



Consultation Response

FROM THE RSPCA IN WALES

Consultation response: Wild Animals in Travelling Circuses (Wales) Bill

November 2018

QUESTION 1: DO YOU AGREE WITH OUR PROPOSAL TO INTRODUCE LEGISLATION THAT WOULD MAKE IT AN OFFENCE FOR A WILD ANIMAL TO BE USED IN A TRAVELLING CIRCUS?

The RSPCA is opposed to the use of wild animals in travelling circuses. Due to the itinerant nature of circuses, it is not possible to provide for the needs of wild animals in such an environment. Animals should not be subjected to the confinement, constant transportation and abnormal social groups associated with circus life - circumstances known to cause stress to animals. Animals may be subjected to forced training, performing to a timetable and performing acts that cause welfare issues. Crowds and noise can also cause welfare problems in captive animals.

The practice of touring with wild animals in a circus is outdated and fails to reflect current public opinion on how animals should be treated and represented - indeed an RSPCA petition¹ in Wales gathered 7,700 signatures from just May to October in 2015. The RSPCA therefore welcomes the Welsh Government's Wild Animals in Circuses Bill to ban the use of wild animals in travelling circuses in Wales, which would bring it in line with an ever-growing list of countries that have instituted bans. At the time of writing, 30 countries around the world and 19 in Europe had banned circuses using wild animals.

QUESTION 2: DO YOU AGREE BANNING THE USE OF WILD ANIMALS IN TRAVELLING CIRCUSES WILL HAVE A POSITIVE IMPACT ON THE ATTITUDES OF CHILDREN AND YOUNG PEOPLE TOWARDS ANIMALS? DO YOU HAVE ANY EVIDENCE TO SUPPORT YOUR VIEW THAT YOU WOULD LIKE TO SHARE WITH US?

Yes. Teaching animals to perform inappropriate tricks does not educate the public or foster respect for animals. The RSPCA believes that the appreciation of animals as sentient beings and the need to provide them with a healthy and happy life are essential in the promotion and development of empathy towards them. Ensuring animals have their physical, behavioural and psychological needs met and their welfare safeguarded at all times is essential to this; as is their portrayal as such to the public.

There is evidence that the way in which wild animals are portrayed has an impact on the attitude and actions of the public. Research² found that, compared to people shown videos of chimpanzees in a species-appropriate natural setting, people shown chimpanzees in an unnatural, human-like context ('entertainment chimpanzees') had a lower understanding of how endangered they are in the wild and were less likely to say they would contribute financially to the conservation of the species. People shown

¹ <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?Ild=13740>

² Schroepfer, K. K., Rosati, A. G., Chartrand, T. & Hare, B. Use of 'Entertainment' Chimpanzees in Commercials Distorts Public Perception Regarding Their Conservation status. *PLoS One* **6**, 8 (2011).

them in the natural setting were also more likely to say they were unsuitable as pets.

QUESTION 3: DO YOU CONSIDER THAT A BAN ON WILD ANIMALS IN TRAVELLING CIRCUSES COULD HAVE AN IMPACT ON CIRCUSES, OR ON OTHER RELATED INDUSTRIES? WHAT WOULD THE IMPACT BE AND WHY?

The RSPCA believes that a ban on the use of wild animals in circuses will not adversely affect circuses' revenue. It could in fact benefit circuses financially to not use animals and publicise this fact by appealing to a wider audience. Polls have consistently shown, including a YouGov poll for RSPCA Cymru which found 74 percent³ of the public in Wales support a ban on the use of wild animals in circuses, that the majority of the public find the use of wild animals in circuses unacceptable.

Circus costs could also reduce in the event of a ban and animal-keeping staff moved to attend to domestic species, which would not be affected by this ban.

QUESTION 4: DO YOU AGREE WITH THE PROPOSED OFFENCE?

The proposed offence relates to a wild animal that '*performs, or is exhibited*'. A wild animal could still be taken on tour and trained for performance, and so be exposed to most conditions that make itinerant circus life objectionable due to associated welfare problems, as long as the animal is not performing or on exhibition. The draft Bill therefore has a narrower focus than the current Circus Regulations in England which apply to all wild animals '*kept or introduced (whether for the purpose of performance, display or otherwise)*' into a travelling circus (regulation 2).

The terms "performs" and "is exhibited" tend to be defined in terms of putting (the animal) in a prominent place in order that it may readily be seen. Is there a risk that circuses with wild animals in tow will be able to sell private admission tickets, in more limited numbers, to view the animals and see them perform? In any case, the lack of a prohibition on wild animals being transported in travelling circuses would seem to make the policing of the ban more difficult and time intensive.

Clause 1(2) should be amended to: '*For the purpose of subsection (1), a circus operator uses a wild animal in a travelling circus if the animal is kept by, travels with or performs or is exhibited as part of, the circus.*'

QUESTION 5: DO YOU AGREE THAT THE OFFENCE SHOULD APPLY TO THE TRAVELLING CIRCUS OPERATOR EVEN IF THE OPERATOR MAY NOT BE THE PERSON USING THE WILD ANIMAL?

Yes

QUESTION 6: DO YOU AGREE WITH THE DEFINITION OF "OPERATOR"?

Yes

QUESTION 7: DO YOU AGREE WITH THE DEFINITION OF "WILD ANIMAL"?

The RSPCA is in agreement with the part of the definition of 'wild animal' in the draft Bill that states '*an animal of a kind that is not commonly domesticated in the British Islands*'. This is almost identical to the definition in the Zoo Licensing Act 1981: "*wild animals*" means *animals not normally domesticated in Great Britain*'. The definition in the draft Bill would therefore provide parity with the Zoo Licensing Act, which has been in operation for over 30 years. The RSPCA therefore supports this part of the definition.

³ YouGov Plc. Total sample size was 1036 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+).

The RSPCA does not agree with the part of the definition dealing with domesticated animals and believe this section should be removed. It is inaccurate and open to interpretation and misuse. Under the current definition, breeding that induces *any* amount of change in an animal's behaviour, life cycle or physiology could lead to the animal being classed as 'domesticated'. Furthermore, breeding animals for 'multiple generations' simply means two or more generations, which is not the case, and we believe that this is not what is intended. Where animals have been domesticated through selective breeding to adapt to living alongside people, it has been for hundreds if not thousands of years. Claims could therefore be made that a captive-bred tiger that is the second generation bred in captivity is a domesticated animal. Such an interpretation would mean that zoos are full of domesticated animals. This is not the case; the needs of a captive-born tiger are fundamentally no different to those of its counterparts born in the wild.

We suggest removing section 3(2) entirely and leaving the definition in section 3(1)

QUESTION 8: DO YOU AGREE WITH THE INCLUSION OF SECTION 3(3) WHICH WOULD ALLOW FOR REGULATIONS TO BE MADE TO SPECIFY KINDS OF ANIMAL THAT ARE, OR ARE NOT, TO BE REGARDED AS WILD? REGULATIONS WOULD BE MADE BY WELSH MINISTERS (SEE SECTION 7 OF THE DRAFT BILL).

A more preferable solution would be to align with interpretation of 'wild animal' in the Zoo Licensing Act 1981, outlined in Annex A of the ZLA's Guide to the Act's provisions⁴. This would ensure parity with other legislation and avoid a situation where the same species is considered 'wild' in a zoo, but 'domesticated' when kept in a circus.

If the proposal were to be progressed, there must be a transparent mechanism and criteria for additions and removals to the list, including requiring a good quality evidence base, involvement of suitably qualified independent consultees and an ability to deal with disagreements and appeals.

QUESTION 9: DO YOU AGREE WITH THE DEFINITION OF TRAVELLING CIRCUS.

No. Limiting the purpose to 'entertainment' risks circuses rebranding as 'educational' events and thus circumventing the regulations (see further below in Q.10 examples of circuses doing this).

A more appropriate definition of '*travelling circus*', largely the same as the definition in the Circus Regulations in England, is: '*A travelling circus means any company/group which travels from place to place for the purpose of giving performances, displays or exhibitions*'. An alternative to 'company' or 'group' is 'institution', used in the Austrian Animal Welfare Act (2005): '*circus - an institution with performances that, among other things, fall within the domain of equestrian skills or animal dressage and that may include acrobatic presentations serious and comic acts, pantomimes as well as dancing and musical numbers*'. The RSPCA is not suggesting that equestrian acts be prohibited but that emphasis on the company/group/institution, rather than place, more accurately reflects how circuses work, with acts often moving between circuses. It also circumvents the scenario of circuses exchanging their iconic tents for other temporary arrangements that may not be commonly recognised as a 'circus', or even travelling between permanent facilities around the country. Whilst the definition suggested above would prevent circuses touring with wild animals, it has the advantage of not impacting on the use of wild animals for the audio-visual industry, which reside at a home base when not being used for performance.

QUESTION 10: DO YOU AGREE WITH THE INCLUSION OF SECTION 4(4) WHICH WOULD ALLOW FOR REGULATIONS TO BE MADE TO SPECIFY TYPES OF UNDERTAKING, ACT, ENTERTAINMENT OR SIMILAR WHICH IS TO BE REGARDED AS A TRAVELLING CIRCUS? REGULATIONS ARE TO BE MADE BY WELSH MINISTERS (SEE SECTION 7 OF THE DRAFT BILL).

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69595/zoo-licensing-act-guide.pdf

Yes. This would safeguard against attempts to circumvent the regulations. For example, if it will not be an offence to use a wild animal for entertainment in a Mobile Animal Exhibit (“MAE”), licensable under the forthcoming regulations, it would seem possible for a circus to split itself into (a) the company of human performers and entertainers’ and (b) an MAE comprising the domesticated and wild animals used for performance and entertainment. In the 2017 consultation on MAEs, which defined them as “*individuals, groups or commercial enterprises that travel to exhibit domestic and/or wild animals, for entertainment, therapy, educational and/ or other purposes*”, the example was given of an MAE with big cats which does not class itself as a circus but as an ‘educational facility’. Other examples include the use of birds of prey to display their ability to fly and do tricks. It would then seem possible for an MAE to display, say, tigers’ physical abilities or an elephant’s ability to shoot water from its trunk. Could section 4(4) be used to ensure that a loophole does not arise whereby a circus can rebrand itself as a MAE, or part human circus and part MAE, travelling together, and so avoid the ban having any impact on their use of wild animals?

QUESTION 11: DO YOU AGREE WITH THE ENFORCEMENT PROVISIONS DETAILED IN THE SCHEDULE?

Generally yes, with some exceptions outlined below.

In addition to a fine, Courts should have the power to disqualify offenders from keeping wild animals, for example in order to deal with repeat offenders, as they can do for example with the Dangerous Wild Animals Act 1976 (DWAA), section 6(2). A further point should be added to paragraph 15 of the Schedule to the draft Bill: *‘Where a person is convicted of an offence under this Act the court by which he is convicted may disqualify him from keeping any wild animal for such period as the court thinks fit. A court which has ordered his disqualification in pursuance of the last foregoing subsection may, if it thinks fit, suspend the operation of the order pending an appeal.’* Likewise, under the current draft Bill a minor amendment should be made to section 6(2) of the DWAA to include a conviction under the new circus Act, once in force, as grounds for cancelling any DWA licence and disqualifying a person from keeping a dangerous wild animal, if the court so decides.

The draft Bill does not award power of entry to constables and so does not permit anyone other than the appointed inspector to enter premises to search and gather evidence. *‘Inspector’* should be replaced with *‘inspector or constable’* throughout, as in the Animal Welfare Act 2006 (AWA). This will also require additions to the Schedule of the draft Bill as per Schedule 2 of the AWA.

Paragraph 11(k) of the Schedule to the draft Bill states that an inspector exercising a power of entry may *‘seize anything, except an animal, that is found on the premises’*. An inspector may therefore be forced to leave premises where an offence is being committed. Indeed, no provision is made for an animal when an offence is committed. One assumes the animal will be left with the circus, in which case how long might it be until a second offence is committed? What would happen once the circus moves to another location? Power of seizure should extend to the animal, as it does for example in the DWAA when an animal of a type listed in the Act’s Schedule is kept without a licence or in contravention of licence conditions.