

DOGS (PROTECTION OF LIVESTOCK) (AMENDMENT) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Offence under section 1 of the 1953 Act: name, definition and penalty

6. Section 1 of the 1953 Act is (at the time of Royal Assent) entitled “Penalty where dog worries livestock on agricultural land” and sets out 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, is guilty of an offence. “Worrying” livestock is defined in subsection (2) 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”. Subsection (2A) sets out exceptions to subsection (2)(c), including for certain working dogs. Subsections (3)-(5) also deal with exceptions to the offence and subsection (6) sets out the maximum penalty for the offence.
7. Section 1(2) changes the title of section 1 (of the 1953 Act), partly so as to include the words “attacks or” before “worries”. Subsections (3)(a), (3)(d) and (4) make equivalent changes at other places in sections 1 and 2 of the 1953 Act which refer to the “worrying” of livestock. Subsection (3)(b) removes paragraph (a) from the definition of “worrying”, so that it becomes the term used only for the less serious types of behaviour that constitute the offence. While these changes do not alter the scope of the offence (that is, all the same behaviours continue to constitute the offence), they ensure that the word “attack” is given greater prominence in the legislation., and that the language of the offence better reflects its seriousness.
8. Section 1(3)(c) amends section 1(2A)(b) of the 1953 Act to include assistance dogs other than guide dogs in the list of working dogs which may be at large in a field of sheep without this constituting “worrying”. However, it also provides that any of these working dogs may be so at large only “if and to the extent that the dog is performing the role in question”. This means, for example, that if a guide dog is at large in a field of sheep when it is not working but is instead being exercised by a sighted person, its owner and the person in charge of it at the time would be committing an offence.
9. Section 5(2)(c) adds to the 1953 Act a definition of “assistance dog” which links to the existing definition in section 173(1) of the Equality Act 2010. That definition covers (a) guide dogs for the blind, (b) dogs trained to assist the deaf, (c) dogs trained by prescribed charities (that is, prescribed in regulations under the 2010 Act) to assist people with epilepsy or other disabilities affecting their mobility, manual dexterity, physical coordination or ability to lift, carry or move everyday objects, and (d) dogs in other (prescribed) categories trained to assist people with other (prescribed) disabilities. As a result, where regulations under the 2010 Act add new categories of “assistance dog” for the purposes of that Act (requiring the drivers of taxis and private hire vehicles to transport assistance dogs with their owners and to do so without additional charge),

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this will carry over automatically to the 1953 Act (enabling the owner or person in charge of such a dog, when it is working, to allow it to be at large in a field of sheep).

10. Under the 1953 Act, the penalty for those found guilty of the section 1 offence is a fine not exceeding level 3 on the standard scale (there is a standard scale of fines for summary offences and level 3 is currently set at £1,000). Section 1(3)(e) increases the maximum penalty to imprisonment for up to twelve months or a fine not exceeding £40,000, or both. Section 1(5) prevents this higher penalty being applied retrospectively, for example to someone who is sentenced after the date the penalty is increased, but for an offence that took place before that date.

Section 2 – Power to make order in respect of person convicted

11. Section 2(1) inserts a new section, section 1A, into the 1953 Act. New section 1A provides for an additional penalty that may be imposed on a person convicted of the section 1 offence (whether that person is the owner of the dog or the person who was in charge of it at the time).
12. Subsection (1) of new section 1A allows the court, by order, to disqualify the convicted person from owning or keeping dogs, or to require the person to prevent any dog the person is in charge of from going onto land on which livestock is present or is likely to be present, or both. The length of the disqualification or requirement is for the court to determine (and if the court imposes both a disqualification and a requirement, these may be for different periods of time).
13. Subsection (2) of new section 1A requires the order to be treated as a sentence, so that it can be appealed in the same way as a sentence can be appealed.
14. Subsection (3) of new section 1A provides that a breach of such an order is punishable by a fine of up to level 5 on the standard scale (currently set at £5,000).
15. Subsections (4) and (5) of new section 1A entitle the convicted person to apply to the court to have the order discharged in whole or in part, but only if at least one year has elapsed since the order was made. It will be for the courts themselves to prescribe, in rules of court, how such an application is to be made.
16. Under subsection (6) of new section 1A, if the application (to have the order discharged) is refused, the convicted person may appeal the refusal to the Sheriff Appeal Court. The person may, separately, apply again to have the disqualification order discharged, but (again) only if at least a year has elapsed since the previous refusal.
17. Section 2(2) prevents an order under new section 1A being applied retrospectively, for example to someone who is convicted after the date the court gains the power to make an order, but for an offence that took place before that date.

Section 3 – Powers to seize etc. dog suspected of attacking or worrying livestock

18. Section 3 amends section 2 of the 1953 Act. Section 2 of the 1953 Act sets out how the offence is to be enforced.
19. Section 2(2) of the 1953 Act allows a police officer to seize and detain a dog that the officer believes has been worrying livestock on agricultural land but only if the dog is found on the land in question and no-one is present who admits to being its owner or in charge of it, and only in order to ascertain who the owner is. Section 2(3) of the 1953 Act applies section 3 of the Dogs Act 1906 to dogs seized and detained in this way. As a result, the seized dog must be kept by the police for at least seven days while efforts are made to identify the owner, the dog must be fed and maintained during that period, the owner may be required to pay the cost of its detention, and an unclaimed dog may be either sold or destroyed.

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20. Section 3(2) amends section 2(2) of the 1953 Act, so that the power to seize and detain a dog in order to identify its owner is extended so that a dog can be seized from any land on which it is found, not just the agricultural land where the livestock attack or worrying took place (for example it could be on a grass verge nearby); but it does not allow a dog to be seized from within premises.
21. Section 3(3) inserts a new subsection (2A) into section 2 of the 1953 Act. This new subsection confers a new power to allow a dog suspected of attacking or worrying livestock on agricultural land to be seized and detained, so that the dog can be examined in order to identify and secure any evidence. As with subsection (2), this power covers situations where the dog is no longer on the land where the attack or worrying took place, but does not allow a dog to be seized from within premises.
22. Section 3(4) amends section 2(3) of the 1953 Act, which relates to the disposal of seized dogs in terms of section 3 of the Dogs Act 1906.
23. Section 3(4)(a) disapplies section 3(10) of the 1906 Act for the purposes of the 1953 Act. This is a technical change to reflect the fact that section 3(10) of the 1906 Act has already been repealed (and, in any case, never had any application in Scotland).
24. Section 3(4)(b) clarifies the circumstances in which section 3 of the 1906 Act applies, namely to cases where a dog is seized (by a police officer) under section 2(2) of the 1953 Act. This is a technical change to reflect that section 2(2) is no longer “the last preceding subsection”, now that 2(2A) has been inserted.
25. Section 3(4)(c) makes section 2(3) of the 1953 Act subject to new section 2(6) of that Act (inserted by section 3(5) – see paragraph 28 below).
26. Section 3(5) inserts new subsections (4) and (5) into section 2 of the 1953 Act.
27. New subsection (4) applies section 3 of the 1906 Act to dogs seized (by a police officer) under the new section 2(2A) of the 1953 Act on a similar basis to how that section is applied to dogs seized (by a police officer) under section 2(2) of the 1953 Act – except that, in the case of a dog seized under section 2(2A), the owner cannot be required to pay the cost of its detention.
28. New subsection (5) imposes a presumption on the police when disposing of a dog unclaimed by its owner after seven days, to sell the dog rather than destroy it unless the dog is dangerous or selling it is impracticable.

Section 4 – Powers to authorise entry, search, seizure etc.

29. Section 4 replaces section 2A of the 1953 Act with a new version.
30. The existing section 2A allows a justice of the peace to issue a warrant authorising a constable (i.e. police officer) to enter and search premises if the constable has reason to believe that a dog suspected of livestock worrying is on the premises, but only in order to identify the dog. The new section 2A expands on this in two respects: it allows a sheriff as well as a justice of the peace to issue the warrant; and it allows premises to be entered and searched not only to identify the dog but also to ascertain who the owner is, and to examine, seize and detain the dog in order to collect evidence.
31. Under subsections (1)(b) to (3) of new section 2A, one of the pre-conditions for seeking a warrant is that the constable has sought admission to the premises and been refused, and has then served notice of the intention to seek a warrant. But it also allows for situations where the constable has not sought admission because a refusal could reasonably be expected, and for situations where the constable hasn’t given notice of the intention to seek a warrant because doing so would frustrate the purpose of obtaining a warrant (for example, if it is likely that the dog would be removed from the premises before the warrant could be obtained). An alternative pre-condition is that the premises are unoccupied or the occupier is temporarily absent.

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32. Subsection (4) of new section 2A allows the police officer to use reasonable force to enter the premises.
33. Under subsection (5) the warrant provides authority for opening “lockfast places” (for example, forcing open a locked door) and provides authorisation for individuals named in the warrant or for anyone carrying out a role specified in the warrant to accompany the police officer. (For example, it may be more practical to take a vet to the dog, rather than taking the dog to the vet.)
34. Subsections (6) and (7) of new section 2A specify how the rules on the detention of dogs (under section 3 of the Dogs Act 1906) apply in the case of dogs seized from premises under subsection (4) of section 2A. Where the dog is detained under subsection (4)(b), for the purpose of ascertaining who its owner is, it is treated on the same basis as a dog seized from land and detained for a similar purpose under section 2(2). Where the dog is detained under subsection (4)(c), for the purpose of gathering evidence, it is treated on the same basis as a dog seized from land and detained for a similar purpose under section 2(2A). In particular, this means that the owner may be required to repay the cost of detaining the dog if it is detained for the purpose of ascertaining who its owner is, but not if it is detained for evidence-gathering.
35. Section 4(2) inserts new section 2B into the 1953 Act. This new section provides for a police officer who has seized a dog for the purpose of gathering evidence to arrange for the dog to be examined by a vet, and for the vet to take samples from the dog. This can be done either with or without the owner being present.

Section 5 – Definitions

36. Section 5 amends the definitions set out in section 3(1) of the 1953 Act, adds further definitions, and gives the Scottish Ministers power to amend those definitions.
37. The definition of “livestock” is amended to include camelids (for example, alpacas and llamas), ostriches, farmed deer, enclosed game birds and buffalo, and gives further explanation of the meaning of “farmed deer” and “enclosed game birds”. The definition of “agricultural land” is amended to clarify that “grazing land” includes woodland used for grazing, and to include land used for the purpose of raising game birds (to ensure that where enclosed game birds are attacked or worried by a dog, this counts as attacking or worrying them on agricultural land). “Donkeys” replaces the term “asses”, within the definition of “horses”, in order to reflect modern terminology.
38. Section 5(3) inserts new section 3(4) into the 1953 Act to allow the Scottish Ministers by regulations to amend the definitions set out in section 3(1). Section 5(4) specifies that these regulations are subject to the affirmative procedure, which means that they must be laid in draft for approval by the Parliament.

Section 6 – Minor and consequential amendments to the 1953 Act

39. This section changes various references (in section 1 of the 1953 Act) to an offence “under this Act” to refer instead to an offence under “this section” (i.e. under section 1). This is to distinguish that offence from the new offence created by section 1A(3) of the 1953 Act (inserted by section 2 of the Act). Where references to an offence “under this Act” are retained (in sections 2(1) and 2A(1) of the 1953 Act), this is to allow the powers of entry, search, seizure and detention of a dog to be used for investigating and enforcing both offences.