



Law Society
of Scotland

Stage 1 Briefing

20 January 2021



Introduction

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 previously responded to the Call for Evidence¹ on the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill² (the Bill) which was introduced as a Member's bill by Emma Harper MSP on 14 May 2020. The Rural Economy and Connectivity Committee published its Stage 1 Report³ on 14 December 2020. The Stage 1 debate which is scheduled to take place on Thursday 21 January 2021.

General

We support the aims of the Bill⁴ which seeks to strengthen and update the existing law, namely the Dogs (Protection of Livestock) Act 1953 (1953 Act) with reference to "livestock worrying. There is a need to review how the 1953 Act is working and this is highlighted in the Bill's Stage 1 Report that:

"the best approach to addressing the livestock worrying issue would be for it to form part of a wider consolidation of dog control law."⁵

Since the Scottish Government has indicated that it intends to review dog control legislation in 2020-21, it should ensure that its remit includes the 1953 Act with the Control of Dogs (Scotland) Act 2010 and Dangerous Dogs Act 1991. That seems the best way in which a comprehensive review of the relevant "dog control" legislation is undertaken and ultimately, to achieve consolidation and modernisation of legislation.

¹ <https://www.lawscot.org.uk/media/369347/2020-08-28-crim-dogs-protection-of-livestock-amendment-scotland-bill.pdf>

² <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/dogs-protection-of-livestock-amendment-scotland-bill/introduced/bill-as-introduced-dogs-protection-of-livestock-amendment-scotland-bill.pdf>

³ <https://digitalpublications.parliament.scot/Committees/Report/REC/2020/12/14/dcbfe80e-1835-11eb-960e-000d3a23af40#de2cb370-1835-11eb-9611-000d3a23af40.dita>

⁴ <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/dogs-protection-of-livestock-amendment-scotland-bill/introduced/policy-memorandum-dogs-protection-of-livestock-amendment-scotland-bill.pdf>

⁵ <https://sp-bpr-en-prod-cdneq.azureedge.net/published/REC/2020/12/14/dcbfe80e-1835-11eb-960e-000d3a23af40/RECS052020R14.pdf>

Avoiding a piecemeal approach rather than amending parts of the 1953 Act would be the best way to proceed. An indication as to completion timescales for any review would be helpful. However, we note the recommendation from the Bill's Stage 1 Report that "more immediate action to amend legislation on livestock worrying is merited." On that basis, our comments follow:

Addressing concerns around this aspect, we comment as follows:

Prosecution of offences

All prosecutions under the 1953 Act are undertaken by Crown Office and Procurator Fiscal Service (COPFS). For any prosecution to take place, there must be sufficient admissible evidence of an offence having been committed. Thereafter, the prosecution must be in the public interest which lies entirely at the discretion of COPFS. What seems unclear is exactly how the current legislative regime is not providing adequate cover though we note that COPFS's policy on Agricultural Crime Policy refers to prosecutions for offences for worrying of livestock under sections 1(1) and (6) of the 1953 Act.⁶ Its Paragraph 16 recognises that the incidence of reporting may be low for reasons that lie outwith the creation/amendment of offences as a result of any legislative changes. Exploring that further in relation to the Bill would help in ensuring the measures will have the desired effect.

Issues arise in respect of the 1953 Act, but the Bill is unclear as to how to address these though using the opportunity to consider these issues would help improve areas lacking clarity such as:

In *Dickson v Brown*⁷, the order to destroy the dog was quashed as the 1953 Act could not be interpreted so 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 is 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.

Should cats be included within the categories of animals?

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

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https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/COPFS%20Agricultural%20Policy.

⁷ <https://www.scotcourts.gov.uk/search-judgments/judgment?id=c5ae86a6-8980-69d2-b500-ff0000d74aa7>

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 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

Increase in penalties

Section 1(3) (e) of the Bill proposes to increase the sentencing powers which seem reasonable, but we wonder exactly how the current regime is not adequate. There is merit in reviewing and seeking an increase in sentencing powers as:

- no custodial sentence exists
- the penalty is the imposition of a maximum fine of £1000 (level 3) which would benefit from an inflationary increase.

Section 1 of The Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020⁸ increased 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?

Increasing the penalties will permit consideration of the imposition of a community-based disposal such as a Community Payback Order which allows the judge to select a disposal that would include unpaid work and/or include a compensation requirement. Compensation is available under the 1953 Act, but we recognise that compensation is of the utmost importance to those who have suffered loss. Rather than new provisions, we suggest that the approach could be twofold:

- Ensuring that those sentencing are aware of the extent of the losses in the factual information provided as the basis of the alleged crime. 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.
- Sentencing is about punishing the offender, reducing crime, reforming and the rehabilitation of offenders, for the protection of the public and making the offender give something back. Publicity needs to ensure that offenders are aware of the nature of the offence and the likely sentence. That is about the need for education of the public and relevant publicity campaigns.

We endorse fully the observations made at paragraph 179 of the Bill’s Stage 1 Report⁹ that “a major behavioural shift is required, and this will require any such campaign to focus on raising public awareness

⁸ <https://www.legislation.gov.uk/asp/2020/14/enacted>

⁹ <https://sp-bpr-en-prod-cdneq.azureedge.net/published/REC/2020/12/14/dcbfe80e-1835-11eb-960e-000d3a23af40/RECS052020R14.pdf>

through all appropriate conventional and social media channels and educational platforms (including in schools).” Obtaining more information about the plans to deal with this aspect seems very important given the need for the public to be aware of how to control their dog over the pandemic and the possible impact on pet ownership being the subject of a survey conducted by the Royal Veterinary College.¹⁰

Disqualification Orders

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 note the paragraph 101 of the Bill’s Stage 1 Report¹¹ asked for greater clarity regarding how disqualification orders would work which included Convention compliance, and enforcement and monitoring which included our views on how periodic reviews would work in practice. If this involved an application to court for a sheriff to consider, this could be quite costly, having an impact on those that could afford to make such an application and access to justice since it would be unlikely that legal aid would necessarily be available.

Inspecting Bodies

We note paragraph 129 of the Bill’s Stage 1 Report¹² which the responsibility for dealing with relevant offences should lie with Police Scotland. Were there to be any expansion of the roles, it should form part of the review outlined above as it affects more than just the provisions within the Bill.

Finally, there was no mention made of the legal aid/legal advice. If there are an increase in offences, there would be an increase in prosecutions and potentially legal advice required. Considerations as to legal aid should be considered.

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¹⁰ <https://www.rvc.ac.uk/vetcompass/news/rvc-invites-uk-dog-owners-who-acquired-a-puppy-since-january-2019-to-take-part-in-huge-national-study>

¹¹ <https://sp-bpr-en-prod-cdnep.azureedge.net/published/REC/2020/12/14/dcbfe80e-1835-11eb-960e-000d3a23af40/RECS052020R14.pdf>

¹² <https://sp-bpr-en-prod-cdnep.azureedge.net/published/REC/2020/12/14/dcbfe80e-1835-11eb-960e-000d3a23af40/RECS052020R14.pdf>



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