

The law and management of public access rights vary widely between the four countries of the United Kingdom. Practical elements of the following advice apply in all of them but the legal requirements in Scotland and Northern Ireland may differ from those in England and Wales.

Riders and drivers of horses are referred to generically as equestrians.

More advice is available on www.bhs.org.uk/accessadvice.

IMPORTANT This guidance is general and does not aim to cover every variation in circumstances. Where it is being relied upon, The Society strongly recommends seeking its advice specific to the site.

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Fly-grazing is the unlawful grazing of horses (and other animals) on land without permission of the landowner. Such land may include the verges of highways, which includes bridleways and byways as well as tarmac roads or unsurfaced roads, and on commons and open space. The presence of loose or tethered horses can be a hazard for riders and carriage-drivers (equestrians) and may prevent them from using their right to pass, so amounting to an obstruction of the highway or common right of access.

Fly-grazed horses may be stallions, so equestrians should always be wary.

This advice note addresses fly-grazing on highways and its effect on riders and carriage-drivers. For welfare concerns regarding abandoned or fly-grazing horses or fly-grazing on land without public access, see Welfare on www.bhs.org.uk.

What to do about fly-grazing on highways

In England and Wales, the police and local authorities have powers to remove horses left on bridleways, byways and roads (highways). Fly-grazed horses on highways should always be reported to the police and the highway authority (county council) with a request for action, explaining the danger posed by the horses to users of the highway.

If the route is a byway or bridleway, officers may not recognise it as a highway, with the same law applicable as on a public road, if they are less familiar with the law or fly-grazing.

Authorities may not have officers with specific responsibility so where there is doubt which department that may be, it should be reported to the Chief Executive. The highway authority will be the county council if the area has borough or district councils as well as a county council, or the council if it is a unitary authority area (with one council providing all services).

Where horses are preventing use of a highway or presenting a hazard to those using it, you should also copy the report to the council officer responsible for public rights of way and make it clear that the way is obstructed. Where the fly-grazing horses are endangering users or preventing use of the highway, the authority is required to act because the horses are an obstruction, which is a criminal offence. If the horses are not preventing use of the highway, the authority has a power to act but not necessarily a duty (requirement).

It may be necessary to clarify that the presence of the horses is preventing use by equestrians even if it is not preventing use on foot, as this may not be recognised by an officer who is not a rider, and may visit on foot.

The authority has a duty, defined in the Highways Act 1980 Section 130, to “assert and protect” the right of the public to use the right of way. In this respect, fly-grazing is an obstruction, in the same way as a locked gate.

What may happen

Best results are achieved in council areas where there is zero-tolerance to fly-grazing and a coordinated joint approach between the landowner, the police and the local authority, and the various services within the local authority — trading standards for horses without microchip or passport, public rights of way/highways,

the officers responsible for stray, loose or abandoned animals and for traveller liaison (these roles are not defined in all authorities, especially small unitaries).

Landowners are liable for the welfare of any horses left on their land, and for any incident arising from one of those horses straying onto a highway or endangering a highway user so they will be keen to achieve an early solution. The National Farmers' Union and Country Landowners' Association have advice for their members and the action they may take.

The highway authority is unlikely to be the owner of the land over which a public bridleway, byway or road passes, but the owner may not be known or registered if the way is ancient and separated from land to each side by fences, hedges or walls. The surface layer of any highway is 'vested in' the highway authority irrespective of who owns the land so it has a responsibility for what happens to that surface, as well as a responsibility to keep the highway clear and usable in safety, by taking enforcement action against others if necessary.

The highway authority should serve notice on the owner of the animals to remove them, either directly if the owner is known, or by posting notices on site if unknown. The notice states that the horse(s) will be taken, kept for four days,¹ and then ownership passes to the landowner, who may sell, re-home or humanely destroy the animals. The authority may reclaim the costs of doing so from the owner (if known) or through sale of the animals. Most authorities use the services of equine bailiffs for this work.

Fly-grazing is more common in some parts of the country than others, but when action is taken in one area, the problem tends to move rather than disappear if there is not consistent action by all highway authorities. Lack of action by an authority may arise from not having a protocol in place to deal with fly-grazing. It may be necessary to be persistent in complaining about the obstruction, and in encouraging others to also complain. Details of the process for taking action on obstruction are available in BHS Advice on Blocked and difficult to use bridleways on www.bhs.org.uk/accessadvice.

Where the highway authority does not have a protocol in place, it may be difficult to identify the officer responsible and to ensure swift action is taken. Where an authority is reluctant to act, the situation is very likely to deteriorate.

¹ Control of Horses Act 2015 (England), Control of Horses (Wales) Act 2014

In a highway authority unused to dealing with fly-grazing, various delays and misunderstandings may arise. The points most beneficial to understand for the welfare of the horses, the reduction of impact on local people and on the authority are:

- A highway includes a bridleway or byway and is a public place where a tethered horse may present a safety risk to the public, a risk which is increased for equestrians and if the tethered horse is a stallion.
- Tethering on the highway is not illegal, but fly-grazing is unlawful and tethering without intention to graze is unusual.
- The horse or its tether will be an obstruction of part or the whole width of the highway. Obstructing the public highway is a criminal offence ('highway' includes bridleways and byways). The extent of the highway commonly includes the whole width between fences or ditches so including verges, not just a worn or surfaced width.
- Horses preventing use by the public by intimidation (fear of the animal or consequences of passing it) or direct aggressive behaviour are an obstruction.
- If tethered horses are unable to complete a circle, they do not have freedom of movement, which is a welfare issue (tethers need swivels at both ends).
- The landowner is responsible for the welfare of horses on their land plus the highway authority's vested interest in the surface means they are liable to undertake frequent visits (several times a day) to check the welfare of horses, which may involve a veterinary surgeon or knowledgeable consultant.
- Adequate welfare visits are more expensive than removing the horse(s).

Authorities need to encourage responsible ownership of horses, which includes castration if appropriate, microchipping and having a passport for every horse.

Police and the public can seize horses but the police have no more power than the public so it is better that the local authority take action as they have more power.

Failing to act encourages more fly-grazing which creates an escalating welfare problem and may result in the area becoming a hotspot for fly-grazing or abandonment, leading to higher costs to resolve plus the potentially serious effect on the lives of the residents or businesses in the area.

Authorities have the power to act but not a duty unless there is threat to the safety of the public or obstruction of the highway, therefore it may be necessary

to lobby councillors to stimulate the political and managerial will to take action. It is also helpful to provide evidence of the risk to the public through photographs and video.

Information on fly-grazing as an issue of horse welfare can be found on www.bhs.org.uk.

If this is a saved or printed copy, please check www.bhs.org.uk/accessadvice for the latest version (date top of page 2).