

## LEGISLATIVE CONSENT MEMORANDUM

### Wild Animals in Circuses (No. 2) Bill

#### Background

1. This memorandum has been lodged by Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform, under Rule 9.B.3.1(a) of the Parliament's standing orders, and is supported by Mairi Gougeon, Minister for Rural Affairs and the Natural Environment. The Wild Animals in Circuses (No. 2) Bill was introduced in the House of Commons on 1 May 2019. The Bill can be found at: <https://services.parliament.uk/Bills/2017-19/wildanimalsincircusesno2.html>.

#### Content of the UK Government's Wild Animals in Circuses (No. 2) Bill

2. The Wild Animals in Circuses (No. 2) Bill ('the Bill') puts in place provisions to make it an offence for a circus operator to use a wild animal in a travelling circus in England, to set out relevant definitions, and put in place appropriate inspection and enforcement powers. The effect is similar in nature to that of Scotland's Wild Animals in Travelling Circuses (Scotland) Act 2018 (the 2018 Act).

3. Clause 3 of the Bill also contains a consequential amendment to the Dangerous Wild Animals Act 1976 (the 1976 Act), removing the exemption of circuses from the requirement to hold a licence for any dangerous wild animals in their keeping.

4. There are no transitional provisions proposed as they are not considered necessary. There are only two remaining travelling circuses in the UK that use dangerous wild animals; both are based in England. The Bill will come into force in the winter closed season, when the circuses are not touring and Defra understands that the two circuses known to be affected already have licences under the DWA to keep their dangerous wild animals (zebras and camels) in their winter quarters. Circuses should have at least two months between Royal Assent and the ban coming into force to get any DWA licences needed.

#### Provisions Which Relate to Scotland

5. **Clause 3 is the only provision of the Bill (as introduced) which extends to Scotland.** It proposes an amendment to the 1976 Act.

6. The 1976 Act regulates the keeping of certain kinds of dangerous wild animals. Its main purposes is to protect the safety of the general public in relation to the keeping of such animals by private individuals, although it is also intended to help cater for the welfare of such animals.

7. Clause 3 amends section 5(2) of the 1976 Act so that the keeping of an animal in a circus in England and in Scotland is no longer exempt from need for a licence under that Act. This would mean that, from 20 January 2020, a licence would be required under the 1976 Act to keep any dangerous wild animal in a circus (static or travelling) in England or Scotland.

8. Insofar as Clause 3 of the Bill extends to Scotland, it falls within the legislative competence of the Scottish Parliament and therefore requires its legislative consent.

### **Reasons for seeking a legislative consent motion**

9. Circuses are currently exempt from the requirement to hold a licence under the 1976 Act. Given the changing format of modern circuses, this raises some hypothetical concerns, outlined below. This outdated exemption could have been removed when the Scottish Government put forward its Wild Animals in Travelling Circuses (Scotland) Bill. However, as the 1976 Act is Great Britain wide and as no circuses with wild animals had visited Scotland for several years, it was decided to wait until the change could be made consistently across England, Wales and Scotland. Consenting to the UK Government making the required amendment on our behalf represents the most time and cost-effective mechanism of making the required technical change.

### The Dangerous Wild Animals Act 1976

10. The 1976 Act, which extends to England and Wales and to Scotland, requires a person to hold a licence to keep any dangerous wild animal which is listed in the schedule to the Act. While a key outcome is to protect the public, the regime helps to ensure that individuals keeping dangerous wild animals are doing so in a manner that is conducive to their health and welfare, minimising the chance of escape and danger/nuisance to the general public, and minimising the transfer of disease, including zoonoses.

11. Circuses are specifically excluded from the 1976 Act along with a number of other professions as the intention of the 1976 Act was to control the private keeping of dangerous wild animals by the general public. A research report published by Defra entitled 'Effectiveness Study of the Dangerous Wild Animals Act' (June 2001) noted: "Throughout the progress of the Bill it was made clear that its intention was to control the private keeping of dangerous wild animals by the general public. Professional and commercial animal keeping was to be regarded differently and this was confirmed by exempting pet shops, premises licensed for scientific procedures, zoos and circuses. Reassurance was given that pet shops were already controlled by licensing, and that a zoo licensing system was under development. The position of circuses was not expressly referred to, but it was perhaps expected that a zoo licensing act would control circuses as well."

12. The courts have also said that "It is surely clear that in disapplying the Act... Parliament was intending to exempt those whose general expertise and experience (whether as zoo owners or as circus owners) was thought sufficient to justify their keeping of dangerous wild animals without having to be specifically licensed for it." (South Kesteven District Council v Mackie & ORS, Court of Appeal, 1999).

### Wild animals in Scottish circuses

13. Scotland has no static circuses with wild animals at present and has banned the use of wild animals in travelling circuses via the 2018 Act. The 2018 Act

significantly reduced the likelihood of circuses in Scotland having personnel with sufficient expertise to keep dangerous wild animals without the need for a licence under the 1976 Act. The UK Bill seeks to impose a similar ban in relation to the use of wild animals in a travelling circus in England. Any such ban is likely to have a similar effect in relation to the experience of personnel in circuses in England.

14. Where a dangerous wild animal is kept in a circus, however, it does not currently require a licence under the 1976 Act. In addition, as such animals are no longer permitted to perform in a travelling circus, there may also be no requirement for the circus to register under the Performing Animals (Regulation) Act 1925. Accordingly, while the exemption from the 1976 Act for circuses exists, it remains a theoretical possibility for circuses in England and in Scotland to keep dangerous wild animals not intended for performance with no professional expertise and no official oversight or regulation.

15. The UK Government considers that it is appropriate, as a matter of policy, to remove the provision in the 1976 Act which exempts circuses from the need to obtain a licence for the keeping of dangerous wild animals in England. As regards devolved interests, it is considered appropriate to likewise remove this exemption for circuses in Scotland, thereby ensuring that a licence is similarly required for the keeping of such animals in a circus in Scotland.

#### Developments elsewhere in the UK

16. In addition to the UK Bill, the Welsh Government is proposing to introduce its own Bill to enact a similar ban in relation to the use of wild animals in travelling circuses in Wales, and it is also proposing a similar consequential amendment to the 1976 Act.

#### **Consultation**

17. Defra has previously consulted widely on banning the use of wild animals in travelling circuses and received significant support from respondents. As those most likely to be affected by Clause 3 of the Bill have already been consulted by Defra as part of its wider consultation, and as no circuses currently use wild animals in Scotland, no additional consultation is proposed or considered necessary for Scotland.

#### **Financial Implications**

18. The Bill is not anticipated to have significant financial or resource implications for Scotland.

19. Clause 3 of the Bill would mean that any person wishing to keep a dangerous wild animal in a circus in Scotland, would have to apply for a licence and pay any associated licence application fee. There could also be a potential cost to local authorities due to the need to undertake additional inspection and licensing activity, although it is expected that any such costs would be recovered in any licence fee.

20. However, in practice, so far as we are aware, no circuses based in Scotland or that have visited Scotland in recent years keep dangerous wild animals. The Scottish

Government is not, therefore, expecting any new dangerous wild animals licences to be required.

21. There are no financial implications for the Scottish Government.

### **Conclusion**

22. It is the view of the Scottish Government that it is in the interests of the people of Scotland that the relevant provisions which fall within the legislative competence of the Scottish Parliament should be considered by the UK Parliament.

### **Draft Legislative Consent Motion**

23. The draft motion, which will be lodged by the Cabinet Secretary for Environment, Climate Change and Land Reform, is:

“That the Parliament agrees that the relevant provisions of the Wild Animals in Circuses (No. 2) Bill, introduced in the House of Commons on 1 May 2019, relating to removing the current exemption for circuses from the Dangerous Wild Animals Act 1976, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

**SCOTTISH GOVERNMENT**  
**May 2019**



*This Legislative Consent Memorandum relates to the Wild Animals in Circuses (No. 2) Bill (UK legislation) and was lodged with the Scottish Parliament on 15 May 2019*

## **WILD ANIMALS IN CIRCUSES (NO. 2) BILL – LEGISLATIVE CONSENT MEMORANDUM**

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