



Consultation Response

Proposed Protection of Livestock (Scotland) Bill

A proposal for a bill to increase penalties and provide additional powers to investigate and enforce the offence of livestock worrying

15 May 2019



Introduction

The Law Society of Scotland is the professional body for over 11,000 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 and the Rural Affairs subcommittee welcome the opportunity to consider and respond to the Proposed Protection of Livestock (Scotland) Bill (the Bill). We have the following comments to put forward for consideration.

General

We note that the aim of the Bill is “to better protect livestock from worrying/attack”. The proposals include:

- Updating the existing legislation
- Increasing the existing penalties and sanctions against dogs
- Powers to gather evidence.

There does seem merit in considering how the Dogs (Protection of Livestock) Act 1953 (1953 Act) is working with which the Bill is primarily concerned. However, as the Bill notes, there is currently an ongoing post-legislative scrutiny of the Control of Dogs (Scotland) Act 2010 being undertaken by the Scottish Government to which we responded in October 2018.¹ It may be worth considering aligning the results of that scrutiny with the responses to the Bill as there is an overlap from a policy perspective with regard to how dogs may be dealt with.

We refer to the case of *Dickson v Brown*² where issues arose 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 in its owner's prosecution. Section 1(6) of the 1953 Act provided sanction for a fine only. In prosecution under the 1953 Act, there was a need to consider

¹ <https://www.lawscot.org.uk/media/361158/crim-call-for-evidence-control-of-dogs-scotland-act-2010-4-october-2018.pdf>

² 2014 S.C.C.R. 96

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. This case may provide an opportunity as indicate din the Bill for considering the sanctions that may be imposed on conviction.

We would respond to the questions of the Bill as follows:

About You

1. We are responding as an organisation.

2B. We are a representative body.

3. I am content for this response to be published and attributed to my organisation.

4. The Law Society of Scotland

gillianmawdsley@lawscot.org.uk

5. I confirm that I have read and understood the privacy notice attached to this consultation which explains how my personal data will be used.

Your Views on the Proposal

Aim and approach

1. Which of the following best express your view of the proposal to increase penalties and provide additional powers to investigate and enforce the offence of livestock worrying?

Partially support

There are three aspects to this question:

1. Increase penalties: The Bill sets out that the maximum penalty for an offence under section 1 of the 1953 Act is at level 3 (£1000). Reviewing the level of penalty may seem relevant to keep it up to date, possibly now to Level 5 in accordance with the statutory maximum summary fine (unlimited fine for offences committed after 13 March 2015.³) However, there is no suggestion within the Bill that the current sentencing powers are not adequate in cases where convictions currently arise. We fully appreciate that the cost or loss to the complainer may be high where these offences arise. These losses should include, in cases of sheep and other livestock worrying offences:

- Distress/impact on victims
- Number of livestock killed/injured
- Nature and extent of any injuries sustained⁴

When offences occur, the penalties by way of fines and compensation provisions, should be appropriate. These costs could be substantial so reviewing the level of penalties would seem of benefit.

Increasing the level of penalties however does not stand alone. 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.

Those who may potentially commit such offences must be made aware by means of publicity and education as to the likely level of penalties and implications of any conviction.

2. Provide additional powers to investigate: For any case to be brought to court successfully, this will depend on sufficient evidence that a crime has been committed. We are unaware of any issues arising from the current powers that the agencies who are involved have in relation to conducting investigations before the case can be reported. We suspect that a number of evidential issues including the requirement for corroboration arise in establishing to the necessary standard of criminal proof, being beyond reasonable doubt, as to:

- what dog committed the offence
- who the owner of the dog is
- the boundary issues as on whose land the incident occurred
- the circumstances of the incident itself.

There is a need to be aware of the statutory defences set out in section 1(2A), 1(3) and 1(4) of the 1953 Act.

An increase in powers would not assist in evidence finding.

³ <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/9-maximum-fines/>

⁴ Paragraph 24 COPFS
http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/COPFS%20Agricultural%20Policy.pdf

In order to identify if there are any problems with the existing legislation or indeed, sentencing, it would be useful to ascertain the number of cases that are reported to Police Scotland, the number of cases reported to the Crown Office and Procurator Fiscal Service (COPFS), the number of cases prosecuted by COPFS and the number of convictions that have taken place. That may indicate where any specific problems with the use of the current investigation powers arise.

3. Enforce the offence: The Bill refers to the number of offences “recorded and convicted” by the local authorities. Clarification as to what this means would be welcome. Does this refer to COPFS’s statistics?

From these statistics, it may be difficult to establish exactly where any problems with the current legislation may arise with regard to enforcement.

All prosecutions under the existing legislation 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. As to whether any prosecution may be instructed, this lies entirely at the discretion of COPFS.

The scope of the COPFS’s policy on Agricultural Crime⁵ (the policy) is wider than the Bill but does refer to prosecutions for offences for worrying of livestock under sections 1(1) and (6) of the 1953 Act. Paragraph 16 of the policy⁶ does recognise that the incidence of reporting may be low for reasons that lie outwith the creation of any new legislation. These reasons would need to be investigated in full to understand any issues arising from enforcement.

2 What other measure could be taken (either instead of, or in addition to, legislation) to achieve the aim of the proposal?

We refer to the answer to Question 1. Any change as proposed in Question 1 would require legislation. We would emphasise that what is important is that those that are affected 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.

Penalties

⁵ http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/COPFS%20Agricultural%20Policy.pdf

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3. Which of the following best expresses your view of increasing the maximum penalty for livestock worrying/attacking to level 5 on the standard scale or imprisonment for up to six months?

Neutral

We refer to our answer to Question 1. There seems to be no custodial sentence in respect of this offence at present. There may be merit in permitting the imposition of a community-based disposal as Community Payback Orders do have an extensive menu from which sheriffs or justices of the peace can select a disposal that would include unpaid work and could include a compensation requirement. However, compensation is available under the 1953 Act in any event.

4. Which of the following best expresses your view of giving the courts the power to ban anyone convicted of livestock worrying /attack from owning a dog including for life subject to periodic review?

Neutral

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 make such an application.

Evidence gathering

5. Which of the following best expresses your view of providing police officers with powers to require a person to take their dog within a 24 hour period for examination to a vet for the purpose of evidence gathering or for a police officer to have the powers to seize the dog and take it to the vet themselves?

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 powers would need to be narrowly framed.

6. Which of the following best expresses your view of given Scottish Ministers the power to delegate powers to investigate and enforce the offence to an appropriate body?

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

Definitions

7. The 1953 Act defines “livestock” including cattle sheep, goats, swine, horses and poultry. Which of the following best expresses your view of extending this definition to include camelids and other farmed species such as ostrich or deer?

We have no comment to make.

Financial implications

8. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

(a) Government and the public sector

The public sector costs will need to include COPFS, Police Scotland and the Scottish Courts and Tribunal Services. If there are any increases in case numbers being investigated, reported or prosecuted, then there will be a consequential increase in all these costs.

(b) Businesses

We cannot comment on these costs.

(c) Individuals

Any increase in prosecution will increase the requirements for individuals to receive legal advice and assistance. There may be an effect on legal aid if they are entitled to receive legal aid for such cases.

9. Are there ways in which the proposed Bill could achieve its aim more cost effectively?

We have no comment to make.

Equalities

10. What overall impact is the proposed Bill likely to have on equality taking account of the protected characteristics under the Equality Act 2010?

We have no comment to make.

Sustainability

11. Do you consider that the proposed Bill can be delivered sustainably?

We have no comment to make.

General

12 Do you have any other comments or suggestions on this proposal?

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 (the Code)⁷ 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.

For further information, please contact:

Gillian Mawdsley
Policy Executive
Law Society of Scotland
DD: 0131476 8206
gillianmawdsley@lawscot.org.uk

⁷ <https://www.outdooraccess-scotland.scot/>