

## **RURAL ECONOMY AND CONNECTIVITY COMMITTEE**

### **CALL FOR EVIDENCE ON THE DOGS (PROTECTION OF LIVESTOCK) (AMENDMENT) (SCOTLAND) BILL**

#### **SUBMISSION FROM ONEKIND**

OneKind is an animal protection charity based in Edinburgh and aiming to end cruelty to Scotland's animals by harnessing research, education and campaigns.

OneKind strongly supports the aims of reducing or, as far as possible, eradicating unnecessary suffering caused to sheep and other livestock due to dog attacks.

#### **Increased penalties**

OneKind agrees that stronger penalties need to be available in recognition of the serious consequences of livestock attacks. Level 5 fines and imprisonment are the highest penalties available for summary prosecutions but OneKind believes that these are justified, given the extreme suffering caused both during and after the most serious livestock attacks.

Given that courts cannot impose short sentences except under specific circumstances, it would be well worth exploring ways to improve the effectiveness of community payback orders (CPO). A CPO is a direct alternative to a custodial sentence and comes with specific requirements attached. Monetary penalties such as fines or compensation orders and deferred sentences remain available to the court as separate disposals. Supervision by a criminal justice social worker (working to change offending behaviour) and unpaid work in the community are the two most common requirements placed on CPOs, but there is also the option of a requirement to attend a special programme. While it would be unusual, it might be possible for the court to attach a condition of taking the dog to obedience training.

#### **Disqualification**

We have some reservations about the proposal to disqualify convicted persons from owning or keeping a dog. Removing a dog for reasons other than the dog's welfare would require justification. The use of this power would have to be appropriate to the context of the offence.

Taking away a family pet who has become out of control in a one-off situation would be disproportionate and inhumane. It is our belief that most owners who witness their dogs attacking livestock would be upset by the experience and would take steps to prevent it happening again. Fear of losing the dog would exacerbate the distress. The consequences could be counter-productive, such as failure to inform the farmer about injured livestock or comply with police enquiries.

That said, the context is different when a dog has been left out unsupervised and has followed his/her instincts to chase livestock. The owner might be unaware of the behaviour. It is the result of irresponsible ownership and an unsupervised dog still living in the same location might be able to chase livestock again. In those

circumstances, or in the case of repeat offenders, disqualification orders might well be appropriate.

We note the proposal for appeal, and this might allow a disqualified individual to acquire a new dog but would be unlikely to restore the original, possibly much loved, pet to his/her family. The proposed power should therefore be used with extreme caution. OneKind would like to see clear guidance to accompany the provision, so that it would only be invoked in clearly defined circumstances, where negligence, possibly amounting to recklessness, has been shown. OneKind recommends an amendment to make the intended applications of disqualification orders clear on the face of the Bill. We acknowledge that removal and disqualification might be imposed as an alternative to ordering the destruction of a dog and in those circumstances it would be preferable.

We support the proposal to require the convicted 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, as a preferable measure to disqualification in most cases.

### **Increased police and inspector powers**

OneKind is supportive of the increased powers allowing police and inspectors to seize dogs suspected of worrying livestock, to identify the owner of the dog or collect evidence.

Taking samples from both the victim of the attack and the dog assumed to have carried it out is a reliable method of establishing whether or not contact has taken place. DNA testing is increasingly used in domestic animal and wildlife cases and has become an essential evidential tool.

The seizure of a dog from an uncooperative or unhappy owner is likely to heighten stress for all concerned and it would be better if this can be avoided by ensuring that the owner takes the dog for evidence to be collected, or this is carried out in the home environment. If the power of seizure has to be invoked, we would support the involvement of the Scottish SPCA, whose Inspectors are used to handling dogs in a heightened state and have a clear remit to ensure their welfare.

### **Powers to authorise inspecting bodies**

As stated in the consultation document when this bill was initially proposed<sup>1</sup>, the number of prosecutions under the Dogs (Protection of Livestock) Act 1953 does not reflect the number of attacks taking place. The number of convictions cited in the document amounts to approximately 11% of the number of incidents reported. Therefore, while the significance of an individual conviction will be greater once increased penalties are available, the overall effectiveness of the legal approach is affected by a number of factors. Under-reporting of incidents is one of these, as is the apparently low clear-up rate (when investigation of a case results in a referral to the COPFS or the court).

---

<sup>1</sup> [https://www.parliament.scot/S5MembersBills/20190219\\_FINAL\\_Draft\\_Consultation\\_Document.pdf](https://www.parliament.scot/S5MembersBills/20190219_FINAL_Draft_Consultation_Document.pdf)

This suggests that investigation and detection resources need to be bolstered to achieve improved enforcement: simply increasing the penalties is only one of the elements required in a concerted effort to end the suffering. We therefore agree with the proposal to give the Scottish Ministers powers to delegate enforcement of the Bill to a relevant agency to provide for greater enforcement and investigation. Police Scotland has taken a pro-active role in public education campaigns but given the reported increase in attacks, it is essential to use all available resources to trace the owners of the dogs involved and apply legal measures where appropriate.

We support the power to investigate and enforce this offence being given to the Scottish SPCA, which has considerable expertise in investigating all kinds of offences involving animals, and protecting the welfare of all the animals concerned – in the case of livestock attacks, that would mean both victim and “offender”. Scottish SPCA Inspectors are authorised to enforce the Animal Health and Welfare (Scotland) Act 2006 as well as other legislation and play an essential role in this area. We can also see a benefit in involving the Scottish SPCA in any operation involving the removal of a dog for veterinary examination, as mentioned above.

### **Extending the definition of livestock**

We agree that any farmed species should be protected from unnecessary suffering due to attack or pursuit by dogs and support the extended definition of livestock and agricultural land. We also welcome the power given to the Scottish Ministers to amend that definition by regulation; this will allow for the protection of species that are not currently farmed but may be so in the future.

### **Additional measures that could be taken**

The most constructive, helpful and welfare-friendly way forward is obviously to focus on preventing livestock attacks in the first place.

Further work on responsible dog ownership is necessary and this would be a constructive approach to combating livestock attacks.

OneKind has long supported the introduction of a modern dog licensing scheme to provide an appropriate means of encouraging responsible dog ownership, not only with reference to dog control, but also dog welfare. This could follow the model of the General Licences currently provided for purposes such as the movement of cattle, activities affecting wild birds, and import/export trading. These General Licences permit activities that are widely practised, while placing conditions on the conduct of the activity and providing sanctions for breach.

An effective General Dog Licence (GDL) would avoid the need to apply for individual licences or to renew annually but would still provide enforceable Conditions. The position would be that all dog owners were covered by the licence unless they did not meet the Conditions.

OneKind sees a modern licence scheme as a mechanism for promoting responsible dog ownership. Conditions we have previously proposed include:

- The dog must be kept under control (“control” to be defined using the terminology of s.1 of the Control of Dogs (Scotland) Act 2010)
- The holder must not have been convicted of offences under the Control of Dogs (Scotland) Act 2010, the Dangerous Dogs Act 1991, or sections 19-24, 29 or 40(11) of the Animal Health and Welfare (Scotland) Act 2006, within the previous ten years.

Failure to observe all the conditions of the licence would ultimately remove an individual’s right to access the licence, either temporarily or permanently. This amounts to the same sanction as disqualification, as proposed in the Bill, but there are two key differences.

Firstly, it would be unlikely that a conviction, based on the criminal standard of proof, would be required before the licence could be removed; and secondly, the conditions of the licence and the consequences of non-compliance would become well known to dog owners and this would promote and encourage appropriate behaviour in all situations.

Regarding the topic at hand, different measures are required to address different aspects of the problem. Publicity and local engagement campaigns have attracted significant coverage and have increased the use of signage in areas such as the Loch Lomond and Trossachs National Park, and we are aware that standard signage has been made available to landowners. This could be augmented so that signage not only warns of the presence of livestock but also suggests alternative routes to take to avoid any risk of encounters. Signs could point to areas where there is no problem with allowing dogs to run off the lead, so that walkers feel welcome on the land and are more likely to be compliant where there are restrictions

The guiding principles for land managers published by SNH (now NatureScot)<sup>2</sup> in the wake of the Scottish Outdoor Access Code encourage a positive, welcoming approach:

- Managing access with dogs should be an integral part of positive management of public access. Identify which particular issues present the greatest problem and concentrate on these.
- People respond best to land managers who show that they welcome responsible public access.
- Clearly communicate the behaviour that is requested, why, where and when.
- Focus on encouraging and promoting access in less sensitive areas rather than trying to stop people elsewhere.
- Identifying and clearly signing areas suitable for letting dogs off-lead as well as areas where it is advised that dogs are kept on-lead shows dog walkers that their needs are being actively considered, which helps encourage a positive response.

---

<sup>2</sup> <https://www.nature.scot/sites/default/files/2017-06/Publication%202015%20-%20Taking%20the%20Lead%20-%20Managing%20access%20with%20dogs%20to%20reduce%20impacts%20on%20land%20management.pdf>

- Raise awareness of issues through appropriate signs and direct communication with dog walkers, and if necessary by other routes such as local media.
- Enlist the help and support of responsible dog walkers to lead by example and apply peer pressure to those failing to behave responsibly.

OneKind feels that these are important points. People should feel welcome in the Scottish countryside and it is our belief that positive reinforcement would encourage dog owners to adapt their behaviour, for example by keeping dogs on the lead where requested.

Researchers into the psychology of dog walkers write<sup>3</sup> that:

*“There is great scope for improving the management of dog walking in the countryside. On the one hand, some behaviours need to be changed to improve relations between dog walkers and other users; on the other hand, there are things that can improve the experience for dogs and their walkers. We believe that these two angles must be approached concurrently, so that what is offered is an approach and overall ‘package’ for dog walkers, which seeks to improve the quality of their dog walking overall, and which is presented as such.*

*[...] As part of this approach, we recommend that site managers use a variety of means to communicate with dog walkers in a positive way. Leaflets, maps, notice boards, websites, and direct contact via a forum of land users may be the most effective. Site managers might consider different routes to persuasion, for example, by emphasising management practices from the perspective of the dog, explaining restrictions, providing more facilities, and opening communication channels. Central and peripheral routes to persuasion, foot-in-the-door techniques and emotional appeals may be applied in order to develop methods for encouraging desired behaviours, by influencing behavioural, normative and control beliefs. The influence of group membership may also be utilized.”*

Given the stress in this report on positive messages to dog walkers, OneKind has observed that approaches vary. We have seen some signage, both north and south of the border, that could be seen as somewhat peremptory. We noted contrasting tones in different blogs hosted by the NFU Scotland website. One blog emphasises the need to “Control Your Dog on Farmland” and repeatedly uses expressions such as “irresponsible access”, “tougher penalties”, “tackle”, “untold damage”, “persistent offenders” and “dangers”. This perspective is understandable in view of the real damage and suffering caused by livestock attacks - but in view of the advice from SNH to land managers and the aforementioned research, it may not be the most effective way to approach dog owners.

A subsequent blog on the same site takes a far more welcoming tone, referring to “right to roam”, “responsible dog ownership”, “a lovely walk in the countryside with our best friend” and “dog owners and farmers can work together to ensure responsible and safe dog walking on farm land for all involved.”

---

<sup>3</sup> <http://publications.naturalengland.org.uk/publication/215080>

OneKind would suggest that getting the tone right when communicating with dog walkers will play a major part in gaining their understanding and co-operation. People may well aspire to being known as responsible dog owners but will inevitably feel resentful and targeted when categorised as irresponsible. This may reduce their willingness to comply. Further research into this area is recommended.

### **A final point of clarification**

In the member's commentary on the results of the consultation, when this bill was initially proposed, Emma Harper wrote: "*The animal protection charity OneKind proposed the removal of exemptions in the 1953 Act for police dogs, guide dogs, trained sheep dogs, working gun dogs and dogs 'lawfully used to hunt'.*"

We would like to clarify – it was only the exemption for hunting dogs that we recommended be removed.

We stand by this recommendation. Packs of hounds in the vicinity of sheep can cause them considerable stress. Hunting with hounds, though purportedly carried out for 'pest' control, does not serve any essential function, in contrast to the other exemptions listed in the Act. Therefore, an exemption for dogs used to hunt is not justified.