

## Annex C – Impact Assessment

### Summary: Intervention & Options

<b>Department /Agency:</b> Department for the Environment, Food and Rural Affairs	<b>Title:</b> Impact Assessment of The Legislative Reform (Animals Act 1971) (Amendment) Order 2009	
<b>Stage:</b> Consultation Proposal	<b>Version:</b> 1	<b>Date:</b> 1 February 2009
<b>Related Publications:</b> Consultation on Changes to the Animals Act 1971 to clarify the application of strict liability to the keepers of animals. Defra. September 2008.		

#### Available to view or download at:

<http://www.defra.gov.uk/corporate/regulat/impact-assessment/>

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#### What is the problem under consideration? Why is government intervention necessary?

There is disagreement and conflicting case law concerning the interpretation of section 2(2) of the Animals Act 1971, which imposes strict liability on the keepers of animals that cause harm or damage in certain circumstances. This lack of clarity has adversely affected equestrian and other, particularly rural, businesses whose commercial activity involves non-dangerous species of animal, as they have faced uncertainty over their legal position in the event of their animals causing harm or damage. This lack of legal certainty may also have adversely affected these businesses through large increases in insurance premiums. Government intervention to amend the Act would ensure greater certainty in the law.

#### What are the policy objectives and the intended effects?

The Government is committed to reducing burdens on business generally and to promoting rural enterprise. Amending section 2(2) of the Animals Act to remove the current lack of clarity will enable the courts to decide more easily whether strict liability applies in particular cases, and thus provide a more certain legal environment in which equestrian and land-based businesses, such as farms and commercial estates, can operate and flourish.

#### What policy options have been considered? Please justify any preferred option.

Amending the Act is the only option if we wish to improve the clarity of the existing legislation. Doing nothing would not achieve any improvement in clarity and, therefore, not resolve the problem. In the absence of suitable primary legislation, the Government has previously supported a Private Member's Bill to achieve this objective. This option failed and the Government now favours a Legislative Reform Order as a means to amend the Act.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The Government would be prepared to review the impact of the amendment in 2012, which should allow time for the effects of the amendment to be identified and assessed.

#### **Ministerial Sign-off** For Consultation Proposal Impact Assessment:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

..... Date:

## Summary: Analysis & Evidence

<b>Policy Option:</b>		<b>Description: Legislative Reform Order</b>			
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' It is not expected that there will be any significant monetised costs arising to any particular group as a result of this amendment.		
	<b>One-off</b> (Transition)	<b>Yrs</b>			
	£ n/a				
	<b>Average Annual Cost</b> (excluding one-off)				
	£ n/a		<b>Total Cost (PV)</b>	£ n/a	
Other <b>key non-monetised costs</b> by 'main affected groups' There may be an impact on individuals injured in accidents involving animals where strict liability does not apply following the Order and yet may have been applied by the courts under current case-law interpreting section 2(2) of the Animals Act. Such cases are thought to be relatively rare and their outcome is relatively uncertain even under the current legislation. The Department of Health has estimated that initial treatment for the most serious injuries, e.g. serious spinal and/or head injuries, could cost the NHS up to £40,000 in each case. However, the suggestion that there will be an additional cost to the NHS presupposes that people who obtain such compensation spend the money on private medical treatment, and do not rely on the NHS in any case.					
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' None of the benefits of the amendment can be readily monetised.		
	<b>One-off</b>	<b>Yrs</b>			
	£ n/a				
	<b>Average Annual Benefit</b> (excluding one-off)				
	£ n/a		<b>Total Benefit (PV)</b>	£ n/a	
Other <b>key non-monetised benefits</b> by 'main affected groups' The amendment will provide greater legal certainty for equestrian and other land-based businesses, which will reduce legal costs and encourage investment and expansion in these sectors. It will also enable the insurance industry to better assess risk and may potentially reduce insurance premiums.					
<b>Key Assumptions/Sensitivities/Risks</b> Proposal assumes that the courts will recognise the greater certainty provided by the revised wording and deal with cases accordingly. It also assumes that the insurance industry will, in due course, pass any savings in litigation on to its customers, subject to other prevailing factors affecting the insurance market.					
Price Base Year	Time Period Years	Net Benefit Range (NPV) £ n/a		NET BENEFIT (NPV Best estimate) £ n/a	
What is the geographic coverage of the policy/option?					England and Wales
On what date will the policy be implemented?					July 2009 (estimate)
Which organisation(s) will enforce the policy?					n/a
What is the total annual cost of enforcement for these organisations?					£ n/a
Does enforcement comply with Hampton principles?					Yes
Will implementation go beyond minimum EU requirements?					n/a
What is the value of the proposed offsetting measure per year?					£ n/a
What is the value of changes in greenhouse gas emissions?					£ n/a
Will the proposal have a significant impact on competition?					No
Annual cost (£-£) per organisation (excluding one-off)		Micro n/a	Small n/a	Medium n/a	Large n/a
Are any of these organisations exempt?		No	No	No	No
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)					(Increase - Decrease)
Increase of	£ n/a	Decrease of	£ n/a	<b>Net Impact</b>	£ n/a

## Evidence Base (for summary sheets)

### The Problem to be Addressed

The purpose of the Order is to address a long-standing issue relating to the interpretation of the Animals Act 1971. Section 2 of the Animals Act 1971 creates strict liability for the keeper of an animal in certain circumstances. Section 2(1) provides that the keeper of an animal that is of a “dangerous species” is strictly liable for damage caused by it. “Dangerous species” is defined by section 6(2) of that Act as one that is not commonly domesticated in the British Islands and whose fully grown members normally have such characteristics that they are likely, unless restrained, to cause severe damage or that any damage they may cause is likely to be severe. Section 2(2) provides for strict liability in certain circumstances for damage caused by an animal that is not of a dangerous species.<sup>6</sup>

Since the Act was passed, there has been disagreement and conflicting case law concerning the interpretation of section 2(2), and in particular section 2(2)(b), both as concerns the purpose of the first phrase “the likelihood of the damage or of its being severe” and the meaning of the last phrase “except at particular times or in particular circumstances”. There has also been repeated judicial criticism that section 2(2)(b) lacked clarity. This issue culminated in the House of Lords’ judgment in the *Mirvahedy v Henley*<sup>7</sup> case, which confirmed a broad interpretation of the wording, potentially bringing within the scope of strict liability under the Act the keepers of animals that were not known to possess a dangerous characteristic.

The precise effects of the *Mirvahedy* judgment on businesses are difficult to assess. The courts have not found animal keepers strictly liable in all comparable cases since the judgment was handed down, so the uncertainty that existed before *Mirvahedy* continues, but with the added complication that businesses now believe that they are more likely to be found strictly liable, and insurance companies believe that they are more likely to be required to pay compensation when incidents occur. In addition to this adverse effect on business confidence, it is believed by many that this continuing uncertainty has had a negative impact on insurance premiums. Evidence to support a direct link between *Mirvahedy* and insurance premiums is inconclusive, as insurance premiums are based on a wide range of commercial factors. However, the Government accepts that insurance premiums for many rural and equestrian businesses did indeed increase

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<sup>6</sup> Section 2(2) of the Act currently states:

(2) Where damage is caused by an animal which does not belong to a dangerous species, a keeper of the animal is liable for the damage, except as otherwise provided by this Act, if-

(a) the damage is of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe; and

(b) the likelihood of the damage or of its being severe was due to characteristics of the animal which are not normally found in animals of the same species or are not normally so found except at particular times or in particular circumstances; and

(c) those characteristics were known to that keeper or were at any time known to a person who at that time had charge of the animal as that keeper’s servant or, where that keeper is the head of a household, were known to another keeper of the animal who is a member of that household and under the age of sixteen.”

<sup>7</sup> WLR 882. In *Mirvahedy v Henley* [2003], Mr Mirvahedy was seriously injured when his car collided with a horse owned by Mr and Mrs Henley which had been spooked by something unknown and bolted onto a dual carriageway. The horse had been in a secure field and a claim against the Henleys under liability in negligence failed. However, in a majority judgment in the House of Lords, the Henleys were held strictly liable for the horse’s actions, and thus for Mr Mirvahedy’s injuries, under section 2(2)(b) of the Animals Act 1971. This decision, which confirmed that the keepers of animals could be held responsible for any damage caused by their animals even where the animal was not particularly dangerous as an individual and where the animal was not known to be likely to display any dangerous characteristic at that particular time, is a matter of considerable concern to individual animal owners and their representative organisations. Many also believe that the decision led to a large increase in insurance premiums for equine and other businesses, which has impacted adversely on the rural economy.

significantly in the period following the judgment, with public liability premiums for commercial riding establishments increasing by an estimated 30% in 2002, 79% in 2003, 39% in 2004 and 34% in 2005.

## **The Proposed Intervention**

The Government's proposal is to replace the existing wording of section 2(2)(b) with a new formulation referring to the damage being caused by "unusual or conditional" characteristics of the animal. Unusual characteristics are defined as those that are not shared by the species generally, while conditional characteristics are defined as those that are shared generally by the species but only in particular circumstances. The new wording would require that for strict liability to apply in cases where an unusual characteristic was the cause of the damage, the keeper of the animal at the time the damage was caused must have known of that characteristic in the animal. Where the damage is due to a conditional characteristic of the animal, it limits the application of strict liability by providing a defence if the keeper of the animal when the incident took place can show that there was no particular reason to expect that the particular circumstances that provoked the conditional characteristic would arise at that time.

Essentially, the Order seeks to reflect the policy that it is desirable that the keepers of animals that do not belong to an inherently dangerous species should be strictly liable for damage or harm caused by that animal when they know that the animal in question may be dangerous at the time the damage is caused, either because of its particular temperament, or because of the particular circumstances applying at the time, such as having young to protect. The Order confirms that strict liability applies to a keeper of an animal that is of a normal temperament for the species but causes damage due to becoming dangerous in particular circumstances only if it can be shown that the damage was caused in such circumstances. It further provides the keeper of the animal with a defence against strict liability if the keeper can show that there was no particular reason to expect that those circumstances would arise at that time.

## **The Case for Government Support**

The Government recognises that there is a lack of clarity over the meaning of Section 2(2) of the Act and that this uncertainty may have adversely affected rural businesses, particularly those in the land-based and equestrian sectors, whose business confidence has been undermined by the ambiguity in the current legislation, and who believe that their insurance premiums have risen significantly as a result of the wider interpretation of the Act favoured in the *Mirvahedy* case. The Government's primary purpose in supporting an amendment to the Act is to ensure greater certainty in the law, and thus restore business confidence, but it would welcome any additional benefits to rural business arising from it.

In the absence of Government time in Parliament to address this issue, Ministers have previously indicated that they would support an acceptable and workable Private Member's Bill to achieve this objective, if a willing MP could be identified. Stephen Crabb MP brought forward a Ten Minute Bill in summer 2007 proposing amendments to the Act, and followed this up a Private Member's Bill in spring 2008. The Government supported this Bill, and was disappointed when it fell due to an insufficient number of MPs being present in the House of Commons for the second reading.<sup>8</sup>

The content of the proposed Legislative Reform (Animals Act 1971) (Amendment) Order is essentially identical to the earlier Private Member's Bill, and is the result of discussions with all interested parties.

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<sup>8</sup> The Bill was supported by a majority of 26:1 in its second reading vote, but a minimum of 40 MPs must be present in order for a Bill to proceed.

## The Impact of the Amendment

The principal impact of the amendment would be to ensure greater certainty in the law. It is expected that it will enable the courts to decide more easily whether strict liability applies in particular cases, and, in due course, reduce the number of cases brought before them under the Act.

The overall impact on business is difficult to quantify, as the amended law will only take direct effect if and when certain circumstances occur. However, the Government expects that the proposed amendment will be of general benefit because it will clarify a piece of legislation that has long been considered confusing and subject to judicial criticism. In particular, it will benefit the keepers of all non-dangerous species of animal (e.g. horses, dogs, cows, sheep) as it will clarify their legal position in the event of accidents occurring involving their animals. This includes both individual animal owners and businesses who keep and utilise such animals, such as farms, riding schools, livery yards, petting zoos and pony trekking establishments. This greater certainty will remove a disincentive to investment and expansion amongst such businesses and will thus benefit the businesses themselves, their customers, and the wider, particularly rural, economy. The amendment should also benefit the insurance industry by creating greater certainty in instances where strict liability applies and thus better enabling them to assess the risk of having to pay compensation in order to settle cases brought under the Act. Insurance companies may choose to pass on these benefits to their customers in the form of reduced premiums but the size and timing of any reductions would be commercial decisions for the industry to determine over time and in the light of other factors. Assuming some benefits are passed on, land-based and equestrian businesses, the majority of whom are both rural and small- and medium-sized enterprises, would be among the main beneficiaries. The Government would welcome the benefits to rural businesses deriving from reduced insurance premiums.

The amendment may have an impact on individuals injured in accidents involving normally well behaved animals where, under the current case law, a court might impose strict liability provided it could infer that the injury resulted from "particular circumstances", irrespective of whether those circumstances could be identified or whether the person responsible for the animal had any reason to expect that they might arise. Some of these cases may be addressed by negligence and some of them will not. The impact will be felt more acutely in cases where negligence cannot be established, and no alternative route for compensation, eg personal insurance, exists. Such cases are thought to be relatively rare and their outcome is relatively uncertain even under the current legislation.

The amendment will have no particular effect on charities or the voluntary sector. It will not affect competition, nor will it affect the legal aid budget. It will not lead to any changes in the emission of Greenhouse gases, and will have no other impacts on the environment or sustainable development. There will be no impact on public health, well-being or health inequalities, although there may be a cost to the National Health Service in the relatively small number of cases where people injured in incidents involving animals are no longer able to claim compensation from the animal's keeper, and rely on NHS treatment for their injuries rather than private medical care. The Department of Health has estimated that initial treatment for the most serious injuries, e.g. serious spinal and/or head injuries, could cost the NHS up to £40,000 in each case. However, the suggestion that there will be an additional cost to the NHS presupposes that people who obtain such compensation spend the money on private medical treatment, and do not rely on the NHS in any case.

The potential impacts of the Order on gender, race and disability equality have been duly considered, as have the Order's implications for human rights. The Order will not have a differential impact on any particular group of people or region. However, it is expected that the majority of businesses likely to benefit from any reduced insurance premiums passed on to customers as a result of the Order will be small- and medium-sized enterprises in rural areas, although it is not currently possible to assess the scale of this positive impact.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No