

Welsh Government

Consultation – summary of responses

Fly Grazing and Abandonment of horses and ponies: Delivering a long term solution

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Overview

Fly grazing is the term that has been adopted to describe actions by irresponsible owners who allow animals to graze on land where they do not have the consent of the landowner.

These actions often impact on public safety, on communities (public and privately owned land), the agricultural industry, the welfare of the animals concerned, as well as placing financial burdens on individuals and on the tax payer. Fly grazing is often accompanied by implied threats and intimidation as well as animal cruelty.

The Welsh Government vision is for a fly grazing free Wales. A zero tolerance approach to the practice that will ensure that the future sees Wales free from the unacceptable social, economic and environmental harm caused by the nuisance of fly grazing.

Introduction and background

Fly Grazing, in simple terms, is the actions of irresponsible owners intentionally or negligently permitting their horses to graze on land where they do not have the consent of the landowner or where that consent has been withdrawn and the horse owner has refused to move them. In some cases the horses involved are unidentified in terms of ownership, appear suddenly, strip the land of available grazing and disappear as quickly as they appeared leaving the landowners with large bills to repair the damage caused.

Problems have been experienced over a number of years in South Wales in particular.

Reasons for the increase in the scale of the problem over recent years include the over production of horses, many of which are of poor quality, leading to a surplus of unwanted stock, a depressed market in horse sales, the high price of winter feed and the lack of available grazing land. All these factors have contributed to the fly grazing problems experienced across South Wales.

The main issues associated with fly grazing and abandoned horse and ponies are:

- a risk to public safety when stray horses are found on highways causing road closures and diversions to motorists and potential accidents;
- a nuisance to communities (on public and private land including parks, playgrounds and other public spaces);
- an impact on the agricultural industry when land and fencing is damaged leaving insufficient grazing for the landowners' own stock;

- an 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
- a considerable financial burden to those dealing with the problem. Current estimated costs to the enforcement authorities in Wales (Police, Local Authorities, RSPCA and the Fire Service) since November 2011 amount to some £1.2 million.

The horses involved are often left for long periods of time and with their ownership unknown or in doubt, leaving landowners in a very difficult position as they become responsible for the welfare of the animals and potentially for any damage the animals might cause if, for example, they escape from fields onto public highways and cause an accident.

Purpose of the consultation

The purpose of this consultation is to look at the current legislative framework in order to determine whether it addresses the situation we are currently facing and to identify whether there are gaps and what if anything, the Welsh Government might do to provide enforcement authorities with more appropriate means of dealing with fly grazing and abandonment of horses in Wales.

Those authorities that have tackled the issue and seized horses have either had to re-home them via equine charities or sell them via auctions. Where they have been offered for sale, local authorities recoup only a tiny proportion of the costs incurred. These costs, which can run into several hundreds of pounds per horse, are a drain on local authority resources. The problem is often exacerbated as having taken action and incurred costs, the same horses have been found to reappear in “the system” perpetuating the cycle of nuisance and cost. The practice of re-homing horses, seized as a result of fly grazing or abandonment, with equine welfare charities has now become unsustainable due to the fact that the charities no longer have capacity to take the large numbers that are being reported.

Feedback received from some local authorities indicates that the current legislation available to them is inadequate to enable them to tackle this issue on this scale. The consultation sought the views of enforcement authorities, stakeholders and other interested parties on what the Welsh Government might do to find a sustainable response to the problem of fly grazing and abandonment of horses and ponies in Wales.

Consultation period and distribution

The consultation ran for a period of 8 weeks starting on 4 March 2013 and closing on 29 April 2013. The consultation was published on the Welsh Government website, highlighted in Gwlad magazine, and e-mailed to major stakeholders, local authorities and individuals with an interest in horses and the fly grazing issue.

Summary of responses

The Welsh Government would like to thank all those who responded to the consultation. The responses have been analysed and considered as part of the process of determining what measures need to be taken to ensure a robust and consistent approach to fly grazing across Wales. In total there were 602 responses. 77 of these responses were received via the official response form as published on the Welsh Government website, 505 responses were generic responses believed to have been circulated via social media. Of the 505, at least 60 were identified as being from countries outside the UK and as such have been excluded from this analysis. A further 20 responses were received as individual letters or included additional information or suggestions as part of the generic responses. A break down of respondents is shown at Table 1

Table 1: Responses received split by sector

Sector	Number of responses	Percentage of total respondents from each sector
General Public	500	92%
Local Government	13	2%
Emergency Services	3	1%
Welfare Charities	10	2%
Other Equine Related organisations	6	1%
Other organisations with an interest	7	1%
Farming Unions and CLA	3	1%
Total	542 *	100%

* Excludes those 60 responses identified as coming from outside the UK.

Recurrent themes

There were a number of recurrent themes throughout the consultation. There was criticism of the current equine identification regulations and resulting difficulties experienced by the enforcement authorities in identifying ownership of the horses involved. There was concern over the costs to authorities, the lack of resources and staff time to deal effectively with the issue and the difficulties and dangers faced by those left to deal with what in many cases are semi feral animals. The lack of truly secure facilities to hold horses was repeatedly mentioned and many had concerns about the dangers that the fly grazed horses pose to the public and the psychological impact on land owners and tenants and the public in general. It was also widely recognised that charities are not resourced to cope with the additional numbers and that fly grazing and abandonment is often accompanied by cruelty and serious welfare concerns. Those that had some experience of, or where aware of, the role of local authorities recognised that the majority of the horses involved are in poor condition which ultimately results in additional costs for authorities in meeting the health and welfare needs of animals seized.

An issue that came across very strongly was the impact that fly grazing and abandonment has on communities. Many of the responses received contained personal accounts and in some cases graphic details of the impact that the nuisance has on their daily lives.

Although certain consultation questions were perhaps more relevant for enforcement authorities as they addressed specific issues on the use of legislation, responses to these questions were also provided by charities and members of the public. The comments have been noted and although not always entirely relevant to the questions they do provide an understanding of how the situation has affected people and a realisation that urgent action is now needed to deal with the problem.

Responses by question

A total of 542 responses were received. However, 445 of these were generic responses believed to have been circulated via social media. These responses covered the same issues and are dealt with separately at the end of this document. In addition, a further 20 responses were received as letters addressing specific areas or providing “add-on” suggestions to the generic response. The comments or suggestions from these responders are also recorded at the end of this document.

77 full or partial responses were received using the template issued. These responses are analysed as follows.

Question 1: Do you agree with the Welsh Government definition of FLY GRAZING. If not what is missing and how would you define the term Fly Grazing?

53 of those responding (69%) agreed or agreed in principle with the definition. However, 25 of these respondents went further and provided additional suggestions. 7 respondents (9%) did not agree with the definition whilst a further 6 respondents (8%) provided alternative suggestions. 11 respondents (14%) had no views and therefore did not answer the question.

Those agreeing in principle suggested that reference should also be made to keepers / anyone caring for the horse(s) or third parties acting as agents for owners which would help to avoid situations where people claim not to be “the owner”. It was further suggested that the term landowner should be replaced by ‘occupier’ to cover tenant farmers, those with commoners’ rights and the reference to ‘horse’ should be replaced by animal so it is not restrictive and species specific. It was considered that the environmental impact should be included to recognise the damage caused to land and the consequences for landowners incurring over-grazing penalties.

Those disagreeing were of the view that the definition did not go far enough and reference should be made to the illegality, dumping, welfare, economic, anti-social behaviour and the public safety impact resulting from poor animal husbandry.

Additional suggestion included extending the term ‘land’ to include, ‘Common Land’ and those with ‘Commoners rights’, public land including parks, housing estates and highways. Several respondents suggested that the definition should include animals tethered as well as free grazing.

Responses from those enforcing legislation requested that any definition should clarify the words ‘intentionally’, ‘negligently’, ‘consent’, ‘refused’ and ‘owner’. In addition it was suggested that irresponsible be removed as owners may not see themselves as behaving irresponsibly, particularly when acting to provide food for animals in their care.

Question 2: Do you agree with the Welsh Government definition of ABANDONMENT. If not what is missing and how would you define the term abandonment?

52 of those responding (68%) agreed or agreed in principle with the definition; however 14 of these respondents went further and provided additional suggestions. 11 respondents (14%) did not agree with the definition, 7 respondents (9%) provided alternative suggestions and a further 7 respondents (9%) did not answer the question.

As was the case in respect of Question 1, the majority agreed with the Welsh Government definition. However, there was some debate on how the definition could be improved.

Abandonment was considered to be where a horse is given up by its owner or someone with the owner's authority where he/she has no intention of reclaiming the horse either on a temporary or permanent basis and where no provision has been made by the owner for a suitable person to provide for that horse's welfare needs. The act of abandonment occurs when horses are left on land for which the owners have no ownership or tenancy rights (public, private, common land including the leaving of horses in livery yards without payment). With no owner/keeper to provide for the animal's needs, abandonment can compromise the welfare of a horse.

It was also suggested that abandonment applied to horses 'historically' living on land where there is very little chance of finding the original owner. In addition, it was also considered that there was an issue of temporary abandonment with owners / keepers returning at a later date when circumstances / weather improve. In addition there is the issue of abandonment when fly grazing 'goes wrong' and the owner would need to make themselves known to reclaim their animals resulting in the abandonment of whole groups of horses.

Those responsible for enforcing legislation had concerns that the definition as drafted could be ambiguous and as such suggested that an alternative definition might include leaving horses on land where they no longer have permission and with no intention of reclaiming them or where it would be reasonable for the land owner or authorities to assume that the horse owners have no intention of reclaiming them. The action of a horse owner or person acting on behalf of the horse owner in permitting their charges to roam at will, or range over and graze on land in the absence of specific and current consent of the landowner, tenant, agent or person lawfully empowered to give consent for the use of the land in this way.

Those disagreeing considered that the definition did not go far enough and reference should be made to the welfare of the animals concerned, along with providing a legal definition of the terms abandonment, temporary abandonment and dumping. It was also felt that the term 'intention' would be difficult to prove and therefore should be replaced with a time period in which owners should tend to their horses needs. Concern was also expressed that reference to Common Land and tethering were missing from the definition as was reference to any associated intimidation.

A number of respondents raised the repealed Abandonment Act 1960 with it being suggested that the Welsh Government should include the provisions that were previously set out under this Act in any new legislation. However, others considered that it would be a retrograde step to reintroduce the offence of abandonment unless it could be framed in the context of making adequate arrangements to meet the

needs of the animals. An additional suggestion was that reference be made to the definition of abandonment under the Animal Health and Welfare (Scotland) Act 2006

Question 3: Have you experienced incidents of fly grazing / abandonment within your local area of Wales? If YES please provide details of how the incident(s) has/have affected you and your surroundings.

Question 3 evoked the greatest number of responses with many respondents having personal experience of how fly grazing had impacted on their lives and the general public nuisance that fly grazing causes.

Intimidation, alleged threats and actual damage to property such as barns burnt down, tyres slashed, fences cut and gates and walls damaged were all reported. Many had witnessed horses loose in public places – schools, playgrounds, roads, housing estates, gardens, local nature reserve, community and sports fields and footpaths. There were reports of members of the public including children being forced into hedges, gardens and onto roads to escape loose horses. It was also recognised that fly grazing prevents legitimate graziers using the land, ruining farmland and putting livelihoods at risk.

Problems were reported as particularly acute on common land with cases often linked to serious welfare issues with emaciated animals left in unsuitable environments with little or no food and water. Diseases such as strangles are prevalent, ponies are worm infested and many horses are left dead or dying with carcasses dumped or left to decay.

Sites recorded as special areas of conservation have been damaged as a result of fly grazing; both poaching and overgrazing has led to sites failing to achieve favourable conservation status. In addition the unauthorised grazing of SSSI's has impacted on nesting birds and damaged important features through the poaching and trampling of ground.

Reports of horses left seriously injured or dead on roads were also highlighted as were reports of horses stuck in the tidal mud and mares with young foals drowning as a result of being cut off by incoming tides. Tethering was also noted as an issue of concern with many horses having no access to shelter, food or water and often subjected to acts of cruelty

Local authorities who have been at the forefront of the issue reported dealing with large numbers of fly grazed horses, all of which had come at a significant cost. Those dealing with the problem have had to put up with harassment and intimidation and have in the main had to rely on external parties and charities to assist as staff do not have the expert knowledge / skills to deal with the issue in house. The issue

has in many cases diverted officers away from other duties resulting in authorities not meeting their other key performance indicators.

The Emergency Services highlighted the amount of resources and officer time spent dealing with the issue and the serious risk it presents to both the public and service personnel dealing with large numbers of horses on roads.

Charities have borne the brunt of the issue having to pick up and deal with injured, sick and malnourished animals that they have taken into care. One charity has facilitated the removal of 329 equines from Wales during 2012 all of which were the subject of fly grazing. Other charities have acted in an advisory capacity responding to horse owners who find horses on their land and then have difficulties establishing if they have been abandoned.

One of the Farming Unions reported that a survey of their members had indicated that 5% had been directly affected by fly grazing with a similar number knowing of a neighbour affected.

Several respondents indicated that they had been personally financing help for many of the abandoned horses through the purchase of fodder and provision of water to both tethered and free grazing animals. A number of respondents used the opportunity to call for greater controls to be introduced including the castration of stallions / colts and commoners being required to move their animals off in the winter in order to identify those horses that are abandoned / fly grazed.

Question 4: Have you used (or know of the use of) Section 7 of the Animals Act to find a solution to fly grazing / abandonment and if so did it provide an effective outcome? If you have responded either 'No' or 'Partly solved the issue' please state what the problems were, what in your view prevented a resolution being found and what might the Welsh Government do to assist in providing an appropriate solution?

56 (73%) of the 77 respondents provided a response or offered opinions on this question although many had neither used nor known of the use of this Act.

Many of the local authorities responding commented that they had used this legislation to deal with fly grazing / abandonment issues. However, concerns were raised over the legality of using the Act in that it applies to stray animals or the involuntary trespass of animals and is therefore not fit for purpose in dealing with the problem of fly grazing as the intentional and calculated exploitation of other's land for grazing. Horses found fly grazing often have not strayed onto the land, they have been placed there so it is believed that anyone using the legislation could be open to legal challenge by those deemed to be the owner of the horses if animals are sold, given away or destroyed.

Those who had used this Act, noted that it provided free grazing for a fortnight and, with a requirement on authorities to microchip and obtain passports before disposal, it was unlikely that there would be any form of cost recovery. Seizure and sale via an auction / market was noted as having the potential to fuel the abandonment / welfare problems as the low price seized horses sell for could result in them being bought by unscrupulous / inexperienced persons. Where authorities had seized and sold at auction there is evidence of owners buying the horses back for less than what authorities invested in them to make them saleable. It was considered that when authorities used the Act they were in fact doing owners a favour in removing and disposing of low value horses; in essence a loophole for getting rid of unwanted stock at no cost to the owner.

It was also felt that it was not practicable for use by private residents and would be both unjust and unrealistic to expect a householder who has horses abandoned in their garden to hold them for 14 days. It was noted that the average person does not have the knowledge of legislation to act to dispose of horses so the Act fails when the property owner / occupier is inexperienced with equines or does not have adequate facilities, finances or resources to cope. The civil recovery method appears to provide incentive for abandonment as regulators are limited in their response unless there are accompanying welfare concerns. It was also considered that the Act fails on common land where local authorities and commoners associations are disjointed and there is a lack of communication, policies and protocols and on tidal marshes where abandoned equines drown because authorities do not have the staff, knowledge or equipment for dealing with the issues in this environment.

Problems with the Act as it currently stands were sighted as favouring the fly grazer to the disadvantage of the landowner. Where 14 day abandonment notices are posted horses are often removed on day 13 following damage to fields, fences, gates etc. Following removal these horses are often replaced with others in an ongoing cycle. The Act takes no account of the low value of the majority of the animals found fly grazing / abandoned and the costs associated with keeping them for 14 days; impounding, transport, feeding, veterinary treatment, micro-chipping, passports and specialist handling costs all of which outweigh the value of most of the horses seized. Many are in poor condition which not only places responsibilities on the landowner who becomes responsible for their welfare but also adds to the landowners / authorities costs as they may not be fit for transport and require conditioning for sale. The Act requires that proceeds from any sale have to be returned to any owner subsequently coming forward.

In addition the lack of secure pound facilities was also considered an issue that makes it difficult to find a resolution to the problem. It was also considered that the time for holding horses (14 days) was far too long and should be amended with suggestions ranging from slaughtering immediately, within 48 hours as many are in

poor condition and not worth selling, to disposal after 7 days. It was also considered that if an owner could be identified they should be given the chance to reclaim the horse within 12 hours paying the local authority costs and a penalty. Failure to pay any costs and fee within 14 days should create an offence.

The law as it currently stands is viewed as ineffective as few horses are traceable to an owner. There is a need to remove the protection for those that fly graze by allowing landowners to prove that fly grazing has occurred rather than having to first establish the identity of the owner.

Question 5: Have you used (or know of the use of) any of the provisions under the Animal Welfare Act (AWA) 2006 to find a solution to fly grazing / abandonment and if so did it provide the necessary outcome required? If you have responded either 'No' or 'Partly solved the issue' please state what the problems were, what in your view prevented a resolution being found and what might the Welsh Government do to assist in providing an appropriate solution?

50 (65%) of the 77 respondents answered this question providing a view or offering an opinion. Many responding on behalf of local authorities had used the Act to a greater or lesser degree to resolve situations of abandonment / fly grazing where welfare was the driver. Those Charities that responded had assisted the work of local authorities and as a result offer comments on the mechanics of the legislation.

The AWA was seen as an excellent tool for promoting and protecting the welfare of animals when the responsible person or owner is known. It was recognised that the Act was not designed to deal with vagaries of fly grazing and any amendments might undo real benefits the Act has brought to animal welfare since 2006.

The greatest difficulty with employing this legislation is the identification of the owner / persons responsible coupled with the resources needed to enforce it through the use of specialist and professional expertise. The fact that the legislation hinges on the identification of the owner being known and also only applies where there is a welfare issue confirms that it was never designed for dealing with large scale flagrant breaches and therefore was not considered a suitable vehicle for dealing with fly grazing.

A major problem of the Act was seen as being the fact that those who inadvertently become victims of fly grazing and abandonment, i.e. the landowner / occupier, then become responsible for the welfare of the animals simply by having animals on their land / premises. Many felt that the Act should be amended to remove the duty of care in these instances whilst others called for a system to identify owners from their animals so they can be held to account with responsibility only falling to others (whether on a temporary or permanent basis) if they have formally agreed to accept

such responsibility. It was also recognised that fly grazing presents a disease risk to in-situ livestock and as such landowners / occupiers should be able to make the decision to euthanize an animal that does not warrant the investment for veterinary care. Concerns were also raised that where landowners find themselves responsible it could provide an incentive to turn fly grazed or abandoned animals off their land on to the highway.

A number of authorities highlighted the significant time and costs involved in tracing owners and where expert witnesses were required Animal Health and veterinary Laboratory Agency (AHVLA) Vets were highlighted as being a resource that Local authorities would welcome to assist them in bringing prosecutions.

There was some criticism of various sections of the Act as the interpretation is variable. The justification for repealing the Abandonment Act was that abandonment would be covered by Section 9 in the case of needs not being met. Although this was considered logical it was unhelpful as many equine abandonment and fly grazing cases result in a situation that initially meets the need for a suitable environment and diet. However, other provisions, notably to protect equines from pain, injury disease for example, cannot be met if an owner is absent. It was noted that it is hard to prove that an owner does not attend (unless 24hour surveillance is carried out) so those working under the Act struggle to fully establish to what extent all needs are being met. The Act is silent on what time period is reasonable for owners to be absent and as a result equines invariably end up suffering. Those who took issue on this point felt it would be appropriate to stipulate the minimum period of a day or two before an owner is considered to be absent but a week or 14 days allows too much time in which there is a vacuum for action.

In summary, it was noted that the complexities of the Animal Welfare Act make it intimidating and costly to use, greatly complicates the process of addressing abandonment and fly grazing and as a result those knowingly practicing fly grazing will continue to do so knowing the window created by the protracted legal process will provide them with up to virtually two weeks of free grazing.

Question 6: Do you have any further views on the provisions available under the Animal Welfare Act which might assist the Welsh Government in providing a solution to fly grazing / abandonment? Please provide details.

43 (56%) responses were received to this question with suggestions ranging from licensing those wishing to buy a horse, the provision of centrally funded secure pounds / green yards, employment of additional welfare officers / horse wardens, the micro-chipping of all horses and the registration of all equine premises / establishments and owners as well as equine movements.

It was suggested that the Welsh Government codes of practice should be amended to include the issue of over-breeding and that in cases where there was a failure to meet any of the 5 needs (a suitable environment, a healthy diet, able to behave normally, has appropriate company, protected from pain, suffering, injury and disease) the codes be used to serve meaningful improvement notices.

Concerns were raised over the interpretation of some sections of the Act including Section 20, and the reluctance by Courts to utilize this section in the misconception that in order to use Section 20 and allow the disposal of the horse there needed to be a presumption of guilt. The costs to prosecuting authorities of retaining, rehabilitating and caring for the animals during the lengthy legal process can be prohibitive. The issue of how enforcement authorities might legally seize fly grazed horses which are placing an unfair and unnecessary burden on landowners when private vets are sometimes unwilling to sign a seizure notice was a point that it was considered needed addressing.

One group of respondents were of the opinion that the Act was suitable to deal with the practice of fly grazing and abandonment through the use of Section 3(3) and 9(1) and felt that authorities should be pursuing cases vigorously with a zero tolerance approach leading to disqualification from owning a horse.

Question 7: Have you used (or know of the use of) provisions under the Equine Identification (Wales) regulations 2009 to find a solution to fly grazing / abandonment and if so did it provide the necessary outcome required? *If you have responded either 'No' or 'Partly solved the issue' please state what the problems were, what in your view prevented a resolution being found and what might the Welsh Government do to assist in providing an appropriate solution?*

The questions on Horse Passports and their application drew a considerable response from both enforcement authorities and general stakeholders. Of the 77 responses 52 (68%) provided a response although 23 (30%) of these responses had neither used nor witnessed the use of provisions to deal with issues of fly grazing and abandonment.

Of those that expressed views, a number felt that the concept of passports and microchips was a good idea however the fact that there was a lack of enforcement meant that the regulations were ignored by certain sections of society. Others considered the system a farce as fly grazed or abandoned animals are not likely to be identified as irresponsible owners do not wish to be linked to their horses.

Suggestions included reducing the number of passport issuing organisations, micro-chipping all horses in the UK including those working under the terms of the semi-federal derogations, placing a greater onus on vets and auctioneers to assist in

compliance and requiring the police to play an active role in spot-checking animals in transit. In addition, the fact that the transfer of ownership is often ignored adds to the general confusion and lack of traceability of animals. A number of respondents criticised the loss of the National Equine Database (NED) and called for it to be reinstated along with a system similar to the one operated by the DVLA for notifying changes in ownership.

Those tasked with enforcing the legislation felt that the Regulations as drafted were not fit for purpose and in many instances did not provide the correct powers or offences. It was recognised that the legislation and regulations were being used for a purpose that was never intended. Effective enforcement required resources with the suggestion that there should be dedicated equine teams. The issue of stolen or invalid passports was also sighted as a problem along with the reported use of bogus or untraceable microchips.

It was considered that the legislation should enable the owner to be traced. In practice this fails as the horse is either not micro-chipped or the microchip has not been registered, horses do not have a passport or the microchip is not linked to the passport and as a result the Regulations cannot solve fly grazing or abandonment. However it was recognised that the legislation would assist if every horse and owner were identified.

Question 8: Do you have any further views on the provisions available under the Equine Identification (Wales) Regulations 2009 which might assist the Welsh Government to provide a solution to fly grazing / abandonment? Please provide details.

This question gave respondents the opportunity to explore the Regulations further and provide solutions for consideration in any future legislation. 46 (60%) of those responding provided further suggestions including moving to a single body issuing passports linked to a central database, inclusion of photographs within a horse's passport, a register of horse keepers, the retrospective micro-chipping of all equines and the removal of concessions allowing some native ponies to remain unidentified. The suggestion of a DVLA type system for recording change of ownership was proposed by a number of respondents to aid traceability as was a British Cattle Movement Society (BCMS) type system for the issue of identification documents.

Respondents also felt that in order to deal with fly grazing sufficient resources needed to be made available for seizure with trained staff being employed to enforce the regulations. Local authorities should be provided with the powers to immediately destroy unidentified abandoned animals. To combat the rapid movement of unidentified horses between authorities it was proposed that authorities should mark them with a visible dye to identify when movements are made.

Many felt that there should be a greater emphasis on checks and tougher penalties on those that break the law including custodial sentences for those who do not comply.

Those advocating a change to the Equine Identification Regulations suggested that there was a need for the removal of the words “who has primary responsibility” where it states who can apply for a passport, thus allowing landowners, commons associations to identify animals and dispose of them and tighten up issues in respect of territory so that the Regulations are enforceable across borders.

Question 9: Many of the horses and ponies found fly grazing or abandoned have no way of being identified. Please provide your views on how you think this issue might be resolved.

63 (82%) responded to this question. Many of the suggestions mirrored what had already been reported under the previous questions in relation to the Regulations. Those suggestions on how to identify those fly grazing owners and horses included a number of responses advocating strict enforcement, powers to seize non compliant horses (un-chipped) and powers to cull.

There was also a suggestion that there should be an amnesty so that unidentified horses could be identified and chipped without enforcement action being taken. Further suggestions included chipping foals at birth, licensing of stallions, recording DNA, tattooing, visual identification, and issue of tamper proof passports, micro-chipping of all equines in the UK, vets to supply microchips and be responsible for the register and recording of owner details.

Question 10: Have you used (or know of the use of) provisions under the Highways Act 1980 to find a solution to loose or abandoned horses fly grazing and if so did it provide the necessary outcome required? *If you have responded either ‘No’ or ‘Partly solved the issue’ please state what the problems were, what in your view prevented a resolution being found and what might the Welsh Government do to assist in providing an appropriate solution?*

43 (56%) of those responding provided comments to this question.

Some authorities had only used the powers under the Act for genuinely escaped animals. However, proving whether it was intentional or accidental was recognised as being particularly difficult. Others were reluctant to use the legislation as tracing owners was difficult and the fines under the legislation are minimal so do not act as a deterrent to owners to stop their horses straying and do not reflect the time or costs of bringing cases to court. The powers under the Act do not contribute to combating stray or abandoned animals as landowners lose out as they end up with

the horses in their fields which may not be adequately or suitably fenced and if the horses stray further and cause an accident the landowner may well find that they are ultimately responsible.

While it was recognised that it is necessary to remove horses to protect the public from danger, the police response of putting horses into the first available field was considered not always to be in the best welfare interests of the horse. The action can make the situation worse by passing the problem to the landowner or the local authority to resolve. Furthermore the police are often ill equipped to handle or safely remove horses.

The policy of developing 'green yards' in England was seen as a partial solution whereby third party organisations are responsible for the safe removal and detention of horses found loose on highways. A number of respondents called for access to a central secure impounding facility and the logistical support and transportation to seize and remove large animals straying on highways.

Where an animal is seized it was considered that local authorities should be able to recover all costs before the horse is returned and if it is not claimed it should be rehomed or euthanized.

Responders suggesting that amendments should be made to this Act considered that section 155 could provide the basis for the creation of a general offence. It currently provides for horses 'found straying or lying on or at the side of a highway'. The term 'straying' in this context is interpreted as being limited to 'at the side of a highway'. If 'straying' could be extended to include other land, this would create a specific offence which would incorporate fly-grazing wherever it occurred.

Question 11: Have you used (or know of the use of) provisions under the Environmental Protection Act 1990 to find a solution to fly grazing / abandonment and if so did it provide the outcome required? *If you have responded either 'No' or 'Partly solved the issue' please state what the problems were, what in your view prevented a resolution being found and what might the Welsh Government do to assist in providing an appropriate solution?*

39 (51%) of those responding commented on this question although very few had either used or witnessed the use of this Act.

None of the local authorities responding had used this legislation to counter abandonment or fly grazing. It was not seen as a practicable solution if the owner or persons responsible for fly grazed horses was unknown as the Abatement Notice would have to be served on the land owner. The Act requires someone to have the enjoyment of their property affected by the conditions arising from the way the

animals are being kept. Other legislation was therefore considered more appropriate as cases of fly grazing tend to take place away from places of residence where it could be regarded as a statutory nuisance. Further comments suggested that authorities might have difficulties in proving definitions for the words 'prejudicial', 'nuisance', 'likely', 'recur' all of which would require expert opinion for clarification purposes prior to serving a notice.

Question 12: Have you used the seizure of stray animals provisions under the Local Acts (Cardiff, Mid Glamorgan, West Glamorgan) in your local authority area to address fly grazing / abandonment and if so did it provide the necessary outcome required? *If you have responded either 'No' or 'Partly solved the issue' please state what the problems were, what in your view prevented a resolution being found and what might the Welsh Government do to assist in providing an appropriate solution?*

This question was aimed at those Local Authorities covered by those Local Acts currently available. However, many individuals also responded sighting their own experiences or what they believed to be the problems relating to the use of such powers. 12 of the responses came from individual local authorities or groups representing all Welsh authorities. Many had no experience of the Acts but were aware of their use and used the opportunity to provide feedback and raise concerns. In total 34 (44%) responded to this question.

It was recognised that the Local Acts can alleviate problems but can also displace the problem to another authority and with no means of identifying offenders it does little to deter inconsiderate and irresponsible owners from continuing the behaviour. Those local authorities covered by the Local Acts recognised their importance in dealing with fly grazing.

Many authorities were concerned about the costs of seizure, transport, secure impounding / livery for 14 days as well as either micro-chipping and passporting or euthanasia. With no means of claiming costs back as owners are often unidentifiable, many authorities were reluctant to intervene and would leave the problem to the landowner to resolve.

Providing consistent powers across Wales was considered to have the potential over time to bring about changes in culture and behaviour. However, consideration would need to be given to providing additional support for the enforcement of any change to legislation or consolidation of current legal requirements. Any changes to legislation should clearly cover fly grazing as it was currently considered that the Local Acts may only be used for straying horses so therefore does not resolve incidents of fly grazing or abandonment.

Reference was made to the current 14 day time limit for disposal with a suggestion that this is too long and needs to be reviewed. The current procedure for disposing of seized horses via a sale often results in the original owner purchasing them back at minimal cost with the horses ending up back in the system. Other areas that required clarification were the level of proof of identity for those claiming horses, seizure where local authorities are not the landowners and where those who are affected by the problem are reluctant to give permission for removal due to intimidation. It was also suggested that any horse on land for which no permission to graze has been given should be removed and sold / euthanized. Local authorities should not have to prove ownership unless they wish to pursue costs.

Use of the Local Acts was seen to have a potentially negative impact on behaviour of those who fly graze their animals as the resulting outcome is that their unwanted horses and ponies are seized and disposed of for free to the owner but at cost to the taxpayer.

A number of respondents did not feel that destruction was the answer and should either not occur or only be considered as a matter of last resort. There was also concern that there would be mental pressures on those people who have to deal with and decide on the fate of the animals concerned.

Question 13: Have you used the seizure of stray animals provisions under the Local Acts (Cardiff, Mid Glamorgan, West Glamorgan) to destroy horses found as a result of fly grazing / abandonment? *If you have responded No' please state why not? If you have responded Yes, please provide details*

This question was directed at those local authorities covered by the provisions of the 3 local Acts. Of these only two authorities had actually euthanized horses seized under these Acts. This had been a case of last resort and where animals were unable to be re-homed or where they had irredeemable welfare issues. Other authorities had only used the powers in respect of those equines found straying on the highway and had either returned animals to owners following payment of an impounding fee or disposed of them via private sale or re-homing through charities.

Authorities dealing with the issue recognise that the numbers involved mean that this approach is unsustainable – charities simply cannot cope. Destruction was seen as being a tragic outcome and one of last resort but one that was often unavoidable.

Question 14: If you are responding on behalf of a local authority that does not currently have access to the Local Acts described or are responding as a non local authority consultee, please let us know what you think about the potential destruction of horses

Despite the fact that this question was aimed at local authorities just under 50% of all respondents (36) provided comments on this issue. 26 respondents (72% of those responding) either advocated a cull or recognised that this might be necessary as a measure of last resort.

In recognition of the fact that there are currently too many low value equines in Wales, destruction was seen as being unsavoury but necessary. While re-homing was seen as being the best option available, availability of homes cannot keep up with the demand.

Those that advocated a cull felt that it was desperately needed as there is currently an over saturated market of unidentified horses and destruction was seen as being a preferable outcome to letting them suffer. Although many felt a cull was the right option it was recognised that it would be difficult for the general public to accept and should only be considered as a measure of last resort where no suitable homes can be found or the costs associated with seizing and caring for the horses concerned cannot be borne by local authorities.

Amongst those opposed to destruction there was concern that such action would do nothing to deter over breeding and nor would it encourage responsible ownership. Euthanasia of healthy horses would only encourage further abandonment and a view that horses are a disposable commodity. It was considered that authorities need to look at other measures such as identification, enforcement, education and interventions to stop inappropriate breeding. Castration of males was suggested.

Welfare charities recognised that the issue of destruction of abandoned / fly grazed horses is a particularly difficult subject. Destruction to end suffering is an integral part of welfare work but destruction as a result of callous and irresponsible actions of owners goes against the values that underpin the values of welfare charities and their supporters.

Question 15: Do you think that the seizure of stray animals provisions under these Local Acts (Cardiff, Mid Glamorgan, West Glamorgan) are appropriate to deal with the issue of fly grazing / abandonment? If not what is missing and how do you consider the changes you suggest may affect the situation?

48 (62%) respondents had a view on this issue. However, only 10 of these advocated euthanasia, 3 stated their opposition to the issue. The remaining 35 respondents although recognised that something needed to be done, fell short of

advocating that horses should be destroyed. The remainder had no views on the issue.

Recurrent themes included the issue of resources to tackle the issue at source, the costs to authorities once the horse(s) had been seized and the lack of equine expertise or facilities to enforce actions without assistance from the voluntary sector to which the cost and impact is considerable. It was also noted that the costs of keeping horses under the current 14 day requirements were prohibitive and with costs ranging from £150 - £250 for carcass disposal many authorities were not adequately resourced to deal with the scale of the problem.

Concerns were also raised about the intimidation and reprisals and fear of such against landowners who as a result are often reluctant to get involved and to report and pursue matters.

Those supporting a legislative mechanism to facilitate the removal of fly grazed horses suggested that it would be prudent to introduce a single Act that would apply the same powers to seize and destroy throughout Wales. A number of respondents felt that on occasions when animals were not easily identifiable action should be taken quickly, they should be promptly destroyed, providing a fairer less expensive solution for landowners and local authorities. This permanent removal would have the benefit of not adding to charities' burden and would ensure that animals were not simply purchased and simply go round the system again having enjoyed free health care and identification. It was considered that fly grazing should be treated similarly to other criminal offences and where owners are identified stricter fines and penalties should be imposed to act as a strong deterrent.

Those that did not agree with extending the Acts to the whole of Wales considered that destroying horses would be a public relations disaster. Others considered that such legislation would relinquish irresponsible owners / breeders of any responsibility, costs or accountability and provide a service for the disposal of unwanted stock at zero cost to the owners.

One respondent felt that the existing local Acts were either not fit for purpose or were not being used effectively by authorities as the worst problems appeared to be in those authorities covered by the local Acts. It was also noted that some local authority officers are reluctant to destroy horses because of alleged intimidation, reprisals and personal attacks.

Question 16: It is recognised that the seizure of stray animals provisions under the Local Acts (Cardiff, Mid Glamorgan, West Glamorgan) are not available to all local authority areas across Wales. Should the Welsh Government consider extending those fly grazing provisions to the whole of Wales?

47 (61%) of the 77 responders commented on this question with the overwhelming number, 39 (51%), supporting an extension of the local Acts across Wales. Of the 8 (10%) that did not support an extension to the whole of Wales, 4 (5%) of these responses came from local authorities or local authority groups who advocated amendments to existing legislation.

Of those that supported an extension it was suggested that in order to manage expectations the Welsh Government would need to provide adequate resources to meet legislative changes and direct authorities to enforce the laws. It was further suggested that new legislation, that complements current Animal Welfare legislation, should encompass all aspects of horse ownership including welfare, identification, straying and abandoned / fly grazed horses with tougher sentencing provisions for those who do not comply.

Question 17: Do you consider that new or amended legislation is required or that it is sufficient that the Welsh Government issue detailed guidance to enforcement authorities. Please state your preference and why.

54 (70%) of respondents answered this question with 41 (53%) advocating a need for either new or amended legislation with a greater emphasis on enforcement. It was felt that tighter controls should be introduced on ownership and breeding. Suggestions included aligning new legislation with the Animal Welfare Act, the Environmental Protection Act 1990 (stray dogs), or the Highways Act 1980 (stray horses) and adding enhancements to the identification requirements.

Other powers that were sought included those to promptly seize any unidentified horse and destroy it, lifetime bans for offenders and the provision of additional offences for obstruction and increased enforcement options to include prosecution. It was also suggested that legislation should be amended to alleviate the disproportionate protection to the owners of the stray animals through making fly grazing a specific offence with deterrent penalties.

Those responders that were of the opinion that existing legislation was adequate suggested that all that was required was proper and consistent enforcement. Many considered there was a need for detailed guidance to support both existing legislation and any new or amended legislation.

Question 18: Do you have any alternative information / ideas that may help the Welsh Government to find a long term solution to fly grazing / abandonment?

43 (66%) of those responding provided additional information which centred around greater enforcement of current laws, making fly grazing and abandonment a criminal

offence, initiating stricter passport controls and providing local authorities with Horse Wardens or appropriate equine training.

Although the consultation stated that it did not concern breeding / over breeding or general equine welfare issues, many used the opportunity to call for the castration of stallions, the issue of breeding licences and an assessment system before anyone should be permitted to keep horses.

A number of respondents confirmed their view that some form of cull was required including the immediate removal and euthanasia of stray or fly grazed horses. In addition, it was suggested that all stock needs to be removed from Commons for 1 month and where owners do not come forward, animals remaining should be classed as stray / abandoned and disposed of.

Other suggestions included greater use of CCTV, lifetime bans for offenders, the compulsory micro-chipping of all equines, making sellers responsible for notifying PIOs of the transfer of ownership, licensing of all colts over 12 months of age, restrictions on the number of stallions kept for breeding, introduction of a DNA database, a register of equine keepers, an education / awareness campaign and implement the Gate Safe scheme seen in the Vale of Glamorgan.

Question 19: We have asked a number of specific questions in relation to the legislation which is currently available to assist in resolving the problem of fly grazing / abandonment of horses and ponies. If you have any related issues which we have not specifically addressed, please use this space to report them or provide comments.

Less than half (43%) provided additional comments and those that did covered comments that had already been addressed in response to earlier questions.

Related issues included giving landowners the right to impound and dispose or sell horses dumped on their land after 7 days and providing a single point of contact when an animal is dumped, abandoned or fly grazed.

The issue of identification and the associated problems were raised repeatedly. The micro-chipping of all equines plus a move to a single Passport Issuing Organisation which would by default provide a national database was advocated. It was also considered that microchips should only be available through vets and should not be able to be sold unless inserted in the horse. It was further suggested that there needed to be a cross compliance matrix for equines and equine establishments requiring inspection and that cross compliance requirements in Glastir should include equine welfare.

Common land was also seen as another problem area with suggestions that legislation be introduced making landowners / Commoners Associations liable for all animals grazing on commons and to put management systems in place to control the number of ponies grazing, control the release of stallions and implementation of a castration programme. Furthermore there was support for chipping all commoners' ponies.

Summary

In summary, it was recognised that the problems are caused by a small minority of people who have scant regard for people or equine welfare. There is a need for a better legal framework to tackle problems by more effectively linking equines to their owners. This would benefit the wider equine sector by providing the means to tackle other problems such as irresponsible breeding and trading.

Generic Responses

445 generic replies (believed to be via a social media campaign) were received. These responses mirrored many of the comments made by those responding to the individual questions and included:

Strengthening the legislation around horses including improving traceability and extending the local Acts to cover the whole of Wales. Stronger and more consistent enforcement with dedicated resources for local authorities and a mechanism for sharing best practice.

There was support for the resurrection of the National Equine Database and for one central database that records horse passports and change of ownership (DVLA system) along with an amendment to the passport regulations so that all horses are chipped regardless of age.

It was also considered that the Welsh Government should develop guidance and contingency plans for those effected by fly grazing as well as statutory guidance and conditions for local authorities to aid enforcement with measures being backed by adequate resources.

A further 20 responses were received which either added to the generic responses or were submitted as individual letters, these responses also mirrored many of the comments made but also added support for the introduction of a straightforward, robust and consistent legal framework to address the issue across the whole of Wales. It was suggested that there was a need to define 'Owner' as this implies that it is their right to determine how they treat 'their' animal – 'Carer' was proposed as a more apt description.

Those commenting on identification felt that freeze branding or hoof branding should be considered in place of micro-chipping.

Many considered that the current laws encourage fly grazing as horse owners who flay graze their animals know they have a minimum of 14 days of free food before seizure of the horses concerned. It was suggested that legislative changes were required to allow authorities to seize, remove and destroy horses immediately on occasions when landowners had not given consent for the animals to be present.

It was also considered that destruction was now effectively the only option as homes are no longer available and such a policy will demonstrate that there is a zero tolerance approach to the problem. Powers of sequester should be applied for any horses confiscated and slaughtered as a result of fly grazing.

Those representing commoners called for a system (as used under the Animals Act 1971 pre equine passports) that allows commoners to remove horses and dispose of them through an appropriate method that ensures that horses cannot enter into the human food chain. It was recognised that stocking densities needed to be realistic and that a cull should be implemented for badly bred non-descript ponies leaving fit healthy native animals. Another correspondent considered that horses should be allowed to graze freely in the uplands.

Those not supporting a cull suggested that set aside land should be used to provide temporary grazing for abandoned horses until such time as charities can find them homes.

Tethering was also raised and the need for any new legislation covers this issue with a view to the possible future banning of the practice.

It was also deemed necessary to encourage greater throughput at slaughterhouses through the establishment of a safe period between the administration and admission to the human food chain of those horses treated with phenylbutazone.

Equine Conference

The Welsh Government held an Equine Conference on 11 March 2013 as part of the Consultation process. The Conference was aimed at enforcement authorities and front line officials with attendees from Welsh local authorities, Equine welfare charities, and the 4 Police Services in Wales. Delegates were asked to respond to two questions to help inform the consultation process.

Question 1 - What, from your own experiences, has prevented you from solving the problem? The biggest obstacles / challenges?
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Identification

Many had problems identifying horses, and therefore their owners. The loss of the National Equine Database had resulted in a lack of traceability with the system put in place by Defra being considered cumbersome and too slow. It was suggested that microchips were easy to obtain and very rarely registered to owners. Many passports did not match the horse it purportedly was issued to and it was considered that there were too many derogations with a lack of clarity over who had a derogation.

Resources

The lack of resources was a major concern, especially when the numbers of horses involved and the high number of incidents of fly grazing were taken into consideration. The seizing, transporting and holding of horses provides logistical problems as well as considerable costs to local authorities. In addition, many authorities do not have specialist staff able to deal with the issues around fly grazing. It was reported that the average cost to a local authority of addressing fly grazing was £1,000 per horse with the resale value being as little as £5.

Managing expectations

There is an expectation that local authorities will provide an emergency response to the problem of fly grazing.

In reality there had been a somewhat uncoordinated response to incidents although this had been addressed following the establishment of the All-Wales Equine Task Force. Some authorities sighted the issue of intimidation of landowners and enforcement authorities as an obstacle along with delaying tactics used at Court which added to the costs incurred.

Legislation

Many recognised that some legislation was out of date, some lacked relevance to the current situation whilst other legislation had gaps rendering it not fit for purpose.

Powers were at best disparate and different interpretations led to unclear resolutions.. It was suggested that there needed to be a quicker process for bringing offenders to Court and that penalties should fit the crime and act as a deterrent.

It was further agreed that 14 days was too long for any abandonment notice, that authorities should look at using Section 18 of the Animal Welfare Act more widely and that there was a need for Courts to be encouraged to grant Section 20 Orders under the Animal Welfare Act.

Imports

The lack of Border Inspection Posts (BIPs) and full enforcement at ports was considered to contribute to the problems.

Common Land

Problems often arose when authorities need to determine whether commoners have rights.

Education

There is a perceived lack of education of horse owners along with a lack of understanding by the Courts and insufficient sentencing guidance.

Miscellaneous

The issue of over breeding limited castration of poor quality colts were all sighted as issues that had contributed to the problem.

Question 2 – If starting again what would you introduce to solve the problem?

Identification

It was agreed that a single UK Passport Issuing Organisation providing a database and a tamper proof passport that was fit for purpose would be fundamental to solving the identification problems. In addition, all horses should be microchipped before 6 months of age and vets should be the sole stockists of chips which, when inserted, should be notified to the PIO by the vet responsible for inserting the chip. Those horses not properly identified would be subject to euthanasia / cull. A further suggestion was that both the buyer and seller should notify the change of ownership and that there should be a registration system similar to the one run by BCMS i.e. premises / keeper / owner especially those keeping over a certain number of horses.

The reintroduction of stallion licensing by local authorities and the removal of all derogations for ponies on commons were also seen as crucial to solving the problem.

Education

Education of all horse owners was seen as a long term objective. In addition, it was also suggested that guidance/information should be openly provided to the public on any future euthanasia policy.

Resources

There was a recognition that in order to enforce properly there was a need for adequate resources (both people and funding) and that training was a key part of any enforcement activity. A national network providing a knowledge base was also deemed to be essential to deal with issues as was an all Wales Local Authority Protocol / infrastructure for dealing consistently with fly grazing that enabled action to be taken quickly resulting in timely disposal either via sale or euthanasia.

Legislation

New legislation needs to be subject to scrutiny to ensure that it is workable and enforceable. Any legal framework must have penalties to fit the. On the spot fines were suggested. In the case of consolidating legislation to deal with abandonment and fly grazing, it was suggested that consideration be given to tackling the ineffective time periods and notices, 14 days was considered too long between seizure and euthanasia.

It was considered that more needed to be done to make Courts aware of the associated criminal activity that accompanies fly grazing and abandonment and there needs to be a fast-track service for courts to deal with S20 of the Animal Welfare Act 2006.

Miscellaneous

The requirement for horse wardens, transport and large, secure animal holding sites were all considered essential to solving the issue as was the creation of a horsemeat industry. Classifying horses as agricultural animals with farm to fork identification and opening links to the meat and pet food market were all seen as ways of disposing of surplus horses.

Next steps

In providing this summary document, the Welsh Government has considered all the consultation responses. Advice and recommendations will be put to the Minister for Natural Resources and Food on the results of this consultation in order to determine how a robust and consistent legislative framework might be provided in Wales.