

STOP THE SCOURGE

Time to address unlawful fly-grazing in England



England needs improved legislation to stop the scourge of unlawful grazing. Only this can truly tackle the problem.

The authors, comprising rural organisations and welfare charities representing almost 400,000 members and supporters – including those who own or manage a significant proportion of the rural land in England – want improved legislation to help stop the growing problem of fly-grazing in its tracks. Existing laws are negatively impacting everyone but the perpetrators. Other solutions will not work effectively, if at all. Fly-grazing needs a consistent approach across the country if it is truly to be addressed, or this mobile problem will simply move from council to council. It is time for England to legislate against this scourge on our communities.

What is the problem?

Parts of England are under siege from thousands of horses and their irresponsible owners. Whilst actual numbers are difficult to collate, the authors of this report believe that unlawful fly-grazing has increased significantly in recent years, and on a conservative estimate at least 3,000 horses are being fly-grazed in England alone.

In recent years loose, stray, abandoned and fly-grazing horses have become an acute and expensive problem for landowners, local authorities, enforcement agencies, welfare charities and taxpayers. The lack of care the horses receive, and the actions of their owners, are threatening the livelihoods of farmers and landowners, creating significant horse welfare problems, depriving the public use of public spaces and risking the lives of motorists. The current lack of clarity in the legal process to deal with the horses and the lengthy, and at times ineffective, procedures required are diverting the resources of local authorities. Intimidation and violence are common against the human victims of this practice who try to remove the horses or hold their owners to account.

Whether the number of horses being fly-grazed has increased, or they have just been moved to more visible locations, or some combination of these, is not clear.

The victims of this practice have one thing in common: they are effectively powerless to remove horses from their land swiftly and cost-effectively. Whilst several different pieces of legislation exist none provide an answer to this growing problem (see below). All contain loopholes which the perpetrators are adept at exploiting. One of the major stumbling blocks is the requirement to identify the owner of any horse being fly-grazed unlawfully. As the UK's equine identification laws were never fully complied with or enforced, it is frequently impossible to link a horse to an owner to the satisfaction required by the courts. Estimates that some 70% of horses being abandoned are not identifiable show the level of non-compliance in this area.

There is an opportunity to rectify this situation. In July 2014 Julian Sturdy MP tabled a Private Members' Bill that has the potential to solve this situation and is supported by the authors of this report.

Fly-grazing explained:

The practice of leaving horses to graze on public or private land without permission, or where permission has been withdrawn, has long been common across England and Wales.

These horses, which can number anywhere from one to several hundred in a single location, are often placed in inappropriate places such as verges, playing fields, gardens or farmland. Often the land is not designed to keep such animals enclosed, or in the case of farmland, it may be specially selected because it is secure. Although generally fly-grazing horses is unlawful, present legislation makes it difficult, time consuming and expensive for landowners to remove horses from their own land.



Why are horses fly-grazed?

Horses are increasingly fly-grazed mainly to keep costs down. Other drivers may include:

- There are few, if any, consequences for horse owners who fly-graze their animals – particularly as the UK's equine identification system is completely unenforceable and unenforced. This means that these irresponsible horse owners are not held to account.
- There may be more horses fly-grazing as the horse sales market is depressed, leaving dealers with more horses to feed. Horses at every level have dropped in value, and at the very lowest end they are being sold at auction for as little as £5.
- For some horse owners the use of tethering and fly-grazing stems from a difficulty in finding appropriate fields – particularly if the owners do not have a good reputation within the local community. This challenge is amplified for nomadic travellers who are not seen by some as reliable tenants.
- As land becomes more scarce, councils and landowners may be selling or bringing back into active use, such as for housing, land that had previously been used by fly-grazers, thus moving horses to more visible locations.
- Many owners of fly-grazed horses have no desire to lose their animals yet will abandon them if trouble with the authorities costs more than the value of the horses. Others leave unwanted horses behind or move them to someone else's land because the horses have no value, caring for them is too costly or the welfare of the animals is so poor that owners fear prosecution.
- These same horses can make their owners money on the continent. The absence of health, welfare and documentation checks at ports can provide dealers with a safe revenue stream through illicitly exporting horses for slaughter on questionable horse passports.



What is the legislation on fly-grazing?

There are a number of pieces of legislation that have been used to address fly-grazing but all have their limitations as summarised below.

Legislation	Drawbacks
Animals Act 1971 (Often used for fly-grazing cases but is long-winded and costly, can be vulnerable to challenge and 'playing the system' by perpetrators)	<u>Costly</u> – requires waiting period of at least two weeks - in practice can be much longer. <u>Loopholes abused</u> – horses replaced with those of poor quality just before deadline or moved at 13 days. <u>Requires sale of animals at market or auction</u> where they can be bought back by owners cheaply – despite having been microchipped and therefore made more valuable.
Animal Welfare Act 2006 (Used by enforcement bodies to investigate animal welfare problems)	<u>Owners must be identified</u> to be held accountable. <u>Only covers animals suffering or likely to suffer</u> before action can be taken. <u>Does not cover horses being fly-grazed</u> where their welfare needs are being met.
Highways Act 1980 (Used by police to remove horses who pose risks on the road)	<u>Landowners could be liable</u> if fly-grazing horses stray onto roads from their land. <u>Responsibility too often shifts</u> between police, landowners and local authorities as horses wander on and off roads so responsibility for enforcement is fluid and unclear.
Torts (Interference with Goods) Act 1977 (Used by landowners)	<u>Costly and long-winded</u> – requires use of notices (see Animals Act) and use of bailiffs.
County court procedure (Used by landowners)	<u>Costly and long-winded</u> – requires use of bailiffs and other procedures.
Horse Passports Order 2009 (and equivalent Order in Wales) (Enforced where possible by local authorities)	<u>Law currently unenforceable</u> by local authorities. <u>Compliance low in fly-grazing</u> rendering much legislation ineffective at holding owners to account (see below).
Local Government (Miscellaneous Provisions) Act 1982	<u>Costly to local authorities</u> as horses must be kept for one month.
Anti-social Behaviour Act 2003 and Anti-social Behaviour, Crime and Policing Act 2014	<u>Requires owner of horses to be identified</u> – which is rarely possible. <u>Enforcement measures issued are applicable to the owner.</u> The use of measures under the Anti-social Behaviour Act 2003 for horse fly-grazing has <u>only been used once</u> to date to stop fly-grazing in certain areas – horses were merely moved to other areas not covered by the restrictions.
Common Law of Lost or Abandoned Property (Applies to landowners)	<u>Costly to landowners</u> who can eventually sell horses and reclaim expenses but must hold profits for owner for six years (in practice they will be significantly out of pocket). <u>Not dissuasive to fly-grazers.</u> <u>Landowner could be liable</u> for caring for horses and attempting to trace owners.
Control of Horses (Wales) Act 2014	<u>Only applies to Wales.</u> <u>Does not allow action by private landowner.</u>
Private Acts (e.g. Hampshire Act 1983) (Used by these local authorities)	<u>Costly to local authorities</u> who must keep horses for 14 days. <u>Pushes problem to other areas.</u> <u>Can only be used in those areas covered.</u>

What impact does fly-grazing have?

Horses and animal welfare charities

There is a horse welfare crisis in Britain, with thousands of horses at risk. One of the major causes of the welfare crisis is an increase in fly-grazing and fly-grazed horses.

- Often the needs of these fly-grazing horses are not being met by their owners, resulting in welfare problems, spread of disease and, in some cases, death.
- Calls regarding fly-grazed or abandoned horses have risen by 66% from 1502 in 2010 to 2553 in 2013 at the RSPCA.
- Welfare problems regularly seen among fly-grazed horses are: malnutrition, untreated disease, heavy worm and lice burdens, poor environment and lack of foot, dental or veterinary care. Many of these problems are not obvious until the horse is inspected; many require euthanasia on compassionate grounds.
- Malnutrition and internal and external parasites are welfare problems in themselves which also make them vulnerable to further contagious disease. Their poor health also renders the animals unable to cope with extreme weather that would otherwise not be a problem.
- The number of horses that equine charities are caring for has risen by double digits over the past five years, as have complaints regarding poor welfare. A significant part of this has been fuelled by fly-grazing. Charities have seen triple-digit increases in requests for help.
- Many charities have increased capacity but the situation is not sustainable. Fly-grazers represent a notable proportion of horses taken in by the major welfare charities over the past three years, but there is simply not enough space at the charities to accommodate the thousands of horses unlawfully grazing or 'parked' in landowners' barns.
- Charities have come under fire from members of the public for not 'doing anything' to rescue fly-grazed horses from inappropriate care or environments, despite charities not having the power to take the animals unless a vet deems them to be suffering or likely to suffer.



Farmers and landowners

Fly-grazing horses damage land, crops and fencing, restrict space for other livestock and cost money to feed and provide for their welfare and safety.

- Landowners can attempt to remove the horses by following legal avenues although this is invariably costly and time-consuming for a problem which is not of their making. Many have had horses placed on their land and had to fund a lengthy legal process, and hire bailiffs at significant cost, to resolve the situation.
- The applicability of the legal remedy most often used, the Animals Act 1971, while not tested in the English courts has been questioned in Northern Ireland (McLoughlin v Cooper [1999] NIJB 90) and in particular the meaning of the word “stray”.
- **There is no low-cost legal remedy readily available to all farmers and landowners throughout England and Wales.** These costs add up to much more than the horses are worth, especially in this depressed market.
- It is possible that in engaging in the process of detention landowners could be deemed to be the keeper of the animals and therefore potentially liable for their actions. Many will not be adequately insured for keeping horses and the fields they are kept in are likely to be inadequate to fence the horses in.
- The problem is often exacerbated by intimidation and threats of retribution should the owner remove the horses. Some have had barns burnt down; others have had their children threatened.
- Owners of fly-grazing horses are taking advantage of the fact that trespass is a civil matter and, therefore, not actionable by the police.

“We have been raising this issue for some time, in recent years our members, who own or manage a significant proportion of the rural land in England and Wales have reported serious problems with fly-grazing. Our members face considerable obstacles in getting these animals removed, not least because the current legal process for seeking their removal is not fit for purpose; mired with uncertainty and all too frequently eye-watering costs. It is time England followed the Welsh Government’s lead; without a consistent approach the very real concern is that this problem will simply migrate, concentrating the problem in England.” – CLA President Henry Robinson

Impact on farming

- The NFU have been working closely with local authorities, members and lobbying MPs to raise the profile of the need for a solution.
- A 2012 NFU survey found that around six per cent of their members (1,000+farmers) have direct experience of fly-grazing; a similar number is aware of a neighbour who has been the victim of fly-grazing.
- 44% of respondents affected in the 12 months experienced one incident whilst 56% saw fly-grazing on their land multiple times – with 38% being affected more than five times in the 12 months of 2012.
- The problem is exacerbated by intimidation and threats of retribution should the owner try to remove the horses. 38% of victims experienced intimidation including threats of violence (or death) against them or their families or the destruction of their property.

Intimidation and violence

Another factor that prevents the ‘persons responsible’ for these horses from being held to account is their propensity for violence, criminal damage or just the intimidation caused by the threat of violence. Often the victims do not feel confident that they can go to the police, or come to court without suffering retribution even if there is a conviction.

“When we approach them about the issue, they damage our property and set fire to our barns” – NFU Member

Local authorities

Local authorities have suffered immensely from fly-grazing, both in their capacity as landowners as listed above and also from trying to address the situation as enforcers using ineffective, and easily circumvented laws.

- Local authorities are struggling with the numbers of horses left on their land, many of which are not legally identified and therefore cannot be linked to an owner. This is exacerbated by the inadequacies of implementation of the legislation on horse passports and microchips.
- Their land is often more vulnerable as it is often subject to public access so cannot be protected by security measures from those wishing to fly-graze their animals there.
- Unlawfully grazed horses are often placed on public land such as roadside verges, sports fields and open green spaces. Not only can this restrict access to these publicly owned facilities for sports, dog walking and recreation, but the horses cause damage to fences and turf and pose a risk to the public.
- As with farmers, landowners and members of the public who have had horses placed on their land, local authorities may become responsible for the health and welfare of the horses, and liable should the horse escape into the road and cause a fatal accident. Such a case was settled by Wrexham Borough Council in 2012 for around £600,000.
- Many councils are self-insured up to significant levels and so a single claim can have a considerable impact which would come out of the public purse.
- In a survey of local authorities conducted in May-June 2014, more than 50% cited fly-grazing as a 'moderate' problem in their area, with more than 15% rating the problem as 'significant' and 6% 'severe'. Only 23% of authorities said it was not a problem in their area.
- Around 5% of responding authorities admitted to spending £60k-£100k on the problem in the past 12 months, while 6% spent £20k-£60k and almost 65% spent £0-£20K. Once council spent more than £100,000 on the issue. These figures do not include staff time spent on the lengthy legal process, nor time and resource of other agencies that may have been involved such as the police, Environment Agency and council staff.
- More than 80% of those authorities that had used existing legislation to try to resolve fly-grazing incidents said the authors' proposed law changes would help them address fly-grazing.
- Some local authorities especially in North Kent, South Essex and Lancashire are seeing increased problems of fly-grazing following the implementation of the Welsh legislation which may be a result of horses being moved to England to escape the legislation.

“No fresh water in summer - just a stinking bog. In winter, a foal was standing in water up to his belly ... horses were up to their knees in water the ponies were eating bags of rubbish. It's heartbreaking - please take them away and give them a peaceful end.” – Member of the public

General public

- The general public is also significantly impacted by fly-grazing, either directly through horses being placed in their gardens, making their public spaces no-go for risk of being kicked by a horse or enduring the heartbreaking sight of apparently neglected horses tethered near their homes and feeling powerless to do anything for them.
- Fly-grazing poses risks to people when horses wander into the roads, through school grounds, digging up sports fields and trashing nature reserves.
- Road accidents involving stray horses are also relatively common in some areas including Hertfordshire, Essex and Suffolk.
- In a report dated 9 April 2014 (<http://www.judiciary.gov.uk/wp-content/uploads/2014/07/Allen-2014-0160.pdf>) Dr Peter Dean, senior coroner for the coroner area of Suffolk, set out his concerns following a death on the road caused by a fly-grazing horse. He stated: “In my opinion there is a risk that future deaths will occur unless action is taken.”
- Taxpayers are also footing the bill for local authorities to fund the lengthy legal process they, or their local authority, must navigate to resolve fly-grazing issues, including trying to trace the owner of the horses.

Animals Act carousel: Running circles around the law

The Animals Act 1971 is often the law cited as being the solution but is the most frequently abused by fly-grazing perpetrators.

Abusers of the system know the loopholes:

Replacing: If an abandonment notice is posted for a group of horses, these 'abandoned' animals are often replaced with other horses the owner no longer wants. As a result, the authorities or landowner are actually doing the owner a favour by taking these unwanted horses off his hands. Where abandonment notices are not followed through the owners soon learn that they can ignore any threat of the horses being seized.

Recycling: The horse owner may wait until the last night of actual enforcement date before moving the horses on. Whilst this may solve the problem for the individual landowner, they will have invested considerable time and money and in the interim considerable damage can be done to the land and crops. This pattern of behaviour can be repeated leaving some landowners with a constant cycle of costly and distracting problems.

Repossessing: Most fly-grazed horses are not microchipped. When horses are left on someone's land, in many circumstances, action can only be taken after a minimum of two weeks of trying to trace the owner and the only option open to local authorities once horses have been confiscated is to put them, microchipped and made legal, into market or auction. Far too often they will simply be bought back by the original owners or their associates (who get a horse whose value has increased with the microchip) and the problem will be perpetuated.

These loopholes can be closed through new or amended legislation to solve issues by changing the requirements for proving ownership, reducing the time needed before action can occur and allowing for disposal of horses other than through auction.

Cover for unlawful activity

The authors believe that the ease with which someone can deny responsibility for a horse is one of the main reasons why some people are trading in them. There is abundant circumstantial evidence that suggests the trade in horses of a low economic value is an effective cover for other unlawful activity (including unlawful export for slaughter), thus fuelling the practice.

Why robust equine identification is essential

Whilst there are laws that seem to allow action against the owners of fly-grazing horses, all have limitations and most only work if the enforcement agency can identify the 'person responsible' to a standard that satisfies the courts. This is extremely difficult in the majority of cases as ownership is simply denied. **The vast majority of fly-grazed horses are not microchipped and in contravention of the law do not have passports.** Even those that are microchipped often have not had the chip registered to an owner. Animal welfare groups estimate that up to 70% of horses that are abandoned are not microchipped. While passports do not prove legal ownership the courts do take them into consideration.

Local authorities have responsibility for enforcing the passport legislation but in reality it is not seen as a priority that they can afford. Indeed some said from the outset that they would not enforce the legislation when passed in 2009. A lot of time and legal investment is required to untangle the paper trails. In fairness, passport legislation was obviously never intended to prove ownership for the purposes of enforcing the law. However, the inability to establish ownership of stray horses is a significant barrier to addressing the fly-grazing problem and where we have proof of ownership existing legislation can work well.

If the UK had an effective and enforced system of equine identification, with the burden of proof on owners to prove ownership, fly-grazing could be addressed much more effectively. However, the UK is unlikely to have a sufficiently robust system for at least a few years, and it will only be robust if it is enforced, which itself depends upon the priority it is given by central government as well as local authorities.

What is being done?

Joint protocols and multi-agency working

Joint working between Government, charitable and other organisations is essential to address fly-grazing, and a number of protocols have been established. For instance, the local authorities in South Wales were able to establish a memorandum of understanding with South Wales Police, and they now work with the councils on joint operations. A Horse Management Protocol approved by Wakefield Council's Cabinet in July 2012 spells out the role of the police. Durham Constabulary works with local authorities and voluntary organisations to deal effectively with fly-grazing. In York there is good multi-agency work between the local authority, housing agency, animal welfare groups and the police.

However, joint working and protocols are not the complete solution required as it often results in the problem being moved to another area.

For example, in Norfolk, where a group of fly-grazed horses in the Norwich area was successfully dislodged after an enormous effort by authorities and charities, the horses simply re-emerged half an hour's drive away in Thetford.

Similarly, welfare charities have already seen horses owned by a Welsh dealer move into England which caused significant problems for the welfare of the horses and for the community as they kept escaping onto roads to find food.

Fly-grazing needs a consistent approach across the country if it is truly to be addressed, or this mobile problem will simply move from council to council.



Solutions

- 1) Produce legislation that is fit-for-purpose to address fly-grazing more quickly and effectively.** England needs updated legislation that allows landowners to take action when the owner cannot be identified, and the flexibility for them to reduce their costs and dispose of horses as they see fit. Any proposed changes in the law should be modelled on the Control of Horse (Wales) Act 2014, which has already solved long-standing fly-grazing problems, such as at Manmoel Common, Gwent, and enabled swift resolution of other difficult cases. Private landowners should also be given the same powers. **This legislation would enable landowners to seize fly-grazing horses immediately and rehome, sell or dispose of them as most appropriate after seven days, rather than the current 14 or even 30 days under some of the existing legislation.** Under these proposals, local authorities should have the powers (but not the statutory duty) to act. The owner may reclaim the horse within seven days if they can prove ownership.
- 2) Introduce effective equine identification legislation and enforce it.** The UK needs a much more effective and robust system of equine identification, and for this to be enforced. The microchipping of all horses should be made retrospective (and fixed penalties imposed to help fund enforcement). This is only possible with the re-introduction of a central equine database, which is currently set to be required under an updated EU Regulation currently being negotiated. However, in light of the UK's significant problems with equine identification, of which fly-grazing is just one example, effort should be made to bring in a central database in partnership with the equine sector as soon as possible.
- 3) Introduce requirements for proving ownership.** Currently landowners and agencies need to try to track down the owner of a fly-grazed horse, which is a waste of resources and absolves the owner of responsibility for their animal. Therefore, if a horse is found to be unlawfully grazing, landowners and local authorities should be able to seize it immediately and only return it within seven days if the owner can prove ownership through passport and microchip.
- 4) Provide national guidance on resolving fly-grazing incidents** for landowners to help signpost them to agencies they should contact and what they can and cannot do.
- 5) Sharing best practice on liaison with communities to stem fly-grazing and inappropriate tethering.** Welfare charities and local authorities have many good case studies to help educate those who require it on better horse care including discounted passport and microchipping and gelding clinics. However, without adequate legislation and enforcement, these efforts are unlikely to have a significant impact on the problem.
- 6) Challenge the need to breed.** The equine sector should lead here, and World Horse Welfare and The British Horse Society have both launched initiatives to encourage horse owners to think carefully before breeding from their horses. These initiatives are targeted at recreational horse owners. However, fly-grazing and other forms of indiscriminate breeding where owners are not responsible are unlikely to be curbed in this way.
- 7) Stop the unlawful trade in horses:** Border authorities and Defra must do more to ensure that an illicit export trade in horses does not provide a disproportionate incentive to fly-graze horses.

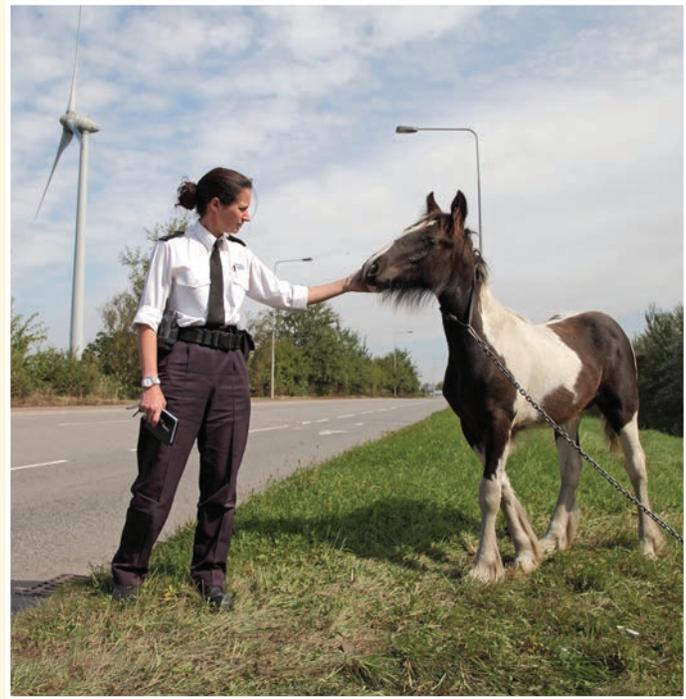


What are the costs?

There will undoubtedly be costs for local authorities involved in setting up green yards and disposing of horses, **but these should be considered in the context of the significant costs – and risks – already borne** by local authorities and the police in dealing with fly-grazing incidents. One survey of local authorities shows that the cost of removing and keeping horses being fly-grazed can range from £370 to £2,000 per horse depending on the time spent and bailiff used. Local authorities do not cover their costs when the animals are sold at auction or claimed back by the owners. Local authorities report income being 2-10% of total costs spent on the horse. Local authorities do not have the budgets or land to keep horses for long periods while cases are going through the courts and improved legislation could reduce the disposal time significantly.

Similarly, landowners seeking to remove horses from their land engage bailiffs at more than £1,000.

Moreover, the potential **costs of compensation** should a horse cause a serious accident after running into the road from local authority land could run into millions. Settlement of one case in 2012 cost taxpayers £600k.



Abandoned horses cost police £1k each to rescue

Fresh concerns for abandoned horses

MP rides into battle to stop horses fly-grazing

Horse 'bailiffs' plan to tackle tethering

I am so worried about these animals

MP's law plea on grazing horses

Stray horses halt city traffic

Coroner calls for 'fly grazing' to be outlawed following driver's death in collision with stray horses on A14

Horses storm pub garden

Fresh crackdown on illegal horses

We need bill to tackle problems of 'fly grazing'

Tears over horses left in field to waste away

Photo credits:

Front cover World Horse Welfare; Page 2 RSPCA; Page 3 RSPCA, Redwings, World Horse Welfare; Page 5 World Horse Welfare; Page 9 World Horse Welfare; Page 10 World Horse Welfare; Page 11 RSPCA, World Horse Welfare; Back page Redwings.