

Climate Change, Environment and Rural Affairs Committee consultation: General Principles of the Wild Animals and Circuses (Wales) Bill

August 2019

Terms of reference

To consider-

the general principles of the Wild Animals and Circuses (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives

the provisions of the Bill, in particular, in relation to:

- (i) the prohibition of using wild animals in travelling circuses (including the meanings set out in sections 2 to 4);
- (ii) the powers of enforcement (the Schedule); and
- (iii) the amendments relating to licensing of circuses (section 8);
 - whether there are any unintended consequences arising from the Bill;
 - the financial implications of the Bill (as set out in Part 2, Section 8 of the Explanatory Memorandum);
 - the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Part 1, Section 5 of the Explanatory Memorandum).

RSPCA Cymru welcomes the opportunity to respond to this important consultation on an issue, and piece of legislation, we have long campaigned for.

We value our close working relationship with the National Assembly for Wales' Climate Change, Environment and Rural Affairs Committee, and commit to working as closely as we can - and is required - by the committee, as the Wild Animals and Circuses (Wales) Bill undertakes its legislative journey.

Indeed, the Assembly's committee structure has assisted the RSPCA with furthering this campaign, through the raising of petition - ['P-04-653 Ban the Use of Wild Animals in Circuses in Wales'](#) - with the Petitions Committee. This ultimately attracted the support of approximately 9,000 individuals; after

continuing to attract interest following its submission with 7,268 paper signatures and 517 online signatures.

The committee's scrutiny follows many years of action on this issue by RSPCA Cymru - incorporating numerous consultation responses, scientific papers, briefings, public-facing events, street stalls, campaign actions and more. Indeed, a ban on the use of wild animals in travelling circuses has long been a key objective for the RSPCA - and we very much welcome the Welsh Government's decision to act and, consequently, the opportunity to scrutinise the Wild Animals and Circuses (Wales) Bill in conjunction with the Climate Change, Environment and Rural Affairs Committee. We look forward to complementing this submission with the delivery of oral evidence.

The need for legislation - and the prohibition of using wild animals in travelling circuses

Pivotal, the itinerant, transient nature of circuses means the complex needs of wild animals cannot be adequately met in such an environment. Confinement, constant transportation, forced training and being placed within abnormal social groups are all grim realities associated with circus life; all of which can cause stress and welfare problems for the animals involved.

Equally, these animals often face forced performances to strict timetables, and the performance of unnatural acts and tricks, which can cause welfare problems; but do not educate the public or foster respect for animals. Loud crowd-noise routinely associated with a travelling circus also raises welfare concerns for captive wild animals. As such, we believe the animal welfare benefits of a ban on this practice are clear and have long rendered Welsh Government action necessary.

Indeed, the use of wild animals in travelling circuses is - the RSPCA believes - out-dated and firmly out of step both with public opinion, and how animals should be treated in a modern compassionate society. Utilising legislation to deliver an outright and absolute ban on this practice sends a powerful and an important statement as to how the welfare of animals is regarded in modern Wales. While the numbers of wild animals used in the circus environment in Wales is currently low, the absence of a ban offers no protection to those animals, nor mitigates against the possible growth of an industry which is so damaging to wild animal welfare.

Animal welfare has long been a devolved competency, and legislation ensures Wales continues its proud record of furthering the nation's animal welfare agenda. The need for legislation has been further highlighted by action taken elsewhere in Great Britain. In England, the Wild Animals in Circuses (No.2) Bill has gained Royal Assent and will come into force in January 2020, while in Scotland, the Wild Animals in Travelling Circuses (Scotland) Act 2018 implemented a ban one day after receiving Royal Assent on 24 January 2018.

In terms of the legislative process utilised, for the RSPCA, our primary objective is to see a ban on this out-dated practice implemented and in force as soon as possible - regardless of the means used. Nevertheless, RSPCA Cymru has long highlighted our belief that two legislative mechanisms exist to achieve this aim - either primary legislation, or subordinate legislation utilising Section 12 of the Animal Welfare Act. We previously highlighted how secondary legislation under the wider Act could provide an expedited route to a ban. However, we also recognise the role primary legislation can play in reducing potential future legal challenge, and opening up an important conversation about the issue of animals used in entertainment and circus environments generally as this Bill now makes its way through the Assembly's legislative process.

The draft legislation is very clear in that the owner of a travelling circus, or a person otherwise with overall responsibility for the circus, cannot use, or permit to be used, a wild animal - either in performance or exhibition. RSPCA Cymru, however, supports the extension of the definition of what constitutes the 'use' of a wild animal in a travelling circus. At present, the draft Bill makes reference only to the wild animal performing or being exhibited. We fear the scope of this wording may be too narrow. Indeed, under this proposal, a wild animal could still legally be taken on tour with a travelling circus and trained for performance within Wales - perhaps for later exhibition in a country without a ban - and thus be exposed to conditions that make itinerant circus life so inappropriate for these animals. To avoid this situation, section 1(2) of the Bill should be strengthened to add '*travels with*' and '*is kept by*' as additional sub-sections as to when a wild animal is considered to be used by a travelling circus; thus strengthening the scope of the offence and aiding enforcement.

RSPCA Cymru has long supported the Welsh Government's intention to define a 'wild animal' as an animal of a kind not commonly domesticated in the British Islands - namely the United Kingdom, Channel Islands and the Isle of Man. The definition delivers parity with the well-established Zoo Licensing Act 1981, which has been in operation for over 30 years. We therefore welcome the retention of this definition in this Bill laid before the National Assembly for Wales.

Positively, the Welsh Government's decision to remove a previous sub-section that suggested a wild animal bred for two or more generations in captivity could be considered domesticated is also very welcome. This has greatly improved this Bill from the earlier consultative stage in October 2018.

We are concerned that the definition of travelling circus used means that performances that do not take place in a typical circus tent (e.g. a tour of arenas) would be allowed to continue despite this being, in all other ways, the same experience for animals as a 'big top' circus. Similarly, reference to '*entertainment*' within the definition of a travelling circus could encourage some operators to seek to continue touring a travelling circus under the guise of education in an attempt to circumvent these regulations. While these would clearly be against the spirit of the Wild Animals and Circuses (Wales) Bill, we fear that without a tightening of this definition, the possibility of wild animals continuing to be carted around in travelling circus-like productions remains an unnecessary prospect. We would instead urge decision-makers in Wales to utilise definitions contained within the Austrian Animal Welfare Act (2005), and England's Circus Regulations, to avoid this possibility. The term 'circus' should not refer to the place but rather the group of people and animals that make up a circus. This more accurately reflects how circuses work, with acts coming and going from the company, and moving between different 'companies' or groups. Austria's legislation refers to 'institutions' which is also appropriate.

Furthermore, all types of performance, exhibition and less formal 'display' of animals (e.g. in fields near public rights of way next to circuses or animals shown next to circus posters) should be included in scope, not just those that are formally 'exhibited'. The Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012 define a travelling circus as a circus 'which (i) travels from place to place for the purpose of giving performances, displays or exhibitions'... Drawing these together, we therefore suggest that a travelling circus is defined as 'any company/group or institution which travels from place to place for the purpose of giving performances, displays or exhibitions'.

However, we note that regulations can be made to offer further clarity as to both the definition of a wild animal and the meaning of a travelling circus - which may prove useful following implementation of the Act and any subsequent loopholes identified which circus operators may try and exploit to keep wild animals within touring shows. Nevertheless, we believe these minor amendments - namely expanding the offence and definition of a circus - would help avoid such a future possibility being necessary.

Concerningly, the Bill has an enforcement date of 1 December 2020. One explanation given is that it would permit the two circuses that visit Wales to avoid making provisions to comply with the Bill whilst on tour. RSPCA Cymru believes this is unnecessary and unacceptably long. Both circuses that currently tour with wild animals are based in England, but sometimes visit Wales. England's ban comes into force in January 2020 when their licensing regulations expire. Both circuses have had years to prepare for this eventuality, and, in England, the UK Government is satisfied that January 2020 is a reasonable enforcement date. RSPCA Cymru strongly urges the Welsh Government to adopt an enforcement date as soon as legally possible, thus reducing the prospect of wild animals facing further touring in a travelling circus and living in the associated, unacceptable conditions.

Powers of enforcement

The Bill confers powers of entry to appointed inspectors if they have reasonable grounds to believe an offence is being committed, in terms of wild animals being used by a travelling circus. Such powers seem proportionate and fair to the nature of the legislation and would allow inspectors appointed by Welsh Ministers or at a local authority level to respond to intelligence to investigate potential breaches of this law.

Extending these powers to automatically include police constables, as is the case in the Wild Animals in Travelling Circuses (Scotland) Act 2018, would further strengthen enforcement and ensure potential breaches are investigated in a timely manner.

However, we would support extension to the legal enforcement provisions contained within the draft Bill. Courts should be empowered to disqualify offenders from keeping wild animals - a move which could help prevent repeat offenders. Additionally, this would deliver consistency with the Dangerous Wild Animals Act 1976 - which is important in the creation of a consistent animal-related statute in Wales.

The section including enabling powers to stop and search vehicles has been removed from the proposed legislation, on the basis that powers of entry already extend to vehicles, tents or moveable structures, which are considered 'premises'. The Explanatory Notes also state that it is 'considered unnecessary to include powers to stop and search travelling circus vehicles for evidence of the use of wild animals'. We would welcome more clarity from the Welsh Government as to the removal of 'stop and search' powers, and whether all scenarios will be catered for under existing power of entry provisions.

Amendments relating to licensing of circuses

By omitting animals based in a circus as an exemption from the Dangerous Wild Animals Act 1976, wild animals based in a circus in Wales which are not performed or exhibited would potentially fall under the remit of that legislation. Therefore, wild animals in a circus not being performed or exhibited would be subject - for the first time - to licensing under Dangerous Wild Animals Act 1976. This potentially offers additional controls and scrutiny over the keeping of those animals and - the RSPCA would hope - opportunities for any welfare concerns identified by local authority inspectors to be appropriately flagged. Indeed, the explanatory memorandum clarifies that a *'travelling circus retaining but not using a dangerous wild animal will require a licence under the 1976 Act'*.

Unintended consequences arising

RSPCA Cymru believes this Bill is very clear in its set objectives.

However, one concern we hope will be addressed during the Bill's legislative journey, is the possibility of existing travelling circuses that use wild animals remarketing themselves to try and escape the Welsh Government's proposed definition of what constitutes a travelling circus, to circumvent the law. Indeed, recently a production - 'An Evening With Lions and Tigers' - toured Wales, under the guise of educating the public around conservation and animals. We believe a tightening of the proposed definitions would ensure shows like this do not consider themselves exempt from the law; nor result in other circus entertainment featuring wild animals attempting to remodel itself along such lines to circumvent the ban.

In the absence of tightening the proposed legal definition, we would welcome clarity from the Welsh Government that a travelling circus retaining wild animals - potentially exploiting the aforementioned potential 'loophole' - could instead be subject to the provisions contained within the Zoo Licensing Act 1981. This may offer some limited but insufficient safeguards via inspection, though RSPCA Cymru believes the tightening the definition of what constitutes a circus will ensure such a scenario does not arise, and will offer further protection for the animals involved.

Financial implications of the Bill

We do not envisage the proposed Bill to have onerous negative financial consequences for public bodies. RSPCA Cymru works closely with Wales' network of 22 local authorities, and fully appreciate the difficult situation many currently face with regards to stretched resources and the delivery of a myriad of animal welfare policies and procedures within that climate. However, we do not foresee that enforcement of the bill will have major financial implications or consequences.

Nevertheless, the lack of full prohibition on wild animals being transported in travelling circuses does potentially create additional difficulties in policing this ban, and may make the process more time-consuming for local authorities, in a way which could be easily avoided with a more robust definition of the proposed offence - namely extending the scope beyond wild animals being performed or exhibited. This would further promote welfare and remove potential situations of ambiguity for inspectors.

Equally, local authorities have already highlighted increased correspondence from the general public when wild animals in circuses visit. Responding to this correspondence is costly and time-consuming, but an absolute ban on the use of wild animals in circuses would likely end the necessity for this correspondence - and associated freedom of information requests - and thus ultimately have a positive impact on Council resources, and the time their staff potentially have to spend on other matters pertaining to animal welfare.

Polling has consistently shown that the public in Wales favour a ban on the use of wild animals in circuses. Indeed, it has found that 74 percent of the public in Wales support a ban on wild animals performing in circuses in Wales¹. Equally, touring circuses featuring wild animals are often met by widespread protests and negative press attention. As such, the RSPCA believes banning the use of wild animals does not need to adversely impact circus revenue, as the appetite for non-animal focussed circus entertainment is far stronger, and could lead to bigger footfall for this form of entertainment. Indeed, the vast majority of circus entertainment in Wales already does not utilise performing or exhibited animals. To this end, we do not believe this legislative change would have a negative impact on local economies in Wales, either.

¹ Polling has shown that 74% support a ban on wild animals performing in circuses. Figure from YouGov Plc. Total sample size was 1,036 adults. Fieldwork was undertaken between 19th–22nd August 2015. The survey was carried out online. The figures have been weighted and are representative of all Welsh adults (aged 18+).

Appropriateness of subordinate legislation-making powers

The draft Bill contains provisions for Welsh Ministers to make regulations which could further specify what is, or is not, to be regarded as a wild animal, and concerning what activities are regarded as a travelling circus. We support these regulations being made via the affirmative procedure to ensure a level of scrutiny and discourse around these changes. We have previously commented in detail on the role subordinate legislation plays for animal welfare through a [submission to the Constitutional and Legislative Affairs Committee](#).

We welcome the Welsh Government's close consideration of potential loopholes that this legislation could inadvertently introduce. Indeed, the Minister made a clear commitment during her recent plenary statement on this - noting that it was important to ensure "that there are no loopholes in any legislation". However, we do believe minor amendments to the Bill as it stands would prevent many potential loopholes materialising - namely firming up the definition of what constitutes a circus and the scope of the offence, to better protect animal welfare, remove legal ambiguities and ease enforcement.

Any amendments to the definition of a wild animal, or a particular species included on any list must be backed up by a solid evidence base; involvement of suitably qualified independent consultees; and a mechanism to deal with disagreements and appeals.

Conclusion

RSPCA Cymru is delighted that the Wild Animals and Circuses (Wales) Bill is now progressing through its legislative journey. We have long highlighted how the itinerant nature of circuses, and the environment they provide, are wholly inappropriate for wild animals - and that this out-dated practice must be brought to an end in modern Wales. We are therefore supportive of the general principles of this proposed Bill, and the need to legislate. While the stated aims of the Bill are clear, we support extension to the scope of the prohibition of using wild animals in travelling circuses, and to the definition of what constitutes a circus. We feel this would reduce the likelihood of the Welsh Government needing to utilise subordinate legislation to close identified loopholes. The extension of enforcement provisions within the Bill would also ensure consistency with other wild animal-related legislation.