1861 ("the 1861 Act") which makes it an offence to attempt to choke, suffocate or strangle any person, or choke, suffocate or strangle a person in an attempt to render that person insensible, unconscious or incapable of resistance with intent to commit another indictable offence.
8. The Government concluded, following a review of the evidence, that non-fatal strangulation cases did appear difficult to prosecute under existing offences particularly if there was little or no physical evidence to show that strangulation had occurred. This then often left victims in fear of further reprisals from their abuser, in addition to feeling let down by the criminal justice system. The problem was also often compounded by the fact that a battery, which as set out above, is the most common charge in such cases, carries a maximum penalty of six months' imprisonment. The Government considered that this did not adequately reflect the seriousness of the behaviour and the impact that it could have on the victim. It was for these reasons that the Government decided it was appropriate to create a new offence of non-fatal strangulation or suffocation which carries a higher maximum penalty, akin to that for ABH. Further, because the offence is triable either way, it is not subject to the limitation set out in section 127 of the Magistrates' Courts Act 1980 described above, which means that the court is able to hear a case even where the complaint was made more than 6 months after the incident..

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Summary of new criminal offence

9. Section 70 of the 2021 Act amends the 2015 Act, to insert two new sections in Part 5 of the 2015 Act — sections 75A and 75B — which create a new and specific criminal offence of non-fatal strangulation and suffocation, and then set out the position on extraterritorial jurisdiction.
10. Section 75A of the 2015 Act provides that where a person (A) intentionally strangles another person (B) or does anything to affect B's ability to breathe and that act constitutes a battery of B, they will be guilty of a criminal offence.
11. The offence applies to all cases where non-fatal strangulation occurs, including in cases where such acts occur in a domestic abuse context. The offence captures strangulation, and any acts that affect a victim's ability to breathe and constitutes a battery (such as suffocation, or constriction).
12. Section 75A(2) of the 2015 Act provides that it is a defence for A to show that B consented to being strangled or to any other act that affected their ability to breathe. The defendant must adduce sufficient evidence to raise the consent defence as an issue in the proceedings, and it will then be for the prosecution to prove beyond reasonable doubt that B did not so consent. If the prosecution cannot establish this to the required standard, then A will have a full defence to the charge. However, this is subject to section 75A(3), which provides that the defence at section 75A(2) will not apply where B suffers serious harm, and where A either intended to cause A serious harm, or was reckless as to whether B would suffer serious harm, no matter whether A purported to give their consent to the acts that caused the serious injury or not. This reflects the longstanding position, as established in *R v Brown* [1993] 2 W.L.R. 556, that while consent can constitute a defence to an assault that amounts to no more than a battery, it is not a defence to an assault in more serious circumstances. Section 75A therefore aims to strike a balance between respect for an individual's private life and acts that may have been consensual between partners but where no, or minor injury occurs, and those that involve serious harm, and the requisite intention or recklessness.
13. The position on consent in the new section 75A of the 2015 Act is also consistent with section 71 of the 2021 Act, which sets out on a statutory basis the principle in *Brown* that is described above, that is, that it is not a defence that a victim consented to the infliction of serious harm for the purpose of obtaining sexual gratification in relation to a 'relevant offence' (defined to mean an offence under sections 18, 20 or 47 of the 1861 Act). Section 71 of the 2021 Act came into force on Royal Assent (29 April 2021).

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14. The offence of non-fatal strangulation or suffocation that is set out at section 75A of the 2015 Act will be triable in either the magistrates' court or the Crown Court. The maximum penalty on summary conviction in the magistrates' court will be 12 months' imprisonment³ and/or an unlimited fine. Following conviction on indictment in the Crown Court, the maximum penalty will be 5 years' imprisonment, an unlimited fine, or both. The maximum penalty for the offence of non-fatal strangulation is therefore the same as that for ABH under section 47 of the 1861 Act. This reflects the seriousness of the offence of non-fatal strangulation. However, the benefit of the non-fatal strangulation offence will be that whilst ABH requires clear evidence of a relatively serious injury, it will not be necessary to establish this under section 75A of the 2015 Act. It will only need to be established that a perpetrator (A) intentionally strangled a victim (B) or did any other act which affected (B's) ability to breathe and that this constituted a battery.
15. It will, however, remain open to the prosecution to bring alternative charges in any individual case where the evidence supports it; for example, ABH or grievous bodily harm.
16. Section 75B of the 2015 Act provides that where a person who is a United Kingdom national or is habitually resident in England or Wales does an act outside the UK, and that act would constitute an offence under section 75A if done in England and Wales, that person is guilty of the section 75A offence in England and Wales. This means that acts committed extraterritorially can be prosecuted as if the offence had been committed in England and Wales.

Useful links:

- [Domestic Abuse Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk)
- The Domestic Abuse Act 2021 (Commencement No. 4) Regulations 2022 - see <https://www.legislation.gov.uk/ukxi/2022/553/contents/made>

³ These provisions came into force on 2nd May: [The Criminal Justice Act 2003 \(Commencement No. 33\)](https://www.legislation.gov.uk/ukxi/2003/33/contents/made) and [Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukxi/2020/2/contents/made)

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