



AN BILLE UM RIALÚ CAPALL, 1996
CONTROL OF HORSES BILL, 1996

EXPLANATORY AND FINANCIAL MEMORANDUM

General

The Bill honours an undertaking in the *Government of Renewal Programme* to introduce legislation to control wandering horses in urban areas. Its main provisions are (a) the declaration, by means of local authority bye-laws, of control areas where horses may not be kept without licences, (b) the granting of licences to horse owners in control areas subject to compliance with conditions to be set out in bye-laws, (c) disqualification from keeping a horse or from obtaining a licence, (d) a ban on the sale of horses to minors under the age of 16 years, (e) the seizure, detention and disposal of stray, unlicensed or unidentifiable horses or horses causing a nuisance or posing a danger, (f) criminal liability for injury or damage caused by horses, (g) powers of enforcement for authorised persons and members of the Garda Síochána and (h) powers of arrest and the issue of search warrants. The Bill also provides penalties on conviction of offences under the legislation. In addition, the Bill provides for amendments to the Protection of Animals Act, 1911, the Pounds (Provision and Maintenance) Act, 1935, the Protection of Animals (Amendment) Act, 1965, and the Animals Act, 1985.

Financial Implications

The Bill contains a number of financial provisions — in particular licence fees, fees for inspections of registers, fees in respect of horses detained and summary fines to be paid to local authorities — whereby revenue will accrue to the local authorities to implement the legislation. In addition, the Bill proposes that the costs to the Minister for Agriculture, Food and Forestry in the administration of the legislation shall be met, to the extent sanctioned by the Minister for Finance, out of moneys provided by the Oireachtas. It is also proposed that the Minister for Agriculture, Food and Forestry, with the consent of the Minister for Finance, may make grants towards the expenses of a local authority incurred under the legislation. The precise staffing and other requirements of the local authorities will be finalised between the Departments of Finance and Agriculture, Food and Forestry in the context of Estimate/Budget discussions.

Detailed Provisions

Part I: Preliminary and General

Section 1 sets out the short title of the Act and provides for commencement by Ministerial Order.

Section 2 contains definitions. In particular the concept of control areas is introduced: these are areas, which are likely to be mainly urban, to be designated in bye-laws made by the local authorities under *section 17* in which horses may not be kept without licences.

The definition of disposal (of a horse) includes selling, giving away or destruction. The definition of horse is that of the Protection of Animals (Amendment) Act, 1965. A stray horse is defined as a horse apparently wandering at large, lost or unaccompanied by any person apparently in charge of it in a public place or on any premises without the owner's or occupier's consent.

Section 3 provides for the appointment of authorised persons by the local authorities to exercise the functions conferred on them by the Act.

Section 4 empowers a member of the Garda Síochána to arrest without warrant persons suspected of having committed certain offences under the Act. These offences are: failure to remove an unlicensed horse from a public place or a control area; failure to give name and address to an authorised person of the local authority or the Garda Síochána where the commission of an offence under the Act is suspected; failure to desist from dangerous use of a horse, from infringing bye-laws relating to horse control and welfare, or from having a horse in an area from which it is excluded; obstruction of an authorised person of a local authority or a member of the Garda Síochána in the exercise of their duties; failure to adhere to bye-laws relating to the control and welfare of horses; keeping, having or riding a horse in an exclusion area.

Section 5 deals with offences committed by a body corporate or by a person acting on behalf of a body corporate or an unincorporated body of persons. Where such offences are committed with the consent or connivance of, or are attributable to any neglect on the part of, any person who at the time of the offence is a director, manager, secretary or other officer of the body, that person shall in addition to the body be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the offence.

Section 6 provides that maximum penalties for offences under the Act (other than *section 42*) will be a fine of £1,500 or 6 months' imprisonment or both. For an offence under *section 42* the maximum penalties will be as follows:

- on summary conviction a fine of £1,500 or 6 months' imprisonment or both;
- on conviction on indictment a fine of £10,000 or 2 years' imprisonment or both.

The summary fines are payable to the local authority which prosecuted the offence.

Section 7 provides that, on conviction of an offence, a person may, in addition to the penalty imposed, be disqualified from keeping a horse for such period as the court sees fit.

Section 8 empowers the court to order the forfeiture of a horse to a local authority on conviction of the owner of an offence where the welfare of the animal so demands. The local authority may seize and detain the horse and dispose of it as it thinks fit.

Section 9 empowers a local authority or the Garda Síochána to prosecute offences summarily.

Section 10 allows the imposition of an on-the-spot fine of £50 (variable by Ministerial regulation) for offences such as failure:

- to licence a horse kept in a control area (*section 18*),
- to inform the local authority in relation to the disposal or change of ownership of a horse (*section 25*),
- to produce a horse licence for inspection by the local authority or the Garda Síochána (*section 26*),
- to remove an unlicensed horse from a public place or control area (*section 27*),
- to comply with bye-laws (*section 43*),
- to keep a horse out of an exclusion area or to comply with a requirement of an authorised officer or a member of the Garda Síochána that a horse be removed from an exclusion area (*section 44*).

Section 11 provides that the horse registers kept under *sections 24* and *39* must be open for inspection on payment of a fee specified in bye-laws. A person will be entitled to obtain a copy of or an extract from an entry in the registers on payment of £5 or such other amount as may be specified in bye-laws. Provision is also made for the receipt in evidence in any legal proceedings of certified copies or extracts without proof of the signature of the certifying officer of the local authority or member of the Garda Síochána. The registers may be prepared, established and maintained in a form that is not legible if they are capable of being converted in to a legible form.

Section 12 deals with regulations which may be made by the Minister. The Minister is empowered to make regulations prescribing:—

- the amount of the on-the-spot fine (*section 10*),
- the persons exempt from the requirement to have a horse licence (*section 19*),
- the licence fee (*section 22*),
- the means of identification of horses kept in control areas (*section 28*).

Provision is also made for the laying of regulations made under the Act before the Houses of the Oireachtas.

Section 13 sets out the procedure to be followed by a local authority in making bye-laws for horse control and related matters. Not less than 2 months before making the bye-laws, with the exception of short-term bye-laws made under *section 44*, the authority must publish in one or more newspapers published in the State and circulating in the area affected by the proposed bye-laws a notice:

- indicating the intention to make the bye-laws,
- stating the purpose of the bye-laws,
- indicating the conditions for public access to the draft bye-laws,
- inviting submissions from the public on the bye-laws.

The making of bye-laws under this legislation will be a reserved function, i.e. a function of a local authority which is performable directly by the elected members.

Section 14 deals with the manner in which notifications or notices must be served on persons under the Act.

Section 15 provides that the Minister, with the consent of the Minister for Finance, may make grants towards the expenses of a local authority incurred under this Act.

Section 16 provides for the payment of expenses incurred by the Minister out of moneys provided by the Oireachtas.

Part II: Licensing of Horses in Control Areas

Section 17 empowers a local authority to declare any area within its functional area to be a control area where horses must be controlled by licence in order to prevent them from causing annoyance, damage, injury or nuisance.

Section 18 provides that a horse owner who keeps a horse or has it kept for him in a control area must hold a horse licence granted by the local authority. It is also provided that a non-owner cannot have control or charge of an unlicensed horse in a control area. Pound keepers and veterinary surgeons in the exercise of their services and other designated classes of persons are exempted from the licensing requirement.

Section 19 exempts certain horses kept in control areas from the licensing requirement. Examples of such exempted horses are those kept by the local authority, the Garda Síochána or the Minister for Defence, horses being treated by a veterinary surgeon on premises other than the premises where the horses are kept, foals kept with their dam or foster-mother.

Section 20 empowers a local authority to grant a horse licence to the owner of a horse entitling the owner to keep the horse in a control area. The licence shall be in respect of a particular horse specified in the licence. Provision is made for the amendment, revocation or suspension of the licence if the holder is in breach of the Act or the conditions of a licence or has already had a licence amended, revoked or suspended. The local authority may not grant a horse licence to certain categories including persons under 16 years of age or persons disqualified from keeping a horse under *section 7*. Local authorities may exchange information with one another regarding horse licences.

Section 21 declares that a person who fraudently alters, or uses, or permits fraudulent alteration or use of a horse licence shall be guilty of an offence.

Section 22 sets out the procedure for applying for a horse licence. The application shall be to the local authority and shall include the submission of an appropriate fee to be specified in bye-laws made by the local authority. An application unaccompanied by the fee shall be invalid.

Section 23 sets out a procedure for appeals against a decision by a local authority to refuse to grant a horse licence or to amend, revoke or suspend a horse licence. Where the local authority notifies an applicant for a horse licence or a licence holder of such decision, the

aggrieved person may make representations within 14 days of the notification. The applicant or holder may in turn appeal against such decision to a judge of the District Court. A decision of the District Court on an appeal shall be final save that, by leave of the Court, an appeal from the decision shall be to the High Court on a specified question of law.

Section 24 requires each local authority to maintain a register of horse licences granted by it. The register must contain information such as: an identification reference and description of the horse; the name and address of the horse owner or, if the horse is kept by a person other than the owner, the name and address of the keeper; the place where the horse is kept.

Section 25 requires that, where the holder of a horse licence disposes of a horse, he or she must notify the local authority about the disposal within 14 days of disposal and must surrender the licence to the authority. Where ownership of the horse has changed, the name and address of the new owner (where known) must be given to the local authority (and the authority must record these particulars in the register maintained under *section 24*).

Section 26 provides that an authorised person of a local authority or a member of the Garda Síochána may request a person whom they suspect is the owner of a horse kept in a control area to state whether such owner has a licence for the horse. It is also provided that the authorised person or the Garda may request the holder of a licence to produce it for inspection within 10 working days of the request.

Section 27 empowers an authorised person of a local authority or a member of the Garda Síochána to require a person in control or charge of an unlicensed or unexempted horse in a public place or control area to remove the horse immediately from the public place or control area.

Section 28 empowers the Minister to make regulations for the identification of horses kept in control areas. This provision is intended to facilitate the prescription of nationwide means of identification so that straying over county borders can be detected.

Part III: Control of Horses

Section 29 empowers an authorised person of a local authority or a member of the Garda Síochána to inspect and examine any horse. It is also a requirement of this section that the person in charge or control of the horse shall give the authorised person or the Garda any reasonable assistance they may request for the purposes of the inspection or examination.

Section 30 obliges any person who keeps or has charge or control of a horse, or the owner or any person in charge of a premises where a horse is found, to give, when requested, the name and address (if known) of the owner of the horse to an authorised person of a local authority or a member of the Garda Síochána.

Section 31 empowers an authorised person of a local authority or a member of the Garda Síochána to request their name and address from a person whom the officer or Garda suspects is committing or has committed an offence.

Section 32 provides that an authorised person of a local authority or a member of the Garda Síochána may direct a person to desist from offending against the provisions of *section 42* or against bye-laws made under *section 43* or *44*, i.e. to desist from dangerous use of a horse, from infringing bye-laws relating to horse control and welfare, or from having a horse in an area from which it is excluded, if the authorised person or Garda has reasonable cause to suspect that the person is so offending.

Section 33 provides that, where an authorised person of a local authority or a member of the Garda Síochána suspects that an offence is being committed or a horse is being illtreated in any premises or vehicle, the authorised person or member may enter such premises or vehicle and may there or in any other place and with the assistance of other persons or equipment, search for any horse or document and may take extracts or copies from the document. The authorised person or the Garda may not enter a dwelling without a search warrant authorising such entry.

Section 34 provides that a judge of the District Court may issue a search warrant to a named member of the Garda Síochána to enter (if necessary by force) and, within one month, to exercise on the premises named in the warrant any of the powers conferred on a member of the Garda Síochána under the Act.

Section 35 makes it an offence to obstruct or impede the authorised person of a local authority or a member of the Garda Síochána in the exercise of their functions under the Act.

Section 36 empowers an authorised person of a local authority or a member of the Garda Síochána to seize and detain any horse which the officer or member suspects to be a stray horse, a horse not under adequate control, a horse causing a nuisance or posing a danger to persons or property, a horse being kept in a control area without a licence, a horse not capable of being identified, or a horse being kept or ridden in an exclusion area. A person who without lawful authority removes a horse from a place of detention while it is being detained shall be guilty of an offence.

Section 37 empowers the local authority in whose functional area the horse was found or the Superintendent of the Garda Síochána to attach an identification mark or device to a horse which has been detained under *section 36*.

Section 38 empowers the local authority or the Superintendent to continue to detain a horse for the purposes of court proceedings or for disposal in accordance with bye-laws made by the local authority. Bye-laws made under this section in relation to a horse detained under *section 36* may deal with the notices to be given or displayed in connection with the detention, the fees (including transport costs) to be paid by the owner or keeper of the horse detained, the provision of veterinary services, and the sale, disposal or destruction of the horse. If the owner or keeper of the horse is known, the sale, disposal or destruction shall take place if he or she fails to produce a horse licence or to remove the horse from detention. The local authority or the Superintendent are empowered to enter into any arrangements with any person (including a pound keeper) in respect of the acceptance, detention, disposal and destruction of horses detained under *section 36*.

Section 39 requires every local authority to maintain a register of horses seized and detained in its functional area which come into its possession. Every Superintendent is required to maintain a register

of horses seized and detained by the Garda Síochána. The registers must contain particulars such as an identification reference, a description of the horse, the date of seizure and detention, the manner in which the horse is dealt with, the place of detention, and details of the person reclaiming the horse.

Section 40 makes it an offence to sell or attempt to sell a horse to a person under the age of 16 years.

Section 41 is a necessary amendment of section 24 of the Protection of Animals (Amendment) Act, 1965, to obviate conflict between the prohibition against the sale of animals as pets to persons under the age of 12 years and *section 40* of the present Bill. The table accompanying *section 41* sets out the provision in the said section 24 following insertion of the amendment.

Section 42 attaches criminal liability to the owner, keeper or person in charge or control of a horse who wilfully or recklessly permits a horse to pose a danger to a person or property or to cause injury to a person or damage to property, or who wilfully or recklessly causes a horse to pose a danger to a person or property or to injure a person or damage property.

Section 43 empowers local authorities to make bye-laws for the control and welfare of horses in the whole or part of its functional area. A local authority may:

- specify the manner in which a horse is to be kept under control in a public or other place so as to prevent injury or nuisance,
- require identification of the horse in such manner or by such means as may be specified,
- specify the manner in which a horse is to be accommodated.

Section 44 empowers a local authority to prohibit by bye-law the keeping or riding of a horse in an area where the horse is causing or is likely to cause a nuisance, injury or damage. An authorised officer of a local authority or a member of the Garda Síochána may require a person whom they suspect is contravening any bye-law made under this section to remove the horse immediately from the area to which the prohibition applies.

Part IV: Miscellaneous Amendments to Other Enactments Relating to Animals

Section 45 provides that the maximum penalties under subsection (1) of section 1 of the Protection of Animals Act, 1911, will be as follows:

- on summary conviction a fine of £1,500 or 6 months' imprisonment or both
- on conviction on indictment a fine of £10,000 or 2 years' imprisonment or both.

This provision seeks to address a limitation of the existing section 1(1) in that it contains only minor penalties on summary conviction. With the increased emphasis on animal welfare, it is considered that the penalties should be recast to include higher penalties on conviction on indictment. The proposed repeal of subsections (2) and (3) of section 20 of the Control of Dogs Act, 1986, by *subsection (2)* is

