

This document relates to the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (SP Bill 72) as introduced in the Scottish Parliament on 14 May 2020

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

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## Explanatory Notes

### Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill, introduced in the Scottish Parliament on 14 May 2020. They have been prepared by the Parliament's Non-Government Bills Unit on behalf of Emma Harper MSP, the member who introduced the Bill.

2. The following other accompanying documents are published separately:

- statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 72–LC);
- a Financial Memorandum (SP Bill 72–FM);
- a Policy Memorandum (SP Bill 72–PM).

3. The Explanatory Notes are intended to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or a part of a section does not seem to require any explanation or comment, none is given.

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## The Bill

4. Under the Dogs (Protection of Livestock) Act 1953 (“the 1953 Act”), where a dog attacks or chases livestock, or is at large in field of sheep, its owner and (if separate) the person in charge of it at the time, commit an offence which carries a maximum penalty of level 3 on the standard scale (currently £1,000).

5. The Bill significantly increases that maximum penalty, and enables the court to make orders in respect of persons convicted of the offence. It provides additional powers to the police for the investigation of the offence (including powers to seize dogs from land or premises, and detain them for the purpose of evidence-gathering), and enables the same powers to be exercised by inspectors appointed by bodies authorised (for that purpose) by the Scottish Ministers. The Bill also extends the application of the offence to cover new livestock species, and clarifies its application to working dogs. Finally, the Bill alters the way the offence is described and defined so as to give greater prominence to the most serious instances.

6. The Bill is in 10 sections, the first seven of which amend the 1953 Act. Section 8 of the Bill amends section 129 of the Civic Government (Scotland) Act 1982. The final two sections deal with commencement and the Bill’s short title.

7. The full text of the 1953 Act, as the Bill would amend it, is set out in Annexe A. The text of section 129 of the 1982 Act, as the Bill would amend it, is set out in Annexe B. The text of section 3 of the Dogs Act 1906, which is referred to in section 3 of the Bill, is set out in Annexe C.

## Commentary on sections

### **Section 1: Offence under section 1 of the 1953 Act: name, definition and penalty**

8. Section 1 of the 1953 Act is currently entitled “Penalty where dog worries livestock on agricultural land” and sets out that if a dog “worries” livestock on any agricultural land, the owner of the dog, and, if it is in the charge of a person other than its owner, that person also, is guilty of an offence. “Worrying” livestock is defined in subsection (2) as “(a) attacking livestock; or (b) chasing livestock in such a way as may reasonably be expected to cause injury or suffering to the livestock or, in the case of

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females, abortion, or loss of or diminution in their produce; or (c) 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”. Subsection (2A) sets out exceptions to subsection (2)(c), including for certain working dogs. Subsections (3)-(5) also deal with exceptions to the offence and subsection (6) sets out the maximum penalty for the offence.

9. Section 1(2) of the Bill changes the title of the section, partly so as to include the words “attacks or” before “worries”. Subsections (3)(a), (3)(d) and (4) make equivalent changes at other places in sections 1 and 2 of the 1953 Act which refer to the “worrying” of livestock. Subsection (3)(b) removes paragraph (a) from the definition of “worrying”, so that it becomes the term used only for the less serious types of behaviour that constitute the offence. While these changes do not alter the scope of the offence (that is, all the same behaviours continue to constitute the offence), they ensure that the word “attack” is given greater prominence in the legislation, and that the language of the offence better reflects its seriousness.

10. Section 1(3)(c) of the Bill amends section 1(2A)(b) of the 1953 Act to include assistance dogs other than guide dogs in the list of working dogs which may be at large in a field of sheep without this constituting “worrying”. However, it also provides that any of these working dogs may be so at large only “if and to the extent that the dog is performing the role in question”. This means, for example, that if a guide dog is at large in a field of sheep when it is not working but is instead being exercised by a sighted person, its owner and the person in charge of it at the time would be committing an offence.

11. Section 6(2)(c) of the Bill adds to the 1953 Act a definition of “assistance dog” which links to the existing definition in section 173(1) of the Equality Act 2010. That definition covers (a) guide dogs for the blind, (b) dogs trained to assist the deaf, (c) dogs trained by prescribed charities (that is, prescribed in regulations under the 2010 Act) to assist people with epilepsy or other disabilities affecting their mobility, manual dexterity, physical coordination or ability to lift, carry or move everyday objects, and (d) dogs in other (prescribed) categories trained to assist people with other (prescribed) disabilities. As a result, where regulations under the 2010 Act add new categories of “assistance dog” for the purposes of that Act (requiring the drivers of taxis and private hire vehicles to transport assistance dogs with their owners and to do so without additional charge),

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this will carry over automatically to the 1953 Act (enabling the owner or person in charge of such a dog, when it is working, to allow it to be at large in a field of sheep).

12. Under the 1953 Act, the penalty for those found guilty of the section 1 offence is a fine not exceeding level 3 on the standard scale (there is a standard scale of fines for summary offences and level 3 is currently set at £1,000). Section 1(3)(e) increases the maximum penalty to imprisonment for up to six months or a fine not exceeding level 5 on the standard scale (currently set at £5,000), or both.

## **Section 2: Power to make order in respect of person convicted**

13. Section 2 of the Bill inserts a new section, section 1A, into the 1953 Act. New section 1A provides for an additional penalty that may be imposed on a person convicted of the section 1 offence (whether that person is the owner of the dog or the person who was in charge of it at the time).

14. Subsection (1) of new section 1A allows the court, by order, to disqualify the convicted person from owning or keeping dogs, or to require the person to prevent any dog the person is in charge of from going onto land on which livestock is present or is likely to be present, or both. The length of the disqualification or requirement is for the court to determine (and if the court imposes both a disqualification and a requirement, these may be for different periods of time).

15. Subsection (2) of new section 1A requires the order to be treated as a sentence, so that it can be appealed in the same way as a sentence can be appealed.

16. Subsection (3) of new section 1A provides that a breach of such an order is punishable by a fine of up to level 5 on the standard scale (currently set at £5,000).

17. Subsections (4) and (5) entitle the convicted person to apply to the court to have the order discharged in whole or in part, but only if at least one year has elapsed since the order was made. It will be for the courts

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themselves to prescribe, in rules of court, how such an application is to be made.

18. Under subsection (6), if the application (to have the order discharged) is refused, the convicted person may appeal the refusal to the Sheriff Appeal Court. The person may, separately, apply again to have the disqualification order discharged, but (again) only if at least a year has elapsed since the previous refusal.

### **Section 3: Powers to seize etc. dog suspected of attacking or worrying livestock**

19. Section 3 of the Bill amends section 2 of the 1953 Act. Section 2 of the 1953 Act sets out how the offence is to be enforced.

20. Section 2(2) of the 1953 Act allows a police officer to seize and detain a dog that the officer believes has been worrying livestock on agricultural land but only if the dog is found on the land in question and no-one is present who admits to being its owner or in charge of it, and only in order to ascertain who the owner is. Section 2(3) of the 1953 Act applies section 3 of the Dogs Act 1906 to dogs seized and detained in this way. As a result, the seized dog must be kept by the police for at least seven days while efforts are made to identify the owner, the dog must be fed and maintained during that period, the owner may be required to pay the cost of its detention, and an unclaimed dog may be either sold or destroyed.

21. Section 3(2) of the Bill amends section 2(2) of the 1953 Act, so that the power to seize and detain a dog in order to identify its owner can be exercised by an inspector (see section 5) as well as by a police officer. The power is also extended so that a dog can be seized from any land on which it is found, not just the agricultural land where the livestock attack or worrying took place (for example it could be on a grass verge nearby); but it does not allow a dog to be seized from within premises.

22. Section 3(3) of the Bill inserts a new subsection (2A) into section 2 of the 1953 Act. This new subsection confers a new power, exercisable by either a police officer or inspector, to allow a dog suspected of attacking or worrying livestock on agricultural land to be seized and detained, so that the dog can be examined in order to identify and secure any evidence. As with subsection (2), this power covers situations where the dog is no longer

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on the land where the attack or worrying took place, but does not allow a dog to be seized from within premises.

23. Section 3(4) of the Bill amends section 2(3) of the 1953 Act, which relates to the disposal of seized dogs in terms of section 3 of the Dogs Act 1906.

24. Section 3(4)(a) of the Bill disapplies section 3(10) of the 1906 Act for the purposes of the 1953 Act. This is a technical change to reflect the fact that section 3(10) of the 1906 Act has already been repealed (and, in any case, never had any application in Scotland).

25. Section 3(4)(b) of the Bill limits the application of section 3 of the 1906 Act to cases where a seizure of a dog (under section 2(2) of the 1953 Act) is undertaken by a police officer. (Separate provision is made for how section 3 of the 1906 Act applies where the seizure of a dog under section 2(2) is undertaken by an inspector – see paragraph 29 below.)

26. Section 3(4)(c) of the Bill makes section 2(3) of the 1953 Act subject to new section 2(6) of that Act (inserted by section 3(5) of the Bill – see paragraph 30 below).

27. Section 3(5) of the Bill inserts new subsections (4) to (6) into section 2 of the 1953 Act.

28. New subsection (4) applies section 3 of the 1906 Act to dogs seized by a police officer under the new section 2(2A) of the 1953 Act on a similar basis to how that section is applied to dogs seized by a police officer under section 2(2) of the 1953 Act – except that, in the case of a dog seized under section 2(2A), the owner cannot be required to pay the cost of its detention.

29. New subsection (5) makes different modifications to the application of section 3 of the 1906 Act in cases where the dog was seized – either under section 2(2) or 2(2A) of the 1953 Act – by an inspector rather than a police officer. Specifically, references to the police are to be read as references to the inspecting body, so that it is, for example, the inspecting body that is to serve notice on the dog's owner that it has been found, and that has the power to dispose of any dog unclaimed by its owner after seven days. Section 3(9) of the 1906 Act (which refers to financial arrangements

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between Police Scotland and the Scottish Police Authority) is also disapplied.

30. New subsection (6) imposes a presumption on the police or an inspecting body, when disposing of a dog unclaimed by its owner after seven days, to sell the dog rather than destroy it unless the dog is dangerous or selling it is impracticable.

#### **Section 4: Powers to authorise entry, search, seizure etc.**

31. Section 4 of the Bill replaces section 2A of the 1953 Act with a new version.

32. The existing section 2A allows a justice of the peace to issue a warrant authorising a constable to enter and search premises if the constable has reason to believe that a dog suspected of livestock worrying is on the premises, but only in order to identify the dog. The new section 2A expands on this in a number of respects: it allows a sheriff as well as a justice of the peace to issue the warrant; it allows it be applied for by an inspector (see section 5 regarding inspectors) as well as by a constable; it allows premises to be entered and searched not only to identify the dog but also to ascertain who the owner is, and to examine, seize and detain the dog in order to collect evidence; and it allows these things to be done, in urgent cases, without a warrant.

33. Under subsections (1)(b) to (3) of new section 2A, one of the pre-conditions for seeking a warrant is that the constable or inspector has sought admission to the premises and been refused, and has then served notice of the intention to seek a warrant. But it also allows for situations where the constable or inspector has not sought admission because a refusal could reasonably be expected, and where the constable or inspector hasn't given notice of the intention to seek a warrant because doing so would frustrate the purpose of obtaining a warrant (for example, if it is likely that the dog would be removed from the premises before the warrant could be obtained). An alternative pre-condition is that the premises are unoccupied or the occupier is temporarily absent.

34. Subsection (4) of new section 2A allows the police officer or inspector to use reasonable force to enter the premises. If the dog is then seized and detained in order to ascertain who the owner is, the owner can be required to repay the cost of detaining it on the same basis as if the dog had been

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found on land other than premises and no person admitted to being its owner or to being in charge of it (see also paragraph 37).

35. Under subsection (5) the warrant provides authority for opening “lockfast places” (for example, forcing open a locked door) and provides authorisation for individuals named in the warrant or for anyone carrying out a role specified in the warrant to accompany the police officer or inspector. (For example, it may be more practical to take a vet to the dog, rather than taking the dog to the vet.)

36. Subsection (6) allows premises to be entered and searched, and dogs to be seized and detained, without a warrant in urgent cases; but subsection (7) prevents this being done in the case of domestic premises. So, the police or an inspector would always need a warrant, for example, to seize a dog from its owner’s home.

37. Subsections (8) and (9) of new section 2A specify how the rules on the detention of dogs (under section 3 of the Dogs Act 1906) apply in the case of dogs seized from premises under subsection (4) of that section. Where the dog is detained under subsection (4)(b), for the purpose of ascertaining who its owner is, it is treated on the same basis as a dog seized from land and detained for a similar purpose under section 2(2). Where the dog is detained under subsection (4)(c), for the purpose of gathering evidence, it is treated on the same basis as a dog seized from land and detained for a similar purpose under section 2(2A). In particular, this means that the owner may be required to repay the cost of detaining the dog if it is detained for the purpose of ascertaining who its owner is, but not if it is detained for evidence-gathering.

38. Section 4(2) of the Bill inserts new section 2B into the 1953 Act. This new section provides for a police officer or inspector who has seized a dog for the purpose of gathering evidence to arrange for the dog to be examined by a vet, and for the vet to take samples from the dog. This can be done either with or without the owner being present.

## **Section 5: Inspecting bodies and inspectors**

39. Section 5 of the Bill inserts new section 2C and new section 2D into the 1953 Act.



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40. New section 2C gives powers to Scottish Ministers, by regulations (under the negative procedure – see section 6(4) of the Bill) to appoint individuals, organisations or bodies as “inspecting bodies”, which may in turn appoint inspectors (employees or officers of the inspecting body). Any prospective inspecting body must be consulted by Scottish Ministers before being appointed. (Note that this does not allow Ministers to decide which individuals are appointed as inspectors.)

41. New section 2D provides that neither inspectors nor inspecting bodies incur civil or criminal liability (that is, they cannot be sued or prosecuted) for anything done by inspectors in carrying out their functions under the 1953 Act, so long as the inspectors act on reasonable grounds and in good faith.

## **Section 6: Definitions**

42. Section 6 of the Bill amends the definitions set out in section 3(1) of the 1953 Act, adds further definitions, and gives the Scottish Ministers power to amend those definitions.

43. The definition of “livestock” is amended to include camelids (for example, alpacas and llamas), ostriches, farmed deer, enclosed game birds and buffalo, and gives further explanation of the meaning of “farmed deer” and “enclosed game birds”; the definition of “agricultural land” is also amended to include land used for the purpose of raising game birds to ensure that where enclosed game birds are attacked or worried by a dog, this counts as attacking or worrying them on agricultural land. “Donkeys” replaces the term “asses”, within the definition of “horses”, in order to reflect modern terminology.

44. Section 6(3) of the Bill inserts new section 3(4) into the 1953 Act to allow the Scottish Ministers by regulations to amend the definitions set out in section 3(1). Section 6(4) specifies that these regulations, and the regulations that allow the Scottish Ministers to appoint inspecting bodies (under new section 2C(1)), are subject to the negative procedure – meaning that the regulations must be laid before the Parliament and are then subject, for 40 days, to annulment by resolution.

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## **Section 7: Minor and consequential amendments to 1953 Act**

45. This section changes various references (in section 1 of the 1953 Act) to an offence “under this Act” to refer instead to an offence under “this section” (i.e. under section 1). This is to distinguish that offence from the new offence created by section 1A(3) of the 1953 Act (inserted by section 2 of the Bill). Where references to an offence “under this Act” are retained (in section 2(1) and 2A(1) of the 1953 Act), this is to allow the powers of entry, search, seizure and detention of a dog to be used for investigating and enforcing both offences.

## **Section 8: Consequential amendments to the Civic Government (Scotland) Act 1982**

46. Section 8 sets out consequential amendments to section 129 of the Civic Government (Scotland) Act 1982, which (amongst other things) provides a defence to a person sued for killing or injuring a dog where the person was acting for the protection of livestock. Section 8 adjusts references in section 129 to a dog “worrying” livestock to become references to the dog “attacking or worrying” livestock, in line with the changes made, by section 1 of the Bill, to the 1953 Act. The terms “livestock” and “worrying” are also given the same meanings in section 129 as they will have (once the Bill is in force) in the 1953 Act. This should ensure that the defence is available (under section 129) to anyone protecting any livestock that is also protected under the 1953 Act.

## **Section 9: Commencement**

47. Section 9 brings into force immediately after Royal Assent section 5(1) (which inserts new section 2C of the 1953 Act) and section 6(4) (which inserts new section 3(5) of that Act). This is to allow the Scottish Ministers to appoint inspecting bodies, and for those bodies to appoint inspectors, prior to the commencement of the provisions that give such inspectors their powers of investigation and enforcement.

48. Apart from section 9 itself and section 10, all other provisions of the Bill (and hence the other substantive changes it makes to the 1953 Act) come into force six months after the date of Royal Assent.

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## **Annexe A: The Dogs (Protection of Livestock) Act 1953 (as it would be amended by the Bill)**

**Note: Text shown underlined is text added or substituted by the Bill; ellipsis ([...]) shows where the Bill removes text.**

An Act to provide for the punishment of persons whose dogs worry livestock on agricultural land; and for purposes connected with the matter aforesaid.

[14th July 1953]

### **1 Offence where dog attacks or worries livestock on agricultural land<sup>1</sup>**

- (1) Subject to the provisions of this section, if a dog attacks or worries livestock on any agricultural land, the owner of the dog, and, if it is in the charge of a person other than its owner, that person also, shall be guilty of an offence under this section<sup>2</sup>.
- (2) For the purposes of this Act worrying livestock means—
  - (a) [...]<sup>3</sup>
  - (b) chasing livestock in such a way as may reasonably be expected to cause injury or suffering to the livestock or, in the case of females, abortion, or loss of or diminution in their produce, or
  - (c) 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.
- (2A) Subsection (2)(c) of this section shall not apply in relation to—
  - (a) a dog owned by, or in the charge of, the occupier of the field or enclosure or the owner of the sheep or a person authorised by either of those persons; or
  - (b) a police dog, a guide dog or other assistance dog, trained sheep dog, a working gun dog or a dog lawfully used to hunt, but only if and to the extent that the dog is performing the role in question.
- (3) A person shall not be guilty of an offence under this section<sup>4</sup> by reason of anything done by a dog, if at the material time the livestock are trespassing on the land in question and the dog is owned by, or in the charge of, the occupier of that land or a person authorised by him, except in a case where the said person causes the dog to attack the livestock.
- (4) The owner of a dog shall not be convicted of an offence under this section<sup>5</sup> in respect of the attacking or worrying of livestock by the dog if he proves that at the time when the dog attacked or worried the livestock it was in the charge of some other person, whom he reasonably believed to be a fit and proper person to be in charge of the dog.
- (5) Where the Minister is satisfied that it is inexpedient that subsection (1) of this section should

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<sup>1</sup> Currently reads: **Penalty where dog worries livestock on agricultural land**

<sup>2</sup> Currently reads: Act

<sup>3</sup> Currently reads: attacking livestock, or

<sup>4</sup> Currently reads: Act

<sup>5</sup> Currently reads: Act

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apply to land in any particular area, being an area appearing to him to consist wholly or mainly of mountain, hill, moor, heath or down land, he may by order direct that subsection shall not apply to land in that area.

- (6) A person guilty of an offence under this section<sup>6</sup> shall be liable on summary conviction—
- (a) to imprisonment for a term not exceeding six months;
  - (b) to a fine not exceeding level 5 on the standard scale; or
  - (c) both.<sup>7</sup>

### **1A Orders in respect of persons convicted of an offence under section 1**

- (1) Where a person (P) is convicted of an offence under section 1, the court may make an order—
- (a) disqualifying P from owning or keeping a dog during such period as the court thinks fit,
  - (b) requiring P, during such period as the court thinks fit, to prevent any dog of which P has charge from going on to land which P knows, or reasonably ought to know, is agricultural land on which livestock is present or is likely to be present, or
  - (c) both.
- (2) Where P is convicted of an offence under section 1, then for the purposes of any appeal under the Criminal Procedure (Scotland) Act 1995 (c.46) an order under subsection (1) is to be treated as a sentence.
- (3) If P fails to comply with an order under subsection (1), P commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Subsection (5) applies where an order has been made under subsection (1) and at least one year has elapsed since the order was made.
- (5) P may, in such manner as may be prescribed by rules of court, apply to the court which made the order for the order to be discharged in whole or in part, or otherwise varied.
- (6) If the application in respect of an order is refused, in whole or in part—
- (a) P may appeal to the Sheriff Appeal Court, and
  - (b) no further application in respect of that order shall otherwise be competent unless at least one year has elapsed from the date of the refusal.

## **2 Enforcement**

- (1) As respects an offence under this Act alleged to have been committed in respect of a dog on any agricultural land in England or Wales, no proceedings shall be brought except—

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<sup>6</sup> Currently reads: Act

<sup>7</sup> Currently reads:

(a) except in a case falling within the succeeding paragraph, to a fine not exceeding ten pounds;

(b) in a case where the person in question has previously been convicted of an offence under this Act in respect of the same dog, to a fine not exceeding fifty pounds

[but by virtue of the Criminal Procedure (Scotland) Act 1975, these penalties are to be read as if the maximum fine that may be imposed on summary conviction were level 3 on the standard scale]

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- (a) by or with the consent of the chief officer of police for the police area in which the land is situated, or
  - (b) by the occupier of the land, or
  - (c) by the owner of any of the livestock in question.
- (2) Where in the case of a dog found on any land (other than premises)—
- (a) a police officer or inspector has reasonable cause to believe that the dog has been attacking or worrying livestock on land that<sup>8</sup> appears to him to be agricultural land, and
  - (b) no person is present who admits to being the owner of the dog or in charge of it,
- then for the purpose of ascertaining who is the owner of the dog the police officer or inspector may seize it and may detain it until the owner has claimed it and paid all expenses incurred by reason of its detention.
- (2A) Where in the case of a dog found on any land (other than premises) a police officer or inspector has reasonable cause to believe that—
- (a) the dog has been attacking or worrying livestock on land (whether the land on which the dog is found or other land) that appears to him to be agricultural land, and
  - (b) it is necessary to seize the dog in order to identify and secure evidence of the commission of an offence under section 1 of this Act,
- then the police officer or inspector may seize the dog and may detain it for as long as necessary to identify and secure any such evidence.
- (3) Subsections (4) to (9)<sup>9</sup> of section three of the Dogs Act, 1906 (which provide for the disposal of dogs seized under subsection (1) of that section if unclaimed after seven days) shall apply in relation to dogs seized by a police officer under subsection (2) of this section<sup>10</sup> as they apply in relation to dogs seized under subsection (1) of that section (which provides for the seizure and detention of dogs found in highways and places of public resort and believed to be stray dogs), subject to subsection (6) of this section.
- (4) Subsections (2) to (9) of section three of the Dogs Act, 1906 shall apply in relation to dogs seized by a police officer under subsection (2A) of this section as they apply in relation to dogs seized under subsection (1) of that section, subject to—
- (a) disregarding the words “and paid all expenses incurred by reason of its detention” where they appear in subsection (4) of that section, and
  - (b) subsection (6) of this section.
- (5) Where a dog has been seized by an inspector under subsection (2) or (2A) of this section, the relevant provisions of section three of the Dogs Act, 1906 shall apply as if the dog had been seized by a police officer under one of those subsections, subject to the following modifications—
- (a) references to “the chief officer of police, or any person authorised by him in that

<sup>8</sup> Currently reads: that land, and the land

<sup>9</sup> Currently reads: (10)

<sup>10</sup> Currently reads: under the last preceding subsection

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behalf” shall be read as references to “the inspecting body that appointed the inspector who seized the dog, or any person authorised by that body”,

(b) references to “the chief constable of the Police Service of Scotland”, “the police” and “the police officer” shall be read as references to “the inspecting body that appointed the inspector who seized the dog”, and

(c) subsection (9) of that section shall not apply.

(6) The application of section three of the Dogs Act, 1906 to dogs seized under this section is subject to a presumption that, unless there are reasonable grounds to suspect that the dog is dangerous or it is otherwise impracticable to do so, the dog should be sold rather than destroyed.

## **2A Power to authorise entry, search, seizure etc.**

(1) Subsection (4) applies if, on an application made by a constable or an inspector, a sheriff or a justice of the peace is satisfied—

(a) that there are reasonable grounds for believing that a dog in respect of which an offence under this Act has been committed is on premises specified in the application, and

(b) that either subsection (2) or subsection (3) is complied with in relation to the premises.

(2) This subsection is complied with in relation to premises if—

(a) either—

(i) admission to the premises has been refused, or

(ii) such a refusal may reasonably be expected, and

(b) either—

(i) notice of the intention to seek a warrant has been given to the occupier of the premises, or

(ii) the giving of such notice would frustrate the purpose for which the warrant is sought.

(3) This subsection is complied with if the premises are unoccupied or the occupier is temporarily absent.

(4) Where this subsection applies, the sheriff or justice of the peace may issue a warrant authorising a constable or inspector to enter the premises (using such force as is reasonably necessary) and to search them in order to—

(a) identify the dog,

(b) ascertain who is the owner of the dog in the event that no person is present who admits to being the owner or to being in charge of the dog, in which case the constable or inspector may seize the dog and may detain it until the owner has claimed it and paid all expenses incurred by reason of its detention, and

(c) examine, seize and detain the dog in order to identify and secure evidence of the commission of an offence under this Act.

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- (5) A warrant issued under this section shall be authority for opening lockfast places and may authorise persons named in the warrant, or persons carrying out roles specified in the warrant, to accompany a constable or inspector who is executing it.
- (6) A constable or an inspector may, without a warrant, do anything that could be authorised by a warrant under subsection (4) if it appears that delay would frustrate the purpose for which the search is to be carried out.
- (7) Subsection (6) does not apply in relation to domestic premises.
- (8) Subsection (3) or, as the case may be, subsection (5) of section 2 of this Act shall apply to any dog seized by a constable or inspector under subsection (4)(b) of this section as if the dog had been seized by a police officer or an inspector under subsection (2) of that section.
- (9) Subsection (4) or, as the case may be, subsection (5) of section 2 of this Act shall apply to any dog seized by a constable or inspector under subsection (4)(c) of this section as if the dog had been seized by a police officer or an inspector under subsection (2A) of that section.<sup>11</sup>

**2B Power to have dog examined**

Where a dog has been seized by a constable or inspector under section 2(2A) or section 2A(4)(c) of this Act, the constable or inspector may, without prejudice to any other power and whether or not in the presence of the owner or person in charge of the dog, arrange for the dog to be examined by a veterinary surgeon, and for the veterinary surgeon to take samples from the dog, for the purposes of identifying and securing evidence of the commission of an offence under this Act.

**2C Authorisation of inspecting bodies and appointment of inspectors**

- (1) The Scottish Ministers may by regulations authorise one or more persons, organisations or bodies to appoint inspectors for the purposes of this Act.
- (2) An inspecting body may appoint an employee or officer of that inspecting body as an inspector for the purposes of this Act.
- (3) Before appointing a person, organisation or body as an inspecting body, the Scottish Ministers must first consult that person, organisation or body on the proposed appointment.

**2D Liability of inspecting bodies and inspectors**

- (1) An inspecting body incurs no civil or criminal liability for anything an inspector appointed by that inspecting body does in purported exercise of any functions conferred on the inspector by a provision of this Act, where the inspector acts on reasonable grounds and in

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<sup>11</sup> Currently reads:

**2A Power of justice of the peace to authorise entry and search**

If on an application made by a constable a justice of the peace is satisfied that there are reasonable grounds for believing—

- (a) that an offence under this Act has been committed; and
  - (b) that the dog in respect of which the offence has been committed is on premises specified in the application,
- he may issue a warrant authorising a constable to enter and search the premises in order to identify the dog.

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good faith.

- (2) An inspector incurs no civil or criminal liability for anything the inspector does in purported exercise of any functions conferred on the inspector by a provision of this Act, where the inspector acts on reasonable grounds and in good faith.
- (3) Nothing in this section affects any liability of any other person in respect of any thing done.

### **3 Interpretation and supplementary provisions**

- (1) In this Act—

“agricultural land” means land used as arable, meadow or grazing land, or for the purpose of poultry farming, pig farming, the raising of game birds, market gardens, allotments, nursery grounds or orchards; [...]<sup>12</sup>

“assistance dog” has the meaning given by section 173(1) of the Equality Act 2010;

“inspecting body” means any person, organisation or body authorised by regulations under section 2C(1);

“inspector” means a person appointed under section 2C(2);

“livestock” means cattle, sheep, goats, swine, horses, camelids, ostriches, farmed deer, enclosed game birds or poultry, and for the purposes of this definition “cattle” means bulls, cows, oxen, buffalo, heifers or calves, “horses” includes donkeys and mules, “farmed deer” means deer of any species which are on agricultural land enclosed by a deer-proof barrier and kept by way of business for the primary purpose of meat production, “enclosed game birds” means any pheasant, partridge, grouse (or moor game), black (or heath) game or ptarmigan that are being kept enclosed prior to their release for sporting purposes, and “poultry” means domestic fowls, turkeys, geese or ducks; and<sup>13</sup>

“veterinary surgeon” means a person registered in the register of veterinary surgeons, or the supplementary veterinary register, kept under the Veterinary Surgeons Act 1966 (c.36).

- (2) In this Act the expression “*the Minister*” as respects England and Wales means the Minister of Agriculture and Fisheries and as respects Scotland means the Secretary of State.
- (3) The power of the Minister to make orders under subsection (5) of section one of this Act shall be exercisable by statutory instrument and shall include power, exercisable in the like manner, to vary or revoke any such order.
- (4) The Scottish Ministers may by regulations amend the definitions in subsection (1).
- (5) Regulations under section 2C(1) or subsection (4) of this section are subject to the negative procedure.

### **4 Short title and extent**

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<sup>12</sup> Currently reads: and

<sup>13</sup> Currently reads: “livestock” means cattle, sheep, goats, swine, horses, or poultry, and for the purposes of this definition “cattle” means bulls, cows, oxen, heifers or calves, “horses” includes asses and mules, and “poultry” means domestic fowls, turkeys, geese or ducks.



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- (1) This Act may be cited as the Dogs (Protection of Livestock) Act, 1953.
- (2) This Act shall not extend to Northern Ireland.

**Annexe B: Section 129 of the Civic Government (Scotland) Act 1982  
(as it would be amended by section 8 of the Bill)**

**Note: Text shown underlined is text added or substituted by the Bill.**

**129 Killing of or injury to dogs attacking or worrying livestock<sup>14</sup>**

- (1) In any civil proceedings in respect of the death of or injury to a dog it shall be a defence to prove—
  - (a) that the person alleged to have killed or injured the dog acted for the protection of any livestock and was a person entitled to act for the protection of that livestock; and
  - (b) that within forty-eight hours of the killing or injury notice thereof was given by him or on his behalf at a police station or to a constable.
- (2) For the purposes of this section a person is entitled to act for the protection of any livestock if, and only if—
  - (a) the livestock or the land on which it belongs to him or to any person under whose express or implied authority he is acting; and
  - (b) the circumstances are not such that the livestock was killed or injured on land on to which it had strayed and either the dog belonged to the occupier or its presence on the land was authorised by the occupier.
- (3) Subject to subsection (4) of this section, a person killing or causing injury to a dog shall be deemed for the purpose of this section to act for the protection of any livestock if, and only if, either—
  - (a) the dog is attacking or worrying or is about to attack or worry the livestock and there are not other reasonable means of ending or preventing the attacking or worrying; or
  - (b) the dog has been attacking or worrying livestock, has not left the vicinity and is not under the control of any person and there are no practicable means of ascertaining to whom it belongs.
- (4) For the purposes of this section the conditions stated in either of the paragraphs of the preceding subsection shall be deemed to have been satisfied if the person alleged to have killed or injured the dog believed that the condition was satisfied and had reasonable ground for that belief.
- (5) For the purposes of this section—
  - (a) an animal belongs to any person if he owns it or has it in his charge;
  - (b) land belongs to any person if he is the occupier thereof;

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<sup>14</sup> Currently reads: **Killing of or injury to dogs worrying livestock**

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- (c) “livestock” has the same meaning as in section 3(1) of the Dogs (Protection of Livestock) Act 1953; and<sup>15</sup>
- (d) “worrying” has the same meaning as in section 1(2) of the Dogs (Protection of Livestock) Act 1953.<sup>16</sup>

### Annexe C: Section 3 of the Dogs Act 1906

**Note: In the case of a dog seized by a police officer under section 2(2) of the 1953 Act, subsections (4) to (9) of this section apply. In the case of a dog seized by a police officer under section 2(2A), subsections (2) to (9) apply, but the text shown in square brackets (in subsection (4)) is to be disregarded. In the case of a dog seized by an inspector under section 2(2), subsections (4) to (8) apply, but the text in *italics* is to be read as shown in the footnotes. In the case of a dog seized by an inspector under section 2(2A), subsections (2) to (8) apply, but the text shown in square brackets (in subsection (4)) is to be disregarded and the text in *italics* is to be read as shown in the footnotes. (See 3(5) of the Bill.)**

#### 3 Seizure of stray dogs

- (1) Where a police officer has reason to believe that any dog found in a road or place of public resort or on any other land or premises is a stray dog, he may seize the dog and may detain it until the owner has claimed it and paid all expenses incurred by reason of its detention.
- (1A) The powers under subsection (1) above shall not be exercised in relation to any dog found on any land or premises other than in a road or place of public resort unless the owner of the land or premises or person having the right of possession thereof has consented to such exercise.
- (1B) In subsections (1) and (1A) above “road” has the same meaning as in the Roads (Scotland) Act 1984.
- (2) Where any dog so seized wears a collar having inscribed thereon or attached thereto the address of any person, or the owner of the dog is known, *the chief officer of police, or any person authorised by him in that behalf*<sup>17</sup>, shall serve on the person whose address is given on the collar, or on the owner, a notice in writing stating that the dog has been so seized, and will be liable to be sold or destroyed if not claimed within seven clear days after the service of the notice.
- (3) A notice under this section may be served either—
  - (a) by delivering it to the person on whom it is to be served; or
  - (b) by leaving it at that person’s usual or last known place of abode, or at the address given on the collar; or

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<sup>15</sup> Currently reads: “livestock” means cattle, horses, asses, mules, hinnies, sheep, pigs, goats and poultry, deer not in the wild state and while in captivity, pheasants, partridges and grouse;

<sup>16</sup> Currently reads: “poultry” means the domestic varieties of the following that is to say, fowls, turkeys, geese, ducks, guinea-fowls, pigeons and quails.

<sup>17</sup> To be read as: the inspecting body that appointed the inspector who seized the dog, or any person authorised by that body

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- (c) by forwarding it by post in a prepaid letter addressed to that person at his usual or last known place of abode, or at the address given on the collar.
- (4) Where any dog so seized has been detained for seven clear days after the seizure, or, in the case of such a notice as aforesaid having been served with respect to the dog, then for seven clear days after the service of the notice, and the owner has not claimed the dog [and paid all expenses incurred by reason of its detention], *the chief officer of police, or any person authorised by him in that behalf*,<sup>18</sup> may cause the dog to be sold or destroyed in a manner to cause as little pain as possible.
- (5) No dog so seized shall be given or sold for the purposes of vivisection.
- (6) *The chief constable of the Police Service of Scotland*<sup>19</sup> shall keep, or cause to be kept, one or more registers of all dogs seized under this section which are not transferred to an establishment for the reception of stray dogs. The register shall contain a brief description of the dog, the date of seizure, and particulars as to the manner in which the dog is disposed of, and every such register shall be open to inspection at all reasonable times by any member of the public.
- (7) *The police*<sup>20</sup> shall not dispose of any dog seized under this section by transferring it to an establishment for the reception of stray dogs unless a register is kept for that establishment containing such particulars as to dogs received in the establishment as are above mentioned, and such register is open to inspection by the public.
- (7A) Where a dog is disposed of under this section to a purchaser in good faith, the sale shall vest the ownership of the dog in the purchaser.
- (8) *The police officer*<sup>21</sup> or other person having charge of any dog detained under this section shall cause the dog to be properly fed and maintained.
- (9) All expenses incurred by the Police Service of Scotland under this section shall be defrayed by the Scottish Police Authority, and any money received by the Police Service of Scotland under this section shall be paid to the Scottish Police Authority.

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<sup>18</sup> To be read as: the inspecting body that appointed the inspector who seized the dog, or any person authorised by that body

<sup>19</sup> To be read as: the inspecting body that appointed the inspector who seized the dog

<sup>20</sup> To be read as: the inspecting body that appointed the inspector who seized the dog

<sup>21</sup> To be read as: the inspecting body that appointed the inspector who seized the dog

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

## Explanatory Notes

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