

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

Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by Scottish Parliament officials in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (a Member’s Bill introduced by Emma Harper MSP). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill provisions

2. The Bill strengthens and updates the law in relation to livestock worrying – in which sheep or other farmed animals are attacked or chased by dogs. Reducing the number of such incidents will reduce the cost and stress they cause to farmers, while also improving animal welfare. To this end, the Bill increases penalties and provides additional powers for the investigation and enforcement of the existing offence of livestock worrying under the Dogs (Protection of Livestock) Act 1953.

3. The Bill also brings up to date the definition of livestock in terms of species which are currently farmed in Scotland, and renames the offence as that of “attacking or worrying” livestock, to emphasise how serious it can be.

4. The Bill is in 10 sections and contains two delegated powers provisions in section 5(1) and section 6(3), described in detail below.

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

Delegated Powers

Section 5(1) – power to appoint inspecting bodies

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative procedure

Provision

5. Section 5(1) inserts, after section 2B of the 1953 Act, a new section 2C, which gives powers to Scottish Ministers, by regulations, to authorise one or more persons, organisations or bodies as “inspecting bodies”. In turn, inspecting bodies may appoint inspectors (employees or officers of the organisation) for the purposes of the Act.

6. The powers of the appointed inspectors would be the same as police officers in terms of investigation and enforcement – for example, they would be able to seize a dog for the purposes of evidence gathering, or have a warrant issued to them to enter premises where it was suspected that a dog was located.

7. Any organisation being considered for appointment as an inspecting body must be consulted by Scottish Ministers before being appointed.

Reason for taking power

8. The member feels that it would be useful to have additional agencies able to enforce the offence of livestock worrying, in view of the limited resources of Police Scotland. She believes there are existing bodies who have local knowledge and relevant expertise, and who would be able to fulfil this role – such as local authorities or the Scottish SPCA. But she also recognises that directly conferring powers on named bodies in the Bill would be inflexible, and that it makes better sense to give Ministers a delegated power to appoint inspecting bodies on a case-by-case basis, once their suitability and willingness to take on the role has been established. This also allows Scottish Ministers the flexibility to cancel, by

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regulations, any appointments previously made or to make new appointments in the future.

Choice of procedure

9. The use of this power is subject to the negative procedure (by virtue of new section 3(5) of the 1953 Act, inserted by section 6(4) of the Bill). The principle of allowing Scottish Ministers to appoint inspecting bodies – and hence of allowing inspectors appointed by those bodies to exercise similar powers to the police – will have been approved during the scrutiny of the Bill during its passage through the Parliament. Any organisations will have to be consulted before they are appointed, to ensure they are willing to take on the role. If there are concerns about the suitability of any particular organisation, the negative procedure would allow MSPs the opportunity to raise concerns when the regulations are referred to a lead committee. It is therefore considered that the negative procedure is appropriate.

Section 6(3) – Power to amend definitions

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative procedure

Provision

10. New section 3(4) of the 1953 Act (inserted by section 6(3) of the Bill) provides Scottish Ministers with the power, by regulations, to amend the definitions set out in section 3(1) of the 1953 Act. These definitions are for “agricultural land”, “assistance dog”, “inspecting body”, “inspector”, “livestock” and “veterinary surgeon”.

Reason for taking power

11. The 1953 Act illustrates the need for statutory definitions to change and evolve over time: the Act’s definition of “livestock”, for example, hasn’t changed since the Act was passed, but there are now many more species of livestock farmed in the UK than there were in 1953. The Bill updates the

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definition (e.g. by adding reference to camelids and farmed deer), but further species may need to be added in future. It therefore seems sensible to allow Scottish Ministers to amend these definitions as appropriate.

Choice of procedure

12. The use of this power is subject to the negative procedure (by virtue of new section 3(5) of the 1953 Act, inserted by section 6(4) of the Bill). The potential impact of this power is considered small. Some of the definitions (for example, that of “veterinary surgeon”) are technical definitions which could only really be amended in non-substantive ways. While the definitions of “livestock” and “agricultural land” are more substantive (helping to determine the scope of the main criminal offence), there is no reason to suppose the power to amend those definitions would be used inappropriately, for anything other than updating the Act in line with changes in agricultural practice. Accordingly, the negative procedure is considered the appropriate level of parliamentary scrutiny.

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