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Rural Economy and Connectivity Committee Comataidh Eaconomaidh Dùthchail is Co- cheangailteachd

Stage 1 Report on the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill



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Rural Economy and Connectivity Committee

Remit: To consider and report on matters relating to the rural economy within the responsibility of the Cabinet Secretary for the Rural Economy and Tourism and matters falling within the responsibility of the Cabinet Secretary for Transport, Infrastructure and Connectivity.



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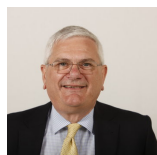
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Summary of conclusions and recommendations

Overall conclusion

Overall, the Committee is supportive of the Bill's aims. However, the evidence from stakeholders has highlighted a number of areas in the Bill on which the Committee considers more clarity and/or amendment is needed to assist in realising its objectives and making it as effective as it can be.

In particular, and as an overarching point regarding the enforcement and prosecution provisions in the Bill, the Committee has raised concerns in this report about the lack of clarity around the intent, appropriateness and practical application of several of these. Whilst it notes that the Member in charge has stated that she would be content to consider amending these sections of the Bill, it considers that there is a need for her to engage in detailed discussion with the Minister on how the issues it has raised in this regard might be resolved.

The Committee notes the views of legal professionals and others that the best approach to addressing the livestock worrying issue would be for it to form part of a wider consolidation of dog control law. It also notes that the Scottish Government intends to review dog control legislation in 2020-21. However, whilst the Committee acknowledges the Scottish Government's work across various strands to address consolidation and modernisation of legislation on dog control, it considers that more immediate action to amend legislation on livestock worrying is merited.

The Committee is aware that if the Bill is passed by the Parliament at Stage 1, there will be a limited period of time available for the remaining amending Stages 2 and 3 to be completed before the end of the current parliamentary session. However, the Committee recommends that sufficient time should be made available to allow this Bill to complete its parliamentary passage.

The Committee supports the general principles of the Bill and recommends to the Parliament that they be agreed to.

Consideration by other committees

The Committee supports the recommendations of the DPLR Committee and agrees that the procedure associated with both delegated powers should be enhanced to the affirmative procedure, as these are substantial powers. [The Member in charge has responded to the DPLR Committee](#) to say that she is content to make those changes to the Bill, should the Bill proceed to Stage 2 (the first amending stage of the bill process).

The Committee also notes that, in giving evidence to the Committee, Mairi Gougeon, the Minister for Rural Affairs and the Natural Environment ("the

Minister") indicated that the Scottish Government would wish to give further consideration to the power to appoint inspectors, and that this could impact on the DPLR Committee's recommendation in relation to that power.

The Committee comments on the proposed power to appoint inspectors later in this report.

Introducing higher penalties for livestock worrying offences

The Committee notes that the higher penalties proposed in the Bill were widely supported by many of those who provided evidence, on the basis these represented an overdue update of the 1953 Act levels.

However, the Committee also notes that several stakeholders have questioned whether higher penalties will assist in delivering the stated objectives of the Bill; whether these had been set appropriately; or whether they should be higher or fixed to be in line with those set in the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020.

On balance, the Committee considers that, in principle, higher penalties for livestock worrying offences are justified. However, it is not convinced that the proposals in the Bill, as currently drafted, are the most appropriate to deliver on this objective. It therefore recommends that the Member in charge should engage with the Minister to establish whether the proposals for higher penalties in the Bill are appropriate and whether these should be amended at a later stage in the Bill's passage.

It is clear that the issue of compensation is of significant importance to livestock owners when their animals are attacked. However, it is not clear from the evidence heard as to what format the compensation measures proposed in the Bill would take, how it would be calculated and what would happen when someone was unable to pay.

The Committee acknowledges that compensation is already available as a tool for the courts and in view of this, the Committee is concerned that specifying precise levels or limits in the Bill could be considered to be too prescriptive. It therefore recommends that the Member in charge should give consideration as to whether the proposed compensation provisions are in fact necessary.

The Committee notes that the existing availability of compensation through the courts does not appear to be widely known amongst livestock keepers. It considers that increasing awareness of the availability of existing mechanisms may be a more appropriate alternative to adding an additional layer of legislation.

The Committee notes that both the Member in Charge and the Minister wish to reflect on how the issue of compensation should be treated in the Bill. It is of the view that it is imperative that further clarification on this important matter is provided by the Member in charge during the Bill's parliamentary passage.

The Committee notes that both the Member in Charge and the Minister also wish to reflect on whether DCNs should be extended to the police, and as in the case of the compensation issue, calls on the Member in charge to provide further clarification on this issue during the parliamentary passage of this Bill.

Disqualification orders

The Committee has found that some elements of disqualification orders are not clear or need further consideration, as follows:

- The Scottish Government has indicated that it wishes to consider further whether these orders are compatible with Convention rights.
- In relation to disqualifying a person from bringing a dog onto agricultural land, some witnesses have questioned how it would be enforced or monitored.
- In relation to an order disqualifying a person from owning a dog for a defined period of time, some witnesses highlighted potential loopholes.
- The definition of agricultural land may prove to be problematic in some cases and could create difficulties in defining a criminal offence.
- 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.
- Further clarification of when the orders are to be used, and guidance on the use of the orders, would be beneficial to aid understanding for the relevant parties, and in the interests of proportionality and consistency.

The Committee highlights the Scottish Government's concern about the compatibility of the proposed disqualification orders with Convention rights and recommends that the Member in charge obtains clarity on this issue as a matter of priority.

The Committee recommends that the Member in charge provides responses to the various issues highlighted in paragraph 101 on how these orders would be applied, enforced and monitored. It also calls on her to consider whether amendments might be required to the relevant provisions in the Bill should it proceed.

Enforcement and prosecution

Inspecting bodies

The Committee notes the Member in charge's intentions that the police will take the lead in inspections, and that guidance and protocols would make clear that

any inspection bodies would remain subordinate to the police.

It also notes that the Minister stated her intention to consider a number of areas associated with the proposals in more detail, including appointment of inspectors, who the inspectors might be, and what training might be required for them.

However, the Committee believes that the evidence raised many unresolved questions regarding the roles of the proposed inspectors and their working relationship with the police. It considers that there is a lack of clarity on key issues related to the inspecting bodies provisions, such as who these bodies would be or, indeed, whether they would be appointed at all.

The Committee has more fundamental concerns about the principle of inspection bodies taking the lead in any circumstances in which a criminal offence of livestock worrying has taken place. It considers that responsibility for dealing with such criminal offences should lie with the police alone. If other bodies (such as a dog warden or the SSPCA) are otherwise involved in responding to a livestock attack, the police could seek their assistance as required.

The Committee therefore recommends that the Member in charge should remove the inspecting bodies provisions from the Bill during the amending stages of the Bill, should it proceed.

Role of vets

The Committee has identified a number of issues that need further clarity regarding the role of vets in examining a dog, including how the integrity and continuity of evidence will be managed, and costs.

The Committee notes that the Member in charge does not consider that these issues need to be resolved on the face of the Bill, but is concerned that there is a great deal of uncertainty for the veterinary profession and the police. It therefore calls on the Member in charge to provide further information on how she envisages information and guidance on such practical matters will be developed and made available prior to the implementation of the Bill.

The Committee notes the Member in charge's commitment to provide more information on the important issue of costs and calls on this to be provided in her response to this report. The Committee also notes that the Minister intends to consider a number of areas in further detail including potential conflicts of interest, standard operating procedures and training, and costs.

Power of entry, search and seizure without a warrant

The Committee has carefully considered the evidence provided on the appropriateness and practical application of the power of entry, search and seizure without a warrant.

The evidence given by the police and COPFS clearly suggest that this power would only be used when no other approach was suitable, and would not be viewed by the police as usual procedure given their preference for having a warrant.

The Committee notes that the Member in charge indicated that she planned to hold discussions with COPFS on the application of the provisions in this section of the Bill. It further notes that she would be prepared to bring forward amendments to this part of the Bill subject to the outcome of those discussions. The Committee also acknowledges the Minister's intention to consider these provisions further with COPFS.

However, the Committee has very real concerns about the powers proposed in this section of the Bill and questions whether they are legally competent. It is therefore not persuaded that the powers of entry, search and seizure without a warrant are required.

Prevention, education and awareness raising

It is clear from evidence that a long term campaign of awareness raising will be fundamental to making this Bill effective if enacted.

A major behavioural shift is required, and this will require any such campaign to focus on raising public awareness through all appropriate conventional and social media channels and educational platforms (including in schools). The Committee notes that awareness raising measures may be integrated with existing and future guidance on responsible dog ownership and outdoor access.

The Committee also acknowledges the importance of infrastructure and signage on livestock land and the need for this to be kept current, engaging and up to date to ensure the public are cognisant of them in a meaningful way.

The Committee considers it to be essential that the awareness campaign is adequately resourced and notes that the Member in charge is in discussions with the Scottish Government on this issue. It is of the view that resource requirements of member's bills passed by the Scottish Parliament should be met by the Scottish Government, as appropriate. The Committee therefore recommends that the Scottish Government should take responsibility for providing adequate resources to raise awareness of this Bill's provisions, if it is passed.

Data collection and reporting of incidents

The Committee notes the need for better national collection of standardised data on livestock attacks (and other dog control incidents), and supports the Scottish Government taking this forward as part of its wider review of legislation on animal welfare. The Committee would be keen to see improved data collection

commence as soon as practically possible, given that it will assist monitoring of this Bill if enacted, and other dog control policies including DCNs.

Exemptions

The Committee notes the explanation regarding hunting dogs from the Member in charge and the Bill drafter, but is concerned that the proposed provisions may not adequately cater for the scenario highlighted in evidence whereby hunting dogs cause stress or injury to livestock in their proximity whilst they are in their hunting role, but are not explicitly attacking or chasing the livestock.

The Committee welcomes the Member in charge's commitment to revisit this section of the Bill, and calls on her to consider whether the exemption for hunting and other working dogs is sufficient to address this scenario.

Finance

The Committee welcomes the potential savings for those working in the field of animal welfare and livestock keepers should this Bill be enacted. It notes that many of the costs on the wider Scottish public sector cannot be projected fully at this stage.

The Committee highlights its concerns earlier in this report about the proposed provisions in relation to inspecting bodies. The Committee believes that the lack of clarity on who should carry out the inspection function presents a challenge in estimating the costs with any reasonable level of accuracy. It also calls for the potential costs and the funding source of veterinary services associated with the implementation of the Bill to be clarified. The need for an adequately resourced public awareness raising campaign has been raised earlier in this report, and is considered essential if this Bill is to be successful.

It is recommended that the Member in charge should seek assurances from the Scottish Government and COPFS that the Scottish Government and CPOFS will meet these costs, and that other public sector bodies or the third sector will not be required to absorb the costs.

Introduction

1. The Dogs (Protection of Livestock) (Amendment) (Scotland) Bill ("the Bill") is a Member's Bill, introduced by Emma Harper MSP ("the Member in charge") on 14 May 2020. The Rural Economy and Connectivity Committee was designated as lead committee at Stage 1 (which means that it considers and reports to the Scottish Parliament on the general principles of the Bill).
2. Emma Harper MSP is also a member of the Rural Economy and Connectivity Committee but did not participate as a member during Stage 1 proceedings. Christine Grahame MSP attended as a committee substitute.
3. The Bill's Policy Memorandum states that its purpose is "to strengthen and update the law in relation to so-called "livestock worrying" – in which sheep or other farmed animals are chased, attacked or killed by dogs". The Bill proposes a range of amendments and updates to the Dogs (Protection of Livestock) Act 1953 ('the 1953 Act'), which is the current legislation on livestock worrying, as follows:
 - to introduce higher penalties for livestock worrying offences in the form of higher maximum penalties;
 - to provide the Courts with order-making disqualification 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;
 - to grant power to Scottish Ministers to authorise persons, bodies or organisations to appoint inspectors for the purpose of enforcement under this Bill;
 - to provide 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;
 - to amend 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".
4. The Bill also amends the Civic Government (Scotland) Act 1982 to reflect amendments made to the 1953 Act.

Consideration by the Rural Economy and Connectivity Committee

5. The Committee launched a call for views on 26 June 2020 which ran to 28 August 2020, and resulted in 75 written submissions (see Annex B). The Committee took oral evidence on the Bill in September and October 2020 (see Annex A) from organisations involved in investigating and enforcing the offence, representatives of dog owners and countryside access interests, representatives of livestock farmers and owners of agricultural land, the Scottish Government and from the Member in charge of the Bill.

6. The Committee is grateful to all those who participated for their valuable input into its consideration of the Bill.

Consideration by other committees

7. The Delegated Powers and Law Reform (DPLR) Committee published [a report](#) on its scrutiny of the delegated powers provisions of the Bill on 20 October 2020. The DPLR Committee made two recommendations on the two delegated powers in the Bill:

- Section 5(1) – inserting new section 2C into the 1953 Act (power to appoint inspecting bodies)
- Section 6(3) – Inserting new section 3(4) into the 1953 Act (power to amend definitions)

In both cases, the DPLR Committee recommended that these should be subject to the affirmative procedure rather than the negative procedure to provide enhanced scrutiny, given the potential for these powers to have substantial impacts.

8. **The Committee supports the recommendations of the DPLR Committee and agrees that the procedure associated with both delegated powers should be enhanced to the affirmative procedure, as these are substantial powers. [The Member in charge has responded to the DPLR Committee](#) to say that she is content to make those changes to the Bill, should the Bill proceed to Stage 2 (the first amending stage of the bill process).**

9. **The Committee also notes that, in giving evidence to the Committee, Mairi Gougeon, the Minister for Rural Affairs and the Natural Environment ("the Minister") indicated that the Scottish Government would wish to give further consideration to the power to appoint inspectors, and that this could impact on the DPLR Committee's recommendation in relation to that power.**

10. **The Committee comments on the proposed power to appoint inspectors later in this report.**

11. The Finance and Constitution Committee did not report on the Financial Memorandum associated with the Bill, and received one submission from [Scottish Land & Estates](#) to its [consultation](#) on the Financial Memorandum.

Background to the Bill

12. 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.
13. 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.
14. The Policy Memorandum for 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.

Source: Dogs (Protection of Livestock) (Amendment) (Scotland) Bill, Policy Memorandum, May 2020, page 1
15. The Scottish Government [provided its initial views on the Bill](#) in a letter to the Committee on 29 July 2020. It stated that, in principle, it supports the Bill with caveats regarding certain areas which are detailed in this report. Overall, stakeholders' evidence to the Committee similarly indicated broad support for the Bill with caveats or calls for greater clarity or suggestions for different approaches in certain areas.
16. The existence of the problem and a need to do more to tackle it was almost universally acknowledged in evidence, though some also acknowledged that the scale of the problem is difficult to determine, and that often attacks are not reported. The Policy Memorandum for the Bill acknowledges this—
 - ” 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
17. Fiona Lovatt, Director, Flock Health Limited, said that her [research](#), which was commissioned by the Scottish Government and to which 1,900 sheep farmers responded, led her to estimate overall livestock attacks in Scotland as between 4,000 and 10,000 per annum ². The research found that over half the farmers—51 per cent—reported that they had had a dog attack on their livestock at some stage, and 14 per cent reported that they had had a dog attack in the previous 12 months of the survey. However, the research also highlighted that, for various reasons, only one third of farmers report dog attacks to the police.
18. There was a perception amongst a number of stakeholders that livestock worrying incidents are on the rise. The [Scottish Government's commissioned research](#), assessed the scale of the issue in relation to sheep, looking at worrying by dogs as well as by wild animals and birds. This research, whilst not reaching a conclusion on whether or not worrying is increasing, backed up the perception that this was the

case.

19. The research also asserted that the existing evidence does not provide an adequate basis for assessing the true scale of the issue in Scotland. It also found that this evidence does not provide adequate information on the contributory factors or impacts, in order to effectively inform the development of appropriate responses. The research itself was carried out to begin to fill this evidence gap.
20. Many individual responses to the Committee's call for views on the Bill highlighted personal experiences of livestock worrying and describe the distressing circumstances, as well as difficulties in dealing with repeated offences and obtaining enough evidence to build a case. Some respondents stated 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.
21. The Scottish Government's research found that each dog incident costs farmers on average just under £700, and that dog attacks cause emotional stress to farmers. However, it appears that the financial impact may not be fully understood, due to conflicting figures and insufficient data.
22. Charlie Adam, NFUS, told the Committee that the problem is increasing and more widespread than the evidence suggests, because a lot of incidents are unreported. He cited a recent NFUS member survey that showed that 72 per cent of members had been affected, and a corresponding increasing cost in insurance payouts. It is estimated that in 2017 £1.6 million was paid in insurance compensation ³.
23. Data provided by Police Scotland to the Committee was consistent with other stakeholder evidence in showing that an owner was present in about 50% of cases of livestock worrying, and that the dog was loose and by itself for the other 50% ². The Scottish Government's commissioned research similarly 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 was not aware of the circumstances.
24. Most stakeholders who gave evidence agreed with the objectives of the Bill, that existing legislation is out of date and that strengthening it is important. Police Scotland stated 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.

Source: Police Scotland, 2020⁴
25. However, not all stakeholders fully agreed with, or are convinced by, the proposed approach to addressing the livestock worrying issue. Some stated that, whilst they agreed with the aims of the legislation in principle, a comprehensive review of all dog control legislation is required.
26. For example, the Law Society of Scotland stated that—

” ...we are keen to avoid what may be seen as the adoption of a piecemeal approach...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. .

Source: Law Society of Scotland, 2020⁵

27. The UK Centre for Animal Law Scottish Steering Committee expressed similar sentiments ⁶, alongside legal academics who responded to the Committee's call for written views. Blue Cross urged the Scottish Government to carry out its review of dangerous dogs and dog control legislation as soon as possible, saying 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.

Source: Blue Cross, 2020⁷

28. The [Scottish Government's Programme for Scotland 2020-2021](#) states that the Scottish Government plans to consult further on the law on dangerous dogs. The Minister explained that the Scottish Government was "undertaking work on animal welfare, including through the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020" ³. The Minister clarified that this review of dog control legislation is due to take place towards the end of 2020, saying that—

” It will focus on the Dangerous Dogs Act 1991 in particular, which was a key area of concern for the Public Audit and Post-legislative Scrutiny Committee. That review's focus on the 1991 act also reflects the fact that both Government departments face resourcing challenges.

There will be a consultation, which will focus on responsible dog ownership and the impacts on people's safety. It will also look at the seizure powers in the 1991 act and how the law affects dog walking businesses. ³

29. Other organisations queried whether the powers proposed in the Bill already exist in other dog control legislation. Some stakeholders also pointed to a lack of data on the effectiveness of the existing legislation. For example, Loch Lomond and Trossachs National Park suggested that there should be "a period of adequately resourced, independent and robust research and data gathering prior to any changes in legislation" ⁸.

30. The Law Society of Scotland, whilst agreeing that the legislation should be strengthened if it is not having any effect, raised the need for "the evidence as to why the current legislative regime does not and is not providing adequate cover". It further stated that—

” 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. ⁵

31. The Law Society of Scotland also referred to the Crown Office and Procurator

Fiscal Service's Agricultural Crime Policy, and noted 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.⁵
32. The Society also cited previous case law where issues with the 1953 Act were raised and questioned whether these have been addressed.
33. 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.
34. A small number of stakeholders commented on this and raised the possibility that the provisions proposed in the Bill may negatively impact access, or be used to illegitimately discourage walkers. The British Veterinary Association (Scottish Branch) , while supportive of the aims of the legislation, noted that it is important to recognise that allowing dogs controlled access to rural spaces (as set out in the Land Reform (Scotland) Act 2003). It suggested that this not only encourages owners to exercise their dogs (with health benefits for both), but also allows for dogs to become habituated to the 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 with other dogs and humans⁹ .
35. The Committee asked the Member in charge whether the projected six months implementation time for the Bill was sufficient. She responded that six months was the usual timescale, and that it could be delayed if necessary. She also noted that although the Scottish Government may not have made the decision on whether to appoint inspecting bodies within that timescale, it would not impede commencement of the Bill overall.¹⁰
36. The following sections of this report considers the views received by the Committee on the specific policy objectives of the Bill in more detail. Given the overall support in principle for the Bill from stakeholders and the Scottish Government, the report focusses on where issues on specific provisions have been raised.

Introducing higher penalties for livestock worrying offences

37. Most stakeholders who provided evidence agreed that there is a need for higher penalties as a modernising update to existing legislation. The Scottish Government, in its initial written evidence to the Committee, also agreed, saying 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.¹¹

38. Many stakeholders agreed that increasing the penalties with the potential for both a prison sentence and a higher fine would have the effect of encouraging greater responsibility amongst dog owners. For example, NFUS said—

” 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.

Source: NFU Scotland (NFUS), 2020¹²

39. There was also broad agreement that higher penalties are commensurate with the cost and suffering caused and are aligned more closely with those which apply to other animal welfare offences. Some respondents to the Committee's call for written views expressed frustration that in previous livestock worrying cases no other remedies were available to the courts in circumstances where the dog owner was not able to pay a fine.

40. However, many organisations and individuals, whilst not necessarily opposing higher penalties, questioned whether higher penalties will lead to a reduction in livestock worrying incidents, given that they believed that most dog attacks are accidental.

41. The Law Society of Scotland said 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."⁵ The National Dog Warden Association (Scotland) noted that, "Most dog owners do not believe their dog is likely to attack sheep and are shocked and distraught after the event."¹³ This sentiment was echoed across a number of responses.

42. The Kennel Club and Scottish Kennel Club also stated that—

” As for any deterrent effect from greater penalties, [it] 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.

Source: The Kennel Club and Scottish Kennel Club, 2020¹⁴

43. As noted earlier in this report, there is a perception that significant incidents of

livestock worrying incidents involve unaccompanied dogs, and several stakeholders questioned whether higher penalties would help to tackle this.

44. Battersea Dogs & Cats Home, amongst others, whilst supporting higher penalties, stated 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. It drew the Committee's attention to a 2017 report by the UK Parliament's All Party Parliamentary Group for Animal Welfare 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. The Home stated—

” 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.

Source: Battersea Dogs & Cats Home, 2020¹⁵

45. Some evidence to the Committee suggested that the penalties for the most serious offences should be higher, and also asked whether other options, such as community service, should be available for less serious offences.
46. The Law Society of Scotland agreed that increased penalties seemed reasonable, but also asked 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 would be more appropriate.⁵
47. The UK Centre for Animal Law Scottish Steering Committee agreed, and suggested that fixed penalty notices also be considered, paralleling the new powers in the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) 2020 Act—

” 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.

Source: The UK Centre for Animal Law Scottish Steering Committee, 2020⁶

48. A broad range of stakeholders also support the use of fixed penalty notices and the availability of a range of penalties for less serious cases. The introduction of penalties commensurate with the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) 2020 Act for the most serious cases was also supported by legal academics.
49. A number of stakeholders in both written and oral evidence highlighted the importance of compensation for livestock keepers such as farmers, crofters and others. The NFUS stated that "compensation for losses incurred by livestock keepers is a key priority for NFUS in terms of satisfactorily addressing this problem for livestock keepers".¹²
50. Whilst the Committee acknowledges that this Bill proposes additional compensation mechanisms, it also notes that compensation is already available under current legislation, as highlighted by the Law Society of Scotland in its written evidence to the Committee.

51. The Committee noted from evidence that although a compensation order is one of the tools available to the court under the Bill, it would not be automatically applied. While not explicitly agreeing or disagreeing with the issue of compensation, the Law Society of Scotland explained that compensation would be an available remedy as a consequence of the increased penalties—

” ...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.

Source: Law Society of Scotland, 2020⁵

52. Some stakeholders questioned how compensation would be calculated . For example, Jennifer Craig, National Sheep Association, said—

” Where do we pitch it? Do we take the farmer’s valuation or do we have to get independent valuations? ³

53. Several stakeholders advised the Committee that there are situations where individuals are not able to pay compensation. For example, Mike Flynn of the SSPCA said—

” You can set any limit you want, but if the person does not have the means to pay it, it is not going to be paid...if a person’s neglect has caused the incident and they can afford to pay the farmer the full value, that should happen. ²

54. As a result of some of these uncertainties, suggestions of a limit to compensation, mandatory insurance, or standardised amounts based on the “principle” of compensation were also raised.

55. Yvonne White, Scottish Crofting Federation suggested that—

” There could be a sort of menu setting out the cost of a tup, a hog and so on, but that might need to be updated annually in relation to market values. However, if it is just about the principle of compensation, that might not be needed. ³

56. When questioned on evidence received by the Committee which suggested that only 9 per cent of farmers who had been affected by a livestock attack or worrying incident had received compensation, the Minister said that as compensation was already available, she would want to reflect on the evidence further—

” Farmers should be insured against such incidents...I would want to give that issue further consideration because all the tools could be already available to us. There is also a civil route for compensation. However, it is worth considering why those routes, given that they are available, are not working, so that we can get to the bottom of the reasons for that. Clearly, it is working for some but not for many other people. ³

57. The Member in charge agreed that raising awareness of the existing availability of compensation through the courts was needed. She also said that she had chosen

not to define compensation in the Bill given that it is already available, coupled with a desire to keep the Bill as simple as possible. She said—

” ...I would prefer to consider compensation schemes and other methods separately from the primary legislation and look at pursuing that aspect in different ways in the future. ¹⁰

58. On the issue of whether there should be a standard compensation scheme, she said it required further consideration—

” I will need to discuss that in my continued engagement with the minister, because it will be up to the Scottish Government to introduce a standard, capped approach to compensation. ¹⁰

59. A number of other stakeholders advocated for better use of Dog Control Notices (DCNs) to prevent instances of livestock worrying. Both NFUS ¹² and Dogs Trust ¹⁶ stated that DCNs should be extended for use by the police and other enforcement authorities to prevent cases of livestock worrying. Similarly, other organisations supported greater use of DCNs to address "latchkey" dogs, or those that escape from a garden or other premises, which, as noted previously, are thought to make up a large proportion of livestock worrying incidents. However, Perth and Kinross Council highlighted from their experience of using DCNs that that it was difficult to monitor compliance in rural areas ².

60. The Committee asked the Minister whether a limit of available resources was an issue for local authorities in restricting their use of DCNs. The Minister questioned whether resources were entirely the issue saying—

” Some of the figures on the issuing of dog control notices showed that there was quite a discrepancy between different local authorities, which did not necessarily correlate with the resources that were in place...It is not as straightforward as saying that this is a resource issue; it is a case of looking at how the legislation is being used and whether it is being used to best effect. ³

61. The Committee also asked the Minister whether Police Scotland should be able to use DCNs in cases of livestock worrying. The Minister said further discussions would be needed on that point—

” I would be hesitant to confirm that we would want the police to have that power. We would have to discuss with Police Scotland whether it thought that it would be appropriate for the police to have that power. ³

62. With regard to whether the Bill was the appropriate vehicle to to improve the use of DCNs, the Minister said that the working group that had been set up to tackle the issue was the most appropriate way to work through the issues, and consider whether legislation is needed, or whether there are other ways to address the problems ³.

63. The Member in charge also agreed in that she did not think this Bill was the right place to address issues around DCNs because she had wanted the policy intent of the Bill to be simple. She stated—

” We considered dog control notices, but they are already available as part of the civil process in the 2010 legislation, and we wanted to focus on updating the old legislation. We thought about it, but my understanding is that those notices are already out there and, rather than muddy the waters, that legislation could still be used and is also currently used for livestock worrying offences.¹⁰

64. **The Committee notes that the higher penalties proposed in the Bill were widely supported by many of those who provided evidence, on the basis these represented an overdue update of the 1953 Act levels.**
65. **However, the Committee also notes that several stakeholders have questioned whether higher penalties will assist in delivering the stated objectives of the Bill; whether these had been set appropriately; or whether they should be higher or fixed to be in line with those set in the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020.**
66. **On balance, the Committee considers that, in principle, higher penalties for livestock worrying offences are justified. However, it is not convinced that the proposals in the Bill, as currently drafted, are the most appropriate to deliver on this objective. It therefore recommends that the Member in charge should engage with the Minister to establish whether the proposals for higher penalties in the Bill are appropriate and whether these should be amended at a later stage in the Bill's passage.**
67. **It is clear that the issue of compensation is of significant importance to livestock owners when their animals are attacked. However, it is not clear from the evidence heard as to what format the compensation measures proposed in the Bill would take, how it would be calculated and what would happen when someone was unable to pay.**
68. **The Committee acknowledges that compensation is already available as a tool for the courts and in view of this, the Committee is concerned that specifying precise levels or limits in the Bill could be considered to be too prescriptive. It therefore recommends that the Member in charge should give consideration as to whether the proposed compensation provisions are in fact necessary.**
69. **The Committee notes that the existing availability of compensation through the courts does not appear to be widely known amongst livestock keepers. It considers that increasing awareness of the availability of existing mechanisms may be a more appropriate alternative to adding an additional layer of legislation.**
70. **The Committee notes that both the Member in Charge and the Minister wish to reflect on how the issue of compensation should be treated in the Bill. It is of the view that it is imperative that further clarification on this important matter is provided by the Member in charge during the Bill's parliamentary passage.**
71. **The Committee notes that both the Member in Charge and the Minister also wish to reflect on whether DCNs should be extended to the police, and as in**

the case of the compensation issue, calls on the Member in charge to provide further clarification on this issue during the parliamentary passage of this Bill.

Disqualification orders

72. One of the proposed new powers in the Bill is the ability for the court to impose an order disqualifying a person from owning a dog for a defined period of time (which could be for life), or disqualifying a person from taking a dog onto agricultural land.
73. Many stakeholders felt that disqualification orders would be a useful tool in certain circumstances. Police Scotland ⁴ and the Scottish SPCA ¹⁷ said that they could be a good additional deterrent. The Scottish SPCA, in common with several other stakeholders, noted this could be especially useful in the case of multiple offences and "blatant recklessness".
74. In relation to these provisions, the Scottish Government concluded in their initial written evidence on the Bill 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." (referring here to the European Convention on Human Rights) ¹¹ .
75. In relation to disqualifying a person from taking a dog onto agricultural land, some questioned how it would be enforced or monitored, particularly in rural or remote areas. Kirsteen Mackenzie, Perth and Kinross Council, highlighted that—
- ” It is difficult to ban someone from walking in a particular area, especially a remote area, and to police or monitor that ban. Corroborating evidence that that person has been walking in that area can be difficult to find, which makes it difficult to prove that that person was there and doing what they should not have been doing. The types of area that we are dealing with makes that quite difficult. ²
76. The police and the Crown Office and Procurator Fiscal Services agreed that the practicalities of enforcing such an order would be challenging. Police Scotland noted that this type of disqualification order might be harder to enforce than the other disqualification order in the Bill—
- ” In practical terms it may be easier to enforce [that] 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.
- Source: Police Scotland, 2020⁴
77. The Crown Office and Procurator Fiscal Services said that obtaining evidence could be difficult—

” 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. ¹⁸

78. In addition, the Committee heard about the difficulty of determining what is 'agricultural land'. The Law Society of Scotland suggested an alternative approach for clarity—

” 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 (the 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.

Source: Law Society of Scotland, 2020⁵

79. Steven Jenkinson, Kennel Club, explained the practical difficulties and also suggested an alternative approach—

” That makes me think of the Highlands and Islands, where North Ronaldsay sheep graze on the beach. Basically, that definition means that agricultural land could be anywhere because, even in arable areas, crop rotation in fields means that there is some grazing on them...it would be far better for there to be targeted signs so that we can help people do the right thing. ²

80. However, others said that they could see the rationale of this part of the Bill. NFUS, whilst also raising questions about enforceability more generally, noted specific circumstances where excluding a dog owner and dog from particular areas 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.

Source: NFU Scotland (NFUS), 2020¹²

81. Others said that, in some circumstances, using this type of order would be preferable to removing an otherwise well-kept dog from its owner. The UK Centre for Animal Law Scottish Steering Group said that they could “see the logic of this type of order 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 so they perceive that such an order would be proportionate ⁶.

82. However, they also noted 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 suggested that such a defence would 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 then subsequently accessed agricultural land, then the third party would be at fault.

83. Witnesses and stakeholders generally expressed support for such a power for cases involving repeated offences or wilful or reckless behaviour. However, many also urge caution in applying any such order to ensure that it is done proportionately. Battersea Dogs & Cats Home said "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. ¹⁵

84. Paula Boyden, Dogs Trust, similarly noted that, “It would be disproportionate to apply a ban to, for example, a first-time offender whose dog had literally escaped because of an error. However, if there are repeat offenders who clearly do not see the gravity of what has happened, that option should be available.” ²

85. Regarding the order disqualifying a person from owning a dog for a defined period of time, legal stakeholders questioned whether it is appropriate to disqualify a person from owning a dog where that dog is otherwise well looked after. Legal academics Sarah Cheape and Mike Radford said—

” ...the basis of a deprivation order under the [Animal Health and Welfare (Scotland)] 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. ¹⁹

86. A number of people also questioned how this power will be enforced, and highlighted the loopholes that may be found. Steve Jenkinson, Kennel Club, commented on loopholes which could make the situation worse—

” ...the issue of who owns a dog and who you take the action against is quite a difficult one. If you ban one person, the dog could be transferred to someone else in the same household, and the issues that relate to why the dog escaped in the first place would be left unresolved. Alternatively, they may just dispose of the dog to an even less suitable home.

87. Legal academics Sarah Cheape and Mike Radford questioned what ‘keeping’ a dog means in practice. They suggested 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." ¹⁹
88. They also said that the two distinct options available under the Animal Health and Welfare (Scotland) Act 2006 ('the 2006 Act') could be more 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.
89. Some stakeholders, such as Scottish Land & Estates, specified 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. ²⁰
90. Several stakeholders raised concerns that disqualifying some dog owners would be disproportionate in other circumstances. The Law Society of Scotland said that a lifetime ban seems too high and "in practical terms unenforceable". ⁵
91. Several organisations (Dogs Trust ¹⁶, Kennel Club and Scottish Kennel Club ¹⁴) suggest that disqualifying a person from owning a dog in the case of a first offence could 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.
92. Battersea Dogs & Cats Home, while also recognising that disqualification may be appropriate under certain circumstances, said that it must be accompanied by clear guidance on the circumstances in which it should be used. ¹⁵ OneKind state 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." ²¹
93. 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." ⁶
94. Some organisations suggested that Dog Control Notices could play a role. The National Dog Warden Association (Scotland) suggested DCNs could be used where the owner is identified, but prior to the case appearing in court. ¹³

95. When asked about the appropriate circumstances for a disqualification order, the Minister said it was "ultimately up to the courts to determine, based on the circumstances of individual cases", and "It is up to the Scottish Sentencing Council to provide guidance on sentencing...The Scottish Sentencing Council is an independent body, so it is not for the Government to dictate to it. However, in general terms she said an order would be "appropriate when a court considers that the offending owner is not able to, or has decided that they will not, control their dog around livestock, especially where that can present a danger to other animals and, potentially, to people, too".³
96. In relation to appeals, Blue Cross suggested 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".⁷
97. Also regarding appeals, OneKind noted 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."²¹
98. The Law Society of Scotland also raised 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.⁵
99. The Member in charge said her Bill was intended to give a flexibility of approach, ensuring that the courts would be able to consider each case individually. She thought a disqualification was likely to be "very rare", but disqualification was an option for the courts—
- ” Very few individuals would be disqualified, but we have heard some pretty harrowing stories, whereby some people should just not have a dog. The provision would allow the Crown Office to move for disqualification of that person.¹⁰
100. Similarly she thought the Bill allowed for adequate flexibility for the practicalities of preventing a person from taking a dog onto land—
- ” It may be that we need to look at a further definition around that, but, again, rather than going for a person and disqualifying them, I wanted a bit of flexibility to allow the police and the Crown Office to make individual assessments of individual incidents and to make adjustments, so that the person could be required not to go to a particular place.¹⁰

101. **The Committee has found that some elements of disqualification orders are not clear or need further consideration, as follows:**
- **The Scottish Government has indicated that it wishes to consider further whether these orders are compatible with Convention rights.**
 - **In relation to disqualifying a person from bringing a dog onto agricultural land, some witnesses have questioned how it would be enforced or monitored.**
 - **In relation to an order disqualifying a person from owning a dog for a defined period of time, some witnesses highlighted potential loopholes.**
 - **The definition of agricultural land may prove to be problematic in some cases and could create difficulties in defining a criminal offence.**
 - **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.**
 - **Further clarification of when the orders are to be used, and guidance on the use of the orders, would be beneficial to aid understanding for the relevant parties, and in the interests of proportionality and consistency.**
102. **The Committee highlights the Scottish Government's concern about the compatibility of the proposed disqualification orders with Convention rights and recommends that the Member in charge obtains clarity on this issue as a matter of priority.**
103. **The Committee recommends that the Member in charge provides responses to the various issues highlighted in paragraph 101 on how these orders would be applied, enforced and monitored. It also calls on her to consider whether amendments might be required to the relevant provisions in the Bill should it proceed.**

Enforcement and prosecution

104. The practical implications of new powers of investigation related to livestock worrying which are proposed in the Bill, together with their impact on enforcement and prosecution, were key areas of scrutiny for the Committee.
105. The Blue Cross stated 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.⁷ The need for adequate enforcement was also highlighted, with concerns that if this was not applied the proposed provisions would not serve their purpose. The British Veterinary Society (Scottish Branch) said that lessons should be taken from the challenges of the implementation of the Control of Dogs Act 2010 to assess the level of police resources required to effectively enforce and investigate livestock worrying and attacks.⁹

Inspecting bodies

106. The Bill grants power to Scottish Ministers to authorise persons, bodies or organisations to appoint inspectors for the purpose of enforcement. It also provides greater investigation powers for these inspectors and the police to seize dogs suspected of having worried livestock for the purpose of obtaining evidence, and providing for powers of entry to seize a dog from premises.
107. Several witnesses and written views submitted to the Committee raised practical questions around who might be appointed by Scottish Ministers to be an "inspecting body". While the Member in charges's initial consultation suggested that the SSPCA may be one candidate, the SSPCA expressed reluctance to take on this role saying it should fall to "another Government funded body such as local authorities or the Animal Health and Plant Agency...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".¹⁷
108. In addition, local authorities expressed a preference not to take on this role, citing a lack of resources. Both the SSPCA and local authorities, however, stated that they would be happy to continue to assist the police where possible. West Lothian Council said that, "appropriate funding requires to be provided for this...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".²²
109. The National Dog Warden Association (Scotland) agreed that a lack of resources would prevent local authorities from taking on the inspecting role. In outlining its experience with the Control of Dogs (Scotland) Act 2010, the Association stated that if local authorities are given joint responsibility to investigate, in time all but the most serious cases would be passed to them. They argued that there is not enough capacity within local authorities, who employ very few dog wardens, and that no additional resources have been provided.¹³ A number of other stakeholders stated more generally that any appointed body must be provided with sufficient resources to adequately carry out enforcement.

110. In relation to the power to authorise bodies to appoint inspectors, the Scottish Government did not offer a conclusive view in its initial written evidence—
- ” 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].¹¹
111. In written evidence, COPFS told the Committee that it "supports legislative provisions which assist with the investigation and prosecution of attacks on livestock." However, COPFS did not provide any comment in its response on the power to authorise inspecting bodies to appoint inspectors.¹⁸
112. In addition, several of those who provided oral evidence to the Committee highlighted a lack of clarity in the Bill about who would retain the primary role of investigation, who would be the main point of contact for victims or the dog owners themselves when reporting an incident, and how to ensure consistency among inspectors who are not the police.
113. Several stakeholders stated assertively that the police should remain as the lead body, for what would be a criminal offence. The National Dog Warden Association (Scotland) said that "Police Scotland must remain the main body responsible".¹³ Stephen Young, Scottish Land & Estates (SLE) said, "The police should ultimately be responsible for enforcement, and they have the resources to do it".³ SLE also highlighted possible safety concerns for the inspectors, "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".²⁰
114. The Law Society of Scotland similarly highlighted that "any enforcement from a criminal perspective involving offences lies with COPFS."⁵ Police Scotland said 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".⁴
115. Inspector Alan Dron, Scottish Partnership Against Rural Crime (SPARC) and Police Scotland, explained where clarity was required—
- ” There would need to be clarity about who would have primacy. Under the current law, it is the police who can investigate but, in lots of rural locations, someone else will attend—whether it is someone from the local authority, the dog warden or whoever—to assist a police officer with corroboration. [...] If there were to be any additional bodies, who they were would need to be clear, as would what they could offer and when they would go out. In addition, the people they were attending would have to know who had primacy—indeed, they would need to know who to contact in the first instance.²
116. On the point of ensuring consistency, Charlie Adam, NFUS, suggested that “there would need to be some central training ..to ensure that they were all singing from the same hymn book ”.³

117. Furthermore, some witnesses questioned why the Bill proposes that Scottish Ministers should appoint an inspecting body, rather than requiring them to appoint inspectors directly, as in other legislation. Legal academics Sarah Cheape and Mike Radford highlighted the importance of ensuring consistency in legislation covering similar or related matters—

” 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.

Source: Sarah Cheape and Mike Radford, School of Law, University of Aberdeen, 2020¹⁹

118. Charles Livingstone, Brodies LLP, in his role as drafter of the Bill, explained that the inspecting bodies provisions had been drafted to "broadly mirror the... inspectors...in the Animal Health and Welfare (Scotland) Act 2006" so that inspectors were not liable for costs—

” Under that regime, the Scottish Government has a relatively unqualified power to appoint inspectors directly. The difference in the bill is that inspecting bodies would have an intermediary role, so an inspecting body would be appointed, and it could then appoint inspectors...One of the reasons why the bill refers to inspecting bodies rather than inspectors is so that the body could meet any costs and the individual inspectors would not have any liability in that regard. ¹⁰

119. The Minister said she would need to consider the overall matter further with COPFS, to decide whether the Bill's approach was best, or whether to "adopt the one that we already use to appoint animal welfare inspectors, which is set out in the 2006 act and involves Scottish ministers directly appointing inspectors and other bodies not having an official role in the appointment process". ³

120. The Minister also said further consideration was needed on who the other inspecting bodies might be as "there are only a limited number of bodies that it could be...It would be beneficial for anyone who was appointed..to have established protocols with the police. Depending on who they might be, we would need to consider what training might be appropriate for them". ³

121. The Member in charge said that not all police have the correct equipment (such as microchip wands), and so her general intention behind appointing inspecting bodies was to have people with "experience of dog behaviour" and the appropriate equipment "to support the police and detain the dog". ¹⁰

122. When asked for more detail about the role of the inspectors, the Member in charge stated that "the bill does not say that we are going to create inspecting bodies, but it would allow ministers to consider whether that would be necessary". ¹⁰ In her supplementary written evidence, she clarified the Bill's powers for inspectors further—

- ” Those powers are the same as the powers which the police would have under the Bill (for example, powers to seize and detain a dog to identify its owner or gather-evidence, and powers of entry, search and seizure). It would be for the inspecting body, the police, and anyone else involved, to develop and agree any protocols about working practicalities and liaison. ²³
123. The Committee asked for more information about the relationship between Police Scotland and any potential inspecting body. The Member in charge said that she did not want that to be in the Bill "because we do not even know whether ministers would want to create inspecting bodies" ¹⁰, and explained that the police would be the lead body. She clarified further that—
- ” My goal would be that guidance would be created or standard operating procedures set out so that if ministers decided to have inspecting bodies, they would be subordinate to and supportive of the police. ¹⁰
124. Charles Livingstone highlighted that "the bill would create powers for inspectors but would not impose any duties on them", and gave an example of a likely scenario involving an inspector—
- ” The thinking is that...the SSPCA or a dog control officer in a local authority might be the person on the scene in respect of a dog worrying offence...Therefore, to a large extent, some of the powers are about allowing them to react to a situation that they find themselves in, as opposed to the SSPCA going out to investigate a criminal offence... ¹⁰
125. The Member in charge also said that she agreed with the Delegated Powers and Law Reform Committee's recommendation that the regulations for the appointment of inspecting bodies should be subject to the higher level of affirmative procedure, which would mean an enhanced level of parliamentary scrutiny in relation to the appointment of inspecting bodies. ²³

126. **The Committee notes the Member in charge's intentions that the police will take the lead in inspections, and that guidance and protocols would make clear that any inspection bodies would remain subordinate to the police.**
127. **It also notes that the Minister stated her intention to consider a number of areas associated with the proposals in more detail, including appointment of inspectors, who the inspectors might be, and what training might be required for them.**
128. **However, the Committee believes that the evidence raised many unresolved questions regarding the roles of the proposed inspectors and their working relationship with the police. It considers that there is a lack of clarity on key issues related to the inspecting bodies provisions, such as who these bodies would be or, indeed, whether they would be appointed at all.**
129. **The Committee has more fundamental concerns about the principle of inspection bodies taking the lead in any circumstances in which a criminal offence of livestock worrying has taken place. It considers that**

responsibility for dealing with such criminal offences should lie with the police alone. If other bodies (such as a dog warden or the SSPCA) are otherwise involved in responding to a livestock attack, the police could seek their assistance as required.

130. **The Committee therefore recommends that the Member in charge should remove the inspecting bodies provisions from the Bill during the amending stages of the Bill, should it proceed.**

Role of vets

131. A range of issues were raised in relation to the role of vets in the investigation and gathering of evidence on alleged instances of livestock worrying.
132. One issue raised was consent for the examination of the dog suspected of being involved. Stakeholders questioned in evidence whether the police would be given authority to give consent for an examination, or whether this would remain with the owner.
133. Fiona Lovatt said that based on existing experience of incidents such as road traffic accidents, it would most likely be the police who gave consent to examine the dog, which would avoid putting the vet in an awkward position, both as a professional and financially.² Inspector Alan Dron said that police consent would depend on the circumstances, the extent of the injury and the case. He also said that currently police take dogs to the vet in "very few instances", such as when a dog is shot.²
134. On the consent issue, the Minister commented that, "Under the bill at the moment, the legal authority to have a dog examined would rest with the constable or the inspector who seized the dog, and would involve there being reasonable grounds for believing that the dog had been involved in a livestock attack or worrying incident."³
135. Further questions were raised on the details of consent, such as who would consent to evidence gathering if there was no owner present, and what would happen if the owner was unwilling to give consent. It was also suggested that vets would require certainty around who would provide consent before they could carry out any examinations. Inspector Alan Dron explained what would be likely to happen regarding consent if an owner was not present, as well as highlighting the related financial implications . He said—

” In the few instances in which that happened, the police would contact the relevant fiscal, because the issue would largely come down to cost—the cost of seizure and of homing. We might need to keep the dog for, say, 24 hours so that samples could be taken, and that would involve contacting a vet to come out. In such a case, we would have a duty of care towards the dog—we would have to feed and water it and so on.

We highlighted in our submission that there is a need for clarity, particularly when it comes to any financial implications regarding policing, homing and dealing with the veterinary aspects... ²

136. The Committee heard concerns regarding whether veterinary practices have the capacity, training and flexibility to react in an appropriate timescale. Stakeholders queried whether there should be standard operating procedures for vets carrying out forensic examinations, and whether training for examinations and evidence handling would be provided to veterinary professionals. A further issue raised was the need to avoid conflicts of interest where either the dog or the livestock are regular clients of the vet.
137. On the 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 British Veterinary Association (Scottish Branch) noted 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 useful to establish a database of suitably qualified vets in practice in a given area who enforcement officers could liaise with". ⁹
138. As regards what evidence gathering would be required, and how any evidence would be obtained, the British Veterinary Association (Scottish Branch) said 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."
139. Several stakeholders highlighted the need for procedures to ensure the welfare of dogs in police care, and ensuring the welfare of dogs during examinations. The Blue Cross said that the owner should accompany the dog to the vets wherever possible to reduce emotional trauma. ⁷ The UK Centre for Animal Law Scottish Steering Committee said that including an express provision for the police to check a dog's microchip to establish its owner may be useful. ⁶
140. The Minister was also asked about the questions of conflicts of interest and of standard operating procedures and training, and she indicated that she would have to give more consideration to these matters. ³
141. On potential conflict of interests for the vet, the Member in charge said that she did not think that was an issue as vets were professionals and treated their cases impartially. ¹⁰
142. Stakeholders queried who would be expected to cover the costs when a vet is

called to examine a dog in a case of livestock worrying and how the associated costs would be recovered. For example, Inspector Alan Dron said—

” Would the vet bill the farmer? The farmer, landowner or livestock owner would have the initial outlay, to cover the vet’s costs, and might be looking to get some sort of compensation further down the line. ²

143. On the costs issue, the Minister commented that—

” The costs of investigation would probably have to be borne initially by the investigatory body. We will have to give greater consideration to whether those costs could or should be recouped from an offender. ³

144. Phil Burns, Scottish Government, also highlighted on costs, “the possibility that, in many remote areas, there would be relatively few vets. There would be costs involved in taking a dog to a vet who was further away.” ³

145. On costs for vets, the Member in charge said that costs would be paid by COPFS or ultimately the Scottish Government, but that she needed to discuss this with the Minister. She thought the fee structure would likely follow that used by vets in their usual line of work, and “that operating protocols or procedures could be established in order to make the structure fair and reasonable”, but said that she would consider this in more detail and feedback views to the Committee. She also agreed to further consider the issue of ensuring vets were paid for their costs in reasonable timescales. ¹⁰

146. The Committee asked the Member in charge what would happen if the vet was not at the scene of the offence in reasonable time, given possible remote locations or other factors. She responded that local authorities would likely detain the dog using current procedures for stray dogs, but an accompanied dog would go back to its owner’s residence. However, if evidence was required, the vet would need to gather evidence on site or the police would take photographic evidence on site. The dog could then be returned to its owner pending the investigation and its outcome. ¹⁰

147. The Committee also heard evidence [Fiona Lovatt, Inspector Alan Dron] suggesting that it might be possible to use the Scottish Rural University College’s (SRUC) veterinarians to take samples from a dog seized by a constable or inspector for the purposes of identifying and securing evidence. ²

148. The Minister explained in supplementary written evidence that SRUC vets already did this type of work, and that she didn’t consider that it should be specified in the Bill—

- ” SRUC has offered to work with Police Scotland, the British Veterinary Association and the British Small Animal Veterinary Association to discuss possible protocols for local vets or police officers in taking saliva samples from suspect dogs and to provide advice on gathering evidence in individual cases as these arise.

It is not considered that any statutory power for SRUC or local vets is required in the legislation as they can already be involved in collecting evidence from animals presented to them by Police Scotland or another investigating enforcement authority.

Source: Scottish Government, 2020²⁴

149. In supplementary correspondence after her oral evidence session, the Member in charge said in relation to the overall issues raised regarding vets that "the Bill does not confer any obligations on vets to carry out any work", and that she did not think the Bill was the correct vehicle to address the issues raised. She said—

- ” ...the practical issues raised by the Committee would, in my view, be for consideration by others, outwith the Bill process (such as individual vet practices, sectoral bodies, and the Scottish Government) and I do not consider it would be helpful or appropriate to try and legislate for such practicalities in the Bill. However, as the Minister stated when she gave evidence, the Scottish Government intends to engage with vets, and others involved, to discuss practicalities.

Source: Emma Harper MSP, 2020²³

150. **The Committee has identified a number of issues that need further clarity regarding the role of vets in examining a dog, including how the integrity and continuity of evidence will be managed, and costs.**
151. **The Committee notes that the Member in charge does not consider that these issues need to be resolved on the face of the Bill, but is concerned that there is a great deal of uncertainty for the veterinary profession and the police. It therefore calls on the Member in charge to provide further information on how she envisages information and guidance on such practical matters will be developed and made available prior to the implementation of the Bill.**
152. **The Committee notes the Member in charge's commitment to provide more information on the important issue of costs and calls on this to be provided in her response to this report. The Committee also notes that the Minister intends to consider a number of areas in further detail including potential conflicts of interest, standard operating procedures and training, and costs.**

Power of entry, search and seizure without a warrant

153. The Bill contains proposals to grant the power of entry, search and seizure without a warrant when cases of livestock worrying are being investigated. The Committee heard in evidence that clarity on the practical use of this power was required.
154. The UK Centre for Animal Law Scottish Steering Committee commented on this provision, saying that— "Section 4(6) allows a constable or inspector to carry out these activities without a warrant if it appears that delay would frustrate the purpose for which the search is to be carried out." However, they also noted that "the provision does not apply in relation to domestic premises, where most dogs live, and therefore a warrant will almost always be necessary".⁶
155. The Crown Office and Procurator Fiscal Service noted 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. It also stated that were COPFS 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".¹⁸
156. Inspector Alan Dron said it was "an unusual step", and that the police would "need to make sure that there were reasonable grounds for suspecting that evidence that was connected to the alleged commission of the offence of livestock worrying was to be found in the specified premises and that there were no other means of obtaining that evidence".²
157. Inspector Alan Dron, when asked whether those powers were necessary, suggested that it might not, as "It might overcomplicate things. We might end up having to get a warrant anyway. We would always be on stronger grounds if we had a warrant". He also said it would be "extremely unusual" and a "lot of clarification would need to be provided" to avoid problems with any court case—
- ” I could also see it being contested in court if the police gained access to premises without obtaining a warrant—unless, of course, they were welcomed in by the house owner, who said, for example, “It was my dog. I was actually going to contact you.” I could see the power being exercised on a case-by-case basis.²
158. The Minister was asked about these provisions, and indicated in response that, “there are similarities with other pieces of legislation. It is currently the case for constables and inspectors, under paragraph 4 of schedule 1 to the Animal Health and Welfare (Scotland) Act 2006, in connection with the investigation of certain of certain animal welfare offences, so it would not be such a massive departure as has been suggested. Other pieces of legislation contain similar powers, which are primarily in relation to concern about the welfare of an animal.”³

159. However, when presented with the distinction between the power of entry to investigate a crime that is currently underway, and the power of entry to investigate a crime that has already been committed, the Minister stated that “we want to further consider the provisions in that part of the bill, as well as the appointment of inspectors via authorising a body to appoint them. Those issues need further consideration and we will have discussions on them with the Crown Office in due course.”³
160. Charles Livingstone highlighted that these provisions had been modelled on the powers given to inspectors and constables in the Animal Health and Welfare (Scotland) Act 2006, which includes the ability to enter non-domestic premises without a warrant to “enter the premises, and ... search for, examine and seize any animal (including the carcass of an animal), equipment, document or other thing tending to provide evidence of the commission of, or participation in, a relevant offence.” He explained that the provision was narrower in this bill, because a warrant can be granted in order to “identify the dog ... ascertain ... the owner ... and examine, seize and detain the dog”, rather than to seize documents and other things.¹⁰
161. The Committee asked the Member in charge what discussions she had had with COPFS about these various provisions covered in this section of the report. She responded that she was awaiting a response from COPFS, and might need to reflect on the Bill's content dependent on COPFS' response. She said she could make changes, if they are needed, in order to make the bill clearer and more appropriate.¹⁰

- 162. The Committee has carefully considered the evidence provided on the appropriateness and practical application of the power of entry, search and seizure without a warrant.**
- 163. The evidence given by the police and COPFS clearly suggest that this power would only be used when no other approach was suitable, and would not be viewed by the police as usual procedure given their preference for having a warrant.**
- 164. The Committee notes that the Member in charge indicated that she planned to hold discussions with COPFS on the application of the provisions in this section of the Bill. It further notes that she would be prepared to bring forward amendments to this part of the Bill subject to the outcome of those discussions. The Committee also acknowledges the Minister's intention to consider these provisions further with COPFS.**
- 165. However, the Committee has very real concerns about the powers proposed in this section of the Bill and questions whether they are legally competent. It is therefore not persuaded that the powers of entry, search and seizure without a warrant are required.**

Prevention, education and awareness raising

166. The Committee heard views that increased penalties and powers of investigation and enforcement may not fully address prevention of livestock worrying incidents. Subsequently stakeholders highlighted a need for education and awareness raising to help prevent incidents of livestock worrying, as well as the punitive penalties in the Bill.
167. Several stakeholders disagreed with the focus on punishment rather than prevention. The Dogs Trust ¹⁶ stated that the Bill does not deal with the causes of livestock worrying, but reacts to the effects. The Kennel Club and Scottish Kennel Club, "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 also mentioned that existing preventative and remedial measures using Dog Control Notices (DCNs) are not currently being adequately used by local authorities. ¹⁴
168. Stakeholders described instances where a dog, originally not near a field of livestock, can run away for various reasons and then be amongst livestock, sometimes far away from its owner who cannot then stop an attack by the dog. They question whether, in these cases, the additional threat of a greater punishment would prevent the incident from occurring. As a result, many emphasise the need for education, improved signage, and other measures to prevent attacks in addition to legislation.
169. The Kennel Club ¹⁴ and Battersea Dogs & Cats Home ¹⁵ advocated use of information and signage for dog walkers and owners. Steve Jenkinson, Kennel Club, noted that, "the insurer NFU Mutual says that only 27 per cent of farmers use signage", and that signs could be used more effectively. ² Battersea Dogs & Cats Home said that standardised signs may be helpful, as is the case in Wales, where the Welsh Government are working with the Animal Welfare Network Wales. Similarly, Bridget Jones, NatureScot, highlighted the importance of good infrastructure, which should include "ensuring that paths are there or, if lambing is happening in the field, that alternative routes are available. Good information should be provided about that. There should also be good fencing and gate arrangements." ²
170. Stephen Young, SLE, highlighted that a combination of education and penalties was most effective to cover different scenarios—
- ” It is important to get the message across to people, so that they understand the severity of the issue, and to have that backed up by penalties, if required, for people who do not move on after being educated. We definitely need penalties for repeat offenders. ³
171. Fiona Lovatt highlighted that farmers also supported greater awareness—

- ” The most popular measure, which 93 per cent of them wanted, was an increase in public awareness, partly because it is often a dog owner who is unaware or it is a one-off incident.²
172. In addition, witnesses agreed that a long term campaign of publicising and awareness raising for any new legislation is critically important. Mike Flynn, SSPCA, stated that “people in Scotland...do not even know that legislation on the control of dogs exists, and local authorities are not enforcing it correctly. People have to be made aware...That does not mean just having one advert...; it has to be continual.”²
173. The Committee asked the Minister whether she intended that the Bill, if passed, will be accompanied by more awareness-raising educational campaigns for dog owners and land managers to prevent livestock worrying.
174. The Minister replied that she would “have to give further consideration to that as we move forward”, and have discussions with other organisations already engaged in this sort of work “about working together on education and awareness raising”. She also said that as this work was funded across ministerial portfolios, she would need to discuss it with ministerial colleagues.³
175. Jim Wilson, Scottish Government, highlighted that social media had been used very successfully at a modest cost to raise awareness of dog control to promote the Control of Dogs (Scotland) Act 2010. He also said that a Scottish Government-led working group is considering what other key enforcement agencies can do to promote responsible dog ownership across the country.³
176. The Member in charge said that her Bill aimed to educate “by raising awareness of the offence and showing the severity of it”, and that she was keen to use existing material on public awareness such as the Outdoor Access Code, and that awareness was extended to the non-farming media who were not as engaged as the farming media at present. When asked if existing material would be updated if the Bill passed, she said that she was discussing with the Scottish Government how to use the Outdoor Access Code, and work with the national access forum.¹⁰
177. She also said that she was in ongoing discussions with the Scottish Government regarding resources and a campaign on preventing livestock worrying, and that the Financial Memorandum for the Bill indicated there would be an initial increase in resources following commencement of the Bill, but that was likely to decrease over the longer term as awareness increased.

178. **It is clear from evidence that a long term campaign of awareness raising will be fundamental to making this Bill effective if enacted.**

179. **A major behavioural shift is required, and this will require any such campaign to focus on raising public awareness through all appropriate conventional and social media channels and educational platforms (including in schools). The Committee notes that awareness raising measures may be integrated with existing and future guidance on responsible dog ownership and outdoor access.**

180. **The Committee also acknowledges the importance of infrastructure and signage on livestock land and the need for this to be kept current, engaging and up to date to ensure the public are cognisant of them in a meaningful way.**
181. **The Committee considers it to be essential that the awareness campaign is adequately resourced and notes that the Member in charge is in discussions with the Scottish Government on this issue. It is of the view that resource requirements of member's bills passed by the Scottish Parliament should be met by the Scottish Government, as appropriate. The Committee therefore recommends that the Scottish Government should take responsibility for providing adequate resources to raise awareness of this Bill's provisions, if it is passed.**

Data collection and reporting of incidents

182. Stakeholders highlighted the need for better standardised data collection around reported incidents, and the desirability of encouraging increased reporting among both livestock keepers and dog owners.
183. The Dogs Trust proposed, "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." ¹⁶
184. Paula Boyden, Dogs Trust, highlighted that better data gathering would help monitor the effectiveness of this Bill and other desirable aims—
- ” We need to make sure that recording is standardised, not only so that we know what we are dealing with but so that, should the bill be passed, we can assess whether it is being beneficial. Reporting at the moment focuses on the numbers, but we might need to look at the impact or the level of suffering that has been encountered by the farm. ²
185. Scottish Land & Estates (SLE) proposed that dog owners be legally required to report suspected incidents, as this would “assist investigations and be beneficial to the animal’s welfare as it could ensure faster veterinary treatment.” ²⁰ SLE described where such reporting would be important and encourage responsible ownership and access, (such as where a dog chases sheep, not killing or injuring them but causing other issues), saying that “ people can inspect the animals and find out what issues have been caused, which might not be immediately apparent”. ³
186. The Committee asked the Member in charge why the Bill does not include a requirement for people to report suspected attacks by their dogs. She responded that it was not a policy she was minded to put in the Bill, as it would be practically difficult to enforce, and there is not a precedent to self-report—
- ” Aside from the many practical concerns (such as: how it would be enforced; whether it would place undue burden on the police and other agencies; and consideration of ECHR issues), I do not consider such a measure would be appropriate in Scots law.
- Making it an offence not to self-report a suspected offence is not, to my knowledge, used in other contexts – and there would not appear to be anything so distinctive about the livestock-worrying context that would justify making a special exception from general principles of criminal law. ²³
187. The Committee asked the Minister and Scottish Government officials whether there should be a national database for dog control legislation, and whether this data should be available for use in investigating livestock worrying.
188. Jim Wilson, Scottish Government, said the Scottish Government would be open to such a database holding more information than just for dog control notices, but that this would require legislative change—

” What could be held on it is quite restricted: it would be information on dog control notices. However, we would be open to considering further legislative change in order for more information on dog control to be held on such a system...we have to ensure that any systems that are developed are future proofed to ensure that the digital tools can support any current plans or policy changes that might be on the horizon, whether through legislative means or otherwise...³

189. The Member in charge told the Committee that the Scottish Partnership Against Rural Crime (SPARC) was now collecting data. She also agreed that there was potential to improve data collection, but said it should be done as part of the Scottish Government's wider work on dogs and animal welfare legislation—

” Therefore, rather than providing for that in the bill, I am keen to see what future proposals the minister has as regards data processing and management. Future Government legislation will be able to address those data management issues.¹⁰

190. The Committee notes the need for better national collection of standardised data on livestock attacks (and other dog control incidents), and supports the Scottish Government taking this forward as part of its wider review of legislation on animal welfare. The Committee would be keen to see improved data collection commence as soon as practically possible, given that it will assist monitoring of this Bill if enacted, and other dog control policies including DCNs.

Exemptions

191. The Bill clarifies the exemption for guide dogs, specifying that assistance dogs are also exempt. It 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".
 192. The UK Centre for Animal Law Scottish Steering Committee noted that, "numerous incidents have been observed in Scotland where packs of foxhounds have been hunting in proximity to flocks of sheep", and recommended revisiting the exemption for hunting dogs.⁶
 193. The Committee asked the Member in charge to clarify the exemption for hunting dogs. She replied that COPFS would determine it on a case by case basis, but that she would consider if it was necessary to define the exemption more clearly in the explanatory notes and the guidance that supports the bill.¹⁰
 194. Charles Livingstone, drafter of the Bill, explained the technicalities of the definition, saying that, "The exemption is only to section 1(2)(c) of the 1953 act, which is the offence of "being at large ... in a field or enclosure in which there are sheep". If a police dog, a guide dog or a pack of hounds were to attack or chase livestock, an offence would still be committed...if, in the course of a hunt, a pack of hounds were to cross a field in which there were sheep, because that was where the hunt took them, that would not be an offence because, by definition, a pack of hounds would not be on a lead or under close control".¹⁰
195. **The Committee notes the explanation regarding hunting dogs from the Member in charge and the Bill drafter, but is concerned that the proposed provisions may not adequately cater for the scenario highlighted in evidence whereby hunting dogs cause stress or injury to livestock in their proximity whilst they are in their hunting role, but are not explicitly attacking or chasing the livestock.**
 196. **The Committee welcomes the Member in charge's commitment to revisit this section of the Bill, and calls on her to consider whether the exemption for hunting and other working dogs is sufficient to address this scenario.**

Equalities assessment

197. The Committee notes that an [equality impact assessment has been completed in relation to the Bill](#) and that, based on this assessment, the Member in Charge does not consider that the Bill's provisions will negatively impact on protected groups, such as those using assistance or guide dogs.
198. The assessment makes provision for the proposed disqualification order in the Bill which means that a person may be disqualified from owning a dog, potentially for life. Anyone disqualified may apply to the court, at annual intervals, to have the disqualification reviewed. The assessment states that this allows for a situation where someone does not rely on an assistance dog at the time of disqualification but requires an assistance dog later in life.

Finance

199. The [Financial Memorandum](#) has some uncertainty relating to the provisions in the Bill that need further clarification (as detailed in the rest of this report). The overarching assumption is that—
- ” If the aims of the Bill are achieved, the number of incidents of livestock attack and worrying will decrease, but a higher proportion of the incidents that still take place will be prosecuted and lead to convictions.²⁵
200. The Financial Memorandum identifies the likely costs of this Bill. The estimated figure for farmers of the annual cost of livestock worrying (£7M) would fit the findings outlined in this report whereby each dog incident costs farmers on average just under £700, and an estimated maximum figure of 10,000 attacks per annum. Costs for dog owners and walkers are considered to be a likely average fine between £250 and £2,500.
201. Costs for public authorities including enforcement and prosecution are also estimated, which acknowledge that prosecutions and police time required might increase. It is projected that costs of producing regulations and guidance on the Scottish Government would be absorbed within existing budgets.
202. With regard to inspecting bodies costs, the cost on local authorities if appointed as inspecting bodies is estimated at around £30,000 per inspector authorised by a local authority to investigate livestock worrying. Costs are also estimated should the inspecting bodies be from the third sector or elsewhere which take into account retrieving and testing evidence including costs of forensic exams, post-mortem exams, DNA testing (DNA swabs from dogs and sheep cost £20-£50 per test), DNA analysis and vets' bills and costs to keep a dog secure.
203. The Financial Memorandum also identifies that if the Bill achieves reductions in livestock attacks and worrying, there will be long-term savings. There could be savings for COPFS and the police as there may be fewer cases to investigate and prosecute, and savings for livestock owners in terms of vet bills and loss of animals. Any short-term increases in fine revenue will not result in increased revenue for the Scottish Government, as increases lead to Scottish block grant adjustments.
- 204. The Committee welcomes the potential savings for those working in the field of animal welfare and livestock keepers should this Bill be enacted. It notes that many of the costs on the wider Scottish public sector cannot be projected fully at this stage.**
- 205. The Committee highlights its concerns earlier in this report about the proposed provisions in relation to inspecting bodies. The Committee believes that the lack of clarity on who should carry out the inspection function presents a challenge in estimating the costs with any reasonable level of accuracy. It also calls for the potential costs and the funding source of veterinary services associated with the implementation of the Bill to be clarified. The need for an adequately resourced public awareness raising campaign has been raised earlier in this report, and is considered essential**

if this Bill is to be successful.

206. **It is recommended that the Member in charge should seek assurances from the Scottish Government and COPFS that the Scottish Government and CPOFS will meet these costs, and that other public sector bodies or the third sector will not be required to absorb the costs.**

Conclusions

207. Overall, the Committee is supportive of the Bill's aims. However, the evidence from stakeholders has highlighted a number of areas in the Bill on which the Committee considers more clarity and/or amendment is needed to assist in realising its objectives and making it as effective as it can be.
208. In particular, and as an overarching point regarding the enforcement and prosecution provisions in the Bill, the Committee has raised concerns in this report about the lack of clarity around the intent, appropriateness and practical application of several of these. Whilst it notes that the Member in charge has stated that she would be content to consider amending these sections of the Bill, it considers that there is a need for her to engage in detailed discussion with the Minister on how the issues it has raised in this regard might be resolved.
209. The Committee notes the views of legal professionals and others that the best approach to addressing the livestock worrying issue would be for it to form part of a wider consolidation of dog control law. It also notes that the Scottish Government intends to review dog control legislation in 2020-21. However, whilst the Committee acknowledges the Scottish Government's work across various strands to address consolidation and modernisation of legislation on dog control, it considers that more immediate action to amend legislation on livestock worrying is merited.
210. The Committee is aware that if the Bill is passed by the Parliament at Stage 1, there will be a limited period of time available for the remaining amending Stages 2 and 3 to be completed before the end of the current parliamentary session. However, the Committee recommends that sufficient time should be made available to allow this Bill to complete its parliamentary passage.
211. The Committee supports the general principles of the Bill and recommends to the Parliament that they be agreed to.

Annex A - Extract from minutes

16th Meeting, 2020 (Session 5), Wednesday 24 June 2020

7. Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Stage 1.

22nd Meeting, 2020 (Session 5), Wednesday 16 September 2020

1. Dogs (Protection of Livestock) (Amendment) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from— Fiona Lovatt, Director, Flock Health Limited; Inspector Alan Dron, Chair, Scottish Partnership Against Rural Crime (SPARC) and National Rural Crime Co-ordinator, Police Scotland; Kirsteen Mackenzie, Animal Welfare Officer, Perth and Kinross Council; Mike Flynn, Chief Superintendent, Scottish SPCA; Steve Jenkinson, Access and Countryside Advisor, Kennel Club; Paula Boyden, Director, Dogs Trust; Bridget Jones, Strategic Paths and Projects Manager, NatureScot.

2. Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (in private): The Committee reviewed the evidence heard at agenda item 1.

23rd Meeting, 2020 (Session 5), Wednesday 23 September 2020

Dogs (Protection of Livestock) (Amendment) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from— Stephen Young, Head of Policy, Scottish Land & Estates; Charlie Adam, Vice President, NFU Scotland; Yvonne White, Chair, Scottish Crofting Federation; Jennifer Craig, Chair, National Sheep Association (NSA) Scotland; Mairi Gougeon, Minister for Rural Affairs and Natural Environment, Phil Burns, Policy Manager, Animal Welfare Branch, and Jim Wilson, Head of Safer Communities and Justice Directorate Covid Hub, Scottish Government.

4. Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (in private): The Committee reviewed the evidence heard at agenda item 1.

26th Meeting, 2020 (Session 5), Wednesday 28 October 2020

5. Dogs (Protection of Livestock) (Amendment) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from— Emma Harper, Member in charge of the Bill, Nick Hawthorne, Senior Assistant Clerk, Non-Government Bills Unit, and Kenny Htet-Khin, Solicitor, Scottish Parliament; Charles Livingstone, Partner, Brodies LLP Solicitors.

6. Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (in private): The Committee reviewed the evidence heard at agenda item 5. For agenda items 1-6— Peter Chapman declared an interest as a partner in a farming business. Stewart Stevenson declared an interest as an owner of a small agricultural holding and sheep grazing. Edward Mountain declared an interest as a family partnership in Murray.

31st Meeting, 2020 (Session 5) Wednesday 25 November 2020

1. Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (in private): The Committee considered a draft Stage 1 report.

32nd Meeting, 2020 (Session 5) Wednesday 2 December 2020

14. Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (in private): The Committee considered a draft Stage 1 report.

[33rd Meeting, 2020 \(Session 5\) Wednesday 9 December 2020](#)

6. Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (in private): The Committee considered a draft Stage 1 report.

Annex B - Written submissions

[Anonymous_1 \(64 KB pdf\)](#)

[Anonymous_2 \(33 KB pdf\)](#)

[Anonymous_3 \(28 KB pdf\)](#)

[Anonymous_4 \(28 KB pdf\)](#)

[Anonymous 5 \(67 KB pdf\)](#)

[Anonymous 6 \(27 KB pdf\)](#)

[Anonymous 7 \(82 KB pdf\)](#)

[Anonymous 8 \(110 KB pdf\)](#)

[Anonymous 9 \(104 KB pdf\)](#)

[Anonymous 11 \(72 KB pdf\)](#)

[Anonymous 12 \(83 KB pdf\)](#)

[Anonymous 13 \(84 KB pdf\)](#)

[Anonymous 14 \(85 KB pdf\)](#)

[Anonymous 15 \(88 KB pdf\)](#)

[Anonymous 16 \(96 KB pdf\)](#)

[Anonymous 17 \(95 KB pdf\)](#)

[Anonymous 18 \(114 KB pdf\)](#)

[Anonymous 19 \(109 KB pdf\)](#)

[Anonymous 20 \(94 KB pdf\)](#)

[Ross Hendron \(69 KB pdf\)](#)

[Margaret MacIver \(28 KB pdf\)](#)

[Stuart MacLean \(28 KB pdf\)](#)

[Liz Howard \(27 KB pdf\)](#)

[Anne Massie \(27 KB pdf\)](#)

[Peter Amsden \(28 KB pdf\)](#)

[John Campbell \(27 KB pdf\)](#)

[Caroline Barr \(27 KB pdf\)](#)

[Julie Mckechnie \(27 KB pdf\)](#)

[Yvonne White \(27 KB pdf\)](#)

[Michelle Fowler \(79 KB pdf\)](#)

[Scottish SPCA \(101 KB pdf\)](#)

[Allan Macaskill \(27 KB pdf\)](#)

[H Nicol, Factor, Argyll Estates \(125 KB pdf\)](#)

[Angela Simpson \(73 KB pdf\)](#)

[Helensburgh and District Access Trust \(66 KB pdf\)](#)

[Graham and Helen Acreman \(28 KB pdf\)](#)

[East Ayrshire Council \(72 KB pdf\)](#)

[NFU Scotland \(130 KB pdf\)](#)

[Alistair and Eleanor Glennie \(28 KB pdf\)](#)

[West Lothian Council \(21 KB pdf\)](#)

[Electronic Collars Manufacturers Association™ \(ECMA\) \(262 KB pdf\)](#)

[Moray Local Outdoor Access Forum \(10 KB pdf\)](#)

[J A J Johnson \(29 KB pdf\)](#)

[Blue Cross \(169 KB pdf\)](#)

[Paul Muir \(73 KB pdf\)](#)

[Police Scotland \(132 KB pdf\)](#)

[British Horse Society Scotland \(140 KB pdf\)](#)

[Aberdeenshire Council \(129 KB pdf\)](#)

[Sarah Cheape and Mike Radford, School Of Law, University of Aberdeen \(167 KB pdf\)](#)

[Eilidh Somerville\(8.39 KB pdf\)](#)

[Dunpender Community Council \(8.42 KB pdf\)](#)

[John Duncan \(74 KB pdf\)](#)

[Royal College of Veterinary Surgeons \(69 KB pdf\)](#)

[Rita Nemes \(113 KB pdf\)](#)

[Dogs Trust \(197 KB pdf\)](#)

[Onekind \(169 KB pdf\)](#)

[The British Association for Shooting and Conservation \(124 KB pdf\)](#)

[Paths for All \(128 KB pdf\)](#)

[Scottish Land & Estates \(182 KB pdf\)](#)

[NatureScot \(171 KB pdf\)](#)

[Rhona Matthews \(100 KB pdf\)](#)

[Battersea Dogs & Cats Home \(141 KB pdf\)](#)

[The National Dog Warden Association Scotland \(119 KB pdf\)](#)

[Law Society of Scotland \(158 KB pdf\)](#)

[Association of Responsible Dog Owners \(ARDO\) \(534 KB pdf\)](#)

[The Kennel Club and Scottish Kennel Club \(138 KB pdf\)](#)

[UK Centre for Animal Law Scottish Steering Committee \(125 KB pdf\)](#)

[Loch Lomond & The Trossachs National Park \(203 KB pdf\)](#)

[Crown Office and Procurator Fiscal Service \(COPFS\) \(129 KB pdf\)](#)

[NSA Scotland on behalf of Dawn Green, Dog Trainer and Sheep Farmer \(81.6 KB pdf\)](#)

[Moredun Research Institute \(83.7 KB pdf\)](#)

[NSA Scotland on behalf of James Cochrane \(105 KB pdf\)](#)

[Perth and Kinross Council \(104 KB pdf\)](#)

[BVA Scottish Branch, BCVA, BEVA, BSAVA, BVPA, GVS, PVS, SVS and VDS \(192 KB pdf\)](#)

[NSA Scotland on behalf of Ian Warren \(137 KB pdf\)](#)

Annex C - Correspondence

- [Letter from the Minister for Rural Affairs and the Natural Environment on the Scottish Government's initial views on the Dogs \(Protection of Livestock\) \(Amendment\) \(Scotland\) Bill, 29 July 2020 \(321 KB pdf\)](#)
- [Letter from the Non-Government Bills Unit, which is supporting Emma Harper MSP on this Bill, regarding Equality Impact Assessment on the Dogs \(Protection of Livestock\) \(Amendment\) Bill, 17 August 2020 \(133 KB pdf\)](#)
- [Letter from the Minister for Rural Affairs and the Natural Environment regarding, the evidence session on the Dogs \(Protection of Livestock\) \(Amendment\) \(Scotland\) Bill on 23 September 2020, also provides further information about the option of using the Scottish Rural University College \(SRUC\) vets in a statutory role under the Bill, 19 October 2020 \(153 KB pdf\)](#)
- [Letter from Emma Harper, the member in charge of the Bill, as follow up to her evidence session with the Committee on 28 October 2020, 5 November 2020 \(186 KB pdf\)](#)

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