Environment, Climate Change and Land Reform Committee

Wild Animals in Travelling Circuses (Scotland) Bill

Written submission from OneKind

Summary

OneKind strongly supports the Scottish Government proposal to ban the use of wild animals in travelling circuses in Scotland. We consider the proposal to be forward-looking and progressive in its attitude to animals, and note the importance of the signal it would send to the rest of the UK and other EU countries who are considering a similar move. We agree with the ethical basis for the Bill, but note that it could equally be justified on animal welfare grounds. Our responses to the questions posed by the Committee are set out below.

The ethical basis for the Bill, as opposed to other justifications such as animal welfare

OneKind notes and supports the ethical basis for this Bill, and believes that the Bill could equally justified on animal welfare grounds.

Animal welfare is seriously compromised for wild animals travelling with circuses. The circus life involves a year-round regime of travel, confinement, being made to perform, and being deprived of natural interaction with other animals. Incidents of abuse have also been documented. Circus animals are transported throughout their life cycle, regardless of age, condition or reproductive status. They live in temporary facilities for most of the year, either on a lorry or in stables, and may remain tethered for long periods of time while workers are busy, or on breaks. Some circuses make an effort to provide exercise space, but this is unlikely to be sufficient for the animals’ long-term needs.

It is also important to take account of the longevity of some circus animals and the duration of their unnatural lifestyle. The elephant, Anne, for example, spent over 50 years on the road with the Bobby Roberts Super Circus. A rhinoceros and hippopotamus brought to Scotland in the summer of 1997, by an Italian travelling circus, were found almost ten years later in a different circus in the Republic of Ireland.

We are aware that circus representatives believe that they do their best for their animals but in ethical terms, entertainment is not a sufficient reason to impose a lifestyle on sentient animals that makes their needs impossible to meet.

The Chairman of the Circus Working Group reported in 2007 that “our present state of knowledge about the welfare of non-domesticated animals used in circuses is such that we cannot look to scientific evidence for a steer in the development of policy; it is, ultimately, an entirely political decision”\(^1\). However, the remit for that report set by DEFRA was very limited, and a considerable body of research has

been carried out since this report was published ten years ago\(^2\). In particular, an extensive literature review and questionnaire of over 600 experts carried out for the Welsh Government in 2016 led researchers to conclude that: "The available scientific evidence indicates that captive wild animals in circuses and other travelling animal shows do not achieve their optimal animal welfare requirements as set out under the Animal Welfare Act 2006, and the evidence would therefore support a ban on using wild animals in circuses and mobile zoos on animal welfare grounds."\(^3\)

At the same time, however, the ethical case for a ban on the use of wild animals in circuses is robust and provides a sufficient basis for legislation. OneKind believes that animals deserve to be respected for their intrinsic value – the extraordinary skills, behaviours and characteristics that they possess as animals – rather than training them to mimic human behaviour or carry out other unnatural tricks for entertainment. As generations of natural history documentaries have shown, wild animals are at their most fascinating when seen in their natural settings. OneKind therefore agrees with the Scottish Government’s stated ethical concerns about using wild animals in circuses, as set out in the policy memorandum accompanying the Bill\(^4\).

In the 21st century we have a great deal more understanding of the intelligence, sentience and behavioural needs of wild animals than was the case in the heyday of the travelling circus. Instinctive behaviours such as hunting, nesting or natural breeding simply cannot be performed in the travelling circus environment. Ultimately, we consider it unethical to deprive wild animals of these opportunities for their entire lives, for a purpose that is of no particular benefit to society.

**The effectiveness of the creation of an offence to prevent wild animals being used in travelling circuses in Scotland**

OneKind supports this approach. It is a simple and direct way to prevent circuses with wild animals travelling to Scotland. As there are no circuses in Scotland at present, it would be disproportionate to create a costly licensing system requiring specialist knowledge of a potentially wide variety of wild animals, and an inspection regime which would be a burden on local authorities. Regulators with specialist knowledge of the species being used would need to monitor conditions of travel, housing, handling, training and performance on a day-to-day basis during the touring season, which is unlikely to be practical.

OneKind supports the Scottish Government’s intention to include all wild animals. We do not believe that there is any ethical justification for allowing the continued use of certain wild animals whilst prohibiting the use of others. In July 2013, the Westminster EFRA Committee considering an English Bill recommended that any prohibition on animal use in circuses should be limited to big cats and elephants, whilst use of species such as zebras and snakes should still be allowed. OneKind and other animal welfare organisations felt that this approach was misguided: it met with an overwhelmingly negative public reaction and was rejected by the UK Government when it responded to the report in October 2013.

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\(^3\) Dorning J, Harris S and Pickett H (2016) The welfare of animals in travelling circuses
Alternative approaches to preventing the use of wild animals being used in travelling circuses

As stated above, we believe that a specific licensing regime for circuses would be a cumbersome approach to a problem that is limited in extent and indeed does not currently exist in Scotland. An alternative approach would be to focus on existing local authority competences such as the issuing of public entertainment licences under the Civic Government (Scotland) Act 1982, and councils’ policies regarding the use of their own land. OneKind has engaged with many Scottish local authorities in respect to both these issues.

We have made many requests to councils to refuse public entertainment licences to circuses using wild animals, on the grounds of animal welfare and public interest. We found that councils were concerned about acting *ultra vires*, following the case of *Gerry Cottle's Circus Ltd. v City of Edinburgh District Council*. Following the passage of the Animal Health and Welfare (Scotland) Act 2006, placing an onus on the owners of animals to ensure their welfare, OneKind believed that there was a statutory basis for refusing such licences but, understandably, no local authority has wished to risk court proceedings. Sometimes, however, a licensing panel would agree to place a condition on the licence to the effect that a wild animal must not be used.

While local authorities believed that they were prevented by the *Cottle* judgment from adopting a policy of not licensing wild animal circuses, many were responsive to the suggestion that they adopt policies of refusing to let land to circuses using wild animals. A significant number of councils, including Dundee, East Ayrshire, East Lothian, East Renfrewshire, Edinburgh, Fife, Highland (three areas), North Ayrshire, Renfrewshire and West Lothian have adopted this policy. Some of these councils apply this policy to all animal circuses, i.e. including those that use domesticated animals.

The difficulty with enforcing these policies is that officials may not always know when a wild animal is being used in a circus, in breach of a public entertainment licence or a council land lease. In our experience, it takes time for a council to receive a report that an animal is being used in breach of council conditions, to send an inspector to a venue, to issue a warning and then to make a follow-up visit. This delay effectively allows the circus to complete its run and move to another area.

OneKind monitored the use of wild animals by the Bobby Roberts' Super Circus for the whole of its tour of Scotland in 2009, as well as intermittently in other years. The aged elephant, Anne, was used for exhibition during the performance interval for members of the audience to photograph, at a charge of £5, and performed a trick of eating candyfloss. Several of the local authorities where the elephant appeared prohibited the use of wild animals on their land, but did not know that she was being used. Their conditions were circumvented and due to the peripatetic nature of the circus, enforcement actions were not undertaken.

In 2011, covert filming by Animal Defenders International (ADI) exposed the fact that Anne was being seriously mistreated in the circus, and she was subsequently re-
homed. A simple ban on the use of wild animals in travelling circuses in Scotland would offer more effective protection to animals like Anne (an animal who was originally taken from the wild), and would better address the ethical problems that surrounded her exploitation over half a century.

**The definitions of key phrases in the Bill such as “wild animal”, “animal”, “circus operator” and “travelling circus”**

OneKind agrees with the definition of a wild animal as one that is not “commonly domesticated in the British Islands”, which accords with existing definitions in the Animal Health and Welfare (Scotland) Act 2006 and the Zoo Licensing Act 1981.

We believe the definition of “domesticated” in s.2(2) is unclear and requires amendment. Domestication is a process that takes hundreds or thousands of years, and this is not reflected in the concept of “multiple generations of animals”. One circus industry respondent to the Scottish Government consultation argued that “[…] it is possible to consider the classical dichotomy between ‘domesticated animals’ and ‘wild animals’ in circuses as obsolete, because in the circus community all animals are domesticated as they have been living with men for generations”6. This misrepresents the difference between taming an individual animal and domesticating a species.

We therefore suggest deleting s.2(2) or amending it to give greater clarity about the process of domestication. Otherwise, there is a risk of challenges based on different interpretations of the expression “multiple generations”. An alternative approach would be an Annex to the Bill that specifies those species considered as domesticated for the purposes of the Bill. This would, we believe, be the clearest way of defining the scope of the ban, and would minimise the chance of interpretation of the ban so that it allows the use of tamed wild animals.

We agree with the definitions of “animal”, “circus operator” and “travelling circus”. In our view it is appropriate to leave the word “circus” to the courts to interpret.

**Proposed culpability**

OneKind agrees that responsibility for offences must lie with the circus operator, and with the definitions of responsible individuals in the case of organisational offending set out in section 4(4).

**The effectiveness of proposed powers of enforcement**

OneKind agrees that inspectors appointed by local authorities should be the primary enforcers of the legislation, and with the extent of powers set out in Schedule 1. These appear to us to be standard enforcement powers similar to those in the Animal Health and Welfare (Scotland) Act 2006. We do have concerns about the resources and capacity of local authorities in general to enforce animal welfare legislation, but this particular Bill is not expected to impose significant additional burdens on councils, given that visits of wild animal circuses are currently very uncommon.

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