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Llywodraeth Cymru  
Welsh Government

# **CONTROL OF HORSES (WALES) BILL**

**Explanatory Memorandum**  
incorporating the Regulatory Impact  
Assessment and Explanatory Notes

October 2013

# **CONTROL OF HORSES (WALES) BILL**

## **Explanatory Memorandum to Control of Horses (Wales) Bill**

This Explanatory Memorandum has been prepared by the Department for Sustainable Futures of the Welsh Government and is laid before the National Assembly for Wales.

### **Member's Declaration**

In my view the provisions of the Control of Horses (Wales) Bill, introduced by me on 14 October 2013 are within the legislative competence of the National Assembly for Wales.

**Alun Davies AM**

Minister for Natural Resources and Food  
Assembly Member in charge of the Bill

14 October 2013

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### **ANNEX 1 – EXPLANATORY NOTES TO THE CONTROL OF HORSES (WALES) BILL**

## **1. Description**

1. The Control of Horses (Wales) Bill (“the Bill”) gives effect to the Welsh Government's determination for Wales to be free from large-scale incidents of fly-grazing and abandonment of horses.
- 2 “Fly grazing and abandonment” is the common term given to the practice by irresponsible horse owners (or the person responsible for the horse), of intentionally or negligently permitting their horses to graze on land where they do not have the consent of the owner or where that consent has been withdrawn and the horse owner has refused to remove the animal(s); or, where the horse(s) has been abandoned and left to fend for itself with no care or attention from the owner or person responsible. In some cases the fly grazed animals involved are unidentified in terms of ownership, are placed clandestinely, strip the land of available grazing and are removed as quickly as they appeared leaving the land owners with large bills to repair the damage caused. In some other cases the horse(s) are abandoned with no feed, water or shelter and are left to fend for themselves or perish when the immediate resources are expended.
- 3 The Bill proposes an all Wales solution to enable all local authorities to deliver a consistent approach to removing the impact that the nuisance of fly grazing and the abandonment of horses and ponies have on landowners, the agricultural industry and communities across Wales. The Bill establishes powers for local authorities to seize, impound, sell and dispose of horses that are in any public place or any other land in the local authority's area without lawful authority. For the purposes of this Explanatory Memorandum, “horse” includes a pony, donkey, mule or hinny or any other equine animal.

## **2. Legislative Background**

- 4 The National Assembly for Wales has the legislative competence to make the provisions in the Control of Horses (Wales) Bill under section 108 and Part 1 of Schedule 7 to the Government of Wales Act 2006 (“GOWA 2006”). A provision falls within section 108 (4)(a) if it relates to one or more of the subjects listed in Part 1 of Schedule 7 and does not fall within any of the exceptions listed in that Part of the Schedule.
- 5 The relevant subjects in Part 1 of Schedule 7 to GOWA 2006 are reproduced below:

## **6 Environment**

*Environmental protection, including pollution, nuisances and hazardous substances. Prevention, reduction, collection, management, treatment and disposal of waste. Land drainage and land improvement. Countryside and open spaces (including the designation and regulation of national parks and areas of outstanding natural beauty). Nature conservation and sites of special scientific interest. Protection of natural habitats, coast and marine environment (including seabed). Biodiversity. Genetically modified organisms. Smallholdings and allotments. Common land. Town and village greens. Burial and cremation, except coroner's functions.*

## **12 Local government**

*Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. Powers and duties of local authorities and their members and officers. Local government finance.*

*"Local authorities" does not include police authorities, police and crime commissioners.*

*Exceptions –*

*Local government franchise.*

*Electoral registration and administration.*

*Registration of births, marriages, civil partnerships and deaths.*

*Licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.*

*Anti-social behaviour orders.*

*Local land charges, apart from fees.*

*Sunday trading.*

*Provision of advice and assistance overseas by local authorities in connection with carrying on local government activities.*

## **1 Agriculture, forestry, animals, plants and rural development**

*Agriculture, Horticulture, Forestry, Fisheries and fishing. Animal Health and welfare, Plant Health. Plant varieties and seeds. Rural development.*

*In this part of this Schedule "animal" means-*

*(a) all mammals apart from humans, and*

*(b) all animals other than mammals;*

*And related expressions are to be construed accordingly.*

*Exceptions-*

*Hunting with dogs.*

*Regulation of scientific or other experimental procedures on animals.*

*Import and export control, and regulation of movement, of animals, plants and*

*other things, apart from (but subject to provision made by or by virtue of any Act of Parliament relating to the control of imports or exports)-*

*(a) the movement into and out of, and within, Wales of animals, plants and other things related to them for the purposes of protecting human, animal or plant health, animal welfare or the environment or observing or implementing obligations under the Common Agricultural Policy, and*

*(b) the movement into and out of, and within, Wales of animal feedstuff, fertilisers and pesticides (or things treated by virtue of any enactment as pesticides) for the purposes of protecting human, animal or plant health or the environment.*

*Authorisations of veterinary medicines and medicinal products.*

## **10 Highways and transport**

*Highways, including bridges and tunnels. Streetworks. Traffic management and regulation. Transport facilities and services.*

*Exceptions –*

*Registration of local bus services, and the application and enforcement of traffic regulation conditions in relation to those services.*

*Road freight transport services, including good vehicles operating licensing.*

*Regulation of the construction and equipment of motor vehicles and trailers, and regulation of the use of motor vehicles and trailers on roads, apart from –*

*(a) any such regulation which –*

*(i) relates to schemes for imposing charges in respect of the use or keeping or keeping of vehicles on Welsh trunk roads (“trunk road charging schemes”), or*

*(ii) relates to the descriptions of motor vehicles and trailers which may be used under arrangements for persons to travel to and from the places where they receive education or training, unless the regulation is the setting of technical standards for construction or equipment of motor vehicles or trailers which differ from the standards that would or might otherwise apply to them;  
and*

*(b) regulation of the use of motor vehicles and trailers carrying animals for the purpose of protecting human, animal or plant health, animal welfare or the environment.*

*Road traffic offences.*

*Driver licensing.*

*Driving instruction.*

*Insurance of motor vehicles.*

*Drivers' hours*

*Traffic regulation on special roads, apart from regulation relating to trunk road charging schemes.*

*Pedestrian crossings.*

*Traffic signs, apart from the placing and maintenance of traffic signs relating to trunk road charging schemes.*

*Speed limits.*

*International road transport services for passengers.*

*Public service vehicle operator licensing.*

*Documents relating to vehicles and drivers for purposes of travel abroad and vehicles brought temporarily into Wales by persons resident outside the United Kingdom.*

*Vehicle excise duty and vehicle registration.*

*Provision and regulation of railway services, apart from financial assistance which-*

*(a) does not relate to the carriage of goods*

*(b) is not made in connection with a railway administration order, and*

*(c) is not made in connection with Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road.*

*Transport, security apart from regulation relating to the carriage of adults who supervise persons travelling to and from the places where they receive education or training.*

*Railway heritage.*

*Aviation, air transport, airports and aerodromes, apart from-*

*(a) financial assistance to providers or proposed providers of air transport services or airport facilities or services,*

*(b) strategies by the Welsh Ministers or local or other public authorities about provision of air services, and*

*(c ) regulation of use of aircraft carrying animals for the purposes of protecting human, animal or plant health, animal welfare of the environment.*

*Shipping, apart from –*

*(a) financial assistance for shipping services to, from or within Wales, and*

*(b) regulation of use of vessels carrying animals for the purposes of protecting human, animal or plant health, animal welfare or the environment.*

*Navigational rights and freedoms, apart from regulation of works which may obstruct or endanger navigation.*

*Technical and safety standards of vessels.*

*Harbours, docks, piers and boat slips apart from –*

*(a) those used or required wholly or mainly for the fishing industry, for recreation, or for communication between places in Wales (or for two or more of those purposes), and*

*(b) regulation for the purposes of protecting human, animal or plant health, animal welfare or the environment.*

*Carriage of dangerous goods (including transport of radioactive material).*

*Technical specifications for fuel for use in internal combustion engines.*

- 6 The National Assembly for Wales has the legislative competence to pass the Control of Horses (Wales) Bill under the subject of ‘environmental protection including nuisances’ under Heading 6 (Environment), under the subject of ‘powers and duties of local authorities and their members and officers’ under Heading 12 (Local Government) and the subjects of ‘animal health and welfare’ ‘agriculture’ under Heading 1 (Agriculture, forestry, animals, plants and rural development) and the subject of ‘highways’ under Heading 10 (Highways and Transport). The National Assembly for Wales has legislative competence in relation to the Bill under these subjects. None of the provisions of the Bill falls within any of the exceptions specified in Part 1 of Schedule 7 to GOWA 2006. None of the provisions of the Bill apply otherwise than in relation to Wales or confer, impose, modify, or remove (or gives power to confer, impose, modify or remove) functions exercisable other than in relation to Wales. None of the provisions breach any of the restrictions in Part 2 of Schedule 7 - having regard to any exception in Part 3 of that Schedule from those restrictions.



### 3. Purpose and intended effect of the legislation

#### Background

- 7 Large scale incidents of fly grazing have been causing a risk to public safety, a nuisance to communities (on public and privately owned land), an impact on the agricultural industry and a financial burden on those who have to deal with the problem. In 2012 the First Minister was alerted to issues experienced by local authorities across South Wales and the problems they experienced in trying to deal with fly grazing under existing legislation.
- 8 The actual number of incidents of horse related nuisance in Wales is difficult to quantify, as reports are received by a variety of different organisations including the Police, local authorities and charities. What is clear is that agencies dealing with the issue are seeing an increase in reported occurrences especially during the winter months. The number of reported incidents recorded during 2012 have in some cases risen by as much as 200% over the same period in the preceding year. Further details can be found in the Regulatory Impact Assessment in Part 2. The increase in numbers raises issues around road safety particularly as Police and Fire and Rescue Services resource are being diverted to deal with the issue of general horse nuisance as per the responses received from these agencies in the public consultation.
- 9 The problems of fly grazing are particularly prevalent in South Wales along the M4 corridor, notably in the local authority areas of Bridgend and the Vale of Glamorgan. However there is evidence that the problem is increasing in other local authority areas with reports being received from Dyfed Powys and Gwent Police forces as well as local authorities covering Mid Wales.
- 10 There are three local authority Acts that apply to certain local authorities (see paragraphs 23 to 27.) Other authorities that do not have the benefit of these Acts have to deal with the problem through the use of existing legislation, none of which provides an effective solution to the problem and only partly addresses the issue. Consequently there is no consistent approach to enforcement across Wales. With 22 local authorities in Wales and disparate legal powers to address the issue each local authority has acted on an *ad hoc* basis using the legislation available to it.
- 11 Local authorities are largely responsible for the enforcement of current relevant legislation although the Police have powers relating to obstruction of the highway and also any associated criminal damage (e.g. destruction of fences etc.) Some authorities are able to act more quickly than others because either they have more experience of dealing with these problems or have more efficient tools to deal with the problems than other authorities.

- 12 Informal feedback received from some local authorities indicates that the current legislation available to them is inadequate to enable them to tackle the issue. Two major shortcomings are that (i) the legislation available requires that the identity of the horse owner is known before action can be taken and (ii) the powers to dispose of the animals in a humane manner is only available to those local authorities that are covered by the local Acts for Cardiff, Mid Glamorgan and West Glamorgan, as described at paragraphs 23 to 27.
- 13 There is no Wales wide approach and it has been widely recognised across Welsh local authorities and the Police that in order to deal with the problem we need a uniform approach. The Welsh Government believes that a clear consistent approach on an all Wales basis is therefore the best way to achieve this aim.

### Current legislative position

- 14 In developing the Control of Horses (Wales) Bill an analysis of the existing legislation has been undertaken and is set out below.

#### Animal Welfare Act 2006

- 15 Section 9 of the Animal Welfare Act 2006 ('the 2006 Act') places a duty on the person responsible for an animal to ensure its welfare. Local authorities enforce breaches of this duty and criminal sanctions may be sought. However, this requires the identity of the person responsible for the animal to be known before it can take any action. Ownership of horses found fly grazing is often very difficult to prove making it hard for local authorities to pursue action.
- 16 Section 3 of the 2006 Act places a duty on the owner or person who has 'responsibility' of the animal, which is not necessarily the owner, to ensure that animal's welfare.
- 17 If an owner or person responsible is identified, a criminal prosecution can be brought but these proceedings can be protracted and expensive and the high standard of evidential burden required is that of beyond reasonable doubt.
- 18 A court may order, following conviction of an offence of a person under the Act, that they be disqualified from keeping an animal. Following conviction and such disqualification, section 35 provides the local authority with a power to seize any animal previously in that disqualified person's possession. Section 37 provides a power to destroy that animal if to do so would be in its best interests but such destruction may only be by way of a court order. The Act also contains other provisions permitting destruction of animals in the interests of their welfare (sections 18(3),(4), 20(1)(e) and 33).
- 19 Although the Welsh Ministers may, under section 12, make regulations under the 2006 Act, such regulations must be for the purpose of promoting the welfare of animals for which a person is responsible. In particular imposing specific requirements for the purpose of securing the needs of the animal are met, to facilitate or improve co-ordination in relation to the carrying out by

different persons of functions relating to the welfare of animals and for the establishment of one or more bodies with functions relating to advice about the welfare of animals. The regulation making power is confined to animal welfare considerations and not the wider issue of nuisance and is therefore insufficient to confer powers on local authorities to enable them to tackle the fly grazing problem.

### Animals Act 1971

- 20 Section 7 of the Animals Act 1971 ('the 1971 Act') provides that where livestock (which includes horses) stray on to any land which is not under the control of any person, the occupier of the land may detain it subject to that person notifying the Police and the owner, if known, at the end of 48 hours. Once the animal has been detained for a minimum of 14 days the person detaining it may sell it at market or auction unless there are proceedings pending its return or a claim for damages.
- 21 The provisions of this Act have been utilised by several local authorities which have impounded, provided passports and micro-chipped the horses before selling them at auctions or markets. However they have found that the horses which were sold under the 1971 Act are often bought back by the original owner at minimal cost to them, and re-introduced into other parts of Wales to fly graze again thereby perpetuating the problem.

### Other legislation

- 22 The Equine Identification (Wales) Regulations 2009, the Highways Act 1980 and the Environmental Protection Act 1990, require that the identity of the owners are established before any action can be taken and therefore do little to assist in solving the principal and circular problem (as described in the paragraph above), of the nuisance of fly grazing.

### Local Acts

- 23 Three local Acts have been identified which contain legal powers for certain local authorities to seize, impound, dispose and destroy by humane means, stray animals found on land in their areas. These provisions are contained in the Mid Glamorgan Act 1987, the Cardiff City Council Act 1984 and the West Glamorgan Act 1987:

#### ***Summary of provisions contained in section 15 of the Mid Glamorgan Act 1987 in respect of the seizure of stray animals***

*The District Council may seize and impound any animal (to include horses) which is on land in the district which is either (a) the district's own land (b) at the request of the occupier of the land or (c) with the consent of the occupier of the land.*

*The District Council must within 24 hours after impounding any animal give notice of the impounding to the police and the owner if his/her*

*identification is known. It must also keep a register of the animals seized and a statement as to whether the animal was sold, destroyed or otherwise disposed and that register must be made available for public inspection.*

*If after 7 clear days from the date of impounding the animal the owner has not claimed it and paid all expenses incurred in seizing, impounding and maintaining it, the District Council may sell or otherwise dispose of the animal but it may not destroy it.*

*If after 14 clear days from the date of the owner not having claimed the animal and paid its expenses, the District Council may destroy the animal in a manner to cause as little pain or distress as possible.*

*The District Council may recover expenses from the owner. Any profits made from the disposal of the animal by the District Council must be paid to the owner.*

- 24 Section 29 of the Cardiff City Council Act 1984 and section 35 of the West Glamorgan Act 1987 contain similar provisions as those provided in section 15 of the Mid Glamorgan Act 1987, set out above.
- 25 The Mid Glamorgan Act 1987 is enforceable in the following local authority areas:
- Bridgend
  - Rhondda Cynon Taf
  - Merthyr Tydfil
  - Cardiff (only in relation to Penttyrch)
  - Caerphilly (only in relation to Rhymney Valley)
  - Vale of Glamorgan (only in relation to Wick, Ewenny, St Bride's)
- 26 The Cardiff City Council Act 1984 is enforceable in the Cardiff local authority area (except Penttyrch).
- 27 The West Glamorgan Act 1987 is enforceable in the Swansea and Neath Port Talbot local authority areas.

### *Summary of Local Acts*

- 28 The local acts do not cover the whole of Wales which means that we are left with a complex, patchwork of legislative provisions in Wales and consequently unable to tackle the problem of the nuisance of fly grazing effectively on an all Wales basis.
- 29 The advantage of the provisions of these Acts is that they do not require the identity of the owner to be known before legal action can be taken to deal with the nuisance of fly grazing. Local authorities that have these powers may, after certain conditions are met, destroy the horses by humane means. Local

authorities would be expected to make every effort to trace owners before embarking on a course of destruction. Checks performed would include looking for microchips or any other identifiable marking, placing notices detailing the horses seized, make enquiries locally on whether horses have gone missing, use local knowledge to locate possible owners and contacting other agencies such as the Police and charities to report the seizure of horses. In addition those seizing horses should look for obvious signs of active care i.e. shod; clipped; hogged/maintained mane; trimmed tail and whiskers. These are all indications (not necessarily proof) that the horse may have an active owner and the horse has simply escaped and the owner(s) are looking for the animal.

### Crime and Disorder Act 1998

- 30 Section 1 of the Crime and Disorder Act 1998 ('the 1998 Act') provides that the relevant authority, which includes local authorities, can make an application to the Magistrates Court for an Anti Social Behaviour Order (ASBO) to order the person affected to do or not do something as set out in that Order. If such an ASBO is obtained its effect is for a minimum of 2 years and if the order is breached during its lifetime, the person to whom it applies may be prosecuted.
- 31 Feedback from the Police and certain local authorities indicate that they have been successful in obtaining ASBOs against persons who they were able to identify and link as the owner of horses which were found to be causing a nuisance by fly grazing.
- 32 The main problems with the powers available under section 1 of the 1998 Act as a mechanism for eradicating fly grazing, are that (i) the identify of the owner of the horses causing the nuisance must be known to the prosecuting authority; (ii) obtaining an ASBO only results in a short term solution to the problem due to the fact that there are large numbers of horses whose owners cannot be identified; (iii) to obtain an ASBO is resource intensive requiring a great deal of coordinated work between the relevant authorities, investment in terms of money, time, evidential burden and continued vigilance, to ensure that the terms of the Order are complied with by the named person.

### Objectives of the Bill

- 33 The Welsh Government's primary policy objective in relation to this Bill is to work towards establishing a fly grazing free Wales.
- 34 The Bill will provide all local authorities in Wales with the same legal powers to seize, impound, sell, dispose of and destroy horses by humane means after certain notifications and time limits, when the horses are found causing nuisance by fly grazing in a local authority area.
- 35 The effect of the Bill is to provide all local authorities with the necessary powers to seize impound and dispose of, or destroy horses, such that they may work together to protect the public and the environment from the nuisance caused by the practice of abandonment/fly grazing.

- 36 The policy objectives will be achieved by introducing powers for local authorities to act when they are notified of horses on land in its area without lawful authority. Local authorities will be able to seize and impound those horses. If after 7 days, beginning on the day on which the Notice was served, and the owner of the horse or a person acting on behalf of the owner has not contacted the local authority or the owner has contacted the local authority but has not paid the reasonable costs incurred by the local authority in connection with seizure and impounding the local authority may then dispose of the seized horses (including by way of humane destruction).
- 37 The Welsh Government considers the proposed powers will also provide a remedy to the problem of seized horses that are unidentifiable being sold and are bought back at minimal costs by those believed to be the original owner, and then found fly grazing once more, causing nuisance to communities within Wales. It would be for local authorities to decide the best course of action, in the case of a small number of seized horses selling via auction may be seen as the most appropriate course of action in order to help defray expenses. Equine welfare charities may be able to take, rehabilitate and re-home some horses. However, in the case of large numbers of unclaimed unidentifiable horses with a low economic value local authorities may need to consider humane destruction as an appropriate option.

### Who is affected by the Bill?

- 38 Irresponsible horse owners or keepers who actively allow their horses to fly graze illegally or abandon them with no intention of fulfilling their duty of care to their horses will be affected by the Bill. Such owners or keepers who ignore the effect that fly grazing has on the environment, property and communities and do not take seriously their animal welfare responsibilities and the quality of their horse's life will face the removal and re-homing or destruction of horses which they abandon or fly graze.
- 39 Local authorities will be given the powers to seize, impound, sell, dispose of, or destroy horses which are on land in their area without lawful authority, thereby removing horses that are causing a nuisance to communities and the environment.
- 40 Land owners where horses have been fly grazed without their consent or abandoned, in particular where ownership of the horse is difficult to establish will benefit from the powers given to local authorities in this Bill.
- 41 The new legislation has also been welcomed by animal welfare organisations and horse charities where resources and space within rescue centres is limited, because they can see the benefits of having an all Wales approach to this issue and the legislation will mean that local authorities can act faster than is currently possible. Over the last 3 years, many establishments such as the RSPCA, Blue Cross, World Horse Welfare and Redwings have seen a sharp increase in horses needing to be re-homed.

## Detailed implementation and delivery plan

### Timescale

- 42 It is proposed that the Bill will commence on Royal Assent (which it is anticipated will be received in early 2014).
- 43 Non-statutory guidance will be developed in conjunction with local authorities and issued to coincide with the coming into force of the Bill. The guidance will include the process and suggested approach local authorities should take in determining whether an owner is likely to come forward to claim a horse. It is proposed to keep the guidance under review so that it may develop over time and in response to experience of operation.

### Risk/hazards if the legislation is not made

- 44 If the Bill is not passed and does not receive Royal Assent, the issues of fly grazing and abandonment will continue to be a problem and a nuisance to the public, local authorities and emergency services in Wales.
- 45 The problem of fly grazing in some parts of Wales are such that there is a risk to public health where horses are either on public roads or have entered residential property. This is in addition to the issues faced by landowners where horses have appeared on their land without permission and can cause damage to their property. There is also an impact on the agricultural industry when land and fencing is damaged leaving insufficient grazing for the landowners own stock.
- 46 Finally, there is a considerable financial burden to those dealing with the problem. Current estimated costs to the enforcement authorities (Police Service, local authorities, RSPCA and the Fire Service) since November 2011 amount to some £1.2 million. This situation is not sustainable.

## **4. Consultation**

### Consultation on proposals for the Control of Horses (Wales) Bill

- 47 In his Legislative Statement of July 2011, the First Minister made a commitment to consult appropriately and engage meaningfully with our partners when developing legislation. In keeping with this commitment, the Welsh Government undertook a consultation on the matter of fly grazing from 4 March 2013 to 29 April 2013. The consultation exercise sought views on the issues of fly grazing and abandonment. The consultation also asked for views on the possible content of a Bill to tackle those issues. The consultation document was issued to stakeholders including local authorities, the Police forces in Wales, the Fire and Rescue Service, Landowners, Farmers, Farming Unions, Commoners, Equine Welfare Charities, Passport Issuing Organisations, owners/keepers of horses and the Gypsy/Traveller Community.

- 48 In total there were 602 responses received. 77 of these responses were received via the official response form as published on the Welsh Government website, 505 responses were generic responses believed to have been circulated via social media. Of these 505, 60 were identified as being from countries outside the UK without any direct interest in the matter and as such have been excluded from this analysis. A further 20 responses were received as individual letters or included as additional information or suggestions as part of the generic responses.
- 49 The responses were analysed and considered as part of the process of determining what measures need to be taken to ensure a consistent approach to fly grazing across Wales. A break down of respondents is shown at Table 1

Table 1: Responses received split by sector

Sector	Number of responses	Percentage of total respondents from each sector
General Public	500	92%
Local Government	13	2%
Emergency Services	3	1%
Welfare Charities	10	2%
Other equine related organisations	6	1%
Other organisations with an interest	7	1%
Farming Unions	3	1%
<b>Total</b>	<b>542 *</b>	<b>100%</b>

\* Excludes those 60 responses identified as coming from outside the UK.

## Summary of the outcome of the consultation

- 50 Respondents identified that the problems are caused by a minority of individuals. There were a number of recurrent themes raised throughout the responses to the consultation around identification (linking horses to owners), irresponsible breeding and trading. There was criticism of the current legislative framework for not effectively dealing with the issues of fly grazing and abandonment, which led to a call for a consistent legal framework for the whole of Wales to tackle the problem.
- 51 445 generic replies (believed to be via social media) were received, these responses mirrored many of the comments made by those responding to the individual questions and included strengthening the legislation around horses including improving traceability and extending the local Acts to cover the whole of Wales. There were also calls for stronger and more consistent enforcement with dedicated resources for local authorities and a mechanism for sharing best practice.



- 52 The responses included support for the resurrection of the National Equine Database and provision for one central database that records horse passports and change of ownership (along the lines of the DVLA system for motorised vehicles) along with an amendment to the horse passport regulations so that all horses are chipped regardless of age.
- 53 Some respondents also considered the Welsh Government should develop guidance and contingency plans for those affected by fly grazing as well as statutory guidance and conditions for local authorities to aid enforcement with measures being backed by adequate resources.
- 54 A further 20 responses were received which mirrored many of the comments made above but also added support for the introduction of a straightforward and consistent legal framework to address the issue across the whole of Wales. It was suggested that there was a need to define 'Owner' as this implies that it is their right as to how they treat 'their' animal – carer was proposed as a more apt description.
- 55 Those commenting on identification felt that freeze branding<sup>1</sup> or hoof branding<sup>2</sup> should be considered in place of micro-chipping.
- 56 A recurrent theme in the consultation responses was for the Welsh Government to address the issue of available powers in order to find a legislative solution to the problem that was consistent across Wales. A number of other non-legislative solutions were also proposed; these suggestions and ideas will form the basis of an Action Plan that the Minister for Natural Resources and Food is proposing to issue during the autumn. This Action Plan will inform ongoing work between the Welsh Government, local authorities, Police and welfare charities.
- 57 A number of respondents considered the current laws could encourage fly grazing as horse owners know they have a minimum of 14 days of free food before seizure. The respondents considered legislative change was required for the appropriate statutory authority to seize, remove and destroy horses immediately where landowners have not given consent and for this to be achieved with some anonymity in order that the authority and/or its officers do not become the target of possible reprisals.
- 58 It was also considered that destruction was now the only option as homes for seized horses are not generally available and such a policy would demonstrate there is a zero tolerance to the practice. Powers of sequester should be applied for any horses confiscated and slaughtered as a result of fly grazing.

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<sup>1</sup> Freeze marking is a painless, humane procedure, in which super-chilled markers are pressed onto the horse's skin. This destroys the pigment (which makes the hair coloured), so that the hair re-grows white, and the unique mark can be seen.

<sup>2</sup> Hoof branding is a form of hot iron branding where an owner's chosen information, such as a post code is branded onto the horse's hooves. This is not a permanent method of marking as the continual hoof growth requires the brand to be re-applied approximately every six months.

- 59 A summary of the consultation responses has been prepared and has been published to the Welsh Government's website. The Summary report can be accessed via the attached link:  
[Control of Horses Consultation](#)

## 5. Power to make subordinate legislation

60 The Bill contains provisions to make subordinate legislation. The following table sets out in relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power; and
- the applied procedure (*affirmative, negative, no procedure*), if any, together with the reasons why it is considered appropriate;

Section :	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
Section 7- Appeals	Welsh Ministers	Regulations	This section provides Welsh Ministers with the power to make regulations to specify a mechanism for a right of appeal for any person in relation to any matter arising under this Act including specifying the grounds, procedure, timing and costs. Any such procedure and costs will need to be reviewed and amended from time to time. Therefore subordinate legislation is appropriate for this purpose.	Negative	These are likely to be minor or technical procedures and provides for flexibility in making changes to the law if required

## PART 2 – REGULATORY IMPACT ASSESSMENT

### 6. Options

- 61 This Chapter presents three different options in relation to the policy objectives of the Bill. Each of the options is analysed in terms of how far they would achieve the Welsh Government's objectives, along with the risks. The costs and benefits associated with each option are set out in Chapter 8.
- 62 The costs and benefits associated have been explored and are based on research and evidence provided by Local Authorities. The costs and benefits are presented in Net Present Value (NPV) terms using a discount rate of 3.5 percent. This is in line with the guidance in HM Treasury's Green Book.
- 63 The options below reflect those presented in the consultation document. The options are:
- (a) Option 1 – do nothing
  - (b) Option 2 – introduce non-statutory guidance
  - (c) Option 3 – introduce primary legislation and supporting guidance.

#### Option 1 - do nothing

- 64 Under this option fly grazing and abandonment would continue to be managed using the existing legislative framework, including local Acts in those areas where they apply.
- 65 The key disadvantages of this option are that –
- (a) The existing three local acts are limited to parts of Wales and the problem is spreading more widely.
  - (b) There is only provision at the moment in the Mid Glamorgan County Council Act for local authorities to recover their costs where the owners of fly grazed horses have been identified.
  - (c) There would be no improvement of the fly grazing problem in Wales and costs to local authorities, the Police and the Fire and Rescue Service (FRS) will increase as the situation deteriorates.
- 66 This option will perpetuate the risk to public safety, the nuisance to communities (on public and privately owned land), the impact on the agricultural industry and increase the financial burden on those who have to deal with the problem.
- 67 The Welsh Government considers that the existing situation cannot be allowed to continue unchanged and that to do nothing is not a viable option.

## Option 2 – introduce non-statutory guidance

- 68 This option proposes introducing non-statutory guidance to encourage responsible horse ownership.
- 69 It is expected that non-statutory guidance would be welcomed and followed by a majority of horse owners, but it is likely that those owners are not the owners that are usually causing the problems.
- 70 It could be argued that non-statutory guidance would improve the situation slightly but the Welsh Government considers it unlikely that such guidance would be effective against the owners and responsible persons that are difficult to identify who fly graze their horses in the hundreds (or perhaps thousands) on a regular basis, as they will simply ignore it. In addition a Code of Practice for the Welfare of Equines (October 2008) has already been issued by the Welsh Government under section 14 of the Animal Welfare Act 2006. This Code sets out to horse owners how to meet the standards of care required by that Act. These codes have been made freely available to members of the public, local authorities, welfare charities, vets and pet shops. Local Authorities and the RSPCA have indicated that they use the Codes when dealing with cases and frequently hand copies to owners they visit in respect of welfare issues.

## Option 3 – introduce primary legislation and supporting guidance

- 71 This option proposes introducing primary legislation to establish consistent powers across Wales to enable the appropriate authorities to deal with the issue of fly grazing and abandonment. While there are occasional instances of where escaped horses and ponies are on land without lawful authority, the Bill is aimed at the irresponsible owners and keepers who either deliberately or negligently allow their horses to fly graze and cause a nuisance or a hazard and damage to property.
- 72 There would also be supporting non-statutory guidance to advise on the practicalities of implementing the powers for local authorities and interested parties.
- 73 This option will provide a consistent approach across Wales and ensure that all local authorities have the relevant tools to effectively deal with this problem.
- 74 Introducing new legislation in Wales in order to allow local authorities to deal with the issue of fly grazing and abandonment in a robust and consistent manner may result in the problem being displaced across the border into England. However, we have no evidence to measure the likelihood of this risk or if it did happen on what scale it might occur. If the problem were to be displaced to England, it is not for the Welsh Government to presume the approach English local authorities would take to deal with the problem or

under which legislative provisions they might choose to act. It is therefore not possible to produce even a best estimate of the costs that might be involved.

## 7. Costs and benefits

75 This chapter contains the cost benefit of the options detailed in Chapter 5.

### Costs

#### Option 1 – do nothing

76 As this option proposes no change it is considered that without effective legislation, the costs resulting from fly grazing will continue to escalate.

77 The costs of the effects of fly grazing for Wales are not currently available centrally. However, the fly grazing issue is currently concentrated in the main in the area of South Wales particularly Bridgend, Cardiff, Swansea and the Vale of Glamorgan. Since November 2011 South Wales Police have recorded more than 1,500 incidents relating to loose, abandoned and fly grazed horses. The costs accrued over the same period in dealing with horse related incidents by the Police in South and West Wales, Fire and Rescue Service and two local authorities (Bridgend and Vale of Glamorgan) has amounted to some £1.2 million. Dealing with the problem robustly has seen a gradual displacement of the problem to other areas; Newport in particular has reported cases of landowners who have horses fly grazed on their land. Other areas of Wales that have experienced the problem are Monmouthshire, Torfaen and Gwynedd.

78 Against the backdrop of an increasing number of horses being re-homed as a result of fly grazing, animal charities<sup>3</sup> across Wales and England issued a joint report '*Left on the Verge – the approaching equine crisis in England and Wales*'<sup>4</sup> in 2012 which provides estimates of some 6,000 horses potentially being at risk across England and Wales. The report details the issues around fly grazing and makes reference to the rising number of horses being taken into care each year by charities. Welfare organisations are at saturation point and no longer have the room to take additional horses. The associated costs of taking horses into care has also risen which has added to the burden of charities and left many to turn away all but the worst cases of equine neglect. In 2011 the RSPCA re-homed 240 horses, double the number re-homed in 2010. Redwings increased the number of horses it re-homed from 46 in 2006 to 109 in 2011. Blue Cross also reported that 21% of horses admitted to their centres in England and Wales in the year to June 2012 were due to welfare reasons, an increase of 12% reported for the same period in 2007-2008. The costs of prosecuting horse cases are also rising, particularly for multiple horse cases where local authorities have advised us that costs can run to £500 per day (see paragraph 85).

79 In the last two years the Welsh Police forces have responded to requests for support following significant levels of straying or abandoned horses. This has

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<sup>3</sup> RSPCA, Blue Cross, Redwings Horse Sanctuary, World Horse Welfare, HorseWorld, British Horse Society

<sup>4</sup> [Left on the Verge Report](#)

been mostly in the Gwent, South Wales and Dyfed Powys Police force areas, although to varying degrees all areas of Wales are affected by this situation.

- 80 From November 2011 to March 2012 more than 2,000 occurrences have been recorded in south Wales by South Wales Police and local authorities of loose, abandoned and fly-grazing horses. Loose horses on the public highway, including main arterial routes, present a serious and grave danger to both the public and the authorities who have to deal with removing them.
- 81 The effect on the community is significant and lasting. Not only the direct and obvious impact on those who are involved in the equine industry but also on the public in general. Primarily, loose horses can cause danger to life, damage to property and inconvenience to the public. Loose horses also cause an unacceptable level of disruption to people's lives.
- 82 The impact on the farming community has also been disruptive, with reports of direct intimidation, threats and damage aimed at ensuring the 'fly-grazing' horses are not removed from farmers' land. These include instances where farmers believed that they had reached informal arrangements only to find out later that the horses in question are either not removed or others are added.
- 83 It is not just those who have undertaken business with known equine traders who are directly impacted by irresponsible horse ownership. The National Farmers Union Cymru (NFU) and Farmers Union of Wales (FUW) raised a number of points during the public consultation that highlight the hidden impact of a poorly managed equine industry on the farming community. The NFU have also produced a paper on the matter (see [www.nfonline.com](http://www.nfonline.com)).
- 84 Costs to partner agencies provided by the local authorities below (Dec 2011 – March 2012):

Cost Type	Vale	Bridgend
Horse recovery / transport costs	£21,225.98	£24,644
Vet fees	£2,784.95	£8,812
Horse feed costs	£1,392.33	£172
Horse equipment costs	£1,700	£963
Costs in relation to secure locations / compounds for captured horses	£11,914.84	£22,360
Security costs at these locations / compounds	£18,691.09	at least £10,000
Prevention methods at Rhoose in case of further dumping included ploughing, disking, and fencing	£6350	

- 85 Using the figures above, which are based on information from two partner agencies and could well be higher in other LA areas, we estimate an



approximate cost for these two authorities on providing horse recovery / transport, vets fees, horse feed, equipment, livery and security costs amounted to some £125k in respect of some 260 horses (average of around £500 per horse). These figures exclude officer time and in particular the £80k allocated for the employment of 2 horse wardens. Swansea have estimated that the cost to their authority is between £1,000 and £1,500 per horse.

- 86 Bridgend in addition has allocated approximately £80K to fund two horse warden posts on a temporary basis, this includes the cost of vehicles hire, trailer hire, additional equipment and Personal Protective Equipment (PPE) along with overtime costs.
- 87 Cardiff also employs a horse warden but other authorities rely on their animal health officers to deal with equine related issues.
- 88 Cardiff received 141 complaints during 2012-13 and reports the cost of seizing, impounding and disposing of horses as significant. As an example, they seized 21 fly-grazing horses in August 2013 and the contractors costs were £1,644 for the seizure alone, not including the time for four officers. Those 21 horses were then required to be kept for a minimum of 14 days at £228 per day per horse. There are sometimes vet costs on top where the horses are in poor condition. In addition, because the owners will often try and take the horses back, the horses are moved to various secure locations and that also incurs costs of between £200 and £1000 per move dependent on the number involved.
- 89 Cardiff's experience is that owners rarely come forward to claim the animals, as there is no value to the horses, which sell for a few pounds only, if at all. Attempts are made to rehome but it is very time consuming. Where rehoming is possible, horses are micro-chipped and a horse passport issued (approx. £50 of costs) and stallions gelded to minimise breeding which costs a further approx. £200. Where horses cannot be rehomed they are humanely destroyed at a cost of up to £200 per horse plus transportation etc.
- 90 Wrexham County Borough Council has seen a number of cases of illegal fly grazing where small numbers of horses have been left to graze, including an incident where horses were released onto the helicopter landing area at Wrexham Maelor Hospital. In a further incident horses were placed on local authority land from which they strayed causing a major traffic incident which resulted in the death of a motorist. The Local Authority were held liable as the horses had strayed from their land, the case was settled out of court with the costs to the Authority being unknown.

## Option 2 – introduce non-statutory guidance

- 91 Under this option, the Welsh Government would produce and publish non-statutory guidance aimed at encouraging responsible horse and pony ownership. There would be a one off cost to the Welsh Government for developing this guidance which is estimated to be approximately £11,000.

This is based on the assumption that the guidance will require 5% of an Executive Band 2 and 20% of a Management Band 2.

- $EB2 \times 5\% \times £65,920 = £3,296$
- $MB2 \times 20\% \times £38,304 = £7,661$

- 92 This option is expected to have little impact on the problems associated with fly grazing because the majority of horse owners already act responsibly and those owners that are not acting responsibly are unlikely to alter their behaviour in response to the guidance. As such, this option is unlikely to reduce the cost and impacts associated with fly grazing.

### Option 3 – introduce primary legislation and supporting guidance

#### Cost to local authorities

- 93 The option to introduce primary legislation and supporting guidance would provide all local authorities in Wales with the power to manage the problem of fly grazing and abandonment, including the provision to recover costs from horse owners where they can be identified.
- 94 Some local authorities who are using the local Acts have already adopted the good practice of posting Notices on sites where horses have been seized and are also keeping a record of seized/impounded horses. There will be no additional costs for these local authorities as a result of introducing the Bill.
- 95 For those local authorities not already posting Notices and keeping a record, there will be a small cost to establish a method for recording seized/impounded horses that we estimate would be about half an hour of an officer's time per local authority (approximately £500 in total across Wales). We estimate that recording the details of each horse to comply with the Bill will take between 3-5 minutes per horse (approximately £2.50-£4 per horse). There will also be an additional cost of officer time to post Notices that we estimate will be between 1-2 hours on average per round trip (approximately £50-£100 per occurrence).
- 96 In addition to the all Wales legislative solution, there is an estimated cost for setting up a call off contract for secure accommodation that could cost Welsh Government and the Welsh Local Government Association approximately £450k to set up and a possible £300k per annum in following years. Setting up a facility from scratch so that it meets the welfare needs of horses which depending on the site used would include the conversion of existing buildings to accommodate large groups of semi-feral horses as well as the provision of isolation / stallion areas, the purchase of equipment for handling horses, staff costs and the provision of appropriate bedding and fodder. It is recognised that the winter months are the peak time for both fly grazing and abandonment when such a facility will be required. With no way of estimating the number of horses that authorities will be required to seize the running costs can only be based on the information provided by Bridgend and Vale

along with the figures provided by Swansea on the number of horses that they have impounded during 2012 (154) and 2013 (63).

- 97 These costs may not be required and are the worst case scenario of dealing with several hundred horses and would cover all the costs identified above, including collection, secure accommodation, livery, feed and disposal. Local authorities already have existing facilities which they use for impounding horses for numbers of up to 100 horses and will continue to use these facilities.
- 98 The current process results in many of the horses seized being bought back by individuals (believed to be the owner) at a fraction of what it has cost authorities to seize, impound, properly care for, identify and then sell. Being able to permanently remove fly grazed horses from the system will ensure that they are not just being re-purchased and fly grazed in other areas of Wales. It is believed that the introduction of new legislation that provides an option for the humane destruction of the horses will break this cycle and send a very clear message that there are no benefits to fly grazing.

### Cost to Welsh Government

- 99 As with Option 2, the Welsh Government will produce non-statutory guidance aimed at encouraging responsible horse ownership. The one-off cost to Welsh Government associated with producing this guidance is approximately £11,000 based on the figures outlined in relation to Option 2.
- 100 Section 7 of the Bill provides for Welsh Ministers to make regulations providing for a right of appeal in relation to any matter arising under the Bill.
- 101 A decision on the format of the appeals process introduced by subordinate legislation will only be taken following public consultation.
- 102 The format of the appeals process is not known, however if the Welsh Ministers are to determine appeals, it is estimated that the cost to the Welsh Government would be approximately £60 per case (this work is considered business as usual (BAU) for the Welsh Government and a typical cost for an appeal is estimated at 1 Executive Band 2 x 1.5 hours per case plus administrative support). These estimated costs are based on a percentage of staff costs of the policy team.

### Cost to horse owners

- 103 Where a horse is on land without lawful authority, the owner will run the risk of their horse being seized, impounded and potentially destroyed. Local authorities will also be able to take action against an identified horse owner to recover any costs incurred in dealing with horses seized and impounded. Therefore the effect of the Bill provisions is not likely to impose any costs on

horse owners who care for their horses in a responsible way and act in accordance with their statutory duties.

- 104 The local authority is entitled under Section 4 of the Bill to recover the costs it has reasonably incurred. The owner could face a range of potential costs dependent on: the arrangements the local authority has in place to manage the problem; the length of time the local authority has provided livery for the horse(s); the medical condition of the horse and any treatment provided; and the location of the facility (which may not be local to the point of seizure) and associated transport costs. This means the range of costs to the owner could be from zero where the local authority decides to return to the horse(s) without pursuing any remedy up to several thousand pounds. As the decision to reclaim costs is discretionary, the local authority as a public body, is under a duty to act reasonably in light of the facts of each case and would therefore have to consider the reasonableness of any claim it considers pursuing. This could for example mean, a local authority returning a horse to a child aged 16 (the minimum legal age under the Animal Welfare Act to own an animal as the legal owner) and not requiring reimbursement of costs, particularly where there is a genuine case of a horse escaping from its dedicated field.
- 105 Disputes as to reasonable costs may be appealed under the regulations made pursuant to section 7. Cost to initiate an appeal are estimated as the time to write a letter and postage at approximately £10.

## *Benefits*

### Option 1 – do nothing

- 106 There are no additional benefits to horse owners, land owners, local authorities other partner agencies, or the Welsh Government from this option. The incidents of illegal fly grazing in Wales have increased in recent years and are not sustainable. It is considered essential that an appropriate solution is found.

### Option 2 – introduce non-statutory guidance

- 107 It is considered that the key benefit of this option would be increased awareness amongst horse owners, generated from publicity campaigns about the guidance. However it considered unlikely that awareness of the guidance, without statutory enforcement, would generate a significant change in behaviour in those irresponsible owners that are causing the existing problems. The option is therefore very unlikely to have any major impact on the problems of fly grazing and abandonment of horses.

### Option 3 – introduce primary legislation and supporting guidance

- 108 The key benefit of this option is that the Bill would provide all local authorities in Wales with the same legal powers to seize, impound, sell, dispose of including by means of destruction horses by humane means after certain

notifications and time limits, when they are on land without lawful authority in a local authority area. The provisions in the Bill would provide the means for local authorities to work together to protect the public and the environment from the nuisance caused by the practice of abandonment and fly grazing.

- 109 It is anticipated that these new legal powers could lead to a reduction in the overall costs to local authorities both by providing local authorities with the tools to be able to act quicker thereby saving livery costs and the ultimate deterrent of destruction to those intending to fly graze their horses. The legislation also proposes the recovery of expenditure made by local authorities from identified owners.
- 110 Recent examples of fly grazing that could have been prevented with such legislation in place include:
- a. During January 2012 the Woodland Trust's land at Monk's Wood in the Vale of Glamorgan was subject to the illegal abandonment of 35+ horses at this site causing over £5,000 worth of damage. The gates into the site were badly damaged to gain entry for the horses. Newly planted trees were also trampled and damaged by the horses. Removal of the horses using the provisions in this option would substantially reduce the impact if a similar incident occurred again.
  - b. There have been examples of 'fly-grazing' of horses on educational premises where at one comprehensive school, the safety of pupils and staff was continually put at risk. This resulted in the need to erect robust perimeter fencing to the boundaries of the school at a cost of £61,000. The school's playing fields were also extensively damaged impacting directly on the sports education of the children and the presence of horse manure meant that pupils and the wider community were deprived of the use of these facilities until a clean up operation could be effectively conducted. This option would lessen the impact in this type of situation and return the facilities to their proper use with the minimum amount of disruption.

- c. Carmarthen Bay and Estuaries Special Areas of Conservation (SAC) monitoring team came across instances of fly grazing on saltmarsh within the SAC in the summer of 2012. The saltmarsh in these areas had deteriorated and poaching and overgrazing by the horses led to the sites failing to achieve favourable conservation status (especially Bynea saltmarsh by Llanelli). The Habitats Directive (Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora) and transposing regulations require the establishment of conservation measures for SACs corresponding to their ecological requirements and the taking of appropriate steps to avoid deterioration and significant disturbance of the habitat types and species for which the SAC and Special Protection Areas are designated. It was difficult to estimate the cost of this damage at the time, but having the option to respond quickly would undoubtedly benefit the SAC by removing the horses and minimising the environmental impact.
- d. Unauthorised horses have been put, from time to time, on a number of Sites of Special Scientific Interest (SSSI) in South Wales. Whilst grazing can help improve the habitat on under-grazed land, if ground conditions are dry enough, the key problem is the lack of control over the timing of grazing that can lead to disturbance of nesting birds and can be damaging to important features particularly in winter with localised poaching and trampling. The habitat most typically affected is south Wales coalfield marshy grassland, which is usually drier in summer than in winter as the water table falls and rises. The recommendation for marshy grassland is therefore for light summer grazing by horses and/or cattle but winter grazing of these sites is mostly damaging. Marshy grassland is good for biodiversity but often looks 'scruffy' and is not valuable farmland so it tends to be vulnerable to fly grazing. Again it is difficult to quantify the environmental damage in terms of costs, but this option provides a clear and fast means of dealing with fly grazing horses and therefore reducing the environmental impact.
- e. The Vale of Glamorgan Council became involved with an issue of 66 abandoned horses (plus their foals) on council owned land situated adjacent to Cardiff airport in Rhose. Due process was followed by the erection of Animal Act notices but no person came forward to claim ownership of the animals. The horses were consistently escaping onto the highway and on one occasion onto Cardiff airport runway. Vale of Glamorgan Trading Standards were then obliged to ensure the welfare of the 71 mainly colt cob foals. The cost to the authority for the abandonment, the resultant care and the removal of these equines was £30,000. That figure does not include officer time which was substantial. Vale Trading Standards was then notified by Vale of Glamorgan country parks department of a further 70 horses fly grazing at Cosmeston Country Parks which was land owned by the council. Again Animal Act notices were erected however on the 13th day before ownership transferred to the council these horses were removed from the site during the night causing considerable damage to the parks

environment. The total cost of this incident to the Council was £3,500; again this does not include officer time. Following numerous multi-agency meetings an emergency response to the horse straying and fly grazing issue, a horse pound was set up by the Council to enable the authority to respond quickly when removing horses from the highway which threatened public safety and to provide a safe environment for the equines seized. The pound was first used to assist Bridgend County Borough Council with the issue of straying that they were facing, however horses were stolen from the pound even with 24 hour security provided. The cost of the aforementioned security was £2,500 per week. Whilst the pound was in operation (a period of 2 months) a total of 220 horses seized from the highways and or fly grazing within the Vale of Glamorgan and Bridgend areas were re-homed to horse charities by Vale of Glamorgan Trading Standards. The cost of the horse pound and re-homing etc., totalled over £50,000. The economic impact on services, excluding the courts and agencies prosecution costs, to the Police and Partner Agencies between November 2011 and December 2012 are estimated at £1,221,000.00. The removal of the necessity to incur this expenditure under this option would be a direct benefit to the Police and Partner Agencies.

## Summary and preferred option

- 111 The Welsh Government considers that Option 3 (introduction of primary legislation and supporting guidance), offers the best way forward to tackle the issue of fly grazing and abandonment of horses in Wales.
- 112 The costs currently being incurred by local authorities and other partner agencies need to be addressed and are not sustainable. This Bill would provide the means for local authorities to reduce and in some cases recover their costs associated with the seizure and impounding of horses on land without lawful authority.

## 8. Specific Impact Assessments

- 113 A series of impact assessments on the policy relating to the Bill were undertaken as part of this RIA.

### Impact on small business

- 114 There are no estimated financial costs to small business as a result of introducing this Bill.

### Impact on voluntary sector

- 115 We expect that horse charity organisations in the voluntary sector will not see a detrimental effect as a result of this Bill. There may in fact be a reduction of impact on them as local authorities will have the powers to dispose of

including by means of humanely destroying horses where necessary, rather than putting further pressure on already stretched horse charities to take yet more horses.

## Equality impact assessment

- 116 The provisions of the proposed Bill will provide local authorities in Wales with the powers to dispose of horses after 7 clear days from notice being given where the owner has not contacted the local authority or where the owner has contacted the local authority but has not paid the costs incurred by the local authority relating to the seizure and impounding of that horse. The current local Acts provide a power to dispose by way of destruction after a minimum of 21 days has passed. The Bill provision reduces this to 7 days which is a substantive departure from the current local Acts.
- 117 The acts of seizing, impounding, selling, disposing including by way of destruction by the local authority amounts to an interference, control of use and deprivation of property, which engages Article 1 of the First Protocol of the Human Rights Act 1998.
- 118 A Bill will not be within the legislative competence of the National Assembly for Wales if it is incompatible with the European Convention on Human Rights and could not become law (section 108(6) (c) GOWA 2006).
- 119 The provisions of this Bill will benefit the community by eradicating the nuisance caused by fly grazing. This is a legitimate aim which outweighs the detrimental effect on the individual who has been deprived of his or her property. A major defect of the existing legislation is that the individuals responsible for the horses which create the nuisance are not readily identifiable. However, if they were those persons may be liable in civil law for trespass and criminal law for (amongst other things) failing to meet the welfare needs of their animals.
- 120 To seize, impound, sell, dispose of and destroy horses under the proposed Bill amounts to an interference, control of use and deprivation of property but these are justified actions balancing the interests of the owner with the public interest in eradicating nuisance and danger and destruction caused to the environment.
- 121 Human Rights Act 1998 has been considered as part of the screening equality assessment. Consideration is being given as to whether the powers provided to local authorities under the Bill provisions amount to a determination of a civil right or obligation under Article 6 of the Convention in relation to an interference with personal property rights which are also protected by virtue of Article 1 of the First Protocol. If Article 6 is engaged it is noted that there are remedies available to persons affected by decisions taken by the local authority under the Bill by way of actions in the County Court and judicial review. The sufficiency of those remedies is being further assessed. However section 7 which makes provision for the Welsh Ministers to make regulations



to set up an appeals process has been included in the Bill as a safeguard in meeting compliance with the Convention.

- 122 In considering if there is any differential impact for Gender and Gender Reassignment, Religion and Belief and Non-Belief, Sexual Orientation, Pregnancy and Maternity, Civil Partnerships and Race, we have determined there is no evidence to indicate a differential impact to any of the protected groups.
- 123 In recognising the lack of evidence regarding protected groups, any future review of the Bill will include an assessment of the use of the Bill to measure if there has been any impact on protected groups.
- 124 The Head of Inclusion Team for Local Government and Communities is a member of the Project Board and her advice will be sought to inform the Communications Plan to ensure the Bill is communicated to protected groups, especially those that may not otherwise receive news of it through more usual media channels.

## Sustainable development impact

- 125 The policy objectives of the Bill have been considered in terms of potential impact against the indicators for a sustainable development including social, economic and environmental. This Bill promotes long term thinking and preventative action in an attempt to deal with the problem of fly grazing that has shown over the last few years that rising costs to local authorities, emergency services and animal welfare charities is not sustainable.
- 126 Paragraph 83 and the table above it demonstrate the economic impact of fly grazing horses, which can cost up to £500 per day for local authorities. This Bill will provide local authorities with the powers to deal with the issue in a more timely and cost effective way.
- 127 The direct social impact on communities is described above, including, where horses are found on school and hospital premises as well as public highways. There have also been frequent examples in the media where fly grazing horses have been reported roaming the streets and causing damage to gardens and domestic property. This is in addition to the damage caused to agricultural land where farming is at the heart of the community and cannot sustain the costs incurred.
- 128 The environmental impact of fly grazing can be seen where horses have been left at Sites of Special Scientific Interest or Special Areas of Conservation (see paragraph 110). This can have a devastating effect on land that cannot easily recover from ill-timed and unmanaged grazing and which causes substantial damage, preventing the land being used for the purpose for which it was intended.

- 129 Engagement through the public consultation (see paragraphs 50 to 59) has shown clearly that legislation is considered by the majority as the best way forward to combat the nuisance of fly grazing and abandonment.
- 130 In addition to the specific examples above, as can be seen throughout the Explanatory Memorandum, the situation as it currently stands in Wales is not sustainable. The Social, Economic and Environmental issues caused by fly grazing and abandoned horses are addressed by this Bill and form the core of the policy that underpins it.

## Rural proofing checklist

- 131 The Rural Proofing Checklist assesses whether the Bill causes a significant detrimental impact on the rural community.

The table below summarises the rural proofing checklist results:

	<b>Policy Question</b>	<b>Yes</b>	<b>No</b>	<b>Comment</b>
1.	Will your policy affect the availability of other public and private services in the rural area?	Yes		This Bill will have a positive impact on public spaces in rural communities as the lack of availability resulting from the danger caused by fly grazing horses will be reduced by faster action from local authorities using these new powers.
2.	Could you deliver the policy you are proposing to implement through existing service outlets? E.g. schools, banks and GP surgeries	Yes		The delivery of this policy will be through local authorities.
3.	Will there be an extra cost to delivering your policy to rural areas?		No	
4.	Will the policy affect travel needs or the ease and cost of travel for rural communities?		No	
5.	Does the policy rely on communicating information to clients?		No	
6.	Will the policy be delivered through the private sector or through a public-private partnership?	Yes		The initial responders to fly grazing incidents will be the local authorities, but the physical removal and storage will probably be contracted out to the

				private sector.
7.	Does the policy rely on infrastructure for delivery that may put rural communities at a disadvantage? E.g. Broadband ICT, main roads and utilities		No	
8.	Will the policy impact on rural businesses particularly the self employed and micro businesses and on the Third Sector including social enterprises and local voluntary organisations?		No	
9.	Will the policy have a particular impact on land based industries and therefore on rural economies and the environment?	Yes		As in 1 above, there will be a positive impact on rural economies and the environment as the nuisance of fly grazing and abandonment will be handled far more quickly and fly grazing/abandoned horses will be present for a shorter period of time and cause less damage to land.
10.	Will the policy affect those on low wages or in part-time or seasonal employment?		No	
11.	Will the policy target disadvantaged people living in rural areas?		No	
12.	Will the policy rely on local organisations for delivery?	Yes		The prime users of this legislation will be local authorities.
13.	Does the policy depend on a new building or development site?		No	
14.	Will the policy impact on the quality and character of the natural and built rural landscape?		No	
15.	Will the policy impact on people wishing to reach and use the countryside as a place for recreation and enjoyment?	Yes		As in 1 and 9 above, this legislation will have a positive impact on access to public spaces in rural areas by reducing the periods of time where fly grazing makes an area inaccessible.

Impact on Welsh Language

- 132 There is no risk that the Bill will have a negative impact on the Welsh Language.

## 9. Competition Assessment

- 133 There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition.
- 134 The table below summarises the competition filter results.

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

- 135 In view of the answers above, the second stage of the competition assessment is not required.

## 10. Post implementation review

- 136 It is anticipated that this legislation would be reviewed two years from the date of Royal Assent or sooner if the need arises.

# **CONTROL OF HORSES (WALES) BILL**

## **EXPLANATORY NOTES**

### **Introduction**

1. These Explanatory Notes relate to the Control of Horses (Wales) Bill (“the Bill”) and should be read in conjunction with the Bill.
2. The Explanatory Notes have been prepared by the Welsh Government Agriculture and Rural Affairs Division. They do not form part of the Bill and have not been endorsed by the National Assembly for Wales. Where a section or part of a section is self explanatory, then no further explanation or comment is provided in the Explanatory Notes.
3. The powers to make the Bill are contained in section 108 and Part 1, Subjects 6 and 12 and 1, of Schedule 7 to the Government of Wales Act 2006. The Member in charge of the Bill (the Minister for Natural Resources and Food) has made a declaration that, in his view, the provisions of the Control of Horses (Wales) Bill are within the legislative competence of the National Assembly for Wales.

### **Summary and Background**

4. The Control of Horses (Wales) Bill gives effect to the Welsh Government’s commitment for Wales to be free from incidents of fly-grazing and abandonment of horses.
5. “Fly grazing” is the term commonly given to the practice by irresponsible horse owners (or persons responsible for horses) of intentionally or negligently permitting their horses to graze on land where they do not have the consent of the owner.
6. With the exception of three local Acts, legal action is currently dependent on tracing the owners of the horses and, since the majority of horses which are fly grazed or abandoned are not identifiable in accordance with legal requirements, they cannot easily be traced back to their owners thereby making the existing legislation ineffective. The three local Acts which do provide local authorities with certain powers to act without having to identify ownership apply only to the current local authority areas of Mid Glamorgan, West Glamorgan and Cardiff. There are no similar provisions for the remainder of Wales.
7. The Bill provides local authorities with the powers to deliver a consistent approach on an all-Wales basis to deal with the impact of fly grazing and the abandonment of horses. This practice creates a nuisance in terms of public safety, causes economic and environmental harm and places a

financial burden on individuals and taxpayers.

8. The Bill provides powers to local authorities in Wales to seize and impound horses which are on land without consent or in public places without lawful authority and further powers to enable them to sell the horses or dispose of them by other means, including by way of destruction.

## **Commentary on sections**

### Section 1 – Overview

9. This section summarises what the Bill permits local authorities to do when horses are without lawful authority in public places or other land without the consent of the occupier.

### Section 2 – Power of local authority to seize horses

10. A local authority may seize and impound a horse which is on the highway or any other public place in the local authority's area or on other land in its area without the consent of the occupier if the occupier consents to the local authority seizing and impounding it. The local authority must have reasonable grounds to believe the horse is there without lawful authority before it can use these powers.

### Section 3 – Notices about seizure etc.

11. The local authority is required to post a written notice within 24 hours of seizing a horse under section 2, at or near the place where the horse was seized stating the date and time it was seized and detailing how contact may be made with the local authority. It must also within 24 hours of seizing a horse, give written notices to any person who appears to be the owner or a person acting on behalf of the owner of the horse and to the police.

12. The local authority must take reasonable steps to ascertain the owner of the horse as soon as reasonably practicable following its seizure. If, within 7 days of seizing a horse under section 2, the local authority ascertains that a person who has not already been given written notice under the Bill, is the owner of the horse, the local authority must within 24 hours, give a written notice to that person.

13. The notices given must be dated and include a description of the horse, and the date, time and place at which the horse was seized together with contact details of the local authority.

14. A notice to a person believed to be, or to be acting on behalf of, the owner of a horse must also state why the local authority believes that person to be either the owner of the horse or a person acting on behalf of the owner. The notice must set out the effect of the operation of section 5 (disposal of impounded horses) including the date on which the powers under, section 5 (2) to sell, or otherwise dispose of, the horse (including arranging for its destruction) will become available. A notice issued to a police officer must also state who else has been served with a notice.

#### Section 4 – Costs of seizure etc.

15. The owner is liable to pay the local authority any costs reasonably incurred in the seizure and impounding of the horse and in feeding and maintaining it while it has been impounded. The Bill does not require the local authority to return the horse until such costs incurred are paid. General law requires the horse to be looked after while under local authority care.

#### Section 5 – Disposal of impounded horses

16. If after the period of 7 days beginning on the date that a notice is served under section 3(3) or (4), no person has notified the local authority that they are either the owner of the horse or acting on behalf of the owner of the horse, or the owner has contacted the local authority but has not complied with section 4(1), the local authority may sell or otherwise dispose of the horse, including arranging for its destruction. Destruction will be carried out in a humane manner as possible.

17. The local authority may also recover any costs it may incur in relation to any arrangements for the disposal or destruction of the horse under this section. This section also provides that where there are no proceeds arising from the disposal of the horse, or the amount of costs of the disposal or destruction exceed the amount of those proceeds, the local authority may seek to obtain such costs from the owner. The owner is liable to pay the local authority any costs incurred in connection with the disposal of the horse or the amount of that excess.

18. This section also provides that the local authority is required to pay the owner, of the horse, any proceeds arising from the disposal of the horse where the proceeds exceed the amount of the costs incurred by the local authority but if a local authority has previously made a payment to a person it reasonably believes to be the owner it is not required to repay any other person.

#### Section 6 – Record of horses dealt with

19. The local authority is required under this section to keep a register of all horses seized under section 2 of the Act and that register must contain a brief description of the horse, a statement of the date, time and place at which the horse was seized and when it was impounded and details of the steps taken to establish the owner and, if the horse has been disposed of, the details and manner in which the horse was disposed of under section 5. The register must be open to inspection by members of the public (either by person or via the internet) at all reasonable times.

#### Section 7- Appeals

20. This section makes provision for the Welsh Ministers to make regulations by way of statutory instrument providing for a right of appeal in relation to any matter under the Bill. This section sets out the provisions that may be made by any such regulations but does not limit other provisions which may be made. Subsection (2) includes provisions which may: specify the grounds on which an appeal may be

brought, a provision for and in connection with the appointment of persons to hear appeals, the specifying the time within which appeals are to be brought and determined. It also includes provisions for procedure on appeals, imposing fees for bringing appeals, provision as to the award of costs in appeals and provision preventing the taking of any specified action pending the determination of appeals.

#### Section 8 – Consequential repeals

21. This section sets out the relevant provisions contained in the three local Acts which cease to have effect as they will be unnecessary as a result of the coming into force of this Bill. These repeals are as follows:

- (a) section 29 of the Cardiff City Council Act 1984 (c.xv);
- (b) in section 15(8) of the Mid Glamorgan County Council Act 1987 (c.vii), the words “horses (including ponies, mules, jennets),”; and
- (c) in section 35(7) of the West Glamorgan Act 1987 (c.viii), the word “horses”.