

Bil Anifeiliaid Gwyllt a Sycrasau (Cymru) | Wild Animals and Circuses (Wales) Bill  
WA 03

**Ymateb gan :** Dr Rebekah Humphreys, Darlithydd mewn Athroniaeth, Prifysgol  
Cymru Y Drindod Dewi Sant

**Evidence from :** Dr Rebekah Humphreys, Lecturer in Philosophy, University of  
Wales Trinity St David

In response to the invitation to provide written evidence in relation to the Wild Animals and Circuses (Wales) Bill, I hereby submit the following report to inform scrutiny of the Bill. This submission centres around the Committee's agreed 'Terms of Reference'. Overall, I find the Bill to be thorough and well considered.

The general principles of the Wild Animals and Circuses (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives:

There is now substantial evidence to show that wild animals used in circuses suffer considerably due to the conditions they are made to endure; conditions which are part and parcel of their forced confinement. Indeed, without labouring the point here (as this has been addressed elsewhere,<sup>1</sup> plus a review of the evidence for this is not the purpose of this report), suffice it to say here that there is an obligation to ban the use of wild animals in circuses; obligations grounded in ethics (particularly issues surrounding the application of dignity in relation to the lives of animals),<sup>2</sup> and in evidence relating to animal welfare.<sup>3</sup>

Legislation is needed to deliver the Bill's stated policy objectives since the current legislative situation cannot sufficiently overcome the ethical and welfare considerations related to the use of wild animals in circuses. I think it is also a matter of moral progress that we 'catch up' with other countries that have already banned the use of wild animals in circuses (most notably, some countries in South America and in Europe) and take the lead in enforcing those high standards of animal welfare that we enforce in other areas. It is foreseeable that other countries may well also follow suit in time.

The provisions of the Bill, in particular, in relation to the prohibition of using wild animals in travelling circuses and the meaning of 'operator' as defined in section 2 of the Bill:

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<sup>1</sup> See 'Welsh Government Consultation Document: Wild Animals in Travelling Circuses (Wales) Bill', Date of issue: 1 October 2018.

<sup>2</sup> Humphreys, Rebekah, 'Dignity and its violation examined within the context of animal ethics', *Ethics and the Environment* (21:2), Fall 2016, pp. 143-162.

<sup>3</sup> See, for example, 'Harris Review', by Harris et al, 2016, as cited in 'Welsh Government Consultation Document', op. cit.

- i. To avoid vagueness, it would be worth including some examples of ‘the person in the UK responsible for the operation of the travelling circus’. For example, for clarity’s sake, one could consider adding the following: ‘Such a person could include, but should not be limited to, a line manager, manager supervisor, or another relevant person(s) responsible for, for example, employees or contractors, and / or animals and / or administration in relation to the over-seeing or management of those employees or contractors, and / or animals and / or that administration. This list of persons responsible is not exhaustive but merely illustrative’.
- ii. ‘the owner’ and ‘person’ in sec. 2 should be changed to ‘owner(s)’ and ‘person(s)’ throughout the section to avoid the aversion of responsibility where more than one person is responsible.
- iii. It might be wise to add an extra statement to sec. 2: ‘(d) a corporate body, partnership or an unincorporated association other than a partnership responsible for the operation of the travelling circus.’ This would then link sufficiently with section 6 of the Bill.

The provisions of the Bill, in particular, the meaning of ‘wild animal’ as defined in section 3:

The meaning of ‘wildness’ is a much contested topic in the literature, and some animals could be defined as more or less wild than others so that ‘wildness’ ends up being much like a sliding scale.<sup>4</sup> However, there are some definitions that in the context of the Bill appear more applicable than others, including the following where wildness relates to an animal...

- which has interests, including specific-specific ones, capacities, dispositional tendencies and behaviours the fulfilment of which depend on at least minimal human interference.
- for which human constraints and forced behaviour constitutes a violation of its dignity and prevent it from being the kind of animal it is, as well as thwart the fulfilment of its essential capacities and potentialities.
- As such, and in the light of the above, it may be useful to include examples of the kinds of animals that are covered by the Bill, so that sec.3, sub-section (1) might add; ‘Examples of wild animals then include zebra, camel, zebu (a type of cattle), reindeer, raccoon, fox, macaw, elephants, lions, tigers, other species of large cats, and bears. The examples given in this list are not exhaustive’.

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<sup>4</sup> See, for example, Palmer, Clare, ‘Climate Change, Ethics, and the Wildness of Wild Animals’, in B. Bovenkerk, and J. Keulartz (eds.), *Animal Ethics in the Age of Humans, The International Library of Environmental, Agricultural and Food Ethics*, Vol. 23, Springer, 2016, pp. 131-150.

The following may also apply:

- Not selectively bred
- Not adapted to live alongside humans
- Not adapted to human use or purpose.<sup>5</sup>

The provisions of the Bill, in particular, the meaning of ‘travelling circus’ as defined in section 4:

- i. I think subsections (1) and (2) are necessary. To be sufficient to cover all that is usually meant by ‘travelling circuses’ and the use of wild animals in ‘travelling exhibitions’ (including travelling zoos and circuses in which wild animals are exhibited as opposed to other forms of forced performance), one could consider inserting an additional clause or adding to (1), perhaps something such as:

‘A travelling circuses means a circus which travels from one place to another for the purposes of providing entertainment at those places, and / or for the purposes of exhibiting animals, and / or for the purposes of providing an education component though entertainment and / or via the exhibition of animals.’ [suggested addition in italics]

- ii. With regards to sub-section (2) it is foreseeable that a particular circus that uses wild animals might put on a show just once a year and for the rest of the year remain stationary and thus the animals remain in stationary housing or permanent housing for much of the year. An operator might therefore try to claim that their establishment or undertaking cannot be classed as a ‘travelling’ circus. To avoid ambiguity and foreseeable consequences regarding what an operator might try to claim in order to avert responsibility, I suggest that the words such as ‘however long’ be inserted between ‘despite there being periods’ and ‘during which...’, so that this clause runs ‘despite there being periods, *however long*, during which it does not travel from one place to another.’ [suggested addition in italics]

### The powers of enforcement

It seems that inspectors do not have the power to seize an animal. This limits the power of inspectors, and I would argue that at some point in their investigations it may well become appropriate for the inspectors to seize an animal and relocate that animal to an appropriate place. This would require

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<sup>5</sup> Palmer, *ibid.*

partnership with relevant establishments and charities, such as sanctuaries and the RSPCA.

### The amendments relating to licensing of circuses

Agreed. No further comment.

### Unintended consequences arising from the Bill

In relation to unintended consequences, some possible consequences have been considered above with my suggested revisions being an attempt to mitigate such consequences. As regards to other possible consequences, the following points are relevant:

Travelling circus establishments might decide to continue to use wild animals for the purpose of entertainment or exhibition, but without travelling, thus leaving the animals in similar if not the same conditions albeit without the extra stress of transportation. Establishments may, for example, morph into side-show exhibitions, thus leaving the plight of animals very much unchanged. However, the ethical and welfare grounding of the Bill suggests that such an unintended consequence should be avoided if possible. (There are consequences related to this one, and I have attempted to address such related consequences in the sections above.)

So, consequences include circuses morphing into roadside menageries (in countries in Europe) and into animal exhibitions (outside petrol stations, for example). Another consequence may well be animals languishing in stationary cages for the rest of their lives. The latter often happens in any case, where animals formerly used for entertainment are no longer needed or become old and infirm. One example of this is Katya, a bear formerly used in a circus in St Petersburg, Russia. In 2009 the then 36-year-old bear was kept by a retired circus owner in a small, stinking cage welded to a stationary / derelict old bus on the outskirts of St Petersburg. Despite the apparent poor state of the bear in terms of its mental and physical condition, campaigners found it impossibly difficult to help Katya, mainly because the bear was languishing in Russia and because the owner did not want to transfer ownership. Such tragic stories are all too common – of course, such an analogous situation would not be permitted in the UK due to animal welfare legislation, but the case highlights some similar consequences (including owners not wanting to transfer ownership and the consequences for the animals concerned) the avoidance of which may be deemed a matter of ethics and thus a moral obligation.

One way this has been overcome in countries in South America is for the animals to be seized on inspection and transported to appropriate sanctuaries and housing. Thus, amendment of 'The powers of endorsement' to give

inspectors such powers, and amendment to section 4 (see this report, above, p.2) would assist in averting such an unintended consequence but would of course have a financial cost implication.

Another unintended consequence could include operators and other relevant persons 'hiding' animals from the public when in countries in which a ban is enforced. Or circus establishments simply 'leaving' their animals at their main country of residence when travelling to countries in which there is a ban. One way to overcome this is to implement a successful ban and take the moral lead in this important issue so that other countries will eventually follow suit, as well as give inspectors the right to cease animals if it is appropriate to do so.

#### The financial implications of the Bill (as set out in Part 2, Sec. 8 of the Explanatory Memorandum).

The ethical rationale for the Bill — a rationale which itself is further grounded by welfare considerations — calls for option 3 as the only defensive and satisfactory option. In time, one consequence would be that fewer inspections would be needed as Wales becomes known as a country that does not permit the use for wild animals in travelling circuses. One would hope that over time there would be a lesser need to enforce the Bill.

With regards to the impact on travelling circuses that make use of animals, many circuses now favour not using animals as more and more people shun wild animal 'performances'. People appreciate the great acrobat and dance skills displayed at circuses in which human gymnastic ability is evinced. One example is the No Fit State Circus, which recently sold out across Wales and has had outstanding reviews with many people travelling all over Europe to watch repeated performances. Circuses that use wild animals could be encouraged to focus on human performances only and perhaps attend courses to 'up-skill' their workers. Indeed, courses in circus performance are becoming more mainstream.

Rehoming, rehabilitation and sanctuary for animals is a costly endeavour but, again, one that would hopefully not be needed in the longer-term future. Such sanctuary would require inspectors to work in partnership with RSPCA and other animal charities such as Animal Defenders International (in the UK and in countries throughout Europe); organisations that rescue animals. Further such charities would need to be made equipped to participate in any rescues and rehoming. But such rehoming is necessary in order to avoid animals being moved on to other operators / owners that run, for example, zoos with poor welfare standards, mobile animal exhibits, or other businesses in which animals are used in a way deemed excessively instrumental and thus in a way that continues to violate their dignity and cause them to suffer. Appropriate safari parks could also assist with rehoming.

It is worth noting that there are vested interests at stake in relation to a ban on the use of wild animals in circuses. For example, the use of wild animals in circuses has strong analogies to their use in the film and television industry, not least because wild animals used in the latter industry are made to perform similar 'tricks' and, analogously, the interests of such animals cannot be properly fulfilled by the conditions in which they are forced to endure. Such animals, similarly to wild animals used in circuses, often end up languishing in small cages once they are no longer deemed to have instrumental value. However, this is not ethically acceptable because the welfare of animals matters in its own right, and wild animals in particular have a good of their own that cannot be fulfilled by living in conditions which enforce close confinement and prevent them from exercising their instinctive tendencies and potentialities. In the light of such parallels, attention is bound to be drawn to the ethics of using wild animals for any form of entertainment, with critics pointing at the film and television industry. But such is moral progress, and this would be so in spite of a ban — for whether or not a ban exists, people are already becoming more aware of the cognitive capacities and complex lives of wild animals, and with such knowledge comes growing consciousness about the ethics of using such animals for entertainment purposes. (The increasing opposition to the use of captive orcas in SeaWorld is a case in point.)

The appropriateness of the powers of the Bill for Welsh Minister to make subordinate legislation (as set out in Part 1, Sec. 5 of the Explanatory Memorandum).

Agreed. No further comment.