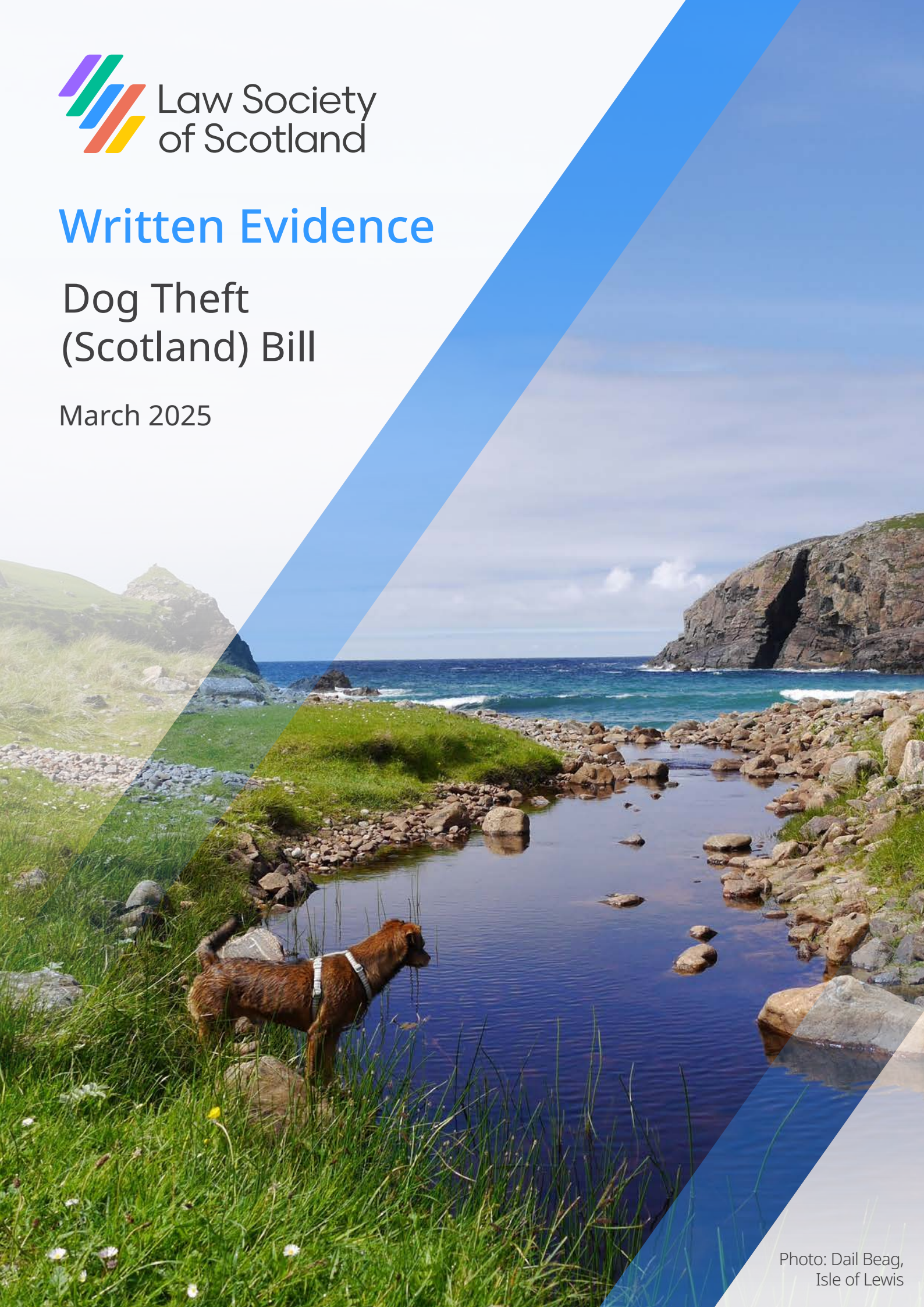


Written Evidence

Dog Theft (Scotland) Bill

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Introduction

The Law Society of Scotland is the professional body for over 13,000 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 welcomes the opportunity to provide written evidence to the Scottish Parliament's Rural Affairs and Islands Committee on the Dog Theft (Scotland) Bill. We have the following comments to put forward for consideration.

Call for views questions

Question 1: Do you think there is any gap or inadequacy in the common law offence of theft in dealing with dog theft that having a standalone statutory offence would address?

According to the Policy Memorandum, the creation of a standalone statutory offence of dog theft aims to provide recognition of the emotional bond between a dog and its owner. For the Member who proposes the Bill, when a dog is stolen, victims may suffer a significant emotional impact which is not specifically recognised in the common law offence of theft¹. In addition, while it seems the number of dog theft incidents have increased since the beginning of the Covid-19 pandemic in the UK², it was found that a significant percentage of dog abduction cases conclude with no one being charged³.

The Policy Memorandum also mentions that other UK jurisdictions provide for specific statutory offences for pet abduction⁴. In England, Wales and Northern Ireland, the [Pet Abduction Act 2024](#) introduces the offences of dog abduction and cat abduction and provides the power to appropriate national authorities to replicate those offences in respect of further species of animals by regulations.

We concur that the relationship between dogs and their owners may involve an emotional bond. We agree that the impact that the loss of any pet -and in particular dogs- may have in their owners should be considered when deciding

¹ [Policy Memorandum](#) – Para. 8

² Ibid – Para. 19.

³ Ibid – Para. 24.

⁴ Ibid – Para. 34-36.

the appropriate sentence for the perpetrator. We also agree that a specific statutory offence may contribute in gathering more accurate data about this type of crime.

While we acknowledge that the Member considered the Pet Abduction Act 2024 in drafting the proposed new offence of dog theft, we note that its scope covers only dogs, in contrast with the legislation applicable to other UK jurisdictions. We indicated at [consultation stage](#) that having a consistent approach with other UK jurisdictions would reduce the potential confusion that different legislation on the subject may cause. In addition, while the Policy Memorandum provides figures that demonstrate that dogs are more likely to be abducted than other animals⁵, some of the policy intentions that support the Bill could also be applicable to pets other than dogs.

We have a neutral view on the creation of a new offence for dog theft cases. While we agree with some of the policy intentions stated in the Policy Memorandum, we consider that the sentencing process already recognises the emotional harm that dog abductions may produce in victims, in the scope of the common law offence of theft.

The [Sentencing Process guideline](#) published by the Scottish Sentencing Council in September 2021 indicates that one of the factors that should be considered when determining the seriousness of the offence is the harm caused. One of the examples of aspects that can be relevant for the harm assessment is “in property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where theft of equipment causes serious disruption to a victim’s life or business)”⁶. Accordingly, when a dog is stolen and the offence produces a significant emotional loss for its owner, this circumstance may be considered when evaluating the harm produced by the offence and, consequently, its seriousness.

There is another relevant aspect that we would like to highlight. We note in the summary of consultation responses to the Proposed Dog Abduction (Scotland) Bill that Dr Craig Anderson indicated: “Without increased resourcing for law enforcement, simply creating a new offence is unlikely to achieve anything of value”⁷. We endorse Dr Anderson’s comment. If more resources are not provided to criminal justice institutions, the creation of new offences will have a very limited impact in increasing the number of people convicted.

We note that according to the [Financial Memorandum](#), the Member expects an increase in the number of crimes reported and investigated under the new offence. He also expects that 6% of those new reports result in prosecution

⁵ [Policy Memorandum](#) – Para. 22.

⁶ [Scottish Sentencing Council, Sentencing Process Guideline](#) – Para 16.

⁷ [Scottish Parliament – Summary of consultation responses to the Proposed Dog Abduction \(Scotland\) Bill](#) – P. 18.

(between 8 and 15 new cases per annum)⁸. This conclusion reinforces our concern on the real impact that new legislation may have without appropriate resourcing.

A successful prosecution depends upon the police having devoted sufficient resources to the investigation. If the police cannot establish a sufficient basis to report a case to the Crown, there will be no prosecution. It seems to us that legislative change alone is unlikely to make any real difference to the prosecution rate; instead, what is required is a commitment to greater resources being made available.

Question 2: What are your views on the inclusion of an aggravation to the offence of dog theft for the theft of an assistance dog? Would this achieve something that cannot be achieved under the common law offence of theft?

The Policy Memorandum indicates that a new aggravating factor is necessary for assessing circumstances in which the dog abducted provides special assistance to people with some disability.

We recognise the critical support that assistance dogs provide to their owners. Because of that, we agree that the abduction of those types of dogs involves a more serious behaviour that should be considered in the sentencing process.

The Sentencing Process Guideline recognises similar circumstances as aspects to be considered when determining the seriousness of the offence. As indicated earlier, one of the factors that determines the harm in property offences is the consequential loss that includes situations where theft of “equipment” causes serious disruption to a victim’s life.

In addition, when the offender is aware that the assistance dog supports a vulnerable person, it can be considered the aggravating factor of “deliberate targeting a victim who is vulnerable or perceived to be vulnerable” as a relevant circumstance for determining the seriousness of the offence⁹.

Considering that, we are of the view that the circumstances that aim to be covered by the proposed aggravating factor are already considered by existing sentencing guidelines.

Question 3: What are your views on the provision which allows victims statements to be made to the court where an offence of dog theft is prosecuted, and that this can take place in any level of court? Is this required and how will it fit within the current system around prescribed offences and courts?

[Section 14 of the Criminal Justice \(Scotland\) Act 2003](#) provides that victims of prescribed offences have the opportunity to make a statement, describing the impact the offence has had on them. Those statements must be considered by the court for sentencing purposes. The prescribed offences are defined in the

⁸ [Financial Memorandum](#) – Para. 37.

⁹ [Scottish Sentencing Council. The Sentencing Process Guideline](#) – Annex B (P. 15).

[Schedule of the Victims Statements \(Prescribed Offences\) \(No. 2\) \(Scotland\) Order 2009](#). The common law offence of theft is not included.

Section 14(15b) of the 2003 Act indicates that an order can be made for prescribing an offence by reference of its nature. That means that the Scottish Ministers can modify the list of prescribed offences and include dog theft offences, without the need of primary legislation.

Question 4: How is harm to the victim currently accounted for if a case of dog theft is prosecuted under common law? Do you feel this is sufficient or does the Bill address deficiencies in the current process?

We refer to our comments on question 1.

Question 5: What are your views on the reporting requirements included in the Bill for your organisation (if applicable)?

This question is not applicable to our organisation.

Question 6: What are your views on the costs included in the Financial Memorandum published with the Bill for your organisation (if applicable), do you think the costs will be incurred over and above those outlined?

This question is not applicable to our organisation.

Question 7: The aim of the Bill is to address the fact that currently “the common law offence of theft places emphasis on the monetary value of an object, and that there is insufficient focus on the emotional importance to the owner of a sentient being” and also the low levels of prosecutions for the offence of dog theft. Do you think there are alternatives to introducing a standalone offence that could achieve these aims?

Yes, we do. We reiterate our comments to question 1.



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