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### CONTROL OF HORSES (WALES) BILL: ADDITIONAL INFORMATION

During the Committee hearing on 14 November I undertook to provide additional information to the Committee on certain points.

Section 7 of the Bill now provides for a horse owner to make a referral to the Welsh Ministers where there is a dispute over whether the local authority concerned has reasonably incurred the costs it is seeking to claim from the horse owner.

Further to Stage 2 proceedings, detailed consideration of each of the Bill's provisions has now been undertaken to examine the possibility of widening the appeals provision. This is set out below with a summary in the table at Annex A.

The local authority has only limited scope under the Bill to exercise any discretion because the Bill sets out what it can and cannot do. However, Section 2 (Power of local authorities to seize horses), gives the local authority discretion to seize horses where they reasonably believe that specified circumstances exist. The "reasonable grounds" threshold contained in section 2 of the Bill gives the legislation its effectiveness. It means that the local authority need only satisfy itself that there are reasonable grounds to believe that the horse is where it is without lawful authority, before it may seize a horse. This provides an appropriate balance between the need to create an efficient solution to the problem of fly grazing with the need to ensure horse owners' rights are properly protected.

As a public body, the local authority itself must act lawfully in all its dealings but the provision of the Bill at Section 2 builds in certain safeguards against any unlawful seizure. There are in effect three separate 'tests' which the local authority must satisfy

before it may seize and impound a horse, depending on the context of individual incidents of what appears to that local authority to be an act of fly grazing.

Section 2(1) contains the broadest power given to the local authority to seize and impound a horse on any highway or any public place. If the local authority has reasonable grounds for believing the horse is there without lawful authority. There is little if any scope for a dispute given that it is highly improbable that a person can have negotiated grazing rights on the highway or a public place without the relevant local authority being aware of it. The local authority would have to undertake an appraisal of the situation in order to satisfy itself that the reasonable grounds element was met and to do this, it would use its local knowledge and work collaboratively with the Police and the local community.

Under section 2(2)(a), the local authority may seize and impound a horse in its own area where it is itself the occupier of that land, e.g. a school playing field or park. There is little scope for dispute given the local authority will know whether lawful authority for grazing has been given by it in those circumstances.

Section 2(2)(b) - private or other land, already includes safeguards before the local authority may exercise its power to seize and impound. Not only does it need to have "reasonable grounds" it must also obtain the consent of the owner of the land on which the horses are found fly grazing. The requirement for consent therefore severely limits any basis for a dispute.

The policy intention has always been to give the local authorities the necessary powers to react quickly and efficiently to incidents of fly grazing and the reasonable grounds test, as stated above, gives the legislation this effectiveness - this is what local authorities have sought from the Welsh Government. Effective and appropriate remedies when things go wrong are of course important and if a horse is unlawfully seized by the local authority, the owner may bring an action in trespass to goods against the local authority in the County Court for which compensation may be awarded by the court if the local authority is found at fault.

As I undertook when I appeared before the Committee on 14 November, my officials have considered again the potential for appeals against the serving of notices and a review provision on this basis was also considered inappropriate. The local authority is under a statutory duty to give a notice to an identified owner and a constable and to put a notice up at or near the site of seizure. If notices under section 3 are wrongly served or not served at all, then that is a breach of that section 3 statutory duty. To obtain redress from the local authority (and the resulting consequences which may mean a horse is sold on or destroyed), it is likely that the owner will be seeking damages by way of financial recompense from the local authority for their loss. The proper route for redress in such circumstances would be through the County Court in a claim against the local authority for a breach of its statutory duty in that it did not issue the notice correctly or failed to give one at all and as a result the owner suffered a detriment.

I consider that widening the scope of the review mechanism for the Welsh Ministers to deal with disputes as to the seizure of horses and service of notices is both unnecessary and inappropriate. There are existing and more appropriate and effective remedies available in the County Court for horse owners. The court will be able to hear the evidence from the parties and assess any quantum of damages in line with proper reference to relevant civil procedure guidelines and case law.

Expanding the original policy intention by providing for a review to the Welsh Ministers on matters other than disputed costs may have a detrimental effect and provide greater potential for those wishing to frustrate local authorities in their attempts to deal with the problems by 'playing the system'. There may also be a risk of local authorities simply not using their new powers and the situation may arise that local authorities find the legislation to be problematic because of a complicated system of reviews which can be triggered when it uses the new powers. In addition, those local authorities that currently have the local Acts at their disposal would no longer have those available to them because this Bill would have revoked the fly grazing provisions in those local Acts. It is worth noting that the local Acts do not include rights of appeal.

The right of review to the Welsh Ministers is restricted to disputes about costs for a number of reasons.

- First, the Bill is very prescriptive in what the local authority must do so scope for factual dispute is limited. However, it is appropriate to have an independent review about factual disputes on costs as the imposition of those costs provides the local authorities with a certain amount of discretion.
- Second, it is envisaged that disputes of this nature can be dealt with quickly and effectively by the Welsh Ministers without recourse to formal litigation by the horse owner.
- Thirdly, this approach avoids lengthy delays pending the outcome of such litigation where the local authority may incur the expense of extended livery pending a court judgement.

Having therefore considered each of the Bill's provisions, I do not believe that there are any other areas within the Bill that require further clarification and amendment.

I have been advised that officials at the Ministry of Justice are content that this provision does not lead to direct and additional burdens on the courts. Officials at the Home Office are also content with the use of the word "constable" in section 3 of the Bill - the local authority is required to issue a notice to a "constable" to advise the Police that a horse or horses have been seized and impounded. This particular provision is already contained in the 3 local Acts in Wales, namely the Mid Glamorgan Act, West Glamorgan Act and the City of Cardiff Act.

I have also looked again at the issue of identification and the need for local authorities to microchip all horses seized before returning them to their identified owner or selling them.

The guidance to accompany the Control of Horses (Wales) Bill will set out very clearly what the local authority should do in respect of identifying horses they have seized. It also re-states what the existing legal requirements are in respect of owners in complying with the relevant regulations on passports and microchips including the potential for criminal prosecution.

The guidance will cover what an owner must do to identify any horses they own and what happens in the case of a horse being seized where the owner has failed to obtain a passport or have the horse micro-chipped. In addition, the guidance covers local authorities' responsibilities over verifying the ownership of any horses they seize. A copy of the draft guidance will be made available to the Committee by no later than 4 December as agreed with the Committee Clerk.

Finally, on the issue of a financial dispute resolution, there is no provision in the Bill for a local authority to recover any costs from the owner for damage that his/her horse has caused to the local authority land by horses either by way of fly grazing there or in the operation of seizing such horses. Local authorities are in the same position as private landowners in terms of recovering their costs in these circumstances.

The local authority may only recover the costs that it has reasonably incurred in relation to seizing, impounding, feeding and maintaining the horse and if applicable the disposal of the horse.

Existing law provides private landowners with at least two avenues under the Animals Act 1971 where they have suffered damage as a result of being a victim of fly grazing. If the horse owner is known, the landowner may claim expenses from that owner. If the owner is not known the landowner may be able to sell the animal that has strayed on to their land and gain recompense in that way. This information will be provided in the guidance.

Handwritten signature in blue ink, appearing to read 'Alun'.

**Alun Davies AC / AM**  
Y Gweinidog Cyfoeth Naturiol a Bwyd  
Minister for Natural Resources and Food

Section of Bill	What it means and action taken	Review
Section 1 – Overview	This section describes the purpose and provisions of the Bill.	This section simply sets out what the Bill does so there could be no basis for any review
Section 2 - Power to seize horse	This section gives the local authority the power to seize a horse under specific circumstances once it is satisfied that there are reasonable grounds to believe it is there without lawful authority.	This Section gives local authorities the power to interfere with another's property in specified circumstances. There is an existing mechanism for challenge if a horse is seized unlawfully, by way of an action for tort of trespass to goods in the County Court. It may also be possible to judicially review the decision of the local authority. There is no scope for a review on the basis that the specified circumstances leading to the horse's seizure did not exist. To provide for this would undermine the local authority's statutory right and would not achieve the policy intention of enabling LAs to act quickly to deal with fly grazing.
Section 3 - Notices	This section sets out what Notice the local authority must put in place once they have seized and impounded a horse. It sets out where and to whom those notices must be given and what those Notices must contain. There are 3 types of Notice. (1) place notice at or near site of seizure within 24 hours of seizure (2) notice to constable and owner or person acting for owner if known with 24 hours of seizure (3) notice	This section of the Bill imposes statutory duties on the local authority to deal with Notices in the manner prescribed by the Bill.  If the local authority does not follow the requirements of the Bill this would amount to a breach of statutory duty. If someone has suffered a detriment as a result of this breach, they may take action against the local authority for breach of that

	to the owner, once identified following local authority searches and within 24 hours of ascertaining that identity	<p>statutory duty in the County Court for which damages may be assessed and ordered by the court. There is no scope for a review by Welsh Ministers in respect of a case for breach of statutory duty other than through the Courts.</p> <p>There is a legal duty on owners, under the provisions of the Animal Welfare Act 2006, to ensure that their basic needs are met in respect of environment, diet, behaviour, company and health and welfare. The Welsh Government Code of Practice on equines also sets out the duties on owners and their responsibilities including a duty to check any horses owned at least once a day. Breach of the Act could result in a prosecution by the local authority and other enforcement bodies.</p>
Section 4 – costs of seizure	This section provides for the owner to pay the local authority costs reasonably incurred in the seizing and impounding of the horse and in feeding and maintaining it while it is impounded. It also sets out information that the local authority must provide to the owner regarding those costs and inform the owner of their right of review to Welsh Ministers of those costs.	A review process under which the Welsh Ministers can deal with disputes as to the costs reasonably incurred by the local authority is already provided for in the Bill (section 7).
Section 5 – disposal of impounded horses	This section provides for the local authority to dispose of the horse by sale, re-homing, returning or destruction when certain conditions are met.	<p>Potential review that the owner disputes the value of the horse resulting from disposal via sale.</p> <p>An owner disputing the value of the horse would have the right to a review by the Welsh Ministers</p>

		under Section 7.
Section 6 – Record of horse dealt with	A record that a local authority is required to keep of all horses seized.	This is a statutory requirement imposed on the local authority. If no records were kept by it, this would be a breach of statutory duty. If a person suffered a detriment as a result of a breach, a claim may be made to the County Court which would assess and award any damages payable.
Section 7 – Resolution of disputes	This section provides for a review by Welsh Ministers in respect of costs.	This is the mechanism under which an owner may refer a dispute as to costs reasonably incurred by the local authority, to the Welsh Ministers. The provisions in the Bill on the setting of costs do allow for some local authority discretion therefore it is appropriate for a dispute of fact on costs to be referred to the Welsh Ministers for determination.

