



Law Society
of Scotland

Consultation Response

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

23 March 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

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 Stage 3 debate is scheduled to take place on Wednesday 24 March 2021.

General

We support the objectives of the Bill which were set out in the Policy Memorandum to strengthen and the existing law, namely the Dogs (Protection of Livestock) Act 1953 (1953 Act) in relation to "livestock worrying" where sheep or other farmed animals are chased, attacked or killed by dogs. The Bill proposed increases in penalties and additional powers for the investigation and the enforcement of the existing offence of livestock worrying.³

We agree that it is timely to review the 1953 Act which is now nearly 70 years old but that it should have formed part of a comprehensive review of dog control legislation as was 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."⁴

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-asintroduced-dogs-protection-of-livestock-amendment-scotland-bill.pdf>

³ The Bill's Policy Memorandum <https://betaproxy1.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>

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

We recognise that the Scottish Government has now published a consultation closing on 30 April 2021⁵ that seems to form part of that review, however though it appears to be restricted to the Dangerous Dogs Act 1991, but does importantly, seek to obtain views on wider dog control law.

The Bill, if passed, may well form part of an appropriate and comprehensive consolidated law in Scotland in due course covering all aspects and requirements for the control of dogs wherever the offence(s) arise. That seems sensible- as this would clarify the law and it would provide one place for the relevant law where the law to be consulted.

For the present, the premise appears to be as indicated from the Bill's Stage 1 Report that "more immediate action to amend legislation on livestock worrying is merited." The Bill would achieve just that if passed.

Perhaps the debate today helps to promote the awareness of the need for control of dogs wherever they and is needed too to reflect the increase in dog-owning which has resulted from the pandemic. A total of £3.2 million⁶ households have allegedly bought a dog since lockdown.

Ownership of dogs carries necessary responsibilities, especially in the country where livestock are involved.

Our comments are as follows:

Increase in penalties

Section 1(3) (e) of the Bill increases the sentencing powers for the relevant offences which seems appropriate. There is presently no provision for the imposition of a custodial sentence and the fine level of £1000 (level 3) seems outdated. It would benefit from an increase as proposed to a fine not exceeding £40,000. This was amended at Stage 2 and reflects the maximum penalties for wildlife crime offences as well as offences specified in regulations under part 2 of the Animal Health and Welfare (Scotland) Act 2006.⁷⁸

Increasing penalties will permit consideration of the imposition of a community-based disposal such as a Community Payback Order⁹ as an alternative to custody that allows the judge to select a disposal that would include unpaid work and/or include a compensation requirement.

⁵ <https://consult.gov.scot/justice/criminal-law-dealing-with-dangerous-dogs>

⁶ <https://www.bbc.co.uk/news/business-56362987>

⁷ <https://betaproxy1.parliament.scot/bills-and-laws/bills/dogs-protection-of-livestock-amendment-scotland-bill#target1>

⁹ Including compensation under a CPO may be useful though compensation is available under the 1953 Act. Compensation for loss of livestock may be more important.

However, having higher penalties or indeed the possibility of imposing a custodial sentence will only be relevant if they are used or act as a deterrent to others who may be liable to offend.

There is a need as we have highlighted for those involved in reporting, prosecution and sentencing to be aware of the financial extent of any losses in the information provided as the basis of the alleged criminal conduct. Without this it may well be that no one involved or is experienced with knowledge of the actual extent of losses incurred knows how serious this offence is given the distress/impact caused and the numbers of livestock killed/injured, and the nature and extent of any injuries sustained.

Then sentencing should be about punishing the offender, reducing crime, reforming and the rehabilitation of offenders, for the protection of the public and in this case, those owning livestock and making the offender give something back. When the Bill is passed there is a need 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 running a relevant publicity campaign.

Paragraph 179 of the Bill's Stage 1 Report¹⁰ indicated that "a major behavioural shift is required, and this will require action to ensure that there is that focus on raising public awareness. These need to include appropriate conventional and social media channels and educational platforms (including in schools)."

It would be useful to hear of what the relevant plans would be to obtaining more information about how to ensure the public are aware of how to control their dog.

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 made.

¹⁰ <https://www.legislation.gov.uk/asp/2020/14/enacted> 9 <https://sp-bpr-en-prod-cdnep.azureedge.net/published/REC/2020/12/14/dcbfe80e-1835-11eb-960e-000d3a23af40/RECS052020R14.pdf>



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