

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

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial 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);
- Explanatory Notes (SP Bill 72–EN);
- a Policy Memorandum (SP Bill 72–PM).

Background and aims 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.

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4. The Bill also brings up to date the definition of livestock in terms of the species which are currently farmed in Scotland, and renames the offence as that of “attacking or worrying” livestock, to emphasise how serious it can be.

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

Strand one

6. 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:

- Maximum penalty on summary conviction to be imprisonment for up to six months (or an equivalent community penalty – i.e. community payback order) and/or a fine up to level 5 on the standard scale (currently set at £5,000);
- If convicted, power of the court also to make an order (a) disqualifying the owner, or the person in charge of the dog at the time, from owning or keeping a dog, or (b) preventing that person from taking a dog onto land containing livestock, or both;
- Provision allowing anyone subject to such an order to apply to have the order discharged after one year (and, if such an application is refused, the offender may appeal the refusal to the Sheriff Appeal Court, and/or re-apply after a further year);
- Making breach of such an order punishable by a fine up to level 5 on the standard scale.

Strand two

7. This expands existing police powers (to seize a dog that is suspected of worrying livestock for the purpose of identifying the dog’s owner) so that 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).

8. The Bill 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

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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). The Bill also provides police officers and inspectors with powers to enter premises to seize a dog, with or without a warrant, and to take the dog to a vet to allow the vet to examine the dog and take evidence samples.

Strand three

9. 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”. 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 have a dog examined by a vet.

Strand four

10. 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 (including, for example, camelids and farmed deer). The Bill also creates a power for Scottish Ministers, by regulations, to further amend the Act’s definition, for example by adding to the definition of “livestock” new species which are first farmed in Scotland after the Bill comes into force.

Strand five

11. The Bill re-names 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.

Data and methodology

12. A starting point for quantifying the financial impact of the Bill is to identify the extent of livestock worrying/attack at present, and the costs involved.

Number of farms with livestock and number of livestock

13. According to the Scottish Government’s annual Agriculture facts and figures report, there are approximately 51,200 farms in Scotland, of which 24,000 have livestock (pigs, poultry, dairy, sheep, cattle and mixed farms,

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and smallholdings) and, of these, approximately 12,700 breed sheep,¹ 8,800 breed cattle² and 900 have dairy cows.³ There are 204 holdings that keep alpacas, 91 that keep llamas and 120 holdings that have farmed deer.⁴ From this, it can be inferred that there are around 12,000 livestock farms that do not involve sheep.⁵

14. The total number of sheep and lambs in Scotland in 2018 was 6.6 million, and the total number of cattle and calves was 1.6 million.⁶

Number of livestock worrying incidents

15. NFU Scotland's (NFUS) 2018/19 survey on livestock worrying, conducted as a self-selecting online survey with 241 responses from farmers, found that 173 respondents (72%) had experienced livestock worrying at some point. Of the 161 respondents with sheep farms, 85% had experienced livestock worrying. Of those who had experienced a problem with sheep worrying, 52% had experienced sheep being physically injured by dogs, 37% had experienced sheep being chased into water bodies, over cliffs or across boundaries, 23% had experienced sheep aborting their lambs, and 41% had had sheep killed (either as the result of physical injury directly from a dog, or as a result of being chased).⁷ Applying these figures to the overall number of farms in Scotland (paragraph 14), the NFUS

¹ Agriculture facts and figures: 2019, available at <https://www.gov.scot/publications/agriculture-facts-figures-2019/> Accessed 16 April 2020.

² Agriculture facts and figures: 2019, available at <https://www.gov.scot/publications/agriculture-facts-figures-2019/pages/9/> Accessed 16 April 2020.

³ Agriculture facts and figures: 2019, available at <https://www.gov.scot/publications/agriculture-facts-figures-2019/pages/8/> Accessed 16 April 2020.

⁴ Information provided by the Scottish Government's Agricultural Census team to NGBU

⁵ 24,000 – 12,700 = 11,300. This has been rounded up to 12,000 in recognition of the possibility of a small number of farms keeping both sheep and other livestock types.

⁶ Agriculture facts and figures: 2019, available at <https://www.gov.scot/publications/agriculture-facts-figures-2019/pages/4/> Accessed 16 April 2020.

⁷ Information provided by NFU Scotland to NGBU, survey conducted as part of their 'Control Your Dog on Farmland' campaign.

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survey would suggest that 17,280 farmers (72% of 24,000) have experienced livestock worrying, including 10,795 sheep farmers (85% of 12,700). This also suggests that 4,426 sheep farmers (41%) had sheep killed and 6,604 (52%) had sheep injured.

16. In 2019, the Scottish Government commissioned a “large-scale, representative survey of sheep farmers and follow-up qualitative research” on “the prevalence of attacks on sheep by dogs and wildlife; the impact of attacks on sheep; the impact of attacks on farmers in terms of the financial impact, the time impact and the emotional impact; the perceived effectiveness of any preventative techniques; and views on potential policy interventions.”⁸

17. The Scottish Government’s survey received 1,931 online and telephone responses (having initially contacted 9,158 sheep farmers who had been selected to take part). Half (51%) of the 1,931 sheep farmers who responded had, at some point, had their sheep chased, attacked or killed by dogs.⁹

18. A 2017 report into livestock worrying by the UK Parliament’s All-Party Parliamentary Group on Animal Welfare¹⁰ suggests that most livestock worrying incidents occur against sheep. In conjunction with the fact that the

⁸ Lorraine Murray and Rachel Warren, Ipsos MORI Scotland and Fiona Lovatt, Flock Health, on behalf of the Scottish Government, Sheep attacks and harassment research 2019, available at <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/12/sheep-attacks-harassment-research/documents/sheep-attacks-harassment-research/sheep-attacks-harassment-research/govscot%3Adocument/sheep-attacks-harassment-research.pdf>. Accessed 16 April 2020.

⁹ This is lower than the 85% of sheep farmers in the NFUS survey that had experienced livestock worrying, however this could possibly be attributed to methodology (the NFUS survey was self-selecting with a smaller number of respondents) and the fact that “livestock worrying” encompasses a dog being at large in a field of sheep, whereas the Scottish Government survey looked at impacts of dogs attacking and chasing sheep.

¹⁰ All-party parliamentary group for animal welfare, Tackling livestock worrying and encouraging responsible dog ownership, November 2017, available at <https://csjk9blog.files.wordpress.com/2017/11/apgaw-livestock-worrying-report-2017-1.pdf> Accessed 16 April 2020.

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most reliable data available relates to sheep worrying (that is, the Scottish Government's extensive 2019 survey), for the purposes of this Financial Memorandum the costs of the Bill will be based on the data available for sheep worrying.

19. However, it should be noted that the actual incidence of livestock-worrying is likely to be higher than set out below, once incidents involving other types of livestock are factored in. For example, the British Horse Society has provided the UK Parliament's All-Party Parliamentary Group for Animal Welfare with anecdotal evidence of 662 attacks on horses, for the whole of the UK, between 2012 and 2017.¹¹ The British Camelids Society reported 37 instances of camelid worrying for its members between 2005 and 2017.¹²

Annual livestock worrying figures

20. The Scottish Government's 2019 survey found that, in the previous 12 months, 14% of respondents reported that their sheep had been attacked or chased by dogs, and these respondents had experienced an average of 3.5 separate incidents within that 12-month period. In 71% of these attacks at least one sheep was affected and the average number of sheep reported as stressed but physically uninjured in each incident was 28. Sheep were injured in 42% of dog attacks, with the average number of sheep injured in each incident being two. Sheep were killed in 39% of dog attacks and, when this occurred, the average number killed was also two.¹³

¹¹ Page 9, All-party parliamentary group for animal welfare, Tackling livestock worrying and encouraging responsible dog ownership, November 2017, available at <https://csjk9blog.files.wordpress.com/2017/11/apgaw-livestock-worrying-report-2017-1.pdf> Accessed 16 April 2020.

¹² Camelids include, for example, alpacas and llamas. Para. 2.3.3, National Police Chiefs' Council Working Group, Livestock worrying police working group, Final report, available at <https://www.npcc.police.uk/Publication/livestock%20worrying.pdf> Accessed 16 April 2020.

¹³ The average cited is the mean average, rather than the median, page 33, Scottish Government, Sheep attacks and harassment research 2019, available at <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/12/sheep-attacks-harassment->

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21. The Scottish Government's survey estimated that around 7,000 sheep-worrying incidents occur each year (or, at least, a figure in the range 4,500 to 10,000).¹⁴ The survey does not make it clear how this figure was calculated. If the 14% figure is applied to the number of sheep farms in Scotland for 2018/19 (12,738), and multiplied by the average number of incidents (3.5), then the estimate is 6,242 sheep worrying incidents annually affecting 1,783 farms.

22. There are roughly twice as many livestock farms in total as there are sheep farms,¹⁵ so if the proportion experiencing livestock worrying was the same for all farms, it might be expected that the total number of farms in Scotland affected each year would be roughly double 1,783 (i.e. around 3,388¹⁶). However, the NFUS survey indicates that the proportion of all farmers experiencing livestock worrying at some point is 72%, whereas for sheep farmers it is 85%. This suggests that the total number of Scottish livestock farms that experience livestock worrying each year is closer to 2,900.¹⁷ If all these farms experienced the same average number of incidents per year as sheep farmers (3.5 incidents per year), the total number of incidents would be around 10,000.¹⁸

Reporting and enforcement data

23. In the Scottish Government's 2019 survey, only a third (32%) of sheep farmers said they had reported the most recent livestock worrying incident to the police.¹⁹ It can therefore be estimated that around 2,000

research/documents/sheep-attacks-harassment-research/sheep-attacks-harassment-research/govscot%3Adocument/sheep-attacks-harassment-research.pdf Accessed 16 April 2020.

¹⁴ Page 22, Scottish Government, Sheep attacks and harassment research 2019, available at

<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/12/sheep-attacks-harassment-research/documents/sheep-attacks-harassment-research/sheep-attacks-harassment-research/govscot%3Adocument/sheep-attacks-harassment-research.pdf> Accessed 16 April 2020.

¹⁵ $24,000 / 12,700 = 1.9$ (figures from paragraph 13)

¹⁶ $1.9 \times 1,783$.

¹⁷ $3,388 \times (0.72 / 0.85) = 2,870$.

¹⁸ $2,870 \times 3.5 = 10,045$.

¹⁹ Page 44, Scottish Government, Sheep attacks and harassment research 2019, available at

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reports of sheep worrying are made to the police each year.²⁰ If other livestock farmers experienced a similar number of incidents per year, and were equally likely to report them to the police, that would suggest around 3,250 incidents reported per year.²¹

24. According to Scottish Government figures,²² the number of livestock-worrying offences recorded by Police Scotland under the 1953 Act was 109 in 2014/15, 174 in 2015/16, 175 in 2016/17, 170 in 2017/18, and 168 in 2018/19 – an annual average of 159. It therefore appears that only around 1 in 20 incidents reported to the police (5%) are recorded as offences under the 1953 Act.²³

25. The same 159 recorded offences represent only 1.6% of the estimated 10,000 incidents that take place each year (see paragraph 22). Put another way, if only 32% of incidents are reported (paragraph 23), and only 1 in 20 reported incidents are recorded as offences (paragraph 24), the proportion of incidents recorded as offences is only 1 in 62 or 1.6%.

26. NFU Scotland has provided figures from 1 December 2017 to 31 May 2018 on the number of Dog Control Notices (DCNs) issued for livestock worrying, by local authorities, which show that very few such notices have been issued. Only 10 local authorities (of the 31 that responded to NFU Scotland's FOI request) issued DCNs for livestock worrying in that time period, and only one issued more than 3 notices in that period (Argyle and

<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/12/sheep-attacks-harassment-research/documents/sheep-attacks-harassment-research/sheep-attacks-harassment-research/govscot%3Adocument/sheep-attacks-harassment-research.pdf> Accessed 16 April 2020.

²⁰ 32% of 6,242 is 1,997.

²¹ $2,000 \times (2,900 / 1,783) = 3,253$.

²² Response to parliamentary question S5W- 26508, answered by Mairi Gougeon on 22 November 2019:

<https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-26508&ResultsPerPage=10>
Accessed 16 April 2020.

²³ $3,250/159 = 20.44$

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Bute, with 12). The total number issued by all 31 local authorities that responded was 26.²⁴

Cost of livestock worrying

27. The National Sheep Association has reported that three commercial breeding ewes can cost £270 to £360, plus £400 to £500 for a commercial ram. Registered pedigree stock in the UK has been known to sell for several thousand pounds, which would exceed the estimated yearly compensation quota immediately. Sheep from hefted flocks in the uplands, which are the result of generations of learned behaviour, are reportedly irreplaceable.²⁵ The value of a standard, commercial neonatal lamb is calculated at £20 to £25 up to the point of lambing.²⁶

28. NFU Mutual, an insurance company with strong ties to the UK's rural and farming communities, has estimated the cost of livestock worrying to the Scottish agricultural sector, based on insurance claims for livestock killed or injured by dogs during the four-year period 2015-2018 (inclusive), at £767,000 – i.e. approximately £192,000 per annum. However, NFU Mutual acknowledges that this will only be a partial figure as not all farms have livestock worrying insurance²⁷ and, as noted above from the Scottish Government's survey, 96% of sheep farmers that responded stated that they do not make insurance claims as the result of a dog attack.

29. The Scottish Government's survey estimates that the total mean time dealing with a single instance of a dog worrying sheep was 5 hours and 19 minutes and that "using agricultural wages to provide a notional cost of this

²⁴ Information provided by NFU Scotland to NGBU.

²⁵ Hefting is where flocks are kept in unfenced land and return to the same area of land due to learned behaviour passed from mother to lamb - <http://sciencesearch.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=0&ProjectID=15631> Accessed 16 April 2020.

²⁶ National Sheep Association, The wider consequences of the introduction of the Eurasian lynx (*Lynx lynx*) to the UK, April 2016, <https://www.nationalsheep.org.uk/workspace/pdfs/nsa-report-on-the-wider-consequences-of-the-introduction-of-eurasian-lynx-to-the-uk.pdf> Accessed 16 April 2020.

²⁷ NFU Mutual states that it insures approximately three quarters of farmers. <https://www.nfumutual.co.uk/news-and-stories/a-guide-for-farmers-to-deal-with-livestock-worrying/> Accessed 16 April 2020.

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time, the average time cost of each incident is £50.33 and the total estimated time cost to the sector per annum is around £350,000.”²⁸ If similar costs applied to incidents involving other species, the total “time cost” per annum to all livestock farmers might be around £0.5 million.²⁹

30. According to the Scottish Government 2019 survey of sheep farmers, “respondents consistently reported the value of lost sheep as the biggest financial cost of attacks, with the highest figures reported for a single incident being ... £8,000 for a dog attack.”³⁰

31. The survey also notes that “the value of aborted lambs was the second biggest financial impact on farmers, with ... the highest estimated cost of a dog attack £9,999. The other costs mentioned included the costs of additional labour involved in dealing with the incident [and] the costs of additional feed for nurturing injured sheep.”³¹

²⁸ This calculation is based on the same estimate of around 7,000 sheep-worrying incidents per year as is cited in paragraph 20. Page 36, Scottish Government, Sheep attacks and harassment research 2019, available at <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/12/sheep-attacks-harassment-research/documents/sheep-attacks-harassment-research/sheep-attacks-harassment-research/govscot%3Adocument/sheep-attacks-harassment-research.pdf> Accessed 16 April 2020.

²⁹ £350,000 x (10,000 / 7,000) = £500,000. The 10,000 figure is from paragraph 22.

³⁰ Page 39, Scottish Government, Sheep attacks and harassment research 2019, available at <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/12/sheep-attacks-harassment-research/documents/sheep-attacks-harassment-research/sheep-attacks-harassment-research/govscot%3Adocument/sheep-attacks-harassment-research.pdf> Accessed 16 April 2020.

³¹ Page 39, Scottish Government, Sheep attacks and harassment research 2019, available at <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/12/sheep-attacks-harassment-research/documents/sheep-attacks-harassment-research/sheep-attacks-harassment-research/govscot%3Adocument/sheep-attacks-harassment-research.pdf> Accessed 16 April 2020.

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32. The National Fallen Stock Company has provided typical figures for the cost of retrieving and disposing fallen stock in Scotland. Depending on location, an adult sheep can cost between £15-£20 per sheep, a lamb aged 2-12 months can cost between £10-£15 and an alpaca can cost between £40-£63.³²

33. The Scottish Government survey estimates that “the mean total financial cost of each dog incident to [sheep] farmers was £697.33”. If this is multiplied by the estimated annual number of sheep-worrying incidents (6,242 – paragraph 21), it gives a total of around £4.35 million.³³ There is no equivalent data on the typical average cost to farmers of each incident involving other species of livestock, but if it was similar to the £697 figure, the total annual cost to all livestock farmers might be around £7 million.³⁴ If (as estimated above) only around £192,000 per annum is recovered from insurance, this suggests that the large majority of this cost is borne directly by farmers.

Summary

34. The below table provides a summary of the estimates discussed above:

Table 1: Summary of estimates

	Estimate	
	All livestock farms	Sheep farms
Number of farms affected by livestock worrying annually ³⁵	2,900	1,783

³² Information provided by NFSCo to NGBU. Note there are some areas where the NFSCo does not operate, due to the remoteness of the location (local collectors or incinerators may be used instead- Scottish Government, Animal by-products disposal guidance, available at <https://www.gov.scot/publications/animal-by-products-disposal-guidance/pages/fallen-stock-and-other-animal-carcases/>) Accessed 16 April 2020.

³³ Using the Scottish Government’s own estimate of 7,000 incidents would give a total of around £4.9 million.

³⁴ £697 x 10,000 (figure from paragraph 22).

³⁵ See paragraphs 21 and 22 above.

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Annual number of incidents ³⁶	10,000	6,242
Annual number of incidents reported to the police ³⁷	3,250	2,000
Annual number of incidents resulting in a recorded offence ³⁸	159	Unknown
Mean total financial cost to the farmer of each incident ³⁹	Unknown	£697.33
Annual cost to farmers ⁴⁰	£7,000,000 (speculative)	£4,352,000

Costs on the Scottish administration

Costs on the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service

35. Anecdotal evidence provided by stakeholders in response to Emma Harper’s consultation suggests that, due to the lack of powers for the police to fully investigate the offence, and the relatively low level of penalties, there is significant under-reporting of incidents.⁴¹

36. It can therefore be anticipated that, due to new powers for investigation of livestock worrying, which the Bill provides to the police and to other organisations, as well as an increase in penalties, the number of

³⁶ See paragraphs 21 and 22 above.

³⁷ See paragraph 23 above.

³⁸ Average from 2015-2019, see paragraph 24 above.

³⁹ See paragraph 33 above.

⁴⁰ See paragraph 33 above.

⁴¹ This is also supported by the Scottish Government’s survey from 2019, which found that 96% of farmers do not make insurance claims when they experience losses as a result of dog attacks – page 8, Scottish Government, Sheep attacks and harassment research 2019, available at <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/12/sheep-attacks-harassment-research/documents/sheep-attacks-harassment-research/sheep-attacks-harassment-research/govscot%3Adocument/sheep-attacks-harassment-research.pdf> Accessed 16 April 2020.

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reports, investigations and prosecutions of livestock worrying may increase as farmers become more confident that reports of livestock worrying will be fully investigated and that evidence will be available to enable a prosecution. Conversely, the increased likelihood of a livestock worrying offence being investigated and prosecuted, as well as increased penalties for anyone found guilty of the offence, may act as a deterrent and, as is the member's aim for the Bill, may reduce the number of incidents of livestock worrying occurring. It is therefore difficult to estimate whether the number of reports, investigations, prosecutions and convictions for the offence will increase, decrease or stay the same in the long term.

37. Another factor that may result in an increase in the number of reports, investigations, prosecutions and convictions are the provisions in the Bill which extend the definition of livestock to now included camelids, ostriches, deer (when kept on enclosed farmland), buffalo, and game birds (when kept in an enclosure), none of which are currently included in the list of animals covered by the 1953 Act.

38. As noted above (paragraph 24), the average number of 1953 Act offences recorded by Police Scotland from 2014-2019 was 159 per year.⁴² However, the number of prosecutions and convictions is relatively low compared with the number of recorded offences. In 2018/19, the number of offences prosecuted was 18, all of which resulted in a conviction.⁴³ In 2017/18 there were 11 prosecutions and 8 convictions, in 2016/17, 21 prosecutions and 19 convictions, in 2015/16, 18 prosecutions and 16 convictions and in 2014/15, 12 prosecutions and 10 convictions.⁴⁴ The five-year averages were therefore 16 prosecutions (10% of offences recorded) and 14 convictions (9% of offences recorded).

⁴² Response to parliamentary question S5W- 26508, answered by Mairi Gougeon on 22 November 2019:
<https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-26508&ResultsPerPage=10> and 2017/18 data provided by SPICe. Link accessed 16 April 2020.

⁴³ Information provided by SPICe to NGBU.

⁴⁴ Response to parliamentary questions S5W- 162017, answered by Fergus Ewing on 1 May 2018
<https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-16107&ResultsPerPage=10>
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39. The costs of prosecution through the courts vary depending on the type of case and court used. The 1953 Act provides that the offence of livestock worrying is prosecuted under summary procedure. The standard costs in Scotland of Sheriff Court (summary procedure) and Justice of the Peace Courts are as follows:

Table 2: Standard prosecution and court costs

	Sheriff Court (Summary procedure)	Justice of the Peace	Average cost
Prosecution costs (COPFS)	£421	£421	£421
Court Costs (SCTS)	£441	£225	£333
Total	£862	£646	£754

40. All court witness fees for expert witness offences are paid for by the COPFS.⁴⁵ There may be an increase in court witness fees, particularly vet testimony, to speak to any evidence gathered. Experts provide a “Terms of Business agreement” to the COPFS, which should set out various costs which might be incurred.⁴⁶ As each individual case will be different in terms of complexity, length, etc. there is no “set rate” to be applied.

41. As noted above, it is difficult to assess whether the number of prosecutions is likely to increase, decrease or stay the same. In order to demonstrate the possible costs involved should prosecutions increase, the table below sets out 10%, 25%, 50% and 100% increases in the number of prosecutions under the 1953 Act, using the average number of prosecutions for the last five years (16, from 2014-19⁴⁷). However, it is

⁴⁵ Source: information provided by the Scottish SPCA to NGBU.

⁴⁶ Law Society of Scotland, Expert witness code of practice, <https://www.lawscot.org.uk/members/business-support/expert-witness/expert-witness-code-of-practice/> Accessed 16 April 2020.

⁴⁷ $(12+18+21+11+18)/5 = 16$. Information for 2018/19 and 2017/18 provided by SPICe, data from 2014-17 can be found in the response to parliamentary questions S5W- 162017, answered by Fergus Ewing on 1 May 2018

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important to note that even with a 100% increase, the number of prosecutions (that is, 32 prosecutions a year) would equate to less than 0.5% of the estimated number of livestock worrying attacks that take place.

Table 3: Additional prosecution and court costs (for the offence of livestock worrying under the 1953 Act)

Percentage increase in the average number of annual prosecutions	Additional number of prosecutions	Total additional cost (number x £754)
10%	1.6	£1,206
25%	4	£3,016
50%	8	£6,032
100%	16	£12,064

42. The Bill provides for an order, either for disqualification from owning a dog or prohibiting someone from taking a dog onto agricultural land, to be handed down as part of the sentence for livestock worrying. It also provides for a person to make an application for the disqualification order to be varied or discharged, to the court where the order was made. If the application is refused or partially refused, the Bill provides for the possibility of an appeal to the Sheriff Appeal Court, and for the application to be re-submitted at least one year after the date of refusal. It is therefore likely that there will be increased court costs for courts to process applications to have the order discharged, and for the Sheriff Appeal Court to hear appeals to have the order discharged. However, standard costs for Sheriff Appeal Court hearings (criminal) are currently unavailable.⁴⁸

43. As a comparison, the Animal Health and Welfare (Scotland) Act 2006 and the Control of Dogs (Scotland) Act 2010 contain powers for courts to

<https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-16107&ResultsPerPage=10>
 Accessed 16 April 2020.

⁴⁸ Sheriff Appeal Court costs are yet to be included in the Costs of the Criminal Justice System in Scotland dataset-
<https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset> Accessed 16 April 2020.

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impose disqualification orders on dog owners.⁴⁹ The number of disqualification orders issued under these Acts has so far been zero.⁵⁰ It is therefore difficult to quantify how many disqualification orders are likely to be issued under the Bill's provisions, and therefore how many may not be complied with.

44. Currently, should a dog be seized by the police and then detained (by a "reporting agency") prior to prosecution, the cost of accommodating the dog falls initially on the reporting agency at an average cost of £15 per dog per day.⁵¹ (Where a dog is detained by the police in order to enable its owner to be identified, the cost to the police can be reclaimed from the owner.) However, should the COPFS decide that the case is to proceed to prosecution, and the dog continues to be detained, the cost of housing and feeding the dog may transfer to the COPFS.⁵²

45. As noted above, the aim of the Bill is to reduce the number of livestock-worrying incidents in the long term. It is therefore difficult to predict with any certainty whether numbers of prosecutions and convictions will go up or down, but it seems likely that while incidents will go down, a higher proportion of the incidents that still take place will be prosecuted and lead to convictions.

Costs on the Scottish Prison Service (SPS)

46. The current maximum penalty for livestock worrying is a fine up to a maximum of level 3 on the standard scale, currently set at £1,000. The Bill's provisions will increase the maximum penalty for livestock worrying to allow a custodial sentence of up to six months imprisonment, to be imposed. Should an offender be sentenced for this amount of time, automatic early release would dictate that not more than 3 months would be spent in prison. Based on the average cost per year per prisoner of

⁴⁹ Section 40, Animal Health and Welfare (Scotland) Act 2006 available at <http://www.legislation.gov.uk/asp/2006/11/contents> and section 11, Control of Dogs (Scotland) Act 2010, available at <http://www.legislation.gov.uk/asp/2010/9/contents> Accessed 22 April 2020.

⁵⁰ Source: information provided by the Scottish Government Justice Analysts and SPICe. Note that disqualification orders are different from the Dog Control Notices referred to in paragraph 26.

⁵¹ Source: information provided by the Scottish SPCA to NGBU.

⁵² Source: information provided by the Scottish SPCA to NGBU.

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£37,334⁵³ (£3,111 per month) it can be calculated that for each person serving the maximum custodial sentence, the additional cost to the Scottish Prison Service would be £9,333.

47. However, it should be noted that there is a statutory presumption against short-term sentences of less than 12 months.⁵⁴ It is therefore likely the alternative community sentence would be handed down, for example, a community payback order. The average cost of an offender undertaking a community payback order is £1,894.⁵⁵

Cost of producing regulations and guidance

48. The Bill provides for the Scottish Ministers to delegate powers to other suitable organisations, such as the Scottish SPCA or local authorities. It is expected that the Scottish Ministers will produce guidance on the operation of these powers and that the cost of producing the guidance would be absorbed within existing budgets.

49. The appointment of any organisations, with delegated powers, would be by regulations. It is expected that any cost to the Scottish Ministers to develop and consult on these regulations would be minimal and absorbed within existing budgets.

Costs on local authorities

50. There is some ambiguity regarding when dog control wardens or local authority officers attend reports of livestock worrying. The Scottish Parliament's Public Audit and Post-legislative Scrutiny Committee report

⁵³ Costs of the Criminal Justice System in Scotland dataset, December 2019, available at <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>

⁵⁴ <https://www.gov.scot/news/presumption-against-short-sentences-extended/> Accessed 16 April 2020.

⁵⁵ Note that this is based on funding allocation, rather than actual expenditure. Costs of the Criminal Justice System in Scotland dataset, December 2019, available at <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot> and <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset> Accessed 16 April 2020.

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noted that, for other offences related to the control of dogs there is confusion between local authorities and the police as to who is responsible for investigating reports and implementing the legislation.⁵⁶

51. Shetland Islands Council's response to Emma Harper's consultation suggested that, at present, local authority officers do not have powers to investigate, report and enforce livestock worrying offences and that "currently the Police are the only enforcement agency named under the 1953 Act that can take action in relation [to] the worrying of livestock." It also states that "Local Authorities have significant roles and powers to deal with straying and out of control dogs within Scotland and could easily take on further investigatory and enforcement powers to deal with the worrying of livestock."⁵⁷ However, Argyll and Bute Council's consultation response noted that "We, the Council, already have [officers] in place who investigate incidents, there would be no appreciable increase in cost that I can see. Perhaps a greater investment of time, but that is only to be expected."⁵⁸

52. Should local authorities be designated as inspecting bodies under the Bill, and local authorities appoint inspectors to use these powers, then the cost of investigating reports of livestock worrying and potential offences may be passed on to local authorities who are not already carrying out this function under other legislation.

53. The Scottish SPCA estimated that the cost of an inspector investigating animal welfare incidents is £30,000 per annum, on a pro rata basis. It is therefore likely that the cost of an inspector authorised by a local authority to investigate livestock worrying would be similar.

⁵⁶ Column 10 and Column 23 – Official Report, 21 February 2019
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11957&mode=pdf>. Accessed 16 April 2020.

⁵⁷ Consultation response from Shetland Islands Council- full response available at:

https://emmaharpermsp.scot/wp-content/uploads/2019/06/Response-549_Shetland-Islands-Council-116606593.pdf Accessed 16 April 2020.

⁵⁸ Consultation response from Argyll and Bute Council- full response available at: https://emmaharpermsp.scot/wp-content/uploads/2019/05/Response-189_Argyll-Bute-Council-110469405.pdf Accessed 16 April 2020.

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Costs on other bodies, individuals and businesses

Costs on Police Scotland

54. As one of the aims of the Bill is to increase the proportion of livestock attack and worrying incidents that are reported, it is anticipated that initially there will be an increased number of police investigations. There will therefore be a corresponding cost, in police hours, a report and investigating an incident. As noted above (paragraph 24), the average number of offences under the 1953 Act that were recorded from 2014-2019 was 159 per year.⁵⁹ However, this figure does not take account of the much larger number of reported incidents that the police presumably investigated, which did not result in a recorded offence. The amount of time police officers spend investigating a report may vary. Police Scotland estimates that a constable's time costs £60 per hour.⁶⁰

55. The amount of time police officers are required to spend investigating a report of livestock worrying may increase, due to the new powers the Bill will give officers to seize a dog for evidence gathering purpose. This may include seizing a dog and taking it to a vet for evidence or taking swabs at the scene for testing. If evidence is collected, officers are also required to accompany the collected evidence to a laboratory.⁶¹

Costs on the Scottish SPCA (and other prospective “inspecting bodies”)

56. The Bill provides for Scottish Ministers to delegate powers to “inspecting bodies”, such as the Scottish SPCA or local authorities. At present, the Scottish Ministers delegate powers under the Animal Health and Welfare (Scotland) Act 2006 to the Scottish SPCA to investigate and report on animal welfare offences. Any work that Scottish SPCA inspectors

⁵⁹ Response to parliamentary question S5W- 26508, answered by Mairi Gougeon on 22 November 2019:

<https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-26508&ResultsPerPage=10>
Accessed 16 April 2020.

⁶⁰ Police Scotland website, “Organising an event” available at <https://www.scotland.police.uk/contact-us/organising-an-event/#:~:text=Alternatively%2C%20if%20you%20wish%20to,Planning%20Unit%2C%20Operational%20Support%20Division> Accessed 16 April 2020.

⁶¹ Source: information provided by the Scottish SPCA to NGBU.

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carry out using these powers is funded by the Scottish SPCA.⁶² This can include inspectors' time, retrieving and testing evidence including costs of forensic exams, post-mortem exams, DNA testing and vets' bills. DNA testing, e.g. for swabs from both a sheep and a dog, cost between £20-£50 per test.⁶³ Inspectors' time can vary depending on the rurality of the area and the severity of the complaint. Most complaints are attended to within 24 hours. A typical salary for a Scottish SPCA inspector is £30,000 per annum. There is no data available regarding the average amount time spent on dealing with an incident by either the Police, Scottish SPCA or vets.

57. The Scottish SPCA noted in its consultation response that there will be significant costs involved in both undertaking DNA analysis and in "keeping a dog secure for the months prior to and during court proceedings" (presumably referring to seized dogs). If a person maintains their innocence and a full trial is required, this may be a minimum of six months from seizure to nearer 9 to 10 months.⁶⁴ The Scottish SPCA noted that "if a person is subsequently found guilty they should be responsible for all reasonable costs incurred in the investigation."

Costs of new powers to have dogs examined by vets

58. There will be a cost for the police and inspecting bodies if they use their new powers (under the Bill) to seize dogs and have them examined by veterinarians, in the same way that reporting agencies such as the Scottish SPCA currently incur costs for having mobile devices and laptops checked for evidence.

Dog owners and walkers

59. There is likely to be an increased cost for dog owners and walkers who are convicted of livestock worrying due to the Bill increasing the maximum fine level from £1,000 to £5,000. Average fine figures for livestock worrying show that most fines are currently in the region of £50-

⁶² Source: information provided by the Scottish SPCA to NGBU.

⁶³ Source: information provided by the Scottish SPCA to NGBU.

⁶⁴ Source: information provided by the Scottish SPCA to NGBU.

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£500. Increasing the maximum by a factor of five is liable to increase the average amount to somewhere between £250 and £2,500.⁶⁵

Savings

60. It is Emma Harper's aim that, in the long-term, the Bill's provisions will result in the instances of livestock worrying and attack being reduced. If this is achieved, then the Scottish Administration and police may see a subsequent reduction in the costs of investigating and prosecuting livestock worrying offences.

61. The Scottish Government may, in the short-term, see an increase in fine revenue, both from an increased number of prosecutions and an increase the fines being handed down to the maximum fine amount increasing (from £1,000 to £5,000). Fine revenue is paid into the Scottish Consolidated Fund; however, an equivalent adjustment is made to the block grant (paid by the UK Treasury into the Fund), resulting in an effectively cost-neutral position for the Scottish Government.

62. An eventual reduction in the number of instances, due to greater awareness of owners/dog walkers and a greater likelihood of being prosecuted acting as a deterrent, may therefore also lead to potential savings for livestock owners. These may include a reduction in vet bills for treating maimed sheep, including both the medical costs and the vet call-out charge, the cost of disposal for killed sheep and the lost of value for sheep that are killed or that abort their lambs.

Summary

63. It is anticipated that if the Bill's objectives are achieved and the numbers of livestock worrying/attack incidents are reduced, this will be of significant economic benefit to farmers and livestock owners. If there is an increase in the number of offences reported, and there is a requirement for additional police, prosecution, or court time spent on cases, there may be some resource implications for these bodies. If the aims of the Bill are

⁶⁵ Response to parliamentary question S5W-20365, answered by Fergus Ewing on 18/12/2018 - <https://parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-20365&DateTo=3/3/2020%2011:59:59%20PM&SortBy=DateSubmitted&Answers=All&SearchFor=All&ResultsPerPage=10> Accessed 16 April 2020.

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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.

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