

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 the Executive:

- i) delegates powers to the Director of Environment, Culture and Communities authorising him to undertake all Council functions arising from the Policy annexed to this report;**
- ii) approves the Policy document attached to the report as Annex A, and notes 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 nationally in recent years. The change to the legislation provides Councils with more effective ways of dealing with such activity in public spaces; however it also exposes Councils to potentially significant costs associated with the removal, treatment, care and subsequent disposal of horses. The majority of local incidents 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 the face of it this may seem inconsiderate but it rarely results in serious damage to the land. Landowners have had under the Animals Act 1971 civil powers 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 they leave them where they are as there were very limited options for onward disposal.
- 5.2 Such action can give rise to 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. 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 shows that this Borough periodically suffers from this practice.
- 5.4 To date the Council has 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 new legislation enables 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. This approach need not therefore change.
- 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 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, or destroying humanely.
- 5.6 Whilst these new provisions are better, experience shows that 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, hence the proposed Policy. It is felt it important to make clear to the general public that the Council only has responsibility for "public places" which in this Borough will include Town or Parish land, highways and their verges. 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 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 Councils 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.

- 5.8 Experience tells us that the vast majority of horses found fly grazed with the Borough are piebald and when it has been possible to establish ownership they have been owned by Gypsy families. The incidents of fly grazing could reduce especially if landowners and the Council make it clear that they are both willing and committed to full utilisation of the powers. If the Policy is agreed, officers will work with others to ensure the existence of the new Policy is known locally.
- 5.9 Where a decision is taken to transfer ownership of the horses found upon public space in the first instance the Council will 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. A list of potential organisations will be developed from the outset and relationships developed to ensure effective communication. 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 Council. If any excess funds are generated they would be paid to the owner of the horses should they come forward.
- 5.10 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 the proposed Policy for dealing with such matters has been drawn up which is similar in format to that for unauthorised encampments. It is suggested that Regulatory Services, as with Unauthorised Encampments, be delegated the role to manage the Council response for incidents and similarly the landowner. The 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

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