

**PE1400/C**

**Rural and Environment Directorate**

Animal Health and Welfare Division

T: 0300 244 9242

E: [beverley.williams@scotland.gsi.gov.uk](mailto:beverley.williams@scotland.gsi.gov.uk)



Anne Peat  
Public Petitions Committee  
Scottish Parliament  
T3.40  
Edinburgh  
EH99 1SP

27 October 2011

Dear Ms Peat,

**CONSIDERATION OF PETITION PE1400**

Thank you for your letter dated 29 September asking for our consideration of petition PE1400 on banning the use of wild animals in circuses, submitted by Libby Anderson. You asked for our views on the specific issues raised in the petition itself, those raised during the discussion on the petition, and the specific written questions to the Scottish Government. I shall respond to all these points within the framework of the written questions posed.

**What are your views on the issues raised in the petition?**

The Scottish Government's position on wild animals in travelling circuses is currently under review. We are aware that there was renewed public concern when evidence of Anne the elephant being abused by a worker at Bobby Robert's circus came to light; the incident reopened the question of whether travelling circuses are a suitable environment for wild animals. We accept that there are significant concerns regarding the welfare of wild animals in this environment. We note the BVA's position that wild animals in circuses serve no justifiable purpose and should therefore not be used, and we are aware that this feeling is widespread amongst the UK general public. We are also aware of the concern that changes in England may result in circuses re-locating to Scotland.

There is existing protection for wild animals in travelling circuses; the Animal Health and Welfare (Scotland) Act 2006 places a duty of care on those responsible for any animals to ensure their welfare by ensuring that their needs are met, including their need for a suitable environment and the ability to exhibit normal behaviour. The Act also makes it an offence to cause a captive or domestic animal unnecessary suffering; this includes mental as well as physical suffering. The duty of care aspect may be difficult to apply to wild animals in circuses, since while many have expressed an opinion, there is little objective evidence available on what is required to ensure good welfare in this situation. Abuse and cruel training practices can be dealt with both under the Animal Health and Welfare (Scotland) Act 2006, and under the Performing Animals (Regulation) Act 1925, which includes the power to prohibit the training or exhibition of animals, or to impose conditions, where training or exhibition has been proven to be accompanied by cruelty.

There has been considerable debate over whether there is evidence of welfare issues in circuses that would support the adoption of a ban on the use of wild animals. In 2006 Defra set up the Circus Working Group, chaired by Mike Radford from the University of Aberdeen, to provide and consider evidence relating to the transportation and housing needs of non-domesticated species. Their report highlighted that, "Our present state of knowledge about the welfare of non-domestic animals used in circuses is such that we cannot look to scientific evidence for a steer in the development of policy". The widely quoted literature review by Iossa, Soulsbury and Harris in 2009 (Are wild animals suited to a travelling circus life?) also noted that data on circus animals were very scarce and inferred likely welfare implications in certain species based on zoo data. While informed inferences are helpful, they do not constitute clear and objective evidence. With so few circuses feeling the need to have wild animals in the 21<sup>st</sup> Century, we are now unlikely to obtain conclusive scientific evidence of welfare problems specific to travelling circuses, or on how to solve them.

However, the Scottish Government acknowledges that the lack of scientific evidence does not mean that there is no problem and agrees with the Radford report that "The status quo is not a tenable option". In the absence of clear evidence that the welfare of wild animals in circuses is worse than those in other captive environments the decision on whether or not to ban becomes an ethical and legal one. This point was made by the Minister for Environment and Climate Change at the Members' Business Debate on the 9<sup>th</sup> June. We can confirm that both the Minister and the Cabinet Secretary for Rural Affairs and the Environment, in whose portfolio animal welfare lies, both remain sympathetic to a ban. No plans were announced on this matter as part of the Scottish Government Legislative Programme because there are a number of complex legal issues that require investigation before any legislation can be considered.

The Scottish Government is aware that some local authorities in Scotland already prohibit circuses that use wild animals on local authority land due to the strength of public feeling against this. As landlords, they are within their rights to do so. It is not appropriate for the Scottish Government to comment on whether Local Authorities could refuse public entertainment licences to circuses with wild animals, or on communication problems that there may be within Local Authorities between welfare and estates officials.

### **Could the Animal Health and Welfare (Scotland) Act 2006 be used to introduce a ban by way of secondary legislation? What other legislative mechanisms could be considered?**

Scottish Government's position is that Regulations made under section 26 of the Animal Health and Welfare (Scotland) Act 2006 could not be used to introduce a ban on the use of non-domesticated animals in travelling circuses. The powers conferred by the Act must be for the purpose of securing the welfare of animals. In our view there is an absence of any clear objective evidence that a) there is a welfare problem specific to wild animals in travelling circuses or b) that a ban would be the most proportionate method of solving it. Informed inferences and professional opinion do not constitute clear and objective evidence of the sort that would be necessary to withstand legal challenge on this point. Furthermore, a ban could be seen as a dis-proportionate method of securing the welfare of animals in this situation when other options, such as the licensing regime being actively developed in England, could achieve the same aim.

Banning the use of wild animals in travelling circuses under Primary legislation would remove the need for objective evidence that there is a welfare problem that only a ban could solve by potentially allowing a ban to be put in place on ethical grounds. However, any such legislation would need to be compatible with the European Convention on Human Rights

(ECHR) and EU law, including the Services Directive (EC Directive 2006/123) Although we note that the petitioner considers such concerns far fetched, we can confirm that a German circus, Circus Krone, initiated proceedings in the Austrian Constitutional Court against the Austrian ban on the 15<sup>th</sup> June 2011 and that the challenge raises issues as to whether the Austrian ban is compatible with ECHR and EU law. The issues are still under consideration by the Austrian Court.

The third alternative is to regulate the use of wild animals in travelling circuses via secondary legislation under the Animal Health and Welfare (Scotland) Act 2006. It is not clear whether this would necessarily result in an increase in the use of wild animals in travelling circuses - as businesses circuses must take account of the views of their potential customers. The Scottish Government does, like the petitioner, have reservations regarding the practicality of a licensing regime. Robust conditions would be difficult to develop given the lack of objective evidence on what constitutes good welfare in this situation, and the practicalities and costs associated with implementing and enforcing such a regime could potentially be disproportionate given the relatively small number of circuses and animals concerned. However, we are not discounting this as an option at this time.

Whatever route is pursued, the Scottish Government agrees with the suggestions made in the discussion on this petition that cross-border issues and, potentially, re-homing of the animals, needs to be addressed. We also agree that the views and experience of Local Authorities, the SSPCA inspectorate and the circus owners association will be important to any developments.

**Following the Members' Business debate on this issue in June 2011, what work has the Scottish Government undertaken and what plans does it have in relation to the use of wild animals in circuses?**

Scottish Government Ministers have requested that a consultation be conducted on this matter. There remain outstanding legal issues that may impact on whether a ban is achievable, which will in turn impact on whether the consultation should cover a ban, or should concentrate on regulation. We expect to have a better understanding of these issues by January, which will feed into the drafting of the consultation.

**What information has been received and what discussions have there been with the UK Government?**

Scottish Government officials have been in contact with their UK Government counterparts on this matter. Defra have made us aware of their plans to licence the use of wild animals in travelling circuses and their reasons for discounting a ban at present. They are sympathetic to the call for a ban and are continuing to look at how the legal obstacles may be overcome so that a ban could be achieved. Given that they consider a ban unlikely as an immediate possibility they are proceeding with a tough new licensing regime that will prevent circuses from using wild animals unless high standards of welfare are provided. It is intended to have draft Regulations in place by July 2012. Scottish Government officials will continue to keep in close touch with Defra on developments in this area.

This is a complex and high profile issue that the Scottish Government is taking very seriously. I hope that this information is helpful to the Committee in their further consideration of the petition on the use of wild animals in circuses. Should the Committee require further information on any specific issue, please feel to ask me for more detail.

Yours sincerely

**Dr Beverley Williams**  
Animal Welfare Team Leader