The Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012: unethical, ineffective and unenforceable

The use of wild animals in travelling circuses has been a hotly debated topic for a number of years, with increasing support for a complete ban on the practice demonstrated in both public and political arenas¹.

Recent Ministerial Statements have indicated the Government’s preference for a ban with statements such as: “there is no place in today’s society for wild animals being used for our entertainment in travelling circuses”² and that they are “minded to ban performing wild animals in circuses”³ showing a very clear position on the issue. The statements set out the Government’s plans to bring in a ban in the long term but in the interim period to introduce a licensing regime to “protect the welfare of such animals”⁴.

The proposals for the licensing regime were opposed by all members of the animal welfare lobby on the basis that it is strongly believed that the welfare needs of wild animals simply cannot be met in the travelling circus environment. As such, the organisations committed to support the Government in its implementation of a ban, but saw little benefit in engaging with the process of developing licensing, particularly as it was apparently intended to be a temporary measure. The British Veterinary Association offered feedback from a professional perspective during the public consultation period but remains fundamentally opposed to the regime on principle.

In a meeting between the Lord Taylor of Holbeach CBE, the Born Free Foundation, the British Veterinary Association, the Captive Animals’ Protection Society and the RSPCA in April 2012, Lord Taylor confirmed that the ban would make it illegal for any wild animal to be used in a travelling circus in England from the date that the ban came into force and stated that the Government had every intention of putting a ban in place within the lifetime of this parliament. This news was welcomed by the organisations involved.

The Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012 were published in draft form in July 2012 and we were extremely concerned to note a number of points that suggest that the assurances made by the Government that a complete ban was forthcoming were in conflict with the provisions of the new Regulations.

Our major areas of concern are as follows:

¹ 2010 public consultation saw 95% of respondents call for an outright ban, a backbench debate in the House of Commons on 23rd June 2011 called on the Westminster Government to introduce a ban
³ Written Ministerial Statement, Performing Wild Animals in Travelling Circuses, 1 March 2012
⁴ Written Ministerial Statement, Performing Wild Animals in Travelling Circuses, 12 July 2012
The Regulation timetable conflicts with the intended ban timetable
The previous animal welfare Minister, the Rt Hon Jim Paice MP, and the Lord Taylor of Holbeach, CBE have both confirmed that the intention of the Government is to introduce a ban before the end of this Parliament (i.e. by 2015).

Despite this, the draft Regulations are due to be implemented by early 2013, will run for seven years, and have a review period at five years. It is clear, therefore, even if a ban is brought in after the review period (2018) that this sits in conflict with the commitment made by the Government on the proposed timescale for a ban.

The Regulations could encourage the use of new and different species
The Regulations also allow for new and different wild animals to be introduced to circuses during the period of licensing\(^5\). The document published by Defra providing a summary of responses to the public consultation highlights that such animals as sealions, bears, primates and even orcas could start to be seen in circuses (page 46)\(^6\).

To provide for Regulations that allow for any species to be used and in particular suggest guidance will be developed for species not currently used seems to fly in the face of previous statements by Government. Not only are wild animals entirely unsuited to such an environment this again undermines the Government’s previously stated intentions.

The Regulations are demonstrably unenforceable
Notwithstanding the points raised above, it should be made clear that any perceived benefit that the Regulations might deliver is negated by the simple fact that the mechanisms for enforcement create an impossible situation which renders them unenforceable and sanctions meaningless.

Suspension of a licence is the primary sanction for circuses following a recognised failure to meet licence conditions. In order to revoke a licence, a suspension must have been invoked beforehand. Following the suspension of a licence, there are a limited number of options that might be considered in order to give practical effect to the sanction:

\(i\). if the circus is on tour at the time, it stops all performances until the licence is reinstated. The animals remain where they are.

\(ii\). if the circus is on tour at the time, it continues performances but does not use wild animals in the show until the licence is reinstated. The animals remain where they are.

\(iii\). if the circus is on tour at the time, the animals are returned to winter quarters until the licence is reinstated.

\(iv\). if the circus is on tour at the time, the animals are moved somewhere else until the licence is reinstated.

\(v\). if the circus is not on tour, the animals are removed from winter quarters and held somewhere else until the licence is reinstated.

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This creates an impossible situation as, in order to employ options 1 – 3, the circus is required to hold a licence. As such, instigating a suspension and allowing for options 1, 2 or 3 to be fulfilled renders the suspension meaningless.

Furthermore, the Regulations state that a licence is required for “any place where a wild animal associated with such a circus is kept”, therefore options 4 and 5 are only possible if the site where the animals are held during a suspension also holds a licence. Any site which held the animals without a licence would find itself in contravention of the Regulations. Given that suspensions come into effect immediately, and initial granting of a licence requires prior inspection by a Defra inspector plus relevant fees to be paid and paperwork to be satisfactorily completed, this is clearly not a practical solution.

This leaves the option of moving the animals to another licensed circus during a suspension. However, given that the Secretary of State is required to have 14 days notice if a wild animal is introduced to any circus, this would mean that moving animals from one circus to another would require notice – particularly if the circus that is holding the animals temporarily does not currently have provision for the specific species. As suspensions come into effect immediately, this is not a practical solution.

As such, a decision to enact this legislation would be taken in the knowledge that it cannot be enforced and cannot deliver its purported aim. We believe that this would leave the Regulations open to legal challenge on the basis of an error of law.

**Based on these fundamental errors, in our opinion, we are asking parliamentarians to oppose these draft Regulations and request that the Government withdraws them. Instead the Government should focus its time and resources on legislation that implements the ban that animal welfare charities, the majority of the public and the majority of MPs want.**