

Wild Animals In Travelling Circuses (Scotland) Bill

[As amended at stage 2]

Revised explanatory notes

Introduction

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the Wild Animals in Travelling Circuses (Scotland) Bill (which was introduced in the Scottish Parliament on 10 May 2017) as amended at Stage 2. Text has been added or amended as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the margin.
2. These revised Explanatory Notes have been prepared by the Scottish Government and are intended to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

The bill

54. The Bill makes it an offence for a circus operator to use, or to cause or permit another person to use, a wild animal to be used in a travelling

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circus in Scotland and allows for the enforcement of that offence. The Bill will apply to Scotland only.

5. Explanatory Notes on the various provisions of the Bill are provided below. A detailed explanation of the policy intentions underpinning the Bill's purpose can be found in the Policy Memorandum, which also sets out the relationship of the Bill to wider work on animal welfare in Scotland.

Wild animals in travelling circuses: offence

76. Section 1 makes it an offence for circus operators to use, or to cause or permit another person to use, a wild animals to be used in a travelling circus (see below on the meaning of "circus operator" and "travelling circus"). For the purposes of the Bill, a wild animal is "used" if it is made to perform or is displayed or exhibited. The offence is committed whether or not payment of money is required to view the performance, exhibition, or display.

7. "Performance" would include, but is not limited to, tricks or manoeuvres viewed by the public. The "exhibition" of a wild animal includes, but is not limited to, any proactive showing of animals to the public. "Display" includes, but is not limited to, use in parades, or deliberate positioning of wild animals to facilitate or encourage viewing, for example in fields next to public rights of way in a manner calculated to promote the circus, for example next to a circus poster, or whilst dressed in their performance regalia.

98. A key criterion for an offence to have been committed, in relation to a travelling circus, is that the wild animal is transported, whether regularly or irregularly, from one place to another, where it is used in the travelling circus. for the purpose of being used in a travelling circus. It does not matter whether that transportation takes place along with the rest of the circus while it travels, or whether it takes place under separate arrangements that the travelling circus may have made. For example, the travelling circus may contract with an independent carrier to move its wild animals, or may arrange for wild animals it does not own to be transported to the various venues at which it gives performances. In either case, there may still be an offence if the animals are being transported for use, display, or performance in a travelling circus.

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9. However, wild animals may continue to be kept and transported by travelling circuses whilst in Scotland under the Bill, so long as they are not used (in performance, exhibition or display).

Meaning of “wild animal”

10. Section 2 provides a definition of “wild animal” for the purposes of the Bill. A wild animal is an animal other than one which is of a kind that is commonly domesticated in the British Islands. The Bill explains what it means for an animal to be “domesticated” to inform that definition. Where an animal is of a kind whose behaviour, life cycle or physiology has, over generations, been changed through breeding or living conditions being controlled by humans, it is said to be domesticated for the purposes of the Bill. Wild animals are those not commonly domesticated in the British Islands under that definition of “domesticated”. Animals can be considered commonly domesticated in their country of origin although they are not of a kind commonly domesticated in the British Islands. Such animals would be “wild animals” under the Bill. In this context, “British Islands” takes its meaning from the Interpretation Act 1978, and refers to the United Kingdom, the Channel Islands and the Isle of Man.

11. In addition, section 3A confers a power on the Scottish Ministers to specify, by regulations, a kind of animal that is to be regarded as wild, and a kind of animal that is not to be regarded as wild, for the purposes of the Bill. This power will allow future detailed clarification of whether particular kinds of animals are or are not “wild animals”. Given the general definition in section 2, which will mean in most cases it will be clear whether a kind of animal is wild or not, the power is expected to be used only in cases of doubt or where clarification would be deemed helpful. The distinction between kinds of animals which are wild and those of a kind commonly domesticated in the British Islands is not an immutable one, and there may be particular examples where it is unclear into which category an animal type falls. The power therefore provides certainty in difficult or borderline cases to ensure circus operators know what kinds of animals may or may not be used in travelling circuses in order to avoid committing an offence. Regulations under this power are subject to the affirmative procedure.

12. Subsection (2) of section 3A removes any uncertainty that might arise as to the effect of regulations on the meaning of “wild animal” set out in

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section 2 of the Bill. The generality of that definition is unaffected where the regulations specify a kind of animal as wild; conversely, that generality has to be read as qualified to the extent that the regulations specify a kind of animal as not wild.

Meaning of other key terms

13. Section 3 defines two key terms for the Bill: “circus operator” and “travelling circus”. Only a circus operator can commit the offence in section 1. This means circus owners, people who do not own a circus but have overall charge of its operations and (if no-one in those categories is in the United Kingdom) any other person present in the United Kingdom who has ultimate responsibility for the circus operations.

14. In terms of section 3, a circus is a “travelling circus” even though there are periods when the circus is not travelling from one place to another (for example during temporary tour stops or during the winter closed season). A circus is, however, not a travelling circus for the purpose of this Bill, if it travels merely in order to relocate to a new fixed base which is then used only or mainly as a place to give performances.

15. The expression “travelling circus” also includes any place where a wild animal associated with the circus is kept, including temporarily, such as a wild animal’s accommodation. The effect of this is that if a travelling circus wild animal is, for example, actively exhibited or actively displayed while it is in any kind of accommodation, at any time, the offence in section 1 can be committed. In this case “exhibition” might include, but not be limited to, wild animals being proactively housed in a way which encourages viewing by the public, for example by the use of signage conveying information to the public, whether or not to generate income. “Display” might include, but again not be limited to, the showing of wild animals to the public, regardless of location. Circus operators would not, however, have committed an offence, for example, if a member of the public inadvertently viewed a wild animal grazing unadorned in a back paddock.

165. In addition, section 3B confers on the Scottish Ministers a power to make regulations to describe a particular type of undertaking, act, entertainment or similar thing that is, or is not, to be regarded as a “travelling circus” for the purposes of the Bill. The power permits further future detailed clarification of what is a “travelling circus” if necessary, in

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cases of real doubt and where clarification would be deemed helpful. In many cases, it will be clear whether something is a travelling circus or not in terms of the definition set out in section 3. But, given the potential variety of forms of entertainments using wild animals, there may be cases where it is difficult to identify something definitively as a travelling circus or not using the definition provided in section 3 of the Bill. The power may be exercised so as to provide certainty in relation to types of acts and undertakings whose status as a travelling circus (or as something other than a travelling circus) is unclear. Regulations under this power are subject to the affirmative procedure.

[17]. Subsection (2) of section 3B is intended to avoid any doubt about the effect regulations may have on the definition of “travelling circus” in section 3 of the Bill. Where regulations describe something that is to be regarded as a travelling circus, the generality of the definition is not affected. Where regulations describe a particular type of thing that is not to be regarded as a travelling circus for the purposes of the Bill, the generality of the definition is qualified to the extent that it should not be regarded as capturing the type of thing described.

Individual culpability where organisation commits offence

18. Section 4 makes provision for certain persons associated with different types of organisations to be held criminally liable for committing the offence under section 1 even though it is the organisation that has committed the offence. For that to happen, those persons (referred to in section 4 as “responsible individuals”) must have consented to, or connived in, the organisation’s commission of the offence, or have been guilty of neglect resulting in the organisation’s committing the offence. Section 4(4) sets out a table explaining which type of person is a “relevant person” in relation to different types of organisation listed in the table. For example, the director or secretary of a company, and a partner in a firm, are relevant persons, so potentially have criminal liability for offences under section 1 committed by their business.

Crown application

19. Under section 6 of the Bill, the Crown is not criminally liable for breach of any provision of the Bill. However, any act or omission by the Crown which constitutes a contravention of a provision establishing a criminal

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offence could be declared unlawful by the Court of Session on an application by the Lord Advocate.

Commencement and short title

20. Section 7 of the Bill deals with commencement. The short title, specified in section 8, and the commencement section come into force the day after Royal Assent is given to the Bill. The substantive provisions of the Bill, once enacted, will be brought into force on a date appointed by the Scottish Ministers in regulations. The offence of using a wild animal in a travelling circus will therefore apply from the date so appointed.

Schedule 1: Enforcement powers

21. Schedule 1, as introduced by section 5, deals with enforcement of the Bill's provisions. It confers powers on inspectors appointed under the Bill, and on police constables, to take enforcement action under the Bill. It sets out the range and extent of those enforcement powers and creates offences in relation to hampering enforcement. It also provides for the circumstances when an inspector or constable is authorised to exercise their powers (such as powers of entry and inspection) with or without a warrant.

Interpretation

22. Paragraph 1 provides definitions of the persons who are given powers to enforce the Bill. These are an inspector appointed by the Scottish Ministers or a local authority, and a constable (as defined in the Police and Fire Reform (Scotland) Act 2012, section 99(1)). Paragraph 1 also defines "premises" to include land and any other place, including a vehicle or vessel, tent or other moveable structure. Hence "premises" would include the vehicles and other moveable structures (for example caravans and mobile homes) commonly associated with a travelling circus.

Entry and associated powers

23. Paragraph 2 allows an inspector to enter any premises (other than domestic premises) if there are reasonable grounds for believing that an offence has been or is being committed at the premises. However, this power may be exercised only for the purpose of ascertaining whether or not an offence under section 1 of the Bill has been or is being committed at the premises.

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24. Paragraph 3 confers power on a sheriff or justice of the peace to grant a warrant, stating the conditions which must be satisfied first. By virtue of section 45 of the Courts Reform (Scotland) Act 2014, the power to grant a warrant under paragraph 3 extends to a summary sheriff as well.. There must be reasonable grounds to believe that an offence under section 1 is being or has been committed at particular premises, or that evidence relating to the commission of such an offence will be found at premises. In addition, a warrant will not be granted unless the sheriff or justice is satisfied that an inspector or constable has been refused permission to enter the premises (or that such permission is expected to be refused). Alternatively a warrant may also be granted if the sheriff or justice is satisfied that the premises are unoccupied or the owner is temporarily away from the premises. (Where a summary sheriff is considering an application for a warrant under paragraph 3, the conditions described above relating to the granting of the warrant apply to the summary sheriff in the same ways as they do for the sheriff or a justice of the peace).).

25. Paragraph 4 makes provision for what a warrant authorises an inspector or a constable to do - namely, to enter the premises to which the warrant relates, to search for or examine any animal and to search for, examine and seize any equipment, document or other thing tending to provide evidence of the commission of, or participation in, an offence under section 1 of the Bill. These powers under warrant are exercisable in respect of any premises, including domestic premises (as defined in paragraph 1).

26. Paragraph 5 enables an inspector or constable, in certain circumstances, to exercise the same powers as are mentioned in paragraph 4, but without the need for a warrant. The powers in paragraph 4 are exercisable only in relation to premises specified in a warrant, whereas the powers in paragraph 5 may be exercised in respect of any premises (so long as they are not domestic premises). The condition that must be satisfied before the powers under paragraph 5 may be exercised is that the inspector or constable must believe that delay would frustrate the purpose for which the power is to be exercised. For example, if an inspector suspects that a wild animal is being exhibited to the public, he or she may, without a warrant, enter circus premises to search for the animal and look for and seize any evidence of the offence if it is known that the circus is moving to its next destination the following day.

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Stopping and detaining vehicles

27. Paragraph 6 sets out the power the Bill affords a constable in uniform, or an inspector accompanied by a constable in uniform, to stop and detain a vehicle or vessel. Such a power, however, may be exercised only for the purpose of exercising any of the other powers conferred by schedule 1, or conferred under a warrant granted under the schedule. Paragraph 6(5) provides a definition of “vehicle” that specifically includes a “caravan”. The power to stop and detain vehicles would therefore apply to the types of vehicles, e.g. caravans and mobile homes, which are commonly associated with a travelling circus. A vehicle or vessel may be detained for so long as is reasonably required to enable the constable or inspector to exercise the power in relation to which the vehicle or vessel was stopped. That power need not be exercised at the precise spot where the vehicle or vessel was detained, but somewhere nearby (for example, if that is safer or more convenient).

Entry and associated powers: supplementary

28. Paragraphs 7 to 13 set out a number of matters supplementary to the powers discussed above (including the power to issue warrants). Some of these are self-explanatory. Under paragraph 9, an inspector or constable may use reasonable force when exercising a power conferred on them by the schedule or under a warrant. But that does not apply to the power of entry under paragraph 2.

29. Paragraph 11(1) permits an inspector or constable to take additional people (for example a vet) onto any premises they may enter to provide assistance to the inspector or constable in exercising a power under the schedule. Inspectors or constables may also take any equipment which might be required when entering premises. Paragraph 11(2) provides that the powers conferred on inspectors and constables under the schedule, or in a warrant granted under the schedule, carry with them certain additional powers. These include testing and taking samples from animals, and identifying animals by any means, such as marking or micro-chipping them. Therefore additional people may accompany inspectors or constables when exercising any enforcement power under the schedule, such as powers of entry, inspection, search or detention under paragraphs 2, 4, 5 and 6. For example, an inspector or constable can have powers under paragraphs 4 and 5 to search for and examine any animal and additional powers under paragraph 11(2) such as performing tests, but it may be necessary for the inspector or constable to take a vet with them when

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entering and searching the premises so that the vet can use his or her professional skills to examine or perform tests on any animals which are found to assist the inspector or constable.

30. Paragraph 12 requires certain persons to comply with any reasonable direction made by an inspector or constable and to provide any information and assistance that is reasonably required. Where a power under the schedule or under a warrant is being exercised in respect of particular premises, those persons are the occupier of the premises, the circus operator (where the premises are circus premises) or any other person who seems to be under the control of those persons. A failure to comply with obligations under this paragraph is a criminal offence, as explained below.

Offences

31. Breach of the duties set out in paragraph 12(1), without a reasonable excuse, is an offence (paragraph 14(1)). It is also an offence to intentionally obstruct an inspector or constable who is exercising a power under the schedule or under a warrant granted under the schedule (paragraph 14(2)). Both these offences can be prosecuted in summary courts and carry a maximum fine of level 5 on the standard scale (£5,000).

Liability of inspectors

32. Paragraph 15 confirms that when exercising the inspector's functions, the inspector, and any individual who is accompanying the inspector, are not liable in any civil or criminal proceedings for any action undertaken either by the inspector, or under the inspector's supervision. Such immunity applies only where the inspector or their supervised individual acts on reasonable grounds and in good faith.

Schedule 2: Crown Land

Crown land

33. Under paragraph 1, the exercise of a power of entry under schedule 1 onto Crown land requires the consent of the "appropriate authority". Paragraph 2(1) defines Crown land by reference to ownership of interests in certain types of land. This includes land belonging to the Queen both in right of the Crown and in right of her private estates (such as the Balmoral estate) and land belonging to an office-holder in the Scottish Administration or department of the Government of the United Kingdom. Who constitutes

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the “appropriate authority” from whom consent is required depends on the ownership or management of the land, and is set out in paragraph 2(3). For example, in the case of land belonging to Her Majesty in right of the Crown (i.e. Crown land), which is managed by an office-holder in the Scottish Administration, then the appropriate authority is the office-holder in the Scottish Administration.

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