



Law Society  
of Scotland

# Consultation Response

Dogs (Protection of Livestock)  
(Amendment)(Scotland) Bill

28 August 2020



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Call for Evidence on the Dogs (Protection of Livestock) (Amendment)(Scotland) Bill (the Bill)<sup>1</sup> introduced by Emma Harper MSP on 14 May 2020. This Bill follows on from the earlier consultation on the Proposed Protection of Livestock (Scotland) Bill to which the Society responded on 15 May 2020.<sup>2</sup> The committee has the following comments to put forward for consideration.

## General

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We support the principle of the Bill<sup>3</sup> which seeks to strengthen and update the existing law, namely the Dogs (Protection of Livestock) Act 1953 (1953 Act) with reference to “livestock worrying.”

We agree that there is merit in a review of how the 1953 Act is working. However the scope of this Bill falls into the wider context of “dog control” which we agree is a significant and devastating issue for those affected, but we are keen to avoid what may be seen as the adoption of a piecemeal approach through the Bill in seeking merely to amend the 1953 Act. What is required is the undertaking of a comprehensive review of all legislation relating to “dog control.”

This Bill ties in with the ongoing post-legislative scrutiny of the Control of Dogs (Scotland) Act 2010 (2010 Act) to which we responded on 15 January 2020.<sup>4</sup> That was referred to as “initial” focusing on “the operational effectiveness of the 2010 Act to aid enforcement agencies” so it is similar in review terms to aspects of this Bill with regard to the proposed increase in sentencing powers and an increase in powers of entry/inspection. There were plans previously to seek a further review of wider “dog control” in 2020 which

<sup>1</sup> <https://www.parliament.scot/parliamentarybusiness/115425.aspx>

<sup>2</sup> <https://emmaharpermsp.scot/wp-content/uploads/2019/06/2019-05-15-CRIM-Protection-of-Livestock-Scotland-Bill-response.docx-2.pdf>

<sup>3</sup> We note the Scottish Government support for the Bill in their letter to the Convener of the Rural Economy and Connectivity Committee dated 29 July 2020

<sup>4</sup> <https://www.lawscot.org.uk/media/368221/2020-01-15-crim-improving-the-operational-effectiveness-of-the-control-of-dogs-scotland-act-2010.pdf>

was to consider how the Dangerous Dogs Act 1991 operates and other associated “dog control.” No further timescales for any review given the incidence of the COVID-19 pandemic have been indicated.

We would consider that the best approach would lead to “a modern consolidated Act of the Scottish Parliament on dog control law” to address “the ineffectiveness of the 2010 Act” and other related “dog control” legislation. This includes the 1953 Act as a “comprehensive review of all dog control legislation” is urgently required.

The advantages with a comprehensive review are that this would allow for much needed clarification of the law to assist the public as well as those involved in the justice system. That clarification goes wider and would include vets, general practitioners and hospital authorities too who may be on the front line when seeing the medical results arising from dogs being out of control.

Turning to the Bill, it has five proposals including an increase in penalties, police powers, inspection bodies and the appointment of inspectors along with extending the definition of livestock and renaming the offence. These are all logical inclusions but would merit being consistent with other “dog control” enforcement measures.

We would respond to the questions as follows:

### **Question 1: What is your experience of livestock worrying? What is the scale of the issue?**

We are responding to the Call for Evidence in our capacity as a professional body. We have no experience of personal livestock worrying except in respect of our members who are employed by the Crown Office and Procurator Fiscal Service (COPFS) in the prosecution of relevant offences under the 1953 Act or our members in the defence of such clients charged with offences under the 1953 Act.

### **Question 2: Does legislation need strengthening in this area? If so – does the Bill do this? Is the Bill the best way to do this?**

Legislation has the benefit of clarity and if the 1953 Act is not working, then legislation especially in respect of creation of new offences seems the correct approach. However, what remains unclear is the evidence as to why the current legislative regime does not and is not providing adequate cover. What would have been helpful would have been the inclusion of information regarding current police investigations/reporting, and of COPFS prosecution and/or subsequent conviction.

All prosecutions under the 1953 Act are undertaken by COPFS. For any prosecution to take place, there must be sufficient admissible evidence of an offence having been committed and that it is in the public interest for a prosecution to be instructed. Any prosecution lies entirely at the discretion of COPFS. The

scope of the COPFS's policy on Agricultural Crime Policy is wider than the Bill.<sup>5</sup> It does refer to prosecutions for offences for worrying of livestock under sections 1(1) and (6) of the 1953 Act. Paragraph 16 of that policy does recognise that the incidence of reporting may be low for reasons that lie outwith the creation/amendment of offences as a result of legislative changes. There would be benefit in ascertaining why reporting rates are low and that would ensure that the Bill addresses these in making changes.

We agree that there are issues arising in respect of the 1953 Act. The case of *Dickson v Brown*<sup>6</sup> raised questions over the proposed destruction of the dog. The order to destroy the dog was quashed as the 1953 Act could not be interpreted in such a way as to confer power on a sheriff to order a dog's destruction following the owner's prosecution. Section 1(6) of the 1953 Act provided sanction for a fine only.

In prosecutions under the 1953 Act, there was a need to consider whether steps required to be taken in respect of the dog. If proved that the dog was dangerous, the matter would require to be intimated to the relevant local authority officer who should then consider whether it would be appropriate to serve a dog control notice or apply to the sheriff for a destruction order. It is unclear that the Bill resolves any of these issues; it provides that opportunity to remedy or clarify these issues.

Any changes in legislation would be anticipated to increase the number of reports, investigations, prosecutions and convictions of livestock attacks and worrying in the short-term, with a view to reducing the number of livestock worrying incidents in the long-term.<sup>7</sup> Just how successful the change may be needs to be specified more clearly.

### **Question 3: What are your views on the increased penalties the Bill creates for livestock worrying?**

No custodial sentence in respect of this offence exists under the 1953 Act. The penalty for those found guilty of the relevant offence is for a maximum fine of £1000 (level 3) to be imposed so there is merit in reviewing and seeking an increase in the sentencing provisions. Under section 1(3)(e) of the Bill, there would be an increase in the maximum penalty to imprisonment for up to six months or a fine not exceeding level 5 on the standard scale (currently set at £5,000), or both.

That level seems reasonable though we note that the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill<sup>8</sup> will increase the maximum available penalties for the offence of causing unnecessary suffering (as well as those for animal fighting) to 5 years and/or an unlimited fine. Might this be the level to be adopted here?

<sup>5</sup> [https://www.copfs.gov.uk/images/Documents/Prosecution\\_Policy\\_Guidance/Guidelines\\_and\\_Policy/COPFS%20Agricultural%20Policy.pdf](https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/COPFS%20Agricultural%20Policy.pdf)

<sup>6</sup> <https://www.scotcourts.gov.uk/search-judgments/judgment?id=c5ae86a6-8980-69d2-b500-ff0000d74aa7>

<sup>7</sup> [https://www.parliament.scot/S5\\_Rural/20200817\\_Full\\_EQIA\\_-\\_Dogs\\_\(Protection\\_of\\_Livestock\)\\_\(Amendment\)\\_\(Scotland\)\\_Bill.pdf](https://www.parliament.scot/S5_Rural/20200817_Full_EQIA_-_Dogs_(Protection_of_Livestock)_(Amendment)_(Scotland)_Bill.pdf)

<sup>8</sup> Passed the Scottish Parliament on 17 June 2020

What an increase in penalties does achieve is that this will permit the imposition of a community-based disposal such as a Community Payback Order. That allows an extensive menu from which sheriffs or justices of the peace can select a disposal that would include unpaid work and/or include a compensation requirement. However, compensation is in any event available under the 1953 Act.

Even if the Bill increases the sentencing powers, it would have been useful to set out evidence within the Bill or its associated papers on how the current sentencing provisions on conviction of any offence is inadequate. That said, penalties set out in the 1953 Act do merit review in light of inflation etc which also reflects our observations on the need for consolidation of “dog control” legislation.

Sentencing is about punishing the offender, reducing crime, reforming and rehabilitation of offenders, for the protection of the public and making the offender give something back. It would be good to see justification for the increase reflected in how sentencing powers would improve, deter and prevent others from committing offences.

Sentencing in each case is a matter for the judge who requires full information about the facts and circumstances of any offences so that they can sentence to reflect the seriousness of any offence. We fully appreciate that the cost or loss to the complainer may be high where such offences arise. That relevant information must be made available to the sentencing judge which will include losses, distress/impact on victims, number of livestock killed/injured, and the nature and extent of any injuries sustained.

We emphasise that what is important is that offenders are aware of the nature of the offence and the likely sentence.

That seems to be about education of the public and relevant publicity campaigns, where we would be interested in hearing details of the plans for these.

#### **Question 4: Would the proposals to disqualify convicted persons from owning or keeping a dog or taking a dog onto certain types of land, assist in the aim of reducing the number of livestock worrying instances?**

The imposition of a ban for life on owning a dog seems to be too high as well as being in practical terms unenforceable. We would also question how periodic reviews would work in practice. This would presumably include an application to court for a sheriff to consider. This could be quite costly which could have an impact on those that could afford to make such an application as it may be unlikely that legal aid would necessarily be available.

#### **Question 5: What is your opinion on extending the types of livestock and type of**

## **agricultural land covered by livestock worrying, as described by the Bill?**

We note that section 6 of the Bill amends the definition of livestock in the 1953 Act. We have no comment on these amendments as these are no doubt guided by those experts in the current understanding of what livestock comprises.

We understand the basis under section 6(3) of the Bill for including powers to amend the definitions under secondary legislative powers which seems sensible to provide a simpler basis under which to be able to keep these provisions under more regular review. The Bill includes a level of future proofing; negative parliamentary procedures seems appropriate too.

## **Question 6: What are your views on the powers allowing Scottish Ministers to appoint inspectors, other than police, to investigate and enforce livestock worrying offences?**

We assume that the SSPA do not currently have the powers to investigate. However, any enforcement from a criminal perspective involving offences lies with COPFS.

## **Question 7: Do you have any comments on the expanded powers for police and inspectors to seize dogs, to enter premises and to take a dog to the vet?**

It would be important to establish the reasons why the police are taking the dog to the vet. Is it to discover who owns the dog? Is it wider than that? We can see the purpose in that and if they do not currently have these powers, there may be a benefit in providing them. We cannot see how the other way would work in practice as presumably this would mean someone taking the dog to a vet under police escort. Any provision of these type of powers needs to be narrowly framed.

## **Question 8: Does the Bill adequately balance the rights of dog owners and the rights of livestock farmers?**

We have no specific comment to make. As there is little evidence on how the 1953 Act is not working, it would be easier to justify the balance if the extent of the problem was clearly identified.

## **9. Is there anything else that should be included or excluded from the Bill?**

We have some additional comments to make:

There is merit in continuing to use the term “worrying.” This can include frightening an animal and causing an abortion. It is defined in section 1(2) of the 1953 Act.

We wondered if the 1953 Act is being reviewed if there is merit in including cats within the categories of animals to be included.

Under section 1(2) (c) of the 1953 Act, the offence refers to worrying livestock as meaning: “being at large (that is to say not on a lead or otherwise under close control) in a field or enclosure in which there are sheep.” We wonder if it would be better to define what a field is as common grazing may be a significant area which may or may not be enclosed. The Scottish Outdoor Access Code<sup>9</sup> (the Code) refers to being “under close control”. Would this be better than reference to a lead? The Code should be consistent with the legislation for purposes of clarity and transparency.

Legal aid: We note included within the specification of those to be affected by the Bill<sup>10</sup> in the Equality Impact Assessment that there are a range of organisations such as COPFS and individuals including livestock owners. However, there is no mention made of the profession or indeed legal aid. If there is an increase in offences (which is presumably the purpose of the proposed legislation), there would be an increase in prosecutions and potentially legal advice required. This is also relevant to the proposal that the Bill would allow a person who is disqualified from owning a dog, to apply to the court, at annual intervals, to have the disqualification reviewed. This point regarding legal aid is also relevant in relation to the Minister’s letter when considering the financial impact on the Government and the public sector with its omission to legal advice and assistance.<sup>11</sup>

<sup>9</sup> <https://www.outdooraccess-scotland.scot/>

<sup>10</sup> [https://www.parliament.scot/S5\\_Rural/20200817\\_Full\\_EQIA\\_-\\_Dogs\\_\(Protection\\_of\\_Livestock\)\\_\(Amendment\)\\_\(Scotland\)\\_Bill.pdf](https://www.parliament.scot/S5_Rural/20200817_Full_EQIA_-_Dogs_(Protection_of_Livestock)_(Amendment)_(Scotland)_Bill.pdf)

<sup>11</sup> [https://www.parliament.scot/S5\\_Rural/RECC\\_Memorandum\\_to\\_REC\\_Committee\\_-\\_Dogs\\_\(Protection\\_of\\_Livestock\)\\_Bill\\_-\\_29\\_July\\_2020.pdf](https://www.parliament.scot/S5_Rural/RECC_Memorandum_to_REC_Committee_-_Dogs_(Protection_of_Livestock)_Bill_-_29_July_2020.pdf)



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