

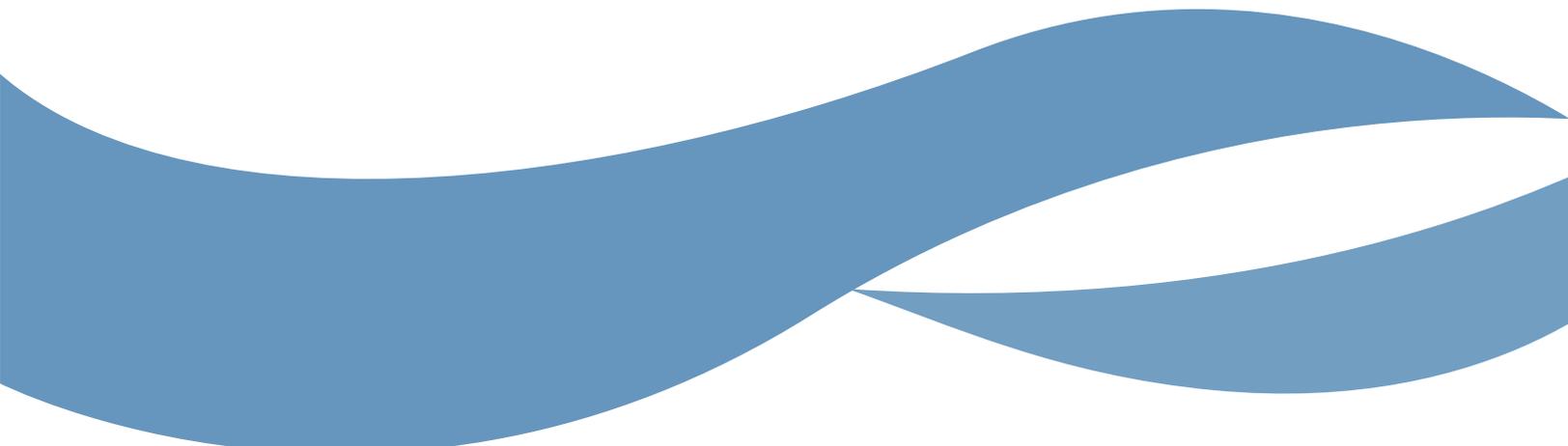
## Dogs (Protection of Livestock) (Amendment) (Scotland) Bill – Stage 1

Written Evidence to the Rural Economy and Connectivity Committee

28/08/2020

### **About Scottish Land & Estates**

At Scottish Land & Estates (SLE) our work helps to ensure that rural Scotland thrives. We are a membership organisation for landowners, rural businesses, and rural professionals. We promote the wide range of benefits land-based businesses provide: tourist attractions, leisure facilities and landscapes enjoyed by the public, as well as housing, employment, tourism & enterprise and farming opportunities. We represent the interests of our members and wider rural Scotland to the UK and Scottish Governments to help ensure that policy and legislation reflects the unique requirements of rural Scotland and its communities.



## Introduction

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Scottish Land & Estates (SLE) is a membership organisation which uniquely represents the interests of both land managers and land-based businesses in rural Scotland. In recent years, we have been involved in multi-agency partnerships and campaigns to highlight problematic incidents, including livestock worrying, that occur across rural Scotland and we are a key partner in the Scottish Partnership Against Rural Crime and a member of the National Access Forum (NAF). Along with National Farmers Union of Scotland, Scottish Natural Heritage, British Horse Society and other NAF stakeholders we have been involved in a NAF subgroup to develop consistent educational messages on responsible dog ownership to raise further awareness of the issues of livestock worrying and attack, and provide advice to land managers in managing access responsibly for dog walkers.

The effects of livestock worrying on farmers cannot be underestimated – the worrying of sheep and other livestock by dogs not only has an obvious financial and emotional impact on farmers when their animals are killed or injured, but also has an effect on the animals themselves, their productivity and welfare.

We fully support the Bill’s objective 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. It is right for the Bill to be ambitious in proposing measures to better protect livestock and we support the proposed increases in penalties and the provision of additional powers for the investigation and enforcement of livestock worrying offences.

Alongside the proposed legislative changes, it is important that a programme of education remains in place to inform dog owners of the risks their uncontrolled dog poses to livestock and to understand that their much-loved pet is capable of attacking and killing livestock. Thought needs to be given to getting messages over to those who do not engage in the obvious ways and could include involvement by a wide range of stakeholders including welfare and veterinary organisations and even pet food retailers. Lastly further thought needs to be given to improving the public messaging on unaccompanied dogs to increase awareness of risks posed by escaping and roaming dogs in or near a farming area.

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

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Despite the efforts of Local Authorities, National Park Authorities, NGOs and Police Scotland to warn the public of the dangers that can occur from uncontrolled dogs in the countryside, irresponsible dog ownership remains an ongoing problem for many of our members.

The reality of livestock worrying can have devastating effects for both the farmer and dog owner and can cause extreme financial and emotional stress to all concerned.

Recent figures from Police Scotland show that from the period 01 April 2019 – 31 March 2020, 265 incidents of livestock worrying were reported. There is evidence to suggest that there is significant under-reporting<sup>1</sup> therefore the actual number of incidents is likely to be higher. NFU Mutual reported

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<sup>1</sup> <https://www.thescottishfarmer.co.uk/news/16171259.half-sheep-worrying-cases-unreported/>

that the cost of livestock worrying to UK agriculture in 2019 was £1.2 million. There are also other financial implications which need to be considered; these include the farmer losing breeding stock that in some cases will have taken years to develop, and the cost of veterinary services and/or disposal of livestock carcasses where a dog attack has caused injury or death to an animal.

A Scottish Government study published in December 2019<sup>2</sup> found that farmers typically spend around 5 and a half hours dealing with a livestock attack incident, including time spent investigating and treating injured sheep. Excluding time costs, the average financial cost of each dog attack to farmers was estimated at £697.33. The biggest costs were the value of the lost sheep and the value of aborted lambs.

The emotional stress of livestock worrying should not be underestimated. Farmers, dog owners and Police all face disturbing scenes of mutilated livestock, some of which suffer serious injury that requires the animal to be destroyed or may even cause them to miscarry. Meanwhile the dog could be destroyed if in the act of worrying which in almost all cases will be the loss of a loved family pet.

The rural nature of livestock worrying incidents mean they can be time consuming to investigate and deal with, including the collection of evidence through photographs and statements, and contacting police and insurance companies. It is important that this is recognised and appropriate support and funding mechanisms are put in place to help tackle this.

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

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We are supportive of proposals to strengthen existing legislation through this Bill as current penalties do not reflect the seriousness of the offence.

Under section 1(2) (c) of the 1953 Act, the offence refers to worrying livestock as meaning:

*“being at large (that is to say not on a lead or otherwise under close control) in a field or enclosure in which there are sheep.”* The Scottish Outdoor Access Code (the Code) refers to *“a dog attacking or chasing livestock or being loose in a field where there are sheep”*. The Code should be consistent with the legislation for the purpose of clarity and transparency. The Code provides detailed guidance on responsible access with dogs and we believe further awareness raising of the Code would be helpful in educating dog owners about their responsibilities.

In order to evaluate the extent to which the legislation needs strengthened, the volume of cases which are reported to Police Scotland, the Crown Office and Procurator Fiscal Service (COPFS), and the volume of cases prosecuted by COPFS and the volume of convictions which have taken place should assist in ascertaining the position. These may highlight any specific problems with the use of the current powers.

The Bill amends the Dogs (Protection of Livestock) Act 1953 and The Animals (Scotland) Act 1987 to address concerns about penalties, enforcement powers and the way this legislation operates in practice.

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<sup>2</sup> [“Sheep Attacks and Harassment Research, 2019”](#) The Scottish Government.

The Control of Dogs (Scotland) Act legislates to increase the onus on dog-owners however current measures do not provide enough deterrent for owners to ensure their dogs are under control around livestock. Under the Dogs (Protection of Livestock) Act 1953 the maximum penalty for a person charged with livestock worrying is £1,000. It is important that full and proportionate compensation for those impacted by livestock worrying is available – under the 1953 Act this is often not the case, with compensation costs often exceeding £1,000 and the landowner being left to bear the financial loss. We believe it is time penalties under the 1953 Act are updated.

Increased penalties for livestock worrying and livestock attack incidents will act as a strong deterrent and the provisions within the Bill to give additional investigative powers to the police will enable more adequate investigation of incidents. Sufficient resource and training should be made available to ensure any livestock worrying or attack incident that is reported is fully investigated.

Increasing the level of penalties does not stand alone. Sentencing in every case is a matter for the judge who requires complete information about the facts and circumstances of any offences so that they can sentence to reflect the seriousness of an offence. Alongside increased penalties, robust enforcement is paramount. A consistent approach to the formal recording of incidents needs to be developed and a clear process needs to be established – who incidents should be reported to and a clear approach to action set out. This will not only assist in increasing confidence in the system, it will also allow for improved monitoring of the effectiveness of enforcement and enable greater action to be taken, including preventative measures. The Control of Dogs (Scotland) Act 2010 allows for a national database of Dog Control Notices (DCNs) to be established. We feel this Bill should look to address the use of DCNs which has previously been an issue and should encourage the development of a national DCN database. This would allow for greater transparency and monitoring of DCNs and would be a particularly useful tool when dealing with repeat offenders and in assessing the effectiveness of DCNs.

An increase in powers does not assist in evidence finding. While strengthening the legislation is important, additional supportive measures should also be introduced to help reduce incidents of livestock worrying and attack.

We recognise that in dealing with livestock offences, preventative work, education and awareness are important factors, as well as a just and proportionate legal system backed by sanctions and with consistent and clear enforcement. It is essential that adequate support and funding mechanisms are put in place to support the agreed authorities in dealing with incidents and it would be helpful to have more detail on how the proposed measures in the Bill will be resourced, for example the additional police powers and associated training requirements.

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

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SLE is fully supportive of increased penalties for livestock worrying and attack offences. Current penalty levels do not act as enough of a deterrent and increasing the financial penalties sends a strong message that it is unacceptable for a dog owner to allow their dog to worry and/or attack livestock.

Penalties imposed should be equivalent to the financial loss caused, this will ensure that financial losses incurred by the farmer are redressed. It is important that fines levied on offenders are proportionate, consistent and reflect the seriousness of the incident. Provisions within the Bill to increase the maximum penalty for an offence from £1,000 to £5,000 are welcomed. However, we would argue that in some cases, the financial damage caused exceeds £5,000 and therefore consideration should be given to the provision of an unlimited fine for the most serious cases.

Depending on the situation custodial sentencing might be appropriate and we would fully support harsher consequences, including imprisonment, for repeat offenders, extremely severe cases and/or where a clear intent can be proven.

There may be worth in permitting the imposition of a community-based disposal as Community Payback Orders do have a large menu from which sheriffs or justices of the peace can select a disposal that would include unpaid work and could include a compensation requirement.

The threat of imprisonment and financial penalties alone will not prevent offenders and it is important penalty and enforcement measures are robust and support one another. As well as ensuring penalties are at a level which will form an effective deterrent, there needs to be increased enforcement and prosecution of incidents – a consistent approach on the investigation and sentencing of incidents would be a useful step forward.

While we recognise that in some situations, tougher sentencing may act as a deterrent, we also accept that in many instances owners of dogs involved in instances of livestock worrying/attacks are ignorant rather than knowingly irresponsible. It is important that preventative measures such as training and education sit alongside the proposed reactive measures as farmers and dog owners may have different views on what behaviour can pose a risk to livestock<sup>3</sup>.

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

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As per our response in question 3, we believe it is important that fines and penalties reflect the seriousness of the incident. In some situations, tougher sentencing may provide a deterrent however many of the incidents that occur do so due to a mis held belief by the owner that their dog is not capable of attacking livestock.

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

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<sup>3</sup> [“Sheep Attacks and Harassment Research, 2019”](#) The Scottish Government.”

we support the proposals to disqualify convicted persons from owning a dog and/or taking a dog onto land with livestock.

We would welcome further information on how this will be implemented, monitored, and policed. Any measure put in place to do so should be practical and not leave the livestock owner in a position of confronting disqualified persons.

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

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We fully support the provision to extend the definition of livestock to incorporate modern farming livestock types including camelids, enclosed game birds, buffalo, farmed deer and ostrich, as this brings the legislation up to date with current farming practices. We are also supportive of the types of livestock list being kept under revision.

Over the years, farmed deer and game birds have also been subject to livestock worrying. In most cases these animals are not considered 'livestock' in law, so 'worrying' isn't considered a specific crime. Even if animals are injured, pursuing prosecution or civil action is often difficult.

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

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We recognise the need for additional support for police to investigate and enforce livestock worrying offences. For a crime to be taken seriously it should be investigated fully by trained police officers. Appropriate training and resources should be made available to allow this to take place.

There are also concerns in terms of deliberate incidents which could involve potentially serious criminality, leading to safety issues if investigated by bodies other than the police. This could put individuals at risk and reduce the likelihood of arrest. The process of reporting the crime of livestock worrying or attack needs to be clear to victims of these incidents.

A consistent approach on the investigation, recording and sentencing of incidents is required. As per our answer to question 2, there needs to be a clear process on the formal recording of incidents and this needs to be fully understood by all parties. This needs to be similarly applicable across all 32 local authority areas.

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

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We fully support the proposal to increase police powers to collect evidence and believe this would be a positive step forward. Where a dog is suspected of carrying out a livestock attack, we support the

increased powers to seize a dog pending investigation. It is in a dog's nature to use learned behaviour and in the context of livestock worrying and attack, an incident is more likely to reoccur after it has happened before.

In addition, we think a legal obligation should be placed on any dog owner to report to police that their dog has attacked livestock. This would assist investigations and be beneficial to the animal's welfare as it could ensure faster veterinary treatment.

A power to obtain a dog's DNA, if the dog was suspected of, or had committed, an attack would be a welcome step as too would the development of a database for these samples.

We support these proposals however note that police need to be adequately resourced to carry out these expanded powers and sufficient sentencing options would need to be developed for failure to comply with these additional requirements. Any additional legal requirements, including the requirement for all dogs to be insured and microchipped are welcomed.

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

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The current legislative regime does not balance the rights of dog owners and the rights of livestock farmers. The Bill is a step forward in addressing this however current legislation does not provide for compensation payments to livestock owners affected by these incidents and this can lead to significant financial impacts.

The Land Reform Act (2003) and associated Scottish Outdoor Access Code allows dog walkers to enjoy the countryside at their leisure and these rights as dog owners are not infringed upon within existing legislation nor the Bill as introduced.

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

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As stated in our response to question 7, placing a legal obligation on any dog owners to report that their dog has attacked livestock to the Police would assist investigations and be beneficial to the animal's welfare as it could ensure faster veterinary treatment. The Road Traffic Act 1988 legislates that if a car is involved in a collision with certain animal species, such as cattle and sheep, the driver by law must report the incident to police. A similar legal obligation should be included in this Bill and would benefit animal welfare where an incident of livestock worrying has occurred.

The Bill should also look to address the use of Dog Control Notices and should encourage the development of a national DCN database. This would allow for greater transparency and monitoring of DCNs and would be a particularly useful tool when dealing with repeat offenders and offenders crossing from one Local Authority to another.

As noted in our response to question 8, current legislation does not provide for compensation payments to livestock owners affected by livestock worrying. Whilst we understand it is not possible to incorporate

compensation payments in a Members Bill, we believe the Scottish Government should bring forward measures to ensure that any future changes also include provision for full compensation based on actual losses suffered.

**For more detailed information**

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