

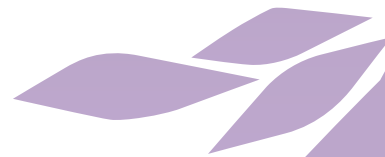


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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Dogs (Protection of Livestock) (Amendment) (Scotland) Bill: Stage 1



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Introduction

1. At its meetings on 22 September and 6 October 2020, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (“the Bill”).
2. The Committee submits this report to the lead Committee for the Bill under Rule 9.6.2 of Standing Orders.

Brief overview of the Bill

3. This Member's Bill was introduced by Emma Harper MSP on 14 May 2020. The lead committee is the Rural Economy and Connectivity Committee.
4. The Bill amends the Dogs (Protection of Livestock) Act 1953 (the "1953 Act"), which the Policy Memorandum states is for the purpose of "strengthening and updating the law" in relation to "livestock worrying", in which sheep or other farmed animals are attacked or chased by dogs.
5. There are 5 five main aspects of the Bill proposed to achieve this, all implemented by means of amendments made to the 1953 Act, by:
 - Re-naming the existing livestock worrying offence by including reference to 'attacking' as well as 'worrying' in the title of the offence. This rewords the existing offence to give greater prominence to "attacking" but does not create a new offence;
 - increasing the penalties for the offence of livestock worrying this includes increasing the existing maximum monetary penalty, introducing a potential prison sentence and introducing disqualification and prevention orders;
 - increasing existing police powers particularly in respect of the power to (1) seize dogs suspected of livestock worrying, (2) enter premises to seize a dog, with or without a warrant (in urgent cases but not domestic premises) and (3) take a dog to a vet (for the purpose of obtaining evidence);
 - creating powers to enable Scottish Ministers, by regulations, to authorise inspecting bodies and for those bodies in turn to appoint inspectors. Such inspectors would have equal powers (as outlined in the preceding bullet point) as the Police; and
 - extending the existing definition of 'livestock' to reflect a more up to date list of species farmed in Scotland and creating powers for Scottish Ministers, by regulations, to further amend that definition.

Delegated Powers

6. The Bill confers 2 powers to make subordinate legislation on Scottish Ministers. The Member in Charge has provided the Parliament with a Delegated Powers Memorandum ("DPM") which sets out the reasons for taking the delegated powers in the Bill and the parliamentary scrutiny procedures that have been chosen.
7. At its meeting on 22 September 2020, the Committee agreed to write to the Member in Charge on both delegated powers in the Bill. More specifically, the Committee asked for clarification on:
 - whether the power in Section 5(1) to make provision for appointing inspecting bodies should be subject to the affirmative procedure. In addition, how the Member envisaged the Scottish Government's process for identifying appropriate "inspecting bodies" would work in practice and whether this procedure should be made clear on the face of the Bill; and
 - whether the power in Section 6(3) to amend definitions should be subject to the affirmative procedure.
8. A copy of the correspondence to the Member, dated 23 September 2020, is included in the Annex.
9. Following a response received from the Member dated 29 September 2020, the Committee reconsidered these powers at its meeting on 6 October.
10. A copy of the response from the Member is also included in the Annex.
11. The issues considered by the Committee in relation to these powers are discussed below.
12. **Section 5(1) – inserting new section 2C into the 1953 Act (power to appoint inspecting bodies)**

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative

Provision

13. Section 5(1) inserts a new section 2C into the 1953 Act. Section 2C gives powers to Scottish Ministers, by regulations, to authorise one or more persons, organisations or bodies as "inspecting bodies". In turn, inspecting bodies may appoint inspectors (employees or officers of the organisation) for the purposes of the 1953 Act.
14. Regulations made under the power in section 5(1) are subject to the negative procedure.
15. The Member addresses the power at paragraphs 5 to 9 of the DPM. Noting at Paragraph 6 that "the powers of the appointed inspectors would be the same as police officers in terms of investigation and enforcement". Paragraph 8 of the DPM

explains that the reason for seeking the power is that, in the Member's view, it would be useful to have additional agencies able to enforce the offence of livestock worrying, considering the limited resources of Police Scotland. Further the regulations would provide flexibility in appointing such bodies as opposed to alternatively directly conferring powers on named bodies in the Bill itself.

16. In light of the range of enforcement powers that would be available to inspectors appointed by such bodies, including seizing dogs and entering premises, the Committee asked the Member whether the affirmative procedure would be more appropriate to apply to the exercise of the power in section 5(1) such that Parliament could have the ability to question why particular bodies are to be appointed. In addition, the Committee also asked how the Scottish Government's process for identifying appropriate "inspecting bodies" will work in practice and whether this procedure should be made clear on the face of the Bill.
17. In her response to the Committee, the Member reiterated that any organisations will have to be consulted before they are appointed, to ensure they are willing to take on the role and that the negative procedure would allow MSPs the opportunity to raise concerns when the regulations are referred to a lead committee. Notwithstanding this, the Member accepted that there may be a case for the affirmative procedure to be used for these regulations, for the reasons stated by the Committee and would consider an amendment to that effect should the Bill pass to stage 2.
18. With regards to the process for appointing bodies, the Member advised that the Scottish Government will have to decide what practice to follow and that she would be open to considering relevant amendments if considered necessary by the Minister.

19. While welcoming the response from the Member, the Committee recommends that the Bill is amended at Stage 2 to make regulations under section 5(1) subject to the affirmative procedure such that there can be enhanced scrutiny of any bodies appointed.

20. **Section 6(3) – Inserting new section 3(4) into the 1953 Act (power to amend definitions)**

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative

Provision

21. Section 6(3) inserts a new section 3(4) into the 1953 Act. Section 3(4) gives powers to Scottish Ministers, by regulations, to amend the definitions set out in section 3(1) of the 1953 Act. These definitions are for "agricultural land", "assistance dog", "inspecting body", "inspector", "livestock" and "veterinary surgeon".
22. Regulations made under the power in section 6(3) are subject to the negative procedure.

23. At paragraph 11 of the DPM, the Member sets out the reason for taking the power which is largely in respect of the definition of “livestock”. The Member notes that definition has not changed over the period the 1953 Act has been in force and that the Bill updates the definition to take into account the range of “livestock” now farmed. The Member considers it therefore sensible that this definition, among the others noted, may be amended as appropriate by way of regulations.
 24. Whilst Paragraph 12 of the DPM notes that the impact of amending some of the more technical definitions such as “veterinary surgeon” may be small, it also acknowledges that the definitions of “livestock” and “agricultural land” are more substantive. Indeed, these definitions help to determine the scope of the main criminal offence. The Committee does not doubt that Ministers would act reasonably, however, in light of the potential effect of an amended definition with regards to the scope of an offence, the Committee asked the Member whether the affirmative procedure would be more appropriate to apply to the exercise of the power in section 6(3) such that Parliament could have enhanced scrutiny of any amended definitions.
 25. In the Member's response, she reiterated that the power to amend definitions would be used appropriately as needed with regards to changes in agricultural practice. However, she acknowledged the case made by the Committee for using the affirmative procedure and confirmed, that if that view is shared by the Minister and/or the lead committee, she would be open to the procedure being amended, should the Bill proceed to stage 2.
26. The Committee again welcomes the response from the Member. Nevertheless, it recommends that the Bill is amended at Stage 2 to make regulations under section 3(4) subject to the affirmative procedure such that there can be enhanced scrutiny of any updated definitions.

Annex

23 September 2020 : Correspondence from the Delegated Powers and Law Reform Committee to Emma Harper MSP

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting yesterday and seeks an explanation of the following matters: Section 5(1) – inserting new section 2C into the 1953 Act (power to appoint inspecting bodies) Power conferred on: the Scottish Ministers Power exercisable by: regulations made by Scottish statutory instrument Parliamentary procedure: negative The Delegated Powers Memorandum (“the DPM”) notes it would be useful to have additional agencies to enforce the offence of livestock worrying, in view of the limited resources of Police Scotland. Further, it notes that directly conferring powers on named bodies in the Bill would be inflexible, and that it makes better sense to give Ministers a delegated power to appoint inspecting bodies on a case-by-case basis. The flexibility also extends to cancelling appointments made.

The DPM also highlights that any organisations will have to be consulted before they are appointed, to ensure they are willing to take on the role. It notes at paragraph 9 that, if there are concerns about the suitability of any particular organisation, the negative procedure would allow MSPs the opportunity to raise concerns when the regulations are referred to a lead committee.

Taking into consideration the range of enforcement powers that would be available to inspectors appointed by such bodies, including seizing dogs and entering premises, the Committee noted that the Parliament may wish to have the ability to question why particular bodies are to be appointed. The affirmative procedure would provide for that when decisions are being made. The negative procedure would require an annulment to be brought.

The Committee therefore asks whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under new section 2C? The Committee also asks how you envisage the Scottish Government’s process for identifying appropriate “inspecting bodies” will work in practice and whether this procedure should be made clear on the face of the Bill.

Section 6(3) – Inserting new section 3(4) into the 1953 Act (power to amend definitions) Power conferred on: the Scottish Ministers Power exercisable by: regulations made by Scottish statutory instrument Parliamentary procedure: negative The DPM notes that some of the definitions, such as “veterinary surgeon”, are technical in nature and unlikely to change in any substantive way. However, the definitions “agricultural land” and “livestock” are central to the purpose of the Bill. Where “livestock” are attacked or worried a criminal offence could be committed, therefore the accuracy and robustness of such a definition is of paramount importance. Paragraph 12 of the DPM advises that there is no reason to suppose the power to amend those definitions would be used inappropriately, for anything other than updating the 1953 Act in line with changes in agricultural practice.

The change of a definition could have an impact with regards to whether an offence has been committed in terms of the 1953 Act (as proposed to be amended). The DPM, at paragraph 12 acknowledges this, in particular by reference to the definitions “livestock” and “agricultural land” helping to determine the scope of the main criminal offence.

Taking into account the above, the Committee noted that the Parliament may wish to have the ability to consider the impact of any change in definitions. The affirmative procedure would provide for that when decisions are being made and provide a higher level of scrutiny. The negative procedure would require an annulment to be brought.

The Committee therefore asks whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under new section 3(4)? I would be grateful if you could please email your responses to the above, to the Delegated Powers and Law Reform Committee e-mail address at the head of this letter, by 5.00pm on Wednesday, 30 September 2020. This is to allow time for the Committee to consider your response and report on the delegated powers in the Bill in time for your evidence session with the lead committee.

29 September 2020 : Correspondence from Emma Harper MSP to the Delegated Powers and Law Reform Committee

Thank you for your letter of 23 September 2020 seeking a response regarding issues raised by the Delegated Powers and Law Reform Committee in relation to my Member's Bill. The first issue raised in your letter related to the following— Section 5(1) – inserting new section 2C into the 1953 Act (power to appoint inspecting bodies) Power conferred on: the Scottish Ministers Power exercisable by: regulations made by Scottish statutory instrument Parliamentary procedure: negative.

This relates to section 5 of the Bill which amends the Dogs (Protection of Livestock) Act 1953 to give powers to Scottish Ministers to appoint individuals, organisations or bodies as “inspecting bodies” which may in turn appoint inspectors. The policy intention of this is to provide the potential for support to be given to Police Scotland in investigations which have suffered to date due to a lack of resources and their often remote/rural location. Your letter noted two questions in relation to this. The Committee asked: • whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under new section 2C; and • how I envisage the Scottish Government's process for identifying appropriate “inspecting bodies” will work in practice and whether this procedure should be made clear on the face of the Bill. In terms of the appropriateness of using the negative procedure, rather than the affirmative procedure, for the power in section 5(1), as your letter notes, any organisations will have to be consulted before they are appointed, to ensure they are willing to take on the role. Also, again as noted in your letter and as is stated in the Delegated Powers Memorandum, if there are concerns about the suitability of any organisation, the negative procedure would allow MSPs the opportunity to raise concerns when the regulations are referred to a lead committee. However, on reflection, I accept that there may be a case for the affirmative procedure to be used for these regulations, for the reasons stated by the Committee. I would therefore consider an amendment to that effect should the Bill pass to stage 2. Turning to the Committee's question about how the Scottish Government's process for identifying appropriate “inspecting bodies” will work in practice and whether this procedure should be made clear on the face of the Bill, I think this question is more for the Minister than me, as it is the Scottish Government that will have to decide what practice to follow. I would certainly be open to considering relevant amendments if considered necessary by the Minister. The second issue raised in your letter related to the following— Section 6(3) – Inserting new section 3(4) into the 1953 Act (power to amend definitions) Power conferred on: the Scottish Ministers Power exercisable by: regulations made by Scottish statutory instrument Parliamentary procedure: negative The Committee asks whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under new section 3(4), given that the change of a definition could have an impact

with regards to whether an offence has been committed in terms of the 1953 Act (as proposed to be amended).

As the Delegated Powers Memorandum states, and as is noted in your letter, I believe the power to amend those definitions would be used appropriately, only to update the 1953 Act in line with changes in agricultural practice. However, I acknowledge the case made by the Committee for using the affirmative procedure. If that view is shared by the Minister and/or the lead committee, I would be open to the procedure being amended, should the Bill proceed to stage 2.

I thank the Committee for its scrutiny and diligence.

