

**Hampshire County Council
Procedures for the
Management of Fly Grazing**

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Part 1 - Background

Introduction

1. Fly grazing is the term when horses are placed on land without permission. Their presence can sometimes cause several issues including public safety, nuisance to communities, agricultural and environmental impacts, and welfare concerns.
2. The Control of Horses Act 2015 amends the Animals Act 1971 to give local authorities and freeholders the powers to deal with fly grazing horses found on land controlled by them.
3. Hampshire County Council (HCC) owned and managed land is a diverse area and includes a variety of public spaces, including country parks, agricultural and strategic land for which different departments have responsibility.
4. This document aims to guide HCC officers on good practice and assist in providing a consistent approach to the issues of illegally placed horses across the Hampshire County Council responsible area. In the first instance officers should seek advice from the Gypsy and Traveller Service (GTS) or Trading Standards (TS). Contacts in Part 4. Any individual freeholder acting under this legislation should be advised to seek independent legal advice before doing so.

Legislative Context

5. The Control of Horse Act 2015 (CHA) amends the Animals Act 1971 to provide legal powers to take appropriate action when equines are found on land without lawful authority. Subject to certain criteria, it allows for the detention, sale, re-homing, return, disposal and destruction of horses in a humane way after necessary notifications for their removal.
6. The landowner is generally the responsible person to be able to act for horses fly grazing on their land. It should be highlighted that the legislation is not a statutory duty for a landowner or for the Local Authority, it gives the power to consider taking any appropriate action to enable the horses' removal where deemed appropriate.

Definitions

7. For the purpose of this provision the following definitions are used:

“Local authority” means—

- (a) a county council,
- (b) a district council,
- (c) a London borough council,
- (d) the Common Council of the City of London, and
- (e) the Council of the Isles of Scilly.

“horse” - includes an ass, mule or hinny;

“public place” includes— (a) any common land or town or village green; (b) any highway (and the verges of any highway)

“common land” means – (a) land registered as common land in a register of common land kept under Part 1 of the Commons Act 2006

(b) land to which Part 1 of that Act does not apply and which is subject to rights of common within the meaning of that Act

“town or village green” means land registered as a town or village green in a register of town or village greens kept under Part 1 of the Commons Act 2006.

The Legislation

8. Part 7 of the Animals Act 1971 (amended by the Control of Horses Act 2015) outlines the technical detail for dealing with fly grazing horses:

8A Power of local authorities in England to detain horses

(1) A local authority in England may detain a horse which is in any public place in its area, if the conditions in subsection (2) are met.

(2) The conditions are—

(a) the local authority has reasonable grounds for believing that the horse is there without lawful authority, and

(b) if the land is lawfully occupied by a person—

(i) that person consents to the detention of the horse, or

(ii) the local authority has reasonable grounds for believing that that person would consent to the detention of the horse (but this does not require the authority to seek consent).

8B Powers of freeholders and occupiers in England to detain horses

(1) This section applies where a horse is on any land in England without lawful authority.

(2) The horse may be detained—

(a) in any case, by the occupier of the land, and

(b) if the freeholder is not the occupier, by the freeholder with the occupier's consent.

8C Detention of horses under sections 7A and 7B

(1) This section applies where a horse is detained under section 7A or 7B.

(2) The right to detain the horse ceases at the end of the period of 24 hours beginning with the time when it is first detained unless, within that period, the person detaining the horse gives notice of the detention to—

(a) the officer in charge of a police station, and

(b) if the person detaining the horse knows to whom the horse belongs, that person.

(3) Where notice is given under subsection (2), the right to detain the horse ceases if, within the period of 96 hours beginning with the time when it is first detained, the person entitled to possession of the horse—

(a) claims it, and

(b) complies with the condition in subsection (4).

(4) The condition is that the person tenders to each person with a claim under section 4A in respect of the horse such amount as is sufficient to satisfy the claim.

(5) If by the end of the 96-hour period referred to in subsection (3) the right to detain the horse has not ceased under this section—

(a) ownership of the horse passes to the person detaining the horse, and

(b) accordingly, the person detaining the horse may dispose of it by selling it, arranging for it to be destroyed or in any other way.

(6) Where a horse is sold under this section and the proceeds of sale, less the costs of the sale and any costs incurred in connection with it, exceed the amount of any claims under section 4A in respect of the horse, the excess is recoverable from the person detaining the horse by the person who would have been entitled to possession of the horse but for this section.

(7) A person detaining a horse under this section is liable for any damage caused to it by a failure to treat it with reasonable care and supply it with adequate food and water while it is so detained.

(8) References in this section to a claim under section 4A in respect of any horse do not include a claim under that section for damage done by or expenses incurred in respect of the horse before it was on the land without lawful authority.

(9) In calculating a period of 96 hours for the purposes of this section, disregard any time falling on—

(a) a Saturday or Sunday,

(b) Good Friday or Christmas Day, or

(c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971

Other avenues of response

Animals on a highway

9. If the horse is on a highway constituting a danger to road users, then the police may use emergency powers under section 149 of the Highways Act 1980. The Highways Act 1835 creates an offence in section 72 for a person to tether animals on the highway. Even if a person is convicted of the offence it does not give the highway authority the power to remove them.

Statutory nuisance

10. If the horse constitutes a nuisance the district council may act in line with a statutory nuisance under the Environmental Protection Act 1990

Injunctions

11. Trespass- Fly-grazing may amount to an act of trespass. An injunction can be sought by the owner of the land against the person responsible for the fly-grazing with terms: requiring them to remove the horse forthwith from the land; and restraining them from further acts of trespass. Anti-social behaviour - A civil injunction can be sought under The Anti-social Behaviour, Crime and Policing Act 2014 by a local authority if there is evidence that the person responsible for the fly-grazing in its area has also engaged or threatened to engage in "Anti-social Behaviour". The term "Anti-social Behaviour" is defined by the Act as conduct that has caused, or is likely to cause, harassment, alarm or distress to any person".
12. A breach of an injunction if proven amounts to contempt of court. The Court does not have the power upon such a finding to make an order authorising the local authority to remove the horses from the land.

Animal Welfare

13. Section 4 of the Animal Welfare Act 2006 creates an offence of unnecessary suffering and section 9 places a duty of care on a person to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.
14. Under Section 18 of this act steps can be taken by an authorised officer under the Animal Welfare Act 2006 or a constable to alleviate an animals suffering, and if certified by a veterinary surgeon the animal can be taken into possession or if in its own interests destroyed. Local Authority animal health and welfare officers have powers under this Act but in practice the welfare of horses is dealt with by partner agencies such as the RSPCA and World Horse Welfare who are best equipped to do so. Contacts can be found in Part 4.

Equine Identification (England) Regulations 2018

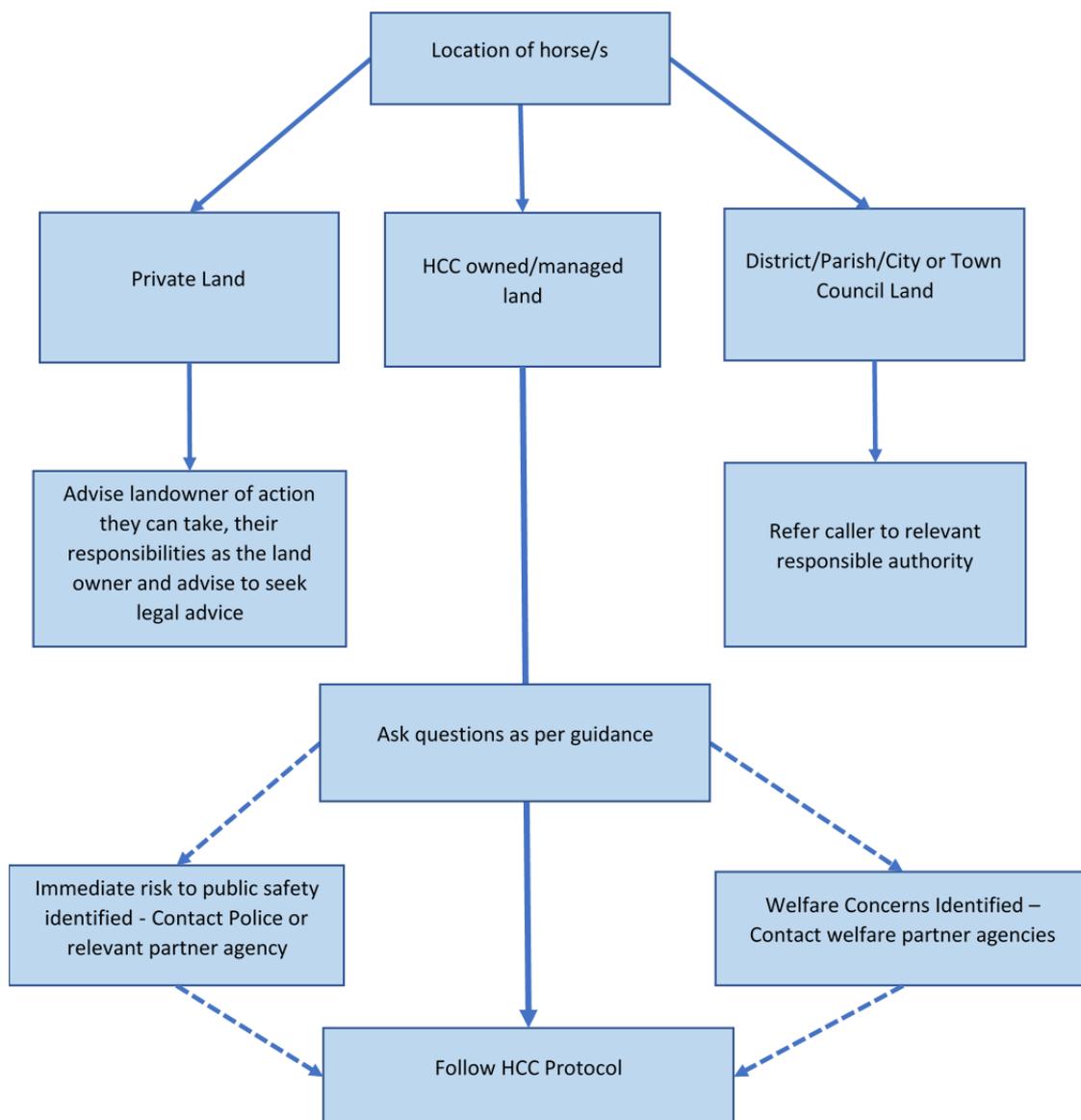
15. This legislation requires the owner of an equine to make an application for ID within 6 months beginning with the day on which the equine was born; or 30th November in the year in which the equine is born, whichever is the latter.
16. Horses born since 1 October 2018 need to be microchipped with a unique number and this must be done before applying for a horse passport.
17. Horses born before 1st October 2009 have until 30 October 2020 to apply for a passport.
18. A horse passport/microchip registration is not regarded as proof of ownership, although it is a requirement for it to be surrendered to a new owner and to be updated within 30 days of change of ownership, as well as accompany it on any movement (with exemptions).
19. Its primary function is to prevent horses that have been treated with certain veterinary medicines (such as wormers and analgesics) from entering the human food chain. It is a useful indication when trying to identify the owner of an animal but should not be relied on solely for absolute proof of ownership.
20. Trading Standards enforce this legislation and information regarding unchipped/passported horses should be passed to them for investigation as per its own enforcement policy, no action would be taken against a person who is uplifting a horse under the CHA.

Part 2 – Process

21. Where horses are found to be fly grazing on HCC land the below practical protocol should be followed, in line with the legislative requirements.
22. It is recognised that each situation is different and the timescales for each will be dependent on many factors, including the animal's welfare, public safety and the availability of resources and partner agencies. In all circumstances public safety and animal welfare should remain a priority.

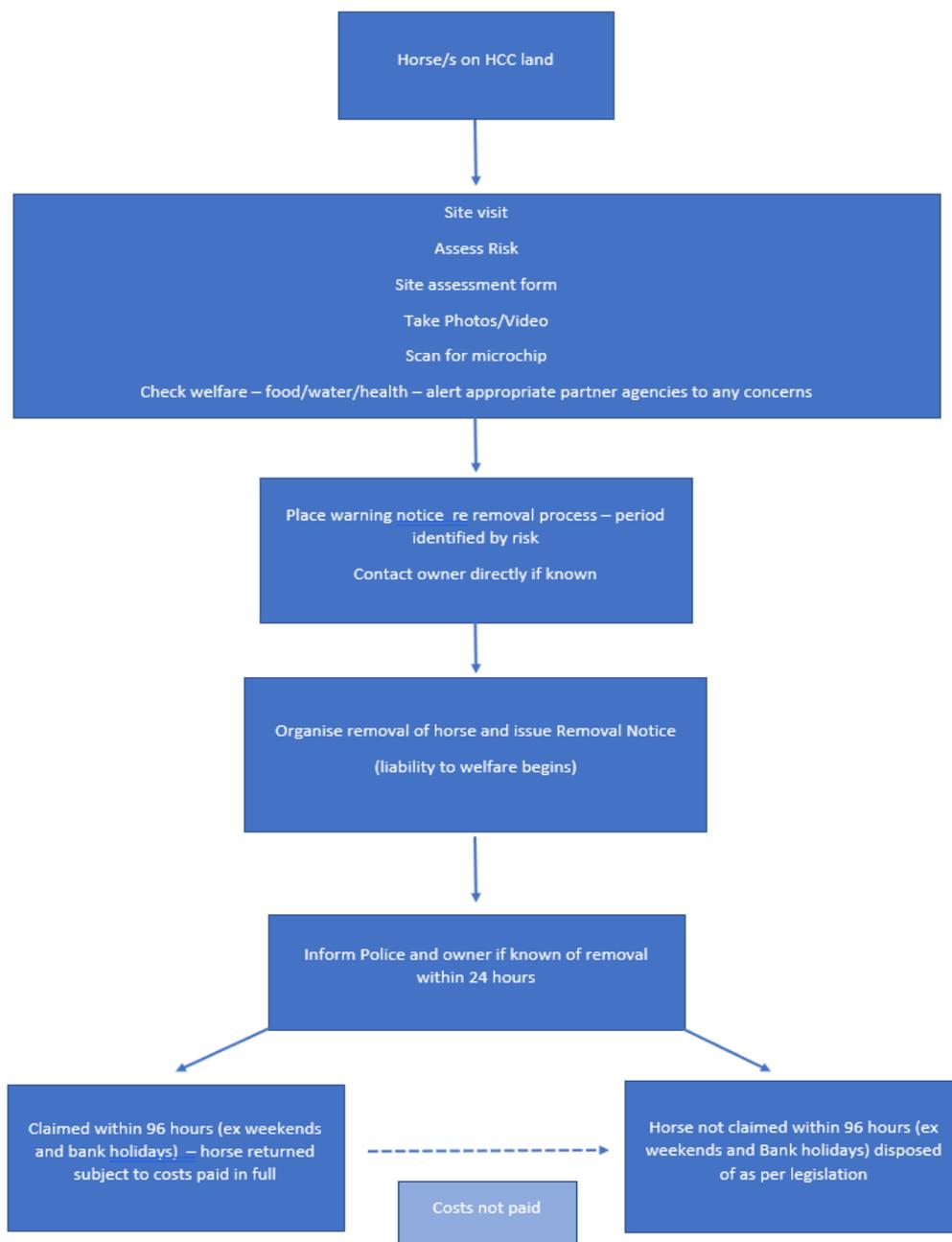
Responding to a complainant

23. The appropriate department within HCC responsible for the land for which the horse is situated on should acknowledge the details of the complaint.
24. The below chart demonstrates the process that should be followed in identifying the appropriate authority to deal with the complaint and addressing immediate concerns.



Dealing with a complaint

25. The process chart below sets out the process to be followed when responding to a complaint.



Site Visit

1. An initial assessment should be carried out at the site to confirm the details of the complaint. **A pro forma can be found in 3.1.**
27. Firstly, consideration should be given to your own health and safety, is the site safe to access, are there any hazards.
28. Secondly, check the security of the site, can the horse/s escape?
29. Welfare should be assessed by eye, if there are any concerns this should be recorded, and a record of the relevant referrals made fully documented. You may not yet be responsible for the animal as it has not been detained, however you do have a duty of care to ensure you report any concerns to the relevant organisations (see welfare contact in Part 4). If possible, you should always scan for a microchip as this may help you in locating the owner and ensuring that the animal may not have been stolen. It is pertinent to remember however that it is not absolute proof of ownership. Please speak to the GTS on matters relating to 'scanning'.
30. Lastly, site access. In considering potential removal of the horses, how accessible is the site, are there any hazards, what is the behaviour of the horse like.

Photos should be taken of the site and horse to assist the persons carrying out the removal, access should be clearly shown, number, size and condition of the horses.

Warning Notices

31. A warning notice is a good tool in getting the owner to take action before the animal is detained under the CHA. If the risk assessment shows there is no immediate concern for public safety or animal welfare it can be enough for the animal to be moved and the situation averted without costly formal action.
32. **It should however be noted that a warning notice is not appropriate in all circumstances. Where the owner is a known repeat offender it would not be appropriate as the offender has shown no change in behaviour from the last time.** By placing a warning notice, you would not be accepting responsibility for that horse at that stage. **A template can be found in 3.2.**
33. You should ensure the notice is placed securely in a prominent position such as on a gateway or a stake, take note that it is protected from adverse weather and does not risk becoming unreadable or blown away.
34. A warning notice should only be issued if the process is intended to be followed through, should the horse not be removed. **Placing a notice and then not taking action will encourage further fly grazing incidents.**
35. Take photos of the notice in situ.

Decision to use a Bailiff Company

36. On making contact with a horse Bailiff company, it is important, from the outset, to ensure clarity with regard to the services you wish the Bailiff to undertake and if possible, to agree those services, together with the fees they will attract, in advance of any work being undertaken by the Bailiff.
37. Each Bailiff company will have its own terms and conditions, so it is important to request a copy of these terms and conditions prior to negotiating and agreeing what fees will be charged.
38. Also, view the Bailiff company's website to see the detail of the services offered, the processes and fees charged for all aspects of their work (see list below).
39. List of most common costs and fees charged by a Bailiff Company
 - Travel
 - Mileage
 - Site inspection
 - Site risk assessment
 - Notices
 - Horse box
 - Staff
 - Vets fees for inspection of the animal
 - Livery costs
 - Storage costs
 - Destruction costs to destroy the horse if requested by customer.
 - Rehoming costs
40. Consideration might be given to transferring ownership of the horse to the Bailiff company, if not reclaimed, in order to mitigate costs.

Removal of horse/s

41. **It is imperative to be fully prepared before taking formal action and be aware that at the point of detention you become responsible for that horse and its welfare.**
42. Should the decision be made to use Horse bailiffs then ensure the cost / terms and conditions are checked and agreed prior to commissioning.
43. NOTE: It is good practise to check to see if the horse(s) is still in situ prior to activating collection by any horse bailiff company. There may be a time delay and any attendance to find the horse has been moved can prove expensive.

Options for care

44. There are several options when it comes to the removal of horse/s and these will depend on the nature of the problem and scale in terms of number of horses. It may be that the horse has complex welfare needs for which a charity may agree to take on the horse on your behalf and then have it signed over to them after the 96 hours expire.

45. The use of a bailiff may be assessed as being appropriate in general circumstances. A bailiff company will often manage the situation from start to end, including making the site visit, placing warning notices and removing the horse/s on your behalf. They are often a resource to consider where there may be anticipated aggravation from the horse's removal and will correspond with any potential owner on your behalf. It should be noted however this can be an expensive option.
46. **As the council will assume legal responsibility for the horse(s) from detention until the point they are signed over to a 3rd party for rehoming/disposal; it is important that you are satisfied regarding the care and welfare including the disposal route a 3rd party will take on your behalf. It would be best practice to ensure a veterinary assessment of the horse whilst under detention. If you are unsure of the animal's fitness to be moved from the site, you should consult a veterinary surgeon who can certify its fitness for the intended journey.**
47. **Due to a conflict of interest for any subsequent claim that may be made by an owner it is important that the horse(s) is never cared for by the complainant whilst under detention or being considered for rehoming. It can not be ruled out that there could be historical issues between the two parties which may be identified as an issue later in proceedings.**

Notice of Detention

48. **By issuing this notice, Template in Part 3.3, you become legally responsible for the horse(s).**
49. **It is best practice to not leave a horse on the site whilst under a detention notice, as you are legally responsible at this stage for the welfare and safety of the animal and cannot guarantee it will not be removed by a 3rd party or be caused injury. The animal must be moved to a secure place of safety.**
50. In practice the organised removal and the notice of detention should be happening at the same time.
51. For a public place you will be using part 7A of the CHA and for council owned land that does not constitute a public place you will be using 7B of the Act, (See Paragraph 7)
52. **It is a legal requirement of the process that, within 24 hours:**
 - a. **You notify the officer in charge of a police station**
 - and**
 - b. **If the person detaining the horse knows who the horse belongs to, advise that person. Otherwise your right to detain it ceases.**
53. You should keep a clear record of this process and any correspondence with the owner and best practice is to do this in writing. If you are writing to a known address this should include proof of delivery to that address, consider a photo of a hand delivery; If it is a phone call as you only have a contact number, record the details of the call including number, time and date of call and any discussion. You need to be satisfied that you have tried all avenues to contact the owner during this 24 hour

period. You can find a **template letter to notify the police in Part 3.4 and to notify the owner in Part in 3.5.**

54. It is important to keep track of your costs in case a claim is made for the horse.

Making Claim to a horse

55. In order for a person to make claim to a horse(s) they must within 96 hours (excluding weekends/bank holidays) of detention make claim to it **and** tender to each person with a claim under section 4A in respect of the horse, such amount as is sufficient to satisfy the claim.

56. In practice they must:

57. Pay for any damage done by the horse to the land, or any property on it which is in the ownership or possession of the freeholder or occupier of the land Pay any expenses which are reasonably incurred by a person detaining the horse under section 7A or 7B of this Act in keeping the horse while it cannot be restored to the person to whom it belongs

or

58. While it is detained under section 7A or 7B of the Act, or in ascertaining to whom it belongs (Section 4 of the Act).

59. If after a period of 96 hours there is no claim to the horse in line with the above, ownership of the horse passes to the person detaining the horse and accordingly, the person detaining the horse may dispose of it by selling it, arranging for it to be destroyed or in any other way.

60. The council would need to officially relinquish ownership to the party taking on the horse and a **template for this can be found in Part 3.6.**

Intelligence reporting

61. To ensure there is cross boarder intelligence sharing any report detail should be entered on to IDB intelligence database for sharing with other Local Authorities and partner agencies such as the police. If your department does not have access Trading Standards Animal Health can enter this information for you. Details should be provided securely to them via the useful contacts information in appendix 4.

Part 3 - Forms

3.1 Site Inspection Form – Fly grazing Horse(s)

Date:..... Time:..... Officer:

Location:.....

Health and Safety

Site safe to enter? (If not do not do so) Y / N - If No carry out visual inspection from outside area:

Horse/s secure in area: Y / N

Horse(s) approachable Y / N

Is land tenanted? Y / N / U/K If so by whom:

Description of site; identify nearby hazards/concerns (open to roads, play parks):

.....
.....

Welfare

Number of horses

Description of horse(s) (markings, height, body condition, age)

.....
.....

Horse/checked for microchip Y / N

Chip found Y / N / N/A Chip numbers:

.....

Horse/s tethered? Y / N Secure tether Y / N

Food Y / N Water Y / N Shelter Y / N

Other information:

3.1. Continued

Accessibility

Ground conditions

Access for a lorry Y / N

Entrance width / turning area

Other vehicle accessibility Hazards / comments

Photos taken Horse/s Site layout Access

Warning Notice placed on this visit? Y / N Photo taken

3.2 Warning Notice

ANIMALS ACT 1971
(as amended by The Control of Horses Act 2015)

WARNING NOTICE

For the attention of the owner of horse(s) at:

.....

.....

These horse(s) are on this land without lawful authority

This notice is to inform that if any horse(s) remain on this land (or return to this land) on or after

.....

Hampshire County Council may take further action after this time to detain the horse(s) under Section 7A/ 7B of the above Act

If you are the legal owner, or have information regarding the ownership of the animal(s) please contact

Name (in block capitals):.....

Hampshire County Council

Telephone:

Signed:.....Dated:.....

3.3 Detention Notice

ANIMALS ACT 1971
(as amended by The Control of Horses Act 2015)

TAKE NOTICE

**The following horse(s) have been detained under Section
7A/ 7B of the above Act**

Description of horse(s):.....
.....
.....

Found at the following address / location:
.....
.....

This notice hereby gives 4 days (96 hours) (not including weekends/bank holidays) for the above described horse(s) to be claimed by the owner. After this time period if no information is forthcoming, in relation to the provisions under Section 7C of the Animals Act 1971, the horse(s) will be disposed of by being re-homed, sold or humanely destroyed.

If you are the legal owner, or have information regarding the ownership of the animal(s) please contact:

Name (in block capitals):.....
Hampshire County Council

Telephone:

Signed:.....**Dated:**.....

4 Day notice Period Starts:.....

4 Day Notice Period Ends:.....

3.4 Police Notification Control of Horses Act 2015

Dear

<i>Insert contact address</i>

Animals Act 1971 & Control of Horses Act 2015

As required by section 7 of the Animals Act 1971 and Section 3 (7c) 2a of the Control of Horses Act 2015 I hereby give you notice that the following horse/s have been found on land owned/ managed by Hampshire County Council without lawful authority and have therefore been detained by Hampshire County Council on

Date Time.....

Site on which found:

Description of horses:

.....

The owner has a period of 96 hours (excluding weekend and bank holidays) from the above time and date in which to reclaim the horse/s, by making claim and settling any costs associated with their detainment or any damage caused by the horse/s. If these costs are not met the horse/s will not be released. If no right of claim and settlement occurs within this time legal ownership of the horse/s transfers to Hampshire County Council.

Proof of ownership will be required to be provided to release the horse/s.

*An owner has not been identified for these horse/s

*A possible owner has been identified and where so have been informed of the detainment of the horses and procedure for claiming them by the following means:

.....

.....

**delete as appropriate*

Yours Sincerely,

Officer Signature

Officer name PRINT

Contact number:

Contact Email:

3.5 Owner Notification Control of Horses Act 2015

Insert contact address

Dear

Animals Act 1971 & Control of Horses Act 2015

As required by section 7 of the Animals Act 1971 and Section 3 (7c) 2b of the Control of Horses Act 2015 I hereby give you notice that the following horse/s have been found on land owned/ managed by Hampshire County Council without lawful authority and have therefore been detained by Hampshire County Council on Date Time.....

Site on which found:

Description of horses:

.....

It is believed that you are the owner of these horse/s and as so I now notify you that you have a period of 96 hours from the above time and date (excluding weekend and bank holidays) in which to reclaim the horse/s, by making claim and settling any costs associated with their detainment and/or any damage caused by the horse/s. If these costs are not met the horse/s will not be released. If no right of claim and settlement occurs within this time legal ownership of the horse/s transfers to Hampshire County Council.

Proof of ownership will be required to be provided to release the horse/s.

Yours Sincerely,

Officer Signature

Officer name PRINT

Contact number:

Contact Email:

3.6 Transfer of Ownership from HCC

TRANSFER OF ANIMALS FROM HCC	
Department REF.:	
OFFICER's NAME.....	Tel N°:
I, <i>Transferor on behalf of Hampshire County Council</i>	
hereby now and for all time in the future, renounce completely all claims, rights and	
ownership of:	
(brief description of animals)	
.....	
.....	
.....	
.....	
.....	
.....	
to,of	
.....	
.....	
.....	
Dated this day of 20.....	
Time:	
Signed Transfrer : <i>on behalf of Hampshire County Council</i>	
Print Name:	
Signed Transferee:	
Print Name:.....	
This Agreement constitutes the entire Agreement between the parties pertaining to its	
subject matter and supersedes all prior contemporaneous agreements, representations and	
undertakings of the parties.	
Witnessed by:	
Signed:	

TRANSFEROR'S REPRESENTATIONS

As of the Effective Date and at the Transfer of Possession, the Transferor makes the following representations:

Transferor has provided the Transferee with copies of all the Animals vaccination records and other veterinary records in the possession of the Transferor.

Transferor is the sole owner of the Animal and has all authority to enter into this Agreement.

There is no lien or encumbrance on the Animal.

On completion of the Agreement the Transferor shall provide the Transferee with ALL documents necessary to transfer the Animal from the Transferor to the Transferee.

RISK OF LOSS

Upon the Transfer of Possession the Transferee will assume all risk of loss or injury to the Animal from the Effective Date

Part 4 - Useful Contacts

Hampshire County Council

- Estates
Chris Jelliffe 0370 779 3967
- County Farms
Josie Palmer 0370 779 8057
- Gypsy Liaison
GLO-Nicholas WAITE – 07736793003
SGLO – Barry Jordan-Davis – 07736 792918
- Highways - <https://www.hants.gov.uk/transpor>
- Trading Standards 01962 833620 - tsadvice@hants.gov.uk

External Partners

- Hampshire Fire and Rescue (animal rescue) 02380 725292
rural.safety@hantsfire.gov.uk
- Hampshire Police non emergency 101

Welfare Organisations

- RSPCA – 0300 1234999 www.rspca.org.uk
- World Horse Welfare 08000 480180 www.worldhorsewelfare.org.uk
- British Horse Society 02476840517 www.bhs.org.uk
- National Equine Council info@newc.co.uk www.newc.co.uk
- Horse Trust 01494 488464 info@horsetrust.org.uk www.horsetrust.org.uk
- British Horse society 02476 840500 enquiry@bhs.org.uk www.bhs.org.uk
- Redwings 01508 481000 www.redwings.org.uk

Bailiff companies

- GRC – 0845 6014307 office@grcgroup.co.uk
- Dean & Company 01227 752665 theb@iliffs.co.uk
- Equine and Land Management 0844 8099355
 - Equine Emergency Service ees@mail.com
 - The Sheriffs Office 0845 6889757
 - Traveller Evictions 01636 642868