Wild Animals in Travelling Circuses (Scotland) Act 2018

2018 asp 3

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 20th December 2017 and received Royal Assent on 24th January 2018

An Act of the Scottish Parliament to make it an offence to use wild animals in travelling circuses.

VALID FROM 28/05/2018

Offence and what it covers

1 Wild animals in travelling circuses: offence

(1) A person who is a circus operator commits an offence if the person uses, or causes or permits another person to use, a wild animal in a travelling circus.

(2) An offence under this section is committed in relation to a travelling circus only if the wild animal is transported, whether regularly or irregularly, from one place to another where it is used in the travelling circus, but—

(a) the animal need not be in the course of being transported for the offence to be committed,

(b) it is immaterial to the commission of the offence whether or not the transportation of the animal is with, or is part of, the travelling circus.

(3) For the purpose of this section, a wild animal is used if the animal—

(a) performs, or

(b) is displayed or exhibited.

(4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

2 Meaning of wild animal

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

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

(3) In this section—

"animal" has the same meaning as in Part 2 of the Animal Health and Welfare (Scotland) Act 2006 (see section 16 of that Act),

"British Islands" has the meaning given in schedule 1 of the Interpretation Act 1978.

3 Meaning of other key terms

In this Act—

"circus operator", in relation to a circus, means—

(a) the owner of the circus,

(b) any person, other than the owner, with overall responsibility for the operation of the circus, or

(c) if neither of the persons mentioned in paragraph (a) or (b) is present in the United Kingdom, the person in the United Kingdom who is ultimately responsible for the operation of the circus,

"travelling circus"—

(a) means a circus which travels, whether regularly or irregularly, from one place to another for the purpose of providing entertainment,

(b) includes—

(i) a circus which travels as mentioned in paragraph (a) for the purpose mentioned there, despite there being periods during which it does not travel from one place to another,

(ii) any place where a wild animal associated with such a circus is kept (including temporarily),

(but not, 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).

4 Power to specify animals as wild or not

(1) The Scottish Ministers may by regulations specify—

(a) a kind of animal that is to be regarded as wild,

(b) a kind of animal that is not to be regarded as wild,

for the purposes of this Act.

(2) For the avoidance of doubt—

(a) whatever is done by regulations under subsection (1)(a) is without prejudice to the generality of section 2,

(b) the generality of section 2 is subject to whatever is done by regulations under subsection (1)(b).

(3) Regulations under this section—

(a) may make different provision for different purposes,

(b) are subject to the affirmative procedure.

5 Power to describe what is or is not a travelling circus

(1) The Scottish Ministers may by regulations describe a particular type of undertaking, act, entertainment or similar thing that—
- (a) is to be regarded as a travelling circus,
- (b) is not to be regarded as a travelling circus,

for the purposes of this Act.

(2) For the avoidance of doubt—
- (a) whatever is done by regulations under subsection (1)(a) is without prejudice to the generality of section 3,
- (b) the generality of section 3 is subject to whatever is done by regulations under subsection (1)(b).

(3) Regulations under subsection (1)—
- (a) may make different provision for different purposes,
- (b) are subject to the affirmative procedure.

VALID FROM 28/05/2018

Individual liability for organisational offending

6 Individual culpability where organisation commits offence

(1) This section applies where—
- (a) an offence under section 1 is committed by a relevant organisation, and
- (b) the commission of the offence—
  - (i) involves consent or connivance on the part of a responsible individual, or
  - (ii) is attributable to neglect on the part of a responsible individual.

(2) The responsible individual (as well as the relevant organisation) commits the offence.

(3) For the purposes of this section—
- (a) "relevant organisation" means an organisation listed in the first column of the table in subsection (4),
- (b) "responsible individual" means, in relation to a relevant organisation—
  - (i) an individual falling within the corresponding entry in the second column of the table in subsection (4), or
  - (ii) an individual purporting to act in the capacity of an individual falling within the corresponding entry.

(4) The table is as follows—

Organisation	***Individual***
company as mentioned in section 1 of the Companies Act 2006	director, manager, secretary or other similar officer

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	member, where the company's affairs are managed by its members
limited liability partnership	member
other partnership	partner
any other body or association	individual who is concerned in the management or control of its affairs

VALID FROM 28/05/2018

Enforcement

7 Powers of enforcement

(1) Schedule 1 makes provision about the powers of inspectors and constables for the purposes of and in connection with this Act.

(2) Schedule 2 makes further provision about the application of schedule 1 in relation to Crown land.

General

VALID FROM 28/05/2018

8 Crown application

(1) Nothing in this Act makes the Crown criminally liable.

(2) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).

(3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.

9 Commencement

(1) This section and section 10 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Different days may be appointed for different purposes.

10 Short title

The short title of this Act is the Wild Animals in Travelling Circuses (Scotland) Act 2018.

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SCHEDULE 1

(introduced by section 7(1))

ENFORCEMENT POWERS

Interpretation

1 In this schedule—

"constable" has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

"domestic premises"—

(a) means premises, or a part of premises, used (or used for the time being) exclusively as a dwelling-house, and

(b) includes any land or structure—

(i) belonging to or usually enjoyed with the dwelling-house, or

(ii) adjacent to and for the time being enjoyed with the dwelling-house,

"inspector" means a person appointed as an inspector for the purposes of this Act—

(a) by the Scottish Ministers, or

(b) by a local authority,

"premises" includes—

(a) land,

(b) any other place, including—

(i) a vehicle or vessel,

(ii) a tent or other moveable structure,

"relevant power" means a power conferred on an inspector or a constable by—

(a) a provision of this schedule, or

(b) a warrant granted under a provision of this schedule,

"section 1 offence" means an offence under section 1.

Entry and associated powers

2 An inspector may enter any premises (other than domestic premises)—

(a) if there are reasonable grounds for believing that a section 1 offence has been or is being committed at the premises, and

(b) for the purpose of ascertaining whether or not a section 1 offence has been or is being committed at the premises.

3 (1) A sheriff or justice of the peace may grant a warrant under this sub-paragraph if satisfied—

(a) that there are reasonable grounds for believing—

(i) that a section 1 offence has been or is being committed at any premises, or

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(ii) that evidence of the commission of, or participation in, a section 1 offence is to be found at any premises, and

(b) that condition A or condition B is satisfied in relation to the premises.

(2) Condition A is—

(a) that—

(i) admission to the premises has been refused, or

(ii) such a refusal may reasonably be expected, and

(b) that—

(i) notice of the intention to seek a warrant has been given to the occupier of the premises, or

(ii) the giving of such notice would frustrate the purpose for which the warrant is sought.

(3) Condition B is—

(a) that the premises are unoccupied, or

(b) that the occupier is temporarily absent.

4 A warrant under paragraph 3(1) authorises an inspector or a constable—

(a) to enter the premises,

(b) to search for and examine any animal, and

(c) to search for, examine and seize any equipment, document or other thing tending to provide evidence of the commission of, or participation in, a section 1 offence.

5 (1) An inspector or a constable may exercise the powers in sub-paragraph (2) without a warrant under paragraph 3(1)—

(a) if it appears to the inspector or, as the case may be, constable that any delay would frustrate the purpose for which the powers are to be exercised, and

(b) in relation only to premises other than domestic premises.

(2) The powers are—

(a) to enter premises,

(b) to search for and examine any animal, and

(c) to search for, examine and seize any equipment, document or other thing tending to provide evidence of the commission of, or participation in, a section 1 offence.

Stopping and detaining vehicles

6 (1) A constable in uniform may stop and detain a vehicle or vessel for the purpose of the exercise of a relevant power.

(2) An inspector, if accompanied by a constable in uniform, may stop and detain a vehicle or vessel for the purpose of the exercise of a relevant power.

(3) A vehicle or vessel may be detained under sub-paragraph (1) or (2) for so long as it is reasonably required for the purpose of the exercise of the power concerned.

(4) The power concerned may be exercised either at the place where the vehicle or vessel was first detained or nearby.

(5) In this paragraph, "vehicle" includes caravan (within the meaning of section 29(1) of the Caravan Sites and Control of Development Act 1960).

Entry and associated powers: supplementary

7 A warrant granted under paragraph 3(1) remains in force for a period of 28 days beginning with the day on which it was granted.

8 A person exercising a relevant power must do so at a reasonable time unless it appears to the person that the purpose of exercising the power would be frustrated by exercising it at such a time.

9 (1) A person may, if necessary, use reasonable force when exercising a relevant power.

(2) Sub-paragraph (1) does not apply to the power conferred by paragraph 2.

10 A person exercising a relevant power must, if required, produce evidence of the person's authority.

11 (1) A relevant power includes power to take onto premises—

(a) such persons for assistance as are required for the purpose of exercising the power, and

(b) such equipment as is required for that purpose.

(2) A relevant power includes power to do or secure the doing of any of the following—

(a) the carrying out of tests on, and taking of samples from—

(i) an animal,

(ii) any equipment, substance or other thing,

(b) the identifying of an animal by use of a mark, microchip or any other method of identification.

12 (1) A person mentioned in sub-paragraph (2) must—

(a) comply with any reasonable direction made by an inspector, or a constable, exercising a relevant power, and

(b) in particular, give the inspector or constable such information and assistance as the inspector or constable may reasonably require.

(2) The persons are—

(a) the occupier of premises in relation to which a relevant power is being exercised,

(b) as respects the premises of a circus in relation to which a relevant power is being exercised, the circus operator,

(c) a person who appears to be under the direction or control of a person mentioned in paragraph (a) or (b).

13 A person exercising a relevant power in relation to unoccupied premises must leave the premises as effectively secured against entry as the person found them.

Offences

14 (1) A person who, without reasonable excuse, contravenes paragraph 12(1) commits an offence.

(2) A person who intentionally obstructs an inspector or constable in the exercise of a relevant power commits an offence.

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(3) A person who commits an offence under sub-paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Liability of inspectors

15 (1) An inspector is not liable in any civil or criminal proceedings for anything done in the purported performance of the inspector's functions under this schedule where the inspector acts on reasonable grounds and in good faith.

(2) Sub-paragraph (1) applies to any person taken onto premises by an inspector under paragraph 11(1)(a) as it applies to an inspector if the person is in the company, and under the supervision, of an inspector exercising functions under this schedule.

Powers of constables under this schedule

16 The powers conferred on constables by this schedule are without prejudice to any powers conferred on constables apart from this schedule.

SCHEDULE 2

(introduced by section 7(2))

CROWN LAND

1 A power of entry conferred by a provision of schedule 1, or a warrant granted under such a provision, is exercisable in relation to Crown land only with the consent of the appropriate authority.

2 (1) In paragraph 1, "Crown land" means land an interest in which—

(a) belongs to Her Majesty—

(i) in right of the Crown, or

(ii) in right of Her private estates,

(b) belongs to—

(i) an office-holder in the Scottish Administration, or

(ii) a Government Department, or

(c) is held in trust for Her Majesty for the purposes of the Scottish Administration or a Government Department.

(2) In paragraph 1, "appropriate authority" in relation to land—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,

(b) in the case of other land belonging to Her Majesty in right of the Crown, means—

(i) where an office-holder in the Scottish Administration has the management of the land, the office-holder,

(ii) where a Government Department has the management of the land, the Government Department, or

(iii) where the land is land to which section 90B(5) of the Scotland Act 1998 applies, the person who has the management of that land,

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(c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,

(d) in the case of land—

(i) belonging to an office-holder in the Scottish Administration or to a Government Department, or

(ii) held in trust for Her Majesty for the purposes of the Scottish Administration or a Government Department,

means the relevant office-holder or (as the case may be) Government Department.

3 (1) In paragraph 2—

(a) "Government Department" means a department of the Government of the United Kingdom,

(b) the references to Her Majesty's private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862.

(2) It is for the Scottish Ministers to determine any question that arises as to who in accordance with paragraph 2 is the appropriate authority in relation to any land (and their decision is final).

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