



What are the remedies available when sheep worrying occurs? Stephanie Hepburn, a Senior Associate in our rural disputes team, and Emma De Saily, an Associate in our rural team, provide an insightful update.

Sheep worrying has become an increasing concern for farmers and estate owners, especially following the introduction of the right of responsible access (often referred to as the “right to roam”) by the Land Reform (Scotland) Act 2003. Incidents are on the rise with research by the Scottish Government estimating approximately 7,000 incidents of sheep worrying in Scotland from 1 May 2018 to 30 April 2019 with a total estimated cost to sheep farmers of around £5,500,000, although these estimates should be treated with caution. The devastating effects of sheep (and other livestock) worrying for farmers and their businesses is clear yet the responsibilities placed on dog owners who live or walk their dogs in the countryside, and the remedies open to those affected by a sheep worrying incident, are often poorly understood.

## Livestock Worrying – Dogs (Protection of Livestock) (Amendment) (Scotland) Bill

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In response to a steady and continued increase of reports of cases of livestock being attacked by dogs, the Livestock Worrying – Dogs (Protection of Livestock) (Amendment) (Scotland) Bill has come before the Scottish Parliament.

The Bill seeks to amend the current law, in particular the Dogs (Protection of Livestock) Act 1953 (see below). Key features are:

- An increase in the maximum penalty to a fine of £5,000 or imprisonment for six months;
- To allow the Courts to ban a convicted person from owning a dog or allowing their dog to go on agricultural land on which livestock is present;

- To give the police greater powers to investigate and enforce livestock worrying offences, such as going onto land to identify a dog, seize it and collect evidence from it;
- To allow other organisations to be given similar powers;
- Redefine “livestock” to reflect the extended species now farmed in Scotland, including llamas, alpacas, ostriches, farmed deer, buffalo, and enclosed game birds; and
- Widen the definition of “worrying” to include chase, attack and kill, to make the offence clear and to allow people to better understand the term.

The Bill was put out for public consultation in May 2020 to understand the need for further legislation in this area and to seek views on whether the additional powers and increased punishments proposed are sufficient and proportionate. The consultation period ended with 75 submissions being received and the Bill is now before the Rural Economy and Connectivity Committee for scrutiny.

*We will update this briefing note if and when the Bill is passed.*

## Current guidance and law in Scotland:

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### Scottish Outdoor Access Code

While the Land Reform (Scotland) Act 2003 does give people rights of responsible access over land and places responsibilities on farmers and land managers to respect these access rights when managing their land, it does not allow members of the public the right to access land with a dog that is not under proper control. The public’s responsibilities are set out in the Scottish Outdoor Access Code. Farmers should be familiar with this Code which



gives examples of how a dog walker should keep their dog under proper control:

- Never let your dog worry or attack livestock;
- Never take your dog into a field where there are calves or lambs;
- Where possible, choose a route that avoids going near sheep, cows and horses. If you need to go into such a field, keep the dog on a short lead (under 2 metres in length) or close at heel and keep your distance from the animals; and
- If farm animals react aggressively and move towards you, keep calm, let the dog go and take the shortest, safest route out of the field.

If you come across a dog walker acting in breach of the Code, advising them that they are acting in breach of the Code should hopefully stop the wrongful act. If it doesn't, there may be more formal legal remedies open to you.

### **Current law**

The guidance in the Scottish Outdoor Access Code is reinforced in criminal law by the Dogs (Protection of Livestock) Act 1953. If a dog worries sheep on agricultural land, the person in charge of the dog is guilty of an offence. Worrying is defined as: "attacking livestock; chasing livestock in such a way as may reasonably be expected to cause injury or suffering; or being out of control in a sheep field without the authorisation of the owner or occupier". Conviction can lead to a fine of up to £1,000 and the seizure of the dog by the police. If you find yourself in a situation where a dog walker continues with sheep worrying even after references to the Code have been made, you can phone the police and allow them to take appropriate action.

The Animals (Scotland) Act 1987 also imposes "strict liability" on those in charge of dogs in relation to injury and damage caused by biting, savaging or harrying. Strict liability means that the person in charge of the dog will be found liable for the injury or damage even if there was no deliberate or reckless conduct on their part, and compensation may be payable to the affected farmer/landowner. As outlined below, this act also gives

the landowner/occupiers certain rights to take action to protect their livestock.

Finally, the Control of Dogs (Scotland) Act 2010 gives the local authority the right to serve a "Dog Control Notice" on the owner of a dog or the person in day to day charge of a dog, if it appears that the dog has been out of control on at least one occasion and its behaviour has led to reasonable alarm or apprehensiveness on the part of any individual. A Dog Control Notice requires certain steps to be taken by the person in charge of the dog to ensure that it remains under control when in a public place.

### **What can you do if sheep worrying affects you?**

As always, prevention is better than cure. Consider whether there are key spots on your land where it would be worth putting up signs alerting the public to the presence of sheep and lambs and reminding them to keep their dogs under control. If you see dog walkers in breach of the Code, and advising them of their breach does not have the desired effect, you should consider calling the police or reporting the problem to your local authority so they can consider whether a Dog Control Notice would be appropriate.

Unfortunately, none of these measures provides a guarantee against sheep worrying, nor does a police investigation or issuing of a Dog Control Notice happen immediately. Where immediate action is required, for example if you find a dog actually attacking your sheep, and the owner is either not present or does not have any control over the dog, you have the right to detain the dog to prevent it causing injury or damage. If you do this, you must then take reasonable care of the dog and return it to the owner or notify the owner or the police without delay. If it is not practical or safe to detain the dog you should contact the police using 101 or 999 in an emergency.

As a last resort, the Animals (Scotland) Act 1987 gives you power to shoot a dog but this is a severe course of action and a number of factors must be taken into account. Your actions have to be for the protection of your livestock, the dog has to be actively worrying or attacking the livestock, and there must be no other practicable means of ending the attack. Where possible you should take photographic evidence of this and it is vital that you inform the police



within 48 hours (preferably sooner). If you are in breach of any of these conditions you may face prosecution and/or having your firearms licence taken from you. Accordingly, exercising this right is something that should be considered very carefully.

## How can we help?

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Our rural disputes team can advise you of your options following an incident or series of incidents of sheep worrying. This can range from contacting authorities on your behalf or seeking compensation after the incident under the Animals (Scotland) Act 1987.

*Please contact Stephanie Hepburn in our rural disputes team or Emma De Saily in our rural team for more information.*

## Key contacts

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