



CROWN OFFICE  
& PROCURATOR  
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

# AGRICULTURAL CRIME POLICY



HAPPY TO TRANSLATE

COPFS/16DEC15/PM

# AGRICULTURAL CRIME POLICY

## Introduction:

1. This document explains the way in which the Crown Office and Procurator Fiscal Service (COPFS) will deal with agricultural crimes reported to us for consideration of prosecution by Police Scotland.

## What is agricultural crime?

2. Agricultural crime has no specific definition but is considered to include any statutory or common law offence which may be committed against people in agricultural communities, their lands, businesses and property.

## Why are we publishing a policy document specifically for agricultural crimes?

3. The Solicitor General announced a review of the way in which COPFS prosecute agricultural crimes on 3 March 2015. The review was [announced](#) following discussion of agricultural crime, and its impact on rural communities, by the Justice Committee of the Scottish Parliament:

4. A review was subsequently carried out in partnership with Police Scotland, National Farmers Union for Scotland, Scottish Land & Estates and Scottish Government, with a focus on ensuring that the full impact of agricultural crimes are considered by prosecutors when deciding on action in cases, and that full information on the impact of the crime on the victim and their business is presented by prosecutors to the Court.

5. On conclusion of the review it was agreed that COPFS would, in respect of all agricultural crime, update existing policy and guidance to ensure that:

- All staff dealing with agricultural crime are aware of the significant financial and emotional impact that agricultural offences can have on rural businesses, communities and individuals;
- Full details of the impact of the crime; e.g. level of financial loss to individuals, impact on business, distress caused to victims are conveyed by the Police in any reports submitted to the Crown;
- Prosecutors are aware of all updated offence specific guidance as it relates to agricultural crime;

- Prosecutors dealing with agricultural crime are provided with training in order that a specialist approach is taken in relation to the consideration of reported agricultural crimes and their prosecution;
- Appropriate prosecutorial action, where there is a sufficiency of evidence, is taken in respect of agricultural crimes and taking account of the impact on victims/communities;
- The courts are made aware by prosecutors of the full impact of the crime following a plea or finding of guilt.
- Consideration of offences involving organised criminality by specialist prosecutors within COPFS Serious and Organised Crime Division will include use of the Proceeds of Crime legislation to maximise the recovery of money and assets obtained through this criminality.

### **Prevention– Working together to tackle agricultural crime:**

6. This document advises of changes to prosecution policy and how crimes should be reported to and dealt with by COPFS. However, prosecutors should also be aware of the work being undertaken by Police Scotland and the wider agricultural community to help prevent these crimes occurring in the first instance.
7. Police Scotland in partnership with NFU Scotland recently produced a booklet for rural communities to assist them in this regard entitled 'A guide to security in the rural environment' and which is available [here](#).
8. The booklet provides practical advice and guidance to rural communities on measures that can be taken to help prevent crime occurring in the first place and encourages the reporting of any suspected offences to Police Scotland.
9. COPFS policy in relation to the prosecution of agricultural crime will support the efforts being made by Police Scotland and the wider agricultural community to tackle these offences.

### **Key offences**

10. The crimes identified to COPFS as priorities for agricultural communities in the course of the review group's discussions were as follows:
  - Theft (including aggravated theft committed by housebreaking or opening lockfast places) of farm vehicles, machinery, equipment, fuel and livestock;

- Vandalism and Malicious Mischief (The wilful or reckless destruction of the property belonging to another) and Wilful Fire-raising committed against businesses/farm property;
- Housebreaking in respect of residential properties;
- Worrying of Livestock, the most common of which is sheep worrying – Dogs (Protection of Livestock) Act 1953 – s.1(1) and (6)

### **Agricultural Crime –the Background and impact**

11. The majority of agricultural offences are clearly likely to occur within rural areas which account for 98% of the land mass of Scotland and nearly a fifth of the population are resident there. Over recent years, the population of rural Scotland has continued to grow at a faster rate than the rest of Scotland.

12. Rural communities are disparate, and rural properties can be a number of miles from their nearest neighbour. As a result of this, these properties and the individuals who reside there can be particularly vulnerable to criminal activities.

The emotional impact on victims and communities

13. Whilst our rural communities are considered to be safe places in which to stay, work and visit, we recognise that the impact of crimes, including agricultural offences, on victims and rural communities are significant.

14. Many crimes may be relatively low value but the cumulative effect of these on a local community can have a serious impact on how safe residents feel. This is particularly true in the instance of farms, where individuals will often have resided in that location for their whole life, and where lone working is a common occurrence. The negative consequences of criminal activities can compound feelings of isolation, and ultimately have a negative impact on how individuals go about their business activities.

15. Most farms (particularly those with pedigree herds) will have built up their stock bloodlines over many years. Any significant loss of breeding stock has the potential to cause harm to many years of hard work and significant loss for the future. Farmers work with their animals on a daily basis, they know the individuals within their herd, and often have substantial levels of emotional attachment with them. Any harm caused to the animals is hugely distressing for them from an emotional perspective.

16. Many instances of livestock worrying are not reported, this is for a number of reasons. It can be due to the victim knowing the owners of the dog responsible, and

fearing reprisals, or it can be because of the belief that reporting the crime will not lead to any satisfactory compensation. As a result of this, the official figures obtained on instances of livestock worrying are probably lower than the reality.

17. The following testimony of a farmer who lost livestock as a result of sheep being worried highlights that the impact of these offences goes far beyond financial loss:

*“The most shocking and alarming days of our lives.*

*“...while out checking our sheep we found a few ewes covered in blood, having been gripped at the neck and face. As we searched the hill we came across many more, and then we came across 3 dogs, a bullmastiff and 2 Border collies running wild on the 650 acre hill ground.*

*“It took two days to gather the ewes and their lambs in from the hill, a job that normally takes 3-4 hours. Many were traumatised which meant many had to be picked up and brought in with the quad bike and trailer. Ewes and lambs were hiding in ditches, and behind rushes, bleeding from the neck and face, some had been attacked the previous day or two and were crawling with maggots.*

*“The impact on other farmers whose livestock are killed and injured by dogs is immeasurable...The pain and trauma those defenceless ewes were put through leaves me distraught. The magnitude and catastrophe of the event are immeasurable.*

*“The affection we have for our livestock is immense, it would be impossible to do this job without it, to see the pain, shock and trauma these ewes went through will never leave me or my husband.”*

The financial cost of agricultural crime

18. The financial cost of agricultural crime such as the theft of vehicles, machinery, equipment and fuel is significant, and for the victims of these crimes it can go beyond the cost of simply replacing the property stolen.

19. Costs to agricultural businesses can include a loss of earnings due to thefts which prevent, or restrict, the carrying out of day to day work and trade.

20. There may be associated costs connected to the hiring of replacement vehicles, equipment and machinery. Further costs can be incurred due to repairs having to be carried out in respect of any property or security measures damaged as a result of thefts and vandalism.

21. The theft of livestock and of livestock worrying offences, the most common of which is sheep worrying, can also have a significant financial impact on victims due to the cost of replacing any animals killed or stolen, veterinary costs associated with

the treatment of injured animals, and directly associated costs on the running of the business. E.g. Any abortions in in the herd caused by stress

22. It is crucial therefore that prosecutors are fully appraised of the impact of offences prior to deciding on the appropriate action to be taken and, in the event of court proceedings and conviction, that the court are similarly advised prior to sentencing.

### **Prosecution Policy:**

23. COPFS policy and guidance is being updated to assist prosecutors take the appropriate action in the public interest in respect of agricultural crimes. A robust prosecution policy approach has been maintained and offence specific guidance is now available to prosecutors.

### **Information to be provided to COPFS by Police Scotland:**

24. It has been agreed with Police Scotland that reporting officers will, in respect of all relevant cases submitted to COPFS for consideration of prosecution, provide the following information within the body of the Standard Prosecution Report (SPR):

Theft (including aggravated theft and fraud) of farm vehicles, machinery, equipment, fuel and livestock

- Distress/impact on victims
- Cost of property stolen;
- Cost of replacement/hiring replacement equipment;
- Immediate impact on business as a result of theft and ongoing costs;
- Directly associated costs to business as a result of theft;- including business interruption and insurance-

Vandalism/Malicious Mischief/Wilful Fire-raising:

- Distress/impact on victims
- Cost of property/equipment damaged;
- Cost of repairs to property/equipment, hiring or replacement of equipment;
- Immediate impact on business as a result of crime and ongoing costs;
- Directly associated costs to business as a result of crime;
- Photographs of damage caused to assist convey impact;

Sheep or other Livestock Worrying Offences:

- Distress/impact on victims
- Number of livestock killed/injured
- Nature and extent of any injuries sustained

- Cost of replacing sheep/other livestock and any directly associated losses as a result of those killed/injured such as:
  - Lambing put back a year
  - Bloodlines lost
  - Any loss of premium from quality assurance
  - Extra feed required to counter loss of condition from stress
  - Extra bedding/housing costs from having to house animals
  - Any abortions in other animals in the herd from stress
  - Future losses of breeding stock
  - Cost of treating sheep or other livestock/veterinary costs
  - Cost of removal/destruction of sheep or other livestock
- Photographs of injured/dead sheep or other livestock– Capture more than just financial impact.

25. If information regarding the full impact of the offence is not provided then prosecutors should defer marking the case and request that the reporting officer make further enquiry.

#### **Detection and reporting of offences:**

26. As agricultural crimes are likely to occur in remote or rural areas it may require Police to conduct more detailed investigations in order to detect and report cases to the Crown for prosecution. If the case discloses a sufficiency, and the victim cannot be appropriately compensated for their loss through a fiscal compensation offer, then there is a presumption that prosecutors will raise proceedings against any accused in court.

#### **Serious and Organised Crime:**

27. In some cases of agricultural crime we recognise that the accused may be associated with organised crime or may have obtained significant financial gain from their criminal endeavours. Therefore at the early decision making stage prosecutors must consider whether the case should be referred to the Proceeds of Crime Unit to consider whether a financial investigation should be carried out with a view to obtaining a confiscation order.

28. To make that assessment the prosecutor must assess if the offences pass the criminal lifestyle test on 1 of the following 3 grounds:-

- (1) The offence is one which is specified in Schedule 4 of Proceeds of Crime (Scotland) Act 2002. This schedule covers offences of money laundering, drug trafficking, directing terrorism, people trafficking, arms trafficking, counterfeiting, intellectual property, pimping, brothel keeping and blackmail; or

(2) The offence constitutes conduct forming part of a course of criminal activity. Section 142 of the Proceeds of Crime (Scotland) Act 2002 states that conduct forms part of a course of criminal activity if the accused is convicted of at least 4 charges on one indictment/complaint from which he or she has benefited or in the period of 6 years prior to proceedings being instituted, the accused has been convicted on at least 2 separate occasions of an offence constituting conduct from which he or she has benefited. In both these cases the relevant total benefit must not be less than £1,000; or

(3) The offence is committed over a period of at least 6 months and, again, the relevant benefit is not less than £1,000.

29. As can be seen from the above, criminal lifestyle cases are intended to target those accused who are engaged in an activity which is profit making.

30. There will also be cases where the accused may not pass the criminal lifestyle test but there is benefit from his/her particular criminal conduct, for example in cases of vehicle or livestock theft.

31. Cases where there has been financial gain must be carefully considered for referral to Proceeds of Crime Unit at Crown Office. Careful consideration should also be applied to how the charges are set out in the complaint or indictment.

### **Victims and Prosecution Witnesses:**

32. COPFS [commitments to victims and witnesses](#) provides that we will:

- (i) Give you respect and a professional service at all times.
- (ii) Communicate with you clearly and effectively.
- (iii) Give you the information you need when you need it.
- (iv) Deal with your case as quickly as possible.
- (v) Require you to give evidence in court only when we have to.
- (vi) Ensure you can communicate with us if your first language is not English.
- (vii) Take account of any extra support you may need.
- (viii) Give the judge information about the effect of the crime on you.
- (ix) Tell you how to claim expenses and deal with your claim as quickly as possible.
- (x) Work with other organisations to help you get the services you need.

33. Clearly there will be times where, of necessity, victims of agricultural crime and witnesses will be required to attend court in person and give evidence in order that the crime can be proven. If a witness is required to attend court then they will receive a letter (called a citation) telling them where and when to go to court. Prosecutors must take all reasonable steps to ensure that victims and witnesses are not unnecessarily called to court to give evidence.



34. Further information for witnesses if they receive a citation to attend court and give evidence is available on our [website](#).

35. Prosecutors must take all reasonable steps to ensure that victims and witnesses are not unnecessarily called to court to give evidence. Witnesses whose evidence is seemingly uncontroversial should be identified within the body of the report. E.g. Owner of the property who cannot identify the person responsible for the housebreaking but speaks to securing the property, discovery of the break-in and the property stolen.

36. Prosecutors should therefore seek to agree such evidence either through the use Statements of Uncontroversial Evidence (SOUEs) or through joint minute of agreement with the defence.