

# Wild Animals in Circuses

December 2013

## Introduction

The use of wild animals in circuses has long been a topic of debate and controversy. This note highlights current legislation in the UK and EU, and details the UK Government's introduction of a licensing scheme, as well as the introduction of the draft Wild Animals in Circuses Bill. The draft Bill applies to England and Wales. While the offence of using a wild animal in a travelling circus in the draft Bill applies only in England as currently drafted the Welsh Government has announced its intention to request that the legislation be extended to Wales. Animal welfare is a devolved competence,<sup>1</sup> so it will be a matter for the Welsh Government whether they want to introduce the same measures as England.

## Use of Wild Animals in Circuses

Figures provided to the Department for Environment, Food and Rural Affairs (DEFRA) in 2012 by Performing Animals Welfare Standards International (PAWSI) suggest that the number of wild animals in circuses in the UK is now below 40,<sup>2</sup> although the precise numbers may vary each season. In 2013 there were 21 wild animals licensed to two circuses in England.<sup>3</sup> These included camels, snakes, and zebras. This compares to

<sup>1</sup> Welsh Government, Elin Jones (Minister for Rural Affairs), *Devolution of Animal Health and Welfare Budgets from DEFRA*, Cabinet Written Statement, 14 March 2011 [accessed 10 July 2013]

<sup>2</sup> Defra, *Impact Assessment: Welfare of Wild Animals in Travelling Circuses*, 8 January 2012 [accessed 10 July 2013]

<sup>3</sup> Environment, Food and Rural Affairs Committee, *Fourth Report, Wild Animals in Circuses*, July 2013 [accessed 9 July 2013]

the size of the industry as recently as 1997 when, according to Animal Defenders International, there were some 124 exotic or wild animals in the UK<sup>4</sup> being used in some 20 circuses.<sup>5</sup> In 2009, wild animals used by circuses in the UK included elephants, tigers, lions, camels, zebras and crocodiles<sup>6</sup>. As of 2013, there are no longer any elephants or big cats kept in circuses which originate from the UK.<sup>7</sup>

## Circuses in the United Kingdom

There are only **two British circuses** currently using wild animals, both of which have applied for licenses under the *Wild Animals in Circuses (England) Regulations*.<sup>8</sup> This is two fewer than the number provided by the report of the chairman of the Circus Working Group in 2007.<sup>9</sup>

In addition, there are three circuses in Ireland which have wild animals, including elephants, lions and tigers. These circuses have been known to regularly cross the border into Northern Ireland with wild animals.<sup>10</sup> Therefore the annual resident and temporary population of circus animals in the UK may differ from that recorded by the PAWSI estimate.

<sup>4</sup> Animal Defenders International, *Animals in Travelling Circuses: The Science on Suffering*, 2006 [accessed 10 July 2013]

<sup>5</sup> Animal Defenders International, *Animal Circuses and the Animal Welfare Bill*, 2004 [accessed 10 July 2013]

<sup>6</sup> Defra, *Tough New Licensing Regime for Wild Animals in Circuses*, [accessed 4 September 2012]

<sup>7</sup> Defra, *Circuses to be Banned from Using Performing Wild Animals*, 1 March 2012 [accessed 9 July 2013]

<sup>8</sup> Defra, FOI release, *Application forms and inspection reports - circus animal licensing (2013)*, [accessed 8 July 2013]

<sup>9</sup> Circus Working Group, *Wild Animals in Travelling Circuses*, October 2007 [Accessed 10 July 2013]

<sup>10</sup> *ibid*

There is a large number of circuses with wild animals in **European countries**, such as Germany (90 elephants in 2006) and France (490 big cats in 2006).<sup>11</sup>

There are **no known resident circuses in Wales**<sup>12</sup> or Scotland<sup>13</sup> with wild animal acts. Circuses do, however, visit both Scotland and Wales, with both of the known British-based circuses with wild animals having visited Wales between 2012 and 2013.<sup>14</sup>

## Legislation

### England and Wales

The **Animal Welfare Act 2006** (hereafter, the 2006 Act) applies in England and Wales.<sup>15</sup> The 2006 Act aimed to harmonise and modernise numerous aspects of animal welfare legislation. Although certain aspects of circus operation were regulated under the **Performing Animals (Regulation) Act of 1925**, there was little regard to the needs of the animals.<sup>16</sup>

Section 9 of the 2006 Act imposes a requirement that someone responsible for an animal, such as a circus proprietor, should meet its reasonable welfare needs. These basic needs remain the same irrespective of the circumstances in which the animal is kept – an animal's needs should not be compromised to enable its use in a circus, but should be similar to animals kept in other captive environments, such as zoos.<sup>17</sup>

<sup>11</sup> Born Free Foundation & RSPCA, *It's Time Parliament Changed its Act*, 2006 [accessed 10 July 2013]

<sup>12</sup> National Assembly for Wales, *SUB-LD7404-EM, Explanatory Memorandum to The Animals and Animal Products (Import and Export) (Wales)(Amendment) Regulations 2009*, 27 February 2009 [accessed 10 July 2013]

<sup>13</sup> Scottish Parliament, *S3W-11168*, Sarah Boyack to Richard Lochhead (Cabinet Secretary for Rural Affairs), Written Answers Report 17 March 2008 [accessed 10 July 2013]

<sup>14</sup> Defra, FOI release, *Application forms and inspection reports - circus animal licensing (2013)*, [accessed 8 July 2013]

<sup>15</sup> UK Government, *Animal Welfare Act 2006*, [accessed 8 July 2013]

<sup>16</sup> Born Free Foundation & RSPCA, *It's Time Parliament Changed its Act*, 2006 [accessed 10 July 2013]

<sup>17</sup> UK Government, *Animal Welfare Act 2006*, [accessed 8 July 2013]

The needs of the animals are based on the **Five Freedoms**, adapted by the Farm Animal Welfare Council and the OIE (World Organisation for Animal Health) and modified and adopted in DEFRA's Standards for Modern Zoo Practice.<sup>18</sup>

These include the need:

- for a suitable environment
- for a suitable diet
- to exhibit normal behaviour patterns
- to be housed with, or apart from, other animals
- to be protected from pain, injury, suffering and disease.

In May 2011, then Environment Secretary Caroline Spelman said that high welfare standards for travelling performing wild animals in circuses would be ensured through a strict new **licensing regime** (rather than a ban on wild animals) enforced through inspections by Government-approved vets.<sup>19</sup>

The UK Government published a consultation on the proposed licensing scheme in March 2012.<sup>20</sup>

The main provisions of the regulations include:

- A requirement that any travelling circus in England that includes wild animals first obtains a licence from DEFRA;
- That a licence can only be obtained on payment of an administrative fee and circuses will also be liable for the cost of inspections;
- A requirement for an initial inspection before a licence can be issued;
- Provision for further inspections;
- That licences can be suspended or revoked and;

<sup>18</sup> Born Free Foundation & RSPCA, *It's Time Parliament Changed its Act*, 2006 [accessed 10 July 2013]

<sup>19</sup> DEFRA, *Tough New Licensing Regime for Wild Animals in Circuses*, [accessed 10 July 2013]

<sup>20</sup> UK Government, *Consultation Response, Welfare of Wild Animals in Travelling Circuses*, [accessed 9 July 2013]

- Detailed licensing conditions covering all aspects of welfare in a travelling circus which must be met and adhered to.<sup>21</sup>

At the same time the UK Government announced that it intended to introduce a **ban** on wild animals in circuses, in the longer term.<sup>22</sup>

James Paice, former Minister of State for Agriculture and Food concluded:

... the new regulations will protect the welfare of wild animals in travelling circuses in the intervening period before a ban can be brought into effect. We expect to publish draft legislation for a ban as soon as parliamentary time allows.<sup>23</sup>

### **The Welfare of Wild Animals in Travelling Circuses Regulations 2012**

were introduced under the 2006 Act and came into force in February 2013.<sup>24</sup> The Regulations require circuses operating in England to apply for a licence to use wild animals. To date, two circuses have applied for licences which cover 28 wild animals.<sup>25</sup> Licences cover each circus for one year. These Regulations only apply to circuses operating in England.

### **Scotland**

There are no regulations which specifically cover the welfare of wild animals in travelling circuses. However section 24 of the **Animal Health and Welfare (Scotland) Act 2006** (hereafter, the Scotland 2006 Act) requires the person responsible for animals, including circus animals, to take reasonable steps to ensure that the needs of the animals are met.<sup>26</sup> The Scotland 2006 Act, which consolidates and modernises animal welfare legislation for Scotland, came into force in October 2006.

<sup>21</sup> UK Government, James Paice (Former Minister of State for Agriculture and Food), **Performing Wild Animals in Travelling Circuses**, Ministerial Written Statement, 12 July 2012 [accessed 10 July 2013]

<sup>22</sup> *ibid*

<sup>23</sup> *ibid*

<sup>24</sup> UK Government, **Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012**, [accessed 9 July 2013]

<sup>25</sup> UK Government, **Written Answers to questions HC Deb, 4 November 2013, c18W** [accessed 14 November 2013].

<sup>26</sup> Scottish Government, **Animal Health and Welfare (Scotland) Act 2006**, [accessed 9 July 2013]

### **Northern Ireland**

The principal legislation relating to Northern Ireland is the new **Welfare of Animals Act (NI) 2011**,<sup>27</sup> which replaces the **Welfare of Animals Act (NI) 1972**. The overall purpose of the new Act is to prevent unnecessary suffering to any vertebrate animal. It sets out the obligations on people to promote the welfare of animals, including domestic pets, for which they are responsible.

There are numerous other restrictions at local and regional level, and in the UK many Local Authorities already prohibit circuses with animals from performing on public land.<sup>28</sup>

### **Policy in the UK**

During parliamentary debates on the Animal Welfare Bill, concerns were expressed about the use of non-domesticated animals in circuses. DEFRA therefore announced that it would consider introducing regulations under the 2006 Act to ban the use, in travelling circuses, of certain non-domesticated species whose welfare needs cannot be met satisfactorily in that environment.<sup>29</sup>

A **Circus Working Group** was formed in 2006 to provide and consider evidence relating to the transport and housing needs of these animals. Although regulation would be a devolved matter, the group agreed to consider evidence on the introduction of regulations across all authorities in the UK. The Group produced the 2007 report **Wild Animals in Travelling Circuses**<sup>30</sup> (hereafter, the **Radford Report**), which concluded that there was an absence of compelling scientific evidence and it was therefore difficult to introduce regulations under section 12 of the 2006

<sup>27</sup> NI Executive, **Welfare of Animals Act (NI) 2011**, [accessed 9 July 2013]

<sup>28</sup> Born Free Foundation & RSPCA, **It's Time Parliament Changed its Act**, 2006 [accessed 10 July 2013]

<sup>29</sup> "I intend to use a regulation under clause 10 of the Animal Welfare Bill [now section 12 of the Act] to the use in travelling circuses of certain non-domesticated species whose welfare needs cannot be satisfactorily met in that environment", Ben Bradshaw, Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs, 8th March 2006.

<sup>30</sup> DEFRA, Circus Working Group, **Wild Animals in Travelling Circuses: The Report of the Chairman of the Circus Working Group**, October 2007 [accessed 10 July 2013]

Act, so a ban would have to be a new piece of primary legislation.

Following on from this, the **Circus Feasibility Study** was initiated to investigate if it would be possible to regulate the use of wild animals in travelling circuses. On 21 December 2009 DEFRA issued a public consultation, asking for stakeholder views on a complete ban; compulsory regulation, and voluntary self-regulation. The majority of those who responded favoured a complete ban.<sup>31</sup>

### Legislative Options

DEFRA concluded that regulations under section 12 of the 2006 Act or section 26 of the Scotland 2006 Act could not be used to introduce a ban on the use of wild animals in circuses, due to a lack of:

- clear scientific evidence that there is a welfare problem specific to wild animals in circuses
- evidence that a ban would be the most proportionate method of solving it.<sup>32</sup>

In the analysis of replies from DEFRA's public consultation in 2002, views on the future of wild animals in circuses were polarised – welfare groups wanted a total ban on animals in circuses, but performing trades wanted greater regulation.<sup>33</sup> All agreed, however, that the *Performing Animals (Regulation) Act 1925* had outlived its usefulness,<sup>34</sup> with the Radford Report from the Circus Working Group in 2007 stating that 'the status quo is not a tenable option'.<sup>35</sup>

<sup>31</sup> DEFRA, *Initial Summary of Responses to the Defra Public Consultation Exercise on the Use of Wild Animals in Circuses*, March 2010 [accessed 10 July 2013]

<sup>32</sup> DEFRA, Circus Working Group, *Wild Animals in Travelling Circuses: The Report of the Chairman of the Circus Working Group*, October 2007 [accessed 10 July 2013]

<sup>33</sup> DEFRA, *The Consultation on an Animal Welfare Bill: An Analysis of Replies*, August 2002 [accessed 10 July 2013]

<sup>34</sup> *ibid*

<sup>35</sup> DEFRA, Circus Working Group, *Wild Animals in Travelling Circuses: The Report of the Chairman of the Circus Working Group*, October 2007 [accessed 10 July 2013]

## Future Policy and Legislation

### England

The draft **Wild Animals in Circuses Bill** was published on 16 April 2013.<sup>36</sup> Under the proposals, it will be an offence for any circus operator to use a wild animal in performance or exhibition in a travelling circus in England, and all travelling circuses in England must stop using wild animal acts by December 2015. The draft Bill will extend to both England and Wales, though the offence of using wild animals in a travelling circus will apply only in England as currently drafted. However, the Welsh Government has signalled its intention to request that the provisions are extended to Wales.

The maximum fine for contravention of the Act will be **£5,000**. The UK Government's position is based on ethical rather than animal welfare grounds.<sup>37</sup>

The Committee on Environment, Food and Rural Affairs has scrutinised the draft Bill and recommended a ban on a proscribed list of animals in circuses (such as elephants and big cats) rather than all wild animals.<sup>38</sup> The UK Government has stated that, given the travelling nature of circuses, enforcement would be simpler if the legislation extended throughout all the countries of the United Kingdom. As such, DEFRA Minister Lord de Mauley has written to his three counterparts in the Devolved Administrations to ask them to consider whether they want to allow the Westminster Parliament to legislate for their countries.<sup>39</sup>

<sup>36</sup> UK Government, *Draft Wild Animals in Circuses Bill*, April 2013 [accessed 9 July 2013]

<sup>37</sup> Environment, Food and Rural Affairs Committee, *Fourth Report, Wild Animals in Circuses*, July 2013 [accessed 9 July 2013]

<sup>38</sup> Environment, Food and Rural Affairs Committee, *Fourth Report, Wild Animals in Circuses*, July 2013 [accessed 9 July 2013]

<sup>39</sup> UK Government, *Wild Animals in Circuses white paper*, April 2013 [accessed 9 July 2013]

The UK Government published a response to the Select Committee's report on 9 October 2013, in which it rejected the recommendation made by the Committee on the draft Bill.<sup>40</sup> In particular it rejected including a list of prohibited species in the Bill.<sup>41,42</sup>

## Wales

Animal welfare is a **devolved** competence.<sup>43</sup>

On 10 July 2012, in response to a Written Assembly Question, John Griffiths, the former Minister for Environment and Sustainable Development stated that:

*The Animal Welfare Act 2006* enables the Welsh Ministers to make secondary legislation for the purpose of promoting the welfare of animals. To rely on section 12 the Welsh Ministers must be able to demonstrate that a ban would promote animal welfare.

The *Government of Wales Act 2006* (Part 1 schedule 7) provides competence for the National Assembly to make primary legislation in relation to the subject of Animal Welfare.<sup>44</sup>

On 11 July 2012 Rebecca Evans AM submitted a proposal for a Member-proposed Bill, the *Ban on Wild Animals in Circuses (Wales) Bill*, to the ballot held on **24 April 2013**. However, the proposal was not selected in the ballot.<sup>45</sup>

<sup>40</sup> UK Government, *Wild Animals in Circuses - Environment, Food and Rural Affairs Committee: Government Response*, October 2013 [accessed 13 November 2013].

<sup>41</sup> UK Government, *Animal Welfare Act 2006*, [accessed 8 July 2013]

<sup>42</sup> UK Government, *Zoo Licensing Act 1981*, [accessed 13 November 2013].

<sup>43</sup> Welsh Government, Elin Jones (Minister for Rural Affairs), *Devolution of Animal Health and Welfare Budgets from DEFRA*, Cabinet Written Statement, 14 March 2011 [accessed 10 July 2013]

<sup>44</sup> National Assembly for Wales, *WAQ60798*, Aled Roberts to John Griffiths (Minister for Environment and Sustainable Development), RoP p8, 10 July 2012, [accessed 10 July 2013]

<sup>45</sup> Research Service Research Paper, *The Queen's Speech 2013 and the draft Wales Bill*, May 2013 [accessed 9 July 2013]

The draft *Wild Animals in Circuses Bill* as drafted does not make it an offence to use wild animals in a circus in Wales. However, on 19 June 2013, Alun Davies, the Minister for Natural Resources and Food stated that:

Following the publication of DEFRA's Command paper 8538 on Wild Animals in Circuses, I intend writing to Lord de Mauley confirming my predecessor's view on working with the UK Government and seeking an extension to the offence of using a wild animal in a circus to Wales.<sup>46</sup>

This was confirmed in written evidence to the Environment and Sustainability Committee by the Minister for Natural Resources and Food, Alun Davies.<sup>47</sup>

Twelve of the 22 Welsh **Local Authorities** have already implemented policies banning circuses that use wild animals on public land in Wales.<sup>48</sup>

## Scotland

Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment stated in a speech to the British Veterinary Association in June 2013 that:

we are currently looking at the complex legal issues surrounding a possible ban in Scotland on ethical grounds and plan to issue a consultation on this soon to provide clear evidence of the feeling on this matter in Scotland.<sup>49</sup>

Several councils in Scotland have banned circuses with performing animals from their land, including North Lanarkshire, East Ayrshire and Allerdale.<sup>50</sup>

<sup>46</sup> National Assembly for Wales, *WAQ64896*, Rebecca Evans to Alun Davies (Minister for Natural Resources and Food), 19 June 2013 [accessed 9 July 2013]

<sup>47</sup> National Assembly of Wales, Environment and Sustainability Committee, E&S(4)-24-13 *paper 1: Draft Budget 2014 – 15: Paper from the Minister for Natural Resources and Food*, 16 October 2013 [accessed 14 November 2013].

<sup>48</sup> RSPCA, *Animal Welfare Indicators Wales*, 2011 [accessed 10 July 2013]

<sup>49</sup> Richard Lochhead, *Speech to the BVA Annual Scottish Dinner*, 18 June 2013 [accessed 9 July 2013]

## Northern Ireland

On 22 January 2013, Agriculture Minister Michelle O'Neill said:

I have not yet developed a position on a ban on the use of wild animals in travelling circuses in the North. [...] Before making any decision on a ban on using wild animals in travelling circuses here, I want to take the time to assess the available evidence and to give the issue detailed consideration. [...] It is important to point out that, given that we do not have any registered circuses in the North, we need an all-island approach to the issue because there is no point in having legislation in one jurisdiction and not in the other.<sup>51</sup>

## Legislation in the EU and Worldwide

### EU Legislation

There is no EU legislation specifically dealing with circus animal welfare. However, circuses should comply with provisions of the following:

- **Council Regulation 338/97/EC** - the protection of endangered species of wild fauna and flora by regulating trade.<sup>52</sup>
- **Council Regulation 1/2005/EC** - the protection of animals during transport and related operations.<sup>53</sup>
- **Council Directive 92/65/EEC** - specific health requirements for imports of animals intended for circuses, according to species.<sup>54</sup>
- **Commission Regulation 1739/2005/EC** - standardized rules across the EU to allow, and ease, the movement of circus animals and animal acts between Member States.<sup>55</sup>

<sup>51</sup> NI Assembly Official Record, *Vol 81, No 2, AQO 3197/11-15, 22* January 2013 [accessed 9 July 2013]

<sup>52</sup> *OJ L 061, 3.3.97* [accessed 10 July 2013]

<sup>53</sup> *OJ L 003, 5.1.05* [accessed 10 July 2013]

<sup>54</sup> *OJ L 268, 14.9.92* [accessed 10 July 2013]

<sup>55</sup> *OJ L 279, 22.10.05* [accessed 10 July 2013]

In England and Wales, these regulations are enacted by the ***Animals & Animal Products (Import & Export) (Laboratories, Circuses & Avian Quarantine) Regulations 2007***.<sup>56</sup>

### Austrian Case

Austrian law prohibits the keeping of wild animals in circuses.<sup>57</sup> The European Commission opened proceedings against Austria under Article 258 of the *Treaty on the Functioning of the European Union* (TFEU – the amended EC Treaty), following an inquiry by the European Ombudsman.

According to the Internal Market Commissioner Charlie McCreevy's initial letter of formal notice of 12 October 2005, the total ban on wild animals in circuses restricted the free movement of services<sup>58</sup> and did not comply with the Gebhard test.<sup>59</sup> The Commission later changed its position on the appropriateness of the EU deciding on this matter and closed the infringement proceedings using discretionary powers. The Commission argued that while the Austrian ban was in breach of Article 49 of the Treaty (Right of Establishment), animal welfare issues could justify a restriction.<sup>60</sup>

### Legislation in other Countries

Several EU nations have bans on all wild animals in circuses including Austria, Croatia, and Greece. Some other nations have bans on some species of wild animals in circuses e.g. Denmark, Finland, Hungary, Portugal and Sweden. Estonia and Poland ban wild-born animals from circuses.<sup>61</sup>

<sup>56</sup> UK Government, ***Animals and Animal Products (Import and Export)(Laboratories, Circuses and Avian Quarantine) Regulations 2007***, [accessed 9 July 2013]

<sup>57</sup> Austrian Federal Chancellery, ***Austrian Laws***, 2012 [accessed 10 July 2013]

<sup>58</sup> Article 49 EC reads as follows: "... restrictions on freedom to provide services within the Community shall be prohibited..."

<sup>59</sup> Case C-55/94, ***Rheinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano***. (reference for preliminary ruling), 1995, ECR I-04165, paragraph 37 [accessed 10 July 2013]

<sup>60</sup> House of Commons Library Standard Note, ***SNSC-5992, Wild Animals in Circuses***, 14 July 2012 [accessed 10 July 2013]

<sup>61</sup> Animal Defenders International, ***Worldwide circus bans***, 21 June 2013 [accessed 9 July 2013]

Several other countries ban wild animals from circuses including Bolivia, Colombia, Costa Rica, Paraguay, Peru, Israel and Singapore.<sup>62</sup>

## Further information

For further information on **Wild Animals in Circuses**, please contact **Nia Seaton** ([Nia.Seaton@Wales.gov.uk](mailto:Nia.Seaton@Wales.gov.uk)), Research Service.

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**Enquiry no: 13/1834**

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<sup>62</sup> ibid