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Convener
Rural Affairs and Islands Committee
Scottish Parliament
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Date: 9 April 2025

Dear Convener

I refer to the Dog Theft (Scotland) Bill and the evidence session held on 26 March 2025. Thank you for giving the Crown Office and Procurator Fiscal Service (COPFS) the opportunity to contribute to the session and for your subsequent email dated 27 March 2025.

You have asked for some additional information in relation to two matters: the current definitions relating to theft and abduction; and defences set out in the Bill.

Theft and Abduction

As discussed with the Committee on 26 March 2025, the theft of any pet is currently an offence prosecuted under the common law in Scotland. Theft is defined as the appropriation of property belonging to another person without their consent. The property must be capable of being stolen, which includes animals but not wild animals, and there is no requirement for the person taking the property to intend for the owner to be deprived of the property permanently.

Abduction is also prosecuted under the common law in Scotland. Here, the essential feature of the crime is the deprivation of the victim's personal freedom and against the victim's will.

The distinction between the two is that theft is the taking or appropriation of something from a person without that person's consent, and abduction is the taking, or unlawful detention, of a person against that person's will.



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It is noted that the recent Pet Abduction Act 2024 which applies to England, Wales and Northern Ireland makes the abduction of domestic pets, including dogs, a specific criminal offence. Reference is made throughout the Act to abduction, however the Act provides that committing the offence of abduction of a dog requires taking a dog so as to remove it from the lawful control of any person, or detaining a dog so as to keep it from the lawful control of any person who is entitled to have lawful control of it.

This phrasing within the 2024 Act aligns with the common law offence of theft in Scotland, albeit reference is made to removing or detaining a dog from the “lawful control of any person” rather than without their consent, and there is no reference made to the dog being the property of the person.

The practical effect of this wording is that the offence is one committed against the person, namely the owner of the dog, and not against the dog itself; as it would be if the wording aligned with the Scottish common law definition of abduction.

Defences

The defences which have been outlined in this part of the Bill are that the person had lawful authority or a reasonable excuse to take or keep the dog, and that it is a defence where the person believed the dog to be a stray, lost or abandoned dog and took all reasonable steps to comply with section 150(1) of the Environmental Protection Act 1990 (delivery of stray dogs to owner or officer of local authority).

In the defences of lawful authority and reasonable excuse, the wording is drawn from the Pet Abduction Act 2024.

It is noted that within these defences it is provided that the offence does not apply where a person who previously lived together in the same household with the dog takes or keeps the dog, covering for a scenario where a couple separate following a domestic dispute and one partner keeps the dog.

As the Committee heard in evidence during the session on 26 March 2025, caution was suggested when legislating for a scenario which may involve a dispute over proof of ownership in the context of criminal proceedings. In scenarios involving domestic abuse, there are legislative provisions to allow prosecution of the taking of a dog from the relationship and therefore prosecutions in those circumstances are not hindered absent the proposed provisions. It is suggested that issues around proof of ownership would not be remedied by further legislation in a prosecutorial context.

I hope that the above information is of assistance to the Committee.

Yours sincerely

Laura Buchan
Procurator Fiscal
Policy and Engagement

