

EXPLANATORY NOTES

Wild Animals in Travelling Circuses (Scotland) Act 2018 (asp 3)

£6.00

WILD ANIMALS IN TRAVELLING CIRCUSES (SCOTLAND) ACT 2018

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Wild Animals in Travelling Circuses (Scotland) Act 2018. They do not form part of the Act and have not been endorsed by the Parliament.
2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act makes it an offence for a circus operator to use, or to cause or permit another person to use, a wild animal in a travelling circus in Scotland and allows for the enforcement of that offence. The Act applies to Scotland only.
4. Explanatory Notes on the various provisions of the Act are provided below. A detailed explanation of the policy intentions underpinning the Act's purpose can be found in the Policy Memorandum, which also sets out the relationship of the Act to wider work on animal welfare in Scotland.

Wild animals in travelling circuses: offence

5. Section 1 makes it an offence for circus operators to use, or to cause or permit another person to use, a wild animal in a travelling circus (see below on the meaning of "circus operator" and "travelling circus"). For the purposes of the Act, a wild animal is "used" if it is made to perform or is displayed or exhibited. The offence is committed whether or not payment of money is required to view the performance, exhibition or display.
6. "Performance" would include, but is not limited to, tricks or manoeuvres viewed by the public. The "exhibition" of a wild animal includes, but is not limited to, any proactive showing of animals 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, for example next to a circus poster, or whilst dressed in their performance regalia.

7. A key criterion for an offence to have been committed, in relation to a travelling circus, is that the wild animal is transported, whether regularly or irregularly, from one place to another, 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. In either case, there may still be an offence if the animals are being transported for use, display, or performance in a travelling circus.

8. However, wild animals may continue to be kept and transported by travelling circuses whilst in Scotland under the Act, so long as they are not used (in performance, exhibition or display).

Meaning of “wild animal”

9. Section 2 provides a definition of “wild animal” for the purposes of the Act. A wild animal is an animal other than one which is of a kind that is commonly domesticated in the British Islands. The Act explains what it means for an animal to be “domesticated” to inform that definition. Where an animal is of a kind whose behaviour, life cycle or physiology has, over multiple generations, been changed through breeding or living conditions being controlled by humans, it is said to be domesticated for the purposes of the Act. Wild animals are those not commonly domesticated in the British Islands under that definition of “domesticated”. Animals can be considered commonly domesticated in their country of origin although they are not of a kind commonly domesticated in the British Islands. Such animals would be “wild animals” under the Act. In this context, “British Islands” takes its meaning from the Interpretation Act 1978, and refers to the United Kingdom, the Channel Islands and the Isle of Man.

10. In addition, section 4 confers a power on the Scottish Ministers to specify, by regulations, a kind of animal that is to be regarded as wild, and a kind of animal that is not to be regarded as wild, for the purposes of the Act. This power will allow future detailed clarification of whether particular kinds of animals are or are not “wild animals”. Given the general definition in section 2, which will mean in most cases it will be clear whether a kind of animal is wild or not, the power is expected to be used only in cases of doubt or where clarification would be deemed helpful. The distinction between kinds of animals which are wild and those of a kind commonly domesticated in the British Islands is not an immutable one, and there may be particular examples where it is unclear into which category an animal type falls. The power is therefore expected to be used to provide clarity in difficult or borderline cases where there is uncertainty to ensure circus operators know what kinds of animals may or may not be used in travelling circuses in order to avoid committing an offence. Regulations under this power are subject to the affirmative procedure.

11. Where regulations under section 4 are made specifying a kind of animal as wild, such regulations are without prejudice to the generality of the definition in section 2. That means regulations cannot have an effect so as to reduce the range of animal types caught by the generality of the definition. It also means that section 2 could have a determinative effect as regards the status of a kind of animal specified in regulations as wild. For example, if circumstances relating to a specified kind of animal change, it may be that that type of animal is regarded as not wild (or no longer wild) for the purposes of the Act, despite regulations

having been made specifying that animals of that kind are to be treated as wild for those purposes. That will be a question of fact in each case, considered against the definition in section 2.

Meaning of other key terms

12. Section 3 defines two key terms for the Act: “circus operator” and “travelling circus”. Only a “circus operator” can commit the offence in section 1. This means circus owners, people who do not own a circus but have overall charge of its operations or (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.

13. In terms of section 3, a circus is a “travelling circus” even though there are periods when the circus is not travelling from one place to another (for example during temporary tour stops or during the winter closed season). A circus is, however, not a travelling circus for the purpose of the Act if it travels merely in order to relocate to a new fixed base which is then used only or mainly as a place to give performances. A static circus which travels only to take up a new residence as a base for its operations is therefore not a travelling circus.

14. The expression “travelling circus” also includes any place where a wild animal associated with the 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, the offence in section 1 can be committed. In this case “exhibition” might include, but not be limited to, wild animals being proactively housed in a way which encourages viewing by the public, for example by the use of signage conveying information to the public, whether or not to generate income. “Display” might include, but again not be limited to, the showing of wild animals to the public, regardless of location. Circus operators would not, however, have committed an offence if, for example, a member of the public inadvertently viewed a wild animal grazing unadorned in a back paddock.

15. In addition, section 5 confers on the Scottish Ministers a power to make regulations to describe a particular type of undertaking, act, entertainment or similar thing that is, or is not, to be regarded as a “travelling circus” for the purposes of the Act. The power permits further future detailed clarification of what is a “travelling circus” if necessary, in cases of real doubt and where clarification would be deemed helpful. In many cases, it will be clear whether something is a travelling circus or not in terms of the definition set out in section 3. But, given the potential variety of forms of entertainments using wild animals, there may be cases where it is not possible to identify something definitively as a travelling circus or not. The power may be exercised so as to provide certainty in relation to types of acts and undertakings whose status as a travelling circus (or as something other than a travelling circus) is unclear. Regulations under this power are subject to the affirmative procedure.

16. As with the case of specifying in regulations a kind of animal as wild, any specification of an undertaking as a travelling circus is subject to the generality of the definition in section 3. Any regulations therefore need to be considered against that definition to determine whether something described in regulations as a travelling circus is, or continues to be, caught by the definition.

Individual culpability where organisation commits offence

17. Section 6 makes provision for certain persons associated with different types of organisations to be held criminally liable for committing the offence under section 1 even though it is the organisation that has committed the offence. For that to happen, those persons (referred to in section 6 as “responsible individuals”) must have consented to, or connived in, the organisation’s commission of the offence, or have been guilty of neglect resulting in the organisation’s committing the offence. Section 6(4) sets out a table explaining which type of person is a “relevant person” in relation to different types of organisation listed in the table. For example, the director or secretary of a company, and a partner in a firm, are relevant persons, so potentially have criminal liability for offences under section 1 committed by their business.

Crown application

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

Commencement and short title

19. Section 10 provides that the short title of the Act is the Wild Animals in Travelling Circuses (Scotland) Act 2018. Section 9 of the Act deals with commencement. The short title, specified in section 10, and the commencement section came into force the day after Royal Assent was given to the Act. The substantive provisions of the Act will be brought into force on a date appointed by the Scottish Ministers in regulations. The offence of using a wild animal in a travelling circus will therefore apply from the date so appointed.

Schedule 1: Enforcement powers

20. Schedule 1, as introduced by section 7, deals with enforcement of the Act’s provisions. It confers powers on inspectors appointed under the Act, and on police constables, to take enforcement action under the Act. It sets out the range and extent of those enforcement powers and creates offences in relation to hampering enforcement. It also provides for the circumstances when an inspector or constable is authorised to exercise their powers (such as powers of entry and inspection) with or without a warrant.

Interpretation

21. Paragraph 1 provides definitions of the persons who are given powers to enforce the Act. These are an inspector appointed by the Scottish Ministers or a local authority, and a constable (as defined in the Police and Fire Reform (Scotland) Act 2012, section 99(1)). Paragraph 1 also defines “premises” to include land and any other place, including a vehicle or vessel, 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.

Entry and associated powers

22. Paragraph 2 allows an inspector to enter any premises (other than domestic premises) if there are reasonable grounds for believing that an offence has been or is being committed at the premises. However, this power may be exercised only 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.

23. Paragraph 3 confers power on a sheriff or justice of the peace to grant a warrant, stating the conditions which must be satisfied first. By virtue of section 45 of the Courts Reform (Scotland) Act 2014, the power to grant a warrant under paragraph 3 extends to a summary sheriff as well. There must be reasonable grounds to believe that an offence under section 1 is being or has been committed at particular premises, or that evidence relating to the commission of such an offence will be found at premises. In addition, a warrant will not be granted unless the sheriff or justice is satisfied that an inspector or constable has been refused permission to enter the premises (or that such permission is expected to be refused). Alternatively a warrant may also be granted if the sheriff or justice is satisfied that the premises are unoccupied or the owner is temporarily away from the premises. (Where a summary sheriff is considering an application for a warrant under paragraph 3, the conditions described above relating to the granting of the warrant apply to the summary sheriff in the same ways as they do for the sheriff or a justice of the peace).

24. Paragraph 4 makes provision for what a warrant authorises an inspector or a constable to do - namely, to enter the premises to which the warrant relates, to search for or examine any animal and to search for, examine and seize any equipment, document or other thing tending to provide evidence of the commission of, or participation in, an offence under section 1 of the Act. These powers under warrant are exercisable in respect of any premises, including domestic premises (as defined in paragraph 1).

25. Paragraph 5 enables an inspector or constable, in certain circumstances, to exercise the same powers as are mentioned in paragraph 4, but without the need for a warrant. While the powers in paragraph 4 are exercisable only in relation to premises specified in a warrant, the powers in paragraph 5 may be exercised in respect of any premises (so long as they are not domestic premises). The condition that must be satisfied before the powers under paragraph 5 may be exercised is that the inspector or constable must believe that delay would frustrate the purpose for which the power is to be exercised. 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 look for and seize any evidence of the offence if it is known that the circus is moving to its next destination the following day.

Stopping and detaining vehicles

26. Paragraph 6 sets out the power the Act affords a constable in uniform, or an inspector accompanied by a constable in uniform, to stop and detain a vehicle or vessel. Such a power, however, may be exercised only for the purpose of exercising any of the other powers conferred by schedule 1, or conferred under a warrant granted under the schedule. Paragraph 6(5) provides a definition of “vehicle” that specifically includes a caravan. The power to stop and detain vehicles would therefore apply to the types of vehicles, e.g. caravans and mobile homes, which are commonly associated with a travelling circus. A vehicle or vessel may be detained for so long as is reasonably required to enable the constable or inspector to exercise the power in relation to which the vehicle or vessel was stopped. That power need not be

exercised at the precise spot where the vehicle or vessel was detained, but somewhere nearby (for example, if that is safer or more convenient).

Entry and associated powers: supplementary

27. Paragraphs 7 to 13 set out a number of matters supplementary to the powers discussed above (including the power to issue warrants). Some of these are self-explanatory. Under paragraph 9, an inspector or constable may use reasonable force when exercising a power conferred on them by the schedule or under a warrant. But that does not apply to the power of entry under paragraph 2.

28. Paragraph 11(1) permits an inspector or constable to take additional people (for example, a vet) onto any premises they may enter to provide assistance to the inspector or constable in exercising a power under the schedule. Inspectors or constables may also take any equipment which might be required when entering premises. Paragraph 11(2) provides that the powers conferred on inspectors and constables under the schedule, or in a warrant granted under the schedule, carry with them certain additional powers. These include testing and taking samples from animals, and identifying animals by any means, such as marking or micro-chipping them. Therefore, additional people may accompany inspectors or constables exercising any enforcement powers under the schedule, such as powers of entry, inspection, search or detention under paragraphs 2, 4, 5 and 6. For example, an inspector or constable can exercise powers under paragraphs 4 and 5 to search for and examine any animal and also has additional powers under paragraph 11(2) such as performing tests. But it may be necessary for the inspector or constable to take a vet with them when entering and searching the premises so that the vet can use his or her professional skills to examine or perform tests on any animals which are found to assist the inspector or constable.

29. Paragraph 12 requires certain persons to comply with any reasonable direction made by an inspector or constable and to provide any information and assistance that is reasonably required. Where a power under the schedule or under a warrant is being exercised in respect of particular premises, those persons are the occupier of the premises, the circus operator (where the premises are circus premises) or any other person who seems to be under the control of those persons. A failure to comply with obligations under this paragraph is a criminal offence, as explained below.

Offences

30. Breach of the duties set out in paragraph 12(1), without a reasonable excuse, is an offence (paragraph 14(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).

Liability of inspectors

31. Paragraph 15 provides that, when an inspector exercises functions under the Act, the inspector, and any individual who is accompanying the inspector, are not liable in any civil or criminal proceedings for any action undertaken either by the inspector, or under the inspector's supervision. Such immunity applies only where the inspector or their supervised individual acts on reasonable grounds and in good faith.

Schedule 2: Crown Land

Crown land

32. Under paragraph 1, the exercise of a power of entry under schedule 1 onto Crown land requires the consent of the “appropriate authority”. Paragraph 2(1) defines “Crown land” by reference to ownership of interests in certain types of 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 constitutes the “appropriate authority” from whom consent is required depends on the ownership or management of the land, and is set out in paragraph 2(2). For example, in the case of land belonging to Her Majesty in right of the Crown which is managed by an office-holder in the Scottish Administration, then the appropriate authority is the office-holder in the Scottish Administration.

PARLIAMENTARY HISTORY

33. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill’s parliamentary passage.

PROCEEDINGS AND REPORTS	REFERENCES
Bill as introduced on 11 May 2017	http://www.parliament.scot/Wild%20Animals%20in%20Travelling%20Circuses%20(Scotland)%20Bill/S_PBill12S052017.pdf
Policy Memorandum	http://www.parliament.scot/Wild%20Animals%20in%20Travelling%20Circuses%20(Scotland)%20Bill/S_PBill12PMS052017.pdf
Stage 1	
<i>Environment, Climate Change and Land Reform Committee</i>	
23 May 2017 (evidence)	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10969&mode=pdf
6 June 2017 (evidence)	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10998&mode=pdf
13 June 2017 (evidence)	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11008&mode=pdf
27 June 2017 (evidence)	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11046&mode=pdf
5 September 2017 (private)	
19 September 2017 (private)	
Stage 1 Report - 22 September 2017	https://sp-bpr-en-prod-cdnep.azureedge.net/published/ECCLR/2017/9/22/Stage-1-Report-on-the-Wild-Animals-in-Travelling-Circuses--Scotland--Bill/ECCLRS052017R9.pdf
<i>Delegated Powers and Law Reform Committee</i>	
23 May 2017	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10962&mode=pdf

These notes relate to the Wild Animals in Travelling Circuses (Scotland) Act 2018 (asp 3) which received Royal Assent on 24 January 2018.

PROCEEDINGS AND REPORTS	REFERENCES
Report 24 May 2017	https://sp-bpr-en-prod-cdnep.azureedge.net/published/DPLR/2017/5/24/Wild-Animals-in-Travelling-Circuses--Scotland--Bill-at-Stage-1-1/28th%20Report.pdf
<i>Consideration by Parliament - Stage 1 debate, 5 October 2017</i>	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11131&mode=pdf
Stage 2	
<i>Environment, Climate Change and Land Reform Committee</i>	
31 October 2017 (private)	
21 November 2017	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11215&mode=pdf
Bill As Amended 22 November 2017	http://www.parliament.scot/Wild%20Animals%20in%20Travelling%20Circuses%20(Scotland)%20Bill/S_PBill12AS052017.pdf
<i>Delegated Powers and Law Reform Committee</i>	
12 December 2017	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11258&mode=pdf
Report - 12 December 2017	https://sp-bpr-en-prod-cdnep.azureedge.net/published/DPLR/2017/12/12/Wild-Animals-in-Travelling-Circuses--Scotland--Bill-as-amended-at-Stage-2/DPLRS52017R60.pdf
Stage 3	
<i>Consideration by Parliament - Stage 3 debate, 20 December 2017</i>	http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11278&mode=pdf
Royal Assent	
24 January 2018	https://www.legislation.gov.uk/asp/2018/3/pdfs/asp_20180003_en.pdf

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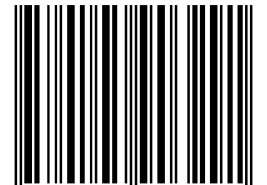
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