



The Scottish Parliament
Pàrlamaid na h-Alba

Published 22 September 2017
SP Paper 197
9th Report, 2017 (Session 5)

Environment, Climate Change and Land Reform Committee

Comataidh Atharrachadh Clìomaid is Ath-leasachaidh Fearann

Stage 1 Report on the Wild Animals in Travelling Circuses (Scotland) Bill



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
<http://www.parliament.scot/abouttheparliament/91279.aspx>

For information on the Scottish Parliament contact Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

| | |
|--|-----------|
| Executive Summary | 1 |
| Geàrr-iomradh | 3 |
| Introduction | 6 |
| Membership changes | 6 |
| Committee consideration | 6 |
| Environment, Climate Change and Land Reform Committee consideration | 7 |
| Policy and financial memoranda | 8 |
| Background and purpose of the Bill | 9 |
| Background | 9 |
| Scottish Government consultation | 11 |
| Children and young people | 12 |
| Volume of responses | 14 |
| Location of respondents | 15 |
| Length of time between the consultation and the introduction of the Bill | 15 |
| Conclusions | 16 |
| Purpose of the Bill | 17 |
| The Wild Animals in Travelling Circuses (Scotland) Bill | 18 |
| Scope of the Bill | 18 |
| Other forms of animal performance | 18 |
| Basis for review of the Performing Animals (Regulation) Act 1925 | 19 |
| Future regulation of the use of wild animals in static circuses | 20 |
| Approach to legislating | 20 |
| Scope and the ethical basis of the Bill | 22 |
| Conclusions | 23 |
| The ethical basis for the Bill | 23 |
| Impact on respect for animals | 24 |
| Static circuses | 25 |
| Conclusions | 26 |
| Impact of travelling environments on an animal's nature (telos) | 26 |
| Scottish Government consultation | 27 |
| Status of accommodation | 29 |
| Impact of travel | 30 |
| Conclusions | 32 |
| Ethical costs vs benefits | 32 |

| | |
|---|----|
| Scottish Government consultation _____ | 33 |
| Education _____ | 33 |
| Conclusions _____ | 34 |
| Ethical grounds and other forms of use of wild animals _____ | 34 |
| Static circuses _____ | 36 |
| Conclusions _____ | 38 |
| Does the prevalence of an opinion make it ethical? _____ | 38 |
| The distinction between ethics and welfare _____ | 38 |
| Introduction of the Bill on welfare grounds _____ | 39 |
| Importance of the basis of the Bill _____ | 41 |
| Conclusions _____ | 41 |
| Section 1 - Wild animals in travelling circuses: offence _____ | 42 |
| Fines _____ | 42 |
| Definition of "use" _____ | 43 |
| Overwintering and "use" _____ | 43 |
| Conclusions _____ | 44 |
| Section 2 - Meaning of wild animal _____ | 44 |
| Sections 2(1) and 2(2) - definitions of wild and domestic animals _____ | 45 |
| Ambiguity _____ | 45 |
| Inclusion and definition of the term "domesticated" _____ | 47 |
| Conclusions _____ | 49 |
| Section 3 - Meaning of other key terms _____ | 50 |
| Omission of definition of "circus" _____ | 50 |
| Interpretation in court _____ | 51 |
| Interpretation by local authorities _____ | 52 |
| Ambiguity and loopholes _____ | 52 |
| Existing definitions of "circus" _____ | 54 |
| Enforcement _____ | 55 |
| Conclusions _____ | 55 |
| Travelling Circus _____ | 56 |
| Conclusions _____ | 57 |
| Definitions and other forms of use of wild animals _____ | 57 |
| Circus Operator _____ | 57 |
| Conclusions _____ | 58 |
| Definition of key terms - conclusions _____ | 58 |
| Section 4 - Individual culpability where organisation commits offence _____ | 58 |

| | |
|---|-----------|
| Section 5 - Powers of enforcement | 59 |
| Schedule 1 - Inspectors | 59 |
| Impact of ethical justifications on enforceability | 60 |
| Powers of investigation | 61 |
| Discretionary nature of enforcement | 62 |
| Conclusions | 62 |
| Guidance | 64 |
| Economic impact of the Bill | 65 |
| Conclusions | 65 |
| Alternative approaches | 66 |
| Conclusions | 67 |
| Overall conclusion on the general principles of the Bill | 68 |
| Annexe A - Minutes of Meetings | 69 |
| Annexe B | 72 |
| Written evidence | 72 |
| Official reports | 73 |

Environment, Climate Change and Land Reform Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Environment, Climate Change and Land Reform.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/environment-committee.aspx>



Ecclr.committee@parliament.scot



0131 348 5051

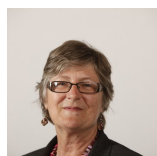
Committee Membership



Convener
Graeme Dey
Scottish National Party



Deputy Convener
John Scott
Scottish Conservative
and Unionist Party



Claudia Beamish
Scottish Labour



Donald Cameron
Scottish Conservative
and Unionist Party



Finlay Carson
Scottish Conservative
and Unionist Party



Kate Forbes
Scottish National Party



Emma Harper
Scottish National Party



Richard Lyle
Scottish National Party



Angus MacDonald
Scottish National Party



Mark Ruskell
Scottish Green Party



David Stewart
Scottish Labour

Executive Summary

1. Travelling circuses which use wild animals in the contexts covered by the Bill have not visited Scotland for many years, and there is no indication they are likely to.ⁱ Nonetheless, the Bill has been introduced to address the public's ethical concerns about the use of wild animals in travelling circuses. The legislation will make it an offence for a circus operator to permit a wild animal to be used in a travelling circus.
2. The Committee considers the decision to frame the Bill on an ethical basis has been difficult to justify, particularly in light of evidence which would support a welfare based approach.
3. The ethical argument is weakened further by the Scottish Government's commitment to introduce a further package of measures to modernise the legislation on performing animals other than in circuses. The Committee believes the issues addressed by the Bill should have been considered as part of this wider work to ensure a coherent approach and that the Scottish Government should proactively ensure there are no gaps in legislation in this area. It also believes there should be extensive consultation ahead of this work, which should not preclude the ethical aspects of the issues, while the statutory instrument proposed to achieve this should be introduced under the affirmative procedure to allow for maximum consultation on, and scrutiny of, proposals.
4. The Committee recognises the issue of the use of wild animals in static circuses was not consulted on and this should be included in this work.
5. Throughout evidence to the Committee, the Scottish Government relied on the premise that ethical objections to the use of wild animals in travelling circuses did not apply to the same extent to other types of animal performance or display. The Committee remains unconvinced of this assertion. There has been no comprehensive assessment of the views of the public on various scenarios involving animal performance and the Committee received no discernible evidence on which to accept this interpretation of the public's view.
6. The Committee welcomes the decision taken by the Scottish Government in creating the offence. However, it believes that the definitions, particularly of "travelling circus" and "wild animals", within the Bill are open to interpretation and strongly recommends these are tightened. The Committee recommends the Scottish Government reflect on the scope for a process for listing animals covered by the Bill which is capable of being updated as required.
7. In the Committee's view, as drafted, these definitions do not entirely capture the scenarios the Bill set out to address and could be misused to cover scenarios it was not intended to.
8. The Committee considers it essential the Bill include a definition of "circus" which is capable of covering relevant performances and excluding those it did not set out to capture.

ⁱ Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 31

9. For example, in evidence from Scottish Government Officials, the Committee was told An Evening with Lions and Tigers was "actually a circus".ⁱⁱ However, the Committee does not think this show would be captured by the Bill as currently drafted as it does not contain elements commonly understood to be part of a circus.
10. The Committee recommends the Scottish Government reflect on the practical realities of hierarchies of responsibility within circuses as outlined to the Committee in evidence in the context of the proposed definition of a "circus operator". The Committee also recommends the Scottish Government consider expanding the definition to cover those with responsibility for animals on site or day-to-day management of animals.
11. The Committee considers the recourse to court challenge in order to clarify definitions to be an inappropriate approach to legislation and asks the Scottish Government to reflect on this.
12. The Committee considers the enforcement powers within the Bill could go further and supports evidence received from local authorities for additional powers to intervene to prevent shows from taking place.
13. Guidance is proposed to support local authorities in their enforcement duties and the Committee considers, given the importance of this document for interpretations, this should be available to councils as soon as the Act is enacted, if the Scottish Parliament passes the Bill.
14. The Committee received evidence from non-circus businesses, including those in the entertainment industry, which considered they could be impacted by the Bill and recommends the Scottish Government consider this evidence to ensure there will be no impact on these businesses.
15. Overall, the Committee believes the Bill as drafted to be at risk of not fully addressing the issues it has been proposed to cover and capturing animal performances it had not intended to. While agreeing to the general principles of the Bill at Stage 1, the Committee believes the Bill can only achieve its purpose if the recommendations contained in this report are implemented in full.

ⁱⁱ Environment, Climate Change and Land Reform Committee, *Official Report*, 27 June 2017, Col 6

Geàrr-iomradh

16. Chan eil soircasan, a bhios a' dol air chuairt agus a bhios a' cleachdadh fiadh-bheathaichean san t-seòrsa shuidheachaidhean ris a bheil am Bile a' dèiligeadh, air tadhal air Alba o chionn iomadh bliadhna, agus chan eil coltas ann gun tadhail iad.ⁱⁱⁱ A dh'aindeoin sin, chaidh am Bile a thoirt a-steach gus dèiligeadh ri draghan beusanta a th' aig a' mhòr-shluagh a thaobh mar a nithear feum de dh'fhiadh-bheathaichean ann an soircasan air chuairt. Leis an reachdas seo, bidh e mì-laghail do neach no companaidh a tha a' ruith soircas leigeil le fiadh-bheathach a bhith air a chleachdadh ann an soircas air chuairt.
17. Tha a' Chomataidh den bheachd gu bheil e air a bhith doirbh an co-dhùnadh gus am Bile a dhealbhadh a rèir phrionnsapalan beusanta a dh'ion, gu h-àraidh nuair a choimheadar air an fhianais a bheireadh taic do Bhile stèidhichte air maith nam beathaichean.
18. Tha argamaid beusanta a' Bhile air a lagachadh tuilleadh ri linn a' gheallaidh aig Riaghaltas na h-Alba gus cumhachan eile a thoirt a-steach a nì ùrachadh air reachdas a thaobh ainmhidhean-cleasachd a tha a' nochdadh ann an suidheachaidhean eile seach soircas. Tha a' Chomataidh den bheachd gum bu chòir na cùisean ris a bheil am Bile a' dèiligeadh a bhith air an gabhail a-steach mar phàirt de dh'obair nas fharsainge a dhèanadh cinnteach gun robh obair aonaichte ga dèanamh agus gum bu chòir do Riaghaltas na h-Alba oidhirp a dhèanamh gus dèanamh cinnteach nach eil uireasbhaidhean san reachdas a tha a' dèiligeadh ris a' chùis seo. Tha iad den bheachd cuideachd gum bu chòir co-chomhairleachadh farsaing a chumail air cùisean mus cuirear an obair seo an gnìomh, a bhios a' gabhail ealla ri cùisean beusanta nuair a tha sin iomchaidh, agus bu chòir don reachdas a thathar a' moladh gus seo a choileanadh a thoirt a-steach tro mhodhan-obrach dearbhaidh feuch an gabh an uiread as motha as urrainnear de cho-chomhairleachadh a chumail agus sgrùdadh a dhèanamh air na molaidhean.
19. Tha a' Chomataidh a' toirt fa-near do mar nach deach beachdan a shireadh a thaobh a bhith a' cleachdadh fiadh-bheathaichean ann an soircasan stèidhichte, agus bu chòir don chùis sin a bhith mar phàirt den obair seo.
20. Rè na h-ùine a bha iad a' toirt fianais seachad don Chomataidh, bha Riaghaltas na h-Alba a' dol a rèir a' bheachd nach eil na h-adhbharan beusanta gus casg a chur air daoine bho bhith a' cleachdadh fiadh-bheathaichean ann an soircasan air chuairt a' buntainn chun na h-aon ìre ris na seòrsaichean cleasachd no taisbeanadh eile le ainmhidhean. Tha a' Chomataidh a' togail cheist mun bheachd sin fhathast. Cha deach measadh iomlan sam bith a dhèanamh air beachdan a' phobaill air na diofar shuidheachaidhean far a bheil cleasachd ann le ainmhidhean, agus cha d' fhuair a' Chomataidh fianais shusbainteach sam bith gus gabhail ris gu bheil am poball den aon bheachd ris an Riaghaltas.
21. Tha a' Chomataidh a' cur fàilte air a' cho-dhùnadh a rinn Riaghaltas na h-Alba gus cùis a tha na h-eucoir a stèidheachadh. Ge-tà, tha iad den bheachd gu bheil na mìneachaidhean sa Bhile, gu h-àraidh a thaobh "soircas air chuairt" agus "fiadh-

ⁱⁱⁱ Comataidh na h-Àrainneachd, Atharrachadh Cliomaid agus Ath-leasachadh an Fhearainn, *Aithisg Oifigeil*, 6 Ògmhios 2017, Col 31

- bheathaichean”, gu math fosgailte a thaobh mar a ghabhas an tuigsinn agus tha iad a’ moladh gu mòr gum bu chòir na mìneachaidhean a bhith nas mionaidiche. Tha a’ Chomataidh a’ moladh gum beachdaich Riaghaltas na h-Alba air modh-obrach a stèidheachadh gus ainmhidhean ainmeachadh a tha a’ tighinn fo sgèith a’ Bhile, agus air dè na h-ainmhidhean a thigeadh fo sgèith a’ Bhile, agus bu chòir gun gabh am modh-obrach ùrachadh nuair a tha sin a dhìth.
22. Am beachd na Comataidh, chan eil na mìneachaidhean, mar a tha iad, gu tur a’ gabhail a-steach nan suidheachaidhean ris an robh am Bile ag iarraidh dèiligeadh agus b’ urrainnear brath a ghabhail orra gus suidheachaidhean a ghabhail a-steach air nach robh am Bile ag amas.
 23. Tha a’ Chomataidh den bheachd gu bheil e riatanach gum bi mìneachadh de “shoircas” sa Bhile a tha a’ gabhail a-steach seòrsaichean cleasachd a bhuineas ri amasan a’ Bhile gun a bhith a’ gabhail a-steach seòrsaichean cleasachd nach buin ris na h-amasan sin.
 24. Mar eisimpleir, nuair a fhuair iad fianais bho Oifigearan Riaghaltas na h-Alba, chaidh innse don Chomataidh gun robh ‘Oidhche le Leòmhainn is Tìgearan’ na “shoircas”.^{iv} Ge-tà, chan eil a’ Chomataidh a’ smaoinichadh gun tigeadh a’ chuir sin fo sgèith chumhachan a’ Bhile mar a tha e an-dràsta oir tha pàirtean den tachartas ann air nach eilear a’ smaoinichadh sa chumantas mar rudan a gheibhear ann an soircas.
 25. Tha a’ Chomataidh a’ moladh gum beachdaich Riaghaltas na h-Alba air ciamar dha-riribh a tha dleastanasan air an roinn aig diofar ìrean ann an soircasan agus dè a’ bhuaidh a th’ aig sin gu practaigeach, cuspair mun d’ fhuair a’ Chomataidh fianais nuair a bhathar a’ beachdachadh air a’ mhìneachadh a bhathar a’ moladh airson “neach-stiùiridh an t-soircais”. Tha a’ Chomataidh cuideachd a’ moladh gum beachdaich Riaghaltas na h-Alba air am mìneachadh a leudachadh gu bhith a’ gabhail a-steach daoine air a bheil uallach airson ainmhidhean air an làraich no airson a bhith a’ coimhead às dèidh nan ainmhidhean bho latha gu latha.
 26. Chan eil a’ Chomataidh a’ smaoinichadh gu bheil e freagarrach mar dhòigh gus dèiligeadh ri reachdas gum bi cothrom ann cùis a thogail sa chùirt gus mìneachaidhean a dhèanamh soilleir, agus thathar ag iarraidh air Riaghaltas na h-Alba beachdachadh air sin.
 27. Tha a’ Chomataidh den bheachd gum faodadh na cumhachdan smachdachaidh sa Bhile a bhith nas làidire, agus tha iad a’ toirt taic do na beachdan a thug ùghdarrasan ionadail seachad agus iad ag iarraidh cumhachdan a bharrachd gus stad a chur air cuirmean bho bhith a’ tachairt.
 28. Thathar a’ moladh gum bi Stiùireadh ann mar thaic do dh’ùghdarrasan ionadail leis na dleastanasan smachdachaidh aca agus tha a’ Chomataidh den bheachd, seach gum bi an sgrìobhainn sin gu math cudromach a thaobh mìneachaidhean, gum bu chòir sin a bhith aig Comhairlean cho luath ’s a thèid an Achd a chur an gnìomh, ma chuireas Pàrlamaid na h-Alba aonta ris a’ Bhile.

iv Comataidh na h-Àrainneachd, Atharrachadh Clìomaid agus Ath-leasachadh an Fhearainn, *Aithisg Oifigeil*, 27 Ògmhios 2017, Col 6

29. Fhuair a' Chomataidh fianais bho ghnòthachasan nach eil a' ruith soircas, a' gabhail a-steach ghnòthachasan dibhearsain, agus bha iad den bheachd gum faodadh am Bile buaidh a thoirt orra agus tha a' Chomataidh a' moladh gum beachdaich Riaghaltas na h-Alba air an fhianais sin gus dèanamh cinnteach nach toir am Bile buaidh air na ghnòthachasan sin.

30. San fharsaingeachd, tha a' Chomataidh den bheachd gu bheil cunnart ann leis mar a tha am Bile an-dràsta nach dèilig e gu tur ris na cùisean air an robh e ag amas agus gun gabh e a-steach seòrsaichean cleasachd le ainmhidhean air nach robh e ag amas. Ged a tha a' Chomataidh ag aontachadh ri prionnsapalan coitcheann a' Bhile aig Ìre 1, tha iad den bheachd nach coilean am Bile a chuid amasan mura tèid na molaidhean san aithisg seo uile a chur an sàs.

Introduction

Membership changes

31. The membership of the Committee changed during the course of the Committee's consideration of the Bill at Stage 1. On 30 June 2017, Maurice Golden MSP and Alexander Burnett MSP were replaced as Members of the Committee by John Scott MSP and Donald Cameron MSP.



Source: Image © Scottish Parliamentary Corporate Body – 2017. Licensed under the Scottish Parliament Copyright Licence

Committee consideration

32. The [Wild Animals in Travelling Circuses \(Scotland\) Bill](#) was introduced in the Scottish Parliament on 10 May 2017. The Bill was accompanied by—
- [Policy Memorandum](#);
 - [Explanatory Notes](#);
 - [Financial Memorandum](#);
 - [Statement on Legislative Competence](#); and
 - [Delegated Powers Memorandum](#).
33. The Scottish Government has also published a [Business and Regulatory Impact Assessment](#) and a [Privacy Impact Assessment](#) in relation to the Bill.

34. Under Rule 9.6 of the Parliament's Standing Orders, the Parliamentary Bureau referred the Bill to the Environment, Climate Change and Land Reform (ECCLR) Committee to consider and report on its general principles.
35. No secondary Committee was appointed to consider the Bill.
36. The [Finance and Constitution Committee](#) considered the Financial Memorandum. It issued a call for evidence and received a [written submission](#) from East Renfrewshire Council.
37. Provisions in section 7(2) of the Bill also meant that it would be considered by the [Delegated Powers and Law Reform \(DPLR\) Committee](#) at Stage 1. The Committee's [report on the Bill at Stage 1](#) found the "commencement powers in section 7 to be acceptable in principle".

Environment, Climate Change and Land Reform Committee consideration

38. At its meeting on 16 May 2017, the ECCLR Committee considered its approach to its scrutiny of the Bill. It agreed to issue a [call for evidence](#) with a deadline of 9 June 2017 and to invite the following groups to give evidence at a series of meetings during May and June 2017—
 - Scottish Government Bill Team;
 - Relevant Local Authorities;
 - Relevant academics;
 - Representatives of the circus industry;
 - Representatives of animal welfare and rights organisations; and
 - The Cabinet Secretary for Environment, Climate Change and Land Reform.
39. The Committee agreed to promote its work on the Bill by—
 - Ensuring audiences identified in its engagement strategy were aware of the call for evidence and the subsequent considerations of the Bill;
 - Hosting the call for evidence on the Committee's website and creating a [mobile-friendly](#) version;
 - Producing social media content, including in Gaelic;
 - Engaging school visits to the Scottish Parliament and asking young people for their opinion on the Bill.
40. Detailed information on the Committee's evidence sessions is available at **Annexe A**. Responses to the call for evidence can be found at **Annexe B**.

Policy and financial memoranda

41. The lead Committee is required under [Rule 9.6.3 of Standing Orders](#) to report on the Policy Memorandum which accompanies the Bill. It is also required to report on the Financial Memorandum.

42. The Committee is generally content with the information provided in the Policy Memorandum and Financial Memorandum.

Background and purpose of the Bill

Background

43. The issues related to the use of wild animals in circuses have been the subject of deliberation by campaigners, policy makers and legislators for decades. Indeed, part of the existing framework for regulation in this area is covered by the [Performing Animals \(Regulation\) Act 1925](#).
44. More recently, the issue was raised in responses to the Scottish Government on the [Animal Health and Welfare \(Scotland\) Bill](#) (which became the [Animal Health and Welfare \(Scotland\) Act 2006](#)). Around this time, the issue was also occupying the thoughts of governments and legislatures elsewhere in the UK. A timeline of the development of this issue throughout the country and its consideration by policy makers in recent times is outlined below—

Timeline of development of policy making on wild animals in travelling circuses around the UK

| Year | Event |
|----------------|--|
| 2004 | The Scottish Government consulted on the Animal Health and Welfare (Scotland) Bill and “Significant concerns were raised regarding the use of wild animals in travelling circuses”. ^v |
| 2006 | The Animal Welfare Act 2006 was passed in the UK. At that time, the UK Government said “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”. DEFRA formed a Circus Working Group, chaired by Mike Radford of the University of Aberdeen, to research and provide evidence relating to the housing and transport needs of animals. |
| 2007 | The Chair of the Circus Working Group published the report Wild Animals in Travelling Circuses: The Report of the Chairman of the Circus Working Group . This is also known as the Radford Review. The report concluded “despite the longstanding concerns of many, that there was insufficient evidence to support a ban on the use of wild animals in travelling circuses on welfare grounds”. |
| May 2011 | The UK Government announced its decision to introduce a licensing scheme in England under the Animal Welfare Act 2006. |
| March 2012 | DEFRA announced plans to ban the use of performing wild animals in travelling circuses. It said it would bring forward primary legislation at the earliest opportunity. At the same time, it launched a public consultation on the proposed licensing scheme. |
| July 2012 | The UK Government published a summary of responses to the consultation on the proposed licensing scheme. |
| July 2012 | Draft Regulations to bring in the new licensing scheme in England were laid before the UK Parliament. The UK Government announced drafting of the Bill to implement a ban was underway. According to a House of Commons Briefing on Wild Animals in Circuses “The regulations will be subject to a full review by the Secretary of State within 5 years of them coming into force. Furthermore, as the Government intend the licensing scheme to be an interim measure, the regulations contain their own ‘sunset’ provisions, which mean they will automatically expire in January 2020.” |
| November 2012 | According to the Policy Memorandum of the Bill, Lord De Mauley, the UK Government Minister at the time, “wrote to the Devolved Administrations.....offering to extend the territorial scope of its, as initially drafted, England-only Bill, to their areas”. The Scottish Government “confirmed that it was to consult on the issue of a ban and indicated that, pending the outcome of the consultation, it would hope to work with DEFRA to produce a single piece of legislation that covered Scotland and England.” |
| January 2013 | The Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012 came into force in England. |
| April 2013 | The UK Government’s Draft Wild Animals in Circuses Bill was published for pre-legislative scrutiny. The Bill made it an offence for “any circus operator to use a wild animal in performance or exhibition in a travelling circus in England. The existing licensing regulations were intended to remain in place until the Bill became law.” The Bill was based on ethical concerns, rather than evidence of welfare issues. |
| July 2013 | The Westminster Environment, Food and Rural Affairs (EFRA) Select Committee published its pre-legislative scrutiny report on the draft Bill. The report “urged the Government to pursue discussions with counterparts in the Devolved Administrations with a view to reaching a co-ordinated position”. |
| October 2013 | The UK Government responded to the EFRA Committee report. |
| January 2014 | The Scottish Government launched a consultation on a ban on the use of wild animals in travelling circuses. |
| April 2014 | The Scottish Government consultation closed and analysis of the responses was published thereafter. |
| February 2016 | The UK Government confirmed via a written answer that it was still its intention to introduce a Bill as soon as parliamentary time allowed. However, a Bill has not as yet been introduced and the issue was not included in the 2017 Conservative Party manifesto . |
| December 2015 | The Welsh Government commissioned a review into the use of wild animals in circuses. |
| April 2016 | The Welsh Government published the results of the review, The Welfare of Wild Animals in Travelling Circuses report. |
| April 2016 | The Scottish National Party stated in its manifesto for the 2016 Scottish Parliament elections that it would ban the use of wild animals in circuses in Scotland. |
| September 2016 | The Scottish Government published its Programme for Government 2016-17 which included a Wild Animals in Circuses Bill, to be introduced on ethical grounds “on the basis that this practice is morally objectionable to a large proportion of Scottish society”. |

| Year | Event |
|---------------|--|
| October 2016 | The Cabinet Secretary for Environment, Climate Change and Land Reform wrote to the Environment, Climate Change and Land Reform Committee to inform it that a Bill would be introduced to Parliament in May 2017 on wild animals in travelling circuses. |
| December 2016 | The Welsh Government announced it would be considering a new “scheme” for Mobile Animal Exhibits, including circuses. |
| May 2017 | In the absence of forthcoming legislation from the UK Government, the Scottish Government introduced a Bill based on its 2014 consultation. |

Scottish Government consultation

45. In evidence to the Committee, Andrew Voas, Veterinary Adviser, Scottish Government said—
- ” “The consultation's approach is quite unusual because we tend to try to base legislation on objective evidence or scientific evidence, if it is available. In this case, the approach has been to try to gather evidence of the general public's ethical objections. Therefore, the purpose of the consultation in 2014 was to seek views and opinions on the ethical arguments that had been suggested.”^{vi}
46. The Scottish Government received a number of representations highlighting “significant concerns”^{vii} on wild animals in travelling circuses during the Scottish Government's 2004 consultation on the [Animal Health and Welfare \(Scotland\) Bill](#), and the passage of what became the [2006 Act](#). The Scottish Government indicated the issue was also prevalent in subsequent correspondence^{viii} which the Policy Memorandum described as a “steady stream”.^{ix}
47. Andrew Voas, Veterinary Adviser, Scottish Government, told the Committee some correspondence was in relation to specific events, such as “the visit of the big cats to Peterhead in 2014”.^x
48. The Committee sought to ascertain what level of correspondence the Scottish Government considered to be sufficient to introduce primary legislation on a subject. In evidence to the Committee, the Cabinet Secretary stated—

v [Wild Animals in Travelling Circuses \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 12-PM, Session 5 (2017)), paragraph 5

vi Environment, Climate Change and Land Reform, [Official Report](#), 23 May 2017, Col 7

vii [Wild Animals in Travelling Circuses \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 12-PM, Session 5 (2017))

viii [Wild Animals in Travelling Circuses \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 12-PM, Session 5 (2017)), paragraph 6

ix [Wild Animals in Travelling Circuses \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 12-PM, Session 5 (2017)), paragraph 6

x Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 June 2017, Col 3

” “We have only counted it between January 2014 and May 2016. In that period there were more than 150 pieces of correspondence on the matter and five parliamentary questions. Since then, we have had more on the issue than we have had on animal sanctuaries, rescue centres, rehoming activities and breeding of and dealing in animals. The issue exercises people’s imagination in a different way, and therefore they are more inclined to communicate their views on it.”^{xi}

49. As figures are unavailable for the subsequent period, it is not clear to the Committee how a “steady stream”^{xii} has been quantified and how this compares with the volumes of correspondence received on other issues, particularly issues people may wish to see progressed on an ethical basis. In particular, the Committee notes the Cabinet Secretary did not provide data for a comprehensive list of the animal welfare issues which occupies the content of correspondence received by the Scottish Government, rather only those which had been less frequent subjects of representations.

Children and young people

50. The results of questions related to respect for animals showed a majority of respondents felt—

- The use of wild animals in travelling circuses adversely impacted upon the development of respectful attitudes to animals among children and young people; and
- “it was inherently disrespectful in today’s society to hold wild animals captive in an unnatural environmental that could not cater for their complex needs”.^{xiii}

51. In evidence to the Committee, Andrew Voas, Veterinary Adviser, Scottish Government, said—

” “Several respondents made the point that it is harmful for young people to see animals being used in such a way, because it gives them a false impression of wild animals and shows a lack of respect for the inherent nature of wild animals.”^{xiv}

52. However, he also said the Scottish Government had not asked children and young people for their views or how they felt the use of wild animals in travelling circuses affected their attitudes to animals.

53. The Committee considers two potential issues could arise from this—

xi Environment, Climate Change and Land Reform Committee. *Official Report*, 27 June 2017, Col 3

xii *Wild Animals in Travelling Circuses (Scotland) Bill*. Policy Memorandum (SP Bill 12-PM, Session 5 (2017)), paragraph 6

xiii Scottish Government (2015). *Should the use of wild animals in travelling circuses be banned in Scotland? Consultation Analysis*, page 4

xiv Environment, Climate Change and Land Reform Committee, *Official Report*, 23 May 2017, Col 4

- Children and young people have not been specifically asked, therefore the assertions are conjecture based on a perception of what *may* arise; and
- Children and young people may receive a false impression of wild animals from other events including performances of animals (wild or otherwise), particularly static circuses or other animal performances, which have not been included in the Bill.

Scottish Parliament engagement with children and young people on the Bill

54. In parallel with the Committee's consideration of the Bill, the Scottish Parliament Education Service used the Bill as a live example of the passage of legislation and school groups visiting the Scottish Parliament were asked their opinion on the whether wild animals in travelling circuses should be banned. The question posed was **"Should it be an offence to use wild animals in travelling circuses?"**.
55. The pupils participating were aged between 9-13. Of the 1045 votes cast, 81% were in favour of a ban, 13% disagreed and 6% abstained. While the Committee recognises this is not a comprehensive or representative consultation exercise, it believes the results are worth noting for interest in the context of a lack of formal consultation with children and young people by the Scottish Government.
56. By way of example and for interest, a selection of responses has been highlighted below to demonstrate the range of views provided during this process.

In favour of a ban

- "Animals shouldn't be made to do tricks for our fun"
- "Animals should be left to enjoy their own habitat"
- "Keeping animals in circuses is cruel and unnatural"
- "People don't like seeing animals like that when they know how cruel it is. There's no point in allowing circuses to have wild animals"
- "It's cruel to keep animals in wee enclosures in circuses"
- "The animals could get loose and attack humans"
- "Often the animals are mistreated as part of their training. They shouldn't be used by circuses at all"
- "The animals are denied family life. It damages their mental health"
- "It shortens their lifespan"
- "You are taking wild animals from their natural habitat. They should be able to live their own lives in the wild"

Against a ban

- "As long as they are looked after properly then it's fine"

- "It's educational and fun to watch. If they were banned it would stop children learning about wildlife. Children wouldn't get to see animals up close"
- "It could end people's careers"

Abstentions

- "Young children like to see wild animals close-up. They think that because they are happy to see the animals, the animals are happy too"
- "Something should be done to make it better for the animals but maybe not banning them altogether"

57. The Committee thanks all the school pupils who provided their views to the Scottish Parliament Education Service on the Bill for their participation and insightful comments.

Volume of responses

58. A total of 2043 responses to the Scottish Government's consultation were received and the [analysis document](#), published in May 2015, highlights the preference for a ban among respondents. As the Scottish Government's [website](#) notes—

” 95.8% of respondents [were] of the view that there are no benefits to having wild animals in travelling circuses”

and

” 95.7% of respondents also took the view that the concerns surrounding the travelling circus environment could only be resolved by banning wild animals in travelling circuses”.

59. Many respondents to the Committee's call for evidence felt this was a relatively low number of responses to suggest this was the public's view. In written evidence, Ron Beadle^{xv} suggested this should be compared to the number of attendees of circuses with wild animal performances which far exceeded this number. Others, such as Circus Mondao^{xvi} and Thomas Chipperfield^{xvii} noted the timing of the consultation had not allowed circuses to promote the consultation to their customers which had impacted on the result. Several written submissions, such as those from Chris Bartrop^{xviii}, Animal Consultants and Trainers Association (ACTA)^{xix}, Circus Mondao^{xx}, and Anthony Beckwith^{xxi} referred to surveys undertaken by circuses which had been able to demonstrate similar levels of support for those travelling and using wild animals.

xv Ron Beadle. [Written Submission](#).

xvi Circus Mondao. [Written Submission](#).

xvii Thomas Chipperfield. [Written Submission](#).

60. The Committee also received notice of a petition from 38 Degrees^{xxii} which had 2580 signatures at the time of submission in favour of the Bill.

Location of respondents

61. In its consultation document, the Scottish Government has analysed the locations of respondents and summarised this as follows—

Location of respondents to the Scottish Government's Consultation Scottish Government (2015). Should the use of wild animals in travelling circuses be banned in Scotland? Consultation Analysis, page 12

| Location respondents based in | Number of respondents | Proportion of Respondents |
|-------------------------------|-----------------------|---------------------------|
| Scotland | 551 | 27% |
| England | 1247 | 61% |
| Wales | 50 | 2.4% |
| Northern Ireland | 20 | 1% |
| Outside the UK | 175 | 8.6% |

62. With regard to respondents representing groups or organisations, the Scottish Government's consultation analysis also states:

” Out of a total of 56 responses received from groups or organisations, 17 were based in Scotland.”^{xxiii}

63. Written evidence received by the Committee noted the response levels to the Scottish Government's consultation, stating that although 98% of those who responded were in favour of the proposed ban, the number of people resident in Scotland who had responded was roughly 0.01% of the population. Several written submissions suggested this misrepresented assertions of the strength of public feeling on the issue and the need for legislative change on ethical grounds.

Length of time between the consultation and the introduction of the Bill

64. The Committee explored the Scottish Government's confidence in the strength of public feeling on the issue of wild animals in travelling circuses, given the delay between the consultation and the introduction of the Bill.
65. In evidence to the Committee, Andrew Voas, Veterinary Adviser, Scottish Government said^{xxiv}—

xviii Chris Barltrop. [Written Submission](#).

xix Animal Consultants and Trainers Association. [Written Submission](#).

xx Circus Mondao. [Written Submission](#).

xxi Anthony Beckwith. [Written Submission](#).

xxii 38 Degrees. [Written Submission](#).

xxiii Scottish Government (2015). [Should the use of wild animals in travelling circuses be banned in Scotland? Consultation Analysis](#), page 13

” "Some of the scientific evidence might have strengthened concern about aspects of keeping animals in travelling circuses, but the key ethical arguments remain unchanged from those that we laid out in the consultation in 2014."

66. When asked whether the Scottish Government had considered a follow up consultation to seek a wider range of views, Andrew Voas stated the Government was relying on the ethical arguments which had not altered.
67. Further questioning by the Committee could uncover no new sources of information from the Scottish Government on the assessment of the continued strength of feeling among the Scottish public. However, the Cabinet Secretary deferred to 2016 YouGov polling, commissioned by the *More for Scotland's Animals* campaign and covering a variety of animal welfare issues, when she said^{xxv}—

” "We could argue that the YouGov poll is probably quite a strong indicator that what we consulted on and understood to be the position among the Scottish public is in fact the position".

68. However, according to the YouGov polling data^{xxvi}, this only referred to use of wild animals in circuses, rather than considering the issue of travelling circuses in isolation. Similarly, the polling shows only 52% of those polled said they "strongly" supported banning the use of wild animals in circuses, suggesting the polling is not an indicator of the strength of public feeling on the issues covered by the Bill.

Conclusions

69. The Committee will focus in later chapters on the Scottish Government's basis for the Bill, which often stemmed from its consultation. However, in relation to its engagement with the public ahead of its consultation and the subsequent responses, the Committee considers that—
- The Scottish Government's opinion that the consultation shows that it is harmful for young people to see wild animals in travelling circuses is not supported by its responses. The Committee's sample of responses from young people, although limited, nevertheless points to this being the case;
 - While an overwhelming majority of respondents were in support of a ban on the use of wild animals in travelling circuses, the number of respondents (especially in Scotland) potentially jeopardises the ability to confidently assert a widely held ethical view by the public;
 - The number of respondents based in Scotland is 551, just over a quarter of the total number of people who responded to the consultation.

xxiv Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 2

xxv Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 2

xxvi YouGov/OneKind [Survey results](#), 18-24 March 2016

Purpose of the Bill

70. The purpose of the Bill is to "prohibit the use (performance, display or exhibition) of any wild animal (as defined in the Bill) in a travelling circus in Scotland based on ethical grounds".^{xxvii} It does not apply to static circuses.
71. As previously stated, the Bill is a response to what the Scottish Government has described as "significant concerns"^{xxviii} on wild animals in travelling circuses raised both during the Scottish Government's 2004 consultation on the [Animal Health and Welfare \(Scotland\) Bill](#), which became the [2006 Act](#) and in subsequent correspondence.
72. However, it is clear from the documents accompanying the Bill, and evidence received by the Committee, that travelling circuses which use wild animals in the contexts covered by the Bill have not visited Scotland for many years, nor have they indicated they were likely to.^{xxix}

^{xxvii} [Wild Animals in Travelling Circuses \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 12-PM, Session 5(2017))

^{xxviii} [Wild Animals in Travelling Circuses \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 12-PM, Session 5(2017))

^{xxix} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 31

The Wild Animals in Travelling Circuses (Scotland) Bill

Scope of the Bill

73. The Wild Animals in Travelling Circuses (Scotland) Bill, as with the consultation, is tightly focussed on the use of wild animals in travelling circuses.
74. The Bill contains 8 sections and 2 schedules—
- **Section 1:** This creates the offence where a circus operator causes or permits a wild animal to be used in a travelling circus;
 - **Section 2:** Contains definitions of wild animal and domestic animal;
 - **Section 3:** This defines other key terms in the Bill, including travelling circus and circus operator. It notably does not contain a definition of circus;
 - **Section 4:** The culpability of individuals when an organisation commits the offence is detailed;
 - **Section 5:** Powers of enforcement;
 - **Section 6:** Describes how the Bill applies to the Crown;
 - **Section 7:** Describes commencement of the Bill;
 - **Section 8:** Contains the short title;
 - **Schedule 1:** Outlines how powers of enforcement may be used;
 - **Schedule 2:** Details applicability to Crown land.
75. The Committee focussed its consideration of the Bill on sections 1-5 and Schedule 1.

Other forms of animal performance

76. On the day the Bill was introduced, the Scottish Government also announced^{xxx} its intention to bring forward a range of measures to improve animal welfare. As part of this package the Scottish Government has committed to "modernise the legislation on performing animals other than in circuses".
77. Evidence presented to the Committee suggested the views in consultation responses and the ethical justifications promoted by the Scottish Government were applicable to other forms of animal performance. The notice of the Cabinet Secretary's intention to modernise legislation on uses of animals in other forms of performance is welcomed by the Committee but also raises several issues—

^{xxx} [Letter](#) from the Cabinet Secretary for Environment, Climate Change and Land Reform on animal welfare issues, 10 May 2017

- the basis of the commitment to review the Performing Animals (Regulation) Act 1925;
- whether the review of other forms of travelling circuses will include static circuses; and
- whether the range of measures will be brought forward as a package of improvements or on an individual and possibly "piecemeal" approach.

78. The Committee recommends that, ahead of Stage 2, the Scottish Government reflect on how it will ensure there are no gaps in legislation on the issue of use of animals in performing, display or exhibition contexts and outline in detail how this will be achieved.

Basis for review of the Performing Animals (Regulation) Act 1925

79. The issues associated with the ethical arguments in support of the Bill are detailed later in this report (see the [ETHICAL BASIS FOR THE BILL](#) chapter of this report). However, this issue is raised in the context of the Scottish Government's commitment to a future review of legislation based on welfare grounds. In evidence to the Committee, the Cabinet Secretary said changes in this area would be introduced by way of a statutory instrument under the Animal Health and Welfare (Scotland) Act 2006, but "*that it is a statutory instrument in the context of welfare law rather than ethics*".^{xxx1} This raises several questions for the Committee.
80. The Bill has been introduced on the basis of three ethical arguments in the absence of evidence on welfare concerns. The Cabinet Secretary stated in evidence to the Committee that the welfare of animals in a travelling circus environment may be of a suitable standard (the Committee recognises the evidence it has received to the contrary), but she emphasised the Bill is being delivered on ethical grounds due to the Scottish Government's interpretation of strength of public feeling on the issue.
81. If future legislation on the regulation of other forms on animal performance is to be introduced on welfare grounds, this suggests there is a concern as to the welfare of animals in such environments and circumstances. It is therefore unclear why legislation on the use of wild animals in travelling circuses, introduced on ethical grounds has been prioritised when there may be welfare concerns about animals used in other forms of performance, especially in light of the Cabinet Secretary's statement^{xxxii} that she does not know when the legislative timetable will permit the review of the provisions in the Performing Animals (Regulation) Act 1925.
82. As recommended later in this report, the Committee believes there should be consultation ahead of the introduction of this statutory instrument, which the Committee believes should be introduced under the Affirmative procedure.

^{xxx1} Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 12

^{xxxii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 12

Future regulation of the use of wild animals in static circuses

83. In her correspondence in May 2017, the Cabinet Secretary stated that^{xxxiii} —
- ” the Scottish Government intends to bring the legislation on performing animals up to date to protect the welfare of animals used for public performances or display in circumstances **other than circuses**.”
84. As this does not state it will protect the welfare of animals used for public performances in circumstances other than **travelling circuses** (nor which types of animals) it could therefore be inferred that, due to the omission of static circuses from this Bill, there will be no further action taken to regulate the use of wild animals in static circuses.
85. However, the Scottish Government's Programme for Government 2017 - 18 is broader when it states:
- ” We will also develop new licensing requirements to protect the welfare of wild and domesticated animals used for public performance or display in other circumstances.”^{xxxiv}
86. Both the Cabinet Secretary^{xxxv} and Scottish Government Officials^{xxxvi} noted the travelling aspect of the use of wild animals in travelling circuses was **not** a primary concern, and it would therefore seem illogical not to re-examine the issue of wild animals in static circuses also.

87. The Committee recommends the Scottish Government confirm ahead of Stage 2 whether future action to protect the welfare of animals used for public performances or display will include static circuses and, as previously recommended, there will not be gaps in regulation and legislation on animal welfare and circuses.

Approach to legislating

88. The Policy Memorandum^{xxxvii} refers to the Welsh Government's intention to develop a new scheme for Mobile Animal Exhibits that would include circuses. The document suggests that while the Scottish Government supports this work, the Welsh Government intends to go further than the scope of the Bill, and this strays into areas already covered by the Performing Animals (Regulation) Act 1925. The

^{xxxiii} Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform, 10 May 2017

^{xxxiv} Scottish Government (2017). [A Nation with Ambition: The Government's Programme for Scotland 2017-18](#)

^{xxxv} Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 8

^{xxxvi} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 11

Scottish Government then note that this Act is "somewhat dated and might benefit from review".

89. As detailed above, a commitment to this review has been made, however some stakeholders told the Committee they would have preferred to see a comprehensive approach to legislating.

90. In evidence to the Committee, Andrew Mitchell representing the City of Edinburgh Council said—

” "from a local government's perspective, a piecemeal approach being taken is not helpful. If the Scottish Government wants to improve how we deal with performing animals across the piece by regulating or banning practice, that should be done in one piece of legislation."^{xxxviii}

91. However, others were keen to see the ban on wild animals in travelling circuses implemented as soon as possible.

92. Responding to a question about whether the Bill could include other areas of animal performance, Liz Tyson representing the Born Free Foundation stated that—

” "That is a difficult one...In an ideal world, we would love all those things to be dealt with equally. However, we are aware of the practicalities of the matter. We were heartened to be told in a meeting with civil servants...that mobile zoos and reindeer displays, for example, may be looked into soon. We certainly welcome that. I would be reluctant to say that they should be considered now, because I imagine that it would be a huge amount of work and would cause a huge delay, so we could miss the opportunity to introduce the ban, which is incredibly important. In an ideal world, we would not take a piecemeal approach, but in the practical world, we would rather see the bill being passed and then continue to work with the Government to proceed on other issues."^{xxxix}

93. Nicola O'Brien representing the Captive Animals Protection Society concurred—

” "... we are torn. We campaign for a complete end to the use of animals in such ways, but we want the bill to move swiftly so that we can get its measures in place. A bill of this nature is grossly overdue in the United Kingdom; Scotland leading on this would be a fantastic and significant start"^{xi}

94. Dr. Dorothy McKeegan of the University of Glasgow said^{xli} it would have been more efficient to include mobile zoos in the Bill.

^{xxxvii} [Wild Animals in Travelling Circuses \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 12-PM, Session 5 (2017)), paragraph 12

^{xxxviii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 21

^{xxxix} Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 7

^{xi} Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 8

^{xli} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 13

95. The Cabinet Secretary provided the Committee with a definitive response when questioned on whether the Bill was the first step in banning other forms of performance—

” **Richard Lyle MSP:** Is the bill the rocky road to banning reindeer at Christmas shows and to banning zoos and wildlife parks and all other such shows that the public attend?

Roseanna Cunningham MSP, Cabinet Secretary for Environment, Climate Change and Land Reform: No.”^{xlii}

96. The Committee nevertheless considers further confirmation on the direction of policy in this area would be welcomed by stakeholders.

97. While recognising the information provided in the Scottish Government's Programme for Government 2017 - 18^{xliii}, the Committee recommends that, ahead of Stage 2, the Scottish Government provide further detail of what is proposed by bringing “the legislation on performing animals up to date to protect the welfare of animals used for public performances or display in circumstances other than circuses.”^{xliv}

Scope and the ethical basis of the Bill

98. In evidence to the Committee, Andrew Voas, Veterinary Adviser, Scottish Government said^{xlv}—

”The bill will not prohibit the private keeping of wild animals that might or might not have been associated with a circus at some point in the past, so it will not prohibit circuses from transporting animals through Scotland or keeping them privately in Scotland if there is no public display of those animals.”

99. It was later confirmed^{xlvi} that the Bill does not cover situations in which animals may be transported through, or transported to Scotland and housed over quieter periods, before moving to other jurisdictions for the purposes of performance or display. Such a scenario would fulfil the criteria in the ethical arguments purported to justify the Bill on ethical grounds, because there would be a performance or display somewhere, even if not in Scotland. This was due to inconsistencies with rights of

^{xlii} Environment, Climate Change and Land Reform Committee, *Official Report*, 27 June 2017, Col 7

^{xliii} Scottish Government (2017). *A Nation with Ambition: The Government's Programme for Scotland 2017-18*

^{xliv} Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform, 10 May 2017

^{xlv} Environment, Climate Change and Land Reform Committee, *Official Report*, 23 May 2017, Col 10

animal ownership, as detailed by the Scottish Government^{xlvi} and Dr. Dorothy McKeegan^{xlviii}.

100. The Committee considers this to be at odds with what it believes are the aims of the Bill and the ethical justifications.

Conclusions

101. The Committee recognises the scope of the Bill and its application to the use of wild animals in travelling circuses only. However, it also notes the evidence it has received on this tightly focussed approach to legislating in this area and has identified opportunities for clarification of the Scottish Government's commitment to take further action on animal welfare law.

102. The Committee recommends the Scottish Government, ahead of Stage 2, clarify whether it intends to review the use of wild animals in static circuses as part of its modernisation of provisions of the Performing Animals (Regulation) Act 1925.

The ethical basis for the Bill

103. A conclusion of the 2007 Radford Review stated^{xlix}—

”there appears to be little evidence to demonstrate that the welfare of animals kept in travelling circuses is any better or worse than that of animals kept in other captive environments.”

104. Despite this, the report also concluded that "the status quo is not a tenable option".ⁱ The UK Government response to this finding was to implement a licensing system in England and in March 2012 announced that it would "bring forward primary legislation at the earliest opportunity to ban circuses from using wild animals on ethical grounds".ⁱⁱ

xlvi Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 12

xlvii Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 11

xlviii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 12

xlix Radford, M. (2007) [Wild Animals in Travelling Circuses: The Report of the Chairman of the Circus Working Group](#), page 7

i Radford, M. (2007) [Wild Animals in Travelling Circuses: The Report of the Chairman of the Circus Working Group](#), page 8

ii [Wild Animals in Travelling Circuses \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 12-PM, Session 5 (2017)), paragraph 14

105. The Scottish Government chose to adopt the latter approach and this subsequent Bill is, according to the Policy Memorandumⁱⁱⁱ based on three ethical grounds—
1. The impact on respect for animals;
 2. Impact of travelling environments on an animals' nature (telos); and
 3. Ethical costs vs. benefits
106. However, the responses to the consultation strayed into many other animal welfare issues and made comment on a variety of other circumstances which may not be ethically palatable to the general public. Indeed, the consultation analysis noted^{liii}—
- ” "The consultation gave the public a forum to raise any further ethical points for consideration".
107. The Committee explored each of these areas during its consideration of the Bill. In addition, evidence presented to the Committee by stakeholders also—
- Suggested the Bill could have been introduced on welfare grounds;
 - Asserted the issues of welfare and ethics were difficult to separate;
 - Raised the issue of whether prevalence of an opinion equated to an ethical foundation to that opinion; and
 - Proposed the justification for the Bill was not as important as the content and policy outcome (for example the Captive Animals Protection Society).

Impact on respect for animals

108. The first of the Scottish Government's three key ethical arguments is concerned with a lack of respect for animals. Andrew Voas, Veterinary Adviser, Scottish Government, described this to the Committee as—
- ” "Wild animals are perceived to have a particular status, and they should be able to fulfil their natural potential; using them in a way that is seen as demeaning or as a source of amusement is contrary to their natural essence. That is an inherently disrespectful attitude, which, as I have said, can foster harmful attitudes in young people who are exposed to it."^{liv}
109. He later added—
- ” "Some of the remarks that were made in response to the consultation mentioned how putting animals in unnatural environments, making them do unnatural tricks and behaviours and dressing them up in unnatural ways is demeaning or humiliating for them."^{liv}

iii [Wild Animals in Travelling Circuses \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 12-PM, Session 5 (2017)), paragraph 22

liii Scottish Government (2015). [Should the use of wild animals in travelling circuses be banned in Scotland? Consultation Analysis](#), page 4

liv Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 5

110. In evidence to the Committee it was asserted that training methods (and inclusion of explanation and education on these techniques within a show) were modernised and focused on respect for the animals. Anthony Beckwith of An Evening with Lions and Tigers stated "It is very different now—it is a display of the relationship that man and animal can have, rather than a display of dominance over an animal, as it would have been a long time ago."^{lvi}
111. Dr. Dorothy McKeegan of the University of Glasgow noted that it may be difficult to distinguish the ethical concerns associated with the use of wild animals in travelling circuses with those associated with animal performances in zoos—
- ” "...there is not much difference in ethical terms between such performances and performances in circuses, when we consider issues of respect for and dignity of the animals involved. There could be issues as a result of a blurring of the lines."^{lvii}
112. The Committee received mixed evidence as to whether circuses instilled a lack of respect for animals in viewers. However, most of the evidence received by the Committee suggested that if it did, this did not apply to circuses in isolation.

Static circuses

113. Comment on the applicability of the combination of ethical arguments in terms of other forms of performance is offered in this report in the [ETHICAL GROUNDS AND OTHER FORMS OF PERFORMANCE](#) chapter. However, the issue of whether it was ethically justified in terms of respect for animals to omit static circuses from the Bill arose throughout the Committee's consideration.
114. The Consultation Analysis states^{lviii}—
- ” "...a number of respondents have commented that, in their opinion, no animals (including domestic animals in a few cases) should be used for entertainment purposes for profit.....The majority of respondents did not make a clear distinction between the travelling circus and the static circus in their responses, and the nature of some of the concerns raised could be applicable to both."
115. In terms of ethics, Dr. Dorothy McKeegan of the University of Glasgow said—
- ” "If animals in a static environment as opposed to a travelling circus are performing tricks or being used in ways that might be perceived as disrespectful, the issues are the same."^{lix}

^{lv} Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 6

^{lvi} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 40

^{lvii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 10

^{lviii} Scottish Government (2015): [Should the use of wild animals in travelling circuses be banned in Scotland? Consultation Analysis](#), page 10

^{lix} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 11

116. In evidence to the Committee, the Cabinet Secretary stated the Bill was more concerned ethically with performance of wild animals, rather than travelling. She said—
- ” You need to remember that the bill is about the ethics of performing animals and not, at this point, about the travelling of those animals. We want to keep those two issues separate.”^{ix}
117. However, when asked why static circuses were not covered by the Bill, said—
- ” There is a slightly weaker ethical argument around that situation. For example, if there was well-designed permanent accommodation in a fixed location and good environmental surroundings were provided, the ethical argument would be weaker than the argument regarding travelling circuses.”^{ixi}
118. The Committee recognises that this position could be seen as potentially contradictory when the emphasis is on the ethics of performing animals yet the omission of static circuses is due to the travelling, rather than performance, aspects.

Conclusions

119. The Committee recognises the argument that development of a lack of respect for animals may arise from viewing a travelling circus show. However, if this viewpoint is accepted, then it could logically follow that this is equally applicable to static circuses.

Impact of travelling environments on an animal's nature (telos)

120. The second of the ethical considerations promoted by the Scottish Government is the impact of travelling environments on an animal's nature or *telos*. The [Policy Memorandum](#)^{ixii} breaks this down into two themes—
- The housing of animals in mobile, temporary and "relatively barren accommodation";
 - Transportation over "long distances".
121. In evidence to the Committee, stakeholders considered how the five freedoms, a framework for considering animal welfare, were achieved within a travelling environment. The five freedoms, as described to the Committee by Dr. Dorothy McKeegan of the University of Glasgow, are—

^{ix} Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 8

^{ixi} Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 9

^{ixii} [Wild Animals in Travelling Circuses \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 12-PM, Session 5 (2017)), paragraph 24

” "a basic checklist for animal welfare, which was developed a long time ago by the Farm Animal Welfare Council but is now used in other animal welfare contexts. They are freedom from hunger and thirst; freedom from discomfort; freedom from pain, injury and disease; freedom to express normal behaviour; and freedom from fear and distress."^{lxiii}

122. The evidence received by the Committee in relation to the impact of a travelling environment on an animal's nature and how such an environment can accommodate the five freedoms was mixed, with stakeholders expressing various views as to whether a travelling environment's impact on wild animals in a "circus" environment represented a unique situation.

Scottish Government consultation

123. The Scottish Government consultation only asked about wild animals in travelling circuses. When questioned^{lxiv}, officials were unable to separate the support for the ethical arguments which support a ban on the use of wild animals in travelling circuses and support for those which apply in other contexts, such as static circuses.

124. In evidence to the Committee, Andrew Voas, Veterinary Adviser, Scottish Government, said^{lxv} that while comment had been passed in consultation responses about other uses of animals "there were not many of those responses".^{lxvi} However, in the analysis of consultation responses^{lxvii}—

” "a number of respondents have commented that, in their opinion, no animals (including domestic animals in a few cases) should be used for entertainment purposes for profit. In particular, many respondents stated their disappointment that the scope of the consultation excluded static circuses due to their belief that no circus could cater properly for the needs of wild animals. The majority of respondents did not make a clear distinction between the travelling circus and the static circus in their responses, and the nature of some of the concerns raised could be applicable to both."

125. The Scottish Government contends ethical objections to the use of wild animals in travelling circuses do not apply to the same extent to other types of animal performance or display. The Committee remains unconvinced of this assertion as the consultation did not cover other forms of animal performance and there has

^{lxiii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 10

^{lxiv} Environment, Climate Change and Land Reform Committee. [Official Report](#), 23 May 2017, Col 5

^{lxv} Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 5

^{lxvi} Environment, Climate Change and Land Reform Committee. [Official Report](#), 23 May 2017, Col 5

^{lxvii} Scottish Government (2015): [Should the use of wild animals in travelling circuses be banned in Scotland? Consultation Analysis](#), page 10

been no comprehensive assessment of the views of the public on various scenarios involving animal performance.

126. When questioned^{lxviii}, the Cabinet Secretary did not confirm why the public were not asked for their views on a range of ways in which animals are used in performance and so could not clarify whether wild animals in travelling circuses was the primary ethical concern for the public. She confirmed further consultation would be done on views in terms of proposed statutory instruments under the Animal Health and Welfare (Scotland) Act 2006 but "that it is a statutory instrument in the context of welfare law rather than ethics".^{lxix}
127. As the consultation remit was tightly focussed on a particular set of circumstances and people were not asked what they thought of other forms of performance, the opportunity for comprehensive comparison with opinion on other forms of performance was not possible.
128. The summaries of respondents' views suggest their ethical objections could equally apply to other circumstances had they been asked. The basis of the assessment that the three ethical arguments do not apply equally to other forms of performance is not clear. Questioning of the Scottish Government^{lxx} by the Committee did not find any attempts to quantify opinion on other forms of performance beyond the consultation. It is therefore not clear how the Scottish Government is "aware that the public do not seem to have the same fundamental ethical objection to those other use of animals as they do to circuses".^{lxxi}
129. Respondents did not limit themselves to the focus of the consultation in their comments, suggesting they do not all agree that a line can be drawn around those issues in terms of "particular ethical arguments". There is a potential discrepancy between the assertion that "a number" and "many" respondents touched on performances outwith travelling circuses in their responses and the statement that "not many"^{lxxii} responses to the Scottish Government's consultation presented arguments beyond the remit of the Bill.

130. The Committee considers it essential that a consultation be undertaken seeking views on other animal performances as part of the Scottish Government commitment to introduce a statutory instrument to "bring the legislation on performing animals up to date to protect the welfare of animals used for public

lxviii Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 11

lxix Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 12

lxx Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 4

lxxi Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 2

lxxii Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 5

performances or display in circumstances other than circuses^{lxxiii}. The Committee recommends this consultation invite, and consider with equal weight, views on an ethical basis.

131. The Committee recommends the statutory instrument is introduced under the Affirmative procedure.

Status of accommodation

132. The Committee heard and received mixed evidence on the status of accommodation. Those in support of the Bill were keen to highlight how the accommodation of animals in travelling circus environments could not meet their needs due to considerations such as—

- Size;
- Impact on diet and mealtimes;
- Impact on mental health;
- Impact on the natural formation of social groupings; and
- Impact on stress, aggression and frustration.

133. However, the Committee also heard evidence to suggest the housing offered to animals in travelling environments—

- Was of similar size to that offered in other forms of captivity;
- Was comparable in terms of health impacts with that offered to animals in other form of captivity (and this was supported by scientific evidence);
- Provides additional stimulus due to the changing nature (compared with other animals in captivity).

134. The Committee received evidence from John Dineley^{lxxiv} and the European Circus Association^{lxxv} to suggest it was within animals' nature to adapt to their environment and they will act naturally within that environment. Melissa Donald of the British Veterinary Association conceded in evidence to the Committee that although a permanent enclosure can be provided for zoo animals, this only allows for "more" natural behaviour for the "bulk of the time".^{lxxvi}

^{lxxiii} [Letter](#) from the Cabinet Secretary for Environment, Climate Change and Land Reform, 10 May 2017

^{lxxiv} John Dineley. [Written Submission](#).

^{lxxv} European Circus Association. [Written Submission](#).

^{lxxvi} Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 4

Impact of travel

135. In evidence to the Committee, Liz Tyson of the Born Free Foundation^{lxxvii} and Nicola O'Brien of the Captive Animals Protection Society^{lxxviii} emphasised the importance of the travelling aspect on the ethical justifications for the Bill. Dr. Dorothy McKeegan of the University of Glasgow suggested that given the potential for the welfare of an animal to be compromised by travelling, not simply performing, "it would be helpful if it has more of a focus on the travelling part."^{lxxix}
136. Representatives of circuses highlighted the relatively short travelling times and distances for wild animals, with Circus Mondao^{lxxx} suggesting this was why they had not visited Scotland for several years. Thomas Chipperfield, business partner of Anthony Beckwith, of An Evening with Lions and Tigers considered^{lxxxi} that circus animals in Britain usually spend less than 2 hours per week in transit.
137. These figures are highlighted in the report as, by way of comparison, Martin Burton of the Association of Circus Proprietors of Great Britain told the Committee of his travel times for horses, which as domestic animals, are not covered by the Bill. He said "we do not travel vast distances—we try to keep the travel times to under eight hours".^{lxxxii}
138. Both Martin Burton and Thomas Chipperfield asserted there was scientific evidence which showed animals travelling with circuses did not experience adverse effects compared to any other form of travel.
139. Mike Flynn of the Scottish Society for the Prevention of Cruelty to Animals nevertheless suggested^{lxxxiii} the length of the journey was immaterial and the stressful part of the process was unloading and loading.
140. The Explanatory Notes also highlight that the Bill does not exclude wild animals from being kept and transported by travelling circuses whilst in Scotland if they are not used—
- ” "wild animals may continue to be kept and transported by travelling circuses whilst (sic) in Scotland under the Bill, so long as they are not used (in performance, exhibition, or display)."^{lxxxiv}

^{lxxvii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 7

^{lxxviii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 6

^{lxxix} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 12

^{lxxx} Circus Mondao. [Written Submission](#).

^{lxxxi} Thomas Chipperfield. [Written Submission](#).

^{lxxxii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 33

^{lxxxiii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 14

141. In evidence to the Committee, Andrew Voas said^{lxxxv}—

” “The bill will not prohibit the private keeping of wild animals that might or might not have been associated with a circus at some point in the past, so it will not prohibit circuses from transporting animals through Scotland or keeping them privately in Scotland if there is no public display of those animals.”

142. Mr Voas said^{lxxxvi} there were three reasons for this—

1. The travelling aspect was not as "morally objectionable" as the viewing of animals (a point later repeated by the Cabinet Secretary^{lxxxvii});
2. It would affect people's right to own property and contravene the European Convention on Human Rights; and
3. Prohibition could lead to animal abandonment.

143. However, the Committee believes there are several potential challenges to these justifications—

- Much has been made of the unique combination of ethical arguments which apply to the use of wild animals in travelling circumstances singularly. If the travelling aspect is not equally important in this, the justifications could also apply to static circuses;
- If accepted, this justification potentially weakens the ethical argument that the Bill should only apply to travelling enterprises because it means the unethical transportation of wild animals for the purpose of performance, exhibition and display (which would take place outwith Scotland) could not be prevented, which is the aim of the Bill; and
- The Scottish Government's concern that "there would be the practical welfare difficulty of what to do with the wild animals that were no longer allowed to be kept by people associated with circuses"^{lxxxviii} suggests the welfare of animals moving between any two environments may be of concern and this could have wider implications.

144. In evidence to the Committee, the Cabinet Secretary said there were a number of reasons for not including all transport of wild animals, such as the need to transport animals from one safari park to another.^{lxxxix} Again, the Committee agrees with this differentiation on a practical level, but believes that it does not necessarily correlate with the Scottish Government's ethical position. The Cabinet Secretary said "We

^{lxxxiv} [Wild Animals in Travelling Circuses \(Scotland\) Bill. Explanatory Notes](#) (and other accompanying documents) (SP Bill 12-EN, Session 5 (2017)), paragraph 10

^{lxxxv} Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 10

^{lxxxvi} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 11

^{lxxxvii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 8

^{lxxxviii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 11

consider that some of the ethical arguments on the issues that you raise could be weaker" were transport of all wild animals to be covered by the Bill. The Committee finds this position unclear and believes the ethical strength of the argument over travel is weakened by the fact it only applies in some circumstances.

Conclusions

145. The Committee accepts there are mixed views on how the travelling circus environment can cater for an animal's ability to display natural behaviours. If the view of the Scottish Government is to be accepted, it could be argued that other forms of animal confinement (whether travelling or not) equally impact on this ability.
146. As the Scottish Government's interpretation is travelling with wild animals (omitting the performance element) cannot be included in the Bill as it would interrupt private ownership^{xc}, the Committee considers that this weakens the ethical argument with regard to the impact of travel on an animal's ability to display natural behaviours.

Ethical costs vs benefits

147. The third of the Scottish Government's key ethical arguments supporting the Bill is that the ethical costs outweigh the benefits of the use of wild animals in travelling circuses. In the case of the Bill, the benefit of entertainment was raised with the Committee.
148. Dr. Dorothy McKeegan stated—

” "The third argument, which is about the ethical costs and benefits, is a very straightforward argument and, in my view, is the strongest of the three arguments. It is based on utilitarian reasoning, whereby we can argue that an action is justified if the benefits that accrue from it are bigger than the costs."^{xcii}
149. However, she went on to highlight how the strength of this argument equally applied to other contexts such as racing, which she noted was mainly concerned with entertainment. Others also highlighted the case of horse racing as being akin to the mischief being examined by the Bill and the British Horse Society commented^{xcii} on the experience of horses in its written submission.
150. In evidence to the Committee, Andrew Voas explained how the ethical costs vs. benefits argument compared with other forms of captivity of wild animals—

lxxxix Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 9

xc Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 11

xcii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 9

xcii British Horse Society. [Written Submission](#).

” "We accept that in a variety of situations there can be a welfare cost to animals that can be justified by some benefit to animals or wider society in general. We accept a welfare compromise for farm animals; they might not always be kept in ideal conditions, but they are fulfilling a purpose by providing food and drink.

Similarly, people have concerns about the conditions in which wild animals are kept in zoos, but zoos fulfil a valuable conservation and education role."^{xciii}

151. He also noted^{xciv} that entertainment of itself was not seen as a sufficient benefit to justify the ethical costs and many written submissions received by the Committee agreed with this viewpoint.

Scottish Government consultation

152. The Committee asked^{xcv} officials whether the Scottish Government had explored the public's attitude to other forms of animal performance in terms of ethical costs vs benefits and were told of occasional correspondence and meetings with stakeholders which had led to plans to modernise the provisions of the Performing Animals (Regulation) Act 1925.

Education

153. In evidence to the Committee, some stakeholders promoted the view that circuses had sufficient educational value to counterbalance ethical concerns. The Scottish Government suggested this was not widespread public opinion and stakeholders such as Dr. Dorothy McKeegan^{xcvi} of the University of Glasgow concurred that any educational aspects of travelling circuses were not sufficient to overcome moral objections.

154. Dr. McKeegan also told the Committee—

” "It is difficult to generalise. Much depends on the way in which animals are used and how they respond. Some mobile zoos seem to have educational aspects, with people going into schools to show animals to children. If that is done in a positive way, that can be part of the utility that helps to even the balance in the cost benefit analysis between the cost that the animals bear and the benefits to society. Much depends on what animals are used and how they are used."^{xcvii}

^{xciii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 5

^{xciv} Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 4

^{xcv} Environment, Climate Change and Land Reform Committee. [Official Report](#), 23 May, Col 4

^{xcvi} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 11

^{xcvii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 11

155. Similarly, the Bill's accompanying documents and evidence presented to the Committee suggested there was an ethical high ground for displays or performances involving wild animals which had some form of educational benefit. However, circus industry representatives, such as Anthony Beckwith^{xcviii}, considered their shows to include this element.

Conclusions

156. The Committee has heard the ethical argument for using wild animals in travelling circuses cannot be made due to the lack of corresponding benefit beyond entertainment. While the Committee does not take a view on whether or not this is the case, it is concerned there is no scope for comparison due to a lack of consultation on views on other activities and there may be other forms of entertainment which the public consider equally deliver no social value.

Ethical grounds and other forms of use of wild animals

157. The Committee explored the distinction drawn by the Scottish Government between the ethical arguments supporting the aims of the Bill and the use of animals in other types of animal performance. Andrew Voas, Veterinary Adviser, Scottish Government, told^{xcix} the Committee of the three main ethical arguments which applied to wild animals in travelling circuses and while these may also have applied to other forms of animal performance, they did not apply in the same way.
158. He also said^c—
- ” We are aware—and, when we were drafting the bill, we were especially aware—that there is a wide variety of other uses of wild and domestic animals for performance or public display. ... We are aware that the public do not seem to have the same fundamental ethical objection to those other uses of animals as they do to circuses.”
159. As detailed earlier in this report, there does not appear to be evidence to support this view.
160. Stakeholders advocated that, taken to their logical conclusion, the ethical justifications for the Bill could apply to other forms of animal performance and banning the use of wild animals in travelling circuses for moral reasons could be the catalyst for the prohibition of other types of entertainment.
161. Ron Beadle of Northumbria University said—

xcviii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 40

xcix Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 5

c Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 2

” “to claim that some decision, some result of reasoning, and indeed some piece of legislation, has an 'ethical' basis, is to claim that its exercise should have universal application.”^{ci}

162. Martin Burton of the Association of Circus Proprietors of Great Britain told the Committee that—

” “...once we start banning things, particularly on ethical grounds, it will clearly spread. If it is not ethically right to have a wild animal in a circus, it is not ethically right to have a wild animal appear at a gala, at a county show, in a shopping centre or in a zoo. That is clearly and logically the only way that an ethical ban can go. You cannot choose your ethics. You will say either that it is ethical or that it is not ethical.”^{cii}

163. Several organisations that provided written evidence to the Committee were concerned over the impact of an ethical justification on other forms of animal entertainment. In its submission, Pact said—

” “If the Scottish Government is determined to pursue the Bill for ethical reasons then both the definition of ‘wild animal’ and ‘travelling circus’ need to be narrowed and more tightly defined so that it does not impact on TV or film production, where animals are obtained from travelling circus for involvement in production.”^{ciii}

164. The British Veterinary Association sought—

” “reassurance that the Bill will only apply to wild animals used in travelling circuses, avoiding any unintended consequences for other types of animals displays that may move to temporary locations.”^{civ}

165. In evidence to the Committee, the Scottish Government noted^{cv} that the display of reindeer in multiple locations at Christmas would not be covered. The Cairngorm Reindeer Centre^{cvi} were nevertheless very concerned the Bill's ethical justification could lead there.

166. The Cabinet Secretary for Environment, Climate Change and Land Reform was emphatic in her assurance^{cvi} the Bill would not lead to the banning of other forms of animals performance and the Committee welcomes this clarity. However she also said—

ci Ron Beadle. [Written Submission](#).

cii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 43

ciii Pact. [Written Submission](#).

civ British Veterinary Association. [Written Submission](#).

cv Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 9

cvi Cairngorm Reindeer Centre. [Written Submission](#).

cvi Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 7

- ” "We are confident that what we have done in the bill is the right thing to do now. That does not preclude our coming back and looking at some of the other ethical issues about the use of wild animals."^{cviii}

Static circuses

167. The SNP Manifesto^{cix} commitment referred to banning the use of wild animals in circuses in Scotland, and did not explicitly refer to travelling circuses. The Bill relates to travelling circuses only and the Policy Memorandum states explicitly that—
- ” "The proposed ban will not apply to a static circus, if there is no transportation of animals off-site for performance or exhibition."
168. The issue of whether it was ethically justified to omit static circuses from the Bill arose throughout the Committee's consideration.
169. The Consultation Analysis states—
- ” "a number of respondents have commented that, in their opinion, no animals (including domestic animals in a few cases) should be used for entertainment purposes for profit. In particular, many respondents stated their disappointment that the scope of the consultation excluded static circuses due to their belief that no circus could cater properly for the needs of wild animals. The majority of respondents did not make a clear distinction between the travelling circus and the static circus in their responses, and the nature of some of the concerns raised could be applicable to both."^{cx}
170. This suggests that the distinction between travelling and static circuses has not been made by respondents to the Scottish Government's consultation, who may consider the arguments for banning travelling circuses equally apply to static circuses.
171. The Captive Animals Protection Society (CAPS)^{cxii} told the Committee they felt static circuses should have been covered by the Bill, and although this had not been covered by the Scottish Government consultation, said their own interactions and engagement demonstrated there was substantial public support for this. Nicola O'Brien, representing the CAPS in oral evidence to the Committee, said—
- ” "The conversations that we have are not about one type of circus over another; use of animals in circuses is the concern."^{cxii}

cviii Environment, Climate Change and Land Reform Committee, *Official Report*, 27 June 2017, Col 9

cix Scottish National Party [Manifesto 2016](#).

cx Scottish Government (2015): [Should the use of wild animals in travelling circuses be banned in Scotland? Consultation Analysis](#), page 10

cxii Captive Animals Protection Society. [Written Submission](#).

cxii Environment, Climate Change and Land Reform Committee, *Official Report*, 13 June 2017, Col 6

172. She also indicated^{cxiii} she was not aware of any other consultation or polling on views on use of wild animals in static circuses.

173. Liz Tyson of the Born Free Foundation said—

” “When a ban was being considered purely on welfare grounds, travelling was a huge part of the issue. The fact that travelling is still an issue is really a hangover from that, but I agree with Nicola O’Brien that, if we say that it is unethical to use wild animals in circuses, although travelling may impact that, the wider issue is that they should not be used.”^{cxiv}

174. Others such as Mike Flynn of the Scottish Society for the Prevention of Cruelty to Animals told the Committee he thought “there is a better chance of ensuring better conditions for animals in some static circuses.”^{cxv} Melissa Donald of the British Veterinary Association concurred^{cxvi} with this view. However, these would seem to be welfare considerations, rather than ethical and are concerned with how well animal welfare can be accommodated in different situations.

175. The Cabinet Secretary also appeared to contradict herself^{cxvii} in her assertions about the focus of ethical arguments which singled out travelling circuses in her evidence to the Committee.

176. Roseanna Cunningham said—

” “You need to remember that the bill is about the ethics of performing animals and not, at this point, about the travelling of those animals. We want to keep those two issues separate.”^{cxviii}

177. However, when asked why static circuses were not covered by the Bill, said—

” “There is a slightly weaker ethical argument around that situation. For example, if there was well-designed permanent accommodation in a fixed location and good environmental surroundings were provided, the ethical argument would be weaker than the argument regarding travelling circuses.”^{cxix}

cxiii Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 7

cxiv Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 7

cxv Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 6

cxvi Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 7

cxvii See the [ETHICAL BASIS FOR THE BILL - IMPACT ON RESPECT FOR ANIMALS - STATIC CIRCUSES](#) section of this report.

cxviii Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 8

cxix Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 9

Conclusions

178. While proposals have been made to the Committee suggesting why the focus is on travelling circuses, these have mainly been concerned with welfare, and the Committee has heard evidence from both sides of the debate suggesting there is ethically little difference between travelling and static enterprises.
179. The Committee considers that in the context of these ethical arguments, the omission of static circuses is difficult to justify. Viewers of a show (particularly young viewers) may not consider whether what they are viewing has travelled or is permanently based in a location. Whether a circus is static or not may have no bearing on whether they develop a lack of respect for animals, derive some or no educational value or are entertained at an animal's expense.

Does the prevalence of an opinion make it ethical?

180. At several points during the Committee's consideration of the Bill, it was suggested the Scottish Government equated the prevalence of an opinion with ethics.
181. The Policy Memorandum states—
- ” It is where society sees significant ethical challenges and little or no benefit that the strongest calls, for a complete ban on such use, are heard.”
182. Andrew Voas, Veterinary Adviser, Scottish Government said in evidence to the Committee^{cxx}—
- ” We are aware that the public do not seem to have the same fundamental ethical objection to those other uses of animals as they do to circuses. The argument is that circuses attract sufficient moral opprobrium that the only appropriate way of dealing with them—given the particular ethical arguments that apply to them—is complete prohibition”.
183. When asked about challenges faced by the Scottish Government in ensuring the Bill reflected scientific evidence and strength of public feeling on the issue, Andrew Voas stated^{cxxi} the passage of time had not impacted on the ethical arguments on which the Bill is based, suggesting the Scottish Government equates strength of public feeling with ethics.

The distinction between ethics and welfare

184. The Committee was keen to hear the views of stakeholders on how the issue of ethical treatment of animals and behaviours which promoted welfare could be distinguished.

cxx Environment, Climate Change and Land Reform Committee. [Official Report](#), 23 May 2017, Col 3

cxxi Environment, Climate Change and Land Reform Committee. [Official Report](#), 23 May 2017, Col 2

185. Dr. Dorothy McKeegan of the University of Glasgow said she thought that the three ethical arguments promoted by the Scottish Government were valid. However she said that the second argument used by the Scottish Government to support a ban (relating to the impact of travelling environments) related more to welfare than ethical concerns—

” ..it is not clear to me what exact ethical framework is being used to underpin the argument. It seems to be much more of a welfare argument than an ethical one, although those two concepts cannot be fully separated in this case.”^{cxxii}

186. She added that, although the welfare arguments for the Bill would have been stronger, the basis on ethical arguments reflected public opinion—

”When people on the street are asked about the issue, most people react morally, without having a lot of knowledge about the welfare costs and so on—I think that that was the outcome of the consultation.”^{cxxiii}

187. The Born Free Foundation told the Committee it did "not believe that the two concepts are mutually exclusive".^{cxxiv}

188. Throughout evidence taking, the Committee heard evidence which blurred the lines between ethical and welfare arguments.

189. The Cabinet Secretary told the Committee the distinction between ethical and welfare arguments could be made in the clearest terms when focussed on wild animals in travelling circuses—

”When you move away from travelling circuses, the ethical arguments become much more mixed with welfare arguments and it becomes harder to tease out the two things. The further you move from travelling circuses, the less clear is the balance between ethics and welfare.”^{cxxv}

Introduction of the Bill on welfare grounds

190. Since the publication of the Radford Review, the Welsh Government commissioned and published a review^{cxxvi} on the use of wild animals in travelling circuses which concluded—

^{cxxii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 8

^{cxxiii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 8

^{cxxiv} Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 2

^{cxxv} Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 10

^{cxxvi} Dorning, J., Harris, S., & Pickett, H. (2016, April). [The Welfare of Wild Animals in Travelling Circuses](#)

” "The available scientific evidence indicates that captive wild animals in circuses and other travelling animal shows do not achieve their optimal welfare requirements, as set out under the Animal Welfare Act 2006, and the evidence would therefore support a ban on using wild animals in travelling circuses and mobile zoos on animal welfare grounds."

191. The Committee heard from both Scottish Government officials^{cxxvii} and the Cabinet Secretary^{cxxviii} of the challenges involved in gathering evidence on welfare for every species of wild animal which may potentially be used in a travelling circus environment.

192. However, the Committee was also told that the introduction of the Bill on welfare evidence would have provided a firmer justification for legislating to ban the use of wild animals in travelling circuses.

193. Dr. Dorothy McKeegan of the University of Glasgow said—

” "The Government could have played the welfare card more strongly in its justification for the bill, the Dorning report, which is well written and powerful, gives a strong welfare basis for the Bill."

194. The Born Free Foundation suggested in both oral^{cxxix} and written evidence that section 26 of the Animal Health and Welfare (Scotland) Act 2006^{cxxx} could have provided a vehicle for introduction of legislation on welfare grounds.

195. Although, in evidence to the Committee on 13 June they acknowledged they were—

” "happy with the proposal to introduce a ban in the most expedient way possible. If that is via ethical grounds, we agree that the criteria of respect for animals and so on are all really important."

196. Mike Flynn of the Scottish Society for the Prevention of Cruelty to Animals and David Kerr of Argyll and Bute Council both commented on the scientific developments in terms of welfare from an enforcement point of view which is analysed in the [SECTION 5 - POWERS OF ENFORCEMENT](#) chapter of this report.

197. However, Anthony Beckwith of An Evening with Lions and Tigers asserted that scientific studies over the last 30 years had shown circus environments provided a level of welfare which is "equal to that in any other captive environment and, and in some cases, is better."^{cxxxi}

cxxvii Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 6

cxxviii Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 7

cxxix Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 2

cxxx Born Free Foundation, [Written Submission](#)

cxxxi Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 25

198. Rona Brown of the Circus Guild of Great Britain, also advocated that the "view of most people", including scientists, was "there are no welfare issues concerning wild animals in circuses in the UK".^{cxxxii} She also commented on circuses, for the most part, meeting the criteria set by the licensing regime in England. The Committee received several written submissions highlighting the deep affection for animals within a circus environment and how, both emotionally and economically, it was not in the circuses' interests to provide anything but the very best care and environment for animals.
199. The Cabinet Secretary for Environment, Climate Change and Land Reform asserted it would have been difficult to introduce the Bill on welfare grounds as many animals in travelling circus environments may be "well fed and looked after" and it was the act of "finding a way to coerce them into behaviours that are not natural."^{cxxxiii} This singular motivation is at odds with the hypothesis there are three ethical arguments, unique to travelling circuses, which, when combined, justify the introduction of the Bill on ethical grounds.

Importance of the basis of the Bill

200. Stakeholders such as the Captive Animals Protection Society^{cxxxiv} and the Born Free Foundation^{cxxxv} suggested that the basis for the Bill was not as important as the outcome of the Bill. Although these stakeholders believed there was evidence to support introduction on the grounds of welfare, they were just happy the ban was being proposed.

Conclusions

201. The Committee has considered evidence on the three ethical arguments on which the Bill is based. While recognising the Scottish Government considers it is the unique application of the combination of all three arguments to the use of wild animals in travelling circuses which justifies legislation, the Committee is not confident this combination is exclusive to the circumstances covered by the Bill. It considers that as a result of this, the definitions of those circumstances are potentially weak and could be potentially subject to sufficient interpretation as to question their effectiveness and therefore leave them vulnerable to legal challenge.
202. Each section of the Bill is considered in turn below.

^{cxxxii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 26

^{cxxxiii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 7

^{cxxxiv} Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 3

^{cxxxv} Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 7

Section 1 - Wild animals in travelling circuses: offence

203. The Bill proposes to ban the use of wild animals in travelling circuses. It does so by creating a new offence of causing or permitting a wild animal to be used in a travelling circus, which is "liable on summary conviction to a fine not exceeding level 5 on the standard scale".^{cxxxvi}
204. Rona Brown of the Circus Guild of Great Britain suggested^{cxxxvii} an offence should not be a blanket ban but there should be "provision whereby you do not ban all circuses in order to deal with some bad circuses". She later suggested^{cxxxviii} the offence should be applied on a "case by case" basis.

Fines

205. Section 1 of the Bill provides for those found guilty of an offence under s1 to be fined at a level not exceeding level 5 (£5000). The Committee was told^{cxxxix} this level had been selected to mirror the fines available under the Animal Health and Welfare (Scotland) Act 2006 and this legislation also provided for higher fines in other circumstances of animal cruelty (which could occur in a circus environment as they could in any other animal environment).
206. Andrew Mitchell of City of Edinburgh Council suggested^{cxl} the inclusion of fixed penalty notices and to require the circus to cease performances should be included in the Bill. David Kerr of Argyll and Bute Council proposed^{cxli} a power to serve notice be included (see the [SECTION 5 - POWERS OF ENFORCEMENT - POWERS OF INVESTIGATION](#) chapter of this report). With regard to fines, both felt the level was appropriate, however noted prevention was preferable.
207. Andrew Mitchell commented on the amount of money which could be made from circus performances in relation to the level of the fine, but in evidence to the Committee Martin Burton of the Association of Circus Proprietors of Great Britain refuted^{cxlii} such a profit could be obtained.
208. Animal Aid, in written evidence, suggested the level of fine was not high enough—

^{cxxxvi} [Wild Animals in Travelling Circuses \(Scotland\) Bill S1\(4\)](#)

^{cxxxvii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 37

^{cxxxviii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 38

^{cxxxix} Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 13

^{cxl} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 18

^{cxli} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 22

^{cxlii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 39

” “any contravention of the law should be treated in the same way as a Section 19 Animal Health and Welfare (Scotland) Act 2006 offence (causing unnecessary suffering/prevention of harm) and thus the maximum penalty should be raised to include 12 months imprisonment, as well as a level 5, standard scale fine.”^{cxliii}

209. Animal Aid also suggested that a circus operator in breach of the offence should be financially liable for any costs involved in securing alternative placement for any animals removed from a circus.

Definition of "use"

210. The Bill states that—

” For the purpose of this section, a wild animal is used if the animal—

(a) performs, or

(b) is displayed or exhibited.”^{cxliv}

211. The Explanatory Notes on the Bill suggest there should be a "proactive" or "deliberate"^{cxlv} element to the action of display or exhibition. The Explanatory Notes further state—

” Circus operators would not, however, have committed an offence, for example, if a member of the public inadvertently viewed a wild animal grazing unadorned in a back paddock.”^{cxlvi}

Overwintering and "use"

212. In evidence to the Committee, Andrew Voas said—

” The term “travelling circuses” covers any premises connected with them, and so would cover overwintering premises in Scotland to which animals associated with a travelling circus might be brought. Any performance, public display or exhibition of those animals at that overwintering site would be prohibited by the bill.”^{cxlvii}

^{cxliii} Animal Aid. [Written Submission](#).

^{cxliv} [Wild Animals in Travelling Circuses \(Scotland\) Bill](#), as introduced (SP Bill 12, Session 5 (2017)) S1(3)

^{cxlv} [Wild Animals in Travelling Circuses \(Scotland\) Bill. Explanatory Notes](#) (and other accompanying documents) (SP Bill 12-EN, Session 5 (2017)), paragraphs 14 and 8

^{cxlvi} [Wild Animals in Travelling Circuses \(Scotland\) Bill. Explanatory Notes](#) (and other accompanying documents) (SP Bill 12-EN, Session 5 (2017)), paragraph 14

^{cxlvii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 10

213. Section 1(2) notes the offence is committed only "if the wild animal is transported for the purpose of being used in a travelling circus" and goes on to note that animals do not need to be in the course of being transported for the offence to be committed. According to the Explanatory Notes a "key criterion for an offence to have been committed is that the wild animal is transported for the purpose of being used in a travelling circus".^{cxlviii} If there was no intention to "use" the animal when it was transported, but subsequent use occurs, this does not appear to be prohibited by the Bill. Consequently, animals could be brought to Scotland for overwintering by a travelling circus with no provable intention of using them and any subsequent "use" which occurred would not be covered.

Conclusions

214. The Committee is content with the principle of the introduction of an offence and that, with the right definitions, this would prove to be an effective deterrent to those considering using wild animals in travelling circuses in Scotland.
215. The Committee considers there could be a potential loophole created by allowing inadvertent observation of wild animals intended for use in travelling circuses and there could be an opportunity to further tighten the legislation by requiring travelling circuses to ensure any wild animals associated with it cannot be viewed by the general public.
216. The Committee would welcome clarification from the Scottish Government on the issue of overwintering. If the term "travelling circus" applies to "any premises in Scotland to which an animal associated with a circus might be brought" this could apply to animals brought to Scotland where there is no intention of "using" them in the terms covered by the Bill. However, subsequent situations could arise, such as exhibiting them or showing them to the public once they had arrived.

217. The Committee recommends the Scottish Government consider whether the definition of "use" within the Bill could be clarified to ensure animals could not be viewed by the general public, thus reducing the opportunity for imaginative interpretation of "display" by circus operators and providing clarification for councils.
218. The Committee recommends the Scottish Government clarify the issue of overwintering and more clearly define the status of this practice within the Bill.

Section 2 - Meaning of wild animal

219. Section 2 of the Bill defines what is meant in the Bill by a wild animal. The Committee received several representations calling for this section of the Bill to be

^{cxlviii} [Wild Animals in Travelling Circuses \(Scotland\) Bill. Explanatory Notes](#) (and other accompanying documents) (SP Bill 12-EN, Session 5 (2017)), para 9

clarified. Others, such as Dr. Dorothy McKeegan of the University of Glasgow welcomed^{cxlix} the "broad" definition of wild animal within the Bill.

Sections 2(1) and 2(2) - definitions of wild and domestic animals

220. Unlike other forms of regulation in this area, the Bill does not contain a list of animals covered. Rather, the proposed legislation defines "wild animal"^{cl} as "an animal other than one of a kind that is commonly domesticated in the British Islands" and goes on to state that—

” "an animal is of a kind that is domesticated if the behaviour, life cycle or physiology of animals of that kind has been altered as a result of the breeding or living conditions of multiple generations of animals of that kind being under human control."

221. Based on the evidence received, the Committee has concluded there are several issues with the definition of animals contained in the Bill—

- The definition could present ambiguity for enforcement authorities and entertainers; and
- The Committee has received submissions suggesting the term "domesticated" is not clear and can be interpreted differently by various parties.

Ambiguity

222. In evidence to the Committee, Andrew Voas of the Scottish Government noted the definition of wild animal in the Bill was the same as in the Animal Health and Welfare (Scotland) Act 2006. He said—

” "That has allowed some useful flexibility in interpretation, and it has been widely understood and accepted."^{cli}

223. Mr Voas added that the definition used—

” "provides sufficient explanation but allows some flexibility for changes in circumstances."^{clii}

224. Dorning et al (2016)^{cliii} have suggested that such a definition poses an interpretation challenge, noting that a range of animals including reindeer, llamas and alpacas have been domesticated for thousands of years and are genetically different from their wild counterparts to the extent that their behaviour, life cycle and physiology differs.

^{cxlix} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 11

^{cl} [Wild Animals in Travelling Circuses \(Scotland\) Bill](#), as introduced (SP Bill 12, Session 5 (2017))

^{cli} Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 11

^{clii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 12

225. David Kerr of Argyll and Bute Council said the term domesticated was an "elastic definition" as "what is normally domesticated can change".^{cliv} Carol Macmanus of Circus Mondao also noted^{clv} the line between domestication and wild could be blurred and thought the status of an animal and the definition in the Bill could be challenged.
226. The Committee also heard about situations where domestication was varied within some types of animal. For example, Carol Macmanus told^{clvi} the Committee some reindeer were domesticated and some were not. Anthony Beckwith of An Evening with Lions and Tigers also commented^{clvii} on this scenario, suggesting taxonomy rather than popular belief should be relied on for the classification of animals.
227. Given there appears to be mixed views on domestication, the Committee considers suggestions in evidence by local authority representatives that veterinary assistance would be required to ascertain and prove an offence are pertinent. The ability to correctly identify an animal as a wild or domestic strain of a particular species is crucial to ascertaining whether an offence has been committed.
228. The Committee notes s11(1) of Schedule 1 allows those authorised to enter premises to take "such persons for assistance as are required for the purpose of exercising the power"^{clviii} which the Explanatory Notes^{clix} clarify could include a vet.
229. Dr. Dorothy McKeegan of the University of Glasgow noted^{clx} that she thought the definition of wild animal provided was sufficient and that it was quite broad. In their written submission^{clxi} the British Veterinary Association similarly said that they supported the Bill's proposed definition of "wild animal".
230. Mike Flynn of the Scottish Society for the Prevention of Cruelty to Animals said that he did "not have a problem with the definitions"^{clxii} as proposed.

-
- cliii Dorning, J., Harris, S., & Pickett, H. (2016, April). [The Welfare of Wild Animals in Travelling Circuses](#)
- cliv Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 20
- clv Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 31
- clvi Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 29
- clvii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 31
- clviii [Wild Animals in Travelling Circuses \(Scotland\) Bill](#), as introduced (SP Bill 12, Session 5 (2017))
- clix [Wild Animals in Travelling Circuses \(Scotland\) Bill. Explanatory Notes](#) (and other accompanying documents) (SP Bill 12-EN, Session 5 (2017)), paragraph 26
- clx Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 11
- clxi British Veterinary Association. [Written Submission](#).

Inclusion and definition of the term "domesticated"

231. The bulk of the evidence the Committee heard in relation to the definition of wild animal actually referred to those which are excluded by the Bill - animals commonly domesticated in the UK. This related to—

- The unique relationship between circus operators and their animals;
- Farmed animals in the UK;
- The process of domestication; and
- Animals domesticated outwith the UK.

232. Stakeholders including OneKind^{clxiii} and Animal Aid^{clxiv} suggested a list of which animals were domesticated, and which were not, would be a useful inclusion in the Bill. However, the Cabinet Secretary stated^{clxv} this would exclude animals which were not on the list.

Unique relationships between circus operators and animals

233. Part of the issue relates to circuses' approach to their animals and their close relationship which blurs the line between wild and domesticated.

234. The Cabinet Secretary told the Committee—

” “The ethical issues are about wild animals that are not domesticated and so not accustomed to living and working with human beings and the use of a management method by which such animals are coerced almost to act against all of their better instincts.”^{clxvi}

235. However, it has been argued this distinction is not clear in a travelling circus environment.

236. According to the Scottish Government consultation analysis^{clxvii} Club Amici del Circo argue that—

” “the classical dichotomy between “domesticated animals” and “wild animals” in circuses as [sic] obsolete, because in the circus community all animals are domesticated as they have been living with men for generations”

clxii Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 13

clxiii OneKind. [Written Submission](#).

clxiv Animal Aid. [Written Submission](#).

clxv Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 13

clxvi Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 7

clxvii Scottish Government (2015). [Should the use of wild animals in travelling circuses be banned in Scotland? Consultation Analysis](#), Page 59

237. In oral^{clxviii} and written evidence^{clxix} to the Committee, Circus Mondao suggested defining "domestic" was problematic.

Farmed "wild" animals

238. Several stakeholders highlighted issues in defining animals as domesticated by citing examples of "wild" animals which are commonly farmed in the UK, such as llamas and alpacas.

Process of domestication

239. The Born Free Foundation suggested that the definition of the term "domesticated" be removed from the Bill to avoid the potential for some to claim that some animals bred in captivity had been domesticated. In evidence to the Committee, Liz Tyson stated that—

” “The problem is less the definition of “wild animal” and more the inclusion of the term “domesticated”. The two are mutually exclusive, but the term “domesticated” has been defined in a confusing way, as it could suggest that domestication simply involves breeding animals in a captive environment for a few generations and taming them. That is very different from the process of domestication, which takes place over millennia and changes animals genetically, physically and physiologically.”^{clxx}

240. Stakeholders such as the Captive Animals Protection Society^{clxxi} and Animal Defenders International^{clxxii} agreed with this assertion.

241. Dr. Dorothy McKeegan of the University of Glasgow said animals which had been reared in a training environment would—

” “still have very strong inherent and instinctive behavioural, physiological and psychological needs that would have been slightly altered but not completely removed by hand rearing. Such needs are not just down to the environment that the animal is in; these are behavioural needs and expressions that are consistent across a species, regardless of how the animal has been reared.”^{clxxiii}

clxviii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col

clxix Circus Mondao. [Written Evidence](#).

clxx Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 12

clxxi Captive Animals Protection Society. [Written Submission](#)

clxxii Animal Defenders International. [Written Submission](#)

clxxiii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 13

242. Dr. McKeegan confirmed this would be her view even if animals were the fourth or fifth generation of that animal raised in a domestic environment. She said—

” “The domestication of animals is not just about captive breeding and sometimes hand rearing but about the behavioural and genetic modification of the animal away from its wild progenitor. That is not going to happen with rearing generation after generation of animals in captivity. These are still wild animals.”^{clxxiv}

243. The Cabinet Secretary was of the view ^{clxxv} that living with man for several generations did not equate to domestication.

Animals domesticated internationally

244. It was also highlighted the definition of wild as “an animal other than one of a kind that is commonly domesticated in the UK”^{clxxvi} would mean “that animals such as camels, which some people would argue have been domesticated in other countries in the world, are seen as wild animals.”^{clxxvii}

245. The Committee heard evidence to suggest camels were both domesticated^{clxxviii} and wild^{clxxix} in the UK from stakeholders.

Conclusions

246. The Committee recognises the concerns of various stakeholders over the definition of wild animal with reference to domestication. This concern was expressed by both parties in support of the Bill and those cautious about the Bill.

247. The Committee shares these concerns and believes clarifying this definition is central to successful operation of the proposed legislation.

248. The Committee recognises the attempt at consistency with the Animal Health and Welfare (Scotland) Act 2006 in terms of wild animals being “not commonly domesticated in the British Islands”. However, this Act does not further define

clxxiv Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 13

clxxv Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 12

clxxvi [Wild Animals in Travelling Circuses \(Scotland\) Bill](#), as introduced (SP Bill 12, Session 5 (2017))

clxxvii Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 12

clxxviii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 31

clxxix Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 13

domesticated and stakeholders have told the Committee the definition contained in the Bill is unhelpful.

249. While the Committee recognises the assertion the inclusion of a list of animals could be restrictive, it considers this could provide certainty to stakeholders, circus proprietors and local authorities as to which animals are covered by the Bill. The Committee believes the Scottish Government should reconsider the inclusion of a list, capable of being updated as required.

250. The Committee recommends the Scottish Government consider amending the definition of wild animal to remove or adapt the definition of domestication in s2(2) so as not to infer domestication equates with training or rearing.

251. The Committee recommends the Scottish Government consider the evidence received by the Committee on the inclusion of a list of wild animals covered by the proposed legislation and revisit the rationale for excluding such detail from the Bill. The Committee recommends the Scottish Government should reconsider the inclusion of a list, including a process for updating this as required.

Section 3 - Meaning of other key terms

Omission of definition of "circus"

252. The term circus is not defined in the Bill. Responding to questioning^{clxxx} on the reasons for this the Scottish Government stated their intention to rely on the "ordinary interpretation". Angela Lawson, Solicitor, Scottish Government said—

” "The Scottish Government's view was that there is an ordinary meaning of "circus"...We did not want to be unduly restrictive in defining it... If we do not define "circus" in the bill, it will take the ordinary meaning. The "Oxford English Dictionary" is often cited and relied on by courts for defining something if it is left to ordinary interpretation. It says that a circus is:

'A circular arena surrounded by tiers of seats, for the exhibition of equestrian, acrobatic, and other performances....Also the company of 'troupe' of performers and their equipage.'^{clxxxii}

253. There were mixed views on whether the omission of a definition for circus was supportive of the Bill's aims. Stakeholders such as the Scottish Society for the Prevention of Cruelty to Animals^{clxxxii} said it was commonly understood, while some such as the Captive Animals Protection Society^{clxxxiii} thought the lack of definition could have positive and negative effects. Circus Mondao^{clxxxiv} believed it was

clxxx Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 8

clxxxi Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 8

clxxxii Scottish Society for the Prevention of Cruelty to Animals. [Written Submission](#).

discriminatory to single out acts that performed under the banner of circus. The Committee's evidence on the subject covered several themes—

- How, in the absence of a definition, circus would be identified in court;
- How local authorities would interpret circus;
- Ambiguity and loopholes;
- Existing definitions of circus;
- The impact of a lack of definition on enforcement; and
- Other forms of animal performance.

Interpretation in court

254. The Committee explored^{clxxxv} how a dictionary definition would be interpreted were a case brought to court disputing a definition of the word circus. Angela Lawson, Solicitor, Scottish Government said guidance would clarify what was meant by the definitions involved. When pressed on possible ways round this, she stated^{clxxxvi} the Scottish Government had considered the issue and "is of the view that it is better to rely on the dictionary definition and ordinary meaning of "circus"". The Cabinet Secretary also said "Should there be any challenge, the commonly used definition of "circus" would be for the courts to consider."^{clxxxvii}

255. However, David Kerr of Argyll and Bute Council was of the view^{clxxxviii} that courts would interpret the legislation as drafted, not intentions.

256. The Committee is concerned that there seems to be a reliance on whether the issue goes to court to confirm the meaning of circus in the legislation. This would be a reactive rather than preventative measure. For example, Andrew Voas said if a case went to court—

” the judgment would be based on a reasonable interpretation of what a travelling circus is, which would be the common understanding of the man in the street, rather than the argument that certain groups might put forward.”^{clxxxix}

clxxxiii Captive Animals Protections Society. [Written Submission](#).

clxxxiv Circus Mondao. [Written Submission](#).

clxxxv Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 19

clxxxvi Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 19

clxxxvii Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 4

clxxxviii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 20

clxxxix Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 20

257. Some stakeholders foresee this loose approach resulting in situations where both—
- enterprises which should be covered and are not; and
 - capturing performances which are not circus.
258. Others, such as OneKind^{cxc}, were happy for this to be left to the court to interpret.

259. The Committee believes the recourse to a court challenge is not an appropriate and clear approach to developing legislation and recommends the Scottish Government reflect on this.

Interpretation by local authorities

260. Mike Flynn of the Scottish Society for the Prevention of Cruelty to Animals had no problems with the definitions in the Bill.^{cxc} However, he did express concerns over local authorities adopting 32 different positions. Indeed, the Cabinet Secretary stated in relation to questioning on why the legislation was required—

”If we simply leave the matter up to local authorities, we get differences between one local authority and others and the exact position becomes confusing. Local authorities might also choose to apply things slightly differently, which also introduces variation.”^{cxcii}

261. Andrew Mitchell suggested that without clear definitions some groups may seek local authorities to apply the legislation more broadly than perhaps envisaged—

”...local authorities will come under intense pressure from groups who have concerns in this area and who will seek to blur the lines and push local authorities into using the legislation to get into areas that Parliament perhaps did not intend them to get into.”^{cxciii}

262. Given the discretionary nature of enforcement and all the Committee has heard about scarcity of resources within local authorities (see the [SECTION 5 - POWERS OF ENFORCEMENT - OTHER](#) chapter of this report), the Committee considers the lack of definition of circus means there is a loophole for councils as to whether to take action.

Ambiguity and loopholes

263. In oral and written evidence received by the Committee, many stakeholders were concerned by the ambiguity and loopholes presented by a lack of definition of circus. They felt some acts, which carried out the very mischief the Bill is intended

^{cxc} OneKind. [Written Submission](#).

^{cxc} Environment, Climate Change and Land Reform, [Official Report](#), 13 June 2017, Col 12

^{cxcii} Environment, Climate Change and Land Reform, [Official Report](#), 27 June 2017, Col 3

^{cxciii} Environment, Climate Change and Land Reform, [Official Report](#), 6 June 2017, Col 18

to address, may not be covered. There were others who were relaxed about it and felt the common understanding of a circus would be sufficient.

264. The Committee also heard the lack of the definition of circus has the potential for confusion as to what type of event is covered, both for enforcement authorities and those in the entertainment industry. This is compounded by the ethical justification for the Bill.

265. It is unclear to the Committee whether a show which only includes wild animals, with none of the other elements included in the Oxford Dictionary definition, is covered.

266. Angela Lawson, Solicitor, Scottish Government, said acts which did not contain all the elements described would not be considered a circus.

” **Mark Ruskell MSP:** I am hypothesising, but if someone wanted to get round the eventual legislation, they would have to conduct the circus somewhere other than in a tent, and they would have to have no other ancillary acts around it, such as “acrobats, clowns, and other entertainers”—I am reading from the “Oxford English Dictionary” definition. They would have to avoid all of that, and then they could get round the proposed legislation. Is that right?

Angela Lawson: Yes—but then it would basically not be a circus.^{cxci}

267. In subsequent evidence to the Committee, Ms. Lawson contradicted this statement and, seemingly less reliant on the dictionary definition and leaning on a more general understanding, said—

” “A definition that lists a specific thing—a circus is a “performance including acrobats and clowns”, for example—means that organisations that put on a circus-like performance will merely omit the clowns and acrobats and keep everything else in order to avoid meeting the definition of a circus. We need to ensure that things that look like a circus, walk like a circus, and talk like a circus are considered to be a circus.

Courts are well versed in taking the ordinary interpretation of a word; they do it all the time..... We want to ensure that circus proprietors do not omit one specific aspect of performance to avoid having to meet the rigid definition of a circus.”^{cxci}

268. Anthony Beckwith, proprietor of An Evening with Lions and Tigers, stated^{cxcii} that the Scottish Government had not been able to say whether his show would, or would not, be covered by the legislation. However, the Cabinet Secretary said she was “pretty sure that a court would call that a circus or define it as one.”^{cxci} Andrew Voas also clarified his view on the show—

cxci Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 17

cxci Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 5

cxci Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 28

” "...if it entails things that would commonly be understood to be a circus, it would be caught by the bill."^{cxcviii}

269. He expanded on this to suggest elements like the circus license held in England further supported the notion the show was covered by the Bill.
270. Mr Beckwith noted there was confusion as to whether his show would require a license under the English scheme and that he had opted to apply for one "to create transparency and to give us a level of credibility".^{cxcix} He also highlighted that his show did not fall within the scope of the Oxford Dictionary definition of a circus.^{cc}
271. Andrew Voas further stated the Scottish Government were not expecting people to "overthink" the issue and to accept a "reasonable" understanding of what the terms involved mean. The Committee is of the view this is unacceptable and those enforcing the legislation need to be able to protect resources and not waste funds considering a show which was "circus-like".^{cci}
272. The Committee considers it counterproductive for there to be ambiguity over what type of act is covered by a Bill which has a single purpose and believes a definition of what is meant by "circus", and indeed what is not meant, would be helpful. Although the Scottish Government is confident about what is meant by a travelling circus, and thinks the public is clear, it was unable to confirm to stakeholders whether their show would be covered.
273. A travelling circus using wild animals has not visited Scotland for many years. However, there was public concern over the housing of wild animals by a circus-type act in Scotland over winter. It therefore seems counterproductive for the Bill to be ambiguous over whether such an act is covered, as this is an area where recent public concern can be demonstrated, unlike the issue of wild animals in travelling circuses overall.

Existing definitions of "circus"

274. Mark Ruskell MSP asked^{ccii} the Scottish Government whether it envisaged there could be problems associated with multiple definitions of a "circus", as definitions of the term were included in other legislation. The Committee heard the Scottish

^{cxcvii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 5

^{cxcviii} Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 6

^{cxcix} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 28

^{cc} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 28

^{cci} Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 24

Government had sought a definition which would work in the context of this Bill, which specifically wanted to prohibit display also, not just performance.

275. David Kerr of Argyll and Bute Council was of the view^{cciii} it would be helpful if there were common definitions across legislation to assist with enforcement.

Enforcement

276. Andrew Mitchell of the City of Edinburgh Council stated it was unhelpful not to have a definition of circus. He said—

” If the legislation is not clear, we will have to spend tremendous amounts of time proving to the procurator fiscal that something is a circus and trying to persuade them to take the case up.”^{cciv}

277. Mr Mitchell later added—

” ...my concern is that operators might seek to miss out a few of those elements, put the event in a different environment—say, without a marquee—and then argue that it was not a circus. That would present a challenge for those of us enforcing the legislation.”^{ccv}

278. David Kerr of Argyll and Bute Council believed —

” For us to enforce legislation effectively, we need clear definitions to help us. Given current business practices, it is very unlikely that we will be confronted with an actual circus. It appears much more likely that there will be issues with people trying to circumvent legislation or with other operations that are similar to circuses being reported to us, but we really could do with a definition that is as clear as possible.”^{ccvi}

279. Both representatives of local authorities who gave evidence to the Committee said the input of a vet would be required in order to ascertain and prove the whether an animal could be considered wild for the purposes of the Bill.

Conclusions

280. The Committee heard the omission of a definition of circus could be both beneficial and detrimental to the application of the legislation in terms of what it is trying to

ccii Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 15

cciii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 19

cciv Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 16

ccv Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 16

ccvi Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col

achieve. However, it disagrees with the notion that deference to court opinion will provide a solution, because by the time a case comes to court, the mischief the Bill attempts to solve, by its very nature, may have moved away. The Committee is concerned the lack of definition could result in a situation where the legislation cannot be effectively enforced.

281. The Committee is also concerned that there is ambiguity over acts which the public have expressed concern about.

282. The Committee recommends the Scottish Government include a clear definition of "circus" on the face of the Bill and believes that, in order to address the intended mischief, this could be solely based around the notion of use of wild animals.

Travelling Circus

283. The scope of the Bill is restricted to travelling circus environments and this is defined in Section 3.

284. A travelling circus is defined as—

” a circus which travels from place to place for the purpose of providing entertainment, 15 (b) includes— (i) a circus which travels from place to place for that purpose despite there being periods during which it does not so travel, (ii) any place where a wild animal associated with such a circus is kept (including temporarily).”^{ccvii}

285. In evidence to the Committee, Angela Lawson stated^{ccviii}—

” We specifically do not want to end up in a situation in which people can get out of or avoid the legislation by, for instance, travelling just once a year. If it travels from place to place, it is a travelling circus.”

286. Some stakeholders such as Equity^{ccix} stated they were happy with the definition. Others commented on the lack of definition of circus (see the [OMISSION OF DEFINITION OF CIRCUS](#) chapter of this report for further details) and the ethical distinction between the activities of a travelling and static circus (see the [IMPACT OF TRAVEL](#) and [ETHICAL GROUNDS AND OTHER FORMS OF USE OF WILD ANIMALS](#) chapters of this report for further analysis).

287. During its consideration of the Bill, the Committee was concerned with the ethical distinction between travelling and static circuses, with the latter being omitted from the scope of the Bill. While the ethical considerations relating to this definition have been outlined in the [ETHICAL GROUNDS AND OTHER FORMS OF USES OF](#)

ccvii [Wild Animals in Travelling Circuses \(Scotland\) Bill](#), as introduced (SP Bill 12, Session 5 (2017)), Section 3

ccviii Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 17

ccix Equity. [Written Submission](#).

WILD ANIMALS chapter of this report, the Committee also heard evidence relating to the definition of travelling circus as it appears in the Bill. This related to what is meant by "travelling".

Conclusions

288. While the Committee welcomes the Scottish Government's attempts to make the term travelling circus as comprehensive as possible, it considers the definition as contained in the Bill, and explained by officials in evidence to the Committee, to be potentially counterproductive to this aim.

289. It is unclear from the Bill and its accompanying document what would constitute a travelling circus in circumstances such as a static circus moving from one location to another permanently.

290. The Committee recommends the Scottish Government clarify what is meant by "travel from place to place" in the definition contained in the Bill of travelling circus.

Definitions and other forms of use of wild animals

291. David Kerr of Argyll and Bute Council foresaw problems with definitions of key terms when questioned as to whether they could be interpreted to cover other types of show or animals performance, such as falconry. While he noted Andrew Voas of the Scottish Government had been clear the Bill would not cover such an event, he thought there should be "very clear differentiation in the legislation so that it does not cover that type of show".^{ccx}

292. Mr Kerr also noted the Scottish Government had said it is clear as to what type of event was covered by "circus" but, both he^{ccxi} and Andrew Mitchell of the City of Edinburgh Council^{ccxii} felt the absence of a definition of this term and ambiguity over the definition of "wild animals" could have unintended consequences for local authorities and other types of show.

Circus Operator

293. Andrew Mitchell of the City of Edinburgh Council said—

ccx Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 18

ccxi Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 18

ccxii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 18

” "The definition of “circus operator” seems to be quite remote from the reality. I think that it would be helpful if the definition said that the person who is in day-to-day control of what appears to be a circus would be liable.”^{ccxiii}

294. Animal Aid^{ccxiv} suggested the definition of circus operator should be expanded to cover anyone who was in charge of an animal as a potentially culpable individual.

Conclusions

295. The Committee notes the evidence received by stakeholders that circus operator could be expanded.

296. The Committee recommends the Scottish Government reflect on evidence received by the Committee outlining the definition of circus operator and the practical realities of hierarchies of responsibility within circuses.

297. The Committee recommends the Scottish Government consider expanding the definition to cover those with responsibility for animals on site or day-to-day management of animals.

Definition of key terms - conclusions

298. The Committee has received much evidence on the ambiguity caused by loose definitions and the potential impact on other forms of animal performance, exhibit or display. The Committee considers the combination of confusion as to what constitutes a wild animal and the lack of definition of circus is unhelpful, and open to misinterpretation, and as is recommended above, these should both be considered ahead of Stage 2.

Section 4 - Individual culpability where organisation commits offence

299. The Bill stipulates culpability for the offence contained in s1 of the Bill, noting that where the offence is committed by an organisation, if there is neglect, consent or connivance on the part of a responsible individual, they are also liable.

300. The Committee explored this in evidence sessions with stakeholders. Angela Lawson, Solicitor, Scottish Government, noted^{ccxv} the Bill had been drafted in a manner where there could be more than one responsible individual and this could mean multiple fines or multiple individuals liable for offences pertaining to one event.

ccxiii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 21

ccxiv Animal Aid. [Written Submission](#).

301. Anthony Beckwith of An Evening with Lions and Tigers suggested it was unclear as to who would be liable and Rona Brown noted^{ccxvi} the licensing scheme in England made this clear by designating the license holder as the liable individual, and in their absence the "person in charge". She agreed^{ccxvii} with provisions in the Bill allowing for both organisations and individuals to be liable for the offence. Martin Burton detailed^{ccxviii} the nature of employment and contracting within circuses to the Committee and noted that although a director would have a role, and potential liability as the contracting agent, the sub-contractor could own and be responsible for animals.

Section 5 - Powers of enforcement

302. Local authority representatives who gave evidence to the Committee had mixed opinions^{ccxix} as to the level of consultation which had taken place with those who would enforce the Bill, although agreed on the view this had taken place at a technical level within local authorities.

Schedule 1 - Inspectors

303. Section 5 of the Bill refers to, in Schedule 1 of the Bill, local authorities or Scottish Ministers power to appoint "inspectors" for the purposes of enforcing the legislation.

304. The [Business and Regulatory Impact Assessment \(BRIA\)](#) states that "It is expected that it will primarily be Local Authorities that will enforce the Bill as part of other responsibilities relevant to travelling circuses."

305. The Committee explored the discussions which the Scottish Government had in developing the Bill with parties who would be expected to enforce its provisions and was told^{ccxx} of local authority and the Scottish Society for Prevention of Cruelty to Animals involvement, but that no discussions had taken place with Police Scotland.

ccxv Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 14

ccxvi Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 38

ccxvii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 38

ccxviii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 38

ccxix Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 14

ccxx Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 13

Impact of ethical justifications on enforceability

306. In evidence to the Committee on 6 June 2017, David Kerr representing Argyll and Bute Council suggested that from an enforcement perspective basing the ban on welfare concerns rather than ethical concerns would be helpful—

” "The Dorning report is very good, and I think that the emphasis should be heavily on welfare. If the approach is based on welfare, we can draw in the Animal Health and Welfare (Scotland) Act 2006, which is a highly effective piece of legislation...I believe that the choice to use ethical reasoning is perfectly understandable...but welfare is much easier for us to prove, with skilled veterinary assistance. If I were drafting the legislation, I would lean on the welfare side of things, which I think is much more to the point."^{ccxxi}

307. He added—

” "All the legislation that I currently enforce is science based, which is in some ways easier to deal with than legislation that is ethics based. If there is an issue with a zoo licence, I can go to very specialist, skilled, highly respected veterinary surgeons who can support me in what I am doing. Moving things to an ethical basis could be very profitable for defence teams, because what we need when we enforce legislation is a clear definition. We tend to say that the definition is common sense and obvious, which is true, but in a court of law one has to define things to the nth degree, and that can take a lot of time."^{ccxxii}

308. Mike Flynn representing the Scottish Society for the Prevention of Cruelty to Animals stated that they did not believe that whether the Bill was based on welfare or ethical principles would impact on the enforceability of it—

” "Although the bill is based on ethical principles, because previous committees said that there was not sufficient evidence to base it on welfare, the offence is black and white—if you operate a travelling circus, you are committing an offence, regardless of whether the bill is ethical or welfare based."

309. However, Angela Lawson of the Scottish Government took the opposite view and said—

” "Every case will be argued on its individual merits. It is a fairly clear and straightforward matter for a court to consider: if it knows that the legislation is designed on ethical grounds, that is how it will look at it. We do not believe that that will make it any more difficult to enforce; indeed, one might possibly view the welfare offence as being more difficult to prove, as that would rely on expert evidence on the suffering of individual animals instead of the broader ethical arguments that will be made in court."^{ccxxiii}

ccxxi Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 21

ccxxii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 17

ccxxiii Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 14

310. The Committee is concerned by the comments of local authorities on how the ethical basis for the Bill has led to weak definitions which they consider difficult to enforce.

Powers of investigation

311. Andrew Mitchell of the City of Edinburgh Council proposed the power to obtain records be included in the "group of powers that officers can use if they have reasonable cause to suspect or believe that an offence has taken place".^{ccxxiv} He also emphasised^{ccxxv} there was no power to issue a fixed penalty notice or immediately cease operations of a circus which was believed to be committing an offence. David Kerr of Argyll and Bute Council concurred^{ccxxvi} and added a power to serve notice would allow local authorities to proactively prevent circuses from acting in breach of the Bill. He added that—

” If we become aware of such a person operating in breach of the legislation, we would serve notice and they would comply. As my colleague said, as things stand, our only recourse currently would be to take the person to court. I do not know whether any of you have been involved in court cases recently, but the courts are heavily clogged up. Taking a case to court is not a quick process; a circus that is not based in the United Kingdom could complete its entire tour and be back on mainland Europe before the case got anywhere near a court.”

312. In evidence to the Committee, the Cabinet Secretary detailed how the enforcement powers in the Bill were designed to mirror the Animal Health and Welfare (Scotland) Act 2006 and that these were proportionate in light of suggestion "none of the big licensed circuses in the UK or the bigger European circuses are ever likely to tour with wild animals in Scotland".^{ccxxvii}
313. Angela Lawson, Solicitor, Scottish Government also suggested^{ccxxviii} the penalties for the offence were a deterrent and, rather than include measures which could also be effective in the case of non-compliance, this would be sufficient.
314. As with the interpretation of the term "circus", the Committee is concerned about the reliance on recourse to court proceedings in the Bill. The Committee is also of the view that deterrence and effective powers in the case of a situation occurring could both be useful tools to help prevent travelling circuses with wild animals using them in Scotland.

ccxxiv Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 21

ccxxv Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 18

ccxxvi Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 22

ccxxvii Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 14

ccxxviii Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 14

315. The Committee recommends the Scottish Government adopt the suggestions of local authorities, who will potentially be enforcing the legislation, at Stage 2—
- A power to serve notice;
 - Issue a fixed penalty fine; and
 - Power to obtain records.

Discretionary nature of enforcement

316. As drafted the Bill does not make it a statutory duty for local authorities to enforce the provisions, this is discretionary. Schedule 1 states that ‘an inspector may enter any premises...’ if there are grounds for believing an offence has been or is being committed.
317. On the lack of statutory duty, local authority representatives commented on how resources would impact on a council's decision as to whether to use a discretionary power. However, it should also be noted that Mike Flynn of the Scottish Society for the Prevention of Cruelty to Animals did not foresee the enforcement powers in the Bill being used^{ccxxix}. He noted that any movement by a travelling circus with wild animals would constitute a new offence and this was unlikely.
318. In evidence to the Committee, the Cabinet Secretary expressed a view^{ccxxx} that any non-enforcement of the legislation by local authorities could be solved by Ministers appointing inspectors. She said—
- ” The bill also allows Scottish ministers some flexibility to appoint inspectors, so it will not be up to local authorities alone to do that. There is a power in the bill for ministers to appoint an alternative inspector if we think that certain local authorities are not enforcing this legislation.”^{ccxxxi}

Conclusions

319. The Committee is concerned that the discretionary nature of the enforcement powers, combined with the current loose definitions in the Bill, could result in 32 interpretations and applications of the legislation.

ccxxix Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 17

ccxxx Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 14

ccxxxi Environment, Climate Change and Land Reform Committee, [Official Report](#), 27 June 2017, Col 14

320. The Committee recommends the Scottish Government tighten the definitions in the Bill as previously recommended in this report and, subject to these amendments being made, remove the discretionary element of the local authorities' enforcement duty.

Guidance

321. At several points in considering the Bill, the issue of accompanying guidance was raised with the Committee.
322. Angela Lawson, Solicitor, Scottish Government, indicated^{ccxxxii} there would be fuller information on how the definitions in the Bill were to be interpreted in accompanying guidance and the Cabinet Secretary said this guidance would mean local authorities would not be "entirely left adrift".^{ccxxxiii}
323. Andrew Mitchell of the City of Edinburgh Council noted^{ccxxxiv} this guidance would need statutory basis in order for the information contained therein to have sufficient weight to fulfil the policy intention. He also noted there was no reference to guidance in the legislation or accompanying documents.
324. The Committee welcomes the intention to produce further guidance on how the Bill is to be interpreted and recommends that, given the intention for there to be no grace period on the commencement of the Bill, the Scottish Government ensures there is no time when, should the Bill be passed, the Bill is enacted and local authorities are without guidance.

^{ccxxxii} Environment, Climate Change and Land Reform Committee, *Official Report*, 23 May 2017, Col 19

^{ccxxxiii} Environment, Climate Change and Land Reform Committee, *Official Report*, 27 June 2017, Col 13

^{ccxxxiv} Environment, Climate Change and Land Reform Committee, *Official Report*, 6 June 2017, Col 16

Economic impact of the Bill

325. Andrew Voas, Veterinary Adviser, Scottish Government told^{ccxxxv} the Committee representatives of the film and television industry had outlined the potential impact of wider prohibition of the use of wild animals on their industry and, in a written submission to the Committee, Pact^{ccxxxvi} emphasised the effect the Bill could have on the use of Scotland as a filming location for productions including wild animals. Rona Brown emphasised^{ccxxxvii} the potential impact of a ban in Scotland throughout the UK and suggested this jeopardised the livelihoods of those adhering to the licensing regime and operating travelling circuses which used wild animals in England. Martin Burton suggested the legislation would eventually impact on the economic viability of any form of show which used wild animals and the Bill "will eventually close your zoos".^{ccxxxviii} The Cairngorm Reindeer Centre^{ccxxxix} was also concerned about the potential impacts of the Bill on its Business. The Circus Guild of Great Britain^{ccxl} and the European Circus Association^{ccxli} asserted there were potential consequences for the right to work.

Conclusions

326. The Committee notes that Scottish businesses are expressing concerns about the potential impacts on their enterprises of the Bill and that there is a potential impact on Scotland's attractiveness as a film or television location.

327. The Committee recommends the Scottish Government reflect on the concerns of businesses on the potential impact of the Bill and on the Committee's previous recommendations regarding clarification of definitions contained within the Bill.

ccxxxv Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 15

ccxxxvi Pact. [Written Submission](#).

ccxxxvii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 35

ccxxxviii Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 41

ccxxxix Cairngorm Reindeer Centre. [Written Submission](#).

ccxl Circus Guild of Great Britain. [Written Submission](#).

ccxli European Circus Association. [Written Submission](#).

Alternative approaches

328. As the Scottish Government's [website](#) notes with regard to its consultation—
- ” 95.7% of respondents also took the view that the concerns surrounding the travelling circus environment could only be resolved by banning wild animals in travelling circuses”.
329. As part of its consideration of the Bill, the Committee examined whether alternatives to a complete ban on the use of wild animals in travelling circuses had been explored and whether there was merit in a licensing system.
330. Andrew Voas of the Scottish Government said^{ccxlii} the Scottish Government had opted not to mirror its counterparts in England by introducing a licensing scheme because there were no travelling circuses using wild animals in Scotland and they did not consider such a scheme would address the key ethical issues outlined. Stakeholders such as the Captive Animals Protection Society concurred with the latter.^{ccxlili}
331. Martin Burton of the Association of Circus Proprietors of Great Britain highlighted^{ccxliv} the stringent regulatory regime operated in Scotland compared with the rest of the UK for use of domestic animals. Anthony Beckwith of An Evening with Lions and Tigers suggested^{ccxlv} a licensing regime was ethical, as it promoted the interest of those who ran and enjoyed circuses, while also providing peace of mind for those concerned about the welfare of animals.
332. Several stakeholders noted the self-financing nature of a licensing scheme in written submissions to the Committee. Others, such as the Scottish Society for Prevention of Cruelty to Animals^{ccxli}, Equity^{ccxlvii}, Pact^{ccxlviii} and Circus Mondao^{ccxlix} indicated they would be in favour of a licensing arrangement. Others such as the Captive Animals Protection Society^{cccl}, OneKind^{cccli} and Animal Aid^{ccclii} felt licensing would not go far enough.

ccxlii Environment, Climate Change and Land Reform Committee, [Official Report](#), 23 May 2017, Col 12

ccxlili Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 15

ccxliiv Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 32

ccxlv Environment, Climate Change and Land Reform Committee, [Official Report](#), 6 June 2017, Col 36

ccxlivi SSPCA. [Written Submission](#).

ccxlvii Equity. [Written Submission](#).

ccxlviii Pact. [Written Submission](#).

ccxlix Circus Mondao. [Written Submission](#).

333. However, the Committee also heard evidence to suggest licensing was ineffective in protecting animal welfare. Liz Tyson of the Born Free Foundation provided^{ccliii} several examples to the Committee and suggested there was a problem with data and enforcement.^{ccliv}
334. Local authority representatives were questioned by the Committee on attempts to ban circuses which used wild animals from hosting performances on council land. Andrew Mitchell of the City of Edinburgh Council described^{cclv} the court decision which had prevented the council from using licensing provisions in the Civic Government (Scotland) Act 1982 as a way of banning circuses. He said the effect of the decision to prevent such acts from using council land was there were only a couple of places in the city where a circus using wild animals could perform.
335. Many submissions to the Committee, such as that from PETA^{cclvi}, concurred the offence would be the most effective way of preventing the use of wild animals in travelling circuses in Scotland.

Conclusions

336. The Committee notes the evidence it has received on alternative approaches.

ccl Captive Animals Protection Society. [Written Submission](#).

ccli OneKind. [Written Submission](#).

cclii Animal Aid. [Written Submission](#).

ccliii Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 14

ccliv Environment, Climate Change and Land Reform Committee, [Official Report](#), 13 June 2017, Col 15

cclv Environment, Climate Change and Land Reform committee, [Official Report](#), 6 June 2017, Col 16

cclvi PETA. [Written Submission](#).

Overall conclusion on the general principles of the Bill

337. In general, the Committee considers the intentions behind the Bill to be important and welcomes steps by the Scottish Government to ban wild animals in travelling circuses in Scotland.
338. The Committee nevertheless has concerns over the approach to the proposed legislation and believes that, as drafted, the Bill is at risk of not fully addressing the issues it has been proposed to cover and capturing performances it is not intended to. The Committee also believes the issue of wild animals in travelling circuses should have been considered as part of the wider approach to review of the use of performing animals. This approach could have also addressed the conundrum of the ethical basis of the Bill.
339. While the Committee does commend the general principles of the Bill to the Scottish Parliament and recommends these be agreed, it believes the Bill will only achieve its purpose if the Committee's recommendations are implemented in full. It looks forward to further considering the Bill at Stage 2.

Annexe A - Minutes of Meetings

23rd Meeting, 2017 (Session 5) Tuesday 19 September 2017

7. Wild Animals in Travelling Circuses (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. The report was agreed for publication.

Richard Lyle declared an interest as Convener of the Scottish Parliament's Cross-Party Group on the Showmen's Guild and an honorary member of the Scottish section of the Showmen's Guild.

21st Meeting, 2017 (Session 5) Tuesday 5 September 2017

3. Wild Animals in Travelling Circuses (Scotland) Bill (in private): The Committee considered its draft Stage 1 report. Various changes were agreed to, and the Committee agreed to consider a revised draft, at a future meeting.

20th Meeting, 2017 (Session 5) Tuesday 27 June 2017

2. Wild Animals in Travelling Circuses (Scotland) Bill: The Committee took evidence from—

- Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform,
- Grant Campbell, Bill Officer,
- Angela Lawson, Solicitor, and
- Andrew Voas, Veterinary Adviser, Scottish Government.

Richard Lyle declared an interest as convener of the Scottish Parliament's Cross-Party Group on the Showmen's Guild and an honorary member of the Scottish section of the Showmen's Guild.

5. Wild Animals in Travelling Circuses (Scotland) Bill (in private): The Committee considered evidence heard earlier in the meeting.

18th Meeting, 2017 (Session 5) Tuesday 13 June 2017

2. Wild Animals in Travelling Circuses (Scotland) Bill: The Committee took evidence from—

- Melissa Donald, Scottish Branch President, British Veterinary Association;
- Mike Flynn, Chief Superintendent, Scottish Society for the Prevention of Cruelty to Animals;
- Nicola O'Brien, Campaigns Director, Captive Animals' Protection Society;
- Liz Tyson, Consultant, Born Free Foundation.

Richard Lyle declared an interest as convener of the Scottish Parliament's Cross-Party Group on the Showmen's Guild and an honorary member of the Scottish section of the Showmen's Guild.

4. Wild Animals in Travelling Circuses (Scotland) Bill (in private): The Committee considered evidence heard earlier in the meeting.

17th Meeting, 2017 (Session 5) Tuesday 6 June 2017

3. Wild Animals in Travelling Circuses (Scotland) Bill: The Committee took evidence from—

- Dr. Dorothy McKeegan, Senior Lecturer, Institute of Biodiversity Animal Health and Comparative Medicine, University of Glasgow;
- David Kerr, Senior Animal Health and Welfare Officer, Argyll and Bute Council;
- Andrew Mitchell, Regulatory Services Manager, City of Edinburgh Council;
- Anthony Beckwith, Proprietor, An Evening With Lions and Tigers;
- Rona Brown, Government Liaison Officer, Circus Guild of Great Britain, on behalf of Peter Jolly's Circus and the European Circus Association;
- Martin Burton, Chairman, Association of Circus Proprietors of Great Britain;
- Carol Macmanus, Animal Trainer, Circus Mondao.

Richard Lyle declared an interest as convener of the Scottish Parliament's Cross-Party Group on the Showmen's Guild and an honorary member of the Scottish section of the Showmen's Guild. Alexander Burnett referred to his Register of Interests on the Scottish Parliament's website.

4. Wild Animals in Travelling Circuses (in private): The Committee considered evidence heard earlier in the meeting.

15th Meeting, 2017 (Session 5) Tuesday 23 May 2017

2. Wild Animals in Travelling Circuses (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- Andrew Voas, Veterinary Adviser; and
- Angela Lawson, Solicitor, Scottish Government.

Richard Lyle declared an interest as Convener of the Scottish Parliament's Cross-Party Group on the Scottish Showmen's Guild.

5. Wild Animals in Travelling Circuses (Scotland) Bill (in private): The Committee considered evidence heard earlier in the meeting.

14th Meeting, 2017 (Session 5) Tuesday 16 May 2017

6. Wild Animals in Travelling Circuses (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1 (subject to formal referral by Parliament) and agreed—

- To issue and promote a call for evidence, with a deadline of 9 June 2017;
- To the content of the call for evidence;
- Its timetable for Stage 1 consideration;
- An initial list of witnesses to give oral evidence;
- To delegate further approval of witnesses to the Convener;
- Its engagement and communications approach;
- To hold further considerations of the approach to the Bill in private;
- To discuss evidence heard in Committee meetings in private;
- To delegate to the Convener the responsibility for approving any claims for expenses as part of the scrutiny of the Bill; and
- To consider drafts of its Stage 1 report in private.

Annexe B

Written evidence

The Committee received the following written submissions on the Bill—

- [001 Bernie Bell](#)
- [002 Thomas Chipperfield](#)
- [003 Chris Barltrop](#)
- [004 Anthony Beckwith](#)
- [005 Born Free Foundation](#)
- [006 Ron Beadle](#)
- [007 The Scottish Society for the Prevention of Cruelty to Animals](#)
- [008 Vanessa Avanzini](#)
- [009 Frank Gallagher](#)
- [010 Amanda Marie](#)
- [011 Juliet Stevenson](#)
- [012 David McKinven](#)
- [013 Karen McKenzie](#)
- [014 Michelle Jorgenson](#)
- [015 Loren Dahle](#)
- [016 Mrs Stephen King](#)
- [017 British Veterinary Association](#)
- [018 British Horse Society](#)
- [019 Captive Animals Protection Society](#)
- [020 John Dineley](#)
- [021 Patricia Kinsella](#)
- [022 Helen Jones](#)
- [023 Submission removed from website on 26 June 2017 at the request of the original submitter](#)
- [024 Janet Brooks](#)

- [025 European Circus Association](#)
- [026 Julie Iamarino](#)
- [027 Lorna Hay](#)
- [028 Nathan Roche](#)
- [029 Equity](#)
- [030 38 Degrees](#)
- [031 Pact](#)
- [032 LM Peacock](#)
- [033 Kelly Poyser](#)
- [034 Circus Mondao](#)
- [035 Cairngorm Reindeer Centre](#)
- [036 OneKind](#)
- [037 Animal Aid](#)
- [038 Peter Jolly Circus](#)
- [039 People for the Ethical Treatment of Animals \(PETA\) Foundation](#)
- [040 Animal Defenders International](#)
- [041 Animal Consultants and Trainers Association \(ACTA\)](#)
- [041 Animal Consultants and Trainers Association \(ACTA\) Updated](#)
- [042 Andrew Lewis](#)
- [043 Joanne Cox](#)
- [044 Circus Guild of Great Britain](#)

Official reports

- [Tuesday 27 June 2017](#) - Evidence from Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform and Officials
- [Tuesday 13 June 2017](#) - Evidence from stakeholders
- [Tuesday 6 June 2017](#) - Evidence from stakeholders
- [Tuesday 23 May 2017](#) - Evidence from Scottish Government Bill Team

