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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Wild Animals in Travelling Circuses (Scotland) Bill at Stage 1



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) any—
 - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
 - (ii) [deleted]
 - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
- (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
- (c) general questions relating to powers to make subordinate legislation;
- (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
- (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;
- (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;
- (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
- (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.
- (i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Introduction

1. At its meeting on 23 May 2017, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Wild Animals in Travelling Circuses (Scotland) Bill ("the Bill"ⁱ) at Stage 1. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.
2. The Scottish Government has produced a Delegated Powers Memorandum ("DPM"ⁱⁱ) on the delegated powers provisions in the Bill. The DPM sets out the reasoning for taking the delegated powers.

ⁱ Wild Animals in Travelling Circuses (Scotland) Bill [as introduced] is available [here](#)

ⁱⁱ Wild Animals in Travelling Circuses (Scotland) Bill Delegated Powers Memorandum is available [here](#)

Overview of the Bill

3. This Government Bill was introduced by the Cabinet Secretary for the Environment, Climate Change and Land Reform (Roseanna Cunningham MSP) on 10 May 2017. The lead committee for the Bill is the Environment, Climate Change and Land Reform Committee.
4. The Bill aims to respond to public concerns around the use of wild animals in travelling circuses. It proposes to make it an offence for a circus operator to cause or permit a wild animal to be used in a travelling circus in Scotland, and enables the enforcement of that offence.
5. Between January and April 2014, the Scottish Government ran a public consultation on proposals to ban the use of wild animals in travelling circuses on ethical grounds. There are no travelling circuses that currently use wild animals based in Scotland.
6. In England, the Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012 established from January 2013 a licensing scheme operated by the Department for the Environment, Food and Rural Affairs. Since then, and according to the Financial Memorandum for the Bill, there have only been two licenses issued under those Regulations, to Circus Mondao and Peter Jolly's Circus.
7. It is more common for wild animals to perform in mainland European circuses. There is no awareness that either of the two English licensed circuses which use wild animals, plan to visit Scotland.

Delegated Powers Provisions

8. At its meeting on 23 May 2017, the Committee considered the one power in the Bill conferred upon the Scottish Ministers, which is as follows:

- **Section 7 – Commencement**

Provision

9. This section 7 and section 8 which states the short title are commenced on the day after Royal Assent. This is a normal position.
10. Section 7(2) enables the Scottish Ministers to bring the Bill's substantive provisions into force at a later date, by means of commencement regulations. In the usual way the regulations would be laid before Parliament and considered by the Delegated Powers and Law Reform Committee but not subject to any further procedure. The regulations could appoint different days for different purposes.

Comment

11. The DPM explains that there are no travelling circuses with wild animals based in Scotland. It is not expected that any such circuses will be appearing in Scotland when the substantive provisions are brought into force, as none have visited for several yearsⁱⁱⁱ.
12. The DPM also explains that, should any unexpected visits arise as and when the Bill is in force, there is no policy wish to give such circuses a 'grace period' during which they may continue to use their animals. As a result, the Scottish Government considers that no power to make transitional provisions is needed, which might have provided a period of grace for circuses with wild animals, on the coming into force of the proposed new offence.
13. The DPM also explains that, while it is expected that the various operative sections of the Bill will be commenced on the same day, the power to appoint different days for different purposes will provide some flexibility, as regards the commencement of the enforcement provisions in schedule 1.
14. Section 6 is a general provision on Crown application. This section will be commenced by the commencement regulations, even though it is a general provision. The Committee considers this to be acceptable. The effect of section 6 is dependent on the operative provisions in sections 1 to 5 being commenced.

Consideration of ancillary powers

15. The Bill does not contain a separate section with powers to make ancillary provisions for the purposes of the Bill (incidental, supplemental, consequential, transitional, transitory, or saving provisions). The Committee agrees with the Scottish Government that this absence of ancillary powers may be appropriate for

ⁱⁱⁱ The Financial Memorandum for the Bill states that according to respondents to the 2014 Scottish Government consultation on travelling circuses, only 2 travelling circuses with wild animals had visited Scotland in the last 5 years, and none in the last 12 months.

this particular Bill. It is relatively narrow in scope, containing a proposed offence and provisions related to the offence (in sections 1 to 4) and enforcement powers related to the offence (in section 5 and the schedules).

16. As regards the effect of the Bill upon the current law in Scotland, the Committee has found no reason to consider that some ancillary powers would be required. Firstly, the Animal Health and Welfare (Scotland) Act 2006 introduced protections for animals, generally. Section 24 provides a statutory basis for licensing activities involving animals. However there are no specific provisions in the 2006 Act for circus animals.
17. Secondly, any persons who exhibit or train performing animals (including in circuses) must register with a local authority, under the Performing Animals (Regulation) Act 1925. The registering authority is where the exhibitor or trainer resides, and so not necessarily where a circus is performing. The Act also contains powers for inspectors to prohibit or restrict the exhibition and training of performing animals, where this has been accompanied by cruelty.
18. In respect of Scotland, the 1925 Act has been repealed by provision in the Animal Health and Welfare (Scotland) Act 2006. It appears that this repeal has not yet been brought into force by means of a commencement order, but that this may yet be arranged by the Scottish Government. This situation in relation to the current law on performing animals does not appear to be a reason to require ancillary powers in this Bill.

Recommendations

19. **The Committee finds the commencement powers in section 7 to be acceptable in principle. The Committee accepts that the regulations would be laid before the Parliament, but not subject to further procedure.**

