

Wild Animals In Travelling Circuses (Scotland) Bill

[As amended at stage 2]

Supplementary delegated powers memorandum

Introduction

1. This supplementary memorandum has been prepared by the Scottish Government in accordance with Rule 9.7 of the Parliament's Standing Orders. It describes provisions in the Bill conferring powers to make subordinate legislation which were introduced at Stage 2.
2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Delegated Powers Memorandum published to accompany the Bill as introduced.

New delegated powers introduced at stage 2

3. The Bill was amended at Stage 2 to provide two new regulation-making powers. These are that Scottish Ministers may specify a kind of animal that is to be regarded as wild or not, and that Scottish Ministers may describe a particular type of undertaking, act, entertainment or similar thing that is or is not to be regarded as a travelling circus.

This document relates to the Wild Animals in Travelling Circuses (Scotland) Bill amended at Stage 2 (SP Bill 12A)

Section 3A - Power to specify animals as wild or not

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

4. This section confers a power on the Scottish Ministers to specify, under subsection (1)(a), a kind of animal that is to be regarded as wild and, under subsection (1)(b), a kind of animal that is not to be regarded as wild, for the purposes of the Act. Any regulations under subsection (1)(a) specifying a kind of animal as wild are without prejudice to the generality of section 2 of the Act. That section provides a broad, general meaning for the expression “wild animal”. In turn, the generality of section 2 is subject to whatever is done by regulations under subsection (1)(b) – the power to specify by regulations that a kind of animal is not to be regarded as wild for the purposes of the Act.

Reason for taking power

5. The power will permit future detailed clarification of whether particular kinds of animal are or are not “wild animals”. Given the general definition in section 2, which will mean that 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 is therefore considered necessary to provide 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.

Choice of procedure

6. The regulations are to be made by statutory instrument, in accordance with section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010. Regulations under this power are subject to the affirmative procedure, which is consistent with the procedure used for animal welfare secondary legislation. Affirmative procedure is considered appropriate since any exercise of the power has the potential to affect the operation of the criminal offence in section 1.

Section 3B - Power to describe what is or is not a travelling circus

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

7. This 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” within the meaning of the Bill. Provision in any regulations under subsection (1)(a) describing something as a travelling circus is without prejudice to the generality of section 3 of the Act. That section provides for the meaning of certain key terms, including a definition of “travelling circus”. In turn, the generality of section 3 is subject to whatever is done under subsection (1)(b) – the power by regulations to describe a particular type of undertaking, act, entertainment or similar thing that is not be regarded as a travelling circus for the purposes of this Act.

Reason for taking power

8. The reason for taking the power is to permit further future detailed clarification of what is a “travelling circus” if necessary, in 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 entertainment using wild animals, there may be cases where it is not possible to identify something definitively as a travelling circus or not. The power is therefore considered necessary to provide certainty in relation to acts and undertakings which could give rise to doubts as to their status as a travelling circus (or as something other than a travelling circus).

Choice of procedure

9. The regulations are to be made by statutory instrument, in accordance with section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010. Regulations under this power are subject to the affirmative procedure, which is consistent with the procedure used for animal welfare secondary legislation. Affirmative procedure is considered appropriate since any exercise of the power has the potential to affect the operation of the criminal offence in section 1.

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