

**Report To:** Cabinet

**Date of Meeting:** September 2014

**Lead Member / Officer:** Cllr David Smith, Lead Member for Public Realm

**Report Author:** Head of Planning and Public Protection/Public Protection Manager

**Title: Control of Horses (Wales) Act 2014 – Delegated Authority Report**

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**1. What is the report about?**

1.1 For Members to consider the adoption of new legislation and the delegation of additional powers to the Head of Planning and Public Protection.

**2. What is the reason for making this report?**

2.1 Recently enacted Welsh Government legislation in the form of the Control of Horses (Wales) Act 2014 provides Local Authorities in Wales with additional powers to address the issues of fly-grazing and the abandonment of horses.

2.2 The Welsh Government has produced an Action Plan (see Appendix 1) and non-statutory guidance will be developed in conjunction with Local Authorities and issued to coincide with the coming into force of the legislation. Such guidance will include the process and suggested approach that Local Authorities should take in determining whether an owner is likely to come forward to claim a horse.

2.3 This report only seeks to secure the adoption of the Act and the associated delegated authority. Issues of policy which will address how the powers are to be used in practice are the subject of ongoing discussion and will be consulted on separately

**3. What are the Recommendations?**

3.1 It is recommended that:-

- The Control of Horses (Wales) Act 2014 be adopted by this Authority;
- The powers under The Control of Horses (Wales) Act 2014 be delegated to the Head of Planning and Public Protection;
- That delegated authority be automatically delegated to the Head of Planning and Public Protection in respect of any subsequent Regulations made under the Act.

**4. Report details.**

- 4.1 Members may be aware of the problems encountered by several South Wales Local Authorities in dealing with so called 'fly-grazing' of horses and ponies which have received significant media coverage.
- 4.2 'Fly-grazing' is the term that has been adopted to describe actions by irresponsible horse owners who intentionally or negligently permit their horses to graze on land where they do not have the consent of the landowner.
- 4.3 We have received less than 10 complaints of fly-grazing issues in Denbighshire over the past 12 months although colleagues in neighbouring authorities report the situation in their area is on the increase. We are of the view that being able to use these powers to deal with them in a more efficient manner will aid enforcement.
- 4.4 The Control of Horses (Wales) Bill was introduced by the Minister for Natural Resources and Food on 14 October 2013. The Bill aimed to address the issues of fly-grazing and the abandonment of horses. The Bill has an accompanying Explanatory Memorandum (EM).
- 4.5 The Bill proposed an all-Wales solution to enable all Local Authorities to deliver a consistent approach to removing the impacts that fly-grazing and the abandonment of horses and ponies have on landowners, the agricultural industry and communities across Wales. It establishes powers for Local Authorities to seize, impound, sell or otherwise dispose of horses which are on land in their area without lawful authority and to provide Local Authorities with the power to recover costs where the owner or person acting for the owner can be identified.
- 4.6 The EM outlines the main issues associated with fly-grazing and abandoned horses and ponies as follows:
- the risk to public safety when stray horses are found on highways causing road closures and diversions to motorists and potential accidents;
  - the nuisance to communities (on public and private land including parks, playgrounds and other public spaces);
  - the impact on the agricultural industry when land and fencing is damaged leaving insufficient grazing for the landowner's own stock;
  - the environmental impact when ground is overgrazed and land becomes poached;
  - welfare concerns linked to the discovery of uncared for and dead and starving horses; and
  - the considerable financial burden to those who have to deal 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.
- 4.7 The EM states that, since November 2011, more than 1,500 occurrences of loose, abandoned and fly-grazing horses were recorded in South Wales by South Wales Police.

- 4.8 The Welsh Government say that the Bill demonstrates their determination for Wales to be free from large-scale incidents of fly-grazing and abandonment of horses.
- 4.9 Assembly Members approved the Control of Horses (Wales) Bill on 10 December 2013 and submitted for Royal Assent. The Bill received Royal Assent on 27 January 2014 and came into force on 28 January 2014.
- 4.10 As this is new legislation, an administrative legal process has to be followed which entails adopting the Act and bestowing delegated authority to enable Officers of Denbighshire Council to discharge the provisions and functions of the legislation.

## **5. How does the decision contribute to the Corporate Priorities?**

- 5.1 Owners who fly graze their horses do not pay for the land and will usually leave the land in a poor state thus increasing costs for landowners (in terms of repair and / or replacement of grass keep). This practice can therefore have a detrimental effect on local landowners and in turn the local economy.

## **6. What will it cost and how will it affect other services?**

- 6.1 There are no direct budgetary implications associated with the adoption of the Act and issuing of delegated authority which is the purpose of this report. Matters of policy on the use of the powers and the frequency of instances of occurrence may have budgetary implications which are difficult to predict and quantify.

## **7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision? The completed EqIA template should be attached as an appendix to the report.**

- 7.1 Adverse impact of these regulations on equality is very unlikely. Moreover, the legislation and policy has been developed by Welsh Government to mitigate the risks and consequences of any adverse impacts, should they occur. Positive impact in relation to equalities, beyond the protection of an individual's human rights, is also unlikely

## **8. What consultations have been carried out with Scrutiny and others?**

- 8.1 Extensive consultation has already taken place by Welsh Government as part of the process which led to enactment.
- 8.2 Internally, given their involvement in Denbighshire's agricultural estates, colleagues in Valuation & Estates have been made aware of the contents of this report.

## **9. Chief Finance Officer Statement**

9.1 There are no immediate financial implications in the adoption of the Act, any future costs would be contained within existing budgets.

**10. What risks are there and is there anything we can do to reduce them?**

10.1 Potential reputational risk issues (e.g. criticism for failure to take action) identified should the Council fail to adopt the legislation as it would not be in a position to consider using the powers in applicable circumstances. There may also be risks of claims against the Council, for example should we fail to adopt and, therefore, be unable to take action.

10.2 There are also financial risks in exercising the powers conferred by this legislation particularly in relation to veterinary, livery and transport costs. The Welsh Government is not providing additional resources as the legislation confers a power and not a duty on Local Authorities. There are cost recovery provisions in the legislation, however experience has shown that often due to difficulties in tracing owners cost recovery is not an option. As a consequence, a contingency plan is being developed in collaboration with other North Wales local authorities and in partnership with the third sector to mitigate some of the costs. This plan will be presented for scrutiny later in the year.

**11. Power to make the Decision**

11.1 Control of Horses (Wales) Act 2014 and Section 101 Local Government Act 1972

Appendix 1

<b>BACKGROUND PAPERS</b>	<b>LOCATION</b>	<b>WEBSITE INFO</b>
The Control of Horses (Wales) Act 2014	Welsh Government website	<a href="http://wales.gov.uk/topics/environmentcountryside/ahw/horses/control-horses-wales-act">http://wales.gov.uk/topics/environmentcountryside/ahw/horses/control-horses-wales-act</a>
The Control of Horses (Wales) Bill	National Assembly for Wales website	<a href="http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&amp;id=250941&amp;ds=10/2013">www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&amp;id=250941&amp;ds=10/2013</a>
Bill Summary: the Control of Horses (Wales) Bill October 2013	National Assembly for Wales website	<a href="http://www.assemblywales.org/13-074.pdf">www.assemblywales.org/13-074.pdf</a>
Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes	National Assembly for Wales website	<a href="http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs/pri-ld9518-em-r-e.pdf?langoption=3&amp;ttl=PRI-LD9518-EM-R%20-%20Control%20of%20Horses%20(Wales)%20Bill%20-%20REVISED%20EXPLANATORY%20MEMORANDUM">http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs/pri-ld9518-em-r-e.pdf?langoption=3&amp;ttl=PRI-LD9518-EM-R%20-%20Control%20of%20Horses%20(Wales)%20Bill%20-%20REVISED%20EXPLANATORY%20MEMORANDUM</a>