

Wild Animals in Travelling Circuses (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Wild Animals in Travelling Circuses (Scotland) Bill. It describes the purpose of the subordinate legislation provisions in the Bill and outlines the reason for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this memorandum do not form part of the Bill, are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The Bill proposes to make it an offence to use any wild animal in a travelling circus in Scotland. The term "use" means performance, exhibition or display, whether for the payment of money or not. Exhibition and display involves the taking of active steps to exhibit or display animals to the public. Performance is to include, but is not limited to, tricks or manoeuvres viewed by the public. The accompanying Policy Memorandum provides a summary of the ethical rationale behind the scope of the Bill at paragraphs 17-21.

4. It is not the intention of the Scottish Government to ban the ownership or keeping of wild animals by a travelling circus if such animals are not performing or being exhibited. The ban is to apply to a travelling circus only and not to other uses of wild animals by other types of commercial or charitable bodies such as zoos or safari parks. The proposed ban will not

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apply to a static circus, if there is no transportation of animals off site for performance or exhibition. The Bill will apply to Scotland only.

Rationale for subordinate legislation

5. The Bill contains a single power to make subordinate legislation that is delegated to the Scottish Ministers. This power is explained in detail in the following paragraphs. Careful consideration has been given as to whether this provision necessitated subordinate legislation or whether it could have been made on the face of the Bill.

The power is to commence certain provisions of the Bill on such day as Scottish Ministers appoint by regulations. It is common Scottish Government practice to commence Bills by subordinate legislation. It is normally not possible, during the passage of a Bill, to determine when Royal Assent will be granted and therefore any specific date for commencement which is written into a Bill may not be achievable. To ensure there is due regard to the provisions of the Scotland Act 1998 (sections 32 to 35) which could impact on the submission of the Bill for Royal Assent, subordinate legislation is the most appropriate way to commence provisions of the Bill.

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Section 7 – Commencement

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: laid, no procedure

Provision

6. Section 7 of the Bill deals with commencement, and provides that this section and section 8 come into force on the day after Royal Assent. However, Section 7(2) states that the remaining provisions of the Bill, once enacted, come into force on such day as the Scottish Ministers may by regulations appoint. Subsection (3) provides that different days may be appointed for different purposes.

Reason for taking power

7. Some formal sections of the Bill (i.e. the short title and section 7 itself) are commenced on the day after Royal Assent. Subsection (2) enables the

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Scottish Ministers to bring the Bill's substantive provisions into force at a later date by means of commencement regulations. There are no travelling circuses with wild animals based in Scotland. It is not expected that any such circuses will be appearing in Scotland when the substantive provisions are brought into force as none have visited for several years.

8. The Bill will be well publicised and the Scottish Government are in contact with the UK circus industry. Should any unexpected visits arise once the Bill is in force, there is no policy wish to give such circuses a grace period during which they may continue to use their animals. Should wild animal use occur, an offence will have been committed. Consequently, no power to make transitional provision, which might have provided a period of grace for circuses with wild animals in Scotland on the coming into force of the new offence, is included. However, it is believed that, rather than prescribing commencement dates on the face of the Bill, taking this power provides for greater flexibility and it is usual practice for commencement provisions to be dealt with in this way. While it is expected that the Bill's sections will be commenced at the same time, the power to appoint different days for different purposes will provide flexibility as regards the commencement of the enforcement powers in schedule 1.

Choice of procedure

9. It is normal practice for commencement regulations to be laid before Parliament subject to no parliamentary procedure. Commencement regulations bring into force provisions whose underlying policy has already been considered by the Parliament during the passage of the Bill. Any regulations under this section will be laid before Parliament as soon as practicable after being made. This is provided for by virtue of section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

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