



The Scottish Parliament
Pàrlamaid na h-Alba

Rural Affairs and Islands Committee

Maurice Golden
MSP for North East Scotland

Thursday 27 February 2025

Dear Maurice,

Dog Theft (Scotland) Bill

As you will know, the Rural Affairs and Islands Committee has been designated as lead Committee to consider the Dog Theft (Scotland) Bill at Stage 1.

I am writing on behalf of the Committee to present a list of questions about your Bill. The Committee would welcome a written response to these points by **Thursday 27 March**.

Section 1(1) offence

The policy memorandum sets out that you “believe there is a low level of prosecutions under the common law for dog theft and that the introduction of a specific crime with an associated proportionate punishment would be used more in practice than the current common law offence of theft”.

The policy memorandum goes on to state there is no reliable data on the extent of dog theft as there is no requirement for incidences, charge, prosecutions and convictions to be specifically recorded as dog theft.

The policy memorandum also sets out the Law Society of Scotland’s view that the consultation on the bill proposal does not establish that there is a gap in the current law of theft.

Given there is no reliable data on the extent of prosecutions under the common law for dog theft, please provide your reasons for believing—

- **there is a low level of prosecutions under the common law for dog theft and**
- **that a specific statutory crime would be used more in practice.**

The policy memorandum states that COPFS would still be able to bring forward prosecutions under common law “where it considers this to be most appropriate” and that you “envisage that prosecutorial guidance could set this out in more detail”.

Contact: Rural Affairs and Islands Committee, The Scottish Parliament, Edinburgh, EH99 1SP.

Email: rural.committee@parliament.scot. We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

Please could you provide further information about—

- instances where it would be more appropriate to prosecute under the common law offence and
- any discussions you have had with the COPFS regarding whether it would produce prosecutorial guidance to inform these decisions.

Section 1(2) to (4) defences to the section 1(1) offence

Section 1(2) provides that an “offence will not apply” in instances of a relationship breakdown and where a dog is taken by someone who previously lived in the same household as the person who has lawful control of the dog and the dog.

Unlike the defences set out at sections 1(3) and 1(4), the section 1(2) defence seems to relate to a deliberate dog theft, where it may be reasonable to assume that the taking or keeping of a dog would cause a similar level of emotional distress as any other dog theft.

Please provide your reasons for specifying that instances of a dog theft following a relationship breakdown should be treated differently from all other instances of a dog theft.

Section 1(3) provides for the defence whereby a person can show they had “lawful authority” or a “reasonable excuse” for taking or keeping the dog.

Please can you set out your reasons for providing for this defence given that, if a person had “lawful authority” to take or keep a dog, it could not have taken or kept a dog from the person with lawful control of it.

The Bill does not include a definition of “lawful authority” or “reasonable excuse”.

Please can you provide your thinking about a definition of “lawful authority” and “reasonable excuse” to inform the Committee’s consideration of this proposed defence.

Section 1(4) is a defence that the person who took or kept the dog did so because they believed it was a stray, that they “took all reasonable steps” to comply with [section 150\(1\)](#) of the Environmental Protection Act 1990 (*Delivery of stray dogs to police or local authority officer*) and did not keep the dog for more than 96 hours (disregarding any period kept under section 150(2)(a) of the 1990 Act).

Please can you set out your reasons for specifying 96 hours, rather than any other time period.

Section 150(2)(a) of the 1990 Act provides that a local authority officer, where the person who takes the stray dog wishes to keep it and the officer having complied with any statutory procedure, shall “allow the finder to remove the dog”.

Please can you explain what is intended in section 1(4)(c) and how it relates to the 1990 Act.

Section 1(6) sentencing

As highlighted above, the policy memorandum sets out your belief that “the introduction of a specific crime with an associated proportionate punishment would be used more in practice than the current common law offence of theft”.

Section 1(6) provides that the section 1 offence would be punishable by up to five years in prison (up to 12 months on summary conviction; up to five years on indictment) and/or the maximum fine level available to the court the person is tried in.

Paragraph 24 of the policy memorandum details the maximum penalty on conviction on indictment that a sheriff can impose for the common law offence of theft is an unlimited fine and/or imprisonment of up to five years. Where a case can be remitted to the High Court, the maximum penalty would be an unlimited fine and/or life imprisonment. Any prison sentences would be subject to any statutory restrictions.

The policy memorandum also sets out a view of some respondents to the consultation on the bill proposal that “the associated sentences with the existing offence can be higher than those under the proposed new offence”.

Please can you provide information about how section 1(6) would— provide a more “proportionate punishment” than those already available for the common law offence of theft and make a statutory offence a stronger deterrent than the current common law offence.

Section 2 theft of assistance dogs

The policy memorandum sets out your view that theft of assistance dogs is a “heinous crime”, causes considerable trauma to the owner and “compounds the severity of the [section 1] offence committed. For these reasons, you propose the Bill create an aggravation for theft of an assistance dog, regardless of whether or not it is working.

Please can you provide information about the discussions you had with assistance dogs charities and organisations to inform this proposal.

Section 3 victim statement

The policy memorandum states that you are “unconvinced that the impact of dog theft on the victim (and indeed on the dog [...]) is taken into account in sentencing”.

Responses to the consultation on the bill proposal, however, argued that the courts currently do take account of animal welfare, victim impact and any other considerations when dealing with dog thefts.

As stated above, the policy memorandum states there is no reliable data on the extent of dog theft as there is no requirement for incidences, charge, prosecutions and convictions to be specifically recorded as dog theft.

Please can you provide evidence to support your view that the emotional impact on victims is not already sufficiently considered during sentencing.

Section 3 proposes that dog theft becomes a prescribed offence and that any court the case is heard in is deemed to be a prescribed court.

In terms of prescribed courts, only the High Court and solemn procedure in Sheriff Courts are prescribed courts so the Bill would be a departure in allowing cases heard in summary Sheriff and Justice of the Peace courts to allow victim statements. This would result in situations, for example, where the victim in a case of assault that wasn't heard by a jury but only by a Sheriff in a summary court would not be able to provide a victim statement but someone whose dog was stolen and the case was heard in the lower courts could.

Please can you provide further information to support your proposal.

Section 4 requirement on the Scottish Ministers to publish an annual report

Section 4 would require the Scottish Ministers to publish and lay an annual report on the operation of the Act and section 4(2) sets out a list of information the annual reports should contain. Any regulations to add to, replace or omit something from this list would be laid under the affirmative procedure.

Please can you provide your reasons for setting out the list of information the annual reports should contain – and which would require regulations under the affirmative procedure to change – on the face of the Bill?

The policy memorandum states that publication of an annual report would “establish the existing extent of dog theft” and “help those bodies in allocating and deploying resources effectively to prosecute dog theft and in finding ways to proactively and preventatively address the issue”.

The Bill does not include a requirement for the Scottish Ministers to “have regard” to the data collected in annual reports, however, and there is no information in the policy memorandum to indicate how this information would be used for these purposes in practice.

Please provide further information about any discussions you have had with the Scottish Government around how this data would be used for these purposes?

Section 5 requirement on the Scottish Ministers to review the operation of the Act

Section 5 would require the Scottish Ministers to undertake a review of the operation of the Act and publish a report after five years. The Act sets out the information which must be considered in the review and included in the report; any regulations to add to, replace or omit something from this list would be laid under the affirmative procedure.

Please provide your reasons for setting out the information which must be considered in the review and included in the report – and which would require regulations under the affirmative procedure to change – on the face of the Bill?

Section 5(2) provides that the report must include information about how the Act has been successful in reducing dog thefts; the number of cases of theft under the Act and under common law; “any concerns with the operation of the Act which have been raised”; and the Scottish Ministers’ response to any concerns, including any changes to this Act. Any changes to the Act would need to be made via primary legislation.

The policy memorandum states the purpose of this provision is to provide data “on how the Act has worked in practice and whether it has acted as a deterrence or not” and that it will “inform decision making on whether the Act needs to be tightened or left as is”.

Please set out your expectations, including any illustrative examples, regarding the requirement for the Scottish Ministers to include any concerns raised with them regarding the operation of the Act and their response.

Section 5(6) includes the provision that the report must set out whether the Scottish Ministers consider whether there should be a statutory offence for the theft of any other animal kept as a pet.

Please set out your reasons for including this provision in the Bill.

The policy memorandum argues the statutory offence is required to recognise the emotional distress associated with dog theft. There is no criteria, however, requiring this – or any other factor – to be taken into account by the Scottish Ministers when reaching a decision on section 5((6).

Please set out your reasons for not providing the same criteria on the face of the Bill for the Scottish Ministers to have regard to when considering the requirement to consider whether the statutory offence should be extended to other pets.

General

The final bill proposal stated the bill would “take account of considerations such as the emotional impact and dog welfare” aspects of dog theft. The policy memorandum sets out how the Bill seeks to recognise the dog owners’ distress following the theft of their dog but there is limited/no reference to dog welfare.

Please can you set out how the Bill addresses the dog welfare aspects of the final bill proposal.

The policy memorandum references the UK Pet Abduction Act 2024.

Please provide information about what research you have done, or you have had access to, which evaluates the success of the UK 2024 Act.

Given the lack of data relating to the use of the common law offence in Scotland, and the limited amount of evidence from the operation of the UK 2024 Act, what consideration did you give to building up an evidence base before progressing with a member's bill?

Thank you and I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Finlay Carson', with a long horizontal flourish extending to the right.

**Finlay Carson MSP
Convener**