

## **RURAL ECONOMY AND CONNECTIVITY COMMITTEE**

### **CALL FOR EVIDENCE ON THE DOGS (PROTECTION OF LIVESTOCK) (AMENDMENT) (SCOTLAND) BILL**

#### **SUBMISSION FROM UK CENTRE FOR ANIMAL LAW SCOTTISH STEERING COMMITTEE**

The UK Centre for Animal Law Scottish Steering Committee welcomes the opportunity to comment on the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill.

The UK Centre for Animal Law (ALAW) is a charity which brings together lawyers and other people interested in animal protection law to share experience and to harness expertise for the benefit of animals, by securing more comprehensive and effective laws and better enforcement of existing animal protection laws. The organisation focuses on promoting knowledge and understanding amongst lawyers, universities, animal protection groups and the wider public about animal protection laws in the UK and elsewhere around the world.

The Scottish Steering Committee (ALAW-SSC) was set up in 2019 to comment and contribute to legislation in the Scottish Parliament and to further ALAW's educational mission in Scotland.

ALAW-SSC supports the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill and congratulates Emma Harper MSP on steering the Bill to this Stage. We hope the following brief comments will be of interest to the Committee.

#### **1. What is your experience of livestock worrying? What is the scale of the issue?**

ALAW-SSC does not have direct experience of livestock worrying but is aware of the animal welfare issues arising from this problem. Most of our members live in the Scottish countryside. Like other members of the public, we have all seen distressing images of injuries and heard farmers' accounts of both financial and welfare impacts. NFUS member surveys suggest that the issue is widespread.

#### **2. Does legislation need strengthening in this area? If so – does the Bill do this?**

##### **Is the Bill the best way to do this?**

ALAW-SSC believes that there is scope to strengthen the existing legislation and that this Bill, with Scottish Government support, can achieve the desired outcome. It is valuable to update the terminology for the offence as the expression "worrying" is not always clearly understood and may give the impression of a trivial welfare impact.

Nonetheless, while we accept that the current Bill is a good way to achieve its specific aims, ALAW-SSC and others remain concerned about the continued need for a modern consolidated dog control law in Scotland. This was recognised by the Public Audit and Post-Legislative Scrutiny Committee in its report on the Control of Dogs (Scotland) Act 2010. The Committee commented:

“The Committee considers that current dog control law is not fit for purpose and recommends that the Scottish Government undertakes a comprehensive review of all dog control legislation without delay, with a view to introducing modernised, fit for purpose, consolidated dog control legislation.”

<https://digitalpublications.parliament.scot/Committees/Report/PAPLS/2019/7/18/Post-legislative-Scrutiny--Control-of-Dogs--Scotland--Act-2010>

(paragraphs 27 and 30)

ALAW-SSC is keen to ensure that the approach taken, both in the current Bill and in any future consolidating legislation, reflects modern understanding of both animal and human behaviour and welfare. Please see also our response to question 8.

### **3. What are your views on the increased penalties the Bill creates for livestock worrying?**

Livestock worrying unquestionably causes unnecessary suffering to its victims and the current penalties under the Dogs (Protection of Livestock) Act 1953 are low compared with the penalties for causing unnecessary suffering under the Animal Health and Welfare (Scotland) Act 2006 (the 2006 Act). The Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 has recently increased the maximum available penalties under the 2006 Act for this offence to imprisonment for a period up to five years and/or an unlimited fine.

The proposed maximum penalties under the Bill are by no means insignificant and, if consistently applied by the courts and widely understood by the public, should have a deterrent effect on those who intentionally or negligently allow their dogs to cause unnecessary suffering to livestock. Nonetheless, the Committee might wish to consider whether, in view of the recent changes, the maximum proposed penalties ought to be reviewed and possibly increased.

The 2020 Act has also introduced a wide range of offences for which fixed penalty notices are to be made available. Consideration might be given to such an approach under this Bill – for example, where a dog has caused a lower level of distress or harm to livestock. A fixed penalty might be lower than a fine (or it might be higher), but it encourages enforcement that is quicker, more widespread and more consistent.

We suggest that both higher maximum penalties for the most severe cases, along with fixed penalty notices to increase the enforcement effort overall, should be considered. Clear and detailed guidance on the application of the different approaches would also be essential.

### **4. Would the proposals to disqualify convicted persons from owning or keeping a dog or taking a dog onto certain types of land, assist in the aim of reducing the number of livestock worrying instances?**

At first sight this would appear the logical consequence of the proposals for post-conviction orders (section 2 of the Bill creating new section 1A of the 1953 Act). However, it needs to be borne in mind that – at least as provided in the 2006 Act – disqualifying an individual owner does not prevent another member of the same

household keeping an animal and therefore a disqualification might have not practical effect.

ALAW-SSC has reservations about the possibility of dogs being routinely removed from their owners for reasons other than their own welfare. Disqualification and deprivation orders under the 2006 Act are made when an owner has actually been convicted of mistreating the animal being seized and/or poses a potential risk to other animals. The situation being addressed in the Bill is quite different and the proposed sanction is a powerful one.

Taking away a family pet who has become out of control in a one-off situation could be disproportionate and inhumane. It could also be counter-productive. Most owners who witness their dogs attacking livestock are upset by the experience and take steps to prevent it happening again. Fear of losing the dog might have unhelpful consequences, such as failure to inform the farmer about injured livestock or comply with police enquiries.

There is a stronger argument for such orders when the case involves a dog who is routinely left out unsupervised. This suggests a degree of irresponsible ownership even if the owner is unaware that the dog has been chasing livestock. As long as the dog lives in the same location and the same circumstances, it will be able to chase livestock again. In those circumstances, deprivation or disqualification might prevent recurrence and might well be in the dog's own interests.

Section 2 also provides for an order to require a person to prevent any dog of which he/she has charge from going on to agricultural land where livestock is present or is likely to be present. We can see the logic of this and, in many situations, it would be a preferable alternative to a deprivation or disqualification order, meaning the giving up of a family pet. We accept that there might be evidential difficulties with establishing that a person has deliberately breached this prohibition.

There may be potential for conflict with Section 1 of the 1953 Act, which provides that:

“The owner of a dog shall not be convicted of an offence under this Act in respect of the worrying of livestock by the dog if he proves that at the time when the dog 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.”

One way to address this would be to make this defence unavailable in circumstances where an Order is in existence, on the basis that the owner should have made the third party aware of the order; if, having done so, the third party ignores the warning, then they are at fault. Broadly speaking, ALAW-SSC agrees that Orders against taking a dog on agricultural land where livestock is present are proportionate.

Consideration might be given as to whether it is always proportionate to prohibit the taking of responsible access with a dog under control on a short lead. We recommend that the Committee scrutinises the practicalities of this proposal during its consideration of the Bill.

Application may be made to have any of these orders discharged after one year. This is welcome but is unlikely to lead to the reuniting of a family pet with its owners: we hope, therefore, that deprivation and/or disqualification orders will only be used in the most serious cases.

**5. What is your opinion on extending the types of livestock and type of agricultural land covered by livestock worrying, as described by the Bill?**

We agree with this proposal. From an animal welfare perspective, it is logical to protect all sentient individuals who might be vulnerable to suffering as a consequence of an attack.

**6. What are your views on the powers allowing Scottish Ministers to appoint inspectors, other than police, to investigate and enforce livestock worrying offences?**

We note the comment by the Minister for Rural Affairs and the Natural Environment, Mairi Gougeon MSP, in her letter to the Committee of 29 July 2020. The Minister points out that this provision does not allow for the direct appointment of inspectors by the Scottish Ministers and, in that respect, it differs from the 2006 Act. Instead, the Scottish Ministers would authorise persons, organisations and bodies by regulations to appoint inspectors.

We are unsure of the reason for this different approach, but we wonder if it would be preferable, on the grounds of consistency and accountability, to maintain the process of direct appointments, in the way that the 2006 Act provides for Scottish SPCA Inspectors.

It would be helpful to have a clear indication of which organisations are to be appointed as “inspecting bodies” under the Bill. We note the comment in the Scottish SPCA submission that ideally the relevant powers should go to a government-funded body such as local authorities or the Animal and Plant Health Agency. The submission goes on to say that the Scottish SPCA would continue to assist the police on request, but that costs incurred for veterinary treatment, testing and kennelling of seized dogs should fall to the principal investigator, to be recovered from the dog owner in the case of a guilty plea or verdict (as the Bill proposes). This is an important caveat and raises the recurring issue of costs which can, in some cases, hamper the full investigation of animal welfare offences

We expect that local authorities will be the main inspecting bodies and we would expect the Scottish SPCA to be consulted (as the Bill provides) as to its involvement, given its ability to represent the welfare of all the animals involved.

**7. Do you have any comments on the expanded powers for police and inspectors to seize dogs, to enter premises and to take a dog to the vet?**

The powers in section 3 for constables and inspectors to seize a dog from land appear proportionate, although that will depend to some extent on which bodies are authorised to appoint inspectors.

We welcome the final provision of section 3(5). This amends the Dogs Act 1906 so that the police or other inspecting body will be expected to sell an unclaimed dog, rather than destroying it, unless there are reasonable grounds to suspect that the

dog is dangerous or it is otherwise impracticable to do so. However, it would be preferable to see more modern language used in the Bill so that the presumption is that the dog should be “suitably re-homed” rather than “sold”, and “euthanised” rather than “destroyed” and we recommend an amendment to this effect.

With regard to entering premises, section 4 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. Section 4(6) allows a constable or inspector to carry out these activities without a warrant if it appears that delay would frustrate the purpose for which the search is to be carried out. However, as acknowledged in the Explanatory Notes to the Bill, the provision does not apply in relation to domestic premises, where most dogs live, and therefore a warrant will almost always be necessary.

ALAW-SSC accepts the need for the examination or the taking of samples from both the victim of the attack and the dog assumed to have carried it out. DNA testing is increasingly used in domestic animal and wildlife cases and is a reliable method of establishing whether or not contact has taken place. Ideally, this would take place with the consent of the owner and the minimum of stress to the dog.

However, there will inevitably be situations where the owner will not co-operate and the power of seizure has to be invoked. The seizure of a dog from an uncooperative or unhappy owner is likely to heighten stress for all concerned and all possible steps should be taken to avoid or minimise this.

If the Scottish SPCA was willing to be involved in such cases, we believe this would be useful, as its Inspectors are used to handling dogs in a heightened state and have a clear remit to ensure their welfare. As few people as possible should be present at a seizure, to reduce the stress on the dog and the household.

The Committee might wish to consider whether the Bill should include an express provision for the authorities to check the dog’s microchip to establish its owner. Microchipping of every dog in Scotland over the age of 8 weeks has been mandatory since 6 April 2016. At present, microchipping is for the purpose of reuniting stray or lost dogs, which may not be the case in the context of livestock worrying, but it offers a practical and non-invasive method of establishing who is responsible for the dog in question

#### **8. Does the Bill adequately balance the rights of dog owners and the rights of livestock farmers?**

The Bill takes a considered approach to protecting the welfare of livestock and the interests of livestock farmers and it does include provisions to protect owners’ rights. However, the most constructive, helpful and welfare-friendly way to protect pets, farm animals and owners is obviously to prevent livestock attacks in the first place.

As far as we are aware, it has not yet been established how many attacks are caused by dogs accompanied by an owner or other person, and how many are by stray or latch-key dogs. In the latter case, an owner may not even be aware that the dog has developed a propensity for chasing livestock, increasing the likelihood of continued attacks.

We are aware that Police Scotland raised the issue of unattended dogs in a guest blog for Scottish Natural Heritage (SNH, now NatureScot), referring to “the increasing number of dogs left alone at home or in gardens then escaping”, and saying “[m]any dogs are left to their own devices during the day, allowing them to roam free without supervision”. We do not know the extent of this problem in Scotland but leaving dogs alone and/or allowing them to roam without supervision is irresponsible and puts dogs, people and other animals at risk.

<https://www.nature.scot/sites/default/files/2017-06/Publication%202015%20-%20Taking%20the%20Lead%20->

Where dog walkers are concerned, ALAW-SSC suggests that public messaging should not only explain the consequences of allowing a dog to chase or otherwise distress livestock but should offer constructive advice. For example, signage should not only warn of the presence of livestock but also suggest alternative routes to take to avoid any risk of encounters. Signs could point to areas where there is no problem with allowing dogs to run off the lead, so that walkers feel welcome on the land and are more likely to be compliant where restrictions do apply. This would be in line with the guiding principles for land managers published by NatureScot in the wake of the Scottish Outdoor Access Code.

[%20Managing%20access%20with%20dogs%20to%20reduce%20impacts%20on%20land%20management.pdf](#)

It would be helpful for the Bill to be accompanied by a positive public education campaign designed to motivate dog owners and avoid divisiveness.

### **9. Is there anything else that should be included or excluded from the Bill?**

The definition of “worrying livestock” at section 1(2) of the Dogs (Protection of Livestock) Act 1953 includes “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.”

Section 1(2A) includes exemptions for police dogs, guide dogs, trained sheep dogs, working gun dogs and dogs “lawfully used to hunt”. However, numerous incidents have been observed in Scotland where packs of foxhounds have been hunting in proximity to flocks of sheep.

Hunting hounds would appear to be “at large” in terms of the 1953 Act and not under “close control”. Sheep have been seen panicking and taking flight, even attempting to climb over stone dykes in an attempt to escape the hounds. The behaviour of the sheep closely resembled that described in campaigns about livestock worrying. As is frequently pointed out, it is not necessary for dogs actually to bite livestock for damage to occur. The stress of being chased can lead to ewes aborting their lambs a few days after the incident.

We note that the animal protection charity OneKind recommended at the consultation stage that the last of these exemptions should be removed, but the Member in charge disagreed with this opinion. ALAW-SSC suggests that it would be worth revisiting this issue.