

# Wild Animals and Circuses (Wales) Bill: Stage 1 Report

December 2019



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# **Wild Animals and Circuses (Wales) Bill:**

## Stage 1 Report

December 2019



# About the Committee

The Committee was established on 28 June 2016. Its remit can be found at:  
[www.assembly.wales/SeneddCCERA](http://www.assembly.wales/SeneddCCERA)

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## Committee Chair:



**Mike Hedges AM**  
Welsh Labour

## Current Committee membership:



**Andrew RT Davies AM**  
Welsh Conservatives



**Llyr Gruffydd AM**  
Plaid Cymru



**Neil Hamilton AM**  
UKIP Wales



**Jenny Rathbone AM**  
Welsh Labour



**Joyce Watson AM**  
Welsh Labour





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## Recommendations

**Recommendation 1.** The Committee is unanimous in its continued support for the welfare of all animals. However, we have not been able to come to an unanimous view on whether this Bill should proceed. A majority of Committee members support the general principles of the Bill. We recommend that the Assembly agrees the general principles of the Bill. .... Page 23

**Recommendation 2.** We recommend that the Minister provides a more comprehensive explanation about:

- why the scope of the ban does not extend to wild animals touring with travelling circuses;
- why the ethical argument for a ban on using wild animals in static circuses is “much weaker” than for travelling circuses; and
- why the ethical argument for a ban on using wild animals in travelling circuses does not apply equally to domesticated animals. .... Page 28

**Recommendation 3.** We recommend that the Bill is amended to include provision for the Welsh Ministers to issue statutory guidance to support the implementation of the ban. This guidance should be developed in conjunction with relevant stakeholders, and be published to coincide with the coming into force date of the Bill..... Page 33

**Recommendation 4.** We recommend that statutory guidance to support the implementation of the ban includes comprehensive guidance on the meaning of “wild animal” and “domesticated”. This should include examples of the types of animals that will, and will not be regarded as “wild”. .... Page 33

**Recommendation 5.** We recommend that statutory guidance to support the implementation of the Bill includes comprehensive guidance on the meaning of “travelling circus” and the types of undertaking, act of entertainment that is to be regarded, or not regarded, as a travelling circus. There must be a clear distinction between travelling circuses and Mobile Animal Exhibits..... Page 36

**Recommendation 6.** We recommend that statutory guidance to support the implementation of the Bill includes comprehensive guidance on when the less formal “display” of wild animals outside the main circus arena would constitute an offence. The guidance must make clear that wild animals which are outside for

legitimate purposes but are visible by the public, would not constitute an offence.  
..... Page 41

**Recommendation 7.** We recommend that the Welsh Government takes all reasonable steps to ensure that circuses likely to be affected by the changes in licensing requirements arising from section 8 of the Bill are aware of, and understand the implications of, those changes. .... Page 42

**Recommendation 8.** We recommend that the Welsh Government reports back on discussions with DEFRA about the support and advice that will be available for the two UK travelling circuses about options for rehoming their wild animals following the ban. ....Page 46



# 1. Introduction

1. On 8 July 2019, the Minister for Environment, Energy and Rural Affairs (the Minister), Lesley Griffiths AM, introduced the **Wild Animals and Circuses (Wales) Bill** (the Bill) to the Assembly. A **Legislative Statement** on the Bill was made on 9 July.
2. The Business Committee referred the Bill to this Committee for Stage 1 scrutiny with a reporting deadline of 6 December 2019.

## Purpose and intended effect of the Bill

3. The policy objective of the Bill is to prohibit the use of wild animals in travelling circuses in Wales.
4. The Bill seeks to make it an offence for a wild animal (defined in section 3 of the Bill) to be used in a travelling circus (defined in section 4). A wild animal is used if the animal “performs” or is “exhibited”. The offence would be committed by the person who is the operator (defined in section 2) of the travelling circus if they use, or cause or permit another person to use a wild animal in the travelling circus. A person guilty of such an offence is liable on summary conviction to a fine.
5. The Bill will not affect the use of domesticated animals in travelling circuses, nor will it prevent wild animals being used for entertainment in other settings, including static circuses.

## Committee’s terms of reference

6. In scrutinising the Bill, the Committee considered:
  - the general principles of the Bill and whether there is a need for legislation to deliver its stated policy objectives;
  - the provisions of the Bill, in particular, in relation to:
    - the prohibition of using wild animals in travelling circuses (including the meanings set out in sections 2 to 4);
    - the powers of enforcement (the Schedule); and
    - the amendments relating to licensing of circuses (section 8);
  - whether there are any unintended consequences arising from the Bill;

- the financial implications of the Bill (as set out in Part 2, Section 8 of the Explanatory Memorandum);
- the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Part 1, Section 5 of the Explanatory Memorandum).

## Committee's approach to scrutiny

**7.** We undertook a public consultation between 12 July and 23 August. We held oral evidence sessions with a range of external witnesses, including academics, representatives from the circus industry, and animal welfare organisations. We held two evidence sessions with the Minister. Details of these can be found at the end of this report.

**8.** We used an online discussion board to engage the wider public with our work. With the assistance of the Assembly's Citizen Engagement and Education and Youth Engagement Teams, we also sought the views of children and young people through focus group discussions. The summary of outcomes of these has helped inform this report.

**9.** We would like to thank all those who contributed to our work.

## Scrutiny of the Bill by other Assembly Committees

**10.** The Assembly's Finance Committee and the Constitutional and Legislative Affairs Committee took evidence from the Minister on their respective areas of interest.

**11.** The Finance Committee wrote to this Committee setting out its views on the financial implications of the Bill. We note the views of the Finance Committee.

**12.** The Constitutional and Legislative Affairs Committee will be publishing its report on the Bill ahead of the Stage 1 reporting deadline of 6 December 2019.

## 2. Policy and legislative background

### 2. 1. Travelling circuses in Wales

**13.** There are currently no Welsh circuses with wild animals, but circuses from other countries do visit, and can legally use wild animals in their acts.

**14.** In England, there are two travelling circuses using wild animals: Circus Mondao and Peter Jolly's Circus. Both regularly visit Wales. According to the UK Government's Department for Environment, Food and Rural Affairs (DEFRA), at the end of 2017, these circuses had a total of 19 wild animals.

### 2. 2. Calls for a ban

**15.** Members of the public and third sector organisations have expressed concern about the welfare of some animals kept in travelling circus conditions. Concerns include the suitability and size of temporary accommodation, changes in normal behaviour, the performance of "unnatural" tricks and the impact of frequent transportation.

**16.** As well as perceived welfare issues, concerns have been raised that the unnatural performance of wild animals for human entertainment is an outdated practice, and no longer ethically acceptable.

**17.** Since October 2015, the Assembly's Petitions Committee has received three petitions calling for a ban.

### 2. 3. Animal welfare legislation in Wales

**18.** Although there are no specific regulations for the welfare of wild animals in travelling circuses in Wales, their welfare falls under the scope of wider animal welfare legislation, including, the Animal Welfare Act 2006 (the 2006 Act)<sup>1</sup>, The Welfare of Animals (Transport) (Wales) Order 2007<sup>2</sup>, and The Performing Animals (Regulation) Act 1925<sup>3</sup>.

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<sup>1</sup> The Animal Welfare Act 2006 covers the welfare of all vertebrate animals. The Act makes it a criminal offence to fail to provide for the animal's welfare needs and to cause an animal any unnecessary pain or suffering.

<sup>2</sup> The Welfare of Animals (Transport) (Wales) Order 2007 makes it an offence to transport any animal in a way which causes, or is likely to cause, injury or unnecessary suffering to the animal.

<sup>3</sup> The Performing Animals (Regulation) Act 1925 requires anyone who trains or exhibits animals to register with a local authority and provide details of the animals involved.

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**19.** In August 2019, the Welsh Government published its draft Animal Welfare (Licensing of Animal Exhibits) (Wales) Regulations 2020 (the draft 2020 Regulations) for consultation. The Regulations will be introduced under the 2006 Act.

**20.** According to the Welsh Government:

“The draft Regulations provide a licensing scheme for all Animal Exhibits (AEs) based in, and visiting, Wales which meet a given criteria; it allows checks to be made to ensure good welfare standards are met at their home base, in transport and during exhibition.”<sup>4</sup>

**21.** The proposed Animal Exhibits licensing scheme will cover keeping, training and exhibiting animals in Wales where those animals are being used for exhibition for educational or entertainment purposes. Animal Exhibits can display domestic and wild animals, and include exotic pet displays, falconry and hawking displays, static circuses and reindeer events.

## 2. 4. Legislation in other UK nations

**22.** Scotland was the first of the UK nations to ban using wild animals in travelling circuses. The Wild Animals and Travelling Circuses (Scotland) Act 2018<sup>5</sup> came into force in January 2018.

**23.** In England, circuses with wild animals require a licence under The Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012<sup>6</sup> (the 2012 Regulations). These Regulations require all operators of travelling circuses in England using wild animals to be licensed. There are several conditions circus operators have to comply with, including submitting tour itineraries detailing the location of the circus and its animals at all times. Licensed circuses receive regular inspections to check compliance with the licence conditions. The 2012 Regulations are due to expire in January 2020.

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<sup>4</sup> [https://gov.wales/sites/default/files/consultations/2019-08/animal-exhibits-consultation-document\\_0.pdf](https://gov.wales/sites/default/files/consultations/2019-08/animal-exhibits-consultation-document_0.pdf)

<sup>5</sup> [www.legislation.gov.uk/asp/2018/3/contents](http://www.legislation.gov.uk/asp/2018/3/contents)

<sup>6</sup> [www.legislation.gov.uk/ukdsi/2012/9780111527832/contents](http://www.legislation.gov.uk/ukdsi/2012/9780111527832/contents)

**24.** The UK Government's Wild Animals in Circuses Act 2019<sup>7</sup> introduces a ban on using wild animals in travelling circuses in England and will come into force in January 2020, when the 2012 Regulations expire.

**25.** Both England and Scotland have introduced the ban on ethical grounds.

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<sup>7</sup> [www.legislation.gov.uk/ukpga/2019/24/contents/enacted/data.htm](http://www.legislation.gov.uk/ukpga/2019/24/contents/enacted/data.htm)

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## 3. The need for legislation and the approach taken

**26.** The Welsh Government is seeking to introduce a ban on ethical grounds through a Bill.

**27.** The Explanatory Memorandum accompanying the Bill sets out the Welsh Government's justification for a ban on ethical grounds, namely:

- circuses are no longer the only opportunity people have to see wild animals;
- using wild animals in travelling circuses raises concerns around animal dignity, and it is increasingly difficult to justify keeping wild animals in travelling circuses and requiring them to perform tricks; and
- there is a strong body of opinion that the welfare needs of wild animals in travelling circuses cannot be met, and the Welsh public and third sector organisations have overwhelmingly lobbied for a ban.<sup>8</sup>

### Evidence from respondents

#### 3. 1. Overview

**28.** There were polarised views from respondents on the need for the Bill. Those who supported the Bill argued that the distinct needs of wild animals cannot be met in a travelling circus environment. They asserted that using wild animals in travelling circuses was “out-dated” and “unethical”. They believed that the only way to address welfare and ethical concerns was through a ban.

**29.** Those who opposed the Bill argued that a ban on using wild animals in travelling circuses was “disproportionate”, given the scale of the issue and the lack of evidence for animal welfare concerns. They believed the ban was “unfair”, “unjust” and potentially discriminatory. They suggested that wild animals in travelling circuses should be regulated under a licensing scheme similar to that currently in place in England.

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<sup>8</sup> [www.assembly.wales/laid%20documents/pri-ld12632-em/pri-ld12632-em-e.pdf](http://www.assembly.wales/laid%20documents/pri-ld12632-em/pri-ld12632-em-e.pdf)



### 3. 2. Ethical considerations

**30.** Many respondents who opposed the ban argued the primary reason the Welsh Government was legislating on ethical grounds was the lack of evidence of welfare concerns. Some emphasised that ethics was subjective and that individuals should have the right to choose whether or not to visit travelling circuses that use wild animals.

**31.** Professor Ron Beadle (Northumbria University) asserted that one of the key questions when considering a ban on ethical grounds is whether using wild animals in travelling circuses “has such significant, far-reaching and overwhelmingly negative effects as to warrant prohibition and thus breach an ethical principle, that of the liberty of the citizen, which is and must be universal”.<sup>9</sup>

**32.** Notwithstanding their views on the approach taken to legislating, many respondents argued that the case for a ban on ethical grounds had not been made. They also highlighted that the ethical justifications provided to support a ban could be applied to animals used in other settings, for example, falconry and horse racing.

**33.** Professor Beadle explained:

“...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.”<sup>10</sup>

**34.** According to Professor Beadle, the Welsh Government “provides no sound ethical arguments for the ban on wild animals in circuses that do not apply equally to all forms of human manipulation of animals”.<sup>11</sup> He raised concern that the Welsh Government’s approach lacked coherence.

**35.** Regardless of their stance on a ban, some respondents, including Thomas Chipperfield (animal trainer)<sup>12</sup> and Born Free Foundation<sup>13</sup> (BFF), suggested it was difficult to separate animal welfare and ethical considerations when determining the grounds for a ban.

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<sup>9</sup> Written evidence WA 10, Professor Ron Beadle

<sup>10</sup> Written evidence WA 10, Professor Ron Beadle

<sup>11</sup> Written evidence WA 10, Professor Ron Beadle

<sup>12</sup> Written evidence WA 24, Thomas Chipperfield

<sup>13</sup> Written evidence WA 06, Born Free Foundation

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## Public opinion

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**36.** Animal welfare organisations reported strong public support for a ban. Some cited the results of the Welsh Government’s consultations on a ban and public opinion polls as evidence of this. For example, a survey conducted by BFF in 2018 found 79.77 per cent of UK respondents agreed that wild animals in circuses should be banned.<sup>14</sup> A 2014 YouGov Poll for RSPCA Cymru found that 74 per cent of the public in Wales supported a ban.<sup>15</sup>

**37.** Freedom for Animals stated:

“Whilst we experience a range of reactions to our different campaigns, the use of animals in circuses is always met with solid objections, on welfare grounds and for strongly held ethical reasons.”<sup>16</sup>

**38.** RSPCA Cymru, Mike Radford (University of Aberdeen) and Dr Rebekah Humphreys (University of Wales Trinity Saint David) highlighted society’s change in attitude towards the use of wild animals in travelling circuses in recent decades. They attributed this to improved scientific understanding and increased public awareness, of animals’ cognitive capacities. According to Dr Humphreys, this had led to “growing consciousness about the ethics of using such animals for entertainment purposes”.<sup>17</sup>

**39.** Professor Beadle emphasised that the prevalence of public opinion “does not equate to an *ethical justification*”. He stated:

“On the assumption...that the ethical argument presupposed here is something along the lines that the will of the people should normally be observed, then all sorts of conundrums are raised.”<sup>18</sup>

**40.** Some respondents who opposed the ban argued it was misleading to use the statistics from the Welsh Government’s consultation, which received 6,546 responses, as evidence for overall public support for a ban. They highlighted that two-thirds of those who responded to the Welsh Government’s consultation did so as part of an organised campaign.

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<sup>14</sup> Written evidence WA 06, Born Free Foundation

<sup>15</sup> Written evidence WA 09, RSPCA Cymru

<sup>16</sup> Written evidence WA 02, Freedom for Animals

<sup>17</sup> Written evidence WA03, Dr Rebekah Humphreys

<sup>18</sup> Written evidence WA10, Professor Ron Beadle

**41.** Circus industry representatives asserted that the large number of visitors to travelling circuses using wild animals demonstrated public approval and was “a big vote in favour of [them]”.<sup>19</sup> Circus Mondao reported receiving 20,000 visitors during a recent 10-week tour of Wales. It told the Committee that “this speaks volumes when talking about who wants to carry on seeing traditional circus in Wales”.<sup>20</sup>

### Performance and animal dignity

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**42.** Those who supported a ban suggested that making wild animals perform tricks was demeaning and a violation of their dignity. BFF argued, “it’s just not right to use wild animals in the way that they’re used in the ring”.<sup>21</sup> It stated:

“...the use of animals in circuses is solely for entertainment. It’s solely to perform tricks or just to be exhibited. It’s a million miles removed from animals engaging in natural processes in the wild.”<sup>22</sup>

**43.** Professor Beadle pointed out that “the critique in relation to animal dignity, if accepted, applies to all circumstances in which animals perform tricks”. He stated that the distinction between wild and domestic animals in this context was “ethically irrelevant”. He also stated:

“The case for the distinctiveness of ‘travelling circus’ such that it requires different treatment...is simply not argued, let alone established, in the Explanatory Memorandum.”<sup>23</sup>

**44.** Circus industry representatives asserted that performances were based on animals’ natural movements and behaviours; helped demonstrate the animals’ unique capabilities; and were examples of human-animal co-operation.

**45.** Thomas Chipperfield explained that, over time, the international circus community had adapted performances to ensure that animals were presented “in a dignified way, as impressive spectacles of mother nature”.<sup>24</sup>

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<sup>19</sup> RoP, para 376, 2 October 2019

<sup>20</sup> Written evidence WA 07, Circus Mondao

<sup>21</sup> RoP, para 31, 26 September 2019

<sup>22</sup> RoP, para 41, 26 September 2019

<sup>23</sup> Written evidence WA 10, Professor Ron Beadle

<sup>24</sup> RoP, para 228, 2 October 2019

## Negative attitudes towards animals

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**46.** Several respondents who supported the ban raised concern that the use of wild animals in travelling circuses had a negative impact on the public's attitude towards animals. The British Veterinary Association (BVA) and British Veterinary Zoological Society (BVZS) suggested that allowing the practice to continue could, potentially "undermine the public's understanding of animals as sentient beings with complex welfare needs, instead framing animals as commodities".<sup>25</sup>

**47.** RSPCA Cymru told the Committee that using wild animals in travelling circuses "[does] not educate the public or foster respect for animals".<sup>26</sup> Animal Defenders International (ADI) expressed a similar view.<sup>27</sup>

**48.** Freedom for Animals raised particular concern about the impact on childrens' attitudes towards wild animals. It stated:

"Children who see animals in these exploitative situations learn how animals behave in these artificial environments, which does not reflect how they would behave naturally in the wild. This form of exploitation also teaches young people that using animals in this way is acceptable in society..."<sup>28</sup>

**49.** Dr Giulia Corsini (Veterinarian) told the Committee that there was "no scientific evidence" to support the above arguments.<sup>29</sup>

**50.** Circus industry representatives suggested that performances provide educational benefit and support the development of positive attitudes towards animals. Rona Brown (representing Performing Animals Welfare Standards (PAWSI) and Peter Jolly's Circus) explained that Peter Jolly's Circus offers visitors an opportunity to interact with its animals following performances, which helps them develop an understanding of the animals.<sup>30</sup>

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<sup>25</sup> Written evidence WA 05, British Veterinary Association and British Veterinary Zoological Society

<sup>26</sup> Written evidence WA 09, RSPCA Cymru

<sup>27</sup> Written evidence WA11, Animal Defenders International

<sup>28</sup> Written evidence WA 02, Freedom for Animals

<sup>29</sup> RoP, para 370, 2 October 2019

<sup>30</sup> RoP, para 13, 2 October 2019

**51.** Circus Mondao suggested that circus visitors may not otherwise have the opportunity to experience wild animals first hand, in particular, due to prohibitive costs of alternatives.<sup>31</sup>

### 3. 3. Animal welfare considerations

**52.** Much of the evidence received in support of a ban focussed on animal welfare considerations. Respondents asserted that the needs of wild animals cannot be met within a travelling circus environment. Many cited the findings of the Harris Review as evidence to support this.

**53.** The BVA Welsh Branch and the BVZS stated:

“Captive wild animals have complex welfare needs and instinctive natural behavioural needs that must be met. Travelling circuses, by definition, necessitate the regular transportation of wild animals between sites and locations, as such their facilities must be portable and often size-limited...With this in mind, travelling circuses are not able to meet wild animals’ need for a suitable environment, with adequate space, enrichment materials, temperature and noise regulation – obstructing animals in pursuit of activities and behavioural expression that is natural to them.”<sup>32</sup>

**54.** RSPCA Cymru stated:

“Pivotal, the itinerant, transient nature of circuses means the complex needs of wild animals cannot be adequately met in such an environment. Confinement, constant transportation, forced training and being placed within abnormal social groups are all grim realities associated with circus life; all of which can cause stress and welfare problems for the animals involved.”<sup>33</sup>

**55.** According to Freedom for Animals, the “animal circus industry has a history of forceful control of animals and sometimes abuse”.<sup>34</sup> ADI alleged poor living conditions, and mistreatment and abuse of wild animals in the two UK travelling circuses.<sup>35</sup>

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<sup>31</sup> RoP, para 190, 2 October 2019

<sup>32</sup> Written evidence WA 05, British Veterinary Association and British Veterinary Zoological Society

<sup>33</sup> Written evidence WA 09, RSPCA Cymru

<sup>34</sup> Written evidence WA 02, Freedom for Animals

<sup>35</sup> Written evidence WA 11, Animal Defenders International

**56.** People for the Ethical Treatment of Animals (PETA) referred to training methods including “water deprivation, hooking, paw burning, application of caustic chemicals and isolation”. It reported cases of alleged abuse in circuses in China, and stated that “[animal] suffering” was “endemic in the circus industry”.<sup>36</sup>

**57.** Some animal welfare organisations believed there was sufficient scientific evidence for the Welsh Government to introduce a ban on animal welfare grounds using powers under the Animal Welfare Act 2006. However, they accepted the Welsh Government’s rationale for its approach. RSPCA Cymru emphasised that its “primary objective” was for a ban on the practice as soon possible, “regardless of the means used”.<sup>37</sup>

**58.** Circus industry representatives asserted there were no welfare concerns in relation to wild animals in the two UK travelling circuses. They cited the findings of DEFRA’s 2018 review of the 2012 Regulations as evidence to support this. According to DEFRA, “the Regulations appear to have established an effective licensing scheme to promote and monitor high welfare standards for wild animals in travelling circuses in England”.<sup>38</sup>

**59.** Thomas Chipperfield, Professor Beadle and Dr Corsini cited several studies, including those by Dr Marthe-Kiley Worthington and Dr Ted Friend, as evidence that the welfare of wild animals in travelling circuses was not compromised.

**60.** Circus industry representatives refuted the suggestions in evidence that cruel training methods were used and that wild animals in travelling circuses were mistreated. Thomas Chipperfield told the Committee “it is fundamentally untrue that animals have to be trained using brutal or cruel methods in order to gain their co-operation”.<sup>39</sup>

**61.** Rona Brown argued it was wrong to use international examples of animal abuse in circuses as evidence to support a ban in Wales.<sup>40</sup>

**62.** Several respondents, including Dr Corsini, Professor Beadle and Pet Owners and Others experiencing difficulties with the RSPCA (The SHG) asserted that the

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<sup>36</sup> Written evidence WA 12, People for Ethical Treatment of Animals

<sup>37</sup> Written evidence WA 09, RSPCA Cymru

<sup>38</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/683306/wild-animals-circuses-post-implementation-review-feb2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683306/wild-animals-circuses-post-implementation-review-feb2018.pdf)

<sup>39</sup> RoP, para 262, 2 October 2019

<sup>40</sup> RoP, para 28, 2 October 2019



Harris Review could not be relied upon as evidence to support a ban. This was due to criticisms of the use of evidence in the Review.

### 3. 4. Equality and human rights considerations

**63.** The majority of respondents who opposed the ban argued it was discriminatory because it only applied to travelling circuses. They also argued the ban raised human rights issues, which would leave the Bill open to legal challenge.

**64.** According to PAWSI, the Bill is “discriminatory, unfair, unjust, against heritage laws, and attacks a minority group”.<sup>41</sup>

**65.** One individual respondent stated:

“Circus has its own core cultural traditions, making the people working and living within this industry a cultural minority within the British Isles. The proposed ban on wild animals within circuses, but excluding all other uses of the same animal species within the public entertainment industry amounts to blatant discrimination with regards to cultural minorities.”<sup>42</sup>

**66.** Thomas Chipperfield believed that the ban would be in violation of Article 10 of the Human Rights Act 1998 (Freedom of expression). The SHG raised concern that the Bill breaches the right of individuals who travel with circuses “to own and enjoy their property. It limits their ability to work. If the animals are pets it interferes with their right to family life.

### Evidence from the Minister

**67.** In explaining the ethical grounds for a ban, the Minister stated:

“Using wild animals in travelling circuses is outdated and fails to reflect current public opinion on how animals should be treated and represented. There is no benefit to society or to the wild animals that justifies their use purely for our entertainment. It contributes little to further our understanding of wild animals and their natural behaviour, or to their conservation in the wild. It is doubtful the animals have a good quality of life, and certainly not a life that is in keeping with

<sup>41</sup> Written evidence WA 19, Performing Animals Welfare Standards International

<sup>42</sup> Written evidence WA15, Individual

members of their species kept in other environments, such as zoos which are heavily regulated, or free-living members of their species.”<sup>43</sup>

**68.** She also told the Committee that “we need to move on from wild animals being paraded around as a spectacle for our amusement” and that, by introducing a ban, Wales would “join a growing number of countries which consider it unacceptable to use sentient beings in this outdated way”.<sup>44</sup>

**69.** The Minister acknowledged that ethics was “a personal thing”<sup>45</sup> and that “we all have different ethics; we all have different morals and we all have different opinions”<sup>46</sup>. However, she reiterated there was “overwhelming”<sup>47</sup> public support for a ban and “this is the right thing to do”<sup>48</sup>.

**70.** The Minister reported that 97 per cent of respondents to the Welsh Government’s consultation supported the proposal to introduce a Bill to ban the practice.<sup>49</sup> While she acknowledged that “consultation exercises are not ballots or opinion polls”, she asserted that “the overwhelming support from respondents [for a ban]... is further indication of the strength of public feeling on this matter”.<sup>50</sup>

**71.** The Committee asked the Minister whether the 20,000 visitors to Circus Mondao was evidence of a continuing appetite among the public in Wales to see wild animals perform in travelling circuses. She stated that the number was “a very small percentage of the Welsh population”.<sup>51</sup>

**72.** In responding to concerns that the ban was discriminatory, the Minister stated that she “[did not] think [travelling circuses were] a minority group” and

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<sup>43</sup>

[www.senedd.assembly.wales/documents/s94382/Response%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%203%20October%202019.pdf](http://www.senedd.assembly.wales/documents/s94382/Response%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%203%20October%202019.pdf)

<sup>44</sup>

[www.senedd.assembly.wales/documents/s94382/Response%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%203%20October%202019.pdf](http://www.senedd.assembly.wales/documents/s94382/Response%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%203%20October%202019.pdf)

<sup>45</sup> RoP, para 14, 10 October 2019

<sup>46</sup> RoP, para 25, 10 October 2019

<sup>47</sup> RoP, para 25, 10 October 2019

<sup>48</sup> RoP, para 14, 10 October 2019

<sup>49</sup> RoP, para 12, 10 October 2019

<sup>50</sup>

[www.senedd.assembly.wales/documents/s94382/Response%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%203%20October%202019.pdf](http://www.senedd.assembly.wales/documents/s94382/Response%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%203%20October%202019.pdf)

<sup>51</sup> RoP, para 12, 10 October 2019

explained that an Equality Impact Assessment had been undertaken for the Bill.<sup>52</sup> The Minister stated that the ban was “proportionate and justified” and she was “satisfied the provisions of the Bill comply with the Human Rights Act 1998”.<sup>53</sup>

**73.** The Committee asked the Minister to explain why the Welsh Government had chosen to prioritise a ban on using wild animals in travelling circuses over the use of animals in other setting where there are known animal welfare concerns. The Minister acknowledged that there were “lots of animal welfare issues that need addressing” in other settings.<sup>54</sup> She suggested that some of these issues may be addressed by the Welsh Government’s proposed licensing scheme for Animal Exhibits.<sup>55</sup>

**74.** The Minister explained that a ban was already in place in Scotland and would be introduced in England in January 2020. She said that she “didn’t want Wales to become a sanctuary [for travelling circuses that use wild animals]”.<sup>56</sup>

**75.** The Minister emphasised that the ban was not being introduced on animal welfare grounds. She confirmed that there was no evidence that wild animals in UK travelling circuses were being mistreated and that they currently “have to adhere to very strict regulations and licensing matters”.<sup>57</sup> When questioned on the relevance of Professor Harris’ research on animal welfare to the Bill, the Minister said that it was “immaterial” as its focus was animal welfare.<sup>58</sup>

## Our view

The use of wild animals in travelling circuses is undoubtedly an emotive issue, with strongly held views on both sides of the debate. This practice has been around for centuries and, some would argue, has adapted over time to reflect society’s changing tastes and attitudes towards animals. Others, however, have firmly-held beliefs that the practice is one of the worst examples of animal exploitation and have campaigned for decades for a ban. The strength of feeling

<sup>52</sup> RoP, para 128, 10 October 2019

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[www.senedd.assembly.wales/documents/s94382/Response%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%203%20October%202019.pdf](http://www.senedd.assembly.wales/documents/s94382/Response%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%203%20October%202019.pdf)

<sup>54</sup> RoP, para 103, 10 October 2019

<sup>55</sup> RoP, para 111, 10 October 2019

<sup>56</sup> RoP, para 12, 18 July 2019

<sup>57</sup> RoP, para 7, 10 October 2019

<sup>58</sup> RoP, para 253, 10 October 2019

about the use of wild animals in travelling circuses, and whether a ban is needed, has been borne out in the evidence we received.

Before turning to our views on the ethical grounds for legislating, we believe it is important to reflect on the scale of the issue that the Welsh Government is seeking to address. The ban will affect two UK travelling circuses, which own a total of 19 wild animals. We note that equivalent bans are, or will soon be, in place in Scotland and England, which has increased the impetus for a ban in Wales. However, there are a range of pressing animal welfare issues that need to be addressed in other settings, for example, dog breeding establishments. The Welsh Government has not made a persuasive argument as to why a ban on the use of wild animals in travelling circuses should be prioritised over such matters.

Ordinarily, legislation would be underpinned by tangible evidence. That is not the case for this Bill. There is a history of debate about the extent to which it is appropriate for governments to legislate on ethical grounds. Ethics involves some degree of judgment, similar to moral decision making. Whether something is ethical or unethical is difficult to prove. The Welsh Government's approach to legislating is therefore problematic.

In terms of the ethical grounds for legislating, the Welsh Government's position is that using wild animals for performance is unethical. If it is to be consistent, it follows that it would consider the use of all animals for performance in other settings, not only travelling circuses, to be unethical. But the Bill applies only to wild, not domesticated, animals; it applies to travelling, but not static, circuses. Animals exhibited for entertainment purposes in settings other than travelling circuses will not be banned but will be regulated.

The Welsh Government has said that its consultation demonstrates support for a ban. Public consultations and opinion polls, such as those cited in evidence, provide a useful insight into underlying public values, but should not be the main source of evidence for legislation. Furthermore, and importantly, the Welsh Government is not clear about whether public support for a ban is founded on ethical considerations, or perceptions of poor animal welfare.

Overall, the argument presented by the Welsh Government in support of its ethical position has been weak and, in some instances, contradictory. The Welsh Government is not applying its ethical position consistently. The result is a Bill narrow in scope, which could appear to be arbitrary. We recognise however that the Bill should be judged on its merits. Its narrow scope and resultant omissions are not necessarily reasons enough to withhold support.

The Committee has approached the question of whether a ban is needed with an open mind. We have listened to the evidence presented by animal welfare organisations, the circus industry, and others, all of whom have put forward convincing arguments.

This Bill has been brought forward on ethical grounds and, ultimately, the question of whether something is ethical is a matter of personal judgement. Some members of this Committee support the need for this Bill. Other Members remain to be convinced.

**Recommendation 1.** The Committee is unanimous in its continued support for the welfare of all animals. However, we have not been able to come to an unanimous view on whether this Bill should proceed. A majority of Committee members support the general principles of the Bill. We recommend that the Assembly agrees the general principles of the Bill.

## 4. Scope of the ban

**76.** The Bill will ban the “use” of a wild animal in a travelling circus. A wild animal is “used” if it “performs” or is “exhibited”.

**77.** According to the Explanatory Notes, a wild animal “performs” if, for example, it does tricks or manoeuvres for an audience. A wild animal is “exhibited” if it is on display to the public, even if it is on display outside the main circus arena. However, an offence will not have been committed if a wild animal is “inadvertently viewed” by the public, for example, when in an outdoor enclosure.

**78.** The Bill will not prevent travelling circuses from keeping, or touring with, wild animals, provided those animals are not used.

**79.** The Bill will not ban the use of domesticated animals in travelling circuses nor the use of wild animals in static circuses. These activities will be subject to the requirements of other licensing schemes including the proposed Animal Exhibit licensing scheme.

### Evidence from stakeholders

#### An “outright” ban

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**80.** RSPCA Cymru, Freedom for Animals and BFF raised concern that the scope of the ban was “narrow” and pointed out that travelling circuses would still be permitted to tour with, and train, wild animals. They argued that the ban did not address concerns about repeated travel and temporary accommodation associated with the travelling circus environment. They called for an outright ban on travelling circuses keeping wild animals. Alternatively, and as a minimum, they called for the scope of the ban to extend to “touring with” wild animals.

**81.** Freedom for Animals suggested that anything other than an outright ban may fall short of public expectations.<sup>59</sup>

**82.** Both UK travelling circuses told the Committee they would like to continue to take their wild animals on tour following the ban, even though those animals could not perform or be exhibited. They emphasised that their animals were well accustomed to the travelling lifestyle, with some born into it. They explained that

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<sup>59</sup> Written evidence WA 02, Freedom for Animals



their animals were “part of their family”, and that leaving them in winter quarters would be unfair.<sup>60</sup>

### Wild animals in static circuses

**83.** There were mixed views in evidence on whether the scope of the ban should extend to the use of wild animals in static circuses. RSPCA Cymru emphasised its main concerns were around the itinerant nature of a travelling circus and the “inability [of travelling circuses] to provide for the needs of wild animals”.<sup>61</sup> It suggested that regulating the use of wild animals in static circuses would be more appropriate than a ban.<sup>62</sup>

**84.** In contrast, PETA advocated extending the scope of the ban to static circuses on the basis that welfare concerns in relation to wild animals in travelling circuses were not limited to the frequent travelling, but “encompass all aspects of animals’ lives in a circus environment”.<sup>63</sup> Dr Rebekah Humphreys made similar points.<sup>64</sup>

**85.** Mike Radford noted that the ethical grounds for a ban on the use of wild animals in travelling circuses equally applied to static circuses.<sup>65</sup> Similarly, Professor Beadle asserted “there’s no [ethical] distinction that makes any sense here”.<sup>66</sup> Notwithstanding his opposition to the Bill, he told the Committee that exempting static circuses from the ban was “unjustifiable”.<sup>67</sup>

### Domesticated animals in travelling circuses

**86.** Freedom for Animals was the only respondent to advocate extending the scope of the ban to domesticated animals. It pointed out that domesticated animals that are used in travelling circuses “suffer many of the same issues that wild animals do”.<sup>68</sup>

**87.** PETA and BFF suggested there may be a case to consider a ban on the use of domesticated animals as a longer-term aspiration. However, they were content

<sup>60</sup> RoP, para 124, 2 October 2019

<sup>61</sup> RoP, para 85, 26 September 2019

<sup>62</sup> RoP, para 85, 26 September 2019

<sup>63</sup> Written evidence WA 12, People for Ethical Treatment of Animals

<sup>64</sup> RoP, para 67, 18 September 2019

<sup>65</sup> RoP, para 68, 18 September 2019

<sup>66</sup> RoP, para 64, 18 September 2019

<sup>67</sup> Written evidence WA 10, Professor Ron Beadle

<sup>68</sup> Written evidence WA 02, Freedom for Animals

that the scope of the ban was limited to the use of wild animals, as ending this practice was their immediate priority.<sup>69</sup>

**88.** BFF told the Committee there was “not the same level of societal concern for domesticated animals in [a travelling circus] environment”.<sup>70</sup> It suggested that ethical considerations around the use of domesticated animals “deserves more discussion”.<sup>71</sup> PETA suggested there was “[no] distinction between how wild and domesticated animals are treated in circuses”.<sup>72</sup> However, it explained that “for the purpose of the Bill we should focus on wild animals because it’s pragmatic to do so”.<sup>73</sup>

**89.** Dr Humphreys, Mike Radford and BFF outlined why the same justification for a ban on the use of wild animals does not apply to domesticated animals. They suggested it was more likely that the needs of domesticated animals could be met in a travelling circus environment. BFF stated:

“...domesticated animals, have millennia of co-existence and selective breeding for life alongside humans, which has imbued them with an ability...to cope with some of the things that we might subject them to in the purposes for which we’ve selected them...it stands in enormous contrast to non-domesticated wild animals...Their inherent biology, their inherent behaviour, is completely unrelated to that environment.”<sup>74</sup>

## Evidence from the Minister

**90.** The Minister explained that she was not seeking an outright ban on travelling circuses keeping their wild animals as this would engage human rights law. She stated that an outright ban would “constitute the complete deprivation of property and engage the right to the peaceful enjoyment of possessions, which is protected by Article 1 of Protocol 1 to the European Convention on Human Rights”.<sup>75</sup>

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<sup>69</sup> RoP, para 81 – 83, 26 September 2019

<sup>70</sup> RoP, para 81, 26 September 2019

<sup>71</sup> RoP, para 81, 26 September 2019

<sup>72</sup> RoP, para 83, 26 September 2019

<sup>73</sup> RoP, para 83, 26 September 2019

<sup>74</sup> RoP, para 81, 26 September 2019

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[www.senedd.assembly.wales/documents/s94382/Response%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-](http://www.senedd.assembly.wales/documents/s94382/Response%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-)

**91.** The Committee asked the Minister to explain why the scope of the ban did not extend to “touring with” wild animals. She asserted that the ban was being introduced because of “the way that [wild animals are] used...not [because of] the travel”.<sup>76</sup> However, the Minister’s official explained that, following the ban, travelling circuses that choose to keep their wild animals would need to be licensed under the Dangerous Wild Animals Act 1976 (the 1976 Act). He stated it was “extremely unlikely” that the conditions of licence would allow the circus to continue touring with those animals because of animal welfare considerations.<sup>77</sup> Further details about licensing under the 1976 Act can be found in Chapter 7.

**92.** The Minister told the Committee that the ethical argument for a ban on using wild animals in static circuses was “much weaker” than for travelling circuses. She said that “an environment that’s permanent could, arguably, be better adapted for an animal’s needs than an environment that’s constantly on the move”.<sup>78</sup>

**93.** The Minister explained that the scope of the ban did not extend to the use of domesticated animals because “there are not the same fundamental ethical objections to the use of domesticated animals in travelling circuses as there are to wild animals”.<sup>79</sup> She stated it was “more appropriate to regulate domestic animals in travelling circuses rather than to ban the activity”.<sup>80</sup>

## Our view

The welfare and ethical concerns expressed in evidence are as much about the unsuitability of the travelling circus environment as they are about making wild animals perform. Concerns around frequent travel, temporary accommodation and confinement can only fully be addressed by an “outright” ban. The Bill does not, and cannot, make provision for this. To do so would engage human rights law and leave the Bill open to legal challenge. This would be unacceptable and undesirable.

The policy intention of the Bill is clear. The Bill aims to end the use of wild animals in travelling circuses. We are concerned, however, that there may be a misconception among the wider public that the effect of the Bill will be to ban travelling circuses from keeping wild animals. It remains to be seen whether the

<sup>76</sup> RoP, para 86, 10 October 2019

<sup>77</sup> RoP, para 37, 18 July 2019

<sup>78</sup> RoP, para 46, 18 July 2019

<sup>79</sup> RoP, para 74, 18 July 2019

<sup>80</sup> RoP, para 81, 18 July 2019

ban will fully address the concerns of the public and third sector organisations whose calls for action are central to the Welsh Government's argument in support of the Bill.

As previously stated, the Welsh Government is not applying its ethical position consistently. This is demonstrated when considering the scope of the ban. The Minister has provided weak arguments, and contradictory evidence in seeking to explain why the ban does not extend to wild animals in static circuses, or domesticated animals in travelling circuses. In order to address inconsistencies, the scope of the ban would need to be extended in this regard. However, we have set out in Chapter 3, that legislating in the absence of tangible evidence is problematic, and that ethics is a matter of personal judgement.

Notwithstanding the above, in the interest of good scrutiny, the Minister should provide the Assembly with a clear explanation of the reasons for the limited scope of the ban, and the inconsistent application of the Welsh Government's ethical position. This will enable Members to reach fully informed decisions on the scope of the ban should the Bill progress.

**Recommendation 2.** We recommend that the Minister provides a more comprehensive explanation about:

- why the scope of the ban does not extend to wild animals touring with travelling circuses;
- why the ethical argument for a ban on using wild animals in static circuses is “much weaker” than for travelling circuses; and
- why the ethical argument for a ban on using wild animals in travelling circuses does not apply equally to domesticated animals.

## 5. Key terms

### 5.1. Meaning of “operator”

**94.** Section 2 provides that the “operator” means the owner of the travelling circus or another person who does not own but has overall responsibility for, its operation. The “operator” means the person in the UK responsible for the operation of the travelling circus.

### Evidence from stakeholders

**95.** Respondents were broadly content with the meaning of “operator”. However, Dr Humphreys suggested that the term was “vague” and would benefit from further explanation.<sup>81</sup> Caerphilly Council suggested that the person responsible for handling the animal during the performance or exhibition should also be considered to have committed an offence.<sup>82</sup>

### Evidence from the Minister

**96.** The Committee did not raise this matter with the Minister.

### Our view

**97.** We are content that the meaning of “operator” is clear and will support the delivery of the Welsh Government’s policy intention.

### 5.2. Meaning of “wild animal”

**98.** Section 3 provides that a “wild animal” means an animal of a kind that is not commonly domesticated in the British Islands. “Animal” has the meaning given by the Animal Welfare Act 2006, and applies to vertebrate animals only.

**99.** Changes have been made since the draft Bill to remove the definition of “domesticated animal” following concerns from respondents about misinterpretation. The definition of “wild animal” is now aligned with that of the Zoo Licensing Act 1981 (the 1981 Act).

**100.** The Explanatory Notes to the Bill highlight the possibility that there may be uncertainty or conflicting views regarding the meaning of “wild animal”. Section 3

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<sup>81</sup> Written evidence WA 03, Dr Rebekah Humphreys

<sup>82</sup> Written evidence WA 04, Caerphilly County Borough Council

provides the Welsh Ministers with the power to make regulations specifying a kind of animal that is or is not, to be regarded as a wild animal.

## Evidence from stakeholders

**101.** Respondents who supported the ban were broadly content with the meaning of “wild animal”. Animal welfare organisations acknowledged that it was consistent with the “well-established” meaning of “wild animal” contained in the 1981 Act. Some respondents suggested that further detail was required, either in the Bill or in accompanying guidance, to aid interpretation of the term and ensure effective implementation of the ban. In particular, respondents highlighted the need to clarify the meaning of “domesticated”.

**102.** Dr Humphreys told the Committee that “the meaning of ‘wildness’ is a much-contested topic”.<sup>83</sup> She explained there were degrees of “wildness” and that “wild” was “a vague concept”.<sup>84</sup> She suggested it may be useful for the Bill to include examples of the kinds of animals that would be considered “wild”.<sup>85</sup>

**103.** Mike Radford stated it was important to make clear “that the concept of domestication is distinct from breeding an animal in captivity, taming or training it”.<sup>86</sup> He emphasised that domestication “is a scientific concept”<sup>87</sup>, and stated:

“[wild animals] are non-domesticated in the sense that their behaviour, their inherent, innate behaviour, has not been changed in the way that domesticated animals have.”<sup>88</sup>

**104.** ADI expressed a similar view. It suggested that clarifying the meaning of “domesticated” may be helpful “to address claims from circuses and circus associations that wild animals in circuses are domestic”.<sup>89</sup>

**105.** RSPCA Cymru emphasised that “being born in captivity – even being captive born over several generations – doesn’t equate to the evolutionary process that we would refer to as domestication”.<sup>90</sup> It believed that further explanation of the

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<sup>83</sup> Written evidence WA 03, Dr Rebekah Humphreys

<sup>84</sup> RoP, para 117, 18 September 2019

<sup>85</sup> Written evidence WA 03, Dr Rebekah Humphreys

<sup>86</sup> Written evidence WA 22, Michael Radford OBE

<sup>87</sup> RoP, para 51, 18 September 2019

<sup>88</sup> RoP, para 61, 18 September 2019

<sup>89</sup> Written evidence WA 11, Animal Defenders International

<sup>90</sup> RoP, para 117, 29 September 2019



meaning of “wild animal” and of “domesticated” would be best addressed in guidance. BFF highlighted DEFRA’s *Zoo Licensing Act 1981: Guide to the Act’s provisions (2012)*, as particularly helpful for the purpose of interpreting the meaning of “wild animal”.<sup>91</sup>

**106.** Those respondents who commented were generally content with the regulation-making powers. BVA and BVZS believed that the power would be useful to provide clarity on the meaning of “wild animal”, ensure consistent application, and prevent “loopholes or grey areas”.<sup>92</sup>

**107.** Freedom for Animals emphasised that the power should not be used as a means of providing exemptions from the ban. It asserted that decisions to specify whether a kind of animal was wild or not should be based on scientific advice.<sup>93</sup> RSPCA Cymru expressed a similar view and called for decisions to be “backed up by a solid evidence base”.<sup>94</sup>

**108.** Much of the evidence received from respondents opposing the ban focused on the extent to which circus animals were “wild”. Circus industry representatives and some individual respondents asserted that the animals currently used by UK travelling circuses were not “wild” in the literal sense. Circus Mondao considered that its animals were “exotic”.<sup>95</sup> Rona Brown asserted that animals used in Peter Jolly’s Circus, including camels and foxes, were not “wild”. She told the Committee that categorising circus animals as “wild” was “misleading”.<sup>96</sup>

**109.** Chris Barltrop explained that all animals in UK travelling circuses had been bred in captivity for many generations, which he suggested was “the beginning of domestication”.<sup>97</sup> Thomas Chipperfield explained that “the majority of circus animals have lost qualities that would be crucial to their survival in the wild through...a form of mild domestication”.

**110.** Dr Corsini told the Committee that “domestication” was “a complex and non-directional process”.<sup>98</sup> She explained that some animals fall within a “grey area”

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<sup>91</sup> Written evidence WA 06, Born Free Foundation

<sup>92</sup> Written evidence WA 05, British Veterinary Association and British Veterinary Zoological Society

<sup>93</sup> Written evidence WA 02, Freedom for Animals

<sup>94</sup> Written evidence WA 09, RSPCA Cymru

<sup>95</sup> Written evidence WA 07, Circus Mondao

<sup>96</sup> RoP, para 84, 2 October 2019

<sup>97</sup> RoP, para 292, 2 October 2019

<sup>98</sup> RoP, para 296, 2 October 2019

and could be categorised as either “wild” or “domesticated”.<sup>99</sup> She suggested it would be beneficial to seek expert advice when categorising animals for the purpose of the Bill.<sup>100</sup>

**111.** In commenting on the meaning of “wild animal” provided for in the Bill, Thomas Chipperfield suggested that the term “not commonly domesticated in the British Islands” could be “potentially problematic” for certain breeds. He cited the Menroquin horse as an example and explained that it would be classified as a “wild animal”, which was “simply not the case”.<sup>101</sup>

## Evidence from the Minister

**112.** The Minister explained that the meaning of “wild animal” provided for in the Bill “is consistent with the definition of ‘wild animal’ in the Zoo Licencing Act”. This was to “avoid a situation where you would have the same species being considered wild in a zoo, but domesticated in a circus”.<sup>102</sup>

**113.** The Minister’s official explained that accompanying guidance could “list types of animals, rather than specific species...that could be considered ‘domesticated’ or ‘wild’ under the [Bill]”.<sup>103</sup> This would be consistent with the approach adopted by DEFRA in its *Zoo Licensing Act 1981: Guide to the Act’s provisions (2012)*.

**114.** The Minister explained that the regulation-making powers under section 3 were discretionary and she had “no plans to use [them] at present”. She suggested that she would be open to seeking expert advice when making regulations, “if [she] thought it required”.<sup>104</sup>

## Our view

We are broadly content with the meaning of “wild animal” set out in the Bill. However, there are clear differences in opinion among those who support the ban, and those who oppose it, about whether wild animals that are born and bred in travelling circuses are, or should be, considered “domesticated”.

While we note the Minister’s rationale for removing the meaning of “domesticated”, the effect of this has been to create a degree of uncertainty.

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<sup>99</sup> RoP, para 297, 2 October 2019

<sup>100</sup> RoP, para 297, 2 October 2019

<sup>101</sup> RoP, para 294, 2 October 2019

<sup>102</sup> RoP, para 88, 18 July 2019

<sup>103</sup> RoP, para 157, 10 October 2019

<sup>104</sup> RoP, para 159, 10 October 2019

Defining the term in a way that provides certainty and delivers the Bill's policy intention, appears to be problematic. On balance, we believe that leaving "domesticated" undefined is preferable in this instance.

The Welsh Government must, however, provide comprehensive guidance to clarify the meaning of "wild animal" and "domesticated", to ensure correct and consistent interpretation of these terms. While the Minister has committed to do this, the Bill does not include provision for statutory guidance. It is unclear, therefore, what the status of future guidance will be. Guidance to support the implementation of the Bill should have appropriate statutory authority.

**Recommendation 3.** We recommend that the Bill is amended to include provision for the Welsh Ministers to issue statutory guidance to support the implementation of the ban. This guidance should be developed in conjunction with relevant stakeholders, and be published to coincide with the coming into force date of the Bill.

**Recommendation 4.** We recommend that statutory guidance to support the implementation of the ban includes comprehensive guidance on the meaning of "wild animal" and "domesticated". This should include examples of the types of animals that will, and will not be regarded as "wild".

### 5. 3. Meaning of "travelling circus"

**115.** Section 4 provides that a "travelling circus" means a circus which travels from one place to another for the purpose of providing entertainment. The Welsh Ministers may make regulations specifying a type of undertaking, act of entertainment that is to be regarded, or not regarded, as a travelling circus. Regulations would be subject to the affirmative procedure.

**116.** Changes have been made since the draft Bill to simplify the definition to address concerns about ambiguity.

**117.** The Welsh Government's draft guidance on the proposed Animal Exhibit licensing scheme defines a Mobile Animal Exhibit (MAE) as:

"An exhibit that travels from place to place to exhibit animals, for example, at schools, weddings, private parties, fairs and other events where an audience is present. They may return to a permanent base every night; others may be more transient in nature."

## Evidence from stakeholders

**118.** There were mixed views in evidence on the meaning of “travelling circus”. Some respondents were content that the meaning was clear and would deliver the Bill’s policy intentions. Others suggested there was a lack of clarity around the meaning and called for this to be addressed.

**119.** ADI stated that the term “travelling circus” was “defined in a way which is widely understood”.<sup>105</sup> Circus Mondao and Rona Brown considered the meaning set out in the Bill was appropriate and accurately reflected the two UK travelling circuses.<sup>106</sup>

**120.** Mike Radford suggested that further consideration should be given to whether the meaning “should be more clearly defined”. He pointed out that, unlike other UK legislation, the Bill does not define the term “circus”. He also highlighted there were currently two definitions of “travelling circus” in UK legislation.<sup>107</sup>

**121.** Many respondents focused on the interplay between “travelling circuses” and MAEs which would fall under the proposed licensing scheme, and whether the Bill adequately distinguished between the two.

**122.** BVA and BVZS were content with the meaning of “travelling circus”, in particular, that it made clear the ban did not extend to MAEs. It stated:

“We also welcome the reassurance that the Bill will only apply to wild animals used in travelling circuses, avoiding any unintended consequences for other types of animal displays that may move to temporary locations, such as for educational purposes.”<sup>108</sup>

**123.** BFF suggested that MAEs may be captured by the ban, albeit unintentionally and emphasised the need to “make a clear distinction between travelling circuses and mobile animal exhibits [MAEs]”. It stated:

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<sup>105</sup> Written evidence WA 11, Animal Defenders International

<sup>106</sup> RoP, para 106 – 109, 2 October 2019

<sup>107</sup> Written evidence WA 22, Mike Radford OBE

<sup>108</sup> Written evidence WA 05, British Veterinary Association and British Veterinary Zoological Society

“...there may be a need to distinguish between the use of animals in itinerant shows (where the animals live “on the road”, as in a circus), and in shows that return to a home base daily or after a few days.”<sup>109</sup>

**124.** Thomas Chipperfield raised concern that “travelling circus” was loosely defined and could, therefore, “pose a potential risk to the outlawing of other activities involving animals”.<sup>110</sup>

**125.** RSPCA Cymru<sup>111</sup> and Caerphilly Council<sup>112</sup> called for “travelling circus” to be more tightly defined to prevent them from rebranding and continuing to tour “under the guise of education” to circumvent the ban. Dr Humphreys raised similar points. However, she believed animal exhibits that use wild animals “should fall within the remit of this Bill”.<sup>113</sup>

**126.** RSPCA Cymru also raised concern that performances which do not take place within a typical circus tent would be permitted under the current meaning of “travelling circus”. It cited “a tour of arenas” as an example. RSPCA Cymru called for the meaning of to be amended, drawing on the definitions contained in the Austrian Animal Welfare Act 2005 and in the 2012 Regulations for England.<sup>114</sup>

**127.** Several respondents, including BFF and RSPCA Cymru, emphasised the need for accompanying guidance to provide further clarity on the activities that would be captured under the meaning of “travelling circus”. In particular, to address any grey areas in relation to MAEs.

## Evidence from the Minister

**128.** The Minister acknowledged that the meaning of “travelling circus” differed from that in the equivalent legislation in Scotland and England. She intends to produce detailed guidance to accompany the introduction of the Act...”[to] set out clearly the types of activity [to be regarded as a travelling circus]”.<sup>115</sup>

<sup>109</sup> Written evidence WA 06, Born Free Foundation

<sup>110</sup> RoP, para 321, 2 October 2019

<sup>111</sup> Written evidence WA 09, RSPCA Cymru

<sup>112</sup> Written evidence WA 04, Caerphilly County Borough Council

<sup>113</sup> RoP, para 84, 19 September 2019

<sup>114</sup> Written evidence WA 09, RSPCA Cymru

<sup>115</sup> RoP, para 90, 18 July 2019

**129.** The Minister's official explained that the regulation-making power contained could be used "to cover scenarios that we haven't foreseen at this stage".<sup>116</sup>

**130.** When asked to explain the legal distinction between a travelling circus that uses wild animals and an MAE, the Minister told us it "isn't clear cut". She added:

"...we're going to produce really detailed guidance to accompany the introduction of the Act. That will assist inspectors, it will assist the circuses themselves, and any other animal exhibits, and it will set out very clearly what types of activity are banned in travelling circuses."<sup>117</sup>

**131.** The Minister explained that if travelling circuses rebranded as MAEs, they would be subject to the requirements of the proposed Animal Exhibits licensing scheme. She said it would be a matter for local authorities to decide whether to issue a licence under the scheme.<sup>118</sup>

## Our view

We are broadly content with the meaning of "travelling circus" set out in the Bill. However, we are concerned that, in practice, it may be difficult to distinguish between a "travelling circus" and a Mobile Animal Exhibit. This could lead to some types of activities falling within either meaning, depending on interpretation. There is a risk this could undermine the effectiveness of the Bill, or inadvertently prohibit some types of activities that could reasonably be permitted under the proposed Animal Exhibits licensing scheme.

The most appropriate way to mitigate this risk is to provide comprehensive guidance on the meaning of "travelling circus" and the types of activities that are intended to be captured by the ban. This should align with the final guidance on the Animal Exhibit licensing scheme.

As previously stated, guidance to support the implementation of the Bill should be statutory, developed in conjunction with relevant stakeholders, and be published to coincide with the coming into force date of the Bill.

**Recommendation 5.** We recommend that statutory guidance to support the implementation of the Bill includes comprehensive guidance on the meaning of "travelling circus" and the types of undertaking, act of entertainment that is to be

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<sup>116</sup> RoP, para 94, 18 July 2019

<sup>117</sup> RoP, para 161, 10 October 2019

<sup>118</sup> RoP, para 163, 10 October 2019

regarded, or not regarded, as a travelling circus. There must be a clear distinction between travelling circuses and Mobile Animal Exhibits.

## 6. Enforcement

**132.** The Schedule (introduced by section 5) confers powers on “inspectors” to enforce the ban and creates offences where a person hampers the exercise of those powers.

**133.** The enforcement powers include a power to enter premises (including land and any place, including a vehicle, a tent or a moveable structure), other than dwellings. Further powers are provided to enter dwellings in certain circumstances.

**134.** Inspectors can take on to the premises “other persons” that appear to the inspector to be appropriate to assist in their duties. While “other persons” is left undefined, the Explanatory Notes provides a zoological specialist or a police constable as examples.

**135.** The Schedule sets out the powers of inspection, search and seizure available to an inspector. These include, amongst other things, taking a sample from an animal and seizing an item. The power to seize a wild animal is expressly excluded.

**136.** Changes have been made to the Schedule since the draft Bill to remove the power for a police constable to stop and search travelling circus vehicles for evidence of the use of wild animals. According to the EM, the power “is considered unnecessary”. The EM also emphasises the need for enforcement action to be “proportional to the crime”.

### Evidence from stakeholders

**137.** Respondents were broadly content with the enforcement provisions. However, some suggested that the provisions could be clarified or strengthened.

**138.** Circus industry representatives called for inspectors to be independent and suitably qualified. RSPCA Cymru suggested that the need for veterinarian involvement during inspections would “depend on the circumstances”.<sup>119</sup> BFF anticipated that any intrusive or invasive sampling of animals would be undertaken by a veterinary professional.<sup>120</sup>

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<sup>119</sup> RoP, para 141, 26 September 2019

<sup>120</sup> RoP, para 142, 26 September 2019



**139.** RSPCA Cymru believed that “courts should be empowered to disqualify offenders from keeping wild animals”, which could prevent repeat offences.<sup>121</sup> This would be consistent with the Dangerous Wild Animals Act 1976. A similar view was expressed by Freedom for Animals, who called for powers to remove animals from the travelling circus following conviction for an offence.<sup>122</sup>

**140.** PETA suggested the powers of inspection should be extended to enable an inspector to seize an animal in certain circumstances, for example, if there is reason to believe it was unwell or suffering.<sup>123</sup> RSPCA Cymru, BFF and Dr Humphreys expressed similar views.

**141.** Thomas Chipperfield did not believe that removing animals from travelling circuses was a proportionate penalty “unless there is a concern over animal welfare”.<sup>124</sup>

**142.** RSPCA Cymru suggested that extending the powers of entry to police constables “would further strengthen enforcement and ensure potential breaches are investigated in a timely manner”.<sup>125</sup> This would be in line with the equivalent Scottish Act.

**143.** PETA asserted that the Bill should include a provision “for repeat offenders to be liable to a community or prison sentence”.<sup>126</sup> It later suggested that the penalty should be consistent with similar legislation, such as the Animal Welfare Act 2006 (the 2006 Act), where a person convicted of causing unnecessary suffering to an animal could be subject to a prison sentence or a £20,000 fine. PETA considered this would be an effective deterrent.<sup>127</sup> RSPCA Cymru and BFF concurred.<sup>128</sup>

**144.** Several respondents highlighted that enforcement may be challenging if wild animals continued touring with travelling circuses as it may be more difficult to determine if an offence had been committed. BFF questioned how inspectors would distinguish between an animal being deliberately and inadvertently “displayed” away from the circus tent.<sup>129</sup>

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<sup>121</sup> Written evidence WA 09, RSPCA Cymru

<sup>122</sup> Written evidence WA 02, Freedom for Animals

<sup>123</sup> Written evidence WA 12, People for Ethical Treatment of Animals

<sup>124</sup> RoP, para 403, 2 October 2019

<sup>125</sup> Written evidence WA 09, RSPCA Cymru

<sup>126</sup> Written evidence WA 12, People for Ethical Treatment of Animals

<sup>127</sup> RoP, para 148, 26 September 2019

<sup>128</sup> RoP, para 150 – 151, 26 September 2019

<sup>129</sup> Written evidence WA 06, Born Free Foundation

## Evidence from the Minister

**145.** The Minister explained that the enforcement powers were “not novel and mirror those already in place in other legislation”.<sup>130</sup>

**146.** The Minister believed that the penalty of an unlimited fine was “proportionate” and she did not consider a power for inspectors to seize an animal was needed as repeat offences would be unlikely.<sup>131</sup>

**147.** The Minister emphasised that travelling circuses which keep animals following the ban must do so in accordance with the 2006 Act.<sup>132</sup> The Act includes powers for inspectors to take into possession animals which are suffering, or are likely to suffer if action is not taken.

**148.** While the Minister confirmed she had considered extending the powers of inspection to police constables, she “didn’t anticipate that [they] would be involved in the enforcement of this legislation”. She explained that inspectors could be accompanied by a police officer, if appropriate, and that the Bill made provision for this.<sup>133</sup>

**149.** The Minister acknowledged that determining whether an offence had been committed when an animal was on “display” outside of the circus tent may be challenging. The Minister’s official stated:

“If they’re out to grass next to the big top, then arguably that could be a form of promoting the circus.”<sup>134</sup>

**150.** However, the Minister’s official went on to state:

“...we wouldn’t want to compromise the welfare of those animals if they need to be grazing...[owners] would have to ensure that, when they come to a specific site, they’ve got an area—and it could be part of the licensing conditions that you have to identify an area, maybe away from

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<sup>130</sup>

[www.senedd.assembly.wales/documents/s94382/Response%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%203%20October%202019.pdf](http://www.senedd.assembly.wales/documents/s94382/Response%20from%20the%20Minister%20for%20Environment%20Energy%20and%20Rural%20Affairs%20-%203%20October%202019.pdf)

<sup>131</sup> RoP, para 176, 10 October 2019

<sup>132</sup> RoP, para 178 – 180, 10 October 2019

<sup>133</sup> RoP, para 185, 10 October 2019

<sup>134</sup> RoP, para 200, 10 October 2019

where the big top is, to allow these animals to demonstrate their five freedoms.”<sup>135</sup>

**151.** The Minister explained “it would be the local authority enforcement officer that would make a judgment on that”, and that “there will be clear guidance available”.<sup>136</sup>

## Our view

The offence created by the Bill relates to the “use” of wild animals, for which we consider a fine is an appropriate penalty. Any concerns in relation to the welfare of wild animals that are kept by travelling circuses following the ban will be dealt with under existing animal welfare legislation. This includes powers for inspectors to take animals into possession as well as disqualification proceedings in the case of ill-treatment.

We are concerned that, in practice, it may be difficult for inspectors to distinguish between instances when a wild animal is “deliberately” displayed and “inadvertently” viewed. The ban must not prevent travelling circuses from allowing their animals outside for legitimate purposes, such as grazing or exercise. To do so could compromise the welfare of these animals, which would be an unacceptable consequence of the ban. We welcome the Minister’s intention to issue guidance on this matter.

**Recommendation 6.** We recommend that statutory guidance to support the implementation of the Bill includes comprehensive guidance on when the less formal “display” of wild animals outside the main circus arena would constitute an offence. The guidance must make clear that wild animals which are outside for legitimate purposes but are visible by the public, would not constitute an offence.

<sup>135</sup> RoP, para 202, 10 October 2019

<sup>136</sup> RoP, para 206, 10 October 2019

## 7. Amendments relating to licensing of circuses

**152.** Section 8 amends the Dangerous Wild Animals Act 1976 (the 1976 Act) and the Zoo Licensing Act 1981 (the 1981 Act), the effect of which is to make changes to the licensing regime for circuses (travelling and static).

**153.** Currently, circuses (travelling and static) are exempt from the Acts. The Bill removes these exemptions. The effects of this is that any circus in Wales which keeps a dangerous wild animal will require a licence under the 1976 Act unless it is caught by the 1981 Act.

### Evidence from stakeholders

**154.** RSPCA Cymru stated that the requirement for circuses to obtain a licence under the 1976 Act offered additional controls and scrutiny over the keeping of animals.<sup>137</sup>

### Evidence from the Minister

**155.** The Minister's official explained that one of the reasons for removing the exemptions from the 1981 Act and the 1976 Act was to "close the loopholes" where a circus in Wales could keep a wild animal and be exempt from a licence requirement.<sup>138</sup>

**156.** He also explained that, following the ban, travelling circuses that choose to keep their animals would need to be licensed under the 1976 Act if those animals were classified as "dangerous" under the Act.<sup>139</sup>

### Our view

We note the purpose and intended effect of the amendments to the 1976 Act and the 1981 Act, and are content with these provisions.

**Recommendation 7.** We recommend that the Welsh Government takes all reasonable steps to ensure that circuses likely to be affected by the changes in

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<sup>137</sup> Written evidence WA 09, RSPCA Cymru

<sup>138</sup> RoP, para 55, 18 July 2019

<sup>139</sup> RoP, para 37, 18 July 2019

licensing requirements arising from section 8 of the Bill are aware of, and understand the implications of, those changes.

## 8. Coming into force

**157.** Section 12 provides that the Bill’s provisions will come into force on 1 December 2020. According to the EM, this would provide sufficient time for travelling circuses to adapt their acts for the following touring season.

### Evidence from stakeholders

**158.** RSPCA Cymru, ADI and Freedom for Animals called for an earlier coming into force date. They asserted that the ban was long-overdue and would be introduced significantly after the ban in Scotland and England. This would allow UK travelling circuses another touring season in Wales. Freedom for Animals advocated “a reasonable but much sooner date”.<sup>140</sup>

### Evidence from the Minister

**159.** The Minister told the Committee that it would “certainly be possible” to bring forward the coming into force date of the Bill. However, she wanted to avoid introducing the ban when circuses were touring, which was usually between March and November.<sup>141</sup>

### Our view

We acknowledge the concerns around the timing of the ban, and the calls to introduce the ban earlier in 2020. Time allowed for legislative scrutiny of the Bill would provide limited scope to bring forward the coming into force date. Given this, and the practical implications of introducing the ban during touring season, we are satisfied that the coming into force date is reasonable and appropriate.

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<sup>140</sup> Written evidence WA 02, Freedom for Animals

<sup>141</sup> RoP, para 247, 10 October 2019

## 9. Impact of the ban on animals

**160.** There are no provisions in the Bill regarding the future of the 19 wild animals that are currently used in UK travelling circuses, following the ban. Travelling circuses may choose to keep their animals, and continue to take them on tour.

### Evidence from stakeholders

**161.** Animal welfare organisations, Dr Humphreys, and the BVA and BVZS raised concern about the future of the 19 wild animals currently used in UK travelling circuses following the ban. Respondents asserted that the welfare of the animals would be compromised if they continued to travel with circuses, or alternatively, were left in winter quarters.

**162.** Several respondents believed that animals should be rehoused following the ban, for example, in sanctuaries.

**163.** Circus Mondao told the Committee it would be detrimental for their animals to be “torn away” from their families. It also raised concern that the ban may result in animals being left in winter quarters alone.<sup>142</sup> However, both Circus Mondao and Peter Jolly’s Circus confirmed that they intend to keep and continue to travel with their wild animals following the ban.

### Evidence from the Minister

**164.** The Committee asked the Minister what measures the Welsh Government intended to put in place to ensure that the ban did not have a detrimental effect on the wild animals currently used in UK travelling circuses. The Minister stated:

“...it’s up to the owners to decide what they want to do with their animals...But because other countries have gone before us, I would imagine that those sorts of decisions will have already been taken. So, it’s their prerogative if they want to use their animals in a different way. As long as they do it within the law, it’s entirely up to them.”<sup>143</sup>

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<sup>142</sup> Written evidence WA 07, Circus Mondao

<sup>143</sup> RoP, para 220, 10 October 2019

## Our view

The two UK travelling circuses currently using wild animals intend to keep and continue to tour with their animals following the ban. These circuses will be subject to existing animal welfare legislation and, in some cases, new licensing requirements. We see no reason to impose further requirements on them.

If this Bill passes, there will be a ban in place in England, Scotland and Wales. Depending on future licensing requirements, it may be more difficult for the two UK travelling circuses to keep and continue to tour with their animals than is currently anticipated. Given that they are based in England, we would expect the Welsh Government to satisfy itself that DEFRA has put in place the appropriate support and advice for the two circuses, which have indicated that they intend to keep their animals after the ban is implemented.

**Recommendation 8.** We recommend that the Welsh Government reports back on discussions with DEFRA about the support and advice that will be available for the two UK travelling circuses about options for rehoming their wild animals following the ban.



## Annex A: List of written evidence

The following people and organisations provided written evidence to the Committee. All Consultation responses and additional written information can be viewed on the [Committee's website](#).

Reference	Organisation
<b>WA01</b>	Individual
<b>WA02</b>	Freedom For Animals
<b>WA03</b>	Dr Rebekah Humphreys, Lecturer in Philosophy, University of Wales Trinity St David
<b>WA04</b>	Caerphilly County Borough Council
<b>WA05</b>	British Veterinary Association and British Veterinary Zoological Society (BVZS)
<b>WA06</b>	Born Free Foundation
<b>WA07</b>	Circus Mondao
<b>WA07A</b>	Circus Mondao – additional evidence
<b>WA08</b>	The Self Help Group for Farmers, Pet Owners and Others experiencing difficulties with the RSPCA (The SHG)
<b>WA09</b>	RSPCA Cymru
<b>WA10</b>	Professor Ron Beadle, Professor of Organisation and Business Ethics, Northumbria University
<b>WA11</b>	Animal Defenders International
<b>WA12</b>	People for Ethical Treatment of Animals (PETA)
<b>WA13</b>	Individual
<b>WA14</b>	Individual
<b>WA15</b>	Individual
<b>WA16</b>	Individual
<b>WA17</b>	Chris Barltrop, Former Chair of the Circus Sub-group of the DEFRA Circus Working Group
<b>WA17A</b>	Chris Barltrop – additional evidence
<b>WA18</b>	Individual
<b>WA19</b>	Performing Animals Welfare Standards International (PAWSI)

<b>WA19A</b>	Performing Animals Welfare Standards International (PAWSI) – additional evidence
<b>WA20</b>	Individual
<b>WA21</b>	Individual
<b>WA22</b>	Mr Michael Radford OBE, Reader in Animal Welfare Law and Public Law, University of Aberdeen
<b>WA23</b>	Individual
<b>WA24</b>	Thomas Chipperfield, Animal Trainer
<b>WA25</b>	Dr Corsini, DVM (Doctor of Veterinary Medicine), representative of (ENC) Ente Nazionale Circhi
<b>WA26</b>	Individual
<b>WA27</b>	Rachael Smith

## Annex B: List of oral evidence sessions

The following witnesses provided oral evidence to the committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the [Committee's website](#).

Date	Name and Organisation
18 July 2019	<b>Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs,</b> Welsh Government <b>Tom Henderson,</b> Welsh Government <b>Richard Lewis,</b> Welsh Government <b>Jackie Price,</b> Welsh Government
18 September 2019	<b>Prof Ron Beadle, Professor of Organisation and Business Ethics,</b> Northumbria University <b>Dr Rebekah Humphreys, Lecturer in Philosophy,</b> University of Wales Trinity St David <b>Michael Radford, Reader in Animal Welfare Law and Public Law,</b> University of Aberdeen
26 September 2019	<b>Dr Carys Bennett, Senior Corporate Liaison,</b> People for the Ethical Treatment of Animals <b>Dr Ros Clubb, Senior Scientific Manager,</b> RSPCA <b>Dr Chris Draper, Head of Animal Welfare and Captivity,</b> Born Free Foundation
2 October 2019	<b>Rona Brown, Government Liaison Officer,</b> Performing Animals Welfare Standards International (PAWSI) <b>Carol MacManus, Director,</b> Circus Mondao <b>Chris Barltrop,</b> Former Chair of the Circus Sub-group of the DEFRA Circus Working Group <b>Thomas Chipperfield,</b> Animal Trainer

	<b>Giulia Corsini, (Doctor of Veterinary Medicine),</b> representative of (ENC) Ente Nazionale Circhi
<b>10 October 2019</b>	<b>Lesley Griffiths AM, Minister for Environment, Energy and Rural Affairs,</b> Welsh Government <b>Tom Henderson,</b> Welsh Government <b>Richard Lewis,</b> Welsh Government <b>Jackie Price,</b> Welsh Government