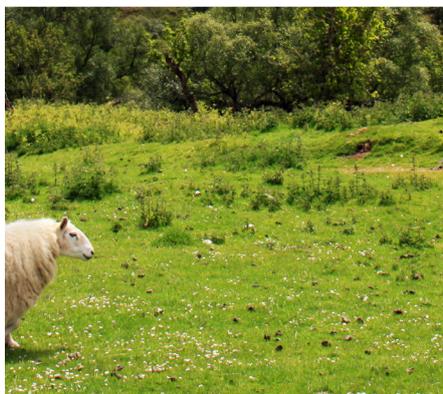
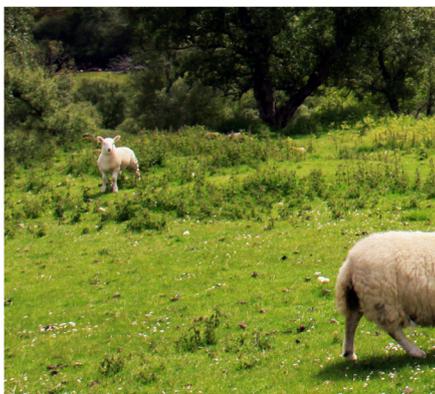




Worrying times for sheep farmers



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Sheep worrying is becoming an increasing concern for farmers and estate owners, especially following the introduction of the “right to roam” by the Land Reform (Scotland) Act 2003. Incidents are on the rise, with over 2,000 reported to the police in the UK in the last two years. Police Scotland recently launched a three month campaign to raise awareness about the devastating effects of sheep (and other livestock) worrying for farmers and their businesses and 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.

Scottish Outdoor Access Code

While the Land Reform (Scotland) Act 2003 does give people access rights 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 2m in length) or close at heel and keep your distance from the animals;
- 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.

The 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?

Our rural litigation 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.

For further information or advice on any of the issues discussed in this briefing note, please get in touch with your usual Shepherd and Wedderburn contact.