

This document relates to the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (SP Bill 72) as introduced in the Scottish Parliament on 14 May 2020

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

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## Policy Memorandum

### Introduction

1. As required under Rule 9.3.3A of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill introduced in the Scottish Parliament on 14 May 2020. It has been prepared by the Parliament's Non-Government Bills Unit on behalf of Emma Harper MSP, the member who introduced the Bill.

2. The following other accompanying documents are published separately:

- Statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 72–LC);
- a Financial Memorandum (SP Bill 72–FM);
- Explanatory Notes (SP Bill 72–EN).

### Policy objectives of the Bill

3. The purpose of the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (“the Bill”) 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. Reducing the number of such incidents will reduce the cost and stress they cause to farmers, while also improving animal welfare. To this end, the Bill increases penalties and provides additional powers for the investigation and enforcement of the existing offence of livestock worrying.

4. The Bill also brings up to date the definition of livestock in terms of species which are currently farmed in Scotland, and renames the offence

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as that of “attacking or worrying” livestock, to emphasise how serious it can be.

## Background

5. There are around 51,200 farms across Scotland, of which 24,000 have livestock,<sup>1</sup> and, of these, approximately 12,700 breed sheep,<sup>2</sup> 8,800 breed cattle<sup>3</sup> and 900 have dairy cows.<sup>4</sup> There are 204 holdings that keep alpacas, 91 that keep llama and 120 holdings that have farmed deer.<sup>5</sup> From contact with livestock owners, it has become clear to the member that many people within Scotland’s agricultural sector have either experienced dog attacks on their livestock, or know of someone who has. The Bill should assist in increasing the public’s awareness of the seriousness of livestock worrying and might therefore contribute to a reduction of the number of incidences.

6. While identifying the true scale of the problem of livestock worrying remains challenging, the research available suggests it is a significant one for many farmers and livestock owners. 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.

7. The results of research commissioned by the Scottish Government and published in December 2019<sup>6</sup> states that: “the existing evidence does not provide an adequate basis for assessing the true scale of the issues, or

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<sup>1</sup><https://www.gov.scot/publications/agriculture-facts-figures-2019/pages/3/>  
This figure is the total number of sheep, cattle, dairy, pigs, poultry and mixed holdings.

<sup>2</sup><https://www.gov.scot/publications/agriculture-facts-figures-2019/pages/10/>

<sup>3</sup><https://www.gov.scot/publications/agriculture-facts-figures-2019/pages/9/>

<sup>4</sup><https://www.gov.scot/publications/agriculture-facts-figures-2019/pages/8/>

<sup>5</sup> Information provided by the Scottish Government’s Agricultural Census team to NGBU

<sup>6</sup> Agriculture, Environment and Marine: Research Findings No. 6/2019: Attacks on Sheep by Dogs and Wildlife

<https://www.gov.scot/publications/sheep-attacks-harassment-research/>

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for showing the potential contributing factors or impacts that can effectively inform the development of appropriate responses”.

## **Findings of recorded incidents**

8. There is some evidence available from a limited number of sources.

9. The results of research commissioned by the Scottish Government and published in December 2019<sup>7</sup> found that 14% of sheep farmers said that dogs had attacked or chased their sheep in the previous 12 months. These farmers reported an average of 3.5 separate incidents over that period – making a total of 6,223 incidents per year.<sup>8</sup> On average, each incident resulted in 1.58 sheep being killed, 0.51 having to be destroyed, and a further 1.72 being injured.<sup>9</sup>

10. This implies that, on average, each sheep farmer who had experienced worrying lost 5.53 sheep killed, 1.785 sheep destroyed and 6.02 sheep injured.<sup>10</sup> That makes a total of 9,832 sheep killed, 3,174 sheep destroyed and 10,704 sheep injured in Scotland each year.<sup>11</sup>

## **Under-reporting of incidents of livestock worrying**

11. The Scottish Government research found that only around a third of dog attacks were currently reported to the police. The qualitative research revealed very mixed experiences of the police and courts’ response to attacks and, consequently, about whether farmers felt that it was worth reporting an incident. There was a perception that the level of understanding of the problem, and the extent to which it was prioritised, varied by area and by individual officer. This suggested a need to encourage farmers to report incidents, to raise awareness of the issue

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<sup>7</sup> Agriculture, Environment and Marine: Research Findings No. 6/2019: Attacks on Sheep by Dogs and Wildlife

<https://www.gov.scot/publications/sheep-attacks-harassment-research/>

<sup>8</sup>  $(12,700 \times 0.14 = 1,778) \times 3.5 = 6,223$ .

<sup>9</sup> Page 2, Agriculture, Environment and Marine: Research Findings No. 6/2019: Attacks on Sheep by Dogs and Wildlife -

<https://www.gov.scot/publications/sheep-attacks-harassment-research/>

<sup>10</sup>  $3.5 \times 1.58 = 5.53$ ;  $3.5 \times 0.51 = 1.785$ ;  $3.5 \times 1.72 = 6.02$ .

<sup>11</sup>  $(12,700 \times 0.14 = 1,778) \times 5.53 = 9,832$ ;  $1,778 \times 1.785 = 3,174$ ;  $1,778 \times 6.02 = 10,704$ .

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among police officers and to improve the consistency of the police response.

## **Cost of livestock worrying**

12. The Scottish Government research indicated that the average cost to farmers was £697 per dog attack amounting to around £4.4m each year.<sup>12</sup> In addition, farmers spent an average of five and a half hours dealing with each incident (for example, dealing with injured sheep and investigating the attack).

13. The study also demonstrated the emotional impact of some attacks on farmers – 80% of farmers said the most recent dog attack had upset them a great deal or quite a lot.

## **Current legislation etc.**

### **Dogs (Protection of Livestock) Act 1953 (“the 1953 Act”)**

14. The principal current legislation on livestock worrying is found in the Dogs (Protection of Livestock) Act 1953<sup>13</sup> which states at section 1 that:

“... if a dog worries livestock on any agricultural land, the owner of the dog, and, if it is in the charge of a person other than its owner, that person also, shall be guilty of an offence under this Act.”

15. The Act also provides that:

- No offence is committed if, at the time of the worrying/attack, the livestock were trespassing, the dog belonged to the owner of the land on which the livestock were trespassing, and the person in charge of the dog did not cause the dog to attack the livestock.
- The maximum penalty for an offence under section 1 is level 3 on the standard scale (currently £1,000).
- Police can seize a dog if it is found on the agricultural land on which the livestock worrying took place, in order to ascertain who the owner is.

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<sup>12</sup> 6,223 x £697 = £4,337,431.

<sup>13</sup> <http://www.legislation.gov.uk/ukpga/Eliz2/1-2/28>

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- “Worrying” is defined as:
  - “(a) attacking livestock, or
  - (b) chasing livestock in such a way as may reasonably be expected to cause injury or suffering to the livestock or, in the case of females, abortion, or loss of or diminution in their produce, or
  - (c) 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”.
- Police dogs, guide dogs, trained sheep dogs, working gun dogs and dogs lawfully used to hunt are exempted from paragraph (c) of the definition (i.e. such dogs are permitted to be at large in a field of sheep without this constituting an offence).

### **The Dogs Act 1906<sup>14</sup> (“the 1906 Act”)**

16. Section 3 of the Dogs Act 1906 enables the police to seize any stray dog found on a road or in a public place, and keep it until it is claimed by its owner. If it is claimed, the owner may be charged for the cost of keeping the dog; and if it is not claimed, the dog may lawfully be sold or destroyed. Section 2(3) of the 1953 Act applies the provisions about keeping, selling and destroying dogs to situations where a dog is seized in connection with a livestock worrying incident.

### **Land Reform (Scotland) Act 2003<sup>15</sup> (“the 2003 Act”)**

17. Section 1 of the Land Reform (Scotland) Act 2003 gives everyone a right of responsible access to most land, including fields where there are horses, cattle and other farm animals.

18. Section 9 outlines conduct excluded from access rights and includes “being on or crossing land while responsible for a dog or other animal which is not under proper control”. Section 10 provides a statutory duty for Scottish Natural Heritage (SNH) to issue a Scottish Outdoor Access Code<sup>16</sup> setting out guidance in relation to access rights. The Code emphasises the

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<sup>14</sup> <http://www.legislation.gov.uk/ukpga/Edw7/6/32>

<sup>15</sup> <http://www.legislation.gov.uk/asp/2003/2/contents>

<sup>16</sup> <http://www.legislation.gov.uk/asp/2003/2/section/10>. The Code is available here: <https://www.outdooraccess-scotland.scot/scottish-outdoor-access-code>

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need for people crossing agricultural land with a dog to keep it on a short lead or otherwise under control in the vicinity of livestock, and avoiding fields with calves or lambs.

### **Control of Dogs (Scotland) Act 2010<sup>17</sup> (“the 2010 Act”)**

19. The Control of Dogs (Scotland) Act 2010 enables local authorities to impose a Dog Control Notice on the owner, or the person in charge, of a dog where the person has failed to keep the dog under control in a public place. A person who breaches a Dog Control Notice commits an offence and may be fined (at up to level 3 on the standard scale – currently £1,000) and may also be disqualified from owning or keeping a dog. The Act also allows local authorities to seek an order for the destruction of a dangerous or unresponsive dog, and to allow the court that issues the order to disqualify the dog’s owner from owning or keeping a dog.

### **Animals (Scotland) Act 1987<sup>18</sup> (“the 1987 Act”)**

20. Under the 1987 Act, anyone who is the keeper of a dog which causes damage by killing or injuring livestock will be liable for the damage caused. The keeper of a dog for the purposes of the Act is the owner, the person in possession of the dog, or the head of a household where the owner is a member of the household under the age of 16.

21. Under section 3 of the 1987 Act, anyone facing civil proceedings for killing or injuring an animal has a defence if they can show they were acting to protect the livestock from attack by the animal, and that they were the keeper of the livestock, the owner of the land where the livestock was kept, or someone acting on that owner’s behalf. Where the animal was attacking, or was about to attack, livestock, the defence applies only if there are no other practical means of ending or preventing the attack. Where the animal had attacked livestock, the defence applies only if it is still in the vicinity, it is not under the control of anyone present and there is no other practicable means of preventing a further attack. In either case, the killing or injuring of the animal must be reported to the police within 48 hours.

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<sup>17</sup> <http://www.legislation.gov.uk/asp/2010/9/contents>

<sup>18</sup> <https://www.legislation.gov.uk/ukpga/1987/9/contents>

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### **Civic Government (Scotland) Act 1982<sup>19</sup> (“the 1982 Act”)**

22. Section 129 of the 1982 Act provides a very similar defence for people who kill or injure a dog which is worrying livestock, again so long as they are the owner (or acting on the authority of the owner) of the livestock or the land; there were no other reasonable means of ending or preventing the worrying; and they report the killing or injuring to the police within 48 hours. Where the dog is no longer worrying livestock, the defence is available only if the dog is still in the vicinity, is not under anyone’s control and there is no practicable means of establishing who owns it. Consequently, if a dog is shot for having worried livestock and its owner is in the vicinity, the person who carried out the shooting would not necessarily be able to rely on this defence.

### **Joint Protocol on the Control of Dogs**

23. Also of relevance is the Joint Protocol on the Control of Dogs detailing the responsibilities of different bodies in dealing with irresponsible dog ownership.<sup>20</sup> The protocol is intended to aid local authorities and Police Scotland with the decision making process when considering how best to deal with complaints relating to irresponsible dog ownership within communities and was developed by local authorities, Police Scotland, the National Dog Warden Association (Scotland), Society of Chief Officers of Environmental Health in Scotland and the Crown Office and Procurator Fiscal Service.

### **Detail of the Bill**

24. There are five main strands to the Bill, all of which are implemented by means of amendments to the 1953 Act.

### **Strand 1 – Increasing the penalties for the offence**

25. The first strand is about increasing the penalties available for the existing offence of livestock worrying (under section 1 of the 1953 Act). There are a number of elements to this.

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<sup>19</sup> <https://www.legislation.gov.uk/ukpga/1982/45/section/129>

<sup>20</sup> [https://www.parliament.scot/S5\\_Public\\_Audit/General%20Documents/Control\\_of\\_Dogs\\_-\\_joint\\_protocol\\_document\\_as\\_of\\_6\\_May\\_2016\\_Web.pdf](https://www.parliament.scot/S5_Public_Audit/General%20Documents/Control_of_Dogs_-_joint_protocol_document_as_of_6_May_2016_Web.pdf)

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## **Increased maximum penalty**

26. Firstly, the maximum penalty (on summary conviction) is increased to imprisonment for up to six months, a fine at level 5 on the standard scale (currently set at £5,000), or both. This is a significant increase over the current maximum (a fine at level 3, currently £1,000).

## **Disqualification and prevention orders**

27. Secondly, the Bill allows the court that convicts the person also to make an order disqualifying them, for such period as the court sees fit, from owning or keeping a dog, or preventing them from taking dogs onto agricultural land on which livestock is present. The latter type of order could be useful in a case where the person who was in charge of the dog when it attacked or worried livestock was, for example, a professional dog-walker – for whom disqualification from owning or keeping dogs might be ineffective.

28. The Bill sets no upper limit on the duration of the order that the court may impose – to allow, in the most serious cases, a lifetime ban on owning a dog or taking it onto land with livestock present. However, the Bill allows the person who is the subject of the order to apply to the court that made the order, at least one year after the order was made, to have the order discharged – and, if that is refused, to re-apply at least a year later (and so on, indefinitely).

29. If the court refuses such an application, the person may appeal the refusal to the Sheriff Appeal Court.

30. Where a person breaches a disqualification order, that person is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **Strand 2 – Increasing police powers**

### **Power to seize a dog from land, for the purpose of identifying the dog's owner**

31. The current legislation on livestock worrying makes limited provision for seizing dogs. The 1953 Act (section 2(2)) provides that a dog can be seized from agricultural land and then detained if a police officer has reasonable cause to believe that the dog has been worrying livestock on

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that land and no one present identifies themselves as responsible for the dog, but only for the purpose of establishing who its owner is. A dog so detained is made subject to the same requirements as apply to stray dogs under the Dogs Act 1906. This means the dog must be properly looked after and efforts made to identify its owner; if the owner has not reclaimed the dog (and paid for the cost of detaining it) within 7 days, the dog may be sold or destroyed.

32. The Bill expands this existing power (to seize a dog that is suspected of worrying livestock for the purpose of identifying the dog's owner) so it allows a dog to be seized from any land (other than premises) even if that land (the land on which the dog is found) is not the agricultural land on which the worrying took place. The Bill also allows the power to be exercised by an inspector as well as by a police officer (see further below). Finally, the Bill adds a presumption that, where the owner hasn't reclaimed the dog after 7 days, the police (or inspecting body) should sell the dog rather than destroy it (unless the dog is considered dangerous or it is impractical to sell it).

### **Power to seize dog from land, for the purpose of gathering evidence**

33. The Bill then adds a new seizure power (section 2(2A)) that allows a police officer (or inspector) to seize and detain a dog suspected of livestock worrying from any land (other than premises), this time for the purposes of identifying and securing evidence of the offence. Like the existing power, this new power is made subject to the requirements of the Dogs Act 1906 (with appropriate modifications).

### **Power to enter premises to seize dog, with or without a warrant**

34. Section 2A of the 1953 Act currently allows the police to obtain a warrant to enter and search premises if there are reasonable grounds for believing that a dog on the premises was involved in an offence under section 1 of the Act. However, this is only a warrant to enter, search and identify the dog; there is no power to seize the dog from premises under such a warrant.

35. The Bill extends section 2A in various ways. First, as with the seizure powers under section 2(2) and (2A), it extends the power to apply for a

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warrant to inspectors as well as the police. Second, it extends the power to issue a warrant to a sheriff as well as a justice of the peace. Third, it allows a warrant to authorise the police officer (or inspector) not just to identify the dog but also to establish who the dog's owner is or (if that cannot be established) to seize and detain the dog – either until the owner has claimed it (and paid for its detention) or for the purpose of gathering evidence. Fourth, it allows the police officer (or inspector) to use reasonable force, including forcing open locked doors. Finally, it allows the police officer (or inspector) to enter non-domestic premises (such as farm buildings) without a warrant in circumstances where seeking a warrant first would frustrate the purpose of searching the premises. (A warrant would always be required to enter domestic premises – such as a dwelling-house or caravan – but the warrant may be granted without the occupier having been given advance notice if giving that notice would frustrate the purpose of obtaining the warrant.)

### **Power to take dog to vet**

36. Where a dog is seized for the purpose of obtaining evidence – either from land (under section 2(2A) of the 1953 Act) or from premises (under new section 2A) – it can also be taken (under new section 2B) to a vet to allow the vet to examine it and take samples. This could, for example, allow the dog's saliva, or wool found in the dog's mouth, to be matched to samples taken from a sheep at the scene. The police officer (or inspector) can exercise this power whether or not accompanied by the dog's owner or the person in charge of the dog.

### **Strand 3 – Powers to authorise inspecting bodies and appoint inspectors**

37. The consultation document highlighted, as one of the factors limiting the success of previous attempts to reduce livestock worrying, that the police do not have enough resource to investigate and enforce the offence, and local authority officers do not have the relevant powers. As a possible mechanism to assist with an increase in resources, the Bill adds a new section 2C to the 1953 Act enabling the Scottish Ministers to authorise, by regulations, other bodies as “inspecting bodies”, thus allowing those bodies to appoint suitably qualified individuals from within their staff as “inspectors”.

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38. Such inspectors would have the same powers as the police to seize dogs from land; to enter premises to identify dogs, establish who owns them and detain them for evidence-gathering purposes; and to take seized dogs to a vet. Inspecting bodies and inspectors would not have any liability for, for example, any damage caused by inspectors while gaining entry to premises to seize a dog, where they were acting on reasonable grounds and in good faith.

#### **Strand 4 – Extending the definition of ‘livestock’**

39. The Bill extends the definition of “livestock” in the 1953 Act to reflect a more up-to-date list of the species which are now farmed in Scotland. The Bill also creates a power for Scottish Ministers, by regulations, to further amend that definition, for example by adding new species which are first farmed in Scotland after the Bill comes into force.

40. Therefore, in addition to cattle, sheep, goats, swine, horses and poultry, the expanded definition includes camelids (e.g. llamas, alpacas), ostriches, farmed deer, buffalo, and enclosed game birds (e.g. young pheasants, before they are released into open countryside). The opportunity has also been taken to replace a reference to “asses” with “donkeys” (the latter being, now, the more usual term for these animals).

41. The Bill also imports the updated definition of “livestock” into section 129 of the Civic Government (Scotland) Act 1982, which provides livestock-owners with a defence to any legal action they may face for killing or injuring a dog if, at the time, the dog was worrying or about to worry livestock. This is to ensure that this provision can provide protection to farmers in the same range of circumstances as the 1953 Act can protect them.

#### **Strand 5 – re-naming the offence by reference to ‘attacking’ as well as ‘worrying’ livestock**

42. The member is of the view that the term “livestock worrying” does not adequately reflect the seriousness of the offence, which sometimes involves sheep or other livestock being savagely attacked, and either killed or severely wounded. Even when there is no direct physical injury, being chased can leave animals exhausted or traumatised, and can cause pregnant ewes to abort. The member believes that, for some people, the

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word “worrying” means nothing more than livestock being alarmed when being chased.

43. She is also aware, however, that replacing the term “worrying” in legislation might be problematic, as it is a widely used and well-understood term, and that replacing it with something applicable only to the more extreme cases (e.g. where livestock are actually killed or injured) would have the perverse effect of narrowing the application of the offence – thus running counter to the policy aim.

44. To square the circle, the Bill re-titles the offence in terms of either attacking or worrying livestock, and makes a corresponding adjustment to the definition of “worrying” so that “attacking” is no longer included. The effect is to leave the scope of the offence (under section 1 of the 1953 Act) unchanged: everything that currently constitutes that offence will still do so, but the offence can now be described in a way that gives greater prominence to the most serious instances (in which livestock is attacked). “Worrying” will now be restricted to the less serious instances (where livestock is chased, or where a dog is at large in a field of sheep).

45. The re-naming of the section 1 offence in terms of a dog attacking or worrying livestock creates a need to make equivalent adjustments in other legislation. This includes section 129 of the Civic Government (Scotland) Act 1982 (mentioned in paragraph 41). The amendments made to section 129 by section 8 of the Bill include amending references to a dog worrying livestock so they become references to the dog attacking or worrying livestock. Non-statutory material such as the SNH Scottish Outdoor Access Code may also have to be revised.

## **Exempt dogs**

46. In addition to these five main strands, the Bill makes a couple of minor adjustments to section 1 of the 1953 Act in respect of the dogs entitled to be at large in a field of sheep.

47. Under section 1(2A)(b), specific types of dog are exempt from the general prohibition on permitting a dog to be at large in a field of sheep. These are, currently, “a police dog, a guide dog, a working gun dog or a dog lawfully used to hunt”. The Bill amends this provision to refer to (and so also exempt) other assistance dogs (including dogs trained to assist the deaf or people with other disabilities such as epilepsy); it also specifies that

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all the dogs listed are exempt only when they are performing the relevant role. As a result, a police dog (for example) would be exempt when being used by a police officer on duty but not when being exercised at other times, and a guide dog would be exempt when used by its blind owner, but not when being exercised by someone else.

## Alternative approaches

48. One other legislative route which the member considered was repealing the 1953 Act and putting in place a whole new alternative Act. While this would have had the advantage of allowing modernisation of the whole regime, including the terminology, the significant disadvantage would have been the additional time required for a larger drafting exercise and more issues on which to consult and make detailed policy decisions.

49. Alternative provisions were also considered to the provisions on inspecting bodies and inspectors, such as naming specific bodies in the Bill (for example, the Scottish SPCA or all local authorities), or allowing Scottish Ministers to appoint individuals as inspectors directly. The view was taken that allowing Scottish Ministers to decide which bodies to appoint would create additional flexibility, including by allowing the list of inspecting bodies to be added to or changed in future. The view was also taken that these bodies are better placed than Ministers to decide which of their staff are suitably qualified to exercise the powers of inspectors, and that the appointment of individuals as inspectors is more appropriately done administratively (rather than via regulations).

50. The member considered whether there were approaches other than legislation which might meet her policy objectives but concluded that, while other measures might complement the impact of legislation, they were not adequately sufficient on their own to achieve the aims of the proposal, nor would they substitute for the need to make outdated legislation fit for purpose.

51. Complementary measures considered included:

- A national awareness raising campaign on the issue led by the Scottish Government and in partnership with farmers' organisations, and other organisations such as the Scottish SPCA, the Dog's Trust and Scottish Natural Heritage, for

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example, could potentially have an impact on the prevalence of livestock worrying.

- In addition to the statistics which are collected for offences, improved types of data collected when an incident is reported to the police – for example, the circumstances in which worrying/attack occurs, whether the owner was with the dog, or details of the types of access to the field where the worrying/attack occurred.

## **Scottish Government reviews of dog control**

52. The member was also aware of Scottish Government action following on from the Scottish Parliament’s Public Audit and Post-Legislative Scrutiny Committee report<sup>21</sup> on the Control of Dogs (Scotland) Act 2010.

53. The Committee concluded that “there is still an unacceptably high prevalence of dog attacks in Scotland” and that the 2010 Act has been ineffective. According to the report, “some local authorities and police officers are not aware of or understand their respective responsibilities under the relevant legislation, nor do they co-ordinate their actions in respect of out of control dogs.” The Committee noted that Dog Control Notices are not being consistently used where it would be appropriate to do so, that “an insufficient number of dog wardens has negatively impacted on local authorities’ ability to implement the 2010 Act”, and that “current dog control law is not fit for purpose”. Accordingly, the Committee recommended “that the Scottish Government undertakes a comprehensive review of all dog control legislation without delay, with a view to introducing modernised, fit for purpose, consolidated dog control legislation.”

54. A debate on the Committee’s report was held on 1 October 2019, when the Parliament noted the conclusions and recommendations contained in the report. The Scottish Government subsequently indicated that it would undertake two reviews of dog control law. The initial consultation (from 27 September 2019 to 15 January 2020) was focused on improving the operational effectiveness of the 2010 Act, in order to aid enforcement agencies. The second review would take place in 2020 and would be a review of wider dog control law, which would look at how the

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<sup>21</sup> <https://www.legislation.gov.uk/ukpga/1991/65/contents>

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Dangerous Dogs Act 1991, and other associated dog control legislation, operates.<sup>22</sup>

55. While the member welcomes the Scottish Government's measures, she is aware that any findings and action from the reviews is likely to take a considerable time to implement, and that action in relation to livestock attacks is required as soon as possible, hence the need for her Bill being taken forward.

## Consultation

56. The consultation period for the draft proposal ("for a Bill to increase penalties and provide additional powers to investigate and enforce the offence of livestock worrying") ran from 20 February to 15 May 2019. Six hundred and nineteen responses were received – 578 from individuals and 41 from organisations, including public sector bodies (such as councils), private sector organisations (such as private land/livestock owners and specific breed businesses), representative organisations and those from the third sector, such as animal charities.

57. A significant majority of respondents (95%) were supportive of the proposal for the increased penalties and additional powers outlined in the consultation and, overall, all questions received more positive than negative responses.

58. Many respondents had personal experience of owning livestock which had been attacked, or having witnessed such an incident, and related the resulting financial and traumatic impacts of the incident, as well as the welfare implications for the animals attacked.

59. The importance of dogs being kept under control around livestock was recognised as essential and various ways of promoting this objective were suggested, including the need for dog owners to be made aware of this through, for example, education and publicity. Training for dogs was a key feature, and a number of respondents felt that electronic training devices were a viable means of controlling dogs' behaviour around livestock.

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<sup>22</sup> <https://www.legislation.gov.uk/ukpga/1991/65/contents>

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60. As well as action by dog owners, there was also a view that livestock owners could take measures to improve the situation, such as signage or better quality of enclosure fencing.

61. There was a predominant view that existing legislation was inadequate.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

### **Equal opportunities**

62. An Equality Impact Assessment (EQIA) has been carried out and did not demonstrate any particular positive or negative impacts in relation to protected characteristics.

63. The increase in maximum penalties has relevance to all protected characteristics as the penalties will apply equally across all protected groups.

64. People with disabilities may rely on assistance dogs. Under the 1953 Act, the offence of allowing a dog to be “at large” in a field or enclosure in which there are sheep (s.1(2)(c)) does not apply if the dog is a “guide dog” but this is likely to be interpreted only to include guide dogs for the blind and to exclude other assistance dogs such as those trained to assist the deaf or people with epilepsy. The Bill adds reference to such other assistance dogs, thus protecting their owners from prosecution for allowing them to be at large in a field of sheep.

65. The Bill also allows a person to be disqualified from owning a dog, or prevented from taking a dog onto agricultural land on which livestock is present, potentially for life. This could disadvantage unfairly someone who comes to require an assistance or guide dog later in life. Partly for this reason, the Bill includes a mechanism to allow the person who is the subject of the disqualification or prevention order to apply, at yearly intervals, to have the order discharged. A relevant change of circumstances, such as needing an assistance dog, would be relevant to such an application.

This document relates to the Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (SP Bill 72) as introduced in the Scottish Parliament on 14 May 2020

## **Human rights**

66. In terms of the European Convention on Human Rights, dogs count as property. Article 1 of Protocol 1 (A1P1) provides protection of the peaceful enjoyment of property. This is not an absolute right, and there are many contexts in which this right is limited, a notable example being in relation to police seizure of property. When it comes to dogs, there are several examples of this in existing legislation. The member believes the Bill strikes an appropriate balance, limiting the dog-owners A1P1 rights in order to protect the rights and interests of farmers and the welfare of their animals.

## **Island communities**

67. It is not expected that the Bill will have any adverse impact on island communities. The measures in the Bill should benefit all livestock farming communities, which includes many on the Scottish islands.

## **Local government**

68. While local authorities have responsibility for issuing dog control notices under the Control of Dogs (Scotland) Act 2010, the Bill should not impact directly on this function. However, if local authorities were to be appointed as “inspecting bodies” with enforcement powers under the 1953 Act, this would have resourcing implications.

## **Sustainable development**

69. The Bill should support sustainable development issues by increasing wellbeing and equity.

70. Encouraging more responsible dog ownership should reduce the distress experienced by livestock and the potential loss of life.

71. The Bill should impact upon fairness and equity by assisting farmers who currently suffer the consequences of livestock worrying but believe that the penalties imposed on the few dog walkers who are caught do not reflect the damage and financial loss caused. Increasing the maximum penalties, and giving the police and other bodies better powers to investigate offences, should therefore strike a better balance between the interests of farmers and those of dog-walkers.

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72. The Bill might also potentially benefit wider society as a whole. Modern society has developed in parallel with the ability to farm and look after livestock, and to secure food in exchange for providing for the animals' needs. Many now consider animal welfare integral to good farming practice. The Bill aims to reduce the suffering and stress caused to livestock by dogs, and so contribute to improved animal welfare.



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

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