

# **DOG THEFT (SCOTLAND) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. As required under Rule 9.3.2A of the Parliament’s Standing Orders, these Explanatory Notes are published to accompany the Dog Theft (Scotland) Bill, introduced in the Scottish Parliament on 17 February 2025.
2. The following other accompanying documents are published separately:
  - a Financial Memorandum (SP Bill 58–FM);
  - a Policy Memorandum (SP Bill 58–PM);
  - a Delegated Powers Memorandum (SP Bill 58–DPM);
  - statements on legislative competence made by the Presiding Officer and the Member in charge of the Bill (SP Bill 58–LC).
3. These Explanatory Notes have been prepared by the Non-Government Bills Unit on behalf of Maurice Golden MSP in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

### **OVERVIEW AND SUMMARY**

5. The Bill creates a statutory offence of dog theft, as well as creating a statutory aggravation for the theft of an assistance dog. The Bill also provides 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. The Bill provides for the Scottish Ministers to report annually to the Parliament on the operation of the Act, and sets out certain matters which must be included in such a report. The Bill also provides for a review of the operation of the Act after five years, which the Scottish Ministers must report on. The Bill specifies certain matters which must be included in the report on the review.
6. The Bill provides for certain defences which a person can use when charged with the offence of dog theft to show that they had lawful authority or a reasonable excuse for taking or keeping the dog. There are three defences available under the Bill which can be raised where relevant. They are 1) lawful authority to take or keep the dog; 2) reasonable excuse to take or keep the dog; 3) defence in relation finding or taking possession of stray, lost or abandoned dogs.

7. Finally, the Bill confers a regulation making power on the Scottish Ministers to add to the categories of “assistance dog” for the purposes of section 2 of this Bill, which deals with the aggravation of the offence of dog theft established under the Bill.

8. Currently, in Scotland, when a person is charged with the theft of a dog the common law offence of theft would apply. The Bill provides for the creation of a specific offence of dog theft, with penalties not exceeding 12 months imprisonment or to a fine not exceeding the prescribed sum (or both) in summary proceedings, or up five years imprisonment or an unlimited fine (or both) in solemn proceedings.

9. The Bill is in eight sections.

## **COMMENTARY ON SECTIONS**

### **Sections 1 to 3: The offence of dog theft**

#### ***Section 1: Dog theft***

10. Section 1 of the Bill creates the offence of dog theft. Subsection (1) defines this 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. The wording of this subsection is drawn from wording in the Pet Abduction Act 2024 (“the 2024 Act”), which was passed by the UK Parliament and received Royal Assent on 24 May 2024<sup>1</sup>.

11. Subsection (2) provides that no offence is committed where the conditions in (a) to (d) of that subsection are met. In short, the offence does not apply where a person who previously lived together in the same household with the dog takes or keeps the dog. This would, for example, cover a scenario where a couple separate following a domestic dispute and one partner keeps the dog. The wording of this subsection also draws heavily on the wording used in the 2024 Act.

12. Subsection (3) provides for the defences of lawful authority and reasonable excuse for taking or keeping a dog. This wording is also drawn from the 2024 Act. An example of lawful authority would be where a police officer or a local authority officer takes the dog from the owner to protect the dog or another individual from harm. An example of a reasonable excuse would be the belief that the person had the consent of the owner or (for example) a dog sitter to keep or take the dog.

13. Subsection (4) makes provision in relation to stray dogs which takes into account the requirements that already apply in relation to a person finding and taking possession of a stray dog under section 150(1) of the Environmental Protection Act 1990 (“the 1990 Act”). Section 150(1) of the 1990 Act requires the finder of a stray dog to return the dog to its owner or contact the local authority for the area in which the dog was found. Subsection (4) provides a defence for a person charged with the offence of dog theft to show that they believed that the dog was stray, lost or abandoned, and took all reasonable steps to deliver the dog to the owner or a local authority officer. The wording reflects the wording in the 2024 Act, with one exception: instead of referring to “a

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<sup>1</sup> [Pet Abduction Act 2024 Stages - Parliamentary Bills - UK Parliament](#)

stray dog”, the Bill widens the term to encompass a dog which was “stray, lost or abandoned”. This is because it may not be obvious that a dog which is clearly owned by someone (for instance, because it appears well-fed and is found with a collar and the owner’s address on its collar) is “stray” for the purposes of this defence.

14. Subsection (5) provides that, where a defence is raised by the accused under subsections (3) or (4) and sufficient evidence of the defence is provided, the onus of proof remains on the prosecution to prove beyond reasonable doubt that the defence does not apply.

15. Subsections (6) and (7) make provision in relation to the penalties to be applied for the offence of dog theft. These are up to 12 months imprisonment and/or a fine not exceeding the prescribed sum (as defined by section 225(8) of the Criminal Procedure (Scotland) Act 1995) on summary conviction, and up to five years’ imprisonment and/or an unlimited fine on conviction on indictment.

16. Subsection (8) includes definitions of "taking" and "keeping" for the purposes of this section. In practice this would mean that someone who may not have committed the physical act of stealing the dog, but has either facilitated the theft or been an accomplice in enabling the theft to happen, for example, as provided for in section 1(8)(a)(i) by causing or inducing the dog to accompany them or anyone else, would be covered by the definitions.

### ***Section 2: Theft of assistance dogs***

17. Section 2 provides that the offence of dog theft under section 1 will be aggravated if the dog taken or kept is an assistance dog, regardless of whether or not the dog is working when it is stolen. The aggravation makes the charge more serious and is likely to make the sentence more severe.<sup>2</sup> Subsection (1) provides for the aggravation. Subsection (2) defines the term “assistance dog”, applying the meaning given to it under section 173(1) of the Equality Act 2010. Section 173(1)(c) and (d) of that Act empowers the UK Government to make regulations to extend the definition of “assistance dog”. Subsection (2)(b) of this Bill enables the Scottish Ministers to make regulations to prescribe additional categories of dogs. Any such regulations would be made only for the purposes of the definition of “assistance dog” under this Bill, and would not affect the definition of “assistance dog” set out in section 173 of the Equality Act 2010.

18. Subsection (3) provides that evidence from a single source is sufficient to prove that a dog is an assistance dog. This means that corroboration is not required. Subsections (4) and (5) set out the requirements placed on the court for recording the aggravation and taking it into account when determining the appropriate sentence.

### ***Section 3: Victim statements***

19. Section 3 amends section 14 of the Criminal Justice (Scotland) Act 2003, to treat the offence of dog theft as a prescribed offence, and to require any court where proceedings under the Dog Theft (Scotland) Act 2025 are taken place to be treated as a prescribed court. This means that victims of dog theft will be able to make a victim statement about the effect of the crime upon them to the court.

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<sup>2</sup> [Scottish Sentencing Council Sentencing Factors](#) | [Scottish Sentencing Council](#)

## **Sections 4 and 5: Reporting of offences and review of legislation**

### ***Section 4: Annual reports by Scottish Ministers***

20. Subsection (1) requires the Scottish Ministers to prepare and publish annual reports on the operation of the Act, and for those reports to be laid before the Scottish Parliament. Subsection (2) sets out what information such a report must include. Subsection (3) provides that the report may include other information the Scottish Ministers consider appropriate.

21. Subsection (4) places a duty on certain bodies holding information set out in subsection (2) to provide that information to the Scottish Ministers in the form, manner and such time the Scottish Ministers may require. Subsection (5) sets out that these bodies are the Scottish Courts and Tribunals Service, the Crown Office and Procurator Fiscal Service (on behalf of the Lord Advocate) and Police Scotland.

22. Subsection (6) defines “reporting period” as the period of one year beginning with the day on which this section comes into force and each subsequent period of one year. This means that the first annual report must be published as soon as reasonably practicable after that one-year period has elapsed.

### ***Section 5: Review of operation of the Act***

23. Section 5 requires the Scottish Ministers to review the operation of the Act five years after section 1 comes into force and to prepare a report on that review. Subsection (2) sets out a list of matters that must be included in such a report. This subsection also requires the Scottish Ministers to set out whether they consider that there should be a statutory offence or offences of the theft of any other types of animals normally kept as a pet. Subsection (3) requires the Scottish Ministers, in undertaking a review and preparing a report on the review, to take into account annual reports published by them during the review period and to consult persons or organisations it considers appropriate as well as carrying out a public consultation. Subsection (4) provides for the Scottish Ministers to publish and lay the report before the Scottish Parliament. Subsection (5) defines “review period” for the purposes of this section.

## **Sections 6 to 8: Final provisions**

### ***Section 6: Ancillary provision***

24. Section 6 gives the Scottish Ministers a freestanding regulation-making power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, or in connection with, or for giving full effect to, the Bill. Subsection (2) allows such regulations to modify any legislation, including the Bill itself and in doing so, the regulations would be subject to the affirmative procedure but otherwise are subject to the negative procedure. The ability to make different provision for different purposes under this section enables a regulation-making power to be used in different ways in different circumstances.

***Section 7: Commencement***

25. Section 7 sets out when the provisions of the Bill come into effect as a matter of law. It provides that the sections on ancillary provision, commencement and the short title will come into force on the day after the Bill receives Royal Assent. All other sections of the Bill are to come into force on a day appointed by regulations made by the Scottish Ministers. Those regulations may make transitional, transitory or saving provision related to commencement and may make different provision for different purposes. They will also be required to be laid before the Scottish Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 but they are not otherwise subject to any parliamentary procedure.

***Section 8 – Short title***

26. Section 8 provides that the short title of the Act that the Bill will become (if passed) the Dog Theft (Scotland) Act 2025.

*This document relates to the Dog Theft (Scotland) Bill (SP Bill 58) as introduced in the Scottish Parliament on 17 February 2025*

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## **EXPLANATORY NOTES**

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