

Improving protections in the justice system for women and girls: consultation

Social Work Scotland response

June 2026

Introduction

Social Work Scotland is the professional body for social work managers and leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome the opportunity to respond to the consultation on improving protections in the justice system for women and girls.

Overview

A workshop discussion with Social Work Scotland members was held mid-May 2026 which highlighted a consistent and coherent set of themes that underpin this consultation response. Overall, members expressed broad support for the Scottish Government's focus on strengthening protections for women and girls, while emphasising that, in many areas, the issue is not a gap in legislation but in how existing laws and systems operate in practice.

A central theme throughout the discussion was confidence in the current legal framework, particularly in relation to non-fatal strangulation and spiking. Members were clear that Scots law already provides a flexible and robust basis for addressing

these harms, especially when behaviour can be understood within a wider pattern of domestic abuse. There was a strong view that creating new standalone offences in these areas risks narrowing the current approach and could have unintended consequences, including weakening the evidential advantages available under existing domestic abuse legislation. Instead, members consistently emphasised that the priority should be on improving how current laws are applied.

Linked to this, a second key theme was the importance of practice, implementation, and system consistency. Members highlighted concerns about variability in investigation, recording, and reporting, particularly in relation to non-fatal strangulation. There was a clear message that the seriousness of such behaviour is not always fully captured as cases move through the justice process, which can limit effective risk assessment and decision-making. Improved recording, better information sharing between agencies – including from police, COPFS and SCTS to Social Work - and access to fuller case information, including victim perspectives, were identified as critical areas for improvement.

A third theme was the need to strengthen professional awareness and training across services. Members noted that behaviours such as non-fatal strangulation and spiking can be minimised or misunderstood, despite being significant indicators of harm and escalation. This applies not only within justice social work, but across policing, health, education, and other partner agencies. Enhancing professional understanding was seen as essential to ensuring consistent identification, appropriate responses, and effective risk management.

The discussion also highlighted the importance of public awareness and cultural change. Members emphasised that awareness-raising must go beyond individual safety messages and instead address wider societal attitudes, including the normalisation of harmful behaviours and the persistence of victim-blaming. This was particularly relevant in relation to young people, with members identifying education and early intervention as key opportunities to promote healthy relationships, challenge harmful norms, and improve understanding of consent and risk.

In contrast to areas where existing law is considered sufficient, members strongly supported the development of new offences in relation to technology-facilitated harm, including the creation and requesting of intimate images and the supply of

tools designed to generate such material. These were viewed as necessary responses to clear gaps in the current framework and reflective of the rapidly evolving nature of online abuse. Alongside legislative change, members stressed the need for improved professional capability, prevention work, and greater accountability for those who enable harm through digital platforms and technologies.

Members also expressed more mixed views in relation to proposals to expand the use of non-harassment orders through diversion from prosecution. While recognising potential benefits in terms of victim safety and flexibility, there were significant concerns about unintended consequences, including reduced access to justice, over-reliance on diversion for serious cases, and loss of access to structured interventions and supports for both victims and those who offend. Ensuring that victims' voices remain central to decision-making was emphasised as a critical consideration in this area.

Finally, across all areas of the consultation, members reinforced the importance of a whole-systems, multi-agency approach aligned with the broader Equally Safe strategy. Legislative change was seen as only one part of the solution, with meaningful progress dependent on coordinated action, trauma-informed practice, and a sustained focus on prevention, protection, and long-term outcomes for women and girls.

Questions and responses

The questions from the consultation are presented below, along with the responses from members of Social Work Scotland who attended the workshop.

Non-fatal strangulation

- **Question 1: Do you agree with the Scottish Government view on the benefits arising from the operation of current law in relation to non-fatal strangulation?**

Social Work Scotland members broadly agree with the Scottish Government's position that the current legal framework provides significant and meaningful benefits in responding to non-fatal strangulation. Members recognise that Scots law already allows such conduct to be prosecuted through a range of offences, including assault and domestic abuse, and that these routes provide sufficient scope to reflect the seriousness of the behaviour. There is a strong view that this flexibility is a key strength of the current system, as it allows practitioners and prosecutors to apply the most appropriate charges based on the full circumstances of each case, rather than constraining responses within a narrowly defined standalone offence.

From a practice perspective, members emphasise that introducing a specific standalone offence risks narrowing the legal approach and potentially weakening the existing framework. The current system enables the inclusion of non-fatal strangulation within wider patterns of coercive and controlling behaviour, particularly under the Domestic Abuse (Scotland) Act 2018, which is highly valued by practitioners. Members consider that this holistic approach better reflects the lived experience of victims, where strangulation is rarely an isolated incident but part of ongoing abuse.

However, agreement with the Government's position is qualified by a clear recognition that the effectiveness of the current law depends heavily on how it is implemented in practice. Members highlighted that the key issue is not a lack of legislation, but variability in investigation, recording, and reporting. There are concerns that non-fatal strangulation is not always fully or consistently documented

by police and may not be adequately reflected in reports submitted to the Procurator Fiscal. This can lead to a loss of critical context when cases progress through the justice system, limiting the ability of courts and justice social work to fully assess risk and seriousness.

In this context, members place significant emphasis on the need for more robust and consistent investigative practices, alongside improved information sharing across agencies. Justice social work practitioners, including court report writers and those involved in bail supervision, often do not receive sufficient detail about the circumstances of offences, including the presence and nature of non-fatal strangulation. Members believe that better access to summaries of evidence and victim statements would strengthen risk assessment, improve decision-making, and ensure that the gravity of such behaviour is properly recognised.

Members also consider that the benefits of the current law could be enhanced through improved training and guidance for police officers, prosecutors, and wider professionals. There is a view that non-fatal strangulation is sometimes minimised or misunderstood, despite its well-evidenced links to serious harm and homicide risk. Strengthening professional understanding would support more consistent identification, recording, and prosecution, ensuring that existing legal provisions are used to their full effect.

Overall, Social Work Scotland members agree with the Scottish Government that the current legal framework offers robust protection and significant benefits. However, they stress that these benefits will only be fully realised through improvements in practice, particularly in relation to investigation, recording, information sharing, and professional awareness. In this respect, members view the priority as strengthening the operation of the existing system rather than introducing new legislative provisions.

- **Question 2: Do you agree with the Scottish Government view for better recording of criminal cases where non-fatal strangulation arises?**

Social Work Scotland members agree with the Scottish Government's view that improved recording of criminal cases involving non-fatal strangulation is necessary

and would bring important benefits. Members recognise that, while the current legal framework is sufficiently robust, there are gaps in how instances of non-fatal strangulation are identified, recorded, and carried through the justice process. Improved and consistent recording is therefore seen as a critical step in strengthening the overall response without the need for new legislation.

Members highlight that, in practice, non-fatal strangulation is often under-recorded or inconsistently described within police reports and prosecution documentation. This can result in the seriousness of the behaviour being minimised or lost as cases progress through the system. As a result, key information may not be fully available to the Procurator Fiscal, the courts, or justice social work practitioners undertaking risk assessments. Improved recording would help ensure that the presence and severity of such behaviour is clearly recognised at every stage of the justice process.

From a social work perspective, accurate and detailed recording is essential to effective assessment and risk management. Members note that justice social work reports, bail supervision assessments, and broader risk assessments rely heavily on the quality of the information provided within case papers. Where information about non-fatal strangulation is incomplete or absent, there is a risk that the level of harm and potential for escalation, including links to homicide risk, is not fully understood. Better recording would therefore support more informed professional judgement and safer decision-making.

Members also emphasise that enhanced recording would contribute to a stronger national evidence base on the prevalence and nature of non-fatal strangulation. At present, the lack of consistent data limits understanding of how frequently this behaviour occurs and in what contexts. Improving data collection would enable more effective policy development, targeted interventions, and resource allocation, as well as supporting multi-agency responses such as MARAC processes where understanding patterns of high-risk behaviour is crucial.

In addition, members see improved recording as closely linked to wider issues of professional awareness and training. Consistent recording requires a shared understanding across police, prosecutors, and other professionals of what constitutes non-fatal strangulation and why it is significant. Enhancing professional

knowledge and reinforcing the importance of capturing this information would help ensure that recording practices are applied consistently and meaningfully.

Overall, Social Work Scotland members strongly support the proposal for better recording of criminal cases involving non-fatal strangulation. They view this as a practical and proportionate measure that would enhance the effectiveness of existing legal provisions, improve risk assessment and victim protection, and contribute to a more informed and coordinated response across the justice and social work systems.

- **Question 3: Do you have views on how best public awareness can be improved as to the dangers of non-fatal strangulation?**

Social Work Scotland members consider that improving public awareness of the dangers of non-fatal strangulation is essential and should be a key priority alongside the effective use of existing legal powers. Members emphasise that awareness-raising must go beyond general messaging and instead focus on developing a clear and consistent understanding across society of the seriousness, risks, and long-term consequences associated with this behaviour. In practice, non-fatal strangulation is often minimised or misunderstood, and there remains a lack of widespread recognition that it is a significant indicator of escalating violence and increased risk of homicide.

Members highlight that awareness-raising should take a whole-systems approach, involving not only the general public but also professionals across justice, social work, health, and education. There is a strong view that professional awareness requires particular attention, as practitioners are often key to identifying and responding to non-fatal strangulation. Training and guidance across agencies should emphasise its role as a critical risk marker within domestic abuse, ensuring that practitioners are equipped to ask the right questions, recognise the signs, and respond appropriately. Improving professional understanding would also support more consistent recording and assessment practices.

In terms of public awareness, members stress the importance of early intervention through education, particularly with children and young people. There is concern that

harmful behaviours, including strangulation, may be normalised within some relationship contexts, influenced in part by online content and wider societal attitudes. Members therefore consider that relationships, sexual health, and wellbeing education provides an important opportunity to challenge harmful norms, clarify the meaning of consent, and reinforce that non-fatal strangulation is dangerous and unacceptable in any context. Integrating this issue into existing programmes on violence against women and girls, such as school-based prevention initiatives, would support consistent messaging from an early stage.

Members also emphasise that awareness campaigns should not focus solely on victims or potential victims. While it is important that individuals understand the risks and feel supported to seek help, there is a need to avoid messaging that could inadvertently contribute to victim-blaming or place responsibility on individuals to protect themselves. Instead, campaigns should also address perpetrators and societal attitudes, reinforcing that responsibility lies with those who commit harm. This includes challenging the normalisation of such behaviour and making clear the serious consequences associated with it.

There is also a strong view that awareness-raising should be linked to improved consistency in recording and response across agencies. Members note that public awareness, professional understanding, and recording practices are interconnected; increasing awareness will support more consistent identification and documentation of non-fatal strangulation, which in turn will improve data, risk assessment, and service responses. Multi-agency structures, such as MARAC processes, are identified as important sources of learning and information that can help inform both awareness-raising and service development.

Finally, members emphasise that effective awareness-raising must be sustained, evidence-informed, and supported by broader cultural change. This includes ensuring that messaging reaches diverse groups and settings, including those experiencing multiple vulnerabilities, and that it is reinforced through ongoing training and public engagement rather than one-off campaigns. Overall, Social Work Scotland members view public awareness as a critical component of prevention and protection, complementing the existing legal framework and supporting a more informed and consistent response to non-fatal strangulation.

- **Question 4: Do you have any other views on steps to address the dangers of non-fatal strangulation?**

Social Work Scotland members consider that, in addition to improvements in legislation and public awareness, there are a number of practical and systemic steps that could further strengthen the response to non-fatal strangulation. A central theme emerging from members' reflections is the need to improve the quality, consistency, and flow of information across the justice system. Members highlight that justice social work practitioners frequently receive limited detail within court papers, often restricted to summary complaints or indictments, with little insight into how cases have evolved or what specific behaviours were alleged initially. Providing fuller information, including summaries of evidence and, where appropriate, victim statements, would significantly enhance the ability of practitioners to assess risk, understand patterns of behaviour, and respond effectively.

Members also emphasise the importance of strengthening multi-agency working and ensuring that non-fatal strangulation is consistently recognised and discussed within existing structures such as MARACs and other risk management forums. These settings provide a valuable opportunity to capture the prevalence and context of non-fatal strangulation within high-risk cases. Better integration of information from such forums into the criminal justice process would support a more coherent understanding of risk and ensure that the seriousness of this behaviour is reflected in decision-making.

There is a strong view that additional focus should be placed on embedding non-fatal strangulation within risk assessment frameworks and professional practice tools. While it is often captured within broader domestic abuse assessments, members note that it may not always be given the specific weight it warrants as a marker of escalation and potential lethality. Strengthening its visibility within assessment processes, including within structured professional judgement tools, would support more consistent identification and management of risk.

Members further highlight the need to address the normalisation and minimisation of non-fatal strangulation observed in some practice contexts. Accounts from frontline services suggest that such behaviour can be described in ways that underplay its

seriousness, for example where incidents are recorded without recognising their potential lethality. Addressing this requires not only training but also a cultural shift across services to ensure that non-fatal strangulation is consistently understood as a high-risk behaviour requiring a robust response.

Another important consideration raised by members is the experience of particularly vulnerable groups, including women involved in commercial sexual exploitation and those accessing women's services. Practitioners report that non-fatal strangulation can be a common and deeply harmful experience within these contexts, yet may be under-reported or inadequately captured. Building trust, improving engagement, and ensuring that appropriate opportunities exist for disclosure are therefore critical steps in addressing the full extent of the issue.

Finally, members reiterate that efforts to address non-fatal strangulation must be aligned with broader strategies to tackle violence against women and girls, including Equally Safe. This includes ensuring that responses are trauma-informed, victim-centred, and focused on both immediate safety and longer-term outcomes. Overall, Social Work Scotland members view the key additional steps as strengthening practice, information-sharing, and professional understanding across systems, rather than introducing new legislative measures.

Spiking

- **Question 5: Do you have views on how the offence of spiking is addressed under existing laws?**

Social Work Scotland members are of the view that the offence of spiking is already appropriately addressed within the existing legal framework in Scotland. Members recognise that the range of available offences, including the common law offence of drugging, alongside assault, culpable and reckless conduct, and the specific offence of administering a substance for sexual purposes, provides sufficient flexibility to respond to the varied circumstances in which spiking occurs. This flexibility is seen as a particular strength, allowing the justice system to respond proportionately to the

seriousness and context of each individual case rather than being constrained by a narrowly defined offence.

Members emphasise that, in practice, the issue does not lie with a lack of legislative provision, but rather with the broader system response to incidents of spiking. There is a shared view that existing laws are capable of addressing spiking effectively when they are applied consistently and supported by robust investigation and prosecution. Creating a new standalone offence is therefore not considered necessary, as it would not in itself address the underlying challenges associated with reporting, evidence gathering, and victim engagement.

From a social work perspective, members highlight that the complexity of spiking incidents, particularly where alcohol or substances are already involved, can present challenges in terms of disclosure, credibility, and progression through the justice system. These challenges are not resolved through new legislation but require improvements in how cases are understood and managed in practice. This includes building confidence among victims that their experiences will be taken seriously and that their circumstances, including any voluntary consumption of substances, will not undermine their ability to seek justice.

Members also note that spiking does not occur solely within public settings such as bars or nightclubs, but can take place within private or domestic contexts, including within relationships. The existing legislative framework is considered sufficiently broad to capture these different contexts, and members see value in retaining that breadth rather than narrowing the response through a single offence definition.

- **Question 6: Do you have views on the benefits of developing a standalone spiking offence?**

Social Work Scotland members do not consider that there are significant benefits to developing a standalone offence of spiking at this time. Members' discussions reflect a consistent view that the existing legal framework in Scotland already provides sufficient scope to respond effectively to spiking, and that introducing a new offence would add limited practical value.

Members emphasise that the current range of offences, including common law drugging and related offences, allows for flexibility in capturing the diverse and often complex circumstances in which spiking occurs. This flexibility is seen as particularly important, allowing prosecutors to select charges that reflect the specific facts and seriousness of each case, rather than fitting behaviour into a more narrowly defined statutory category. As such, a standalone offence is not viewed as necessary to achieve appropriate prosecution or sentencing outcomes.

There is also a concern that creating a new offence may risk an over-reliance on legislative change as a solution to what are understood to be primarily issues of practice, culture, and system response. Members note that barriers to reporting, challenges in evidence gathering, and issues of victim confidence would remain regardless of whether a standalone offence exists. In this context, the introduction of a new offence is not seen as addressing the underlying factors that influence whether incidents are reported, investigated, and successfully prosecuted.

Members further highlight that there is a need to be cautious about unintended consequences. A standalone offence could potentially create confusion or duplication within the legal framework, or lead to inconsistencies in how cases are charged, if it is used in place of broader offences that may better reflect the seriousness or context of the behaviour. Maintaining the current flexible approach is therefore considered preferable.

While acknowledging that a standalone offence might offer some limited benefits, such as increased visibility of the issue or perceived clarity for the public, members do not consider these benefits to outweigh the strengths of the existing approach. Instead, they emphasise that awareness-raising, improved professional responses, and building confidence in reporting are likely to have a more meaningful impact.

- **Question 7: Do you have any views on (a) how public awareness can be improved as to the dangers of spiking and (b) how to encourage individuals to report a spiking offence?**

Social Work Scotland members consider that improving public awareness of the dangers of spiking and increasing reporting requires a carefully balanced and multi-

layered approach. Members emphasise that awareness-raising must go beyond traditional safety messaging and instead address the broader cultural, behavioural, and systemic factors that shape how spiking is understood and responded to.

In relation to public awareness, members highlight that existing messaging has often focused on individual safety measures, particularly in nightlife settings, and is frequently directed at potential victims. While recognising the importance of practical safety advice, members express concern that this approach can unintentionally reinforce messages that place responsibility on individuals to protect themselves. Instead, there is a strong view that awareness campaigns should focus more explicitly on the impact and seriousness of spiking, reinforcing that it is a criminal act with significant physical and psychological consequences. Campaigns should also target perpetrators and challenge behaviours, attitudes, and social norms that enable or minimise such conduct, including through approaches similar to wider violence against women and girls initiatives.

Members also emphasise that awareness-raising needs to reflect the full range of contexts in which spiking occurs. While public messaging has traditionally centred on bars and nightclubs, members note that spiking can also take place in private or domestic environments, including within relationships. Awareness efforts should therefore expand to include these contexts and ensure that the public, as well as professionals, understand that spiking is not confined to particular settings. There is also a need to ensure that messaging reaches diverse audiences, including young people, and is embedded within education and prevention work on relationships, substance use, and personal safety.

In terms of encouraging reporting, members identify victim confidence as a critical issue. There is a strong view that individuals may be reluctant to report spiking due to concerns about not being believed, particularly where alcohol or recreational drug use is involved. Members emphasise the importance of tackling this through a clear and consistent message that responsibility lies with perpetrators and that individuals will be supported regardless of the circumstances in which the incident occurred. Reducing real and perceived victim-blaming is therefore central to increasing reporting rates.

Members also highlight the importance of improving the response from professionals, particularly police, health services, and frontline support services. Encouraging reporting is intrinsically linked to how disclosures are received; individuals are more likely to come forward if they have confidence that they will be taken seriously, treated respectfully, and provided with appropriate support. This includes ensuring that professionals have the training and confidence to respond sensitively and effectively, including recognising less obvious signs of spiking and understanding how it may present, particularly in domestic contexts or over longer periods of time.

There is also a role for improving public understanding of the signs and effects of spiking. Members note that better awareness of symptoms, including those that may develop over time or be less immediately obvious, would support earlier identification and help individuals to recognise when something may have occurred. This is particularly relevant in cases where spiking is repeated or occurs in private settings, where it may be misattributed to other causes.

Finally, members emphasise that awareness-raising and reporting must be supported by consistent, coordinated multi-agency responses. This includes aligning public health messaging, policing, justice processes, and support services so that individuals receive clear and consistent information about what will happen if they report.

Statutory aggravation - offences committed against pregnant women

- **Question 8: Do you agree for a new aggravation in relation to offences committed against pregnant women by a partner or ex-partner?**

Social Work Scotland members are broadly supportive of introducing a new statutory aggravation in relation to offences committed against pregnant women by a partner or ex-partner. Members recognise that pregnancy represents a period of significantly increased vulnerability, during which domestic abuse can escalate in both frequency

and severity, and therefore consider it appropriate that the law formally recognises this heightened risk.

From a social work perspective, members view the proposed aggravation as a proportionate and constructive way to strengthen the justice response without creating unnecessary complexity in the legal framework. By requiring courts to explicitly recognise and record the role of pregnancy in offending behaviour, the aggravation is seen as enhancing transparency, improving consistency in sentencing, and ensuring that the additional harm experienced during pregnancy is properly acknowledged.

Members also agree with the focus on domestic abuse contexts, noting that evidence and practice experience consistently demonstrate that pregnancy can be a trigger point for escalation within abusive relationships. Limiting the aggravation to offences committed by a partner or ex-partner is therefore considered appropriate and pragmatic, helping to avoid legal complexity while targeting the area of greatest risk.

Prosecutorial powers to impose non-harassment orders (NHOs)

- **Question 9: Do you agree to COPFS being given a power to make an NHO against a person when offering an alternative to prosecution?**

Social Work Scotland members hold a mixed and cautious view on the proposal to give COPFS the power to impose a non-harassment order (NHO) as part of an alternative to prosecution. While there is recognition that such a power could offer an additional protective measure for victims, particularly in cases where a prosecution may not proceed, members are not fully persuaded that the benefits clearly outweigh the potential risks.

On one hand, members acknowledge that enabling NHOs at the point of diversion could provide some immediate safeguard for victims without requiring them to engage in what can be a lengthy and often distressing court process. In this respect, the proposal is seen as having potential value, particularly where victims prioritise

safety and wish to avoid court proceedings. It may also offer a more flexible response in cases involving lower-level offending or where diversion is already considered appropriate.

However, members express significant concern about the possible unintended consequences of this approach. A key issue is the risk that introducing NHOs as part of diversion could lead to more cases of domestic abuse being dealt with outwith the court process. There is apprehension that this could result in serious behaviour being responded to less robustly, potentially undermining confidence in the justice system and limiting the ability to hold perpetrators fully accountable. Members are also concerned that such an approach could reduce access to structured interventions, such as court-mandated programmes, which play an important role in addressing offending behaviour and supporting victim safety.

Members also highlight the importance of considering the victim's experience and perspective. There is concern that some victims may feel that justice has not been achieved if cases are diverted rather than prosecuted, particularly after they have gone through the process of reporting and providing statements. While safety is a primary concern for many victims, members emphasise that individuals will have different views on what outcome they want, and any new powers should ensure that victims' voices are central to decision-making.

In addition, members raise questions about how such a system would operate in practice, noting a lack of clarity around issues such as enforcement, variation or revocation of orders, and how breaches would be managed. There are also broader concerns about the current operation of NHOs, including variability in how they are applied by courts and how breaches are responded to, which members feel should be addressed before extending their use through diversion.

Overall, Social Work Scotland members do not express a clear consensus in support of the proposal. While recognising its potential benefits as an additional protective tool, members remain cautious and highlight the need for further clarity, safeguards, and consideration of unintended consequences, particularly in relation to victim experience, system responses, and the wider impact on how domestic abuse cases are managed within the justice system.

- **Question 10: Do you agree on how applications to vary or revoke an NHO made by COPFS should be handled with court involvement suggested for any appeals?**

Social Work Scotland members are broadly content with the principle that there should be court involvement in handling applications to vary or revoke a non-harassment order (NHO), including a right of appeal against decisions. Members recognise that NHOs, even when introduced through an alternative to prosecution, represent a significant restriction on an individual's behaviour and therefore require appropriate safeguards, procedural fairness, and oversight. In this respect, retaining a role for the courts is seen as important in ensuring transparency, consistency, and accountability in decision-making.

Members consider it appropriate that, where COPFS is given the initial power to impose an NHO, any disputes or challenges in relation to variation or revocation should ultimately be subject to independent judicial scrutiny. This is particularly important given the potential complexities involved, including changes in circumstances, issues of ongoing risk, and the need to balance the rights and safety of victims with those of the person subject to the order. Court involvement in appeals is therefore viewed as an essential safeguard within the proposed framework.

However, members also note that there is limited clarity at this stage about how such arrangements would operate in practice, and they emphasise the importance of clear, consistent processes being established. There are questions about how decisions would be made by COPFS in the first instance, how applications would be managed, and how the views of victims would be taken into account throughout the process. Ensuring that victims are fully informed and able to contribute to decisions about variation or revocation is seen as particularly important from a social work and victim-centred perspective.

Members also highlight that any new arrangements should be considered in the context of existing concerns about how NHOs operate in practice, including variability in how they are applied and enforced. Ensuring that processes for variation, revocation, and appeal are robust and accessible will be key to maintaining

confidence in the system and ensuring that NHOs provide meaningful and effective protection.

- **Question 11: Do you agree an NHO made by COPFS as part of an alternative to prosecution should have a maximum time period of 12 months?**

Social Work Scotland members recognise the rationale for proposing a maximum time period for a non-harassment order (NHO) imposed as part of an alternative to prosecution and are generally content that a defined limit, such as 12 months, is appropriate within that context. Members note that diversion from prosecution is typically used in less serious cases and is intended to provide a structured opportunity to address behaviour within a relatively short timeframe. A 12-month period is therefore seen as broadly consistent with the aims of diversion and may provide a proportionate level of protection during that period.

However, this position is held with some caution. Members highlight that the appropriateness of a 12-month limit will depend heavily on the nature of the risk posed in individual cases. While it may be sufficient in some circumstances, there is concern that in cases involving ongoing patterns of abusive behaviour, particularly domestic abuse, a fixed and relatively short duration may not provide adequate protection for victims. Members therefore emphasise that the availability of court proceedings, where longer or indefinite NHOs can be imposed, remains essential in more serious or higher-risk cases.

There is also a broader view that the effectiveness of any time-limited NHO will depend on how well it is monitored and enforced in practice. Members note existing concerns about the consistency of responses to breaches of NHOs and suggest that strengthening the robustness of enforcement should be a priority alongside any new powers.

Online and technology-facilitated harm: intimate images - deepfakes

- **Question 12: Do you agree with the Scottish Government proposal for a creation offence?**

Social Work Scotland members are supportive of the Scottish Government proposal to introduce a new offence covering the creation of non-consensual intimate images, including “deepfake” material. Members recognise that this represents a clear and necessary development in the law to respond to the evolving nature of technology-facilitated abuse.

In contrast to earlier questions where existing legislation was considered sufficient, members view this as an area where there is a genuine gap. The current law primarily addresses the sharing or threatening to share intimate images but does not fully capture the harm caused at the point of creation. Members agree that criminalising creation itself reflects the reality that harm can occur immediately when such images are made, regardless of whether they are subsequently shared.

From a social work perspective, members emphasise the significant and often long-lasting impact that such material can have on victims. The creation of intimate images without consent can be deeply distressing, damaging to dignity and identity, and difficult to contain once it enters digital environments. Members therefore consider that recognising this behaviour as criminal sends a clear and important message about its seriousness and unacceptability.

Members also support the proposal on the basis that it brings consistency with existing protections for children, where the creation of indecent images is already an offence. Extending similar protections to adults is seen as a logical and necessary step, ensuring that all individuals are afforded equivalent protection from this form of abuse.

- **Question 13: Do you agree with the proposal for a requesting creation offence?**

Social Work Scotland members agree with the proposal to introduce an offence relating to the requesting of the creation of non-consensual intimate images. Members consider that this is a necessary and logical extension of the proposed

creation offence, ensuring that the law captures the full range of behaviours involved in facilitating this type of abuse.

Members recognise that requesting the creation of such images is itself a harmful and deliberate act, even where the individual does not directly create or distribute the material. In a digital and global environment, it is relatively easy for perpetrators to seek out others, including those in different jurisdictions, to generate manipulated images on their behalf. Without addressing this behaviour, there is a clear risk that individuals could avoid accountability by outsourcing the production of abusive material.

From a social work perspective, members emphasise that the harm to victims arises not only from the existence or sharing of such images, but from the intent and actions of those who initiate their creation. Criminalising the act of requesting images therefore reflects the seriousness of that intent and helps to close a potential loophole in the law. It also reinforces a clear message that all forms of participation in this behaviour, whether direct or indirect, are unacceptable.

Members also note that introducing this offence aligns with a preventative approach, targeting behaviour at an earlier stage before images are created or disseminated more widely. This is seen as particularly important in the context of rapidly evolving technology, where the speed and scale at which harm can be caused is significant.

Online and technology-facilitated harm: intimate images - nudyfy apps

- **Question 14: Do you agree with the proposal for a new production, supply and offering to supply offence?**

Social Work Scotland members support the proposal to introduce a new offence covering the production, supply and offering to supply tools designed to generate non-consensual intimate images. Members view this as an important and necessary step in addressing the wider ecosystem that enables technology-facilitated abuse.

Members emphasise that, while criminalising individual acts such as creation or sharing is essential, it is equally important to address the availability of the tools that make such abuse easier, quicker and more widespread. The increasing accessibility

of applications and platforms designed to generate intimate images without consent is seen as a significant driver of harm, lowering the threshold for offending and enabling individuals to engage in abusive behaviour with minimal effort or technical skill.

From a social work perspective, members highlight that tackling only the behaviour of individuals risks overlooking the broader structures that facilitate that behaviour. By criminalising the production and supply of such tools, the proposal is seen as taking a more preventative and upstream approach, aiming to reduce demand and limit the availability of harmful technologies. This is particularly important given the rapid pace of technological development and the scale at which such tools can be distributed.

Members also consider that this proposal sends a clear and important message about accountability, extending responsibility beyond individual users to those who design, promote or profit from tools intended to facilitate abuse. This aligns with wider concerns about the role of platforms and developers in enabling harmful online environments and reflects a more comprehensive approach to prevention.

Online and technology-facilitated harm: general criminal law

- **Question 15: Do you consider that there are any specific changes to the current criminal law that would improve how the justice system is able to respond to technology-facilitated and online harms?**

Social Work Scotland members consider that the proposed changes to introduce new offences relating to the creation, requesting, and supply of tools for non-consensual intimate images represent important and necessary developments. However, members also identify a number of additional areas where further changes or complementary measures could strengthen how the justice system responds to technology-facilitated and online harms.

Members emphasise that legislative reform alone will not be sufficient to address the rapidly evolving nature of online abuse. There is a clear need for the justice system to be supported by improved professional understanding and capability. In particular, members highlight the challenges faced by justice social work practitioners in assessing and managing individuals involved in technology-facilitated offending. There is a need for clearer guidance, training, and support to ensure that practitioners understand how such behaviours manifest, how risk can be assessed, and how effective supervision and monitoring can be carried out both pre- and post-conviction.

Members also note that there are practical difficulties in applying existing legal frameworks to new and emerging forms of online harm. While many offences are sufficiently flexible in principle, their application can be inconsistent in practice. There is therefore a case for reviewing how existing offences are being interpreted and used in an online context, and whether additional guidance or clarification is required to ensure they remain effective and consistently applied.

A further issue identified by members is the need to consider greater accountability for those who design, host, or profit from technologies that facilitate harm. While current proposals rightly focus on individual offending behaviour, members suggest that there may be merit in exploring how responsibility can also be extended to organisations or platforms that knowingly provide tools or environments that enable abuse. Addressing harm at this systemic level is seen as an important complement to individual criminalisation.

Members also highlight the distinctive and long-term nature of harm caused by online abuse. The impact of digital harm can be persistent, wide-reaching, and difficult to contain once content is created or shared. There is a view that the legal framework should more fully recognise this enduring impact, potentially through mechanisms such as aggravations or sentencing considerations that reflect the scale and permanence of harm.

Overall, Social Work Scotland members support the direction of travel set out in the consultation and the proposed new offences. However, they emphasise that strengthening the criminal law should be accompanied by improvements in

professional practice, clearer application of existing legislation, and consideration of wider systemic accountability. This combined approach is seen as essential to ensuring that the justice system can effectively respond to the complexity and pace of technology-facilitated and online harms.

Online and technology-facilitated harm: further steps that could be considered

- **Question 16: Do you have any views to offer on further steps to reduce online and technology-facilitated harm?**

Social Work Scotland members consider that further steps to reduce online and technology-facilitated harm should extend beyond legislative reform and focus on strengthening prevention, professional capability, and systemic accountability. While members support the proposed new offences, there is a clear view that meaningful reduction in harm will require a broader, coordinated response across services and sectors.

Members emphasise the need for significant investment in professional training and capacity-building. Justice social work, alongside wider partners in health, education, and policing, must be supported to better understand how technology is used in abusive behaviour, how risk presents in online contexts, and how to respond effectively. This includes developing confidence in identifying digital evidence, managing disclosure, and supporting both victims and those subject to supervision where technology use is a factor.

There is also a strong emphasis on early intervention and prevention, particularly with children and young people. Members highlight the importance of embedding learning about online safety, consent, and respectful relationships within education and youth work. Given the speed at which technology evolves and the influence of online cultures, preventative work must be proactive and regularly updated to remain relevant. This includes addressing harmful norms and behaviours that are reinforced through online platforms.

Members further stress the importance of strengthening accountability at a systemic level. In addition to holding individual perpetrators to account, there is a need to consider the role of digital platforms, developers, and service providers in enabling or facilitating harm. Greater responsibility and oversight at this level is seen as critical to reducing the availability and spread of abusive content and tools.

Another key consideration is the long-term and often irreversible nature of online harm. Members highlight that once harmful content is created or shared, it may persist indefinitely, causing ongoing distress and limiting victims' ability to move on. As such, further steps should include improved mechanisms for the removal of harmful content, as well as support services that recognise and respond to the enduring impact of online abuse.

Finally, members emphasise the importance of a coordinated, multi-agency approach aligned with wider strategies to address violence against women and girls. This includes ensuring that responses are trauma-informed, victim-centred, and consistent across systems, and that individuals affected by online harm have access to clear pathways for support and redress.

Impact assessments

- **Question 17: Do you have any views on potential impacts of the proposals in this consultation on human rights?**

Social Work Scotland members highlight that proposals such as expanded use of non-harassment orders and technology-related offences have clear intersections with human rights, particularly the right to privacy and the right to a fair process. Members emphasise the importance of maintaining procedural safeguards, including court oversight and appeal mechanisms, to ensure proportionality and fairness. There is also a strong emphasis on ensuring that victims' voices are fully considered in any new processes, particularly where decisions are taken out with the court system.

- **Question 18: Do you have any views on potential impacts of the proposals in this consultation on equalities and protected characteristics?**

Members consider that, if implemented effectively, the proposals have the potential to deliver positive impacts for women and girls, who are disproportionately affected by violence and abuse. There is recognition that sex is a key protected characteristic in this context, and that strengthening legal protections and responses should contribute to improved safety and outcomes. However, members stress the importance of ensuring that any changes do not inadvertently disadvantage victims through issues such as reduced access to justice or inconsistent application.

- **Question 19: Do you have any views on potential impacts of the proposals in this consultation on children and young people as set out in the UN Convention on the Rights of the Child (UNCRC)?**

Members note that children and young people will be significantly affected by issues such as online harm, including the creation and sharing of intimate images. There is concern about the long-term impact of digital harm in a context where young people's lives are increasingly mediated through technology. Members emphasise the importance of prevention, education, and early intervention to support children's rights to safety, wellbeing, and protection from harm, alongside ensuring appropriate legal responses.

- **Question 20: Do you have any views on potential impacts of the proposals in this consultation on socio-economic equality?**

Members suggest that impacts on socio-economic equality may arise indirectly, particularly in relation to access to justice and support services. Individuals experiencing disadvantage may face additional barriers to reporting offences or engaging with legal processes. There is also concern that changes such as increased use of diversion could affect access to established support programmes, which are often critical for both victims and those who offend.

- **Question 21: Do you have any views on potential impacts of the proposals in this consultation on communities on the Scottish islands?**

Members did not identify specific impacts unique to island communities in the discussion. However, it is recognised that any legislative changes should be implemented in a way that ensures equitable access to justice, protections, and support services across all geographic areas, including remote and rural communities.

- **Question 22: Do you have any views on potential impacts of the proposals in this consultation on privacy and data protection?**

Members highlight significant concerns regarding privacy in the context of technology-facilitated harm, particularly with the emergence of deepfakes and digital abuse. There is recognition that individuals may experience serious and ongoing violations of privacy through the creation and circulation of intimate images. At the same time, proposals must balance this with individuals' rights to privacy within the justice process, particularly where monitoring or investigative practices involve digital data.

- **Question 23: Do you have any views on potential impacts of the proposals this consultation on businesses and the third sector?**

Members suggest that there may be increasing expectations placed on organisations, particularly third sector services, to respond to victims of emerging forms of harm such as online abuse. There is also recognition of the potential role of technology companies and developers, and the need to consider their responsibility in enabling or preventing harm. Any changes may therefore have implications for how organisations operate and are regulated.

- **Question 24: Do you have any views on potential impacts of the proposals in this consultation on consumers?**

Members did not identify specific impacts in relation to consumers. However, there is an implicit recognition that individuals as users of digital technologies may benefit from increased protections against harm, particularly in relation to unsafe or exploitative tools and online environments.

- **Question 25: Do you have any views on potential impacts of the proposals in this consultation on the environment?**

Members did not identify any significant environmental impacts arising from the proposals. The issues considered in the consultation are primarily social, legal, and technological in nature, with minimal direct environmental implications.

Conclusion

In conclusion, Social Work Scotland members broadly support the Scottish Government's ambition to strengthen protections for women and girls and recognise the important role that the criminal law can play in this.

Members emphasise, however, that the greatest opportunity for improvement lies not solely in legislative reform, but in strengthening the consistent application of existing laws, enhancing professional understanding, improving information sharing, and addressing wider cultural attitudes that underpin harm. Where clear gaps exist, particularly in relation to technology-facilitated abuse, members support targeted legislative development.

Overall, members advocate for a balanced, whole-systems approach that combines effective law, robust practice, prevention, and victim-centred responses to deliver meaningful and lasting improvements in safety and outcomes.

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