

TO: EXECUTIVE
20 OCTOBER 2015

CONTROL OF HORSES ACT 2015
Director of Environment, Culture & Communities

1 PURPOSE OF REPORT

- 1.1 This Act amends the Animals Act 1971 to provide additional legal provisions to address a practice commonly known as fly-grazing. The Act provides a new power for Local Authorities to detain horses which are grazing in a “public place”. This is power not a duty placed upon the Local Authority (LA) and it may exercise that power as it feels necessary and appropriate. This power is not available to Town or Parish Councils.
- 1.2 This report outlines the circumstances that have led to this change in the law and the potential implications for the Council should it decide to use the power.

2 RECOMMENDATION

2.1 That CMT agrees

- i) to delegate powers to the Director Environment Culture and Communities,**
- ii) the Policy document attached to the report as Annex A to be approved by the Executive, and that**
- iii) the service responsible for the management of the land will be responsible for implementing the actions and any subsequent costs incurred.**

3 REASONS FOR RECOMMENDATION

- 3.1 Fly grazing has increased significantly in recent years. The change to the legislation provides the Council with more effective ways of dealing with such activity in public spaces; however it also exposes the Council to potentially significant costs associated with the removal, treatment, care and subsequent disposal of horses. The majority of incidents of fly grazing actually occur on private land and the Council must be careful not to get itself dragged into funding the removal of horses from land where there is an absent owner or an owner who is not prepared to take action themselves. The Policy sets out a position which is defensible for public spaces but also clearly sets out our position where private land is involved.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council could agree to have no policy but in such circumstances it may find that it is the subject of legal challenge by people impacted by fly grazing upon public space where they perceive the Council has failed to take reasonable action to avoid foreseeable consequences. This might be through horses attacking people in a public area, preventing the use of a public right of way or causing a hazard upon the highways. The Policy sets the framework within which the Council will guide its decisions and actions.

5 SUPPORTING INFORMATION

- 5.1 There has been a tradition and in recent times a growing trend to graze horses in empty fields and on public land. This practice is commonly known as fly-grazing. On

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the face of it this may seem inconsiderate but actually it rarely results in serious damage to the land. Landowners have had under the Animals Act 1971 civil provisions to seek the removal or possession of these horses after a 14 day period has elapsed. Unless the landowner has a pressing need to remove the horses often it is easier to leave them where they are as there were very limited options for onward disposal.

- 5.2 This action however has its own issues because often the land does not have an adequate water supply, a sufficient food supply or on occasions sufficient security to restrain the horses and prevent their escape onto public highways. Experience shows that the owners of the horses often do not make adequate efforts to provide additional food or water or check on the horses regularly. The health and fitness of the horses often becomes a growing animal welfare issue, which can lead to suffering and death.
- 5.3 The public has become increasingly alert to the need to care for fly grazed horses and in 2014 the RSPCA nationally received over 22,000 calls on matters relating to fly grazed horse welfare. Recent publicity within Bracknell Forest on Twitter and Facebook clearly shows that this Borough suffers from this practice.
- 5.4 Up to this point the Council has generally adopted an assisting role to both the RSPCA who take an animal welfare lead under the Animal Welfare Act 2006, and Thames Valley Police who assist them and also have a duty if the horses have escaped on to the public highway. The purpose of this new legislation is to enable the landowner, including a Local Authority (LA) to take action much quicker and have more options for the disposal of any horse should the animals not be claimed or removed by the owner following the initiation of a legal process.
- 5.5 The previous legislation required the landowner to give Notice for the removal of the horses to its owner. Ownership would then pass after 14 days if by that time if the horses have not been claimed and removed. This can now be completed within 96 hours. Previously disposal of horses was only through public auction or market and they could not be gifted to another person. Such restrictions made it difficult to move quickly and they also provided a lack of incentive for landowners unless there were pressing reasons to take action. The new provisions allow for sale, gifting, destroying humanely or any other way. Delays in removal of fly grazed horse's increases the occurrence of welfare issues particularly when their owners fail to make sufficient feeding and watering arrangements, hence the increasing public outcry for changes in the law.
- 5.6 Unless damage is being caused to the land, or the land cannot be used for an intended purpose, there will continue to be little incentive for a landowner to seek an early removal of the horses especially if the costs incurred to affect this are unlikely to be met by disposal options. In such circumstances it is highly likely that if welfare issues do arise landowners and the general public will look more to the Council for a solution. It will be important to make clear to the general public that the Council only has responsibility for "public places" which in this Borough will include common land, town or Parish land, highways and their verges and that horse welfare issues on private land will continue to be a responsibility for the RSPCA.
- 5.7 The costs involved in making assessments of the health and well being of such horses, taking possession, their transportation to a place of safety, after care, compliance with horse passport legislation and their onward disposal are likely to be very high. As an example various Police Forces have entered into agreements with third parties for horses to be removed when found loose on public highways and in

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2014 it is reported that Surrey Police had an arrangement in place to deal with 70 horses at a cost to them of £122,000. The Police are looking for LA's to engage with them in funding a similar arrangement across the South East but early indications are that many authorities have a limited appetite for such an arrangement. An option for a LA concerned about meeting high costs would be for the horses to be collected and processed by an abattoir. Such a policy is likely to meet strong opposition from concerned residents and animal welfare groups who will want to see the animals be given new homes. Other arrangements could be to transfer ownership to a horse or animal welfare charity but unless such groups are willing and able to fund the collection, feeding and onward disposal then the Council may still end up on the wrong side of a very large bill.

- 5.8 Experience tells us that the vast majority of horses found fly grazed with the Borough are pied balled and when it has been possible to establish ownership they been owned by gypsy families. The use of the new powers could be of great concern to such owners if they take the view that their horses are valuable assets. Fly grazing could in such circumstances reduce especially if landowners and the Council make it clear that they are both willing and committed to full utilisation of the powers. There would be a need to open channels of communication with Gypsy families to be able to advise them of our policy and where necessary to provide communication lines to horse owners where fly grazing is occurring. This group is generally very difficult to reach and work with and such an arrangement may require the assistance of specialists who work regularly with the Romany and Traveller communities. Community Equalities and Engagement staff within Corporate Services will be approached to see how this might best be achieved.
- 5.9 Council officers are not experts in judging the health and welfare of horses and will rely upon other experts to make such judgements. The Council presently employs a vet to conduct welfare inspections on horses at riding establishments. Such examinations are likely to be upwards of £70 per hour plus travel if contracted by the Council. There is presently no budget for such work.
- 5.10 There are three other relevant pieces of legislation that are potentially applicable to the issue of fly grazing:
- 1) The Animal Welfare Act 2006,
 - 2) Animal By-products Regulations 2013, and
 - 3) Horse Passport Regulations 2009.
- 5.10.1 The Animal Welfare Act 2006 is already available when determining if the person responsible for the animals is meeting their statutory duty to ensure the welfare of the animal. This power within this legislation is available for the Local Authority to utilise and again it is not a statutory duty. Bracknell Forest only tends to utilise this legislation where 'livestock' are involved or where animals such as pets are being sold or cared for under a licence issued by the Council, i.e. pet shops, animal boarding establishments. The RSPCA and officers from DEFRA most commonly enforce legislation outside the traditional LA role, such as pets in a residential environment or non agricultural animals. The Act gives an authorised officer power to enter premises and seize animals.
- 5.10.2 The Animal By-product Regulations make provision which require the carcasses of animals to be removed from farmland. The leaving of a horse carcass would be a breach of this legislation and be enforceable by the LA and such actions have been taken by Officers from Regulatory Services on more than 4 occasions in the last 2

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years. Where the occurrence is public space then the relevant Council service responsible for the management of the land is required to pay any costs.

- 5.10.3 The Horse Passport Regulations require horse owners to have documentation and more recently a microchip in the horse to protect the food chain through animals that are clearly identifiable, traceable and free from veterinary medicines. The LA has a duty to enforce this and whilst we check horses within licensed premises such as riding establishments we do not randomly check horses grazing within the Borough. Any horses seized by the LA would have to be checked and if not registered the LA would have to arrange for the registration and pick up the bill.
- 5.11 The Council can play a role in the control and management of fly grazing within the Borough through the use of the above legislation. For reasons stated above involvement carries with it significant financial risk whilst a policy of disengagement carries with it significant reputational risk. There is a need to have a policy which limits the risks at both ends. This will require engagement to facilitate coordinated working with a range of other stakeholders to find a solution. What actions are considered will firstly depend upon the following primary factors:
- i) The general health and behaviour of the stock
 - ii) The watering and feeding arrangements
 - iii) The condition of the land and any particular use for which is required
 - iv) The security of the land together with its proximity to major routes, such as major roads or railway lines.
- 5.12 If any of the above factors cause serious concern then it is likely that action will need to be taken as a matter of priority. Action should in the first instance be to assess and attempt to address any obvious welfare and security issues. If there are serious welfare, public safety or security issues then the landowner, RSPCA, Thames Valley Police, local residents and animal organisations should be engaged to find a solution whilst initiating the legal process within the new Act. If there are no serious concerns then whilst the legal process is started the pressure to have the horses moved to a new safe and secure location is lessened.
- 5.13 Where a decision is taken to transfer ownership of the horses found upon public space then in interest of the public purse in the first instance the Council should seek to transfer them to a suitable animal organisation that would be responsible for the ongoing welfare of the horses, together with the financial costs to remove them from the location. If no organisation is willing to take ownership then arrangements should be made to have them collected by an abattoir and any income received should be used to offset the costs incurred by the LA. If any excess funds are generated they would need to be paid to the owner of the horses should they come forward.
- 5.14 Issues around fly grazing are similar to those around unauthorised encampments and do require careful management acting within a clearly defined structure and decision making process. Therefore a proposed Policy for dealing with such matters has been drawn up which is similar in format to that for unauthorised encampments. Regulatory Services, as with Unauthorised Encampments may be delegated the role to manage the Council response for incidents and similarly the landowner or service that has landownership responsibility for public land should be responsible for the implementation of the process and meet any costs associated with that action.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The relevant legal issues are addressed within the main body of the report.

Borough Treasurer

- 6.2 There is the potential for significant costs to be incurred as a result of implementing this new legislation. This situation will be monitored closely and any budgetary issues arising will be reported where necessary.

Equalities Impact Assessment

- 6.3 Experience has shown that where ownership of horses has been established the vast majority of horses found fly grazed within the Borough have been the property of families of Romany, Irish or British Gypsy origin. Such groups due to their ethnic and travelling heritage have a level of protection offered by the Equality Act 2010 (race being a protected characteristic of the Act) and the practice of keeping horses and grazing them on public land has been a tradition associated with that heritage for many years. Government Guidance issued shows that consideration must be given to this protected status when making decisions upon the eviction of unauthorised encampment of such groups from public land. The application of this law to remove horses from public land will likely impact predominately upon this protected group and as such attempts will be made to develop effective communication with that community to try mitigating and reducing the impact that the application may have.

Strategic Risk Management Issues

- 6.4 The potential financial costs to the Council through the seizure of horses is significant, probably £1,500 to £1,750 per horse. Full recovery of those costs from either the owner or through the sale of the horse is very unlikely to be achieved. The risks associated with such action should therefore be carefully considered and other options explored before implementing the removal of horses. There is also a significant reputational risk to the Council if it is seen not to be using a power it has been given to protect the safety of the public or protect the welfare of an animal upon public land. These matters were previously the sole responsibility of the Police for horses escaping on to a highway from either public or private land, or the RSPCA for the animal welfare considerations. There is an expectation from both organisations that local authorities will be contributing to the solution and the financial burden of the problem going forward. Partnership arrangements with Local Authorities will be sought by both those organisations.

7 CONSULTATION

Principal Groups Consulted

- 7.1 Not applicable

Method of Consultation

- 7.2 Not applicable

Representations Received

7.3 Not applicable

Background Papers

Control of Horses Act 2015

Contacts for further information

Steve Loudoun
Chief Officer: Environment & Public Protection
01344 352501
steve.loudoun@bracknell-forest.gov.uk

Robert Sexton
Head of Regulatory Services
01344 352580
robert.sexton@bracknell-forest.gov.uk