

Dog Theft (Scotland) Bill

Submission from the Crown Office and Procurator Fiscal Service, 20 March 2025

1. The Crown Office and Procurator Fiscal Service (COPFS) is acutely aware of the impact which the theft of a pet has on the owner and COPFS supports any initiative to raise public awareness of this offence and the powers of police and prosecutors to target such offending.

Discussion on sections 1, 2 and 3 of the Bill

Section 1

2. Section 1 of the Bill seeks to create a statutory offence of dog theft, defining this act as taking a dog so as to remove it from the lawful control of any person, or keeping a dog so as to keep it from the lawful control of any person who is entitled to have lawful control of it.
3. The proposed penalties in terms of the Bill are, on summary conviction, not exceeding 12 months imprisonment or to a fine not exceeding the prescribed sum (or both), and on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or both).
4. The theft of a dog is currently a crime under the common law in Scotland and can be prosecuted at summary or solemn level with a range of sentencing disposals available to the courts, in addition to non-court disposals available to prosecutors.
5. Thus these existing common law provisions cover the act of taking or keeping of a dog which the new legislation is designed to address, with no additional powers in relation to the available penalties that a court could impose or the range of disposals available to courts and prosecutors.
6. In addition, the common law provisions cover the theft of any pet and is not limited, as the Bill would be, to the theft of a dog.
7. It is described in the accompanying documents to the Bill that the common law offence places emphasis on the monetary value of an object that has been stolen. However, it is important to highlight that the courts are not restricted to considering only the monetary value when sentencing, and can take account of a wide range of factors when deciding the appropriate disposal and level of disposal at the time of sentencing.

8. It cannot therefore be said that there is any gap or inadequacy in the common law offence of theft or ability of prosecutors to raise proceedings against an individual accused of theft of a dog.

Section 2

9. The Bill also seeks to create, under Section 2, a statutory aggravation for the theft of an assistance dog. This section provides that the offence of dog theft will be aggravated if the dog taken or kept is an assistance dog, regardless of whether the dog is working when it is stolen.
10. The accompanying documents describe that there is a clear argument for emphasis to be placed on the welfare of the owner of an assistance dog:
11. *“The type of assistance that an assistance dog provides is guiding a blind person, assisting a deaf person with routine tasks or assisting people who are otherwise disabled with such tasks. Given that an individual relies on an assistance dog to carry out day to day functions and to provide them with independence as well as providing mental health benefits, the Member considers that deliberately taking or detaining a dog that is known to be an assistance dog compounds the severity of the offence committed under the Bill”.*
12. Existing aggravations relate either to an offence being aggravated due to factors relating to the accused (e.g. being on bail or subject to an undertaking), or relating to the person to whom the offence has been committed (e.g. hate crime aggravations). The purpose of these is to allow a court to take into consideration these ‘aggravating’ factors when considering an appropriate sentence. A higher tariff of sentence can be imposed as a result of these aggravations and a sheriff will make clear the portion of the sentence allocated to any such aggravation.
13. The question posed is whether such an aggravation relating to the theft of an assistance dog would achieve something that cannot be achieved under the common law offence of theft.
14. It is suggested that it would. The existing aggravation relating to disability falls under the Hate Crime and Public Order (Scotland) Act 2021, however the addition of such an aggravation to an offence requires a demonstration of ‘malice or ill-will’ towards the victim. It is possible to envisage circumstances where the theft of an assistance dog could be committed where it is difficult to establish malice or ill-will.
15. Such an aggravation could then be considered during sentencing.
16. Although it is possible for the fact that a dog that is stolen is an assistance dog to be highlighted in court, including a narrative of the impact the theft has had

on the owner, it does not follow that the court is obliged to impose a more stringent sentence on that basis.

Section 3

17. The Bill further provides, under Section 3, for the offence of dog theft to be a prescribed offence under section 14 of the Criminal Justice (Scotland) Act 2003, thereby enabling victims of dog theft to make a statement to the court under section 14 of that Act (“victim impact statement”) as to the way in which the theft of the dog has affected or continues to affect the victim of the offence.
18. Under the current common law provisions the court can be made aware of the emotional elements associated with the theft of a dog to the owner. This can be done within the evidence or narrative provided to the court, albeit there is no obligation on the court to take such factors into account when deciding on the appropriate disposal or sentence.
19. The legislative Victim Statement Scheme aims to give a voice to victims in the criminal justice process and any statement under this scheme can cover the emotional, physical and psychological impact of the crime on them. Under this scheme the sheriff must have regard to that statement in determining sentence, so far as it is relevant to the offence before the court.
20. This scheme only relates to solemn cases and for limited offences, including crimes of violence, sexual crimes, and housebreaking. In contrast, the proposal here is that such statements would apply to a) the theft of any dog, and b) prosecuted in any court.
21. There are practical and resource implications of the extension of the scheme to cover the theft of a dog.
22. It is respectfully suggested the draft provisions create an anomaly within the criminal justice system whereby a victim impact statement can be given for theft of dog when it is not open to victims to provide such a statement in many other scenarios including for charges in the solemn courts.
23. In addition, the introduction and expansion of this scheme to include all offences relating to the theft of a dog would have financial consequences and time constraints.
24. It is currently possible for such information to be made available to the court. If that information is not already available in the police report or witness statements we can issue instructions to the police to provide such information. It does not impose an obligation on the court to consider it in sentencing. It cannot be concluded that there is a requirement to add the offence of theft of a dog to the existing prescribed offence.

Discussion on sections 4 and 5 of the Bill

Section 4

25. Section 4 of the Bill requires the Scottish Ministers to prepare and publish annual reports on the operation of the Act. The information that would be required from COPFS is contained at section 4(2) and includes:
- *the number of cases for which criminal proceedings are undertaken where an offence under section 1 of this Act was charged*
 - *the number of convictions obtained for an offence under section 1 of this Act*
 - *the number of cases and convictions mentioned at paragraphs (d) and (e) where criminal proceedings were undertaken or convictions obtained (as the case may be) under— (i) summary procedure, and (ii) solemn procedure*
26. The information sought is obtainable in light of the existing systems in place to record and capture such data, albeit as with all other offences is reliant on staff correctly recording within the available systems.
27. It is unlikely that such a requirement will be an onerous one.

Section 5

28. The Financial Memorandum estimates that there are around 200-300 cases of dog theft in Scotland per year although only a small number are reported to the police and very few prosecuted currently under the common law.
29. The costs detailed within the Memorandum are assumed but it “projects that the likely additional costs, at 2024-25 prices, of bringing additional prosecutions for dog theft under this Bill (over and above those currently prosecuted under common law theft) will be in the range of £22,139 to £51,030 per annum.”
30. In considering additional costs to COPFS, these would include the creation of Case Marking Instructions and other internal guidance documents.
31. If victim impact statements were to be available for all offences of dog theft in all forums, as proposed, further costs would be incurred in the application of that in line with other offences where such statements are already obtained.