

Guidance on the Wild Animals in Travelling Circuses (Scotland) Act 2018

May 2018



Scottish Government
Riaghaltas na h-Alba
gov.scot

Contents

INTRODUCTION	3
BACKGROUND	3
The ban	3
Meaning of “use”	4
Meaning of “wild animal”	4
Tame vs domesticated	5
A kind of animal	5
Commonly domesticated in the British Islands	5
In cases of doubt	6
Meaning of “circus”	6
Ordinary meaning	6
Self-identification/Substance	7
Educational role	7
Examples	7
Meaning of “travelling circus”	7
In cases of doubt	9
Meaning of “circus operator”	9
ENFORCEMENT POWERS	9
Key definitions	10
Powers of entry	10
Non Domestic Premises	10
Domestic Premises.....	11
Other relevant powers and requirements	11
Stopping and detaining vehicles	12
Offence of obstruction	12
Verbal and written warnings.....	12
Appeals and review	12
HOW THE ACT APPLIES TO THE CROWN	13
Criminal liability	13
Access to Crown Land	13
FURTHER INFORMATION	13

INTRODUCTION

1. These Guidance Notes are intended to complement the Wild Animals in Travelling Circuses (Scotland) Act 2018. They have been prepared by the Scottish Government in order to aid understanding by providing general guidance on the content of the Act and where appropriate, to give additional notes on its general and specific provisions. They do not form part of the Act and have not been endorsed by the Scottish Parliament.

2. These Guidance Notes are not a comprehensive description of the Act. These Guidance Notes are intended to be used as a reference document and need to be read alongside the Act. Whilst these notes are intended to be as helpful as possible, they cannot give a definitive interpretation of the law. Questions of interpretation are ultimately definitively determined by the courts.

BACKGROUND

3. The purpose of the Act is to make it an offence to use (for performance, display, or exhibition) wild animals in travelling circuses in Scotland and to allow for the enforcement of that ban. It applies to Scotland only.

4. A detailed explanation of the policy intentions underpinning the Act's purpose can be found in the Policy Memorandum¹ that accompanied the Bill.

The ban

5. *Section 1 of the Act makes it an offence for circus operators to use, or to cause or permit another person to use, wild animals in a travelling circus.*

6. An offence is committed in relation to a travelling circus only if the wild animal is transported to a place where it is used in the travelling circus. It does not matter whether that transportation takes place along with the rest of the circus while it travels, or whether it takes place under separate arrangements that the travelling circus may have made. For example, the travelling circus may contract with an independent carrier to move its wild animals, or may arrange for wild animals it does not own to be transported to the various venues at which it gives performances.

7. Wild animals may continue to be kept by travelling circuses whilst in Scotland, so long as they are not used. This may be as pets owned by individual circus workers and kept in their domestic residences. Alternatively, there may be retired wild animals still living and travelling with the circus, or working animals, used outside of Scotland, which come to Scotland during the closed season to overwinter.

1

[http://www.parliament.scot/Wild%20Animals%20in%20Travelling%20Circuses%20\(Scotland\)%20Bill/SPBill12PMS052017.pdf](http://www.parliament.scot/Wild%20Animals%20in%20Travelling%20Circuses%20(Scotland)%20Bill/SPBill12PMS052017.pdf)

8. In some situations the keeping of such animals may be subject to other legislative requirements, e.g. the Dangerous Wild Animals Act 1976.

9. Wild animals may also continue to be transported by travelling circuses whilst in Scotland, so long as they are not used in Scotland. For example, wild animals kept as pets may be transported with the travelling circus, and wild animals may be transported for veterinary treatment or for re-homing, or may be part of a travelling circus passing through Scotland on their tour but are not used in Scotland.

10. In all these cases, provided there is no use of a wild animal in a travelling circus, no offence is committed under the Act. However, other legislation may apply. The welfare of these animals continues to be protected by the Animal Health and Welfare (Scotland) Act 2006 while they are in Scotland.

Meaning of “use”

11. *Section 1(3) of the Act states that a wild animal is used if the animal performs or is displayed or exhibited.*

12. “Performance” would include, but is not limited to, tricks or manoeuvres viewed by the public. The “exhibition” of a wild animal includes being proactively or deliberately housed or shown in a way that encourages viewing by the public, for example by the use of signage delivering information to the public. “Display” includes, but is not limited to, use in parades, or deliberate positioning of wild animals to facilitate or encourage viewing, for example in fields next to public rights of way in a manner calculated to promote the circus, or next to a circus poster, or whilst dressed in any performance regalia. An offence is committed whether or not payment is required, or a donation suggested, in order to view the performance, exhibition, or display.

13. The public have rights of access under statutory Scottish land access rights and it is difficult to remove wild animals in travelling circuses entirely from view without potentially compromising their welfare. Circus operators would not have committed an offence if, for example, a member of the public viewed a wild animal grazing unadorned in a paddock where there was no active effort on the part of the travelling circus to encourage that viewing.

Meaning of “wild animal”

14. *Section 2(1) of the Act states that a wild animal is an animal other than one which is of a kind that is commonly domesticated in the British Islands.*

15. *Section 2(2) of the Act states that for the purpose of subsection (1), an animal is of a kind that is domesticated if the behaviour, life cycle or physiology of animals of that kind has been altered as a result of the breeding or living conditions of multiple generations of animals of that kind being under human control.*

Tame vs domesticated

16. The fact that an individual animal, of a kind that would normally be considered wild, has been “tamed” does not mean it falls outwith the definition of wild animal above. In circuses, wild animals will most likely be “tamed” and may have been bred for a number of generations within a circus environment. However, domestication is a genetic selection process across a significant population of animals for specific traits (for example, milk production in cattle, muscle mass in turkeys, good herding skills in dogs), over more than just a few generations. This selection process results in clear physical and behavioural changes from the original wild-type.

17. It is recognised that some wild circus animals come from a number of generations of animals bred in circuses and the behaviour that they exhibit may be different to animals in the wild. However, breeding for circus use began much more recently, takes place in a relatively small population, and has not resulted in any significant genetic, physiological or life-cycle change. There is also no change to the instinctive behaviours of such animals, although individual animals may be prevented from expressing instinctive behaviours and trained to exhibit behaviours unnatural to them. Individual or groups of “tame” wild circus animals are still wild animals, in terms of the relevant definitions, for the purposes of the Act.

A kind of animal

18. The definitions of both ‘wild animal’ and ‘domesticated’ specifically use the phrase animals *of a kind*, making it clear that whether an animal is considered wild or domesticated is not decided at the level of an individual animal or group of animals; it is considered at the much wider level of the kind of animal. When considering whether or not an offence has been committed, it is necessary to consider what *kind* of animal is being used by a travelling circus.

19. For example, if a travelling circus uses a group of bears, the question to be answered in terms of the Act is whether that *kind* of animal, i.e. “bears” as a *kind* of animal, are commonly domesticated in the British Islands. The question is not whether the individual animals in that specific group of bears owned by the travelling circus are domesticated, as that specific group of bears is not a separate “kind” of animal. The circus bears are all bears in terms of the “kind” of animal they are.

Commonly domesticated in the British Islands

20. In order for a kind of animal **not** to be considered wild for the purpose of the Act, it must be commonly domesticated in the British Islands.

21. Some kinds of circus animals may be considered domesticated in their country of origin but are not currently commonly domesticated in the British Islands, perhaps only being kept in Scotland in zoos or wildlife parks. For example, in their countries of origin camels have been used for many thousands of years by man and have been adapted for such use through breeding to favour certain traits. Although this kind of animal is kept in the UK, the majority are kept in a manner that does not

involve on-going domestication. Therefore, camels are a kind of animal which is not commonly domesticated in the British Islands, at the time of writing. Zoos and wildlife parks generally aim to maintain genetically diverse collections – they do not normally continue genetic selection for the purpose for which an animal may have been domesticated in their country of origin.

22. This contrasts with the position of llamas. Llamas have long been domesticated in South America; they have been widely used as a meat and pack animal by Andean cultures for many centuries. This kind of animal is now widely found in the British Islands in a farming environment where there is on-going genetic selection to suit agricultural needs. Hence this kind of animal is commonly domesticated in the British Islands.

In cases of doubt

23. It is possible that wild species, or species domesticated in other countries, will in future become commonly domesticated in the British Islands due to changing prevalence and use. If there are future cases where there are uncertain or conflicting views regarding whether a kind of animal is to be considered wild for the purposes of the Act, the Scottish Ministers may, by regulations, specify whether a particular kind of animal is or is not wild. However the power to make regulations is without prejudice to the generality of the definition of wild animal in section 2 of the Act. Additionally, this power does not require Scottish Ministers to list, in legislation, all wild animals.

Meaning of “circus”

24. The word ‘circus’ is not defined in the Act and therefore relies on an ordinary interpretation of the word.

Ordinary meaning

25. The term circus is generally understood to mean a company of performers who put on shows with diverse entertainments, often of a daring or exciting nature, that may include, for example, acts such as a ringmaster, clowns, acrobats, trapeze acts, hoopers, tightrope walkers, jugglers, unicyclists, as well as other stunt-oriented or similar acts. A circus may or may not include animals of the domesticated and/or wild type.

26. The intended role of the wild animals, if present, is generally to provide spectacle, entertainment and/or as a way of demonstrating the skill and/or dominance of the trainer. Their effectiveness in this may be enhanced through the use of colourful trappings, costumes or props. The displays or performances of the wild animals often demonstrate unnatural tricks, manoeuvres or behaviours primarily for the purpose of amusement or entertainment rather than education (although the educational role of performances is considered further below). These acts often, although not exclusively, take place in a circular arena, tented environment or similar environment, or a brightly coloured or themed environment.

27. The presence or absence of such characteristics may assist in assessing whether or not an undertaking, act, entertainment or similar thing is or is not a circus. However, the inclusion or omission of any particular characteristic will *not* be decisive, and the presence or absence of these characteristics will need to be balanced against other aspects of the undertaking, act, entertainment or similar thing in each individual case.

Self-identification/Substance

28. A type of undertaking, act, entertainment or similar thing may self-identify as a “circus” either in its name or through application for recognition under legislative regimes that govern circuses in other national territories, for example the Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012. However, a type of undertaking, act, entertainment or similar thing may fall within the ordinary meaning of “circus” even if it does not use the word “circus” in its advertising material. What is relevant is the substance of the show, not its title - a mere change in name of a show would not render it outwith the ordinary meaning of circus if in fact the substance of the show is a circus like performance which falls inside what would be considered to be the ordinary meaning of circus.

Educational role

29. The fact that a particular performance, display or exhibition of a wild animal may include an educational aspect would not render that performance, display or exhibition outwith the ordinary meaning of circus, if the substance of the show is falls within that ordinary meaning.

Examples

30. The following are examples of types of undertakings, acts, entertainment or similar things which would generally **not** be considered to fall within the ordinary meaning of circus;-

- Bird of prey displays
- Festive reindeer displays (i.e. the use of reindeer in a Christmas fair or similar festive entertainment)
- School/educational visits
- Animal handling sessions or parties, normally but not exclusively involving children
- Animals used for television, film or advertisements, from pre-production to post-production
- Community celebrations such as local gala days
- Zoo and safari park outreach activities

Meaning of “travelling circus”

31. *Section 3 provides that a “travelling circus” means a circus which travels, whether regularly or irregularly, from one place to another for the purpose of providing entertainment. “Travelling circus” includes: a circus which travels in the*

above way for the purpose of providing entertainment, despite there being periods during which it does not travel from one place to another; and any place where a wild animal associated with such a circus is kept (including temporarily). It does not include, for example, a circus which travels in order to relocate to a new fixed base for use only or mainly as a place to give performances.

32. As set out above, section 3 provides the meaning of “travelling circus” and states that it means a circus which travels, whether regularly or irregularly, from one place to another for the purpose of providing entertainment.

33. Traditional travelling circuses that involve a nomadic lifestyle with performances at a number of locations on a tour fall within this definition. The following types of undertakings, acts, entertainments or similar things are examples which are unlikely to fall within the definition of travelling circus in the Act: travelling bird of prey demonstrations, screen production, touring TV or film productions, mobile displays from zoos, educational road-shows, and reindeer displays including festive displays. Even though they may travel regularly or irregularly from one place to another they do not fall within the ordinary interpretation of circus and do not meet the definition of “travelling circus” in the Act.

34. A travelling circus remains a travelling circus even during periods when it is not travelling (for example during temporary tour stops or during the winter closed season). The expression “travelling circus” also includes any place where a wild animal associated with such a circus is kept, including temporarily, such as a wild animal’s accommodation. The effect of this is that if a travelling circus wild animal is, for example, actively exhibited or actively displayed while it is in any kind of accommodation, at any time, it is an offence under section 1 of the Act.

35. This includes while wild animals are being overwintered (the housing of circus animals over the circus closed season, which is generally over the winter). Any active display or performance of a wild animal being kept in these overwintering circumstances would be an offence. It would not be an offence, however, for wild animals on loan from a travelling circus (or indeed from a static circus, to which the Act does not apply in the first instance) to be used in TV or film production or festive displays in Scotland, since they are not being used in a travelling circus.

36. Where a permanently located (static) circus sends out either all or a subset of their acts to put on shows at places other than at its fixed base, these acts may also fall under the definition of a travelling circus if they are travelling, regularly or irregularly, from one place to another for the purpose of providing entertainment. The use of any wild animals in such cases would need to be carefully considered as it may constitute an offence. However, where a permanently located (static) circus business chooses to relocate to another permanent / static site and subsequently uses wild animals in its show at its new permanent site, no offence is committed since the business is still considered to be a static circus, not a travelling circus. In

that case the static circus travels from one place to another place for the purpose of relocation to a permanent fixed performance base.

In cases of doubt

37. It is possible that there may be cases where there are uncertain or conflicting views regarding whether a type of undertaking, act, entertainment or similar thing is or is not regarded as a travelling circus for the purposes of the Act. Scottish Ministers may specify, by regulations, whether a particular type of undertaking, act, entertainment or similar thing is or is not a travelling circus. However the power to make regulations is subject to the generality of the definition of travelling circus in section 3 of the Act. In addition, the power does not require the Scottish Ministers to list, in legislation, all undertakings, acts, forms of entertainment or other similar things to be regarded as a travelling circus.

Meaning of “circus operator”

38. Any person who is a circus operator commits the offence in section 1 of the Act if that person uses, or causes or permits another person to use, a wild animal in a travelling circus.

39. *Section 3 of the Act defines a circus operator as:*

- *Circus owners*
- *People who do not own a circus but have overall charge of its operations*
- *If no-one in those categories is in the United Kingdom, any other person present in the United Kingdom who has ultimate responsibility for the circus operations*

40. Where it is an organisation that has committed the offence under section 1, section 4 of the Act sets out which individuals may be held criminally liable when circuses are considered to be various types of organisations: a company, limited liability partnership, other partnership or any other body or association. For that to happen, those persons (referred to in section 4 as “responsible individuals”) must have consented to, or connived in, the organisation’s commission of the offence, or the offence must have been attributable to the responsible person’s neglect.

ENFORCEMENT POWERS

41. Enforcement powers are introduced in section 5 of the Act and are detailed in schedule 1. Although constables are provided powers for enforcement, it is expected that it will primarily be Local Authorities that will enforce the Act as part of other responsibilities relevant to travelling circuses. These include under the Animal Health and Welfare (Scotland) Act 2006 and the Performing Animals Act 1925 (where for example, it is known that there are domesticated animals performing), public entertainment legislation, and section 41 of the Civic Government (Scotland) Act 1982. Given that travelling circuses with wild animals have visited Scotland only

twice in the last 8 years at the time of writing, breaches are expected to be infrequent.

Key definitions

42. These are outlined in paragraph 1 of schedule 1:

- **Inspector** - as appointed by the Scottish Ministers or a local authority.
- **Constable** - as defined in section 99(1) of the Police and Fire Reform (Scotland) Act 2012.
- **Premises** - includes land and any other place, including a vehicle or vessel, a tent or other moveable structure. Hence “premises” would include the vehicles and other moveable structures (for example caravans and mobile homes) commonly associated with a travelling circus.
- **Domestic premises** – means premises or a part of premises used (or used for the time being) exclusively as a dwelling house and includes any land or structure belonging to or usually enjoyed with, or adjacent to and for the time being enjoyed with, the dwelling house. Hence domestic premises would include gardens, garages, sheds, greenhouses etc.

Powers of entry

Non Domestic Premises

43. An inspector may enter any non-domestic premises for the purpose of ascertaining whether or not an offence under section 1 of the Act has been or is being committed at the premises and if there are reasonable grounds for believing that this is the case. (Paragraph 2 of schedule 1)

44. A sheriff or justice of the peace may grant a warrant if there are reasonable grounds for believing that a section 1 offence has been committed or is being committed at any premises, or that evidence of the commission of (or participation in) a section 1 offence is to be found at any premises. A sheriff or justice of the peace will also need to be satisfied that either:

- A. admission to the premises has been refused, or such refusal may be expected, and that a notice of the intention to seek a warrant has been given to the occupier, or the giving of that notice would frustrate the purpose of the warrant; or
- B. the premises are unoccupied or the occupier is temporarily absent.
(Paragraph 3 of schedule 1)

45. A warrant authorises an inspector or constable to enter the premises, search for and examine animals, and search for, examine and seize equipment, document or other thing that tends to provide evidence of the commission of (or participation in) a section 1 offence. (Paragraph 4 of schedule 1)

46. If it appears that any delay would frustrate the purpose of a search, the inspector or a constable may, without a warrant: enter the premises to search for and examine any animal; and to search for, examine and seize any equipment, document or other thing that tends to provide evidence of an offence. For example, if an inspector suspects that a wild animal is being exhibited to the public, he or she may, without a warrant, enter circus premises to search for the animal, and then look for and seize any further evidence (e.g. posters, tickets relating to a performance) of the offence if it is known that the circus is moving to its next destination the following day and it would not be possible to get a warrant in time. (Paragraph 5 of schedule 1)

Domestic Premises

47. Entry into domestic premises by an inspector or a constable always requires a warrant from a sheriff or justice of the peace. A warrant may be granted where there are reasonable grounds for believing that a section 1 offence has been or is being committed at that premises, or that evidence of the commission of or participation in a section 1 offence is to be found at any premises, and that the conditions described at A and B above met. The warrant will authorise the inspector or constable to search for and examine any animal, and to search for, examine and seize any equipment, document or other thing tending to provide evidence of a section 1 offence. (Paragraph 3 and Paragraph 4 of schedule 1)

Other relevant powers and requirements

48. These are laid out in detail; in Paragraphs 7-13 of schedule 1.

- A warrant remains in force for 28 days starting with the day it was granted. (Paragraph 7)
- Inspectors/constables are able to take onto the premises any persons needed to help (such as a vet) or equipment required to carry out tests on/take samples from an animal, any equipment, substance or other thing; to identify any animal by marking, microchipping or any other method. (Paragraph 11)
- Inspectors/constables may use reasonable force when exercising most of their powers, including the power to search premises. This means that inspectors/constables may force their way into locked cabinets if required. However, they may not use force to gain entry without a warrant under paragraph 2. (Paragraph 9)
- Inspectors/constables must exercise their powers at a reasonable time unless this would frustrate the purpose of exercise them. (Paragraph 8)
- Inspectors/constables entering unoccupied premises for enforcement purposes under the Act must leave the premises as effectively secured against entry as they found them. (Paragraph 13)
- The circus operator and/or the occupier of a premises being entered for a purpose under the Act, and/or a person appearing to be under their direction or control, must comply with any reasonable request by an inspector or constable in

connection with the exercise of their enforcement powers, and in particular give them any information and assistance required. (Paragraph 12)

Stopping and detaining vehicles

49. The Act provides a constable in uniform, or an inspector accompanied by a constable in uniform, powers to stop and detain a vehicle or vessel for the purpose of the exercise of a relevant power (i.e. a power under schedule 1). This may be used if the powers of entry, search and seizure need to be used while a travelling circus is moving. (Paragraph 6 of schedule 1)

50. Any entry, search and seizure may be undertaken where the vehicle or vessel was first detained or somewhere nearby if that is safer or more convenient. A vehicle or vessel may be detained for so long as is reasonably required to enable the constable or inspector to undertake any entry, search and, where relevant, seizure.

51. Paragraph 6(5) of schedule 1 provides a definition of “vehicle” that specifically includes a “caravan”. In addition to the usual range of land and air vehicles, this makes it clear that the power to stop and detain vehicles also applies to the types of vehicles, e.g. caravans and mobile homes, which are commonly associated with a travelling circus.

Offence of obstruction

52. Breach of the requirement set out in paragraph 12(1), without a reasonable excuse, is an offence (paragraph 14(1) of schedule 1). It is also an offence to intentionally obstruct an inspector or constable who is exercising a power under the schedule or under a warrant granted under the schedule (paragraph 14(2)). Both these offences can be prosecuted in summary courts and carry a maximum fine of level 5 on the standard scale (£5,000). (Paragraph 14(3) of schedule 1)

Verbal and written warnings

53. Enforcement Authorities may wish to consider following their own standard procedures in relation providing written or verbal warnings.

Appeals and review

54. There are no appeals or review provisions contained within the Act. However as the offences in the Act are summary offences, certain general powers of appeal would apply. Most relevantly, under section 175 of Criminal Procedure (Scotland) Act 1995 there is a general right of appeal for those convicted of offences in summary proceedings.

HOW THE ACT APPLIES TO THE CROWN

Criminal liability

55. Under section 8 of the Act, the Crown is not criminally liable for a breach of any provision of the Act. However, any act or omission by the Crown that constitutes a contravention of a provision could be declared unlawful by the Court of Session on an application by the Lord Advocate.

Access to Crown Land

56. Schedule 2 of the Act sets out how powers of entry apply to Crown land. The exercise of a power of entry under schedule 1 of the Act, including by warrant, also requires the consent of the “appropriate authority” when it involves Crown land. This includes land belonging to the Queen both in right of the Crown and in right of her private estates (such as the Balmoral estate) and land belonging to an office-holder in the Scottish Administration or department of the Government of the United Kingdom. Who the “appropriate authority” from whom consent is required depends on the ownership or management of the land, and is set out in paragraphs 2(2) and (3) of schedule 2.

FURTHER INFORMATION

57. The Animal Welfare Team of the Scottish Government are happy to discuss any issue relating to this guidance. In the first instance, please write to: Animal Welfare Branch, Animal Health and Welfare Division, P Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD; or email to Animal.Health@gov.scot.

Scottish Government
Animal Welfare Team
26 April 2018



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2018

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78851-875-8 (web only)

Published by The Scottish Government, May 2018

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS409066 (05/18)

W W W . G O V . S C O T