



House of Commons
Environment, Food and Rural
Affairs Committee

**Wild Animals in
Circuses: Government
Response to the
Committee's Fourth
Report of Session
2013–14**

**Fifth Special Report of Session 2013–
14**

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Environment, Food and Rural Affairs Committee

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Contacts

All correspondence should be addressed to the Clerk of the Environment, Food and Rural Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5774; the Committee's email address is efracom@parliament.uk. Media inquiries should be addressed to Hannah Pearce on 020 7219 8430.

Fifth Special Report

The Environment, Food and Rural Affairs Committee reported to the House on *Wild Animal in Circuses* in its Fourth Report of Session 2013–14, published on 9 July 2013 as HC 553. The Government's response to the Report was received on 9 October 2013.

Government response

The Government welcomes the Environment, Food and Rural Affairs Committee's report on 'Wild Animals in Circuses'. We are grateful for the Committee's consideration of this matter and its support for the Government's position that there remains insufficient evidence, in line with the findings of the 2007 'Radford Report'¹, for a ban on welfare grounds. The Government is also grateful for the Committee's support for the welfare protections provided by the licensing Regulations introduced last year by Defra².

We have carefully considered the recommendations made by the Committee. This document sets out the Government's response.

The principle of a ban

1. We recommend that the Government revise its approach to the Bill so that a Schedule be attached that contains a proscribed list of animals which can no longer be used in travelling circuses. Initially, for example, there would be a ban on all big cat species and elephants but not on, say, snakes, camels, zebras or racoons. The Secretary of State should have the power through secondary legislation to amend the list in future to reflect prevailing social and cultural attitudes. Those animals not on the proscribed list should, nevertheless, still be protected by the new licensing regime introduced in 2012, which should continue. (Paragraph 17)

The Government cannot agree to this recommendation. The option of a species-specific ban, as proposed by the Committee, was considered by Defra during the development of the draft Wild Animals in Circuses Bill. Defra's initial thoughts were set out in the Impact Assessment that accompanied the publication of the draft Bill.

During the Backbench Business debate on 23 June 2011 the House of Commons made it clear to the Government that it wished to see a ban on the 'use of all wild animals in circuses'. From subsequent debates, parliamentary questions and correspondence from Members, we have no reason to believe that Parliament has changed its view on this matter. The arguments that the Government has put forward in support of the proposed ban³ do not appear to lead to the conclusion that it is still acceptable to still use some species of wild animal but not others. The issue that the Government has been asked to address is not the number of wild animals used in travelling circuses, nor their species, but the fact that they are used at all.

¹ 'Wild Animals in Travelling Circuses: The Report of the Chairman of the Circus Working Group'

² Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012

³ 'Wild Animals in Circuses' command paper Cm 8538, April 2013

The Committee further proposes that the Bill be redrafted to include a power to make secondary legislation that could be used to add species to the prohibited list. The Government would regard the ability to add new species as a reactive measure, possibly requiring the Government of the day to introduce new regulations every touring season as circuses introduced new wild animals not already covered in the prohibited list. Not only would this be potentially burdensome on Defra, Parliament and ultimately the taxpayer, it would also not provide any long term clarity for circuses, who might go to great expense in training up a new animal only to find that the Government subsequently prohibits that species of animal.

The Committee recommends that any species of wild animal allowed to remain in a travelling circus should still be covered by the new licensing Regulations. However, the Regulations contain their own 'sunset' provisions that mean they will automatically expire in January 2020. The Government has always intended that the Regulations should be a temporary measure.

'Wild animal' is already a term recognised in legislation; allowing laws to differentiate between domesticated animals, such as horses or dogs, and animals that have not undergone the same process of domestication, such as tigers and zebras. Both the Zoo Licensing Act 1981 and the Animal Welfare Act 2006, for example, rely on the principle that there is a distinct difference between domesticated animals and non-domesticated 'wild' animals. The concept of what is, and is not, a wild animal is well established and the Committee does not explain why the scope of the ban should be further sub-divided into smaller sub-categories of 'wild animal'. Neither does the Committee provide any clear guidance as to how those further sub-categories of 'wild animal' should be determined or on what grounds the proposed delegated powers should be used.

The Bill in practice

Clause 1

2. We do not agree that clause 1(2) should be amended as suggested by the RSPCA and others to match provision in the 2012 regulations. (Paragraph 21)

The Committee highlighted the important difference between the scope of the Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012 and the draft Wild Animals in Circuses Bill. For purposes of inspection, the Regulations need to take in all places, such as winter quarters, where a wild animal belonging to the circus might be kept. The scope of the draft Bill is quite different, in that it focuses solely on prohibiting the use, in performance or exhibition, of wild animals in a travelling circus. The purpose of the Bill is not to prohibit the ownership of wild animals by circus operators.

Defra agrees with the Committee that in the absence of any welfare issues, which can already be dealt with by existing welfare legislation, further restrictions on wild animals in circuses could amount to a *de facto* restriction on ownership. Indeed, we agree with the Committee that it may not be in the best welfare interests of an animal to remove it from a lifelong keeper or trainer. Defra would add that, depending on the species and the individual animal, separating an animal from a well established socially compatible group,

especially where the alternative may result in keeping the animal in isolation, also may not be in the best welfare interests of the animal.

3. The RSPCA suggests that the courts should have a power to disqualify offenders from keeping wild animals. We disagree: the offence created by the Bill relates to use of a wild animal in a circus, for which a fine is an appropriate penalty. The offence does not relate to the welfare of the animal, and disqualification proceedings are possible under other legislation in the case of ill-treatment. (Paragraph 22)

The Committee pointed out that deprivation and disqualification powers are already contained in the Animal Welfare Act 2006 to deal with incidents of unnecessary suffering or a failure to meet an animal's welfare needs. We would add that the Dangerous Wild Animals Act 1976 also provides powers of seizure that, depending on the species of animal, may also be applicable. Given the very public nature of circuses we think repeat breaches of a ban are highly unlikely and therefore introducing new deprivation or disqualification powers, in addition to the powers already available, would be unnecessary.

4. The Government should explain why the definition of 'wild animal' in clause 1(5) differs slightly from that in the Zoo Licensing Act 1981. (Paragraph 23)

The Government is content to discuss and debate definitional issues, such as the addition of "of a kind which is" to the definition of a wild animal, during the passage of the Bill. However, for the purpose of clarity, Defra is happy to put on the record here the reasoning behind the definition of a wild animal used in the draft Wild Animals in Circuses Bill.

The term "animal" or "wild animal" is used in several places on the statute book. However, there is no one common definition of either. The approach we have taken is in line with the definition of "animal" used in section 1 of the Animal Welfare Act 2006, and of "wild animal" in section 21 of the Zoo Licensing Act 1981 and the Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012. Any differences in the precise wording do not have any material impact on the workings of the definition.

Whether or not an animal is domesticated in another part of the world is not relevant to the situation in England. Asian elephants, for example, are regarded as domesticated in India but no one seriously suggests that they be regarded as commonly domesticated in Great Britain. A zoo that only contained Asian elephants would clearly be captured by the Zoo Licensing Act 1981. Whether or not the animal is domesticated in Great Britain will usually be a simple question to answer, especially for those species typically associated with travelling circuses.

Clause 2

5. The Government should amend the Schedule to include constables as well as inspectors or explain why powers of inspection, entry and seizure should be provided only to inspectors. (Paragraph 24)

Unless there is a suggestion of possible violence against an inspector (for which powers under existing 'breach of the peace' laws can obviously be used to ensure a constable is present during an inspection) it has never been the Government's intention that police constables should be present when powers of inspection, entry and seizure are used. Defra

does not believe it is necessary or appropriate for the police to enforce this legislation. Defra appointed Inspectors are likely to be better qualified in identifying and possibly handling species of wild animal. Inspectors are likely to be AHVLA inspectors or, depending on the circumstances, someone else appropriately qualified such as one of the Inspectors currently used under the interim Circus licensing Regulations

Clause 4

6. It would clearly be desirable for any ban to apply to the whole United Kingdom and we urge Defra to pursue discussions with counterparts in the Devolved Administrations with a view to reaching a co-ordinated position before 1 December 2015. (Paragraph 26)

As the Committee is aware, Defra Minister Lord de Mauley wrote to his three counterparts in the Devolved Administrations last November offering to extend the territorial scope of the Bill to their countries. The Government remains committed to working with the Devolved Administrations on reaching a coordinated position on this matter before a Bill is introduced.

The Scottish Government expects to consult shortly on the issue of a ban and has indicated that, pending the outcome of the consultation, it would hope to work with Defra to produce a single piece of legislation that covers Scotland and England. The Minister for Natural Resources and Food in the Welsh Government, Alun Davies, has already written to Lord de Mauley confirming he would want his officials to work with Defra to produce a Bill that applies to England and Wales.

The Department of Agriculture and Rural Development in Northern Ireland has announced that officials from Northern Ireland and the Republic of Ireland will consider the issue of wild animals in travelling circuses jointly and report back at a future meeting of the North South Ministerial Council. The work will be undertaken by the North South Animal Welfare and Transport Working Group which comprises officials from the two Agriculture Departments.

7. The proposed commencement date of 1 December 2015 is comparatively distant, but we are satisfied that the needs for legislative time, for negotiation with the Administrations in Scotland, Wales and Northern Ireland, and for suitable alternative arrangements to be made for the animals concerned provide sufficient reason for that choice of date. (Paragraph 28)

The Government is grateful that the Committee has given full consideration to the proposed commencement date and has concluded that the Government's proposal is a fair one.