

Report on the Wild Animals and Circuses (Wales) Bill

December 2019



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About the Committee

The Committee was established on 15 June 2016. Its remit can be found at:
www.assembly.wales/SeneddCLA

Committee Chair:



Mick Antoniw AM
Welsh Labour

Current Committee membership:



Suzy Davies AM
Welsh Conservatives



Carwyn Jones AM
Welsh Labour



Dai Lloyd AM
Plaid Cymru



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1. Introduction

In Autumn 2018, the Welsh Government consulted on the then draft Wild Animals in Travelling Circuses (Wales) Bill.

Background

1. Ninety-seven percent of respondents to the Welsh Government's consultation supported its proposal to introduce legislation that would make it an offence for a wild animal to be used in a travelling circus.¹
2. Petitions calling for a ban have twice been considered by the National Assembly's Petitions Committee, with one being debated in Plenary.²
3. Similar legislation has been passed by the UK Parliament for England, and by the Scottish Parliament. In Scotland, the Wild Animals in Travelling Circuses (Scotland) Act 2018 received Royal Assent on 24 January 2018. For England, the Wild Animals in Circuses Act 2019 received Royal Assent on 24 July 2019.

Introduction of the Bill

4. On 8 July 2019, the Wild Animals and Circuses (Wales) Bill³ (the Bill) and accompanying Explanatory Memorandum⁴ (the EM) was introduced by Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs (the Minister).
5. The National Assembly's Business Committee referred the Bill to the Climate Change, Environment and Rural Affairs Committee, and set a deadline of 6 December 2019 for reporting on its general principles.⁵
6. The EM accompanying the Bill states that the policy objective for the Bill "is to prohibit the use of wild animals in travelling circuses in Wales".⁶

¹ Welsh Government consultation: Wild Animals in Travelling Circuses (Wales) Bill

² P-04-653 Ban the Use of Wild Animals in Circuses in Wales, and P-05-796 Calling on the Welsh Government to Ban The Use of Wild Animals in Circuses in Wales

³ Available on the National Assembly's website

⁴ Welsh Government: Explanatory Memorandum on the Wild Animals and Circuses (Wales) Bill, July 2019

⁵ Business Committee, Report on the timetable for the consideration of the Wild Animals and Circuses (Wales) Bill, July 2019

⁶ Explanatory Memorandum, paragraph 3.1

7. The EM notes:

“There are now just two circuses touring with wild animals; Circus Mondao and Peter Jolly’s Circus. Both are based in England but regularly visit Wales; they both visited in 2018, and Circus Mondao are touring Wales this year (2019).”⁷

8. On 8 July 2019 the Minister issued a statement of policy intent to accompany the Bill.⁸

The Committee’s remit

9. The remit of the Constitutional and Legislative Affairs Committee (the Committee) is to carry out the functions of the responsible committee set out in Standing Order 21 (with the exception of Standing Order 21.8) and to consider any other constitutional, legislative or governmental matter within or relating to the competence of the National Assembly or the Welsh Ministers, including the quality of legislation.

10. In our scrutiny of Bills introduced in the National Assembly, our approach is to consider:

- matters relating to the competence of the National Assembly, including compatibility with the European Convention on Human Rights (ECHR);
- the balance between the information that is included on the face of the Bill and that which is left to subordinate legislation;
- whether an appropriate legislative procedure has been chosen, in relation to the granting of powers to the Welsh Ministers, to make subordinate legislation; and
- any other matter we consider relevant to the quality of legislation.

11. We took evidence from the Minister at our meeting on 21 October 2019.⁹

⁷ Explanatory Memorandum, paragraph 3.3

⁸ Welsh Government: Wild Animals and Circuses (Wales) Bill – Statement of Policy Intent for Subordinate Legislation, July 2019

⁹ Constitutional and Legislative Affairs Committee, 21 October 2019

2. Legislative competence

The Welsh Government is satisfied that the Bill is within the legislative competence of the National Assembly.

General

12. We considered this Bill under the reserved powers model of legislative competence, as set out in Section 108A of the Government of Wales Act 2006 (the 2006 Act).

13. The Welsh Government is satisfied that the Bill is within the legislative competence of the National Assembly. The EM states:

“The National Assembly for Wales (‘the Assembly’) has the legislative competence to make the provisions in the Wild Animals and Circuses (Wales) Bill (‘the Bill’) pursuant to Part 4 of the Government of Wales Act 2006 (‘GoWA 2006’) as amended by the Wales Act 2017.”¹⁰

14. In her statement on legislative competence,¹¹ the Llywydd, Elin Jones AM, stated that in her view most of the provisions of the Bill would be within the legislative competence of the National Assembly for Wales, with the exception of section 10. The Llywydd stated:

“Section 10 is outside the legislative competence of the Assembly insofar as it requires consent from the Secretary of State to be within competence.”

15. Section 10 of the Bill concerns the powers of entry to Crown land. It provides that:

“The powers conferred by the Schedule (powers of entry etc.) may be exercised in relation to Crown land only with the consent of the appropriate authority.”

¹⁰ Explanatory Memorandum, paragraph 1.1. See also Constitutional and Legislative Affairs (CLA) Committee, 21 October 2019, Record of Proceedings (RoP), [40]

¹¹ Presiding Officer’s Statement on Legislative Competence: Wild Animals and Circuses (Wales) Bill, 8 July 2019

16. On 12 August 2019 the Minister wrote to the Llywydd to confirm that consent for the provision under section 10 of the Bill had been given by the Secretary of State for Wales.¹²

Human rights

17. To be within the legislative competence of the National Assembly, section 108A(2)(e) of the 2006 Act requires all provisions of a Bill to comply with the European Convention on Human Rights (ECHR).

18. We asked the Minister to what extent she had taken human rights into consideration in preparing the Bill. The Minister said:

“(...) we’re satisfied that the provisions in the Bill comply with the Human Rights Act 1998. Obviously, the Bill focuses on ethical concerns surrounding the use of wild animals in travelling circuses, so, beyond the impact on the two travelling circuses, I think the real benefit will be measured in terms of addressing those ethical concerns that have been raised with me many, many times by the Welsh public and third sector organisations.”¹³

19. The equality impact assessment for the Bill states that the Bill has no impact on matters of race. The equality impact assessment notes that race is said to include different ethnic minorities, Gypsies and Travellers and migrants, asylum seekers and refugees. We asked the Minister why the equality impact assessment does not identify any positive or negative implication with regard to race. The Minister said:

“You’re quite right that that’s what our view is; that’s what the impact assessment on completion agreed to. We commissioned a huge range of research around this. I know we looked at briefings and journals, general articles, and none of them identified any impacts in this area. Travelling circuses are commercial operations, and they exist to provide entertainment, so banning the use of wild animals in travelling circuses would be expected to impact equally on all affected people. It will not be specific to any one protected characteristic.”¹⁴

¹² Letter from the Minister to the Llywydd, 12 August 2019

¹³ CLA Committee, 21 October 2019, RoP, [52]

¹⁴ CLA Committee, 21 October 2019, RoP, [54]

20. With regards to the powers of enforcement, the Bill gives powers to inspectors to enter premises commonly associated with travelling circuses. The EM states:

“The Bill has been drafted with due regard to human rights and the Schedule sets out the conditions that must be satisfied before a warrant may be granted and the limitations of a warrant.”¹⁵

Our view

21. We note the evidence from the Minister and the information provided in the Explanatory Memorandum.

22. We also note that the Secretary of State for Wales has given consent for the provision under section 10 of the Bill.

23. We take the opportunity to re-iterate a conclusion made most recently in our reports on the National Health Service (Indemnities) (Wales) Bill and the Health and Social Care (Quality and Engagement) (Wales) Bill – it is important that full explanations of assessments undertaken in relation to human rights are available in Explanatory Memoranda that accompany Bills laid before the National Assembly.

¹⁵ Explanatory Memorandum, paragraph 3.46

3. General observations

The need for legislation

24. The EM states that the policy objective is “to ban the use of wild animals in travelling circuses in Wales, based on ethical grounds”.¹⁶

25. Chapter 7 of the EM describes the three options which were considered in order to achieve the policy objective.

26. We asked the Minister why the Bill is necessary to achieve the policy objective, as opposed to using existing powers. The Minister said:

“The policy objective is to ban the use of wild animals in travelling circuses in Wales. We don’t have any circuses based here in Wales, but we do have, at the moment, two circuses that do visit Wales. You may be aware that Scotland has already introduced legislation to ban the use of wild animals in travelling circuses. The UK Government are going through the process now. So, we want a consistent approach across Great Britain. We do not want Wales to become a sanctuary for travelling circuses, with the other two countries having introduced a ban. So, I went out to consultation last year. We had about 6,500 responses and 96 per cent of respondents agreed that we should legislate to ban the use of wild animals in travelling circuses.”¹⁷

27. We asked the Minister why the Bill is being brought forward on ethical grounds rather than animal welfare grounds. She said:

“I do not have the evidence to show that there are welfare issues. Obviously, I can’t say 100 per cent with confidence that there aren’t, but you have to assume that every circus is heavily regulated, and if they weren’t complying with the regulations around animal welfare, we would know about it. There have only been two prosecutions in relation to animal welfare in travelling circuses in the last 20 years. I think the last one was about seven years ago. So, I could not bring forward this

¹⁶ Explanatory Memorandum, paragraph 7.1

¹⁷ CLA Committee, 21 October 2019, RoP [42]

Bill on animal welfare grounds and, certainly, Scotland and the UK Government came to the same conclusions with their Bills too.”¹⁸

Balance between what is on the face of the Bill and what is left to subordinate legislation

28. The delegated powers are summarised in Chapter 5 of the EM. As mentioned earlier in this report, the Welsh Government has also provided a statement of policy intent.

29. The delegated powers provided by the Bill will take the form of two regulation-making powers, both of which will be subject to the affirmative procedure.

30. Section 3(2) provides a power for regulations to specify a kind of animal that is, or is not, to be regarded as a wild animal.

31. Section 4 defines a travelling circus. It provides that this is a circus which travels from one place to another for the purpose of providing entertainment at those places. Section 4(3) provides that regulations may specify types of undertaking etc which are, or are not, to be regarded as a travelling circus.

32. Regulations made under sections 3(2) and 4(3) will be subject to the affirmative procedure. The EM states that this procedure is appropriate because amending the meaning of a wild animal and a travelling circus “will have a bearing on the offence”¹⁹.

33. The EM states that it is possible there may be “uncertainty or conflicting views” as to what kind of animal is to be considered as wild, and whether a type of undertaking, act or entertainment is to be regarded as a travelling circus.²⁰

34. We asked the Minister about the inclusion of the two regulation-making powers in sections 3 and 4 which will enable Welsh Ministers to amend the definitions of wild animals and travelling circuses. The Minister told us:

“We think the definitions within the Bill should be sufficient. However, the regulations only really look at the definition of ‘wild animals’ and

¹⁸ CLA Committee, 21 October 2019, RoP [56]. See also Explanatory Memorandum, paragraphs 3.15 to 3.35

¹⁹ Explanatory Memorandum, Table 5.1, page 24

²⁰ Explanatory Memorandum, paragraphs 3.41 and 3.42

‘travelling circuses’. So, if you think about wild animals, it could be that, in future, animals that are considered to be wild at the moment might not be. The only example we’ve been able to come up with is llamas, which 40 years ago were considered to be exotic and now they’re considered to be domesticated.”²¹

35. She added:

“(…) the definitions are the same as those that Scotland and England have used. They’re also in line with other regulations and legislation - so, in the Zoo Licensing Act 1981, for instance, the definition is the same for wild animals there.”²²

36. The official accompanying the Minister added:

“I think the idea is that we’re reasonably happy with the definitions we have, which are in keeping with other legislation, but those powers to make regulations are there should we need them in the future, should things change or should clarification be required.”²³

37. Section 3(1) of the Bill defines a wild animal as “an animal of a kind that is not commonly domesticated in the British Islands”. Section 2 of the Wild Animals in Travelling Circuses (Scotland) Act 2018 states:

“(1) In this Act, “wild animal” means an animal other than one of a kind that is commonly domesticated in the British Islands.

(2) For the purpose of subsection (1), 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.”²⁴

38. The Minister wrote to us on 28 November stating “Further to my appearing before the Committee on 21 October, I feel it would be of benefit to the Committee to clarify some of the issues raised in relation to the Regulation

²¹ CLA Committee, 21 October 2019, RoP, [62]

²² CLA Committee, 21 October 2019, RoP [64]

²³ CLA Committee, 21 October 2019, RoP, [69]. See also [73].

²⁴ Wild Animals in Travelling Circuses (Scotland) Act 2018

making powers in the Wild Animals and Circuses (Wales) Bill”. The Minister’s letter states:

“Although the definition of a wild animal is similar across the Wild Animals and Circuses (Wales) Bill, the Wild Animals in Travelling Circuses (Scotland) Act 2018, Wild Animals in Circuses Act 2019, and Zoo Licensing Act 1981, there are some variations in the drafting although I do not anticipate these resulting in a difference in the overall common effect across the different administrations.”²⁵

39. In terms of bringing forward regulations in the future, the Minister also said:

“(…) what we would firstly do is consult with stakeholders and get expert advice. Any regulations would be affirmative procedure, so in-between those we would then consult as appropriate.”²⁶

Coming into force

40. Section 12 of the Bill provides that the Bill comes into force on 1 December 2020.

41. In her evidence the Minister told us:

“Circuses normally travel between March and November. So, if you look at when we would get Royal Assent, assuming everything goes the way that we would allow for, the date of 1 December was to allow the animals—. If we brought the date forward whilst the animals were touring, it would be much more difficult, I think, for them. But I’m not saying we couldn’t bring it forward if that would be the will of the committees and the National Assembly.”²⁷

Our view

42. We note the evidence from the Minister as it relates to the need for legislation, and the grounds for bringing forward the Bill.

43. The Minister told us that the definitions of “wild animal” and “travelling circus” used in the Bill are the same as those used in the corresponding Scotland and England-only Acts. However, we note, for example, that the definition of “wild

²⁵ Letter from the Minister for Environment, Energy and Rural Affairs, 28 November 2019

²⁶ CLA Committee, 21 October 2019, RoP, [66]

²⁷ CLA Committee, 21 October 2019, RoP, [58]

animal” in the Wild Animals in Travelling Circuses (Scotland) Act 2018 appears to provide a more detailed and specific definition than the one included in this Bill.

44. While we acknowledge that the Minister wrote to us on 28 November to offer some clarification, the letter was received over five weeks after the Minister provided evidence to us and only one week ahead of our reporting deadline. As a result, we have had limited opportunity to consider the implications of the Minister’s additional evidence. It is not clear why it took so long after the evidence session to write to us. In our view, this is not good practice and we hope that it is not repeated in the future.

Recommendation 1. The Minister should, during the Stage 1 debate, clarify the definitions of “wild animal” and “travelling circus” provided for in the Bill, and explain, where applicable, how and why these definitions differ from those used in the equivalent Scotland and England-only Acts.

45. With regards to the balance between the detail on the face of the Bill and what is left to subordinate legislation, we note that the Bill provides two powers to the Welsh Ministers to make subordinate legislation.

46. We note and are content that regulations to be made under sections 3 and 4 are subject to the affirmative procedure.

47. We note section 12 of the Bill and the Minister’s evidence regarding the proposed coming into force date of 1 December 2020.