

# Criminal Liability for Dogs Attacking Livestock under the Dogs (Protection of Livestock) Act 1953: A Worrying Time for Farmers?

**Stephen Forster LLB (Hons) Barrister (Lincoln's Inn) and Lecturer in Law & Policing at Leeds Trinity University.**

## Abstract

In *Dickson v Procurator Fiscal Stirling* [2013] HCJAC 157 Lady Smith, sitting in the High Court of Judiciary, with vivid clarity noted that "the public interest in ensuring that livestock being reared by farmers are protected and the risk of dogs injuring or killing such livestock, have been concerns of Parliament for many years", and that it is not only the financial loss suffered by the farmer, it is an essential food supply and thus "of fundamental concern in any society." Yet despite a protracted 2-year delay, the Government has suddenly decided to withdraw its flagship Animal Welfare (Kept Animals) Bill 2023<sup>1</sup> that would not only have benefited farmers by strengthening the existing law, but also addressed the escalation of a livestock worrying problem<sup>2</sup>.

Given this disappointing news, the main purpose of the article is therefore to provide a comprehensive review of the current law and in particular what impact this is having on livestock farmers, who at the moment are inadequately protected by the criminal law against a growing social menace.

## Introduction

The pandemic had undoubtedly created a greater influx of people into the countryside, national parks<sup>3</sup> and beauty hotspots to enjoy

these majestic surroundings. The well-being and economic benefits of visiting the countryside are obvious<sup>4</sup> but, with an increase in dog ownership<sup>5</sup>, it is no coincidence according to the National Sheep Association survey in March 2023 that farmers are seeing a significant increase in dogs attacking or worrying their grazing livestock during the vital spring and summer months<sup>6</sup>, although the number of recorded complaints to the police is not known<sup>7</sup>.

According to the National Farmers Union (NFU) Mutual Insurance, in 2020 during the height of the pandemic there was a 10% increase in claims, costing around £1.3 million in liability<sup>8</sup>. This has continued to steadily raise to £1.8 million in 2022. Putting aside the financial loss from a dog attacking livestock, there is also the distress and emotional impact of having to deal with any aftermath and in some cases the savagery of an attack, sadly also highlighted by the

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1949, Rural tourism (europa.eu), Far from the madding crowd: rural breaks boom as wary avoid coast | Hospitality industry | The Guardian- More people than ever visit the natural environment - Natural England (blog.gov.uk).

4 New survey shows visiting British farmland benefits mental health – NFUonline, How has lockdown changed our relationship with nature? – Office for National Statistics

5 Morgan et al, Human-dog relations during the COVID 19 pandemic: booming dog adoption during social isolation (2020) 155 Humanities & Social Sciences Communications 1.

6 See Hansard "Livestock Worrying: Sussex" 17 April 2018 vol 639 in which George Eustice noted an increase in cases. Sheep worrying - a growing concern | Rural Insurance Group Urgent action needed to halt helpless acceptance of sheep worrying by dogs | News | National Sheep Association,

7 Recorded incidents are a matter for individual police forces and are not according to DEFRA collated centrally see Hansard "Livestock: Dogs" questioned tabled by Tim Loughton -4 June 2020

8 Dog attacks on livestock – the true cost – NFUonline see also [www.nfumutual/media-centre](http://www.nfumutual/media-centre) (29 March 2021).

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1 The Bill suffered significant delay principally due to anarchic government.

2 Sheep worrying - a growing concern | Rural Insurance Group Urgent action needed to halt helpless acceptance of sheep worrying by dogs | News | National Sheep Association

3 National Parks & Access to the Countryside Act



National Sheep Association (NSA) 2021 survey<sup>9</sup>. As stated in *R(Association of Mest Suppliers) v DEFRA* [2017] EWHC 1961 sheep are prey type animal and therefore instinctively flock together with the desire “to remain in a group, and move away from external influences” such as the presence of a dog will create a heightened level of stress and a risk of injury, especially if in an enclosure. It is only right therefore that farmers should be able to rely on the criminal law to punish and deter such attacks.

## Livestock and Access to Land

<sup>9</sup> Only recently Kent Police Rural Task Force reported a shocking incident in which 27 ewes some pregnant had been killed by a dog in Sittingbourne on Boxing Day, describing it the worst case they had seen (20 December 2022-[www.kent.police.uk/news](http://www.kent.police.uk/news)). Similarly, Cheshire Police reported another shocking incident in Lymm on 3 April 2022, which led to 16 sheep and lambs being attacked, 8 of which died-see Cheshire Police Rural Crime Team Facebook page. Equally, West Mercia Police and the Malvern Hills Trust have reported an increase in sheep worrying in which dogs and grazing sheep are often in close proximity.

According to DEFRA, there are currently 5.1 million cattle/calves and 14.9 million sheep/lambs resident in England, an increase of 2%<sup>10</sup>, whilst in Scotland there are 1.72 million cattle/calves and 6.83 million sheep/lambs<sup>11</sup>. Cutting across the Country is 140,000 miles of public rights of way, excluding unofficial access and pathways not listed or identified on a definitive map, it is inevitable therefore that dogs will come into contact with livestock<sup>12</sup>.

Under Part III of the Wildlife & Countryside Act 1981, each Local Authority is under a duty not only to keep, but continuously review, its definitive map of public rights of way<sup>13</sup>. The maps

<sup>10</sup> Farming Statistics-Livestock Populations as at 1 June 2022, [www.defra.gov.uk](http://www.defra.gov.uk).

<sup>11</sup> Agriculture facts & figures June 2021, [www.gov.scot](http://www.gov.scot).

<sup>12</sup> See Rambler's Association-[www.ramblers.org.uk](http://www.ramblers.org.uk).

<sup>13</sup> This repealed part IV of the National Parks & Access to the Countryside Act 1949, for a detailed review of the legislative scheme and the meaning of a “byway” see the decision in *Masters v SofS for the Environment* [2000] Case No: QBCOF/1999/109C.

themselves under s.56 are "conclusive evidence" of the existence of such rights of ways and therefore essential in preserving their use and enjoyment<sup>14</sup>. Significantly, any pre-1949 historical right of way which is not recorded by the 1 January 2026 will be legally lost forever<sup>15</sup>. However, given this statutory deadline is clearly unworkable<sup>16</sup>, DEFRA announced on the 16th February 2022 that it intended to suspend the provision, a decision welcomed by several campaign groups such as the Open Spaces Society and the Ramblers Association. However, in a reversal of policy DEFRA has now reinstated the cut-off date as the 1st January 2031<sup>17</sup>. A "public path" is defined under s.66 of the Countryside & Rights of Way Act 2000 (CROW Act 2000) as a highway consisting of either a footpath or bridleway. A footpath for this purpose is one that the public have a right of way on foot only, whilst a bridleway extends to a right of way on horseback<sup>18</sup>.

Equally, if it can be established that the public have had voluntary and continuous/uninterrupted use of access (as of right) over any land for at least 20 years, then under s.31 of the Highways Act 1980 such access will be presumed to be dedicated as a highway<sup>19</sup> unless the contrary intention can be shown<sup>20</sup>. To satisfy

this legal test the High Court in *DPP v Instone* [2022] EWHC 1840 ruled that there must be sufficient evidence to confirm actual (uninterrupted) use and enjoyment for at least two decades to create a legal presumption of dedication. Evidence that supports only a "mere physical opportunity" to access land will not suffice, neither does any inaction by the landowner to frustrate such an opportunistic access to their land (that they may or may not be aware of), indicate acquiescence in the absence of evidence of continuous use over the legal period<sup>21</sup>. Significantly, CROW Act 2000 in s.2 extends the right of the public to enter and remain on any access land which inter alia includes open country, mountain, moor, heath and down for the purposes of open-air recreation<sup>22</sup>. This gives a statutory right to roam freely over such land (subject to any bylaw restrictions) without fear of being a trespasser. Similar rights of access exist in the Malvern Hills Act 1995 and s.10 of Dartmoor Commons Act 1985, provided the person exercising this right is on foot and horseback for the purposes of "open space recreation". The meaning and purpose of s.10 was recently challenged in the Court of Appeal in *Darwall v DNPA* [2023] EWCA Civ 927 in which the court ruled as a matter of ordinary language "wild camping can naturally be regarded as a form of open-air recreation" that can be exercised on Dartmoor, subject to any By-Laws limitations/conditions. Natural England are charged with creating conclusive maps under s.4-10 of open country and undertake periodic reviews<sup>23</sup>.

## Offences of Attacking, Worrying or Chasing Livestock by a Dog

Criminal liability for dogs worrying livestock is found in s.1 of The Dogs (Protection of Livestock) Act 1953<sup>24</sup>. At the time the Bill was

<sup>14</sup> According to Natural Resource Wales, there is 20,750 miles of public rights of way in Wales, see Wales ROWIP Review March 2009 08/26, whilst the Ordnance Survey record 140,000 miles on definitive maps

<sup>15</sup> S.53 of the Countryside & Rights of Way Act 2000, there is now a nationwide effort by interested bodies to ensure has many paths are documented and recorded-see Ramblers Association and its Don't Lose your Way survey on historical maps which claims 10,000 miles could be lost, Open Spaces Society, the British Horse Society. In Yorkshire there has been the parish paths survey.

<sup>16</sup> See also the House of Lords short debate-Historic Rights of Way HL 2019 vol 797, 2nd April.

<sup>17</sup> The Countryside & Rights of Way Act 2000 (Substitution of Cut-off Date Relating to Rights of Way) (England) Regulations SI 2023 No: 1126

<sup>18</sup> See, Right of Way: A Guide to Law & Practice by John Riddall & John Trevelyan, Rights of Way: Restoring the Record 2nd Edition by Phil Wadey & Sarah Bucks. For the diversion of a right of way, see *Bennett v DEFRA* [2023] EWHC 2542

<sup>19</sup> See s.328 & s.329.

<sup>20</sup> Upon enquiry this can be designated a right of way and added to the definitive map under s.53 of the W&C Act 1981.

<sup>21</sup> The DJ had erroneously acceded to the appellant's claim they had lawfully used a right of way under s.31 to enter the respondent's land to protest and thus could not be trespassers for the purposes of aggravated trespass offence under s.68 CJ&POAct1994. The case was remitted back for the trial to continue.

<sup>22</sup> See s.1 of CROW 2000.

<sup>23</sup> See CROW 2000(Review of Maps) (England) Regs 2019 SI 1069.

<sup>24</sup> Corresponding offences applying to Northern Ireland are found in article 28 of the Dogs (NI) Order 1983



passing through Parliament Lord Amherst proclaimed that the Bill was designed to encourage much needed meat production “by decreasing the amount of cruelty and suffering caused to livestock by dogs”. Under this legislation, subject to the livestock being lawfully on the land in question, any owner or person in charge of a dog, other than an exempt dog (police dog, guide dog, trained sheep dog, working gun dog and a pack of hounds)<sup>25</sup>, regardless of their state of mind, commits a strict liability offence<sup>26</sup>.

This is punishable by a fine, but only if their dog was shown to have either worried livestock on agricultural land as defined in s.3 and then only if there was sufficient evidence to prove that the dog either attacked (s.1(2)(a) offence) or gave chase (s.1(2)(b) offence) which objectively created a reasonable expectation of a risk of injury or physical/mental suffering, or loss of lamb or in product value, or alternatively if the dog (unless exempt in s.1(2A)) is at large (s.1(2)(c) offence) in a field or enclosure occupied by sheep and was neither on a lead, nor under close control at the material time. A dog owner can avoid liability in circumstances where the livestock either trespass on land occupied by them, provided they do not then encourage the dogs to attack (s.1(3)), or alternatively they can prove that at the time the dog was in the charge of somebody they reasonably believed to be a fit and proper person<sup>27</sup>.

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SI No: 764.

25 In Dec 2020 Cheshire Police rural crime team reported that 30 sheep had killed by what they believe to have been a pack of hounds. The aggrieved person can make a civil for loss and damage caused by the Hounds under the Animal Act 1971-see *Weir v Countryside Alliance Ltd* [2016] NIQB 16.

26 In *Dickson v Procuraator Fiscal* [2013] HCJAC 157, the High Court of Judiciary ruled that given the clear and unambiguous language of the offence, the high public concern and the fact that liability is triggered not by “anything done or omitted, but the actions of the dogs,” meant that s.1 is clearly a strict liability offence.

27 For a detailed analysis of the meaning of a fit and proper person in similar legislation, see Forster “The Dangerous Dogs Act 1991: A Criminal Act that is Dangerous to Dogs” (April 2021) vol 5(1) UK Journal of Animal Law 2, see also the historic decision of the House of Lords in *Fleeming v Orr* [1855] 2 Macqueen 14.

## Meaning of Worrying

The verb worries and its gerund worrying livestock is defined in s.1(2) and includes either attacking or chasing livestock on any agricultural land, or being at large in a field or enclosure containing sheep. However, this is not particularly well drafted in terms of logic and culpability and is unnecessarily cumbersome. It creates one offence of worrying which as a question of fact ought to carry its own natural meaning of either troubling, or causing a heightened state of anxiety amongst livestock. Yet it encapsulates three modes of action of differing gravity punishable by a single fine. It fails to distinguish the more serious incidents that can occur and therefore having a range of offences would allow the case to be more focused on a specific issue and if disputed, a lesser charge could be added in the alternative.

## Meaning of Chase

In *R v Dunmow Justices Exp Anderson* [1964] 2 All ER, the High Court ruled that the meaning of “chase” is sufficiently wide to include not just pursuing, but also causing the animals to scatter or take “flight” or stampede and that, whilst sheep are particularly easily spooked by the mere presence of a dog, liability is founded not on what the owner did or omitted to do, but on the actual dog's behaviour which might reasonably be expected to cause injury, or unnecessary suffering<sup>28</sup>.

## Meaning of Being at Large

To incur liability a dog must be proved to being at large in a field or enclosure occupied by sheep which is then qualified by the statutory language either, “not on a lead or otherwise under close control.” No presumption of fact or law exists on the status of a lead, it all depends on the circumstances; a dog may be on a lead but not under close control, conversely a dog may not be on a lead but under close control. As it stands, what amounts to close control has not had the benefit from Judicial consideration meaning it is left for the Magistrates to decide whether the facts proved amount to a criminal offence, bringing with it the risk of inconsisten-

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28 See also *Stephen v Procurator Fiscal* [1960] JC 119.

cy and potential injustice.

Under the old law laid down in *Fleeming v Orr* [1855] 2 Macq 14, the House of Lords noted that in Scotland, if the dog owner was culpa (to blame, at fault on the facts) for his dog worrying sheep, then he was liable for that consequence. Whereas in contrast, under English law (*Clark v Armstrong* [1315] 24 D & Osborne [1896] 2 QB 110) it was presumed that if the dog is mansuetudo naturoe (by its nature tame) "then no harm will arise from being at large", unless the owner otherwise has knowledge of the dog's actual "propensity to cause mischief" around sheep. Accordingly, until it is made mandatory to have all dogs on a lead when in the vicinity of sheep, then an owner will be able to plead ignorance to a first offence, unless it can be shown that the dog had such tendencies known to the owner which required control and training when at large near sheep and failed to do so.

### Further Problems with the 1953 Act

Given the specifically defined prohibited harm means that the s.1 offence was reserved only for the more serious attacks, and then only if there was cogent evidence to bring a successful prosecution. Lord Amherst in his speech on the 2nd reading of the Bill felt that "the success of the Bill will be if it encourages the thoughtless and careless owner to be more careful and, by so doing reduces unnecessary loss of livestock." This is clearly borne out in the low prosecution figures which have steadily declined over the last 7 years, from 50 cases in 2013 to just 23 in 2019 with 21 convictions<sup>29</sup>.

Yet the low conviction rate is clearly disproportionate to the number of reported incidences and clearly shows that the 1953 Act is ineffective in tackling this growing social problem blighting farmers across the Country, requiring urgent reform and modernisation. The deficiencies in the Act include the construction of the offence itself. Firstly, under s.3, the meaning of livestock is outdated and only includes the more traditional farm type animals of sheep, cattle, poultry, domestic fowls, geese, ducks, horses and goats which means that certain new breeds of farmed animals, such as camelids (for

instance Llama, Alpaca, Ostriches) are excluded.

Secondly, the offence can only be committed on agricultural land which is being used for arable, meadow or grazing land and that, whilst this is wide enough to include a cricket ground being used on a temporary basis for sheep grazing during the winter months as confirmed in *Williams v Richards* [1970] 114 Sol Jo, it still excludes roads or paths.

Thirdly, whilst the offence is one of strict liability and thus lacking a mens rea, without independent eye-witness testimony, it would be difficult under the current framework for the prosecution to identify the offender or sufficiently demonstrate that the dog was out of control at the time<sup>30</sup>. Neither are poultry or gamebird protected from a dog being at large, only sheep, and thus creates an anomaly if there are sheep and chickens sharing the same enclosure, i.e., a public foot path through a farmyard.

Fourthly, unlike the Dogs Act 1871, there is no statutory power with the 1953 Act to impose either a control order or order the destruction of the offending dog and therefore, either a separate complaint will need to be made under the Dogs Act 1871, or alternatively under the Dangerous Dogs Act 1991, meaning two statutory regimes apply.

Lastly, the offence is punishable by a level 3 fine only, which neither acts as an effective deterrent, especially for repeat offenders, nor nearly reflects the gravity and culpability of the worst type of cases which can involve a savage attack. Additionally, the nature of the offence often means that reported incidences of sheep attacks and worrying cases will have occurred in remote and inaccessible areas and the fact that some attacks may not come to light immediately or indeed weeks later, poses particular and unique challenges for the rural police team (with limited resources and a wide geographical area to cover) to investigate and secure direct evidence within the 6-month statutory time limitation under s.127 of the Magistrates Court Act 1980 for commencement of summary

<sup>29</sup> Parliamentary Question to DEFRA 4 June 2020 tabled by Tim Loughton MP.

<sup>30</sup> See *Patterson v Procurator Fiscal* [1998] unreported.

offences in the Magistrates<sup>31</sup>.

This was a point noted in appendix II of the Middlesex University 2021 research led report commissioned by DEFRA on dog attacks generally, and a notable lack of police recorded data to better inform of the true gravity of the problem<sup>32</sup>. Equally, the NFU in a bid to help farmers through the legal quagmire have now produced an "advise and support" guide with useful links to further information on what steps to take in a case of sheep worrying, including a "callfirst" help line for free initial legal and professional advice<sup>33</sup>.

### Control and Destruction Orders under the Dogs Act 1871 & 1906

Whilst s.3 of the Dangerous Dogs Act 1991 creates the offence of having a dog dangerously out of control in either a public or private place is a possible alternative offence, it is essentially aimed at a different set of circumstances and unless there is a direct threat that the dog might cause injury to a person as opposed to livestock, then any prosecution is unlikely to be successful and therefore impracticable<sup>34</sup>. A view shared by the NPCC in their comprehensive report "Livestock Worrying Policing Working Group"<sup>35</sup>, but not one shared by George Eustice who, during a short debate<sup>36</sup> on Livestock Worrying in Sussex called by Brighton MP Lloyd Russell-Moyle, believed that the 1991 Act can be used in attacks on sheep and felt that there was a misconception amongst enforcement agencies that the 1991 Act could not be applied. Whilst the 1991 Act can be applied, it is still limited to attacks, rather than worrying

without attack which would not necessarily satisfy the dangerous threshold needed to secure a conviction for the purposes of that offence and is therefore far from ideal.

In these circumstances, s.1(4) of the Dogs Act 1906<sup>37</sup> does offer a solution by permitting a complainant<sup>38</sup> to seek a civil order under s.2 of Dogs Act 1871 that mandates the owner of a dog found to be dangerous, should keep it under proper control, or if not, for it to be destroyed. In *Smith v Baker* [1960] 3 All ER 653, Lord Parker ruled that a complaint for the purposes of s.2 is "unqualified", it is not limited to an aggrieved person, and that whilst anyone "at large" can lay a complaint before the Magistrates, the police are best placed to do so in the "public interest and for the protection of the public." In this respect the Attorney-General in 1996 under powers in s.3(2)(g) of the Prosecution of Offenders Act 1985 assigned the conduct of s.2 proceedings to the CPS on behalf of the police.

### Meaning of Dangerous under s.2 of the Dogs Act 1871

The purpose of s.2 is to make the owner of a dangerous dog take adequate precautions to protect the public and property either in a public place or, if on the owner's private property, to lawful visitors such as the postman or a neighbour<sup>39</sup> from being endangered. Under s.2 two questions arise for the court, firstly is the dog dangerous, and secondly, if dangerous, can the dog be kept under proper control or must it be destroyed?

In *Briscoe v Shattock* [1999] 1 WLR 432 the High Court, confirmed that the question of dangerous is based, not on an act done by the dog, but whether the dog has a dangerous disposition that poses a risk not just to people and

<sup>31</sup> For an analysis of the 6-month rule See Forster "Prosecuting under the Animal Welfare Legislation: Why Time is of the Essence?" (Dec 2019) vol 3(2) UK Journal of Animal Law 2

<sup>32</sup> Science Search (defra.gov.uk)

<sup>33</sup> What to do if you are a victim of livestock worrying – NFUonline

<sup>34</sup> For a detailed analysis on the application of the s.3 offence see Forster "The Dangerous Dogs Act 1991: A Criminal Act that is Dangerous to Dogs" (April 2021) vol 5(1) UK Journal of Animal Law 2.

<sup>35</sup> February 2018 Wildlife Crime & Rural Affairs, North Yorkshire Police.

<sup>36</sup> Hansard House of Commons (2018) vol 639, 17 April 2018.

<sup>37</sup> It must be proved that the alleged dog injured cattle as defined in s.7 which did not include rabbits kept for commercial purposes-see *Tallents v Bell* [1944] All ER474, or poultry or chasing sheep.

<sup>38</sup> Can be an individual, the Police or a Local Authority to the Magistrates Court.

<sup>39</sup> In *Philp v Wright* [1940] JC 9, the Scottish High Court ruled that it was simply "not prepared to limit the usefulness of an effective Act" to being in public places only. Had Parliament intended to include such a restriction than it could expressly done so.





livestock, but to other animals, including dogs<sup>40</sup>. Given that the legislative intent “was to protect people's property”<sup>41</sup>, Brooke LJ could find no legal basis either in the previous authorities or the Dogs Act 1906 to justify limiting the meaning of dangerous towards mankind or livestock only. Whether or not the nature of dog makes it dangerous, is a question of fact and degree across a wide spectrum of canine paroxysms. A dog, without necessarily being ferocious or savage<sup>42</sup>, can nonetheless be dangerous, regardless of whether this was known to the owner or not<sup>43</sup>. It does not have to be proved that the dog was dangerous at the material time, simply that it is disposed to being dangerous. In *R(Workman) v Leicester Justices* [1964] 1 WLR 707, the High

Court rejected the defence contention that the word “is” dangerous in s.2 meant that the dog had to be dangerous at the time of the hearing.

Any propensity evidence of previous similar misconduct (including previous relevant convictions<sup>44</sup>) or pattern of behaviour by the dog is therefore admissible and relevant to the wider question of dangerous and entitles the court to draw appropriate inferences<sup>45</sup>. Whilst exceptionally a single act can, as confirmed in *Swale BC v Boutler* [2002] All ER 378, be indicative of a dog being dangerous, the Scottish High Court in *MacDonald v Munro* [1951] JC 8 warned against the temptation to focus on one isolated act, rather than the dog's overall character. In the instance case, the magistrates' court had wrongly assumed that a dog which bites a child is per se dangerous and discounted the

<sup>40</sup> See *Henderson v M'Kenzie* [1876] in which Clerk LJ ruled that “the quality of being dangerous, relates not to the acts of the dog, but to his nature and disposition.”

<sup>41</sup> See *Williams v Richards* [1907] KB 88

<sup>42</sup> See *Kedde v Payn* [1964] 1 WLR 262

<sup>43</sup> The scienter doctrine does not apply as knowledge is not required to the Act, see *Parker v Walsh* [1885] 1 TLR 583 & *Tallents v Bell* [1944] All ER 474, *Fleeming v Orr* [1855] 2 Macqueen 14

<sup>44</sup> Admissible under s.11 of the Civil Evidence Act 1968

<sup>45</sup> *Maile v Lenton* [1982] QBD The Times 9 Feb 1982, including any past conduct that occurred in another commission area or jurisdiction—see *R(Shufflebottom) v CC of GMP v CC of GMP* [2003] EWHC 246

fact that the dog, on the evidence, was “a good tempered and peaceful animal being momentarily exasperated or frightened or misled by the conduct of its playmates into committing an isolated act.” A mischievous dog is not a dangerous dog, unless it has a dangerous propensity to attack or bite.

Accordingly, an isolated incident of a dog merely arousing sheep in a field, being inquisitorial or, due to breed instincts such as a collie dog, is unlikely to satisfy the test. There must be some supporting evidence to show that the dog, when in the presence of sheep, is dangerous to them in the context of either attacking them or terrifying them to a sufficient degree.

Similarly, in *Queen v Huntingdon Justices* [1879] QBD 522, whether the owner kept the dog under proper control at the time is a question of fact and degree, and equally, any past evidence<sup>46</sup> of failing to do so, is relevant and admissible in the case of a breach of a previous court order or to rebut an innocent explanation.

## Section 2 Control Orders and Civil Jurisdiction in the Magistrates Court

Section 2 is a civil remedy not a criminal sanction<sup>47</sup> and that, whilst wrongly laying an information as opposed to a civil complaint<sup>48</sup> would not be fatal due to remedial effect of s.123 of the MCA<sup>49</sup> 1980, the High Court in *R(CC of North Wales Police) v Anglesey Justices* [2008] EWHC 309, did warn against making this simple error when initiating action under s.2<sup>50</sup>. A similar unfortunate error was made in *Young v CC of Warwickshire Police* [2014] EWHC 4213, when the CPS wrongly issued a summons, but then

decided to withdraw the complaint (sent notice of discontinuance of criminal proceedings) due to lack of evidence two days before the lodging of trial bundles, leading to the High Court having to determine which statutory scheme allows the court to make a defence cost order. Given that the police were “carrying out administrative functions of a regulator” the High Court ruled that the correct provision was s.52 of the Courts Act 1971 in which the court has a discretion to award costs should a complaint not be proceeded with, but only if it is just and reasonable to do so.

Whilst s.64 of the Magistrates Court 1980 is concerned only with costs on dismissal by the court, the statutory wording is identical to s.52 and thus the Magistrates could take account of the relevant case law under that provision. Noting that the leading authority in *Bradford MDC v Booth* [2000] 164 JP 485 and later approved in *Perinpanathan* [2010] EWCA Civ 40, which stated that a costs order is not presumed and a public authority should be free to conduct their regulatory function without undue fear of a costs order. Therefore, any award of costs should only be made, if and only if, the police/CPS have clearly acted in bad faith or unreasonably in the circumstances. In the present case, the magistrates were right to find that, due to a lack of sufficient evidence from the outset, linking the dogs to attacking the farmer's sheep to support the complaint, it was unreasonable for the Police and the CPS to have formally initiated court proceedings without assessing the sufficiency of the evidence and therefore an award of £5000 was just in the circumstances.

Equally, in *R v Dunmow Justices exp Anderson* [1964] 1 WLR 1030, the High Court gave a note of warning that if a Court is dealing with the two jurisdictions at the same time, then “the better practice would be to hear the criminal proceedings first, and then to invite the parties to accept the evidence which had been given in criminal proceedings in the subsequent civil proceedings.” Alternatively, the criminal conviction is admissible under s.11 of the Civil Procedure Act 1968 in the Dogs Act complaint.

Importantly, in *R (Shufflebottom) v CC of GMP* [2003] EWHC 246, the High Court ruled that

<sup>46</sup> For instance previous dog offence convictions or repeat offending.

<sup>47</sup> See para 5 in *R(Shufflebottom) v CC of GMP* [2003] EWHC 246.

<sup>48</sup> See s.53 of the MCA 1980.

<sup>49</sup> See *R v Jones Exp Daunton* [1963] 1 WLR 270,

<sup>50</sup> See the contrasting cases of *R v Towcester Justices exp Gusterson* [1991] (unreported) *R v Nottingham Justices Exp Brown* [1960] 1 WLR 1315, *White v Main* [1897] 81 2 Adam 151, *R v Cambridge Magistrates Court exp Turley* [1986] (unreported), for procedural irregularities see *R v Clarke* [2008] 2 CrAppR 2 and *R v Johnson* [2018] EWCA Crim 2485 on the modern approach to nullity, *R v Adams* [2021] EWCA Crim 1525.



under s.52 of the Magistrates Court Act 1980 jurisdictionally a magistrate's court can still deal with a s.2 case in which the incident occurred outside of its commission area, but the dog is ordinarily kept within its boundaries. The whole purpose of the legislation is to avoid a situation where a dog with dangerous tendencies is not being properly supervised or controlled, regardless of location or current owner. As confirmed in *R(Workman) v Leicester Justices* [1964] 1 WLR 707, a transfer of ownership does not prevent the Court from imposing a control order on any new owner for a dangerous dog by the previous owner. Parker LJ was clear in that "it is quite right that if a man buys a dangerous dog a court should be able to say: you must ensure that for the future it is kept under proper control".

### **Shooting the Dog as an Act of last Resort under the Animal Act 1971**

The Animal Act 1971 was introduced in order to simplify the overly complicated previous common law concerning civil liability for damage done by animals following the recommendations in the Law Commission Report 1967 Civil Liability for Animals (Law Com No:13). Section 3 provides that, subject to s.5(4), any keeper of a dog which either kills or injures livestock will be strictly liable in Tort to the farmer for the damage caused<sup>51</sup>. Whilst a farmer is entitled to shoot a dog in order to protect their livestock from being attacked or worried, this clearly has to be an act of last resort and treated with real caution. In such circumstances, under s.9, the farmer not only has to report the incident to the police within a 48-hour period, but also justify the shooting as one in which "there was no other reasonable means" to stop or prevent the dog from worrying the livestock, or the dog is at large and the owner cannot be established. Otherwise, he will be liable to pay damages to the owner for interference with goods<sup>52</sup>.

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<sup>51</sup> For a detailed analysis of the Act generally, refer to the House of Lords decision in *Mirvahedy v Henley* [2003] 2 AC 491 and also *Ford v Seymour-Williams* [2021] EWCA Civ 1848.

<sup>52</sup> <sup>39</sup> For stray dogs the relevant legislation is s.149 of the Environmental Protection Act 1990 which places a duty on the Local Authority to deal with stray dogs. For general liability and the construction of likely to in s.1 see *Welsh v Brady* [2009] CSIH 60 & *Smith v Ainger* [1990] Court of Appeal Civil Division (unreported).

In *Goodway v Becher* [1951] 2 All ER 349 the High Court, considering the decision in *Cresswell v Sirl* [1948] 1KB 241, confirmed that the question is not whether the farmer had exhausted all other practical means before shooting a dog, but whether in all the circumstances, he had acted objectively reasonably in doing so in order to protect his livestock, taking account of his subjective belief at the time. The magistrates had therefore "come to the wrong conclusion in law" on that basis. Neither does the farmer have to wait, or give a prior warning shot, provided always he is acting reasonably. Equally, an intention to shoot a dog the next time it was seen worrying livestock can still be justified.

Under s.10 of the Criminal Damage Act 1971, a domestic dog constitutes personal property of a tangible nature and therefore the farmer, by shooting the dog, is at risk of committing an offence of basic criminal damage under s.1<sup>53</sup>, unless it can be shown he had a lawful excuse under s.5(2)(b). This entitles the farmer to claim that, at the material time, he honestly (subjectively) believed that his property, namely the sheep, were in immediate need of protection and the means of protection adopted, namely the shooting, was an objectively reasonable measure to take given the immediacy of the situation and having regard to all the circumstances<sup>54</sup>. Alternatively, the farmer could rely on s.3 of the Criminal Law Act 1967 by using reasonable and proportionate force to prevent the crime of livestock worrying<sup>55</sup>. Although superseded by s.3, there still exists a common law defence of protecting property as confirmed in *DPP v Bayer & Others* [2003] EWHC 2567.

The other risk a farmer faces if the shooting is unreasonable, is being prosecuted for animal cruelty by causing unnecessary suffering, (unless as stated in *Isted v CPS* [1997] unreported, the dog was killed outright and did not suffer unnecessarily) under s.4 of the Animal Welfare

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<sup>53</sup> See *Isted v CPS* [1997] unreported.

<sup>54</sup> *R v Hill & Hall* [1988] 89 Cr App R 74, *Chamberlain v Lindon* [1998] 1 WLR 1252.

<sup>55</sup> This applies the same mixed subjective and objective test for self-defence, see Forster "Belief & Reasonable Force: Is there a Legitimate Purpose?" (2014) 178 Criminal Law & Justice Weekly 279, and *R(Collins) v SofS for Justice* [2016] EWHC 33, para 13-17.

Act 2006 which carries a sentence of 5 years on conviction on indictment<sup>56</sup>, a sentence far higher than that for the offence of livestock worrying revealing a stark disparity.

## Other Measures of Control and Prevention

Obviously, education and awareness campaigning can be an effective measure to improve responsible dog ownership such as notices and signage in prominent areas, leafleting, or providing information at visitor's centres, or pro-active police/warden patrols<sup>57</sup>, or campaigning strategies such as the creation of licensed designated dog walking area<sup>58</sup>. Observation of and compliance with the Countryside Code, which clearly states that dogs always need to be kept under close control and supervision and in sight, is a useful reminder of the standards of ethical behaviour expected when in the countryside. Equally important is the Statutory Code of Practice for the Welfare of Dogs which provides useful information on how to properly care for a dog to ensure good practice and dog training<sup>59</sup>.

However, for those who ignore the advice, aside from the criminal sanctions, Part 4 of the Anti-social Behaviour, Crime & Policing Act 2014 provides for several civil remedies in the form of either Community Protection Orders (CPO) or Public Places Protection Orders (PPPO) which replaced dog control orders<sup>60</sup>. Both orders are injunctive in nature and are an effective measure in controlling the conduct of an individual dog owner whose behaviour is unreasonable, persistent or continuing and is having a detrimental effect on the quality of life of others. Measures include compelling the owner to

muzzle the dog, always having it on a lead in public, or prohibiting them from entering certain areas. Under a PPO which covers any place of public access, a Local Authority can also impose restrictions on the use of public rights of way over the highway and non-compliance constitutes a criminal offence.

However, neither of these offer an immediate solution, given the length of time to gather the evidence and satisfy the legal tests before an LA can impose an order<sup>61</sup>. Section.23 of CROW Act 2000, allows an owner of access land under schedule 2 to require a dog to be on a short lead during the period of 1 March to 31 July to protect ground nesting birds. However, no such provision exists for the lambing session.

S.13 of the Animal Health Act 1981 gives the Secretary of State for the Environment the power to create secondary legislation "for prescribing and regulating the muzzling of dogs and the keeping of dogs under control", including the seizure and destruction of any offending dog. To date however, the only regulation passed is the Control of Dogs Order 1992<sup>62</sup>, which provides that any dog found to be on highway or "in a place of public resort", unless exempt, must be wearing a collar containing the owner's details, otherwise the person in charge (who causes or permits and without lawful excuse) will be guilty of an offence under s.73 of the AHA 1981, punishable by a level 5 fine which is much higher than the level 3 fine for an offence of worrying livestock. This clearly lacks coherency.

A further useful measure is the mandatory requirement of all dog owners to ensure their dog is microchipped under the Microchipping of Dogs (England) Regs 2015<sup>63</sup>, which certainly assists in identifying an offending dog and its owner for potential prosecution or other control measures. Interestingly, the punishment for failing to comply with any mandatory notice is a level 4 fine, whereas an offence of attacking

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56 See *Isted v CPS* [1997] unreported.

57 See the All-Party Parliamentary Group for Animal Welfare report "Tackling livestock worrying & encouraging responsible dog ownership" which made 13 recommendations in order to better develop a more focus regional approach to tackling the problem 2017.

58 One was recently granted in West Marton in North Yorkshire, see also the Kennel Club positive awareness campaign, and the formation of partnership groups involving the NFU and other Stakeholders.

59 Issued under s.15 of the Animal Welfare Act 2006.

60 Repealed s.55 of the Clean Neighbourhoods & Environment Act 2005.

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61 If the dog owner has been convicted of an offence, then it is possible for the prosecution to apply for a criminal behaviour order under chap 1 of the Sentencing Act 2021.

62 SI [1992] No 901.

63 SI [2015] No 108 created under the AWA 2006, applies to all dogs 8 weeks or over.

livestock under the 1953 only carries a level 3 fine which, again, is difficult to reconcile.

In contrast the Scottish Government have taken a more consistent approach with the creation of a dog control database system which came into effect on the 31 December 2021 and will retain vital information on any dog subject to a dog control order, which can then be shared and accessed by either the police and the Local Authority<sup>64</sup> as a useful investigative tool, whilst the Northern Ireland Assembly introduced a dog licensing scheme<sup>65</sup>.

England initially had a voluntary dog licensing scheme, but take up was small making the scheme unviable to administer and it was abolished in 1987<sup>66</sup>. Other measures also include the newly created responsible dog ownership scheme project, which brings together the police, charities and local authorities to consider further the findings of the Middlesex University 2021 study including better enforcement and dog training and awareness courses. In response the Government has devised the responsible dog ownership scheme LEAD (Local Environment Awareness on Dogs)<sup>67</sup> including a multi-agency taskforce steering group to bring about best practice and enforcement measures

### The Legal and Ethical use of E-Collars

A more controversial method of dog corrective behaviour control and suppression of a dog's predatory instincts, is the use of e-collars or shock collars, which allow the owner to administer a sudden electrical shock to the dog to gain compliance. However, their ethical use has been brought into question, with those in favour claiming the devices are an effective method of obedience/correction control, whilst those against argue that pets need to be protected from an unacceptably cruel form of corporal punishment, that they are ineffectual, cause unnecessary harm and should not be used as

a training aid or replace other conformity approved training methods<sup>68</sup>. A study by School of Life Sciences at the University of Lincoln in 2014, which was commissioned on behalf of DEFRA, concluded that the use of e-collars not only caused distress but created negative behavioural responses and, like other aversive methods of positive corrective training, proved to be less effective compared to the use of professional reward-based training<sup>69</sup>.

This is disputed by those who support the devices and have challenged the reliability and credibility of the research conducted by the University of Lincoln. Opposing a ban is the campaign group the Association of Responsible Dog Owners who have pointed to a review conducted by Professor Elliffe of the University of Auckland which criticizes the lack of academic rigour undertaken by the research and identified problems not only with the procedural steps, but also with the research design and data analysis techniques, making it "very seriously flawed" and "should not be relied on" as evidence in policy making decisions. Professor Elliffe argues that in the context of sheep worrying, unlike other forms of direct reprimand, when an e-collar is used "the sheep will become a Pavlovian negative conditioned stimulus" to the dog and thus associate the sheep as a primal cause of the discomfort, not the owner, and will instinctively avoid the sheep<sup>70</sup>.

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68 British Veterinary Association are a proponent of an outright ban based on the risk that such devices are "open to potential abuse and incorrect use" with the risk of causing welfare and training problems and have made seven recommendations - [www.bva.co.uk](http://www.bva.co.uk), other supporters of a ban include animal welfare charities (i.e. Dogs Trust).

69 China et al "The Welfare Consequences & Efficacy of Training Pet Dogs with Remote Electronic Training Collars in Comparison to Reward Based Training" 2014 CNRS (POLIS online) & China et al, "Efficacy of Dog Training with & without Remote Electronic Collars vs. a Focus on Positive Reinforcement" July 2020 *Frontiers in Veterinary Science Journal*.

70 Dr Elliffe, Faculty of Science, University of Auckland, [www.science.auckland.ac.nz](http://www.science.auckland.ac.nz)- Commentary on China et al research paper, 26 November 2020, another supporter of e-collars is Ian Botham, the ex-cricketer-see article published in the Telegraph "Dogs will go on killing if we ban electronic collars" May 5th 2021. For a contrasting view see those of Claire Stallard an animal behaviourist at Blue Cross [www.bluecross.org.uk/news](http://www.bluecross.org.uk/news), "we need to ban aversive devices to protect pets."

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64 The Scottish Dog Control Database Order 2021 SI No 458.

65 The Dogs (Northern Ireland) Order 1983 SI No: 764 (N.I.8) as amended.

66 Dogs Licenses Act 1959 repealed by the Local Government Act 1988.

67 Dog Control and Welfare - Guidance to Police and Local Authorities Dec 2 .pdf



Jennifer Dobson, an animal behaviour consultant, in her written evidence before the DEFRA Select Committee in 2004, noted that not all dogs are equally manageable and, whilst e-collars are not suitable for most dogs, they are essential in addressing troublesome cases in which recognised training methods have proved ineffectual. E-collars can therefore be essential, albeit an act of last resort, in resolving problems in these harder to deal cases, especially "if the dog shows signs of aggressive chasing."

Nevertheless, the Welsh government has already acted and made it an imprisonable offence to attach or caused to be attached an e-collar to a dog<sup>71</sup>, whilst the Scottish Government currently have opted for regulatory guidance, rather than an outright ban. Despite, DEFRA having initially decided in 2017 to only amend the advice in Code of Practice for the Welfare of Dogs that positive training was the preferred method, it instead announced in 2018<sup>72</sup> that it now intended to impose a ban. This change in policy direction led the Electronic Collar Manufacturers Association (ECMA) to unsuccessfully challenge the legality of the decision by Judicial Review proceedings in *ECMA v DEFRA* [2021] EWCA Civ 666<sup>73</sup>. However, until there is a legislative prohibition on the use of these devices, it is still currently legal in England to purchase and use them, notwithstanding the fact that any owner would risk being prosecuted for animal cruelty by causing unnecessary suffering under s.4 of the Animal Welfare Act 2006.

Dr Matthew Offord MP who is a strong opponent to the legality of e-collars on the grounds that they are ineffectual and detrimental to animal welfare, introduced in 2014 a private member's bill (Animal Welfare Electronic Collars Bill) and would have prohibited the sale and use of e-collars had it been successful<sup>74</sup>. In May

2021 DEFRA launched its much-awaited Action Plan for Animal Welfare which puts the protection and welfare of animals at the forefront of Government policy and reform, this includes recognizing animal sentient and carries a clear message to ban e-collars "given their scope to harm cats and dogs"<sup>75</sup>. Acting upon data from two commissioned research papers which suggest that not only are e-collars being used inappropriately, they could actually exacerbate the problem and responses received from a public consultation in 2018.

To this extent DEFRA fully support reward-based behavioural training<sup>76</sup> and as from the 1st February 2024 in England it has become a criminal offence under the Animal Welfare (Electronic Collars) Regulations 2023. This creates two summary offences punishable by a fine in regard to a person who is responsible for a dog or cat to either, (1) attach or cause to be attached an electronic collar, or (2) the dog or cat is wearing an e-collar and at the same time possesses a controlled device that is designed or adapted to activate the collar remotely.<sup>77</sup> The Regulations can be enforced by Local Authorities. If convicted the offender risks a disqualification order including seizure.

## Reforms in Part 2 of the Animal Welfare (Kept Animals) Bill

During the 2nd reading of the Bill, George Eustice the Secretary of State for DEFRA, recognized that "livestock worrying is a serious and increasing problem" and that the new measures in the Bill "will update legislation going back to the 1950s".

However, given the recent announcement on the 8 June 2023 that the Government has now decided to withdraw the Bill in controversial circumstances<sup>78</sup>, despite a manifesto

<sup>71</sup> The Animal Welfare (Electronic Collars)(Wales) Regulations 2010 SI No: 943.

<sup>72</sup> See also a short debate on "Electric Dog Class" secured by Ross Thomson (Hansard Vol 637-14 March 2018)

<sup>73</sup> A similar challenge was brought against the ban in Wales in *R(Petsafe & ECMA) v Welsh Ministers* [2010] EWHC 2908.

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<sup>75</sup> <https://www.gov.uk/government/publications/action-plan-for-animal-welfare>

<sup>76</sup> Animal Behaviour & Training Council.

<sup>77</sup> The Regulations have been created by s.12 of the Animal Welfare Act 2006 are currently in draft form and await approval under the affirmative resolution procedure.

<sup>78</sup> According to the BBC the Bill was withdrawn to avoid an uncomfortable amendment being tabled to include trail hunting. See also the comments in the Par-



commitment to strengthen animal welfare, the much-vaunted Bill which was introduced two years ago, but then failed to progress through its Parliamentary stages due to political turmoil<sup>79</sup> in Westminster, is devastating to the farming community in equal measure.

Significantly, the reform package included several new post-conviction ancillary orders designed to prevent and reduce re-offending and the harm it causes. The 1953 Act would have been repealed and replaced with a new specific offence which would have been extended to include any road or path. The meaning of livestock would have been broadened to include 26 farmed type animals, including camelids, ratites, enclosed gamebirds and Zebra, which is a much-needed improvement from the previ-

ous offence<sup>80</sup>.

In an attempt to somehow refine the new offence, at large does not include circumstances when the dog is either on a 1.8 metre lead or less or within sight of the person in charge, who is not only aware of the dog's actions but has reason to be confident that on his command the dog would return "reliably and promptly". Had this been enacted, far from giving farmers clarity in the law, it would only have led to an evidential quagmire<sup>81</sup>.

Nevertheless, police powers would have been strengthened, allowing the police to apply to the Magistrates court for a warrant to enter and search specific premises for the purpose of identifying the suspected dog, or to seize and detain it, or to be able to take a sample or

liamentary statement on Animal Welfare, Hansard vol 733 (25 May 2023), which was debated on 7 June Hansard vol 830.

<sup>79</sup> See the e-petition debate on the progression of the Bill led by Elliot Coburn which took place on 5 Dec 2022, Hansard vol 724 at 4.30pm.

<sup>80</sup> Also includes cattle, buffalo or bison, horses, ponies, donkeys, asses, hinnies, and mule, poultry, enclosed deer pig, goats-for the full list refer to the general interpretation provision in s.39. see 2nd reading of the bill Hansard 25 Oct 2021 vol 702

<sup>81</sup> Hansard 2nd sitting on the bill Tue 9 Nove 2021

impression, or to seize any potential evidence in the furtherance of an investigation. Likewise, police would have been under a duty to maintain a register of all dogs seized detailing the dog's description, when it was seized and disposed of. This would have allowed the police to collate local intelligence of troublesome dogs as part of the prevention and detection of livestock attacks.

Another new effective measure that was contained in the Bill is the power of the Magistrates court to impose a control order on the convicted offender, or the owner, or both. However, before doing so the Court must be satisfied that, at the time of the offence occurring, the offending dog was not under proper control and include any conditions within its ambit. This is a marked improvement and is designed, not only to target irresponsible ownership of dogs, but also reduce repeat worrying incidents and to save the farmer from having to seek an alternative remedy under the Dogs Act.

If the offender subsequently breaches the order, then unless they have a reasonable excuse for doing so, they commit a summary offence punishable by way of a level 3 fine. At the same time, the court would have the power to disqualify the offender from either owning or keeping dogs, or both, for any period as the "court thinks fit" and can impose a specified prohibition period. If there is a further potential risk that the dog could worry or attack livestock again, then subject to expert evidence from a dog behaviour specialist, a destruction order can be imposed on the offending dog, with a right to appeal.

### **A duty to have a Dog on a Lead when around Livestock**

The Government rejected the idea of making it mandatory to have a dog on a lead in the vicinity of livestock as being a step too far, instead preferring to only recommend the use of leads through voluntary codes and for dog owners to take responsibility in managing and controlling the dog's behaviour. This is included in the statutory code of practice for the welfare of dogs which informs dog owners of their care responsibility and that it is best practice to use a lead. Similarly Natural England has updated

the Countryside Code to now emphasise the importance of keeping dogs in sight and under control at all times and to avoid livestock where possible. Whilst these remain voluntary and cannot be legally enforced, they can be admissible in evidence, including any warning signs, to rebut any suggestion of lack of knowledge or awareness.

This may be of little comfort to Nicola Robinson a farmer from Grange-over-Sands in South Cumbria who in 2022 suffered the loss of 28 lambs due to a dog attack in horrific circumstances when they drowned trying to cross a stream in order to escape. Virginia Crosbie MP, although welcoming the Government reforms, felt they still failed "to give farmers the security they so desperately need."

Responding to one her constituents who had to deal with the death of seven pregnant ewes and three tups, having sustained traumatic injuries from a dog attack, she decided (with little prospect of success) to introduce a draft Dogs (Protection of Livestock) Bill which had the support of the NFU. This sought to amend the 1953 Act by firstly removing the words "otherwise under close control" to make it a requirement for a dog to be on a lead, otherwise it would be unlawfully at large, and secondary to increase the maximum fine to £5000<sup>82</sup>.

### **Sentencing**

In response to a recent Parliamentary question from Matthew Offord, Victoria Prentis on behalf DEFRA stated "All reported instances of livestock worrying should be taken seriously, investigated and, where appropriate, taken through the courts and met with tough sentences." Such sentiments are misplaced given that the new offence would have remained a summary only non-imprisonable offence, punishable only by a level 3 (£1000) fine<sup>83</sup>, and simply does not go far enough. This offers little in the way of deterrence and is, therefore, woefully inadequate to address the worst kinds of attacks deserving of condign punishment necessary to reflect the devastating consequences that it causes, not just in terms of appalling injuries to livestock and financial loss suffered,

82 Hansard 20 July 2021 vol 699.

83 s.122 Sentencing Act 2020.



but also the lasting effects on the farmer and wider community.

With equal force, it is difficult to reconcile having a summary-only fine for this type of offending whilst the Government's animal welfare policy acknowledges that vertebrate animals are sentient beings in the Animal Welfare (Sentience) Act 2022 and the increase in punishment for animal cruelty offences under the Animal Welfare Act 2006 is 5 years imprisonment<sup>84</sup>. In contrast, the Scottish government has taken a far more robust approach by increasing the sentence for the equivalent offence to 12 months imprisonment and/or a maximum £40,000 fine<sup>85</sup>, following a campaign by Emma Harper MSP and having the support of interested parties such as the Law Society of Scotland, Dogs Trust and the NFU (Scotland).

As with dangerous dogs, one possible option would have been to create an either-way aggravated offence of attacking and a lesser offence of worrying but with a proportionate sentencing range. This would enable the court to impose either imprisonment, or community punishment orders in appropriate cases, whilst the police could use restorative justice disposal in minor incidences<sup>86</sup>. A sentencing court is required under s.43 of the Sentencing Act 2020 to make a victim surcharge order which is 10% of the fine value<sup>87</sup>. In addition, a court does have a discretionary power to make a compensation order upon conviction as set out in Chapter 2 of the Sentencing Act 2020. This will very much be dependent on the financial circumstances of the offender but, given that the financial loss is likely to be significant, ultimately the farmer will have to shoulder the loss or claim through insurance.

## Concluding Remarks

Part 2 of the Animal Welfare (Kept Animals) Bill would have implemented the much-needed

reforms to protect livestock from dog attacks and therefore the withdrawal of the Bill is an abject failure of Government, leaving farmers with the ineffectual 1953 Act instead. The reforms relating to livestock worrying are uncontroversial and the measures would have been better contained in a short Bill instead of a broad-ranging Animal Bill. The only prospect of this happening now is either by being re-introduced as a Private Members Bill or by the Government introducing its own specific Bill. However, with the summer recess looming and the constraints on Parliamentary time, it is unrealistic to believe that this will occur this side of the next election, if ever.

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<sup>84</sup> See Forster "Prosecuting under Animal Welfare Legislation: Why is Time of the Essence?" (Dec 2019) Vol 3(2) UK Journal of Animal Law 2.

<sup>85</sup> Dogs (Protection of Livestock) (Amendment) (Scotland) Act 2021,

<sup>86</sup> Community resolution, Conditional Cautions.

<sup>87</sup> See the Sentencing Act 2020 (Surcharge) (Amendment) Regs 2022 SI 584.