

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),

*These notes relate to the Dogs (Protection of Livestock) (Amendment)
(Scotland) Act 2021 (asp 18) which received Royal Assent on 5 May 2021*

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.