

RURAL ECONOMY AND CONNECTIVITY COMMITTEE

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

SUBMISSION FROM LOCH LOMOND & THE TROSSACHS NATIONAL PARK

Introduction

Thank you for the opportunity to comment on the proposed Bill. This response has been compiled at Adviser level and is without prejudice to any formal view the NPA Board may take. We submitted a detailed response to the initial consultation in May 2019 and this response refers to that submission, and includes it again as supplementary information.

Submission questions

1. What is your experience of livestock worrying? What is the scale of the issue?

We are the Access Authority for the National Park and have been working with farmers and other land managers in the National Park since it was established in 2002 including problems of sheep worrying on popular access routes. We know there are hotspots in the National Park (the Conic Hill area in particular) and we have implemented measures such as no dogs in certain areas during the lambing season and advisory signage for dogs on leads in other places.

However we do not have or know of any figures for livestock worrying in the National Park. This is replicated across Scotland and was recognised in the 2019 consultation document. On three occasions the report stated that data is poor (pages 20 and 21);

- *'very difficult to produce accurate data on how many incidents occur across Scotland and the rest of the UK every year';*
- *'Precise data on attacks in Scotland alone is also scarce';*
- *'The absence of robust data on the scale of the problem'*

Therefore the scale of the problem compared to the number of visits to the countryside by the public with dogs is unknown, although estimates can be made. For example the Scottish People and Nature Survey in 2013-14 estimated that there were 395 million outdoor visits of which 53% were in the countryside. This equates to roughly 200 million visits. Of these 48% were with dogs which equates to roughly 98 million visits. A further analysis of 2013-14 data showed that of these 15% of people with dogs visited farmland which roughly equates to 14.7 million visits. Therefore the 175 recorded incidents in 2016-17 represents 0.001% of all visits to farmland with dogs.

There is very little mention of the problem of 'latchkey' dogs despite the access sector advising in 2018 it is likely that 70% of attacks are caused by such dogs. The Kennel Club, in its submission in 2019 stated that, "Police Scotland data shows that two-thirds of livestock attacks occur from dogs local to the area, or purposely let out of the house to roam free, or dogs which had 'escaped' from a house or garden. This is in keeping with the figures reported by police forces over a four year period for England and Wales, in which 7 in 10 attacks took place without an owner present."

We would therefore like to see a period of adequately resourced, independent and robust research and data gathering prior to any changes in legislation and we could be part of any pilot approach.

2. Does legislation need strengthening in this area? If so – does the Bill do this? Is the Bill the best way to do this?

We do not believe the Bill addresses all of the relevant factors associated with livestock worrying. There is no obvious direct measure to aid prevention of straying / latchkey dogs worrying or attacking livestock and all the focus appears to be on access takers accompanied with their dog or dogs. If, as the evidence suggests, the bulk of livestock attacks is by 'latchkey' dogs then the measures put forward by the Bill (increased fines, custodial sentencing, disqualifying offenders from owning dogs) will be difficult to implement if owners cannot be traced.

We would like to see more effort and resources put into education of dog owners of the risks that free roaming dogs pose. For example, Scottish Natural Heritage (SNH) released a series of dog training modules in 2019 but we are unaware of any evaluation of these. They could form part of a wide-reaching and high profile educational campaign that targets individual owners and commercial dog walkers. There is the potential to develop a series of integrated but positive campaign messages such as:

- Health benefits of responsible dog ownership
- Economic benefits of LRA, SOAC and responsible dog ownership
- Tying responsible dog ownership into improved dog welfare messaging and campaigns
- Reminding landowners of effective signage techniques and measures they can take
- Targeted campaigns at known hotspots

We would therefore like to see an educational campaign and an evaluation of the promotion and effectiveness of the SNH training modules to inform changes in legislation.

We also support the Kennel Clubs' call for clear guidance on the use of Dog Control Notices to deal with straying / latchkey dogs, the implementation of the national database to record Dog Control Notices so that all relevant agencies in all parts of the country are aware of dogs subject to control notices, and that powers to issue such Notices should be extended to the police.

3. What are your views on the increased penalties the Bill creates for livestock worrying?

We accept that the current level of fines from the 1953 Protection of Livestock Act is insufficient a deterrent and that a £5,000 fine is more appropriate. We do not support custodial sentencing unless there is clear and corroborated evidence of repeat offending, wilful and negligent ownership of dogs and failure to comply with previous warnings. As mentioned above, given the practical difficulties of establishing the identity of the dog and its owners, we do not expect this level of penalty to be applied on a regular basis.

4. Would the proposals to disqualify convicted persons from owning or keeping a dog or taking a dog onto certain types of land, assist in the aim of reducing the number of livestock worrying instances?

In principle, disqualification from owning or keeping a dog could reduce the number of livestock worrying incidents. However our view is the same as 3) above that it should only apply to those wilful and negligent repeat offenders and where clear evidence exists.

5. What is your opinion on extending the types of livestock and type of agricultural land covered by livestock worrying, as described by the Bill?

We agree with this extension.

6. What are your views on the powers allowing Scottish Ministers to appoint inspectors, other than police, to investigate and enforce livestock worrying offences?

We are not against additional enforcement bodies being able to investigate and enforce the legislation. We recognise the often rural nature of this crime makes it challenging to enforce, and so allowing other enforcement bodies to enforce the law should help to increase the resources available to deal with this issue. Any extension of enforcement powers, would ideally be entrusted to relevant organisations such as the SSPCA and must be linked with appropriate on-going training to ensure that the powers are being executed appropriately, and in line with the law.

7. Do you have any comments on the expanded powers for police and inspectors to seize dogs, to enter premises and to take a dog to the vet?

As with 7) above we are not against this proposal but would expect that the inspectors other than the police would be from relevant organisations and appropriately trained. Also there needs to be greater clarity at what stage of any investigation and what level of evidence does the police or others need before taking this step.

8. Does the Bill adequately balance the rights of dog owners and the rights of livestock farmers?

It is not possible to make an accurate judgement on this for two reasons. Firstly, as described in 1) above, the actual scale of the problem is not known. Secondly we are unsure how well the Bill as proposed represents the views of the respondents to the 2019 consultation. The Scottish Government's own analysis of the 2019 consultation states that of 621 responses, 208 were anonymous and 57 marked not for publication. That equates to 42.6% of responses where there is no identification and therefore not possible in most cases to identify whether they are dog walkers or landowners. As a consequence, we don't know if the Bill meets the needs of all relevant audiences

9. Is there anything else that should be included or excluded from the Bill?

Our fundamental stance is that no-one wants to see livestock attacks and well-designed mechanisms that provide better protection are to be welcomed. We have seen the consequences of livestock attacks that cause serious injury and death and it is a very distressing experience. We therefore support:

- Proposals or actions that are clearly evidenced and well designed
- A period of adequately resourced, independent and robust research on the actual scale and nature of the problem before any new measures are enacted

- A sustained educational campaign about dog ownership and issues of dogs in the countryside. These could include positive messages around dog ownership and there should be an evaluation of this campaign before any new measures are enacted.

We believe the proposals in the Bill are well intentioned but will not systematically address or prevent livestock worrying or attacks on their own. The true scale and nature of the problem needs to be researched and more evidence and action on latchkey dogs is required before the proposed penalties are brought in.

Response to the initial consultation in May 2019

Response from Loch Lomond and The Trossachs National Park Authority to the Proposed Protection of Livestock (Scotland) Bill 2019

Introduction

Thank you for the opportunity to comment on the proposed Bill. This response has been compiled at Adviser level and is without prejudice to any formal view the NPA Board may take. We have also filled in the online consultation questionnaire but wanted to present a more detailed response that provides comment and raises issues that are not covered by the questions. We refer to this letter in the comments section of the questions. We hope that these additional comments will be included in the consultation analysis and further development of the Bill.

We are the Access Authority for the National Park and have been working with farmers and other land managers in the National Park since it was established in 2002. In this time we have worked to deliver constructive solutions to many problems relating to integrating recreation and access rights with those of land managers. This includes problems of sheep worrying on popular access routes as well as camping management, litter management and conflicting recreational activities on water bodies.

General comments

Our fundamental stance is that no-one wants to see livestock attacks and well-designed mechanisms that provide better protection are to be welcomed. We have seen the consequences of livestock attacks that cause serious injury and death and it is a very distressing experience.

Drafting and content of the Bill

1. This is understandably an emotionally-charged subject and what is needed is a carefully-considered approach that delivers robust solutions that will stand the test of time. With that in mind, we feel that the document would benefit from being more firmly evidence-based. It contains several potentially misleading statements and in places uses emotive language which we feel is unhelpful, particularly if taken out of context, and could lead to similarly emotive responses that are more based on media profile and perception. For example on Page 7 it is stated that;

'From year-on-year data of the number of offences recorded by local authorities, under the 1953 Act, it is apparent that the problem is increasing.'

We would question this assertion, as although it is entirely possible with the reporting of incidents increase, the number of actual attacks may have fallen over the years. The opposite may also be true. The document acknowledges this in the next paragraph by saying *'The increase in the number of recorded offences in recent years may reflect, at least in part, increased reporting.'*

2. While not doubting the severity of the incident in question, the case study on page 8 and 9 contains emotive and sometimes conflicting language. The last paragraph in particular; *'Unfortunately, once these dogs have a taste for it, they are likely to attack again, and I fear the next time it may not be an animal, but someone's child'* is unsubstantiated.
3. There is only one reference to latch-key dogs on page 8 despite the access sector advising in 2018 that it is likely that 70% of attacks are caused by such dogs. **We would therefore like to see a period of adequately resourced, independent and robust research and data gathering prior to any changes in legislation and we could be part of any pilot approach.**

4. The example above reflects the overall picture that the proposals in the Bill are not backed by sufficient data and evidence. On three occasions the report states that data is poor (pages 20 and 21);
 - *'very difficult to produce accurate data on how many incidents occur across Scotland and the rest of the UK every year'*;
 - *'Precise data on attacks in Scotland alone is also scarce'*;
 - *'The absence of robust data on the scale of the problem'*
5. There is no context or attempt to outline the scale of the problem compared to the number of visits to the countryside by the public with dogs and the impression given is a problem that is increasing and out of control. Such comparison data exists. For example the Scottish People and Nature Survey in 2013-14¹ estimated that there were 395 million outdoor visits of which 53% were in the countryside. This equates to roughly 200 million visits. Of these 48% were with dogs which equates to roughly 98 million visits. A further analysis of 2013-14 data showed that of these 15% of people with dogs visited farmland which roughly equates to 14.7 million visits. Therefore the 175 recorded incidents in 2016-17 represents 0.001% of all visits to farmland with dogs. Livestock attacks are a serious issue but thankfully they are very much in the minority. We are very much aware of hotspot areas however, including Conic Hill in the National Park, where particular management measures may be needed. For example we request that all dogs are kept on a lead on Conic Hill during the lambing season and this is based on clear evidence and local knowledge.
6. The inclusion of the Dog Control Notice table on page 10 is unnecessary and irrelevant when it states that it is *'not specific to incidents of dogs being out of control close to livestock'* and that *'from speaking to a number of local authority Dog Wardens...they explained that DCNs are not generally used for incidents of livestock worrying/attack, and that they would not normally deal with these incidences.'* This table leads respondents into thinking the problem is on the increase when it may not be.
7. The first paragraph of the foreword appears to conflate the 'sharp rise in the number of dogs attacking livestock' with access legislation. This is symptomatic of the tone and content of the rest of the consultation. It risks creating the impression that public access to Scotland's countryside needs to be curtailed, in the face of many government –led initiatives to promote greater access to and use of the outdoors. This could be redressed by including clearer references to the rights and responsibilities of access takers, landowners and land managers have under the Land Reform Act (LRA) 2003 and advice contained in the Scottish Outdoor Access Code (SOAC). For example, with reference to farm animals SOAC states that responsible behaviour from landowners would be:

*'Give consideration to access rights and well-used paths when positioning stores for slurry or other waste, or providing animal feeding sites, if this could readily be done elsewhere on the farm.'*²
8. Section 6 is titled 'What Stakeholders have called for' but the only stakeholders referenced are NFU Scotland and Scottish Land and Estates. This does not appear to reflect other stakeholders with key expert knowledge who would have inevitably also contributed to the development of this Bill, for example the Scottish Outdoor Access

¹ (<https://www.nature.scot/sites/default/files/2018-12/SPANS%20-%202013-14%20-%20special%20interest%20report%20series%20-%20Dogs.pdf>)

² <https://www.outdooraccess-scotland.scot/practical-guide-all/farm-animals/biosecurity>

Network, SNH, Police Scotland and the Kennel Club. No explanation is given as to whether these stakeholders were consulted or why these views are not included.

Timing of the Bill

1. Along with our request that any enactment of changes in legislation be deferred until research and data can better inform it, we would also suggest a similar delay to evaluate a current high profile and sustained educational campaign on all aspects of dog ownership, but in particular the exercising and control of dogs in the countryside.
2. Scottish Natural Heritage (SNH) has just released a series of dog training modules.³ These modules could be the centrepiece to a wide-reaching and high profile educational campaign that targets individual owners and commercial dog walkers. There is the potential to develop a series of integrated but positive campaign messages such as:
 - Health benefits of responsible dog ownership
 - Economic benefits of LRA, SOAC and responsible dog ownership
 - Tying responsible dog ownership into improved dog welfare messaging and campaigns
 - Reminding landowners of effective signage techniques and measures they can take
 - Targeted campaigns at known hotspots

We would therefore like to see an educational campaign and an evaluation of the promotion and effectiveness of the SNH training modules to inform changes in legislation.

Existing legislation

1. We want to make it very clear that the Land Reform Act (LRA) 2003 is a positive and enabling piece of legislation and that enforcement of irresponsible actions fall under the separate legislation mentioned in the document. This is a societal issue that existed well before the LRA and it is the older and more specific legislation which needs to be updated not the LRA. We are concerned at the reference to breaches of the SOAC not being a criminal offence.
2. However we accept that the current wording of the SOAC is confusing and could be made clearer. There are currently three references to dogs in fields⁴:
 - Don't take your dog into fields where there are lambs, calves or other young farm animals
 - If you go into a field of farm animals, keep your dog(s) on a short lead or close at heel and keep as far as possible from the animals
 - If cattle react aggressively and move towards you, keep calm, let the dog go and take the shortest, safest route out of the field
3. We have discussed this informally with other members of the Scottish Outdoor Access Network (SOAN) and there was no dissent to the suggestion that this could be re-worded to something like 'No dogs in fields of young animals and dogs on leads in **all** enclosed farmland'. We are also aware of the discussions at the National Access Forum on this subject that flexibility should be given to access authorities and officers to vary SOAC wording depending on the situation, for example dogs to be on leads on and around Conic Hill. We believe that the access sector is therefore prepared to discuss variations to the SOAC if it helps prevent livestock attacks. We do not however agree with the NFUS suggested SOAC revision that 'all dogs (except for working dogs) must be on a lead around sheep'. This is too restrictive as it could be defined as all upland areas in the country, including locations where sheep may appear unexpectedly. We believe that the

³ <https://www.outdooraccess-scotland.scot/practical-guide-all/dog-walking/dog-training-and-resources>

⁴ <https://www.outdooraccess-scotland.scot/practical-guide-all/dog-walking>

onus on responsible access outlined in the SOAC means all dog owners should satisfy themselves that there are no livestock in the vicinity prior to letting their dog off the lead or that they will remain under control.

Proposed Measures of the Bill

1. Apart from areas 1 and 2, we are in broad agreement with the areas outlined by NFUS from May 2018, on page 13 of the consultation. We have some serious concerns over the criminalisation of livestock attacks however. The practical difficulties of establishing the identity of the dog and its owners beyond any doubt also need to be considered: legislation that is too hard to enforce is unlikely to be effective. Serious consideration needs to be given to the whole life impact of a criminal record for a dog owner, in particular if it was a case of a genuine accident (for example an excitable dog wanting to play) rather than a malicious attack. This does not mean we condone those 'less severe' incidents or that they cannot cause trauma in themselves but we are of the view that criminalisation would be a step too far in many circumstances and difficult to enforce.
2. We support greater financial penalties as a deterrent around clearly negligent dog ownership and that compensation could be provided by the perpetrators. We agree in principle with the proposal to provide Police Scotland with the powers to issue Dog Control Notices (DCNs) but there needs to be a realistic discussion and recognition of the lack of availability of police resources to carry out this function before this happens. There could also potentially be a lack of priority within some areas of the Police and Procurator Fiscal Service to take these cases forward. Could another organisation such as the SSPCA be better placed to take this forward? We would also like to see a clear rationale as to how this will better protect livestock than the similarly under-resourced network of Local Authority Dog Wardens or enforcement officers. Within the National Park incidents of livestock worrying due to irresponsible dog ownership are focussed on specific hotspot areas. Therefore we believe that enforcement based around targeted campaigns could have the greatest chance of success around behaviour change and reduced incidents.

Summary of comments

1. Any proposals or actions should be clearly evidenced and well designed. Although perceptions and unbalanced media pieces can distract from core issues and solutions everyone wishes to see a reduction in all types of livestock attacks.
2. There should be a period of adequately resourced, independent and robust research on the actual scale and nature of the problem before any new measures are enacted.
3. There should be a sustained educational campaign about dog ownership and issues of dogs in the countryside. These could include positive messages around dog ownership and there should be an evaluation of this campaign before any new measures are enacted.
4. Following this evaluation and data gathering period, the right legislation could be revised. These are the Protection of Livestock Act 1953, Control of Dogs Act 2010 and the Dangerous Dogs Act 1991. There is no evidence that the Land Reform Act 2003 needs any revision but advice in the SOAC could be made clearer.
5. We have concerns about the criminalisation of livestock attacks but support greater financial penalties and other measures that would improve evidence gathering.

6. The proposed Bill should be more positive about the Land Reform Act 2003 and make landowners more aware of the responsibilities they have under the Act and that these could also help address the situation.