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

Anna Brand

This Bill briefing provides an overview of the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill, a Member's Bill introduced by Emma Harper, MSP. A summary of the evidence received to the Rural Economy and Connectivity Committee's call for views is also provided.



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Executive Summary

The Dogs (Protection of Livestock) (Amendment) (Scotland) Bill amends the Dogs (Protection of Livestock) Act 1953 ('the 1953 Act') to:

- introduce higher penalties for livestock worrying offences in the form of higher maximum penalties;
- provides the Courts with order-making powers to restrict the rights of a person convicted of a livestock worrying offence in relation to owning a dog or their rights of access to agricultural land accompanied by a dog;
- grants power to Scottish Ministers to authorise persons, bodies or organisations to appoint inspectors for the purpose of enforcement under this Bill;
- provides greater investigation powers for such inspectors and the police with regard to seizing dogs suspected of having worried livestock for the purpose of obtaining evidence, and providing for powers of entry to seize a dog from premises;
- amends the definitions in the 1953 Act, including expanding the definition of "livestock" to include additional farmed animals, and expanding the definition of "agricultural land" to include "raising of game birds".

The Bill also amends the Civic Government (Scotland) Act 1982 to reflect amendments made to the 1953 Act.

This briefing explains the background and purpose of the Bill, before outlining each section of the Bill in turn.

Finally, this briefing provides an analysis of the evidence received as part of the Rural Economy and Connectivity Committee's call for views on the Bill.

Background

The Bill

The Dogs (Protection of Livestock) (Amendment) (Scotland) Bill amends the [Dogs \(Protection of Livestock\) Act 1953](#) ('the 1953 Act') to introduce higher penalties for livestock worrying offences, and provide for additional enforcement. The Policy Memorandum to the Bill states that *"Reducing the number of such incidents will reduce the cost and stress they cause to farmers, while also improving animal welfare."*¹ The Bill also amends the [Civic Government \(Scotland\) Act 1982](#).

The Bill is a Member's Bill, introduced by Emma Harper, MSP. A consultation was held between February and May 2019 and a consultation summary was produced. The consultation and summary can be found [on the Scottish Parliament's website](#).

Livestock worrying

Livestock worrying occurs when a dog attacks or chases any form of livestock and causes it harm, either in the form of injury, abortion in the case of pregnant female animals, or causes a loss of produce or a reduction in its quality, for example as a result of stress. It is also currently an offence to have a dog 'at large' in a field of sheep.

It is already an offence to allow a dog to worry livestock under the 1953 Act, and being on, or crossing land while responsible for a dog that is not under control is also exempt from outdoor access rights under Section 9 of the [Land Reform \(Scotland\) Act 2003](#).

Several campaigns have been initiated to prevent incidences of livestock worrying. The National Farmers Union of Scotland (NFUS) launched the '[Control Your Dog on Farmland](#)' campaign in February 2019, to encourage greater awareness and prevention of dog-related issues. Around the same time, the Scottish Partnership Against Rural Crime ran the campaign '[Your Dog - Your Responsibility](#)' campaign to "highlight the reality of livestock attacks."

Prevalence of livestock worrying

Overall, many have identified a lack of evidence on the prevalence of the issue, but there are perceptions that it is prevalent.

The [Dogs Trust raised in their submission](#) to the Rural Economy and Connectivity Committee's Call for Views that *"the Police are not currently required to formally record instances of livestock worrying and as such there is no uniformly recorded national statistical picture of the true scale of the problem"*

The [Scottish Government commissioned research](#) to assess the scale of the issue in relation to sheep, looking at worrying by dogs as well as wildlife. The report highlights that

" the existing evidence does not provide an adequate basis for assessing the true scale of the issues in Scotland. Nor does it adequately show the potential contributing factors or impacts, that can effectively inform the development of appropriate responses "

The research itself was carried out to begin to fill this evidence gap. Nearly 2000 sheep farmers were surveyed, and 23 farmers interviewed. The research showed that 14% of sheep farmers had experienced instances of livestock worrying by dogs in the previous 12 months. Factors that made instances of livestock worrying more likely were being near a road or track frequented by dog walkers, living in the Lothians or East Central Scotland, and among sheep in larger flocks or on fully in-by-land (the farmland nearest the farm, usually enclosed, as opposed to the hill or rough ground).² The research extrapolated from information provided that

“ on average, each incident results in 1.58 sheep being killed, a further 0.51 having to be destroyed, a further 1.72 being injured, 0.34 ewes aborting, 1.02 instances of mis-mothering, and 28.04 sheep being stressed but physically uninjured. ”²

In addition, the research reported that while it can not conclude whether or not worrying is increasing, there was a perception that it is increasing. The survey also found that each dog incident costs farmers on average just under £700, and that dog attacks also cause emotional stress to farmers. However, some suggest that the financial impact is not fully understood, citing conflicting figures due to insufficient data.

A [2018 survey run by NFUS](#) showed a higher incidence of livestock worrying among 340 respondents, though this was not limited to the previous 12 months. The survey showed that 72% of respondents had had an issue with livestock worrying on their land.

The Policy Memorandum for the Bill notes that

“ Under-reporting of incidents seems to be a major issue. This is compounded by the absence of a consistent approach to formally recording livestock worrying and attacks. When taken together, this makes it very difficult to produce accurate data on how many incidents occur across Scotland every year. ”¹

The Scottish Government's commissioned research also found that

“ ...only around a third of dog attacks are currently reported to the police. The qualitative research revealed very mixed experiences of the police and courts' response to attacks and, consequently, mixed views about whether it was worth reporting an incident. There was a perception that the level of understanding of the problem, and the extent to which it was prioritised, varied by area and by individual officer. ”²

Police Scotland, who chair the Scottish Partnership Against Rural Crime, [note in their submission to the Rural Economy and Connectivity Committee's call for views](#), that in their experience, 50% of incidents occur where owners or people in charge are present, and 50% where they are not.

When and where livestock worrying occurs

As noted above, there is a lack of collated data on livestock worrying, and suspected under-reporting of the issue. The circumstances around when livestock worrying occurs is also not fully understood.

NatureScot (formerly Scottish Natural Heritage) [state in their submission](#) that

“ Scotland’s People & Nature Survey indicates that there were 643 million visits to the outdoors in 2019-20, of which 295 million visits (46%) were accompanied by a dog; dog walking was the primary motive for 42% of visits ”

Therefore, dog walking is a significant reason for people accessing the countryside, and NatureScot point to the contribution of dogs to national outcomes on accessing the countryside. However, both the Dogs Trust and the Kennel Club raise in their responses that the majority of livestock worrying incidents occur from escaped or unaccompanied dogs, and not where a dog has been taken for a walk. ^{3 4}

On the other hand, the Scottish Government's commissioned research states that

“ In half of the dog attacks reported (49%), farmers believed the dogs were accompanied at the time of the attack, while in 38% of cases the dogs were believed to be unaccompanied and in 13% of cases the respondent did not know. ² ”

The Dogs (Protection of Livestock) Act 1953

Since 1953, it has been an offence to allow dogs to worry livestock (cattle, sheep, goats, swine, horses, poultry). An owner, or any person in charge of a dog who worries livestock is guilty of such an offence under the [Dogs \(Protection of Livestock\) Act 1953](#).

Worrying is defined as either

- attacking livestock,
- chasing them in a way that causes harm (e.g. injury, abortion, or "loss of or diminution of their produce"), or
- being "at large" in an enclosed field of sheep ⁵

There are exceptions under which an offence would not be committed:

- If the dog is owned by the occupier of the field or the owner of the sheep in question, or a person authorised by the owner.
- if livestock stray onto land where it should not be and the dog is owned by the owner of that land, the person in charge of the dog (be that the owner or another person authorised by the owner) will not be committing an offence. The exception does not apply if the person causes the dog to attack the livestock.
- if the dog is a police dog, a guide dog, trained sheep dog, a working gun dog or a dog lawfully used to hunt.
- if the dog is under the control of another person at the time of the attack, and that person is competent to take care of the dog, the owner will not be committing an offence.

A Minister may decide that the offence does not apply on a particular area of land "appearing to him to consist wholly or mainly of mountain, hill, moor, heath or down land" ⁵

Anyone found guilty of committing an offence will be fined.

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

The Explanatory Notes state that 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 ”

Section 1

Section 1 makes several clarifications to the 1953 Act:

- It makes a distinction between "attacking" and "worrying", clarifying that both behaviours constitute an offence, but gives greater prominence to attacking as a more serious form of the crime. ⁶
- It clarifies the exemption for guide dogs, specifying that assistance dogs are also exempt. However, the Bill also clarifies that the named categories of working dogs (police dog, guide dog, assistance dog, trained sheep dog, a working gun dog or a dog lawfully used to hunt) are only exempt "if and to the extent that the dog is performing the role in question".

It also raises the maximum penalties for livestock worrying offences to

- imprisonment for a term not exceeding six months;
- a fine not exceeding level 5 [on the standard scale set out in the Criminal Procedure \(Scotland\) Act 1995](#) (currently £5000 ⁷). This was previously set at a maximum of level 3 on the standard scale (currently £1000).

There is a current [presumption in Scotland against imposing sentences of less than 12 months](#). While courts are still able to impose sentences of shorter lengths, the presumption, supported by a vote in the Scottish Parliament, is aimed at preventing custodial sentences in instances where they would be counterproductive and aims to encourage other remedies.

However, elevating livestock worrying to an offence punishable by imprisonment also provides the courts with additional remedies in cases of livestock worrying. Courts may, instead of choosing to impose a prison sentence, choose to impose a Community Payback Order, under the [Criminal Justice and Licencing \(Scotland\) Act 2010](#). Depending on the circumstances of the case, the court may order the person to, among other things, perform unpaid work, to compensate the owner of the livestock, or to participate in a course or planned set of activities if one has been recommended by an officer of a local authority.

The Law Society of Scotland note in their submission to the Rural Economy and Connectivity Committee's call for views on the Bill, that

“ What an increase in penalties does achieve is that this will permit the imposition of a community-based disposal such as a Community Payback Order. That allows an extensive menu from which sheriffs or justices of the peace can select a disposal that would include unpaid work and/or include a compensation requirement. ”

Therefore, in addition to raising the level of fine that can be imposed, the increase in penalties also provides for a greater variety of methods available to the court.

Section 2

Section 2 provides the court with order-making powers to curtail the right of a person convicted under the Bill to own a dog or walk it in certain areas.

The Bill makes provision to disqualify a person from keeping a dog for an amount of time that the court sees fit, and/or to prevent a person from allowing a dog to enter land which the person knows, or should assume, has livestock on it for a given time. A breach of an order is also punishable by a fine up to level 5 on the standard scale (as in Section 1).

The Policy Memorandum clarifies that as there is no upper limit on the amount of time that a person can be disqualified from owning a dog or prevented from entering agricultural land with a dog; lifetime bans can be imposed in the most serious cases.¹

After one year, the person in question may apply to the court to have the order discharged or varied.

The [Equalities Impact Assessment for the Bill](#) recognises that being disqualified from owning a dog for a longer period (or for life) may disadvantage those that later need a guide dog or assistance dog. The ability to apply to the court to have the order discharged would be relevant in the case of a person later needing a dog for this purpose.

Section 3

Section 3 amends section 2 of the 1953 Act, clarifying the circumstances in which a police officer or inspector (see [Section 5](#)) can seize a dog that is suspected of livestock worrying.

In addition to the purpose of identifying the dog's owner already provided for in the 1953 Act, the Bill provides that dogs can be seized for the purpose of obtaining evidence. It can be seized if the inspector or police officer has reasonable cause to believe that the dog has been attacking or worrying livestock on agricultural land (or what appears to be agricultural land). The dog does not have to be on the land at the time either for the purpose of identifying it or obtaining evidence, unlike under the provision in the 1953 Act. These provisions do not apply to dogs found on premises; in this case, provisions in [section 4](#) apply.

The Bill also provides for some changes to the application of the Dogs Act 1906, an act of the UK Parliament providing for, among other things, seizing and dealing with stray dogs.

In the case of a dog being seized, subsections (2) to (6) of section 3 of the Dogs Act 1906 may apply, depending on whether the dog was seized under 2(2) of the 1953 Act or under section 2(2A). These subsections relate to informing the owner and allowing them to claim the dog within seven days, providing for the dog to be well fed and maintained during its detention, and if the dog remains unclaimed, to destroying or selling the dog.

The Dogs Act 1906 stipulates that if the owner has not claimed the dog and paid any expenses incurred during its seizure the dog may be sold or destroyed. However, the Bill states that where a dog is seized in order to gather evidence of a 1953 Act offence, the owner cannot be required to pay the expenses of its detention.

This section also provides that references to the police in section 3 of the Dogs Act 1906 should be read as references to the inspecting body (to be appointed by Scottish Ministers, see [section 5](#)) when it relates to dogs being seized or detained by an inspector rather than by the police. This places a duty on the inspecting body to e.g. notify the owner, or sell or dispose of the dog.

Finally, this section also amends the 1953 Act to state that the presumption should be that any unclaimed dog should be sold rather than destroyed, unless the dog is dangerous or selling is impracticable.

Section 4

Section 4 gives a Sheriff or Justice of the Peace the power to issue a warrant allowing a constable or inspector (see [Section 5](#)) to enter premises to identify a dog, identify its owner or "examine, seize and detain the dog" to obtain evidence. In the 1953 Act as it stands, only a Justice of the Peace has a much more limited power to authorize a constable (not an inspector) to enter and search premises in order to identify the dog.

Under the Bill, such a warrant can be obtained if there is reasonable cause to believe both that the dog was involved in attacking or worrying livestock, and that the dog is on those premises.

To obtain a warrant, a constable or inspector must have been refused access *or* expect to be refused access, and a notice of an intent to obtain a warrant has been served *or*, it is expected that serving notice would "frustrate the purpose" of obtaining a warrant. In the case of the latter, this could, for example, be in a situation where authorities suspect that the dog will be moved before the warrant is obtained. As an alternative, warrants can also be obtained for unoccupied premises or where the occupier is absent. A constable or inspector may use reasonable force, and the owner can be required to pay expenses incurred.

The section also provides for entry without a warrant for the purposes of identifying the dog or owner or seizing the dog to obtain evidence. This can be done if the delay in obtaining a warrant would "frustrate the purpose" of entering, as above. However, this does not apply to domestic premises; the Explanatory Notes clarify that a warrant would always be required if a dog was being seized from the owner's home. ⁶

This section clarifies how the rules on detention of dogs apply where dogs are seized for the purpose of identifying the owner or obtaining evidence. The Explanatory Notes clarify that *"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"*⁶

Finally, this section provides for the dog to be examined by a veterinary surgeon for the purpose of obtaining evidence, with or without the owner being present.

Section 5

Section 5 provides for the creation of inspectors for the purpose of this Act. Scottish Ministers may, by regulation, authorise persons, organisations or bodies to appoint inspectors, who then have a range of powers under this Act. The section provides that inspectors and inspecting bodies are not civilly or criminally liable for anything done in the course of carrying out their duties so long as they acted in good faith and on reasonable grounds.

As such, the Bill authorises Scottish Ministers to appoint a body to create additional enforcement roles for livestock attack or worrying offences. As outlined in sections 3 and 4, these new inspectors are able to seize dogs suspected of livestock attack or worrying, and obtain warrants and enter premises to seize a dog or obtain evidence.

The Scottish Ministers must consult any proposed body before appointing them as an inspecting body.

During the Bill's consultation process, respondents were asked whether they were supportive of delegating powers to inspecting bodies, with the SSPCA given as an example. [The SSPCA, in responding to the Rural Economy and Connectivity Committee's call for views](#), noted that while they are supportive of delegating powers to assist the police, felt that *"another Government funded body such as local authorities or the Animal Health and Plant Agency"* would be appropriate.

The [call for views, as outlined below, identified different views on who an inspecting body should be](#), with respondents variously preferring a statutory body, an organisation experienced in animal welfare cases, or to retain the main responsibility with Police Scotland.

Section 6

Section 6 amends the definitions included in the original act, creating a wider scope for the offences.

- It explicitly includes "the raising of game birds" in the definition of "agricultural land".
- It clarifies that "assistance dog" has the same meaning given to it under the Equality Act 2010;
- It widens the definition of livestock from *"cattle, sheep, goats, swine, horses, poultry"* to *"cattle, sheep, goats, swine, horses, camelids, ostriches, farmed deer, enclosed game birds or poultry"* and provides definitions for each of these categories. In particular, for the avoidance of confusion with animals commonly found in the wild in

Scotland, *"farmed deer"* is defined as *"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"*, and *"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"

- It provides a definition of veterinary surgeon.

In addition, Scottish Ministers are given powers to amend these definitions by regulation. Such regulations would be subject to the negative procedure, whereby regulations are laid and will come into force unless they are annulled (within 40 days) by resolution of the Parliament.

Sections 7-10

Section 7 makes minor and consequential amendments to the 1953 Act.

Section 8 amends section 129 of the Civic Government (Scotland) Act 1982 to reflect other amendments made by this Bill. This includes the explicit reference to "attack" in addition to worrying (corresponding to changes in section 1 of this Bill), and updating the definitions.

Section 9 makes provision for commencement of the provisions in the Bill. Apart from sections 9, 5(9), 6(4) and 10, provisions in the Bill come into force six months after Royal Assent.

Section 10 sets out the short title.

The Scottish Government's View

The Scottish Government [provided its initial views on the Bill](#) in a letter to the Rural Economy and Connectivity Committee on 29 July 2020.

It stated that it, in principle, supports the Bill.

In relation to **higher penalties**, it agrees that the penalty imposed by the 1953 Act (up to level 3 on the standard scale; currently no more than £1000) is low in comparison to the cost of the loss to farmers, and in comparison to penalties for other animal welfare offences which cause unnecessary harm or suffering.

In relation to **order-making powers for the court to disqualify owners from dog ownership** the Scottish Government note that similar powers exist under the Animal Health and Welfare (Scotland) Act 2006 and the Control of Dogs (Scotland) Act 2010, and that extending such orders in the case of livestock worrying "may be seen as appropriate". In relation to **the power of the court to prevent a person from bringing a dog onto agricultural land**, the Scottish Government also consider that there are similar provisions in the Control of Dogs (Scotland) Act 2010 where the court may require an owner to keep a dog on a lead in a public place. In relation to both of these provisions, the Scottish Government conclude that *"Further analysis of these proposed powers, will be necessary in order to assess whether they have been formulated in a way that is compatible with Convention rights."* They are referring here to the European Convention on Human Rights.

The Scottish Government is supportive of the **additional powers of investigation for police and the proposed inspectors**, and state that *"The proposed new powers to take, or have taken, a dog to a veterinarian for evidence gathering are considered to usefully assist in the investigation of livestock worrying offences. Gathering better quality evidence, including DNA evidence, may be likely to improve the chances of future successful prosecutions."*

In relation to **the power to authorise bodies to appoint inspectors** the Scottish Government do not offer a firm view, but state that *"The combination of this provision with that to give inspectors increased powers has implications for the investigation of crime so the Scottish Government will discuss this provision with COPFS [the Crown Office and Procurator Fiscal Service]"*

[COPFS noted in their response to the REC Committee's call for views](#) that it *"supports legislative provisions which assist with the investigation and prosecution of attacks on livestock. There are specific provisions within the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill 2020 on which COPFS can provide comment."* However, COPFS do not provide any comment in their response on the power to authorise inspecting bodies to appoint inspectors.

Finally, in relation to **the amended definition of livestock**, the Scottish Government is supportive and consider that it is appropriate to update the definition to reflect contemporary farming practices.

Stakeholders' Views

The Rural Economy and Connectivity Committee held a call for views on the Bill between 26 June and 28 August 2020. 74 responses were received, of which 42 were from individuals and the remainder were from organisations.

The call for views asked:

1. What is your experience of livestock worrying? What is the scale of the issue?
2. Does legislation need strengthening in this area? If so – does the Bill do this? Is the Bill the best way to do this?
3. What are your views on the increased penalties the Bill creates for livestock worrying.
4. Would the proposal 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.
5. What is your opinion on extending the types of livestock and type of agricultural land covered by livestock worrying, as described in the Bill?
6. What are your views on the powers allowing Scottish Ministers to appoint Inspectors, other than the police, to investigate and enforce worrying offences?
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 a vet?
8. Does the Bill adequately balance the rights of dog owners and the rights of livestock farmers?
9. Is there anything else that should be included or excluded from the Bill?

All responses to the call for views can be found [on the Rural Economy and Connectivity Committee's webpages](#).

Experience of Livestock Worrying and Scale of the Issue

The existence of the problem and a need to do more to tackle it was almost universally acknowledged, though some also acknowledge that the scale of the problem is difficult to determine, and that there is a lack of evidence. A number of respondents perceive that incidents are on the rise, echoing the Scottish Government's findings. One respondent noted that *"figures of leading rural insurer NFU Mutual, which insures three quarters of farmers, show that the cost of claims for livestock worrying has reached a record level: a rise of 67% across the UK in the past two years"*.

The Dogs Trust propose in their submission that *"the introduction of mandatory standardised data gathering and reporting, not only to be able to quantify the problem, but also to help identify what actions best result in reducing incidents of livestock worrying."* They are among a number of other respondents who agree that better data is required.

Police Scotland (who chair the Scottish Partnership Against Rural Crime) state in their submission that:

“ In terms of reported livestock worrying incidents to Police Scotland; for the period 01st April 2018 - 31st March 2019 a total of 285 incidents were reported; from 01st April 2019 - 31st March 2020, 265 incidents were reported and from 01st April 2020 - 31st July 2020 a total of 91 incidents were reported. ”

A number of the individual responses report personal experiences with livestock worrying and describe the distressing circumstances and their difficulties with repeated offences and with obtaining enough evidence to build a case. Some respondents express a perception that livestock attacks and worrying incidences are on the rise. Other respondents, while agreeing with this perception, raise that an increase or perception of increase could be due to a number of factors, including increased dog ownership, increased awareness and publicity, or increased access to the countryside.

The Need for Legislative Changes

Most respondents agree with the principle of the Bill, feel that strengthening the legislation is important, and that existing legislation is out of date.

Some support the specific reference to "attacking" livestock, in addition to worrying to emphasise the seriousness of the issue, and provides additional clarity.

Police Scotland note that

“ The main piece of legislation, Dogs (Protection of Livestock) Act 1953 has not kept pace with evolving practices within the farming industry, some terminology is outdated plus it does not provide sufficient deterrent that could influence an owner or person in charge of a dog(s) to act with greater responsibility ”

However, **not all respondents fully agree with, or are convinced by, the proposed approach** to addressing the issue. **Several respondents note that a comprehensive review of dog legislation is required**, though some of these respondents also support this Bill as an interim measure. The [Law Society of Scotland raised that](#), while they agree with the aims of the legislation in principle,

“ the scope of this Bill falls into the wider context of “dog control” which we agree is a significant and devastating issue for those affected, but we are keen to avoid what may be seen as the adoption of a piecemeal approach through the Bill in seeking merely to amend the 1953 Act. What is required is the undertaking of a comprehensive review of all legislation relating to “dog control.” [...] We would consider that the best approach would lead to “a modern consolidated Act of the Scottish Parliament on dog control law” to address “the ineffectiveness of the 2010 Act” and other related “dog control” legislation. This includes the 1953 Act as a “comprehensive review of all dog control legislation” is urgently required. ”

The UK Centre for Animal Law Scottish Steering Committee expresses similar sentiments, alongside legal academics who responded to the call for views. Blue Cross "urge" the Scottish Government to publish its review of legislation of dangerous dogs and dog control as soon as possible. They argue that "Such a proliferation of legislation can make it

complicated for enforcers to know which piece of legislation to use in which case. Blue Cross believes there is a case to be made for one piece of consolidated legislation which covers dog control in Scotland". As an example, one individual respondent expressed confusion about why the Bill is required, and what this Bill will do that is not already possible under the Control of Dogs (Scotland) Act 2010. Likewise, other organisations question whether the powers already exist in other dog-control legislation.

Some respondents point to a lack of data on the effectiveness of the existing legislation. The Law Society of Scotland, whilst agreeing that the legislation should be strengthened if it is not having any effect, raise the need to see *"the evidence as to why the current legislative regime does not and is not providing adequate cover. What would have been helpful would have been the inclusion of information regarding current police investigations/reporting, and of COPFS prosecution and/or subsequent conviction."*

The same respondent refers to the Crown Office and Procurator Fiscal Service's Agricultural Crime Policy, and note that *"Paragraph 16 of that policy does recognise that the incidence of reporting may be low for reasons that lie outwith the creation/amendment of offences as a result of legislative changes. There would be benefit in ascertaining why reporting rates are low and that would ensure that the Bill addresses these in making changes."* They also cite previous case law where issues with the 1953 Act were raised and wonder whether these have been addressed.

More generally, Loch Lomond and Trossachs National Park point to the insufficient evidence raised by many, and suggest that there should be *"a period of adequately resourced, independent and robust research and data gathering prior to any changes in legislation"*.

In addition, **several responses disagree with the focus on punishment rather than prevention.** The Kennel Club and Scottish Kennel Club note in their submission that they *"regret that the Bill focusses on prosecution rather than prevention, and moreover does not ensure farmers and crofters are compensated for any losses incurred"*. They, amongst a number of other respondents, argue that the majority of livestock worrying occurs where dogs are unaccompanied, not when they are out for a walk, and as such will not have a significant deterrent effect. They go on to argue that

" There are already existing and more extensive preventative and remedial measures to tackle livestock worrying using Dog Control Notices (DCNs), which the National Farmers Union Scotland has found to be effective when used. Alas these extensive powers are not currently being adequately applied by Local Authorities. There is no practical or financial imperative to fast-track this Bill in isolation, given that Scottish Government research¹ stated it could not give "adequate" figures on the frequency of incidents or determine whether they are increasing or decreasing. "

The Dogs Trust expressed a similar sentiment that the Bill does not deal with the causes of livestock worrying, but reacts to the effects. However, they support the proposals to increase penalties and provide more investigatory powers overall, but stress that prevention also needs to be considered. They raise the need for mandatory standardised data and reporting.

Some of the responses describe instances of dog owners who, when asked to put a lead on their dog due to the circumstances, are resistant to doing so, and describe an unwillingness by some to act responsibly.

By contrast, other respondents also note that instances of livestock worrying are often accidental, the National Dog Warden's Association stated that *"most dog owners do not believe their dog is likely to attack sheep and are shocked and distraught after the event."* Multiple respondents also note that in instances where dogs, originally not near a field of livestock, run away to chase a wild animal or as a result of being startled, and can end up in a field that way, sometimes far away from its owner who cannot then stop an attack from happening. They question whether, in these cases, the additional threat of a greater punishment would prevent the incident from occurring.

As a result, **many respondents emphasise the need for education, improved signage, and other measures to prevent attacks in addition to legislation.** Battersea Dogs and Cats Home raise that standardised signs may be helpful: *"For example, in Wales the Welsh Government are working with the Animal Welfare Network Wales to produce standardised fence post signs that all farmers can use to warn the public of livestock. This is particularly pertinent as out of date, inaccurate signage is likely to be ignored, which could have potentially devastating consequences."*

Likewise, Blue Cross state that new legislation *"is not a panacea"* and that it would need to be accompanied by guidance on enforcement, as well as continued collaboration between the agricultural sector, enforcement agencies, and animal charities.

The **need for adequate enforcement was also raised**, with concerns that otherwise provisions would not serve their purpose. The British Veterinary Society Scottish Branch (BVA) *"advise that learning is taken from the challenges of the implementation of the Control of Dogs Act 2010 and that there is an assessment of the required police resource to effectively enforce and investigate livestock worrying and attacks"*

Several of the respondents comment on access to the countryside and access rights. The BVA note, while supportive of the aims of the legislation, that

" it is important to recognise that allowing dogs controlled access to rural spaces under the right to roam as set out in the Land Reform (Scotland) Act 2003 not only encourages owners to exercise their dogs (with health benefits for both) but also allows for dogs to become habituated to the 4 sights, sounds and smells of the country (which reduces the risk of them becoming stimulated by the presence of livestock), as well as the socialization of dogs with other dogs and humans. However, it is important to reiterate that under the Land Reform (Scotland) Act 2003 and The Scottish Outdoor Access Code (particularly the relevant section on dog walking and farm animals), access rights apply to people walking their dogs as long as their dogs are under proper control. "

A small number of respondents raise the possibility that this legislation may negatively impact access, or be used to illegitimately discourage walkers.

Views on Increased Penalties

Overall, most respondents agree with the need for tougher penalties.

Many respondents agreed that increasing the penalties with the potential for both a prison sentence and a higher fine would hopefully encourage greater responsibility, and that higher penalties are commensurate with the cost and suffering caused, and

aligned with other animal welfare offences. Some respondents describe frustration in previous cases when no other remedies were available to the courts where the dog owner was not able to pay a fine.

The National Farmers Union of Scotland (NFUS) state in their response that

“ NFUS supports the concept of increasing penalties for this sort of rural crime. It is the view of NFUS that current penalty levels do not act as enough of a deterrent to prevent dog owners from allowing their dogs to carry out livestock attacks. Increasing financial penalties would send a strong message that it is unacceptable to allow a dog to worry livestock. ”

Some feel that the penalties for the most serious offences should be higher, and ask whether other options should be available for less serious offences. The Law Society of Scotland agree that increased penalties seem reasonable, but also ask the question of whether the higher level of fines and possibility of longer prison sentences set out in the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 ('the 2020 Act') would be appropriate. The UK Centre for Animal Law Scottish Steering Committee agrees, and suggests that fixed penalty notices also be considered, paralleling the new powers in the 2020 Act. They note *“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.”* Other respondents, including the Battersea Dogs and Cats home, support the use of fixed penalty notices and the availability of a range of penalties for less serious cases and penalties commensurate with the 2020 Act for the most serious cases is also raised by legal academic respondents.

Likewise, the British Association of Shooting and Conservation (BASC) note the differences in the sentences imposed by the two pieces of legislation and suggest that where *“intent to worry can be proven”* the penalties should be aligned with the 2020 Act.

Scottish Land and Estates also note that the cost to land managers may exceed £5000, and agree with *“harsher consequences, including imprisonment, for repeat offenders, extremely severe cases and/or where a clear intent can be proven.”*

However, **many organisations and individuals, while not necessarily opposing higher penalties, question whether higher penalties will lead to a reduction in livestock worrying incidents** because, as noted above, they believe that most dog attacks are accidental. The Law Society of Scotland state that *“it would be good to see justification for the increase reflected in how sentencing powers would improve, deter and prevent others from committing offences.”*

The National Association of Dog Wardens note that *“Most dog owners do not believe their dog is likely to attack sheep and are shocked and distraught after the event.”* This sentiment is echoed across a number of responses.

The Kennel Club and Scottish Kennel Club also stated that *“As for any deterrent effect from greater penalties, is difficult to see what could be more powerful than the summary justice that currently exists for the dog to be lawfully shot in the act.”*

As noted above, there is a perception that the majority of livestock worrying incidents involve unaccompanied dogs, and respondents question whether higher penalties will help to tackle this. Battersea Dogs and Cats Home, among other respondents raise, whilst supporting higher penalties, that

“ It is unclear how the Bill would reduce instances of livestock worrying when the owner or a person who is in charge is not present. Westminster’s All Party Parliamentary Group for Animal Welfare produced a report in 2017 on livestock worrying, which found that 66% of incidents occurred where the dog had escaped from the house or garden of a neighbouring property and unattended by an owner. This evidence, which was drawn from police investigations, clearly shows that whilst the majority of livestock worrying spotlight is focused on people from outside the rural area walking their dogs, the majority of cases in fact occur when the dog strays. ”

As a result, **many respondents feel that raising penalties need to be accompanied by better education on dog behaviour around livestock and around the need for better training for dogs.** In addition, the BVA noted that *“As part of current legislation and any future legislative efforts to prevent livestock worrying, it is crucial that enforcing officers receive sufficient training to understand the principles of dog behaviour”*

Furthermore, **many respondents agree that compensating farmers and crofters should be considered.** The NFUS notes that *“compensation for losses incurred by livestock keepers is a key priority for NFUS in terms of satisfactorily addressing this problem for livestock keepers”.*

However, while not explicitly agreeing or disagreeing with the issue of compensation, the Law Society of Scotland also note that compensation is an available remedy: *“what an increase in penalties does achieve is that this will permit the imposition of a community-based disposal such as a Community Payback Order. That allows an extensive menu from which sheriffs or justices of the peace can select a disposal that would include unpaid work and/or include a compensation requirement.”* It should therefore be noted that, while compensation is not required as part of the provisions in the Bill, it is one of the tools at the court's disposal.

The Dogs Trust note that in order to proportionately penalise offenders, mandatory and standardised data gathering and reporting is required, including recording microchip numbers. They suggest that this would be aided by a national database across local authority areas.

Like a number of other respondents, they also **advocate for better use of Dog Control Notices (DCNs)** to prevent instances of livestock worrying. Both NFUS and Dogs Trust state that DCNs should be extended to the police and other enforcement authorities to be used to prevent cases of livestock worrying. Similarly, other organisations support greater use of DCNs to address “latchkey” dogs, or ones that escape from a garden or other premises, which, as noted above, are thought to make up a large proportion of livestock worrying incidents.

Of the individual respondents, views are mixed. Many agree with the proposals, and describe distressing experiences with severely injured livestock and significant financial losses. Others describe the difficulties they have experienced with pursuing a case due to the lack of evidence. A handful of individuals felt that the penalties were still too lenient.

However, other individuals disagree. One individual expressed the view that *“at the moment it would not be good use of taxpayers’ money incurring the cost of imprisonment of offenders for such offences”* suggesting that money would be better spent on education of dog owners. Other individuals felt that the penalties were disproportionate and that many factors complicate apportioning blame, including how the animal got into the field, what fencing was in place and whether it was well-maintained, what training the owner has

done or would be prepared to do, or whether a genuine unforeseeable accident occurred. Some respondents noted that livestock owners also have a responsibility in preventing attacks with appropriate signage and maintained fences.

Views on Disqualification Orders

Many respondents welcome the disqualification orders, and most felt that they would be a useful tool in certain circumstances.

Police Scotland and the [Scottish SPCA](#) felt that the disqualification orders could be a good additional deterrent. The SSPCA, among many other respondents, noted in their response that this is especially useful in the case of multiple offences and "blatant recklessness".

However, **in relation to preventing owners from exercising their dog on agricultural land**, Police Scotland noted in their response that

“ In practical terms it may be easier to enforce a convicted person is disqualified from owning or keeping a dog(s) than it would be to ensure such a person is not taking a dog onto certain types of land. It would be hoped such a measure would act as a tangible deterrent, something which is currently lacking. ”

In the same vein, the Crown Office and Procurator Fiscal Services agree in their response that preventing a person from taking a dog onto certain types of land would be difficult to enforce. They state

“ Under the proposed Section 1A (3) breach of such an order would be a criminal offence. It should be noted that where there is an alleged breach police and prosecutors will require to establish in evidence the knowledge or inferred knowledge on the part of the person to whom the order applies that the land they were on is “agricultural land” on which livestock is or is likely to be present. Depending on the facts and circumstances of individual cases, this knowledge may prove challenging to establish in evidence. ”

However, NFUS, while also raising questions about enforceability more generally, note that there could be specific circumstances where excluding a dog owner and dog from particular parcels of land could be beneficial

“ NFUS does consider that a proposal which would disqualify persons from specified parcels of land could be useful where there are repeated problems (often with the same person) on the same piece of land. This often happens where dogs at a property neighbouring farm land that holds livestock are not controlled and are able to carry out repeat attacks. In this case, it is possible to identify the dog and the owner and it would give neighbours instant recourse where issues reoccur. ”

Legal academics Sarah Cheape and Mike Radford asked the committee to consider, in addition to an order preventing a person from bringing any dog onto any agricultural land, an order prohibiting a specific dog or dogs from being on agricultural land.

The UK Centre for Animal Law Scottish Steering Group state that they 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", and largely feel that such an order would be proportionate. However, they also note that there may be a potential

conflict if an owner is not liable where another person deemed to be "fit and proper" was in charge of the dog and entered agricultural land. They suggest that such a defence not be available where an Order is in place, as the owner can reasonably be expected to inform the person caring for the dog; if having informed the third party and they did access agricultural land, then the third party would be at fault.

Battersea Dogs and Cats home also raise that *"owners' circumstances must be taken into account. For example, if the owner's only option is to exercise the dog in this location then the courts should be mindful of the Animal Health and Welfare (Scotland) Act 2006. In these cases, Battersea suggest courts are able to require owners to obtain training for the dog, instead of banning them from the location."*

In relation to disqualification orders preventing a person from keeping a dog, a handful of legal respondents raised that preventing an owner from keeping a dog would not prevent another member of the household from doing so, which may reduce the practical effect.

Legal academics Sarah Cheape and Mike Radford ask, *"what does 'keeping' mean in practice?"* and suggest that *"For the avoidance of doubt, such an order should also specify who has agreed to assume responsibility and charge of the relevant dog(s), and if there was evidence that they had failed to do so because the dog(s) subsequently attacked livestock again, they would potentially be guilty of an offence on the ground that they had breached the terms of the order."*

Furthermore, the same respondents consider that the two distinct options available under the Animal Health and Welfare (Scotland) Act 2006 ('the 2006 Act') would be appropriate. On the one hand, an owner who has been convicted may have their dog transferred to another owner (by a deprivation order). On the other hand, a convicted person could be disqualified from a range of activities involving animals.

Some respondents, such as Scottish Land and Estates, specify that disqualification should be used under specific circumstances. They note that

" In instances where dogs are being trained to be aggressive and/or there are repeated/multiple attacks or evidence of a clear intent then it is right on animal welfare grounds that a person is subject to disqualification from owning a dog, this will ensure that nobody is exempt from a form of sanction. We would also encourage harsher sentencing when the owner fails to report the crime. In these instances, we support the proposals to disqualify convicted persons from owning a dog and/or taking a dog onto land with livestock. "

A number of respondents also raise concerns that disqualifying some dog owners would be disproportionate in other circumstances. The Law Society of Scotland felt that a lifetime ban seems too high and *"in practical terms unenforceable"*.

Several organisations suggest that disqualifying a person from owning a dog in the case of a first offence would be inappropriate; the Kennel Club notes that *"the provision to ban someone from walking any dog, even after a first offence, from any land where livestock may be present is excessive, as the definition includes all land where grazing can take place, far beyond enclosed farm land."* They also raise that banning ownership or dog walking in certain areas could have an impact on people's livelihoods, for example in the case of where working dogs are involved in an incident, or where the person involved is a dog walker.

Though the Dogs Trust support the option to disqualify offenders where there is evidence of irresponsible ownership or repeat offences, they also agree with the Kennel Clubs that any disqualification order must be issued proportionately, and not applied to e.g. first-time offenders where the incident was an accident. Similarly, Battersea Dog and Cat Home, while also recognising that disqualification may be appropriate under certain circumstances, feel that it must be accompanied by clear guidance on the circumstances in which it should be used.

Animal welfare charity OneKind suggest that, while there may be circumstances where disqualification may be appropriate, knowing that the consequence of worrying may be having a "family pet" taken away could have "counter-productive" effects, "such as failure to inform the farmer about injured livestock or comply with police enquiries." The UK Centre for Animal Law Scottish Steering Group express similar sentiments suggesting that doing so could be "disproportionate and inhumane" as well as counter-productive, and further note, similarly to the reservations expressed above, that "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."

Legal academics Sarah Cheape and Mike Radford are of the same view. While understanding the rationale, they raise the question of whether disqualifying an owner, who is otherwise keeping their dog well, from owning a dog is appropriate. *They note that "the basis of a deprivation order under the 2006 Act is that the convicted person has been shown to have mistreated their animal(s) by causing unnecessary suffering. The situation in the context of attacks on livestock is rather different. Yes, they have been negligent in failing to prevent the attack, but their general care of the dog(s) in terms of treatment and welfare may be entirely satisfactory. Against this background, it is not so evident that deprivation of ownership is a proportionate penalty."*

As noted in the previous section, a number of organisations also feel that Dog Control Notices can play a role, the National Association of Dog Wardens suggest that these could be used where the owner is identified, but prior to the case appearing in court.

In relation to appeals, Blue Cross suggest that where a disqualification order has been successfully appealed, a previously disqualified person who wanted to own a dog could "be required to undergo a dog control course or training on responsible dog ownership to prevent future problems".

Also in relation to appeals, OneKind note that

"this might allow a disqualified individual to acquire a new dog but would be unlikely to restore the original, possibly much loved, pet to his/her family. The proposed power should therefore be used with extreme caution. OneKind would like to see clear guidance to accompany the provision, so that it would only be invoked in clearly defined circumstances, where negligence, possibly amounting to recklessness, has been shown. OneKind recommends an amendment to make the intended applications of disqualification orders clear on the face of the Bill. We acknowledge that removal and disqualification might be imposed as an alternative to ordering the destruction of a dog and in those circumstances it would be preferable." "

The Law Society of Scotland also raise the question of the cost of appeals and reviews, which may lead to unequal access:

“ 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 afford to make such an application as it may be unlikely that legal aid would necessarily be available. ”

Views on Definitions

Respondents were almost universally supportive of expanding the definition of livestock, and generally felt that any person farming any type of livestock should be afforded the same protections.

The Dogs Trust raised that it is important to ensure that the definition of livestock is tight, so it is not applied to wild animals found on farming land. They propose the use of a similar definition to that used in the Animal Health and Welfare (Scotland) Act 2006.

Two respondents were of the view that the definition of agricultural land should be extended to cover forest, paths and tracks where horses and riders can be found. One respondent noted that *“many horses are not kept on what is considered to be agricultural land so the bill needs to cover horses wherever they are kept.”*

However, the National Dog Warden's Association raised that the legislation should not be used in the case of dogs chasing other animals that are kept as pets even though they are traditionally farmed animals. They note *“the type of land and livestock to which the act applies must be clearly defined. It is not appropriate to use this Act where a dog chases pet goats, sheep, ducks or chickens in a neighbour's garden.”* They argue that those cases can be dealt with under the Control of Dogs (Scotland) Act 2010.

One respondent, Dunpender Community Council noted that

“ Reference is made to “farmers” and “agricultural land” but seems to include other areas such as game management - this needs to be clarified. Are gamekeepers farmers for instance? The term “enclosures”, particularly pertaining to game, also has a need to be defined - what is an enclosure and how big can it be? This should be clearly defined and stated. ”

Some respondents feel that “under close control” is not well-defined, and that where it is appropriate to have a dog on a lead, or where access to a field with a dog should not be allowed, is not well understood. The Association of Responsible Dog Owners state that

“ “We neither seek nor endorse the permanent confinement of a livestock-avoidant, highly obedient dog to the unnecessary restriction of a short lead when in rural locations; however, we must highlight the fact that “close control” is unnecessarily vague.” ”

In the same vein, legal academics Sarah Cheape and Mike Radford also acknowledge the confusion, and ask

“ Subject to the exceptions specified in section 1(2A), when should it not be compulsory to have a dog on a lead in a field with sheep in? Conversely, dog walkers are advised to have a dog off a lead when in a field containing cows with calves because, if the former charge, they will chase the dog and a person is less likely to get injured if the cows are thereby drawn away from them. Logically, therefore, should it not be compulsory to have a dog on a lead if there are livestock in the same field, but for there to be an absolute prohibition to have a dog in a field where there are calves, lambs, or other young offspring at foot? ”

However, the Law Society of Scotland raise that there is no definition for "field", and note that there may be confusion in areas of common grazing, which may potentially be a very large area. They state that

“ "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 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." ”

In further reference to the Scottish Outdoor Access Code, Scottish Land and Estates raise that

“ "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." The Scottish Outdoor Access Code (the Code) refers to "a dog attacking or chasing livestock or being loose in a field where there are sheep". The Code should be consistent with the legislation for the purpose of clarity and transparency. The Code provides detailed guidance on responsible access with dogs and we believe further awareness raising of the Code would be helpful in educating dog owners about their responsibilities." ”

Views on the Appointment of Inspecting Bodies

Many respondents agree that increasing capacity for inspection by bringing in other bodies may be a positive step. However, many raise practical questions and caveats.

The Law Society of Scotland point out that *"any enforcement from a criminal perspective involving offences lies with COPFS."* Police Scotland note that to avoid any confusion or dilution of service, *"it would be beneficial for any appointed body in respective areas establish local protocols with local Police Scotland Area Commanders"*. Others, such as the National Dog Wardens Association state definitively that *"Police Scotland must remain the main body responsible"*.

The National Dog Warden's Association outline their experience with the Control of Dogs (Scotland) Act 2010, stating that if Local Authorities are given joint responsibility to investigate, in time all but the most serious cases will be passed to them. They argue that there is not enough capacity within Local Authorities, who employ at most a handful of dog wardens, and that no additional resources have been provided. West Lothian council express a similar sentiment, that *"This provision is a concern from a local authority*

perspective. If it was determined that local authorities would be appointed this would present a further burden on local government staff resources" and note that "If it remains a determination to grant new powers to local authorities, then appropriate funding requires to be provided for this and all the other regulatory demands placed on local authorities in recent years. This issue would have to be addressed in line with many other regulatory requirements which have a much higher public health and safety profile and priority than those determined in the Bill." A number of other respondents state more generally that any appointed body must be provided with sufficient resources to adequately carry out enforcement.

While some respondents support the SSPCA being appointed as an inspecting body, others expressed the view that an inspecting body should be a statutory body. The SSPCA also held this view noting that

" Due to availability, location and demand it would make sense to expand powers to beyond the police, However, ideally this should be to another Government funded body such as local authorities or the Animal Health and Plant Agency. Given the obvious welfare implications the Scottish SPCA would continue to assist the police on request, but costs incurred for veterinary treatment, testing and kennelling of seized dogs should fall to the principle investigator, which should be recovered from the dog owner in the case of a guilty plea or verdict. "

Others note that any inspectors must be properly trained in animal handling and welfare, and that any appointed body should be impartial.

Finally, legal academics Sarah Cheape and Mike Radford point of the desirability of consistency with other legislation:

" We note that neither Scottish Ministers nor local authorities are given specific power to appoint inspectors. Rather, it will be for Scottish Ministers to authorise other agencies to make appointments. This is different from the Animal Health and Welfare (Scotland) Act 2006, which provides that Scottish Ministers and local authorities may appoint inspectors. The purpose of the difference is not clear and, unless a specific reason is provided, we consider there is merit – both in terms of consistency and the status associated with being appointed by a Scottish Minister – for the model in the 2006 Act to be adopted. "

Views on Additional Powers of Inspection

While respondents generally welcomed (with a small number of exceptions) the principle of increasing power of inspections, some raised practical questions around how this would work, including:

- Questions about the cost of additional veterinary examinations, requiring clarity about whether costs and remuneration for vets are met by the police or the inspecting body;
- Question about whether veterinary practices have the capacity, training and flexibility to deal with such requests in a relevant timescale;
- Lack of clarity about who is consenting for the procedure to be carried out to gather evidence.

- Need for clear standard operating procedures around evidence gathering, handling of evidence, and the need for training in forensic procedures, and questions about who would deliver any training. The BVA note that *"it is questionable if the average vet in practice has the time to train for what might be sporadic events. To better manage this, it may be useful to establish a database of suitably qualified vets in practice in a given area who enforcement officers could liaise with"*.
- Need to avoid or mitigate conflicts of interests where either the dog or the livestock's owners are clients of the vet carrying out the examination
- The procedure in place for the welfare of dogs while in police care.
- What evidence gathering would be required, and how any evidence would be obtained. The BVA also note that *"consideration would also need to be given as to whether the procedures used to collect evidence were in the health and welfare interests of the dog, and, therefore whether the procedure would fall within the RCVS Code of Conduct. Overall, clear parameters are required in outlining the criteria for evidence gathering in relation to any seized dog."*

Police Scotland suggested that SRUC vets be involved. They proposed:

" Currently Scottish Police Authority Scene Examiner officers do not collect DNA samples from live dogs. In terms of evidence gathering and as a method of reducing any burden on a veterinary practice, could consideration be given to potentially utilising Scottish Rural College (SRUC) vets as part of their statutory duties. As the Committee will be aware they already conduct all inquiries at the request of Police Scotland into Wildlife Crime, with any financial implications covered by Scottish Government. "

The Dogs Trust propose that in the case of the attack resulting in severe injury or multiple deaths, that vets carry out an examination or post mortem of the affected animal.

Blue Cross note, while supporting the enhanced powers, that the welfare of the dog must also be regarded

" We would hope that, wherever possible, the owner should accompany their dog to the vets. This is likely to be an extremely distressing event for the animal so any measures to reduce the emotional impact should be taken. Blue Cross also has concerns about any potential seizure of a dog which subsequently does not prove to have been the offender. Such a situation will prove traumatic for the dog involved and the owner. It is essential that any seizure only takes place when the police are sure they have the right dog. "

Other respondents also support the view that the owner should accompany the dog or for the examination to take place at home. Some also favour the involvement of the SSPCA, due to their experience of handling animals in stressful situations, where the dog has to be seized and taken to the vet due to an uncooperative owner. The UK Association of Animal Lawyers Scottish Steering Group note that including an express provision for the police to check a dog's microchip to establish its owner may be useful. Other organisations are supportive of incorporating checks on microchips.

The Crown Office and Procurator Fiscal Service notes that while there is no provision in the 1953 Act for granting a search warrant in Scotland,

“ it is possible for the Procurator Fiscal, upon application by the Police, to seek a common law warrant from a Sheriff authorising the search for and seizure of a dog, including the power to enter premises. There would require to be reasonable grounds for suspecting that evidence connected with the alleged commission of an offence of livestock worrying was to be found in specified premises, and there was no other means of obtaining that evidence ”

They also go on to note that where the COPFS is to be approached with an application for a search warrant it *“would also establish whether other approaches had been considered prior to seeking a warrant”*.

Many individual responses comment on the lack of enforcement either due to a lack of interest or a lack of evidence, some stating that they have not reported incidents to the police because there is *“no point”*. One anonymous respondent suggested that the Bill should include powers for the farmer or land manager to seize a dog that is actively worrying livestock and take it to the vet or the police. The respondent stresses that *“time is of the essence”* and in rural areas police can be far away, by which point evidence becomes difficult to collect.

Scottish Land and Estates note that the safety of inspectors in the case of deliberate criminality must be considered, and echo that processes must be clear to inspectors, police and victims:

“ There are also concerns in terms of deliberate incidents which could involve potentially serious criminality, leading to safety issues if investigated by bodies other than the police. This could put individuals at risk and reduce the likelihood of arrest. The process of reporting the crime of livestock worrying or attack needs to be clear to victims of these incidents. A consistent approach on the investigation, recording and sentencing of incidents is required. As per our answer to question 2, there needs to be a clear process on the formal recording of incidents and this needs to be fully understood by all parties. This needs to be similarly applicable across all 32 local authority areas. ”

Views on Balancing Rights of Dog Owners with Rights of Livestock Farmers

Most respondents feel that the Bill largely balances the rights of dog owners and livestock farmers. The SSPCA felt that *“no responsible dog owner who keeps their dog under proper control in the presence of livestock should ever fall foul of this new legislation”*. Likewise, many agreed that the issue was due to a small number of irresponsible dog owners. Some respondents felt that the Bill now provides a balance, where previously the rights of dog owners were prioritised.

Sarah Cheape and Mike Radford note that

“ While farmers have a responsibility to ensure that the boundaries of their fields are adequately fenced and walled, and they may consider it appropriate to put in place warning notices alerting to the presence of livestock, the moral and legal onus is overwhelmingly on those who have charge of dogs in the vicinity of livestock to take adequate steps to prevent incidents of worrying or worse. A responsible person will voluntarily and routinely act to ensure that the dog they own or are otherwise in charge of does not make a nuisance of itself. The proposed Bill cannot therefore be regarded as impinging on the rights of dog owners. Rather, its effect is to provide an improved legislative framework to enable those who fail to meet the normative standards of the responsible dog owner to be held to account. ”

However, there are some reservations. One anonymous submission, a professional in the field, specifically disagrees that livestock attacks are down to irresponsible ownership and feel that "this is simply not true". They note:

“ I hear again and again from highly responsible and committed owners who have experienced leads breaking, collars coming loose, trips/falls that cause them to accidentally let go of the lead, dogs being startled and backing out of harnesses, dogs escaping professional dog walkers, dogs getting loose during road traffic accidents, dogs sneaking out of houses etc etc, and then travelling long distances to chase livestock. ”

Some respondents feel that the legislation is weighted towards livestock owners, and raise that it doesn't adequately consider the emotional attachment to dogs. A number of responses note that often owners are distressed and mortified by their dog being involved in an incident, rather than having been deliberately reckless.

The National Dog Wardens Association stress that imposing harsh penalties on all dog owners to deal with a minority who are irresponsible would not be proportionate. They suggest that *“financial restitution to the farmer for his lost income or the commercial value of the livestock involved, plus control measures on the dog might be a fairer, more balanced approach in cases where there is no previous record of irresponsible dog ownership. Dog owners can insure against these costs.”*

One respondent, while of the view that the Bill balanced the needs of all parties, nevertheless raised that *“one concern, to be fair to all, is that an aggressive farmer/crofter may feel enabled by this Bill to exclude responsible public access.”*

Two respondents specifically stated that they have no view on whether the Bill balances the rights of dog owners and livestock owners. The Law Society of Scotland refer back to the lack of evidence on the shortcomings of the 1953 Act and note *“it would be easier to justify the balance if the extent of the problem was clearly identified”*. Similarly, Loch Lomond and Trossachs National Park state that

“ It is not possible to make an accurate judgement on this for two reason. Firstly...the actual scale of the problem is not known. Secondly we are unsure how well the Bill as proposed represents the views of the respondents to the 2019 consultation. The Scottish Government’s own analysis of the 2019 consultation states that of 621 responses, 208 were anonymous and 57 marked not for publication. That equates to 42.6% of responses where there is no identification and therefore not possible in most cases to identify whether they are dog walkers or landowners. As a consequence, we don’t know if the Bill meets the needs of all relevant audiences ”

Other views on the Bill

In relation to **owners being required to pay the cost of detaining the dog**, Police Scotland raised that consideration must be given to what happens if an owner chooses not to cover the financial cost, or where the dog's owner has not been identified.

Scottish Land and Estates support **"a legal obligation...placed on any dog owner to report to police that their dog has attacked livestock"**. They suggest that this would be similar to the obligation to report road traffic accidents involving animals.

The UK Association of Animal Lawyers Scottish Steering Group note that *"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"* and recommend **revisiting the exemption for hunting dogs**.

Dogs Trust propose the **introduction of mandatory and standardised evidence-gathering and reporting**. Other respondents also agree that reporting must be improved. One individual respondent proposed *"The design of an online easy to complete Form that reports on incidents of this nature is very necessary. This would make the information consistent and the format consistent and would enable easier data gathering."* They suggest there should also be a phone-in option. Another respondent noted that a central database of incidents would be useful, while Scottish Land and Estates specify that a database for Dog Control Notices would be beneficial.

Many respondents felt that more attention should be paid to **addressing the prevention of these incidents**, especially from escaped or unaccompanied dogs, which both Dogs Trust and the Kennel Clubs note make up the majority of cases of worrying.

NatureScot state that a **"multi-pronged approach" is likely to be required, including education, management and enforcement**. Many respondents argue that education and other measures such as the promotion of effective training must accompany legislation.

Several respondents, including Electric Collars Manufacturing Association, dog owners' associations and individuals, held the view that **e-collar training for dogs** should be considered alongside qualified supervision. One dog owner stated that *"having a dog with a high prey drive, he is able to walk off lead, near or amongst farm animals giving him the freedom he deserves while ensuring the well being of these animals."* The Association of Responsible Dog Owners argued that

" Such proactive, preventative intervention works not only "for the protection of livestock" but for the dog itself and must surely also be considered a "reasonable means of ending or preventing the attacking or worrying", especially where it is used in the prevention of such incidents in the first place and the alternatives of "killing or causing injury to a dog" are deemed legally and morally acceptable? "

However, the BVA noted in their response that vets can be consulted by owners on "avoiding aversive training devices", suggesting that this is not a view held by all.

A handful of respondents raised that **dog owners should require a license**. OneKind suggest that this could be helpful both for dog welfare and to encourage responsible ownership, and note that a criminal conviction would not necessarily be required to revoke a license. They state

“ This could follow the model of the General Licences currently provided for purposes such as the movement of cattle, activities affecting wild birds, and import/export trading. These General Licences permit activities that are widely practised, while placing conditions on the conduct of the activity and providing sanctions for breach. ”

As noted above, many respondents raised that **compensation to the farmer or crofter** should be considered.

Two respondents noted that consideration should be given to **commercial dog walking**, and the possibility of introducing licenses. One respondent was of the view that when in charge of too many dogs at once it is not possible to keep them all under control.

A handful of respondents suggested that dogs should be **required to be on a lead** when near a farm.

One respondent noted that *“The proposed changes to the exemption may have the effect of removing some working dogs from it. All types of working dog should be subject to the exemption and this should be clear in the legislation.”*

Blue Cross propose, to ensure that owners can have their dogs returned, they should be able to undergo **mandatory dog training** .

The Law Society of Scotland wonder if there is **any merit in including cats under the legislation**.

The Law Society of Scotland also raised the **potential impact on legal aid** as a result of prosecutions under the Bill and applications for lifting the disqualification orders.

The NFUS and others proposed that **police officers should be provided with the power to issue Dog Control Notices** to *“reduce the burden on dog wardens, and make their use more widespread, thus acting as an effective deterrent”*.

The BVA propose that an **amendment could be made to the Dangerous Dogs Act 1991** *“to provide protection for all ‘protected animals’ (as defined by section 2 of the Animal Welfare Act 2006) as opposed to just assistance dogs. This would ensure legislative provision to address the trauma inflicted on farmers, horse and pet owners when their animals are attacked by dogs.”*

One respondent felt that the **language around dealing with seized dogs was outdated**, suggesting that, under the Dogs Act 1906, dogs should either be "rehomed" or "put down" rather than "sold" or "destroyed". Likewise, Battersea Dogs and Cats Home suggested that the legislation should specify the dog to be "sold or given away" to recognise that rehoming centres may be the most qualified to find a suitable new home.

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