

CONTROL OF HORSES BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Control of Horses Bill as brought from the House of Commons on 19th January 2015. They have been prepared by the Department for Environment, Food and Rural Affairs, with the consent of Baroness Mallalieu, the peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Bill makes provision for local authorities, freeholders and occupiers of land in England to be able to deal more efficiently with fly-grazing horses on their land. The Bill amends the Animals Act 1971 (“the 1971 Act”) to give such persons the power to detain straying horses or those placed on land their intentionally and unlawfully.

4. The Bill introduces a new procedure regarding the detention and disposal of such horses. Specifically, it allows horses to be disposed of 96 hours after detention, rather than fourteen days at present, and for disposal to include destruction or any other way (which could include giving it to a charity). Currently detained horses must be sold at a market or an auction, and many have little or no value.

5. Fly-grazing is the placing of horses on someone else’s land to use their grazing, without their consent. Despite legal requirements for all horses to be identified by a horse passport and a microchip it has become a significant problem in some parts of England and there have been calls for the law to be changed to make it easier for local authorities, freeholders and occupiers of land to deal with the problem. It has also been a problem in Wales and the Control of Horses (Wales) Act 2014 was passed as a consequence by the Welsh Assembly.

6. The Bill amends the 1971 Act to provide powers for local authorities, freeholders and occupiers of land to detain horses on their land without lawful authority and imposes procedural requirements on a horse-owner seeking to claim a detained horse. Overall it makes the process of detention and disposal of the horse less burdensome.

TERRITORIAL EXTENT AND APPLICATION

7. The 1971 Act extends to England and Wales as a single jurisdiction and so does the Bill. However, these amendments to the 1971 Act apply only in England. Wales has legislated on fly-grazing separately in the Control of Horses (Wales) Act 2014. The 1971 Act and the Bill do not apply to Scotland or Northern Ireland.

COMMENTARY ON CLAUSES

Clause 1: Powers of local authorities in England to detain horses

8. *Clause 1(1)* inserts section 7A to the 1971 Act and gives local authorities in England a power to detain horses in public places in their area.

- a. Section 7A(2) provides that the local authority should have reasonable grounds for believing that the horse is there without lawful authority and, if someone is lawfully occupying the public place, that the occupier consents to the local authority detaining the horse or would consent if asked.
- b. Section 7A(3) applies the procedure in section 7C to detention of horses under section 7A.
- c. Section 7A(4) defines “local authority” for this section. The definition covers unitary authorities (as a unitary authority will in law be a county, district or London borough council).

9. *Clause 1(3)(a)* provides a specific definition of horse which includes an ass, mule or hinny. (A donkey is an ass.) *Clause 1(3)(c)* states that “public place” includes any common land, town or village green and any highway or the verges thereof.

Clause 2: Powers of freeholders and occupiers in England to detain horses

10. *Clause 2(1)* inserts section 7B to the 1971 Act and gives freeholders and occupiers of land in England a power to detain horses on their land without lawful authority.

- a. Section 7B(2) provides that the horse may be detained in any case by the occupier of the land. In cases where the freeholder of the land is not also the occupier, the freeholder may detain the horse with the occupier's consent.
- b. Section 7B(3) applies the procedure in section 7C to detention of horses under section 7B.

Clause 3: Exercise of powers of detention

11. *Clause 3* inserts section 7C into the 1971 Act to set out the procedure for the detention of horses under the new sections 7A and 7B of the 1971 Act. The new procedure is a modification of the procedure in section 7.

- a. The horse may be detained for a total of 96 hours if within the first 24 hours notice is given to an officer in charge of a police station and to the horse-owner, if the person detaining the horse knows who the horse-owner is (sections 7C(2) and (3)). If such notice is not given within the first 24 hours, the horse cannot be detained after the end of the 24 hours period. The 96-hour period excludes non-working days, namely any time falling on a Saturday, Sunday, Good Friday, Christmas Day and Bank Holidays (section 7C(9)).
- b. The right to detain the horse ceases if, before the end of 96 hours beginning with the time when the horse was first detained, the horse-owner claims the horse and tenders to any person with a claim under section 4A such sums as are sufficient to satisfy the claim (sections 7C(3) and (4)).
- c. If at the end of the period of 96 hours under section 7C(3), the right to detain the horse has not ceased, then no-one may subsequently claim the horse who has not already done so. The person detaining the horse may thereafter dispose of it by selling it, arranging for it to be destroyed (which would have to be done humanely) or in any other way, including giving it away (section 7C(5)).
- d. Where the horse is sold, the excess of the proceeds of the sale is recoverable from the person who detained the horse by the former owner of the horse, deducting from this amount the costs of sale and any costs incurred in connection with it, and any expenses incurred in detaining the horse and any claim by the owner or occupier of the land in respect of any damage caused by the horse (section 7C(6)).
- e. The person detaining the horse is liable to the horse-owner for any damage caused to it through failure to treat it with reasonable care while it is detained (section 7C(7), which specifically requires the provision of "adequate food and water"). Separately the Animal Welfare Act 2006 requires, by virtue of section 9 ("duty to ensure welfare"), that any person responsible for an animal takes reasonable steps to ensure that all its welfare needs are met.

Clause 4: Liability for damage and expenses due to horses

12. *Clause 4* inserts section 4A into the 1971 Act, relating to horses in England, and also makes consequential amendments to sections 4, 5 and 10 of the 1971 Act. Section 4A makes provision for liability for expenses arising from the detention and ascertainment of the owner of horses on land in England without lawful authority and for any damage the horse may have caused to the land or property. It is modelled on the existing section 4.

Clause 5: Commencement, extent and short title

13. *Clause 5* provides the commencement, extent and short title of the Bill.

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*These notes refer to the Control of Horses Bill
as brought from the House of Commons on 19th January 2015
[HL Bill 85]*

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