



## 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 arenas<sup>1</sup>.

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"*<sup>2</sup> and that they are *"minded to ban performing wild animals in circuses"*<sup>3</sup> 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"<sup>4</sup>.

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 animal welfare Minister, 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 led the organisations to believe this would be by 2015 at the latest. 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:

- **The Regulation timetable conflicts with the intended ban timetable**

The 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).

---

<sup>1</sup> 2010 public consultation saw 95% of respondents call for an outright ban, a backbench debate in the House of Commons on 23<sup>rd</sup> June 2011 called on the Westminster Government to introduce a ban

<sup>2</sup> Defra press release 1 March 2012 <http://www.defra.gov.uk/news/2012/03/01/circus-wild-animal-ban/> (accessed 31.08.12)

<sup>3</sup> Written Ministerial Statement, Performing Wild Animals in Travelling Circuses, 1 March 2012

<sup>4</sup> Written Ministerial Statement, Performing Wild Animals in Travelling Circuses, 12 July 2012

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.

**Update October 2012:** In a recent meeting, Defra have confirmed that, contrary to Government promises on a ban on all wild animals in travelling circuses in England, a species-specific ban is still being considered. This would mean that licensing becomes permanent for those wild animals not included in the ban. This is clearly in conflict with the commitment to an outright 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<sup>5</sup>. 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)<sup>6</sup>.

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.

---

<sup>5</sup> Schedule to the draft Regulations [http://www.legislation.gov.uk/ukdsi/2012/9780111527832/pdfs/ukdsi\\_9780111527832\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2012/9780111527832/pdfs/ukdsi_9780111527832_en.pdf) (accessed 31.08.12)

<sup>6</sup> <http://www.defra.gov.uk/consult/files/circus-animals-summary-responses-120712.pdf> (accessed 31.08.12)

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.

**Update October 2012:** Detailed discussion with the Defra team and subsequent consultation with Government lawyers has failed to provide a solution to the problem outlined above. In fact, it has been concluded from the responses received from Defra on this issue that the regulations have the effect of forcing circuses to commit an offence under the Animal Welfare Act 2006 immediately upon a suspension coming into effect. There is, in effect, nothing that the circus can do to avoid committing this offence as there is no way in which they can comply with a licence suspension. This flows directly from the error in question and creates a clearly inequitable situation for the circuses. We believe that this would leave the Regulations open to legal challenge on the basis of an error of law.

- **The Regulations create a two-tier framework for animal welfare**

The regulations set welfare standards that are significantly lower than in other comparable industries, such as zoos. For example, under the draft circus regulations elephants would be provided with just 16-25% of the space that they would have under the zoos regulations<sup>7</sup> and can spend every night of their lives chained by the leg. This practice of chaining is allowed in zoos only for short periods and usually to provide veterinary treatment. Big cats in circuses are provided with indoor space of just 4x4 metres under the new plans. Other examples include animals being provided with nothing more than space to stand, turn around and lie down comfortably in their night quarters.

These can hardly be considered to be the “robust” standards to provide “high standards of animal welfare” that were promised by Government. As such, it is maintained that the regulations will be wholly ineffective in protecting the welfare of animals.

**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**

---

<sup>7</sup> Whilst the Born Free Foundation, the Captive Animals' Protection Society and the RSPCA chose not to respond to the consultation on the standards, in its response to the consultation, the BVA stated that any interim circus licensing conditions need to be as stringent as those for zoos.

**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.**