

Wild Animals and Circuses (Wales) Bill: Bill Summary

March 2020



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Contents

1. Introduction	1
2. The purpose and intended effect of the Bill.....	2
2.1. Scale of the issue.....	2
2.2. Calls for a ban.....	2
2.3. A ban on ethical grounds.....	3
3. Summary of the Bill’s provisions	4
3.1. Prohibition on using wild animals in travelling circuses.....	4
3.2. Enforcement.....	5
3.3. Offences by bodies corporate etc.....	5
3.4. Amendments relating to licensing of circuses.....	5
3.5. Application to the Crown	6
3.6. General	6
3.7. The Schedule – powers of enforcement.....	7

4. The Assembly’s consideration of the Bill 8

4.1. The Climate Change, Environment and Rural Affairs
Committee 8

4.2. Stakeholder responses to the Bill..... 8

4.3. The Committee’s recommendations12

4.4. Scrutiny of the Bill by other Assembly Committees..... 14

5. Stage 2.....15

1. Introduction

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.

The Bill's objective is to prohibit the use of wild animals in travelling circuses in Wales. The ban is based on **ethical grounds** which is possible with the coming into force of the *Wales Act 2017*.

Wales is the latest country in the UK to introduce legislation to ban the use of wild animals in travelling circuses. In Scotland the *Wild Animals in Travelling Circuses (Scotland) Act 2018* ('the 2018 Scottish Act') came into force in January 2018. In England the *Wild Animals in Circuses (No.2) Act 2019* ('the 2019 UK Act') received Royal Assent on 24 July 2019 and will come into force in January 2020.

Prior to the introduction of the Welsh Bill, in October 2018 the Welsh Government **consulted** on the **draft Wild Animals in Travelling Circuses (Wales) Bill** ('the draft Bill'). In January 2019, the Welsh Government published **a summary of responses to the consultation**.

This briefing outlines the intended effect of the Bill, a summary of its provisions and work carried out by the Assembly's Committees to date, including stakeholders' responses to the Bill and Committee recommendations.

For more information on the background to this policy area, you can read our previous **Senedd Research briefing**.

2. The purpose and intended effect of the Bill

The policy objective of the Bill is to prohibit the use of wild animals in travelling circuses in Wales.

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.

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.

A summary of the Bill's provisions can be found at section 3 of this briefing.

2.1. Scale of the issue

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.

In England, there are two travelling circuses using wild animals: Circus Mondao and Peter Jolly's Circus. Both regularly visit Wales. According to Defra, at the end of 2017, these circuses had a total of 19 wild animals, consisting of: six reindeer, four zebra, three camels, three racoons, a fox, a macaw, and a zebu.

2.2. Calls for a ban

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

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.

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

2.3. A ban on ethical grounds

The Welsh Ministers currently have powers under the *Animal Welfare Act 2006* ('2006 Act') which would enable them to introduce a ban on using wild animals in travelling circuses on animal welfare grounds. However, the **Explanatory Memorandum (EM)** for this Bill emphasises that the Welsh Ministers "would need to be satisfied there is compelling scientific evidence demonstrating that the welfare of animals kept in travelling circuses is compromised to rely on [those powers]."

The Welsh Government has chosen to introduce primary legislation to ban the use of wild animals in circuses on ethical grounds, the EM states:

The use of wild animals in travelling circuses raises concerns around animal dignity. It is increasingly difficult to justify keeping wild animals in travelling circuses and requiring them to perform tricks. [...]

There is a strong body of opinion that the welfare needs of wild animals in travelling circuses cannot be met. Whilst there may not be conclusive evidence that welfare is compromised to a greater extent in travelling circuses than in any other 'artificial' environment, the Welsh public and third sector organisations have overwhelmingly lobbied for this practice to be banned.

In the EM, the Welsh Government refers to ethical concerns relating to making wild animals travel and live in temporary accommodation, as well as concerns around the performance aspects of their lifestyle.

It concludes that 'a ban will send a clear message that the people of Wales believe this practice to be outdated and ethically unacceptable.'

The EM also points out that bans are already in place in other UK countries. As such:

If there were no equivalent ban in Wales, [it] would be the only country in Great Britain where wild animals could still be used by travelling circuses; they could continue to visit or even relocate to Wales.

3. Summary of the Bill's provisions

This section provides a summary of the Bill's provisions. A more detailed explanation of the provisions can be found in the EM (at Annexe 1 and Part 1, Section 4).

3.1. Prohibition on using wild animals in travelling circuses

Section 1 makes it an offence for an operator of a travelling circus to use, or cause or permit another person to use, a wild animal in a travelling circus.

A wild animal is 'used' if it 'performs', (e.g. it does tricks or manoeuvres for an audience) or 'is exhibited' (e.g. if it is on display to the public, including outside the main circus arena).

An offence is committed whether or not payment is required to view the performance or exhibition. A person guilty of an offence is liable to a fine on summary conviction.

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. If neither is present in the UK. The 'operator' means the person in the UK responsible for the operation of the travelling circus.

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 2006 Act, and applies to vertebrate animals only. However, the Welsh Ministers can extend the 2006 Act definition to cover invertebrates, subject to certain conditions.

The definition of 'wild animal' is aligned with that of the *Zoo Licensing Act 1981*.

Section 4 provides that a 'travelling circus' means a circus which travels from one place to another for the purpose of providing entertainment.

Notwithstanding the above, the Explanatory Notes ('EN') to the Bill, published as part of the EM, highlight the possibility that there may be uncertainty or conflicting views regarding the meanings of 'wild animal' and 'travelling circus' as currently drafted. In particular, whether a particular kind of animal is to be considered wild or not, and whether a type of undertaking, act or entertainment is or is not a travelling circus.

The Bill empowers the Welsh Ministers to make regulations specifying what is, and what is not, to be regarded as a 'wild animal' (section 3(2)) and a 'travelling circus' (section 4(3)).

3.2. Enforcement

Section 5 introduces the Schedule, which makes provision about powers of enforcement.

3.3. Offences by bodies corporate etc.

Section 6 provides for certain persons associated with different types of organisations to be held criminally liable for committing an offence as well as the organisation that committed the offence.

This means, for example, that a director of a company could be criminally liable for an offence committed by the company.

Section 7 sets out how proceedings are to be brought against a partnership or an unincorporated association where they are alleged to have committed an offence.

3.4. Amendments relating to licensing of circuses

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

Under the 1976 Act, a licence is required to keep a 'dangerous wild animal'. Currently, circuses (travelling or static) are exempt from this requirement. Section 8(1) removes this exemption so that any circus in Wales which keeps a dangerous wild animal will require a licence (unless the circus is caught by the provisions of the 1981 Act, see below).

Under the 1981 Act, a licence is required to operate a 'zoo'. Currently, circuses are exempt from this requirement. A circus is defined in the 1981 Act as 'a place where animals are kept or introduced wholly or mainly for the purpose of performing tricks and manoeuvres'. As stated in the EM:

With the banning of wild animals in travelling circuses in Wales, the exemption in section 1(2) [of the 1981 Act] will become redundant and can be removed in Wales. The effect of this is that a non-travelling circus in Wales could fall within the provisions of the 1981 Act if it has wild animals. If a circus is caught by the 1981 Act, then under section 5(1) of the Dangerous Wild Animals Act 1976, that circus is exempt from requiring a licence under the 1976 Act.

According to the EM, these amendments “have the effect of closing loopholes where a circus in Wales could keep a wild animal and be exempt from a licence requirement”. Beyond this, there is limited explanation of the changes to the licensing requirements and what this will mean in practice for both static and travelling circuses with wild animals.

The Schedule to the 1976 Act lists the ‘kinds’ of animals that are considered dangerous. Some animals currently touring with the two travelling circuses that visit Wales are not deemed dangerous under the Act. For example, the fox is exempt from the list of dangerous animals.

3.5. Application to the Crown

Section 9 The Bill binds the Crown. It applies to persons in service of the Crown as it applies to other persons, but it does not make the Crown itself criminally liable. However, section 9 provides the High Court with the power to declare unlawful any act or omission of the Crown for which the Crown would be criminally liable under this Act, were it not for section 26(3) of the *Legislation (Wales) Bill* (which is currently progressing through the Assembly).

Section 10 provides powers of entry to Crown land. The EM explains that ‘in the unlikely event of the Act applying to the Crown, [sections 9 and 10] allow action to be taken whilst taking account of the status and nature of that body’.

3.6. General

Section 11 establishes the procedure for making regulations under the Bill. Regulations must be laid in draft and approved by the Assembly before being made (i.e. the affirmative procedure).

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

Section 13 provides the short title of the Bill.

3.7. The Schedule – powers of enforcement

The **Schedule** confers powers on ‘inspectors’ (appointed by the Welsh Ministers or local authorities) to enforce the offence in section 1 of the Bill. It sets out the extent of the powers and creates offences where a person hampers the exercise of those powers.

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, where a warrant is obtained from a Magistrate before the power is exercised.

Paragraph 8 allows an inspector to take on to the premises ‘other persons’ and ‘equipment and materials’ that appear to the inspector to be appropriate to assist in their duties. While ‘other persons’ is left undefined, the EN provides a zoological specialist or a police constable as examples.

Paragraph 9 sets out the powers of inspection, search and seizure available to an inspector when exercising a power of entry. These include, amongst other things, taking a sample from an animal.

A person commits an offence if they fail to comply with a request for assistance reasonably made by an inspector or intentionally obstruct an inspector when he/she is carrying out their duties. A person guilty of an offence is liable to a fine on summary conviction.

4. The Assembly's consideration of the Bill

4.1. The Climate Change, Environment and Rural Affairs Committee

The Business Committee referred the Bill to the Climate Change, Environment and Rural Affairs (CCERA) Committee for Stage 1 scrutiny.

The Committee initially **took evidence from the Minister on 18 July** and launched a **public consultation** over the summer recess, which closed on 23 August. It received 24 written responses.

During the autumn term, the Committee took oral evidence from stakeholders; academics, animal welfare groups and circus representatives (**18 and 26 September and 2 October respectively**). The Committee held a **second scrutiny session with the Minister on 10 October**.

The **Committee's report on the Bill was published on 6 December 2019**. The sections below summarise the Committee's findings.

4.2. Stakeholder responses to the Bill

The need for a ban

The Committee heard 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 is “out-dated” and “unethical”. They believed that the only way to address welfare and ethical concerns is through a ban.

Those who opposed the Bill argued that a ban on using wild animals in travelling circuses is “disproportionate”, given the scale of the issue and the lack of evidence for animal welfare concerns. They believed the ban is “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.

The ethical argument

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.

Respondents who opposed the ban argued the primary reason why the Welsh Government was legislating on ethical grounds was the lack of evidence of welfare concerns.

Some emphasised that ethics are subjective and that individuals should have the right to choose whether or not to visit travelling circuses that use wild animals.

Animal welfare organisations reported strong public support for a ban. However, Professor Beadle (Professor of Ethics, Northumbria University) emphasised that the prevalence of public opinion “does not equate to an ethical justification”.

Those who supported a ban suggested that making wild animals perform tricks is demeaning and a violation of their dignity. Professor Beadle pointed out that “the critique in relation to animal dignity, if accepted, applies to all circumstances in which animals perform tricks”. Circus industry representatives asserted that performances are based on animals’ natural movements and behaviours; helped demonstrate the animals’ unique capabilities; and were examples of human-animal co-operation.

Several respondents who supported the ban raised concern that the use of wild animals in travelling circuses has a negative impact on the public’s attitude towards animals. Circus industry representatives suggested that performances provide educational benefit and support the development of positive attitudes towards animals.

Animal welfare considerations

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.

Some animal welfare organisations believed there is sufficient scientific evidence for the Welsh Government to introduce a ban on animal welfare grounds using powers under the 2006 Act. However, they accepted the Welsh Government’s rationale for

its approach. RSPCA Cymru emphasised that its “primary objective” is for a ban on the practice as soon possible, “regardless of the means used”.

Circus industry representatives asserted there are 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”.

Equality and human rights considerations

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

Scope of the ban

RSPCA Cymru, Freedom for Animals and Born Free Foundation (BFF) raised concern that the scope of the ban is “narrow” and pointed out that travelling circuses would still be permitted to tour with, and train, wild animals. They argued that the ban does 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.

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 are around the itinerant nature of a travelling circus and the “inability [of travelling circuses] to provide for the needs of wild animals”. It suggested that regulating the use of wild animals in static circuses would be more appropriate than a ban.

In contrast, People for the Ethical Treatment of Animals (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 are not limited to the frequent travelling, but “encompass all aspects of animals’ lives in a circus environment”.

Freedom for Animals advocated 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”. 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 that the scope of the ban was limited to the use of wild animals, as ending this practice was their immediate priority.

Meaning of “wild animal”

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 *Zoo Licensing Act 1981*. 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”.

Much of the evidence received from respondents opposing the ban focused on the extent to which circus animals are “wild”. Circus industry representatives and some individual respondents asserted that the animals currently used by UK travelling circuses are not “wild” in the literal sense. Circus Mondao considered that its animals are “exotic” rather than “wild”.

Meaning of “travelling circus”

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.

Enforcement and inspection

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

Circus industry representatives called for inspectors to be independent and suitably qualified. RSPCA Cymru and BFF suggested that the need for veterinarian involvement during inspections would “depend on the circumstances”.

RSPCA Cymru believed that “courts should be empowered to disqualify offenders from keeping wild animals”, which could prevent repeat offences. 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.

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. RSPCA Cymru, BFF and Dr Humphreys (Lecturer in Philosophy, University of Wales) expressed similar views.

The future of the animals following a ban

Animal welfare organisations, Dr Humphreys, and the British Veterinary Association (BVA) and British Veterinary Zoological Society (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 their static 'winter quarters'.

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

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. 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.

4.3. The Committee's recommendations

Following the Committee's consideration of the evidence, it made eight 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.

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.

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”.

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.

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.

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.

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.

4.4. Scrutiny of the Bill by other Assembly Committees

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

The Constitutional and Legislative Affairs Committee questioned the definitions of 'wild animal' and 'travelling circus' used in the Bill. For example, the Committee noted that the definition of 'wild animal' in the *Wild Animals in Travelling Circuses (Scotland) Act 2018* provides a more detailed and specific definition than the one included in the Welsh Bill. The Committee has recommended that the Minister should, during the Stage 1 debate, clarify the definitions of 'wild animal' and 'travelling circus' provided for in the Bill, and explain how and why these definitions differ from those used in the equivalent Scotland and England-only Acts.

The Constitutional and Legislative Affairs Committee **published its report on the Bill on 4 December 2019** ahead of the Stage 1 debate.

The Finance Committee wrote to the CCERA Committee with its views on the Bill.

The Finance Committee is satisfied that the financial costs and benefits as set out in the Regulatory Impact Assessment are reasonable and appropriate. However, the Committee is mindful of the unquantified costs for local authorities and circuses that have not been identified. The Committee would have expected a best estimate to be included in the Regulatory Impact Assessment.

5. Stage 2

Stage 2 proceedings took place in CCERA Committee on 5 February 2020.

Forty-five amendments were tabled by members of the CCERA Committee. The Welsh Government did not table any amendments.

The tabled amendments can be found on the **Bill's webpage** as a: Notice of Amendments; Marshalled List of Amendments; and Groupings of Amendments.

None of the amendments were agreed by the Committee.

Stage 3 commenced on 6 February. The Stage 3 debate is scheduled for 17 March.