

SCOTTISH COUNTRYSIDE ALLIANCE BRIEFING NOTE

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

February 2021

BACKGROUND

Emma Harper MSP, South Scotland, introduced the [Dogs \(Protection of Livestock\) \(Amendment\) \(Scotland\) Bill](#) in 2019.

The Bill amends the [Dogs \(Protection of Livestock\) Act 1953](#) ("the 1953 Act") to:

- introduce higher penalties for livestock worrying offences in the form of higher maximum penalties;
- provide the Courts with order-making powers to restrict the rights of a person convicted of a livestock worrying offence in relation to owning a dog or their rights of access to agricultural land accompanied by a dog;
- grant power to Scottish Ministers to authorise persons, bodies or organisations to appoint inspectors for the purpose of enforcement under this Bill;
- provide greater investigation powers for such inspectors and the police with regard to seizing dogs suspected of having worried livestock for the purpose of obtaining evidence, and providing for powers of entry to seize a dog from premises;
- amend the definitions in the 1953 Act, including expanding the definition of "livestock" to include additional farmed animals, and expanding the definition of "agricultural land" to include land used for "raising of game birds".

HUNTING DOGS

The Bill proposes to amend Section 1 of the 1953 Act to insert at the end of subsection (2A) (b), after the word "hunt", "but only if and to the extent that the dog is performing the role in question".

The intention of this amendment is to ensure that the general exemption for the dogs listed, including a dog "lawfully used to hunt", applies only while a dog is performing that working role. The Act currently states:

1. Penalty where dog worries livestock on agricultural land.

(1) Subject to the provisions of this section, 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.

(2) For the purposes of this Act worrying livestock means—

- (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.

(2A) Subsection (2)(c) of this section shall not apply in relation to—

- (a) a dog owned by, or in the charge of, the occupier of the field or enclosure or the owner of the sheep or a person authorised by either of those persons; or
- (b) a police dog, a guide dog, trained sheep dog, a working gun dog or a dog lawfully used to hunt.

The current law means that the owner of a dog used to hunt, or used as a gun dog, assistance dog etc. cannot be prosecuted for “being at large” in a field or enclosure in which there are sheep. This would seem to apply regardless of whether or not they are actually performing any of those roles at the time they might be at large. The Bill would amend the law so that the owner of a working gun dog could be prosecuted if his dog was at large where there were sheep at a time when the dog was not being used as a gun dog.

It is supposed that this amendment takes account of the fact that it is possible for these working dogs to be at large contrary to 1(2)(c) at times other than when being worked.

It should also be noted that the current law defines being at large as “not on a lead or otherwise under close control”. When a dog is at large in the vicinity of sheep this falls within the definition of livestock worrying, but is clearly distinct from, and less serious than, the types of worrying in 1(2)(a) and (b), where livestock are attacked or chased with likely serious consequences.

A dog may be “at large” without either attacking or chasing sheep. 1(2)(c) recognises that sheep may be more easily disturbed by the mere presence of dogs, while the exception recognises that working dogs, even if they do enter onto land in the vicinity of sheep while working, are unlikely to pose a threat, as opposed to untrained dogs. Moreover, most working dogs are only on land where they have permission to be, although they may stray onto other land, even if momentarily.

STAGE 2 AMENDMENT

John Finnie MSP has tabled an [amendment](#) to remove the exemption for dogs that lawfully hunt.

1 In section 1, page 1, leave out lines 12 and 13 and insert—

() the words “or a dog lawfully used to hunt” are repealed,

This amendment would remove the exemption for “being at large” for dogs lawfully used to hunt. In reality this amendment would not prevent dogs from lawfully hunting because dogs are only able to do that if the landowner/farmer grants permission to do so. This amendment however does create a further means for misreporting alleged hunting offences. Simply

witnessing dogs at large in a field may lead to allegations being made, wasting police time and resource.

It is clear that this amendment is ideologically driven – focused on attempts to restrict hunting not the welfare of livestock. The amendment, and its supporters, principally ignore two things. Firstly, access must be granted by the landowner/farmer for hunting activities to take place under the Protection of Wild Mammals (Scotland) Act. It is equally the case that [Land Reform \(Scotland\) Act 2003](#), section 9(c), hunting cannot take place without the permission of the landowner/farmer. Therefore, if there were livestock worrying concerns hunts would be refused permission.

Secondly, Mr Finnie ignores that hunts are employed by landowners/farmers to hunt on their land. Hunts perform the essential service of pest control, as acknowledged by Lord Bonomy in his [Report of the Review of the Protection of Wild Mammals \(Scotland\)](#). Hunting activities are requested by the landowner/farmer to protect their livestock. Mr Finnie seems therefore not to understand the role that hunts perform, or is it that he would rather prevent the landowner/farmer from taking action to protect their livestock?

This amendment is ultimately unnecessary because essential pest control will continue by request of the landowner/farmer. It is ironic that this amendment should be tabled on legislation that intends to protect livestock, and indeed is embarrassing for its proponents and supporters as the amendment is not necessary and indeed would actively undermine the protection of livestock.

FURTHER READING

Lord Bonomy Review of The Protection of Wild Mammals (Scotland) Act

The [Report of the Review of the Protection of Wild Mammals \(Scotland\)](#) by the Rt Hon Lord Bonomy made several important observations with regards to the use of hounds/dogs for pest control.

Lord Bonomy noted the significant role that hounds/dogs undertake “...the use of packs of hounds to flush out foxes to be shot remains a significant pest control measure, both to control the general level of foxes in an area as well as to address particular problems affecting a farm or estate.”

Lord Bonomy noted that these packs were not limited to hunts alone, noting how farmers/landowners use their own packs for pest control or engage the use of private packs: “Outwith these formal organisations there are packs of hounds of varying sizes privately owned by individual owners who are engaged by farmers and landowners for pest control purposes. Their own dogs are also routinely and widely used by farmers, gamekeepers, estate managers and landowners in their pest control activities as they were prior to 2002.”

Lord Bonomy also recognised the need for hounds/dogs to operate as packs for the purposes of effective pest control: “...searching and flushing by two dogs would not be as effective as that done by a full pack of hounds, but also that imposing such a restriction could seriously compromise effective pest control in the country, particularly on rough and hilly ground and in extensive areas of dense cover such as conifer woodlands.”

As such to amend the legislation as OneKind suggest would be to prevent landowners/farmers carrying out essential pest control. Even to restrict the number of dogs in this instance would reduce the effectiveness of pest control and compromise the welfare of livestock.

Code of Practice: Scottish Mounted Foxhound Packs

The [Code of Practice](#) was drawn up following recommendation by Lord Bonomy:

The existing Scottish Mounted Foxhound Packs Fox Control Protocol should form the starting point for the development of a separate Code of Practice for the conduct of hunt activities, including requirements for notification to the police in advance of the hunt of the identities of those responsible for the activities of the hunt, the number of hounds to be used, the identities of the guns and other information, and also provisions about the conduct of those participating in the activities of the hunt.

The recommendation was pursued, and the provisions within the Code of Practice were agreed by all those interested in hunting activity, including the police and even those opposed to the activity.

The Code of Practice outlines steps hunts must take before in advance of any activity. These include contacting the landowner/farmer for permission, preferably in writing, and also to contact the police in advance:

- You must ensure permission, where possible in writing, has been granted by the landowner or lawful occupier of the land on which the activity is to take place. Seeking appropriate permission must be addressed as part of the planning/notification phase, including contact with neighbouring estates, where activity may take place,
- You must take reasonable steps to ensure all personnel deployed have the necessary authorities in place to comply with the appropriate legislation,
- You should notify the police at least 24 hrs in advance, or otherwise as soon as reasonably practical, that a mounted hunt activity is to take place and provide details of the Master(s), Huntsman, anticipated time the activity will commence and the general location on which the activity is to take place,

As is clear, for any hunting to take place, the landowner/farmer must have agreed to it in the first instance, and further to that police must have been notified at least 24 hours in advance. In no circumstance will a hunt access land without permission of the landowner/farmer or without notifying the police.

SCOTTISH COUNTRYSIDE ALLIANCE POSITION

The Scottish Countryside Alliance is broadly supportive of this Bill. There is consensus that more needs to be done to tackle livestock worrying and are confident that this legislation will do so.

However, we are concerned of attempts to hijack this Bill by those opposed to hunting and amend it in such a way that instead of protecting livestock, it will actually put livestock at risk.

The Alliance can see no justification for an amendment that would remove the “at large” exemption for dogs that lawfully hunt. It would mean that there would be occasions when dogs undertaking lawful activity could face attempts at prosecution for worrying livestock. It could therefore prevent hunts carrying out essential pest control on agricultural land on which there is livestock. We understand that OneKind and others want to make it ultimately impossible to use dogs to hunt lawfully. This ignores all the evidence, including the findings of the

independent review of the Protection of Wild Mammals (Scotland) Act carried out by Lord Bonomy at the request of the Scottish Government (See above).

The amendment tabled by Mr Finnie is not motivated by any concern for livestock and ultimately is unnecessary. It is clearly motivated by a desire to have further legal grounds on which to harass the hunts, operating a vital service for landowners, at landowners' request, and actually protecting livestock.

Hunts must already have permission to be on land, for their activities to be lawful under the Protection of Wild Mammals (Scotland) Act. There is no general right for hunting activity under access laws. Section 9(c) of the Land Reform (Scotland) Act 2003 includes hunting in a list of activities that do not have access rights. Further to this, under the Code of Practice hunts have to notify the landowner/farmer and police in advance of any hunting activity. Therefore, if a livestock farmer were concerned about worrying, they could refuse the hunt access to their land.

This Bill must remain focussed on tackling livestock worrying and not allowed to be weaponised by those who see harassing hunts as more important than the real animal welfare agenda behind this Bill.