



Scottish Police Federation

5 Woodside Place Glasgow G3 7QF

JCC Circular 2 of 2014

Ref: CS/LS

27 January 2014

Dear Colleague

Should the use of wild animals in travelling circuses be banned in Scotland? - Consultation

I refer to the above and attach herewith the consultation papers for your information.

Please send any comments/observations to Lesley.stevenson@spf.org.uk by **Wednesday 19 March 2014**.

Yours sincerely

Calum Steele
General Secretary

**To Interested Parties
(List attached)**

Dear Sir or Madam

Consultation on “Should the use of wild animals in travelling circuses be banned in Scotland?”

You are invited to respond to the enclosed consultation document on should the use of wild animals in travelling circuses be banned in Scotland by the **16 April 2014**.

Full details regarding the purpose and scope of the consultation, and how to respond to it are contained in **pages 4 to 8** of the consultation paper. To improve ease of analysis of the consultation responses we would be grateful if, where possible, you could respond by way of the **online survey facility hosted by Questback**. A link to the consultation survey on Questback can be found on the Scottish Government website at:

<http://www.scotland.gov.uk/Topics/farmingrural/Agriculture/animal-welfare/AnimalWelfare/Circuses>

This online facility does not reliably allow you to save a part-completed consultation and return to it later so we recommend that you fully consider the Consultation Document and all the questions first before sitting down to complete the online survey. Other methods for responding are explained in the consultation paper.

Your consultation response is important to us so please note that the consultation will close on **16 April 2014**. Any responses received after this date are unlikely to be included in the consultation analysis.

As always with consultations, we need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. The Respondent Information Form should be completed by everyone providing a response to the consultation document. Further information concerning the Respondent Information Form and how your response will be handled can be found on **pages 4 to 8** of the consultation paper.

If you have any queries about this consultation please contact me using the contact details at the top of this letter.

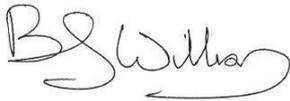
Enclosed with this letter are:

- The Main Consultation Document
- A Consultation Questionnaire (but please complete the online Questback form if at all possible)
- The Respondent Information Form (to be completed when sending a response)

Please feel free to pass on copies of these consultation documents to anyone else that you think might have an interest in them.

We look forward to your response.

Yours faithfully



Dr Beverley Williams
Head of Animal Welfare Branch

Action of Churches Together in Scotland
Angus College
Animal Aid
Animal Concern Advice Line
Animal Defenders International
Argyll Adventure
Armac Veterinary Group
Ashgrove Veterinary Centre Ltd
Associate Parliamentary Group for Animal Welfare
Association of Circus Proprietors of Great Britain
Association of Government Veterinarians (Scotland)
Association of Government Veterinarians (Wales)
Association of Scottish Police Superintendents (The)
Barony College
Blair Drummond Safari Park and Adventure Park
Bodleian Libraries of the University of Oxford
Born Free Foundation
British and Irish Association of Zoos and Aquariums
British Horse Society Scotland (Crieff)
British Library's Legal Deposit Office
British Small Animal Veterinary Association
British Veterinary Association
British Veterinary Association (Scottish Branch)
Bute & Cowal Vets
Cambridge University Library
Catholic Parliamentary Office
Chartered Institute of Environmental Health
Church of Scotland (The)
Circus Friends Association of Great Britain
Circus Mondao
Collier & Brock
Convention of Scottish Local Authorities
Corby, J (Ms)
Covesea Greens Stud
Creature Feature Ltd
Department for Environment, Food and Rural Affairs
Department of Agriculture and Rural Development
Dukes Veterinary Practice Ltd
Dundas Veterinary Group
Elmwood College
Ethical Voice for Animals
European Circus Association
Federation of Companion Animal Societies
Fergusson, Alex, MSP
Flanders Veterinary Services
Forside Farms
German Shepherd Dog Club of Scotland (The)
Great British Circus
Haflinger Trekking Centre
Heds of Ayr Farm Park
Health & Safety Executive
Highland Wildlife Park

Hudghton, Ian MEP
Humanist Society Scotland
Institute of Biodiversity, Animal Health and Comparative Medicine
Inverclyde Dog Training Club
Johnston & Farrell
Kennel Club (The)
Lamond Veterinary Clinic
Library of Trinity College, Dublin (The)
Lyon, George MEP
MacDonald, Margo MSP
Marine Conservation International
Martin, David MEP
Mossburn Community Farm
Mr Bug Ltd
Muslim Council of Scotland
Nardini Rudder Veterinary Centre
National Animal Welfare Trust
National Library of Scotland (The)
National Library of Wales (The)
National Secular Society
North of Scotland British Veterinary Association Welfare Representative
OneKind
Orkney Seal Rescue
Palacerigg Country Park
Peter Jolly's Circus
Police Scotland
Production Guild (The)
Road Haulage Association
Royal (Dick) School of Veterinary Studies
Royal College of Veterinary Surgeons
Royal Environmental Health Institute of Scotland (The)
Royal Society for the Prevention of Cruelty to Animals (The)
Royal Veterinary College (The)
Ryan & Calder
Scientialis Ltd
Scotland for Animals
Scottish Association for Country Sports
Scottish Centre For Animal Welfare Sciences
Scottish Churches Parliamentary Office
Scottish Conservatives & Unionist Party
Scottish Council of Jewish Communities
Scottish Enterprise
Scottish Equestrian Association
Scottish Federation of Meat Traders
Scottish Government (Better Regulation Team)
Scottish Government (Communications Greener)
Scottish Government (Information Management Unit)
Scottish Government (Rural Directorate Veterinary Division)
Scottish Green Party
Scottish Hawk Board
Scottish Islamic Foundation
Scottish Kennel Club (Helensburgh)
Scottish Labour Party

Scottish Liberal Democrats
Scottish National Party
Scottish Parliament European & External Relations Committee
Scottish Parliament Information Centre
Scottish Parliament Rural Affairs and Environment Committee
Scottish Police Federation
Scottish Progressive German Shepherd Dog Group (The)
Scottish Society for the Prevention of Cruelty to Animals
Scottish SPCA Edinburgh & Lothian Animal Rescue & Rehoming Centre
Scottish Voice for Animals
Scottish Youth Parliament
Smith, Alyn MEP
Society of Chief Officers of Trading Standards in Scotland
Stevenson, Struan MEP
Stewartry Veterinary Centre (The)
Stihler, Catherine MEP
Strathblane Falconry
Strathclyde Emergencies Co-ordination Group
Universities Federation for Animal Welfare
University of Aberdeen (School of Law)
University of Bristol (Animal Welfare)
University of Cambridge (Department of Veterinary Medicine)
University of Stirling (Department of Psychology)
Veterinary Centre (The), Uddingston
Vetnetwork UK
Viva!
West Port Veterinary Clinic Ltd
Wild Futures (Primate Welfare Team)
Windygates Stables
World Parrot Trust
World Society for the Protection of Animals
Zoo-lutions Ltd

Also Consulted

Animal Health Veterinary Laboratories Agencies
Private Individuals

Should the use of wild animals in travelling circuses be banned in Scotland?

Consultation Document

Contents

PART I – ABOUT THIS CONSULTATION	4
Topic of this consultation	4
Scope of this consultation	4
Geographical extent	4
Business and regulatory impact assessment	4
Audience	4
Body Responsible for the consultation	4
Duration	5
How to make an enquiry	5
The Scottish Government Consultation Process	5
Responding to this consultation paper	6
Handling your response	7
Next steps in the process	7
Comments and complaints	8
PART II – BACKGROUND INFORMATION	9
Circuses in Scotland	9
Existing legislation	9
The Animal Health and Welfare (Scotland) Act 2006	9
The Performing Animals (Regulation) Act 1925	10
Commission Regulation (EC) No. 1739/2005 laying down animal health requirements for the movement of circus animals between Member States	10
The concerns raised	10
The principle	10
Training and confinement	11
Travelling and accommodation	12
The Radford Report	12
Objectives	12
Findings	12
Limitations of the report	13
Why animal welfare does not provide strong grounds for a ban	14
Objectives for intervention	15
Factors for consideration	16
Definitions and scope of the potential ban	17
Definitions	17
Potential scope of a ban	18
Situations falling outside the scope of this consultation	18
Bans elsewhere	18
Previous consultation	18
PART III – DETAILED CONSIDERATIONS	19

Respect for Animals	19
Travelling environment	20
Ethical costs and benefits	21
Financial impacts of a ban	22
Wider film and television industry	23
Should Scotland ban the use of wild animals in travelling circuses?	23
PART IV – ANY OTHER COMMENTS	25
POTENTIAL ETHICAL GROUNDS FOR A BAN	26
Animal telos	26
Consequential Utilitarianism	26
How these relate to a ban on wild animals in travelling circuses	27

Part I – About this consultation

Topic of this consultation

This consultation is seeking views on whether the Scottish Government should ban the use of some or all wild animals (non-domesticated animals of a kind not commonly domesticated in Great Britain) in travelling circuses.

Scope of this consultation

This consultation is not seeking views or evidence on whether all animals in circuses should be banned, nor does this consultation seek views or evidence on whether the use of wild animals in the performance industry should be banned. It draws a clear line between the use of wild animals in travelling circuses and the use of wild animals in the wider entertainment industry; as well as between the use of wild animals and the use of other animals in travelling circuses.

Geographical extent

Animal welfare is a devolved matter and this consultation applies to the use of wild animals in travelling circuses in Scotland only. Separate consultations either have been or may be conducted in other parts of GB/UK on this matter and the appropriate administration should be approached for further information.

Business and regulatory impact assessment

There are no circus businesses based in Scotland that are likely to be affected by any proposed ban. However, some potential impacts on circuses and the wider entertainment industry are considered in this consultation. If you have any further issues that you would like to raise at this point you may do so at Consultation question 21: 'Do you have any other comments on whether the use of wild animals in travelling circuses should be banned in Scotland?'

Audience

Anyone may reply to this consultation. The Scottish Government would particularly like to hear from: circus proprietors, circus industry bodies, audio-visual industry bodies, the wider advertising and entertainment industry, animal welfare groups, local authorities, veterinarians, and members of the general public.

Body Responsible for the consultation

The Scottish Government's Animal Welfare Team is responsible for the policy and this consultation.

Duration

This consultation started on 22nd January 2014.

This consultation closes on 16th April 2014.

This constitutes a full consultation period of 12 weeks.

How to make an enquiry

If you have any queries about this consultation contact Jackie Quigley (0300 244 9151).

The Scottish Government Consultation Process

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at: Scottish Government consultations (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Responding to this consultation paper

We are inviting responses to this consultation paper by 16th April 2014

To improve ease of analysis of the consultation responses we would be grateful if, where possible, you could use the online survey facility hosted by Questback, which can be accessed via www.scotland.gov.uk/wildanimalsincircuses. Please note that this facility does *not* reliably allow you to save a part-completed consultation and return to it later. We therefore recommend that you fully consider this Consultation Document and all the questions before sitting down to complete the on line survey.

Alternatively, you may use the Consultation Questionnaire Word document supplied to provide your response electronically by sending it, **along with your completed Respondent Information Form** (see "Handling your Response" below) to:

AnimalWelfareConsultations@scotland.gsi.gov.uk

Handwritten responses will be accepted, although the previous methods are preferable. Again, you should use the Consultation Questionnaire provided as this will aid our

analysis of the responses received. Please send your response, **along with your completed Respondent Information Form**, to:

Circus consultation
Animal Welfare Team
P Spur
Saughton House
Broomhouse Drive
EH11 3XD

Please note that due to time constraints, responses not using either the online Questback survey or the Consultation Questionnaire Word document provided may not be considered in the analysis of this consultation.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. If using the Consultation Questionnaire Word document, please complete and return the **Respondent Information Form** enclosed with this consultation paper as this will ensure that we treat your response appropriately. Similar questions will be asked as part of the Questback survey. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise. If appropriate, please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under Freedom of Information legislation. However, because of the law, we cannot promise that we will always be able to keep those details confidential.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public (see the attached Respondent Information Form). These will be made available to the public in the Scottish Government Library and on the Scottish Government consultation web pages by later in 2014. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on whether the use of wild animals

in travelling circuses should be banned in Scotland. We aim to issue a report on this consultation process and, if appropriate, to lay legislation before the Scottish Parliament during 2014.

Comments and complaints

An opportunity to provide comments on your experience of the consultation is provided as part of the consultation survey/questionnaire. Alternatively you may also send any comments that you may have about how this consultation exercise has been conducted to the contact details in the 'Responding to this consultation' section.

Part II – Background information

Circuses in Scotland

There are no travelling circuses that use wild animals based in Scotland, but until recently there were four British travelling circuses using wild animals: the Great British Circus, Bobby Robert's Super Circus, Peter Jolly's Circus and Circus Mondao. Due to the lack of any specific legislation requiring that any meaningful figures be maintained, the precise number of wild animals used by these circuses has been difficult to obtain. However, the figure was usually estimated to be under 50. Since legislation regulating the use of wild animals in travelling circuses came into force in England in January 2013, there have only been two licenses issued to use wild animals to date. Information on the circuses and animals involved was released by Defra in January 2013 and is shown in the table below.

Wild animals listed by UK circuses applying for a license for the 2013 season <i>(Hansard 14 January 2013: Column 880W):</i>	
Circus Mondao <ul style="list-style-type: none">• 2 camels• 2 reindeer• 2 zebras	Peter Jolly's Circus <ul style="list-style-type: none">• 1 camel• 1 fox• 1 ankole• 1 racoon• 4 reindeer• 6 snakes• 1 zebra

It is more common for wild animals to perform in mainland European circuses. Such circus acts are reported to have included: bears; large cats (lions, tigers, ligers (a lion/tiger cross), leopards, pumas and lynx); sea lions; kangaroos; monkeys and apes; elephants; wild birds; snakes; large reptiles (alligator, crocodile, caiman); giraffes and hippopotamus.

It is presently possible for circuses based in England or mainland Europe to visit Scotland with their performing wild animals. Some local authorities in Scotland prohibit circuses that use wild animals from performing on local authority land. We are not aware that either of the two licenced circuses in England plan to visit Scotland. We are also unaware of any circuses based on mainland Europe that plan to visit Scotland.

Existing legislation

At present there are no specific animal welfare regulations for wild animals in travelling circuses in Scotland; however, they do fall under the scope of other wider legislation.

The Animal Health and Welfare (Scotland) Act 2006

This Act makes it an offence for any person responsible for an animal, including owners and keepers, to fail to provide for the animal's welfare. Under section 24 of the Act, a

person responsible for an animal has a duty to provide for the animal's needs, which includes: its need for a suitable environment; its need for a suitable diet; its need to be able to exhibit normal behaviour patterns; its need to be housed with, or apart from, other animals as appropriate; and its need to be protected from suffering, injury and disease. Section 19 of the Act makes it an offence to cause an animal unnecessary suffering. The Act applies to all vertebrate animals.

The Performing Animals (Regulation) Act 1925

This Act makes it an offence for a person to exhibit or train a "performing animal" (which does not include an invertebrate) without being registered with a relevant local authority. It also allows a sheriff, acting on the application of a constable or a local authority, to grant an order prohibiting training or exhibition of an animal or imposing conditions on it. Such an order may be made where the sheriff is satisfied that the training or exhibition "has been accompanied by cruelty". Breach of such an order is also an offence.

Commission Regulation (EC) No. 1739/2005 laying down animal health requirements for the movement of circus animals between Member States

This Regulation lays out animal health requirements for circuses or other animal acts that move between Member States. The Regulation requires that every animal act that wishes to move between Member States must be registered with the competent authority of the country in which it is based, that all performing animals must be registered as belonging to that act or circus, that all registered animals must be issued with a passport and that shortly before moving from one Member State to another, a veterinary inspector must confirm that all registration documents are in order and that all animals are in good health.

The concerns raised

For many years concerns have been raised over the use of wild animals in travelling circuses by MSPs, the general public and animal welfare organisations (including the Scottish SPCA, Advocates for Animals (now OneKind), the Born Free Foundation, the Captive Animal Protection Society and Animal Defenders International).

The principle

It is clear from the steady stream of letters to Scottish Government Ministers that MSPs and the public have serious and on-going concerns about many aspects of the use of animals in travelling circuses, but especially the use of wild animals. These concerns not only involve perceived animal welfare issues, but also deal with the ethical point of whether it is acceptable, in today's society, to transport wild animals throughout the country and make them perform simply for public entertainment. Specific calls for a ban include:

- In 2004 significant concerns regarding the welfare of wild animals in travelling circuses were raised in response to the Scottish Government's consultation on the Animal Health and Welfare Bill to replace the Protection of Animals (Scotland) Act 1912. These views led to the possibility of a ban on the use of circus wild animals

being discussed in committee and in the Main Chamber itself. A commitment was given “to ban the use in travelling circuses of certain non-domesticated species whose welfare needs cannot be met satisfactorily in that environment”.

- In 2009 Defra issued a consultation specifically on the use of wild animals in travelling circuses. Over 95% of respondents felt that it was not acceptable to use any species of wild animal in travelling circuses. Although this consultation was limited to England, the responses mirrored the previous comments that the Scottish Government received.
- In June 2011 the Scottish Parliament debated a motion lodged by Elaine Murray MSP on banning wild animals in circuses. The Minister for Environment and Climate Change concluded the debate by stating that the Scottish Government would continue to examine the issue, taking into account relevant developments in England.
- In September 2011 OneKind presented the Public Petitions Committee of the Scottish Parliament with a petition to ban wild animals in travelling circuses. This petition is on-going, and the Scottish Government has provided a number of responses to specific queries.

Training and confinement

It is generally accepted that animals require a certain amount of physical freedom in order to be able to achieve their physiological and behavioural requirements, for example a comfortable position, exercise, social interaction and mental stimulation. It is also generally accepted that the most appropriate training regimes use positive reinforcement (reward) to promote the performance of any particular desired behaviour. This could include giving treats, verbal praise or a friendly pat immediately after the desired behaviour is displayed. Such regimes generally prove effective in the long term and avoid any potential distress to the animal.

Comments made to both the Scottish Government consultation in 2004 and the Defra consultation in 2009 have indicated that animal welfare organisations and members of the public have serious concerns about the time that wild animals are confined in their transportation vehicles. Furthermore, species by nature vary in their responsiveness to positive reinforcement as a training method and concerns were also raised that negative reinforcement involving aversive methods (including physical punishment) may be used to persuade wild animals to behave as required within the travelling circus environment. Some anecdotal accounts of cruelty and animal abuse were provided.

Some specific allegations of unnecessary suffering due to long periods of confinement or physical abuse have been made relating to wild animals in circuses based in England, some of which have resulted in prosecution. For example:

- Video evidence of cruel training methods was used in the successful prosecution of an animal cruelty case against individuals from the Chipperfield family in 1997-1999.
- The owner of Bobby Roberts Super Circus was successfully prosecuted in November 2012 following allegations that a 59 year old elephant, Anne, was repeatedly kicked and permanently shackled on two of her legs causing distress.

Travelling and accommodation

Comments made to both the Scottish Government consultation in 2004 and the Defra consultation in 2009 indicated that animal welfare organisations and members of the public have serious concerns about the restricted environment provided by animal enclosures on a temporary site. The travelling circus environment is quite different to that of zoos, for example, and it was considered difficult to ensure that the needs of the animals can be adequately met.

These views are further expanded in a report by the Born Free Foundation and the RSPCA in 2006, "It's time Parliament changed its Act – An examination of the state of UK circuses with wild animals". This report identified significant differences between animals kept in zoos and animals kept in circuses, noting that the mobility of housing is a limiting factor as it relates to the size and complexity of living conditions available for animals. Wild animals in circuses are subjected to a number of factors that similar animals in zoos, for example, are not, such as regular and repeated transport, limited size and complexity of housing and the rigors of training and performances

The Radford Report

Objectives

In June 2006 the Circus Working Group was established by Defra and tasked with:

- Examining the evidence on the welfare of wild animals in travelling circuses.
- Considering whether or not, based in that evidence, the use of wild animals in travelling circuses should be banned.

The group were asked to focus on the transportation and housing needs of wild animals, as they were considered to be the factors that differentiated wild animals in circuses from wild animals kept in other situations.

The Group assessed evidence on the basis that to ban wild animals from travelling circuses, there must be sufficient scientific justification that the welfare of wild animals was compromised by being part of a travelling circus.

Findings

Having considered the evidence provided by both animal welfare organisations and the circus industry, in October 2007, the Radford report concluded that:

- There was little evidence to demonstrate that the welfare of animals kept in travelling circuses is any better or worse than that of animals kept in other captive environments.
- There was not enough scientific evidence to ban the use of wild animals in travelling circuses under the Animal Health and Welfare (Scotland) Act 2006.

However, Mr Radford did specifically comment that the status quo was not a tenable option as:

- Expectations have been raised that the Government will do something.
- The circus industry is exceptional in that the use of wild animals in most other commercial contexts is generally subject to specific regulation.
- The present state of uncertainty confronting circuses requires resolution.
- It is considered that the present situation is acting against the interests of the animals involved.
- There is support from all sides of the debate for reform.

Limitations of the report

The remit given to the Circus Working Group omitted issues relating to the training and performance of wild animals; hence the Report dealt only with two of the four factors that impact on the welfare of wild animals used in circuses, namely transportation and housing. Mr Radford stated that “One can only speculate whether the substance of this Report would have been materially different if the Working Group had looked at the full picture.”

Training techniques were specifically excluded from the review as Defra considered that if any cruel practices were employed in this area it would be relatively straightforward to mount a prosecution for cruelty under the Animal Welfare Act 2006. A similar facility is available in Scotland under the Animal Health and Welfare (Scotland) Act 2006. In addition many of the techniques used to train animals are generic across a range of performance situations and Defra considered that the question of training techniques for all types of performance should be reviewed separately.

Animal welfare groups also were critical of the decision that the Group should not take photographic and video evidence into consideration. This evidence, they believed, showed that some training methods used involve cruelty similar to those methods used in the Chipperfield case.

Defra made clear before the review began that certain types of evidence would be disqualified from submission. It was not considered that photographic or video evidence in itself was sufficient to base policy decisions on - it can be open to interpretation, and possible misrepresentation, by giving a snapshot view rather than a complete picture over an extended period of time. For example, a film showing a pacing lion may show evidence of stereotypic behaviour, but may equally have been made when the lion had seen its keeper approaching with food. Furthermore, evidence of a particular instance of cruelty, while distressing, is not sufficient to demonstrate that a particular environment necessarily causes animal suffering. Animals in any environment may unfortunately be subjected to

particular instances of cruelty, private pet ownership being the most common example. It would not be proportionate to ban private pet ownership on the basis that there are some instances of abuse and neglect. In order to establish that an environment inevitably causes an animal suffering or distress, it must be shown that animals suffer and are distressed by being in that environment in the absence of deliberate physical abuse.

Why animal welfare does not provide strong grounds for a ban

By far the most numerous reasons given as to why Government's across the UK should ban the use of wild animals in travelling circuses are those relating to animal welfare, therefore the results of the Radford report appear counter to the viewpoint of many. However, the term animal welfare can be used to mean different things by different people; for example some believe that welfare and health are separate issues, others that health is simply an aspect of welfare, and others that welfare includes broader ethical considerations.

Within science, good animal welfare has primarily been viewed as an absence of physical or mental suffering, which has influenced the type of research done as well as animal welfare legislation based on it. More recently there has been increasing acceptance within both scientific and legislative circles that there should be greater efforts directed towards the promotion of positive states in addition to the avoidance of suffering.

This was reflected in the Animal Health and Welfare (Scotland) Act 2006 by the introduction of the 'duty of care'. Section 24 requires that where someone is responsible for an animal, they have a positive duty to do all that is reasonable in all the circumstances to ensure that needs of the animal are met to the extent required by good practice. The needs of an animal include, but are not restricted to:

- **A suitable environment** (including appropriate accommodation or shelter and a comfortable resting area);
- **A suitable diet**, which should be adequate to maintain full health and vigour through every phase of life;
- **The ability to exhibit normal behaviour**, this could be met by providing sufficient space, appropriate facilities as well as the company of the animal's own kind;
- **The need to be protected from suffering, injury and disease.** Animals should be protected from fear and distress by providing conditions which avoid mental suffering. Problems should be diagnosed quickly and appropriate treatment should be provided for sick or injured animals. Where necessary this treatment should be by a veterinary surgeon.

The Scottish Government accept that there is a strong body of opinion that many of the above needs cannot be catered for in wild animals within a travelling circus environment. We also accept that there is a substantial public view within the UK that there is a need to ban the use of wild animals in travelling circuses in order to safeguard their welfare. However, scientific knowledge by itself does not yet provide relevant, rational and reliable answers to many questions on animal welfare typically raised by the general public. This

is compounded when considering the welfare of wild animals in travelling circuses by the fact that there is little directly relevant scientific evidence of any sort.

Within the current scientific and legal context, the welfare status of these animals cannot be conclusively proven to be good or bad in comparison with animals in other situations generally considered to be acceptable. In the absence of sufficient scientific evidence of irredeemable welfare problems within a travelling circus environment, any attempt to ban the use of an animal using the delegated powers provided by the Animal Health and Welfare (Scotland) Act 2006 would fail the test of proportionality.

Objectives for intervention

The welfare of all animals is important to the Scottish Government, and indeed the people of Scotland. There has long been public concern regarding the use of wild animals in travelling circuses. Much of this concern has centred on the perceived inability of travelling circuses to be able to provide for the welfare needs of wild animals. In order to take forward the Scottish Parliament's original 2004 commitment to a ban using secondary legislation under the Animal Health and Welfare (Scotland) Act 2006 it would have been necessary to obtain robust scientific evidence that the welfare of wild animals was compromised by being part of a travelling circus. The outcome of the Radford Report effectively ruled out this approach.

However, while the Radford Report concluded that there was insufficient evidence to support banning wild animals in travelling circuses on welfare grounds, it also noted that this did not preclude there being a welfare issue, and indeed stated that the status quo was not a tenable option. Since the Radford Report, therefore, consideration has been given to alternative approaches to protecting the welfare of wild animals in travelling circuses. This has included an interim regulatory approach recently adopted by Defra in England, along with alternative mechanisms for banning such use.

Due to the lack of comprehensive scientific data on the welfare and requirements of wild animals within the travelling circus environment, and the inherent difficulty in gathering such information for the range of species potentially involved, the Scottish Government does not consider that a regulatory mechanism is an appropriate long term solution. While we anticipate that welfare improvements might result from a regulatory scheme, such as that recently introduced in England, we consider it questionable as to whether completely satisfactory welfare could be achieved with current knowledge. Perhaps more importantly from Scotland's perspective, given the very small numbers of animals involved and the fact that travelling circuses with wild animals appear to come to Scotland only rarely, such a mechanism would require a disproportionate resource to implement, monitor and enforce in Scotland.

There are clearly serious and on-going concerns surrounding the use of wild animals in travelling circuses, both within the Scottish Parliament and among large numbers of the public. Despite the absence of robust welfare evidence, it appears that there is an ethical

concern over the use of these animals in that particular environment. Therefore, measures may be required that address specifically these ethical concerns.

The Radford report suggested that Parliament might have more flexibility to enact primary legislation than a Minister would bringing forward regulations. For example, Parliament would not be confined to taking account of the scientific evidence - it could legitimately give consideration to ethical issues and public opinion, and could be able to attach greater weight to the interests of the animals involved. Such primary legislation could potentially be developed and implemented in Scotland only, or Scotland could perhaps take advantage of the work being undertaken by Defra, joining in with a wider GB/UK Bill.

The primary objective of this consultation, and any legislative developments that follow, is, therefore, the identification and resolution of any ethical concerns associated with the use of wild animals in travelling circuses in Scotland.

The Scottish Government has held off consulting with a view to clarifying whether, in principle, implementation of a ban would be legal in Scotland. The process of investigating the legality of a ban in Scotland has proved lengthy due to the complex legal situation in Scotland, which is influenced by Devolution arrangements with the UK, and by UK and EU legislation. Although we have not yet been able to completely clarify this matter, the Scottish Government now feels that it is appropriate to issue the consultation so that the results may assist consideration of the legal position; we ask for your responses within this context.

Factors for consideration

As discussed previously, the Scottish Government is aware that many moral objections relate to the perceived welfare of the animals concerned. In line with the Radford Report, we consider that the concerns raised regarding cruel training regimes should already be dealt with under existing legislation. Unnecessarily long confinement should also be dealt with in this manner. In terms of the welfare impact of the travelling environment on wild animals, although we acknowledge a large body of opinion that this is compromised, there is currently no evidence that wild animals in travelling circuses suffer any more or less than a variety of animals in other circumstances generally accepted at present.

However, there are wider ethical considerations that go beyond the question of whether an animal is suffering. Further information on the ethical framework that this consultation is based on can be found in Annex 1; however, in brief, a 'good life' for an animal is considered by many to be a full and active life characteristic of its kind. Unlike domesticated animals, captive wild animals have much the same genetic makeup as counterparts in the wild and retain their wild nature and natural instinctive behaviours. It could be argued that wild animals in travelling circuses are, given the environment in which they are placed, obstructed in the pursuit of activities natural to them. It could also be argued that this obstruction is wrong, regardless of whether or not the animal suffers, as it compromises the integrity of that animal's nature and therefore its well-being.

There is increasing recognition that wild animals have intrinsic value and that we should respect their inherent wildness and consider the implications of this for their treatment. The use of wild animals in travelling circuses reflects a traditional, but perhaps outdated, view of wild animals. Once one of the few ways to see and learn about wild animals, they have for some time been superseded by modern and well managed zoos and world class wildlife documentaries, which arguably convey greater respect for the intrinsic value of the animal and species, and for the natural environment in which their wild counterparts live. With this in mind, from an ethical perspective, it is perhaps becoming increasingly difficult to justify keeping wild animals in travelling circuses and requiring them to perform unnatural tricks.

For the purposes of this consultation, the main ethical points being reflected on during consideration of whether or not to ban wild animals in travelling circuses are, therefore:

- **Respect for Animals** - Many people consider it outdated and morally wrong to make animals to perform tricks and acts, which they would not otherwise perform naturally, in order to entertain or impress a paying public.
- **Travelling environment** - There are specific concerns that the well-being of wild animals, in travelling circuses, in terms of their wild nature and instinctive behaviours, is compromised by the necessity of being transported. Many consider that touring accommodation compares unfavourably with that in which a similar animal might be housed in a zoo. Concerns also surround frequent travel.
- **Ethical costs and benefits** - While certain potential welfare issues should already be dealt with under existing legislation, there remains the question of whether the wider potential for the wild animals' well-being to be compromised outweighs any benefit to humans that might be gained from continuing to use wild animals in travelling circuses.

This consultation aims to collect evidence on the views of interested parties on these and any other ethical considerations put forward in order to inform further consideration of whether a ban should be put in place in Scotland.

Definitions and scope of the potential ban

Definitions

For the purposes of this consultation and any future legislation, "animal" is taken from the Animal Health and Welfare (Scotland) Act 2006 and is defined as a vertebrate, other than man.

A wild animal is defined under the same Act as a non-domesticated animal of a kind that is not commonly domesticated in Great Britain. This would include animals whose collective behaviour, life cycle or physiology remains unaltered from the wild type despite their breeding and living conditions being under human control for multiple generations.

Potential scope of a ban

The Scottish Government is currently considering banning:

- The use (not ownership) of wild animals by travelling circuses.
- “Use” of a wild animal in a travelling circus includes a performance by the animal and any exhibition of it as part of the circus.

Performance would include, for example, a parade of animals in the ring while exhibition would extend to the display of, for example, a lion in a cage. As there are no circuses using wild animals presently based in Scotland, this would effectively mean that no circus that uses wild animals would be allowed to tour Scotland.

Such a ban could potentially be applied to all wild animals, as defined in the previous section. However, in the event that this is not considered proportionate, it will be important to identify those species that cause greatest concern.

Situations falling outside the scope of this consultation

It is important to note the difference between wild animals performing in a travelling circus and other performing and/or wild animals. This consultation seeks views on the use of wild animals in a performance or for exhibition by a travelling circus. It is **not** seeking views on:

- The use of domesticated animals for performance or exhibition in travelling circuses.
- The use of wild animals for performance or exhibition in static circuses with permanent quarters.
- The use of wild animals that may be transported for use in the audio-visual industry.
- The keeping of wild animals by private collectors or static circuses.
- The use of wild animals used in zoo performances
- The use of birds of prey in travelling demonstrations.

Bans elsewhere

Austria, Costa Rica, Israel, Singapore ; the Czech Republic, Denmark, Finland, India, Sweden, Belgium, Estonia and Poland all have bans or restrictions of some description relating to the use of wild animals in travelling circuses. The exact nature of the bans varies with country, and it appears that many are not as comprehensive as that currently being considered in Scotland, and indeed across the UK more widely.

Previous consultation

There has been no previous official consultation in Scotland specifically regarding wild animals in travelling circuses. However, concerns were highlighted during the consultation on the Animal Health and Welfare Bill in 2004 and there has been on-going discussion with key stakeholders regarding the issue since that time.

Part III – Detailed considerations

Respect for Animals

The British circus industry has a rich heritage dating back over two centuries. For many years wild animals were an integral part of the circus experience - travelling circuses were once one of the few ways to see and learn about wild animals, and it was considered acceptable to require them to perform tricks to entertain the public that was effectively paying for their collection and maintenance.

Over the years there has been a general shift in how wild animals are perceived by the general public, from novel items of entertainment to sentient creatures that should be respected and valued. This is at least partly due to a greater awareness of the beauty, variety and complexity of wild animals and their place in the wider ecosystem through the work of world class nature programmes, a wide-reaching education system and education programmes at well managed zoos. These methods of learning about wild animals tend to convey greater respect for the intrinsic value of wild animals and species, and for the natural environment that they come from.

There is increasing recognition that wild animals have intrinsic value and that we should respect their inherent wild nature and consider the implications of this for their treatment. In light of this general shift in attitude, many people now consider it outdated, morally wrong and potentially harmful to make wild animals perform circus tricks and acts that they would not otherwise perform naturally simply to entertain or impress a paying public. They believe that wild animals should be treated with respect and should not be used simply to provide public entertainment.

There are also related concerns regarding the potential impact of wild animals in travelling circuses on developing attitudes towards animals in children and young people. Exposure to an environment in which wild animals are made to perform unnatural tricks purely for entertainment value could promote a perception of animals as an entertainment commodity rather than as sentient beings with their own needs. This could inhibit the development of respectful and responsible attitudes towards animals in the future.

The main factor that we need to consider from an ethical perspective is whether a modern Scottish society considers that the exhibitions and performances required of wild animals in travelling circuses compromise respect for animals and are therefore objectionable. Factors to consider might be whether the required acts are physically difficult due to the animal's physiology, how the acts portray the animals in question (positively or negatively), and whether performing the act benefits the animal/species in any way, either directly or through educational or public relations impact.

Consultation Question 1 Do you believe that the exhibitions and performances required of wild animals in travelling circuses compromise respect for the animals concerned? Why?

Consultation question 2 Do you believe that the exhibitions and performances required of wild animals in travelling circuses have an adverse impact on the development of respectful and responsible attitudes towards animals in children and young people? Why?

Consultation Question 3 Do you consider that concerns relating to respect for animals could be resolved without banning the use of wild animals in travelling circuses. If so, how?

Travelling environment

It is now recognised that all species of animals have, over generations, developed behaviours adapted to the environment in which those species have evolved, for example relating to social groupings, migration, hunting, and parasite control. It is known that there is often a strong and instinctive urge to perform at least some of those behaviours even when an animal is not in its native environment, sometimes even after multiple generations of being bred in captivity. Unlike domesticated animals, captive wild animals have much the same genetic makeup as counterparts in the wild and retain their wild nature and natural instinctive behaviours.

A 'good life' for an animal is considered by many to be a full and active life characteristic of its kind. It could be argued that wild animals in travelling circuses are, given the environment in which they are placed, obstructed in the pursuit of those activities natural to them, and that this obstruction is wrong, regardless of whether or not the animal suffers, as it compromises the integrity of that animal's nature and therefore its well-being.

For example, many consider that the type of accommodation that is used when animals are touring compares unfavourably with the accommodation that a similar animal in a zoo might enjoy in terms of size and complexity. For example indoor facilities may simply be the waggon in which they are transported, outdoor paddocks may be limited in size by the site available to the circus and security concerns, environmental enrichment may be limited by time constraints and space factors. In addition, by their nature, travelling circuses and their wild animals spend much of their time travelling from one site to another, which further significantly curtails the ability of wild animals to undertake their natural and instinctive activities.

While regulation could improve conditions to some extent, the practical challenges faced when keeping wild animals in temporary accommodation and frequently transporting them could arguably mean that many behaviours natural to wild animals can never be catered for, and the time available to indulge in those activities that can be provided for will always be significantly curtailed. Some might argue that the time spent training and performing provides mental and physical stimulation for the animals concerned and therefore makes up for the limitations in natural behaviours. However, even if this was viewed positively in

terms of animal welfare, it would not resolve the fact that this environment is apparently compromising the integrity of the nature and therefore the broader well-being of those animals involved. Indeed the requirement for training and performance could be viewed as further curtailing the time available to wild animals to undertake their natural activities.

The main factor that we need to consider from an ethical perspective is whether a modern Scottish society considers that the ability of wild animals to undertake natural behaviours is curtailed within the travelling circus environment and that the integrity of the nature and therefore the well-being of these animals is therefore inherently compromised in this environment.

Consultation Question 4 Do you believe that the ability of none, some, or all wild animals to undertake natural behaviours are compromised within the travelling circus environment? Which species? Which needs? Why?

Consultation Question 5 Do you consider that it is possible to facilitate the natural behaviour of none, some or all wild animals within the travelling circus environment? Which species? How?

Consultation 6 Do you consider that the concerns raised surrounding the travelling environment could be resolved without banning the use of wild animals in travelling circuses? How?

Ethical costs and benefits

The infliction of unnecessary suffering on animals is both illegal under the Animal Health and Welfare (Scotland) Act 2006 and unacceptable. As outlined previously, cruelty concerns relating to the use of wild animals in travelling circuses have arisen from allegations relating to physical abuse and long periods of close confinement. There have been some well documented, and in some cases successfully prosecuted, instances of cruelty in travelling circuses based in England; however the same could unfortunately be said for a minority of animals being kept in a variety of situations currently accepted by society, for example livestock and pets.

The main factor that we need to consider from an ethical perspective is whether a modern Scottish society considers that the keeping and use of wild animals in circuses compromises the wider well-being of such animals, as discussed in the previous section, for no significant benefit and is therefore objectionable.

For example, many consider that there is little or no educational, conservational, research or economic benefit to be derived from wild animals in travelling circuses that might justify their use and the loss of their ability to behave naturally as a wild animal. Even the entertainment benefit is considered by some to be tenuous since the public could still attend numerous successful circuses that do not use wild animals and continue to enjoy the experience and the varied and exciting acts.

Factors to consider could include the extent to which the ability of such animals to undertake activities natural to them is compromised (for example due to the cumulative impact of the requirement for training and performances, temporary accommodation and travelling on their ability to perform certain behaviours) and whether there are any significant benefits to be gained from accepting any compromise (for example benefits to the animal/species, either directly or through educational or public relations impacts, benefits to the viewing public other than being entertained).

Consultation Question 7 Do you consider that there are any benefits to be gained from having wild animals in travelling circuses? What are they?

Consultation Question 8 Do you believe that there are sufficient benefits to justify the potential compromise to the wider well-being of wild animals kept in a travelling circus ? Why?

Consultation Question 9 Do you consider that the potential conflict between compromising the well-being of wild animals and obtaining any benefit could be resolved without banning the use of wild animals in travelling circuses. If so, how?

Financial impacts of a ban

It has been suggested that overall attendances at particular travelling circuses using wild animals would fall if a ban were imposed in Scotland. For example, if imposing a ban on using wild animals has a material impact on the enjoyment of people who go along to see travelling circuses, there may be a drop in the number of people would still visit such circuses without wild animals. It is also possible that such circuses would no longer include visits to Scotland in their itinerary, or they may need to make alternative accommodation arrangements for the wild animals if they were not permitted to bring them into Scotland. This might all result in a financial loss to the circuses. There might also be a loss of revenue to venue owners in Scotland who currently rent out their venue to travelling circuses with wild animals, though given the apparent rarity of such visits to Scotland, it is thought that any such loss will be small..

Conversely, it is also possible that a ban might encourage those that enjoy visiting circuses to go to see static circuses with wild animals or to see travelling circuses without wild animal acts instead, i.e. the revenue could simply be displaced to other circuses. Indeed, revenue could even be retained or increased at circuses that stop using wild animals due to people that may have boycotted them in the past due to their use of wild animals now choosing to attend. Putting an end to the use of wild animals could improve their public standing and may increase their future viability.

In line with changing public perceptions, the number of travelling circuses using wild animals has greatly declined in recent years, and, to our knowledge, there have been no travelling circuses with wild animals visiting Scotland in recent years. According to one welfare group, in 1997 there were 124 'exotic' or wild animals in the UK in some 20 circuses, compared with only 21 wild animals in two circuses today. Conversely, animal

welfare groups also suggest that visitor numbers have increased for circuses that have voluntarily given up using wild animals in the past. The majority of England's travelling circuses, which number approximately 20, already operate without the use of wild animals.

Consultation Question 10 As far as you are aware, how often have travelling circuses that use wild animals in performances or for exhibition visited Scotland in the last 5 years and in the last 12 months?

Consultation question 11 What effect do you think a ban on the use and exhibition of wild animals would have on the revenue of such circuses? Why?

Consultation Question 12 If a ban on the use and exhibition of wild animals was imposed, do you think that such circuses would still visit Scotland without the wild animals? Why?

Consultation question 13 What effect do you think a ban on the use and exhibition of wild animals in travelling circuses would have on the revenue of other types of circus (e.g. static or those travelling without wild animals)? Why?

Consultation question 14 What effect do you think a ban on the use and exhibition of wild animals in travelling circuses would have on the revenue of circus venues? Why?

Wider film and television industry

It has been suggested that if wild animals were banned from travelling circuses, this would have a negative impact on the wider film and television industry since circus animals are trained and handled in such a way that they are able to do unique close work, involving closer contact with actors and doubles. However, since wild animals are used in a minority of productions and the number of animals in British-based circuses is so small, it is probable that suitable animals are already being sourced from elsewhere. In addition, it could be argued that the increasing use of computer generated graphics in the film industry means that the requirement to use closely trained animals is reducing.

Consultation Question 15 Do you consider that a ban on wild animals in travelling circuses could have an impact on other industries? If so, which industries, what would be the effect and why?

Should Scotland ban the use of wild animals in travelling circuses?

Now that you have considered all of the information and issues raised in this consultation, we would be grateful for your overall views on whether a ban should be introduced in Scotland, and on what form this should take.

Consultation Question 16 Do you agree that the use of wild animals for performance in travelling circuses should be banned in Scotland? Why?

Consultation Question 17 Do you agree that the use of wild animals for exhibition in travelling circuses should be banned in Scotland? Why?

Consultation Question 18 Do you consider that any ban should be a blanket ban on all wild animals in travelling circuses? Why?

Consultation Question 19 Do you consider that any specific species of animal not commonly domesticated in the British Islands should be permitted to be used in travelling circuses in Scotland? If so, which species and why?

Consultation Question 20 Do you consider that there are key species that should be covered by a ban in the event that a blanket ban could not be achieved? If so, which species and why?

Part IV – Any other Comments

The question of whether or not to ban the use of wild animals in travelling circuses is an emotive issue. While we have done our best to explain the issues facing us clearly, there may be aspects that you feel we have not explained well or have not covered at all. The last questions in this consultation paper are to provide you with the opportunity to raise such points, and to provide us with feedback on the consultation itself.

Consultation Question 21. Do you have any other comments on whether/how the use of wild animals in travelling circuses should be banned in Scotland?

Consultation Question 22. Do you consider that the consultation paper explained the key issues sufficiently for you to properly consider your responses?

Consultation Question 23. Do you consider that you had sufficient time to respond to the consultation?

Consultation Question 24. Do you have any other comments on the way this consultation has been conducted?

Potential Ethical Grounds for a Ban

Animal telos

Although many people will never have heard this phrase, the idea of an animal having a telos was first proposed by Aristotle. He proposed that every organism has a final cause or purpose (telos) that explains why an organism has become, and must have become, as it is. He considered that every part of an animal must be explained with regard to its telos, i.e. its nature. Essentially this suggests that the whole purpose of an animal's physical structure and psychology is to enable it to perform those actions natural to it. Since the whole organisation of the animal is directed to achieving those purposes or ends natural to it, those ends must be regarded as 'good' from the perspective of the animal. A good life for an animal is therefore seen as a full and active life characteristic of its kind.

Aristotle considered that an organism needs each particular trait natural to it to be complete and all natural traits and their ultimate purpose are all interdependent. This ultimately suggests that if an animal is prevented from expressing any one of those traits it is robbed of its identity and its existence has lost its purpose. Whether the animal suffers due to the obstruction is considered irrelevant since the prevention of those 'good' ends is still considered to be wrong in itself, even if an organism is not itself aware of it.

This school of thought suggests that it is irrelevant whether a tiger confined in a small wagon for hours at a time suffers (though many assume that they do) – it is wrong because it significantly compromises the tiger's telos by preventing it from expressing natural tiger traits, for example behaviours such as hunting, or seeking out a mate. Indeed, it could be considered even more wrong if the tiger seemed content with its lot, as the animal would be considered to have lost some intrinsic 'tigerishness'.

Consequential Utilitarianism

Utilitarianism is a theory of ethics originally proposed by David Hume and later given a definitive formulation in the 18th century by Jeremy Bentham and others such as Stuart Mill. It requires the quantitative maximisation of good for a population. The 'good' to be maximised is generally happiness, pleasure or preference satisfaction - consequences generally considered to have an impact on the welfare of people or animals.

Consequentialism, or results based ethics, developed from utilitarianism and was originally proposed by Jeremy Bentham in 1789. Since then it has become an area of increasingly complex debate with many sometimes conflicting schools of thought. However, it is essentially based on two principles: whether an act is right or wrong depends on the results of the act, and the more good consequences an act produces the more right the act.

Many would argue that the whole point of morality is to take the good of others into account. Animal rights organisations would argue that the well-being of all animal species deserves equal consideration with that given to human beings. While many others would not entirely agree with this view, it is generally accepted that animals should not be required to suffer without good reason.

When applied to animal welfare, consequential utilitarianism requires us to make a cost-benefit analysis comparing the consequences for the animal with the benefits for humans. This school of thought suggests that the less benefit there is to be gained from using wild animals in travelling circuses, the fewer/smaller are the negative consequences to the animal that are ethically acceptable.

How these relate to a ban on wild animals in travelling circuses

If we take the concept of an animal's telos into account, we must accept that a consequence does not necessarily have to include suffering to be considered negative. If we use the concept of consequential utilitarianism, this suggests that if there is no benefit to humans we should impose no negative consequences on wild animals. This would in turn suggest that banning the use of wild animals in travelling circuses is the most ethical choice to make if we believe that the telos of wild animals will inherently be compromised in a travelling circus environment.

It is unlikely that a clear cut ethical position will be reached as a result of this consultation, not least because similar arguments could be applied to animal use in a variety of situations currently accepted by society at large. However, these concepts provide an ethical framework to on which to base consideration of a ban.



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**To Interested Parties
(List attached)**

Dear Sir or Madam

Consultation on “Should the use of wild animals in travelling circuses be banned in Scotland?”

You are invited to respond to the enclosed consultation document on should the use of wild animals in travelling circuses be banned in Scotland by the **16 April 2014**.

Full details regarding the purpose and scope of the consultation, and how to respond to it are contained in **pages 4 to 8** of the consultation paper. To improve ease of analysis of the consultation responses we would be grateful if, where possible, you could respond by way of the **online survey facility hosted by Questback**. A link to the consultation survey on Questback can be found on the Scottish Government website at:

<http://www.scotland.gov.uk/Topics/farmingrural/Agriculture/animal-welfare/AnimalWelfare/Circuses>

This online facility does not reliably allow you to save a part-completed consultation and return to it later so we recommend that you fully consider the Consultation Document and all the questions first before sitting down to complete the online survey. Other methods for responding are explained in the consultation paper.

Your consultation response is important to us so please note that the consultation will close on **16 April 2014**. Any responses received after this date are unlikely to be included in the consultation analysis.

As always with consultations, we need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. The Respondent Information Form should be completed by everyone providing a response to the consultation document. Further information concerning the Respondent Information Form and how your response will be handled can be found on **pages 4 to 8** of the consultation paper.

If you have any queries about this consultation please contact me using the contact details at the top of this letter.

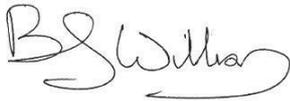
Enclosed with this letter are:

- The Main Consultation Document
- A Consultation Questionnaire (but please complete the online Questback form if at all possible)
- The Respondent Information Form (to be completed when sending a response)

Please feel free to pass on copies of these consultation documents to anyone else that you think might have an interest in them.

We look forward to your response.

Yours faithfully



Dr Beverley Williams
Head of Animal Welfare Branch

Action of Churches Together in Scotland
Angus College
Animal Aid
Animal Concern Advice Line
Animal Defenders International
Argyll Adventure
Armac Veterinary Group
Ashgrove Veterinary Centre Ltd
Associate Parliamentary Group for Animal Welfare
Association of Circus Proprietors of Great Britain
Association of Government Veterinarians (Scotland)
Association of Government Veterinarians (Wales)
Association of Scottish Police Superintendents (The)
Barony College
Blair Drummond Safari Park and Adventure Park
Bodleian Libraries of the University of Oxford
Born Free Foundation
British and Irish Association of Zoos and Aquariums
British Horse Society Scotland (Crieff)
British Library's Legal Deposit Office
British Small Animal Veterinary Association
British Veterinary Association
British Veterinary Association (Scottish Branch)
Bute & Cowal Vets
Cambridge University Library
Catholic Parliamentary Office
Chartered Institute of Environmental Health
Church of Scotland (The)
Circus Friends Association of Great Britain
Circus Mondao
Collier & Brock
Convention of Scottish Local Authorities
Corby, J (Ms)
Covesea Greens Stud
Creature Feature Ltd
Department for Environment, Food and Rural Affairs
Department of Agriculture and Rural Development
Dukes Veterinary Practice Ltd
Dundas Veterinary Group
Elmwood College
Ethical Voice for Animals
European Circus Association
Federation of Companion Animal Societies
Fergusson, Alex, MSP
Flanders Veterinary Services
Forside Farms
German Shepherd Dog Club of Scotland (The)
Great British Circus
Haflinger Trekking Centre
Heds of Ayr Farm Park
Health & Safety Executive
Highland Wildlife Park

Hudghton, Ian MEP
Humanist Society Scotland
Institute of Biodiversity, Animal Health and Comparative Medicine
Inverclyde Dog Training Club
Johnston & Farrell
Kennel Club (The)
Lamond Veterinary Clinic
Library of Trinity College, Dublin (The)
Lyon, George MEP
MacDonald, Margo MSP
Marine Conservation International
Martin, David MEP
Mossburn Community Farm
Mr Bug Ltd
Muslim Council of Scotland
Nardini Rudder Veterinary Centre
National Animal Welfare Trust
National Library of Scotland (The)
National Library of Wales (The)
National Secular Society
North of Scotland British Veterinary Association Welfare Representative
OneKind
Orkney Seal Rescue
Palacerigg Country Park
Peter Jolly's Circus
Police Scotland
Production Guild (The)
Road Haulage Association
Royal (Dick) School of Veterinary Studies
Royal College of Veterinary Surgeons
Royal Environmental Health Institute of Scotland (The)
Royal Society for the Prevention of Cruelty to Animals (The)
Royal Veterinary College (The)
Ryan & Calder
Scientialis Ltd
Scotland for Animals
Scottish Association for Country Sports
Scottish Centre For Animal Welfare Sciences
Scottish Churches Parliamentary Office
Scottish Conservatives & Unionist Party
Scottish Council of Jewish Communities
Scottish Enterprise
Scottish Equestrian Association
Scottish Federation of Meat Traders
Scottish Government (Better Regulation Team)
Scottish Government (Communications Greener)
Scottish Government (Information Management Unit)
Scottish Government (Rural Directorate Veterinary Division)
Scottish Green Party
Scottish Hawk Board
Scottish Islamic Foundation
Scottish Kennel Club (Helensburgh)
Scottish Labour Party

Scottish Liberal Democrats
Scottish National Party
Scottish Parliament European & External Relations Committee
Scottish Parliament Information Centre
Scottish Parliament Rural Affairs and Environment Committee
Scottish Police Federation
Scottish Progressive German Shepherd Dog Group (The)
Scottish Society for the Prevention of Cruelty to Animals
Scottish SPCA Edinburgh & Lothian Animal Rescue & Rehoming Centre
Scottish Voice for Animals
Scottish Youth Parliament
Smith, Alyn MEP
Society of Chief Officers of Trading Standards in Scotland
Stevenson, Struan MEP
Stewartry Veterinary Centre (The)
Stihler, Catherine MEP
Strathblane Falconry
Strathclyde Emergencies Co-ordination Group
Universities Federation for Animal Welfare
University of Aberdeen (School of Law)
University of Bristol (Animal Welfare)
University of Cambridge (Department of Veterinary Medicine)
University of Stirling (Department of Psychology)
Veterinary Centre (The), Uddingston
Vetnetwork UK
Viva!
West Port Veterinary Clinic Ltd
Wild Futures (Primate Welfare Team)
Windygates Stables
World Parrot Trust
World Society for the Protection of Animals
Zoo-lutions Ltd

Also Consulted

Animal Health Veterinary Laboratories Agencies
Private Individuals

Should the use of wild animals in travelling circuses be banned in Scotland?

Consultation Document

Contents

PART I – ABOUT THIS CONSULTATION	4
Topic of this consultation	4
Scope of this consultation	4
Geographical extent	4
Business and regulatory impact assessment	4
Audience	4
Body Responsible for the consultation	4
Duration	5
How to make an enquiry	5
The Scottish Government Consultation Process	5
Responding to this consultation paper	6
Handling your response	7
Next steps in the process	7
Comments and complaints	8
PART II – BACKGROUND INFORMATION	9
Circuses in Scotland	9
Existing legislation	9
The Animal Health and Welfare (Scotland) Act 2006	9
The Performing Animals (Regulation) Act 1925	10
Commission Regulation (EC) No. 1739/2005 laying down animal health requirements for the movement of circus animals between Member States	10
The concerns raised	10
The principle	10
Training and confinement	11
Travelling and accommodation	12
The Radford Report	12
Objectives	12
Findings	12
Limitations of the report	13
Why animal welfare does not provide strong grounds for a ban	14
Objectives for intervention	15
Factors for consideration	16
Definitions and scope of the potential ban	17
Definitions	17
Potential scope of a ban	18
Situations falling outside the scope of this consultation	18
Bans elsewhere	18
Previous consultation	18
PART III – DETAILED CONSIDERATIONS	19

Respect for Animals	19
Travelling environment	20
Ethical costs and benefits	21
Financial impacts of a ban	22
Wider film and television industry	23
Should Scotland ban the use of wild animals in travelling circuses?	23
PART IV – ANY OTHER COMMENTS	25
POTENTIAL ETHICAL GROUNDS FOR A BAN	26
Animal telos	26
Consequential Utilitarianism	26
How these relate to a ban on wild animals in travelling circuses	27

Part I – About this consultation

Topic of this consultation

This consultation is seeking views on whether the Scottish Government should ban the use of some or all wild animals (non-domesticated animals of a kind not commonly domesticated in Great Britain) in travelling circuses.

Scope of this consultation

This consultation is not seeking views or evidence on whether all animals in circuses should be banned, nor does this consultation seek views or evidence on whether the use of wild animals in the performance industry should be banned. It draws a clear line between the use of wild animals in travelling circuses and the use of wild animals in the wider entertainment industry; as well as between the use of wild animals and the use of other animals in travelling circuses.

Geographical extent

Animal welfare is a devolved matter and this consultation applies to the use of wild animals in travelling circuses in Scotland only. Separate consultations either have been or may be conducted in other parts of GB/UK on this matter and the appropriate administration should be approached for further information.

Business and regulatory impact assessment

There are no circus businesses based in Scotland that are likely to be affected by any proposed ban. However, some potential impacts on circuses and the wider entertainment industry are considered in this consultation. If you have any further issues that you would like to raise at this point you may do so at Consultation question 21: 'Do you have any other comments on whether the use of wild animals in travelling circuses should be banned in Scotland?'

Audience

Anyone may reply to this consultation. The Scottish Government would particularly like to hear from: circus proprietors, circus industry bodies, audio-visual industry bodies, the wider advertising and entertainment industry, animal welfare groups, local authorities, veterinarians, and members of the general public.

Body Responsible for the consultation

The Scottish Government's Animal Welfare Team is responsible for the policy and this consultation.

Duration

This consultation started on 22nd January 2014.

This consultation closes on 16th April 2014.

This constitutes a full consultation period of 12 weeks.

How to make an enquiry

If you have any queries about this consultation contact Jackie Quigley (0300 244 9151).

The Scottish Government Consultation Process

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at: Scottish Government consultations (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Responding to this consultation paper

We are inviting responses to this consultation paper by 16th April 2014

To improve ease of analysis of the consultation responses we would be grateful if, where possible, you could use the online survey facility hosted by Questback, which can be accessed via www.scotland.gov.uk/wildanimalsincircuses. Please note that this facility does *not* reliably allow you to save a part-completed consultation and return to it later. We therefore recommend that you fully consider this Consultation Document and all the questions before sitting down to complete the on line survey.

Alternatively, you may use the Consultation Questionnaire Word document supplied to provide your response electronically by sending it, **along with your completed Respondent Information Form** (see "Handling your Response" below) to:

AnimalWelfareConsultations@scotland.gsi.gov.uk

Handwritten responses will be accepted, although the previous methods are preferable. Again, you should use the Consultation Questionnaire provided as this will aid our

analysis of the responses received. Please send your response, **along with your completed Respondent Information Form**, to:

Circus consultation
Animal Welfare Team
P Spur
Saughton House
Broomhouse Drive
EH11 3XD

Please note that due to time constraints, responses not using either the online Questback survey or the Consultation Questionnaire Word document provided may not be considered in the analysis of this consultation.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. If using the Consultation Questionnaire Word document, please complete and return the **Respondent Information Form** enclosed with this consultation paper as this will ensure that we treat your response appropriately. Similar questions will be asked as part of the Questback survey. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise. If appropriate, please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under Freedom of Information legislation. However, because of the law, we cannot promise that we will always be able to keep those details confidential.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public (see the attached Respondent Information Form). These will be made available to the public in the Scottish Government Library and on the Scottish Government consultation web pages by later in 2014. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on whether the use of wild animals

in travelling circuses should be banned in Scotland. We aim to issue a report on this consultation process and, if appropriate, to lay legislation before the Scottish Parliament during 2014.

Comments and complaints

An opportunity to provide comments on your experience of the consultation is provided as part of the consultation survey/questionnaire. Alternatively you may also send any comments that you may have about how this consultation exercise has been conducted to the contact details in the 'Responding to this consultation' section.

Part II – Background information

Circuses in Scotland

There are no travelling circuses that use wild animals based in Scotland, but until recently there were four British travelling circuses using wild animals: the Great British Circus, Bobby Robert's Super Circus, Peter Jolly's Circus and Circus Mondao. Due to the lack of any specific legislation requiring that any meaningful figures be maintained, the precise number of wild animals used by these circuses has been difficult to obtain. However, the figure was usually estimated to be under 50. Since legislation regulating the use of wild animals in travelling circuses came into force in England in January 2013, there have only been two licenses issued to use wild animals to date. Information on the circuses and animals involved was released by Defra in January 2013 and is shown in the table below.

Wild animals listed by UK circuses applying for a license for the 2013 season <i>(Hansard 14 January 2013: Column 880W):</i>	
Circus Mondao <ul style="list-style-type: none">• 2 camels• 2 reindeer• 2 zebras	Peter Jolly's Circus <ul style="list-style-type: none">• 1 camel• 1 fox• 1 ankole• 1 racoon• 4 reindeer• 6 snakes• 1 zebra

It is more common for wild animals to perform in mainland European circuses. Such circus acts are reported to have included: bears; large cats (lions, tigers, ligers (a lion/tiger cross), leopards, pumas and lynx); sea lions; kangaroos; monkeys and apes; elephants; wild birds; snakes; large reptiles (alligator, crocodile, caiman); giraffes and hippopotamus.

It is presently possible for circuses based in England or mainland Europe to visit Scotland with their performing wild animals. Some local authorities in Scotland prohibit circuses that use wild animals from performing on local authority land. We are not aware that either of the two licenced circuses in England plan to visit Scotland. We are also unaware of any circuses based on mainland Europe that plan to visit Scotland.

Existing legislation

At present there are no specific animal welfare regulations for wild animals in travelling circuses in Scotland; however, they do fall under the scope of other wider legislation.

The Animal Health and Welfare (Scotland) Act 2006

This Act makes it an offence for any person responsible for an animal, including owners and keepers, to fail to provide for the animal's welfare. Under section 24 of the Act, a

person responsible for an animal has a duty to provide for the animal's needs, which includes: its need for a suitable environment; its need for a suitable diet; its need to be able to exhibit normal behaviour patterns; its need to be housed with, or apart from, other animals as appropriate; and its need to be protected from suffering, injury and disease. Section 19 of the Act makes it an offence to cause an animal unnecessary suffering. The Act applies to all vertebrate animals.

The Performing Animals (Regulation) Act 1925

This Act makes it an offence for a person to exhibit or train a "performing animal" (which does not include an invertebrate) without being registered with a relevant local authority. It also allows a sheriff, acting on the application of a constable or a local authority, to grant an order prohibiting training or exhibition of an animal or imposing conditions on it. Such an order may be made where the sheriff is satisfied that the training or exhibition "has been accompanied by cruelty". Breach of such an order is also an offence.

Commission Regulation (EC) No. 1739/2005 laying down animal health requirements for the movement of circus animals between Member States

This Regulation lays out animal health requirements for circuses or other animal acts that move between Member States. The Regulation requires that every animal act that wishes to move between Member States must be registered with the competent authority of the country in which it is based, that all performing animals must be registered as belonging to that act or circus, that all registered animals must be issued with a passport and that shortly before moving from one Member State to another, a veterinary inspector must confirm that all registration documents are in order and that all animals are in good health.

The concerns raised

For many years concerns have been raised over the use of wild animals in travelling circuses by MSPs, the general public and animal welfare organisations (including the Scottish SPCA, Advocates for Animals (now OneKind), the Born Free Foundation, the Captive Animal Protection Society and Animal Defenders International).

The principle

It is clear from the steady stream of letters to Scottish Government Ministers that MSPs and the public have serious and on-going concerns about many aspects of the use of animals in travelling circuses, but especially the use of wild animals. These concerns not only involve perceived animal welfare issues, but also deal with the ethical point of whether it is acceptable, in today's society, to transport wild animals throughout the country and make them perform simply for public entertainment. Specific calls for a ban include:

- In 2004 significant concerns regarding the welfare of wild animals in travelling circuses were raised in response to the Scottish Government's consultation on the Animal Health and Welfare Bill to replace the Protection of Animals (Scotland) Act 1912. These views led to the possibility of a ban on the use of circus wild animals

being discussed in committee and in the Main Chamber itself. A commitment was given “to ban the use in travelling circuses of certain non-domesticated species whose welfare needs cannot be met satisfactorily in that environment”.

- In 2009 Defra issued a consultation specifically on the use of wild animals in travelling circuses. Over 95% of respondents felt that it was not acceptable to use any species of wild animal in travelling circuses. Although this consultation was limited to England, the responses mirrored the previous comments that the Scottish Government received.
- In June 2011 the Scottish Parliament debated a motion lodged by Elaine Murray MSP on banning wild animals in circuses. The Minister for Environment and Climate Change concluded the debate by stating that the Scottish Government would continue to examine the issue, taking into account relevant developments in England.
- In September 2011 OneKind presented the Public Petitions Committee of the Scottish Parliament with a petition to ban wild animals in travelling circuses. This petition is on-going, and the Scottish Government has provided a number of responses to specific queries.

Training and confinement

It is generally accepted that animals require a certain amount of physical freedom in order to be able to achieve their physiological and behavioural requirements, for example a comfortable position, exercise, social interaction and mental stimulation. It is also generally accepted that the most appropriate training regimes use positive reinforcement (reward) to promote the performance of any particular desired behaviour. This could include giving treats, verbal praise or a friendly pat immediately after the desired behaviour is displayed. Such regimes generally prove effective in the long term and avoid any potential distress to the animal.

Comments made to both the Scottish Government consultation in 2004 and the Defra consultation in 2009 have indicated that animal welfare organisations and members of the public have serious concerns about the time that wild animals are confined in their transportation vehicles. Furthermore, species by nature vary in their responsiveness to positive reinforcement as a training method and concerns were also raised that negative reinforcement involving aversive methods (including physical punishment) may be used to persuade wild animals to behave as required within the travelling circus environment. Some anecdotal accounts of cruelty and animal abuse were provided.

Some specific allegations of unnecessary suffering due to long periods of confinement or physical abuse have been made relating to wild animals in circuses based in England, some of which have resulted in prosecution. For example:

- Video evidence of cruel training methods was used in the successful prosecution of an animal cruelty case against individuals from the Chipperfield family in 1997-1999.
- The owner of Bobby Roberts Super Circus was successfully prosecuted in November 2012 following allegations that a 59 year old elephant, Anne, was repeatedly kicked and permanently shackled on two of her legs causing distress.

Travelling and accommodation

Comments made to both the Scottish Government consultation in 2004 and the Defra consultation in 2009 indicated that animal welfare organisations and members of the public have serious concerns about the restricted environment provided by animal enclosures on a temporary site. The travelling circus environment is quite different to that of zoos, for example, and it was considered difficult to ensure that the needs of the animals can be adequately met.

These views are further expanded in a report by the Born Free Foundation and the RSPCA in 2006, "It's time Parliament changed its Act – An examination of the state of UK circuses with wild animals". This report identified significant differences between animals kept in zoos and animals kept in circuses, noting that the mobility of housing is a limiting factor as it relates to the size and complexity of living conditions available for animals. Wild animals in circuses are subjected to a number of factors that similar animals in zoos, for example, are not, such as regular and repeated transport, limited size and complexity of housing and the rigors of training and performances

The Radford Report

Objectives

In June 2006 the Circus Working Group was established by Defra and tasked with:

- Examining the evidence on the welfare of wild animals in travelling circuses.
- Considering whether or not, based in that evidence, the use of wild animals in travelling circuses should be banned.

The group were asked to focus on the transportation and housing needs of wild animals, as they were considered to be the factors that differentiated wild animals in circuses from wild animals kept in other situations.

The Group assessed evidence on the basis that to ban wild animals from travelling circuses, there must be sufficient scientific justification that the welfare of wild animals was compromised by being part of a travelling circus.

Findings

Having considered the evidence provided by both animal welfare organisations and the circus industry, in October 2007, the Radford report concluded that:

- There was little evidence to demonstrate that the welfare of animals kept in travelling circuses is any better or worse than that of animals kept in other captive environments.
- There was not enough scientific evidence to ban the use of wild animals in travelling circuses under the Animal Health and Welfare (Scotland) Act 2006.

However, Mr Radford did specifically comment that the status quo was not a tenable option as:

- Expectations have been raised that the Government will do something.
- The circus industry is exceptional in that the use of wild animals in most other commercial contexts is generally subject to specific regulation.
- The present state of uncertainty confronting circuses requires resolution.
- It is considered that the present situation is acting against the interests of the animals involved.
- There is support from all sides of the debate for reform.

Limitations of the report

The remit given to the Circus Working Group omitted issues relating to the training and performance of wild animals; hence the Report dealt only with two of the four factors that impact on the welfare of wild animals used in circuses, namely transportation and housing. Mr Radford stated that “One can only speculate whether the substance of this Report would have been materially different if the Working Group had looked at the full picture.”

Training techniques were specifically excluded from the review as Defra considered that if any cruel practices were employed in this area it would be relatively straightforward to mount a prosecution for cruelty under the Animal Welfare Act 2006. A similar facility is available in Scotland under the Animal Health and Welfare (Scotland) Act 2006. In addition many of the techniques used to train animals are generic across a range of performance situations and Defra considered that the question of training techniques for all types of performance should be reviewed separately.

Animal welfare groups also were critical of the decision that the Group should not take photographic and video evidence into consideration. This evidence, they believed, showed that some training methods used involve cruelty similar to those methods used in the Chipperfield case.

Defra made clear before the review began that certain types of evidence would be disqualified from submission. It was not considered that photographic or video evidence in itself was sufficient to base policy decisions on - it can be open to interpretation, and possible misrepresentation, by giving a snapshot view rather than a complete picture over an extended period of time. For example, a film showing a pacing lion may show evidence of stereotypic behaviour, but may equally have been made when the lion had seen its keeper approaching with food. Furthermore, evidence of a particular instance of cruelty, while distressing, is not sufficient to demonstrate that a particular environment necessarily causes animal suffering. Animals in any environment may unfortunately be subjected to

particular instances of cruelty, private pet ownership being the most common example. It would not be proportionate to ban private pet ownership on the basis that there are some instances of abuse and neglect. In order to establish that an environment inevitably causes an animal suffering or distress, it must be shown that animals suffer and are distressed by being in that environment in the absence of deliberate physical abuse.

Why animal welfare does not provide strong grounds for a ban

By far the most numerous reasons given as to why Government's across the UK should ban the use of wild animals in travelling circuses are those relating to animal welfare, therefore the results of the Radford report appear counter to the viewpoint of many. However, the term animal welfare can be used to mean different things by different people; for example some believe that welfare and health are separate issues, others that health is simply an aspect of welfare, and others that welfare includes broader ethical considerations.

Within science, good animal welfare has primarily been viewed as an absence of physical or mental suffering, which has influenced the type of research done as well as animal welfare legislation based on it. More recently there has been increasing acceptance within both scientific and legislative circles that there should be greater efforts directed towards the promotion of positive states in addition to the avoidance of suffering.

This was reflected in the Animal Health and Welfare (Scotland) Act 2006 by the introduction of the 'duty of care'. Section 24 requires that where someone is responsible for an animal, they have a positive duty to do all that is reasonable in all the circumstances to ensure that needs of the animal are met to the extent required by good practice. The needs of an animal include, but are not restricted to:

- **A suitable environment** (including appropriate accommodation or shelter and a comfortable resting area);
- **A suitable diet**, which should be adequate to maintain full health and vigour through every phase of life;
- **The ability to exhibit normal behaviour**, this could be met by providing sufficient space, appropriate facilities as well as the company of the animal's own kind;
- **The need to be protected from suffering, injury and disease.** Animals should be protected from fear and distress by providing conditions which avoid mental suffering. Problems should be diagnosed quickly and appropriate treatment should be provided for sick or injured animals. Where necessary this treatment should be by a veterinary surgeon.

The Scottish Government accept that there is a strong body of opinion that many of the above needs cannot be catered for in wild animals within a travelling circus environment. We also accept that there is a substantial public view within the UK that there is a need to ban the use of wild animals in travelling circuses in order to safeguard their welfare. However, scientific knowledge by itself does not yet provide relevant, rational and reliable answers to many questions on animal welfare typically raised by the general public. This

is compounded when considering the welfare of wild animals in travelling circuses by the fact that there is little directly relevant scientific evidence of any sort.

Within the current scientific and legal context, the welfare status of these animals cannot be conclusively proven to be good or bad in comparison with animals in other situations generally considered to be acceptable. In the absence of sufficient scientific evidence of irredeemable welfare problems within a travelling circus environment, any attempt to ban the use of an animal using the delegated powers provided by the Animal Health and Welfare (Scotland) Act 2006 would fail the test of proportionality.

Objectives for intervention

The welfare of all animals is important to the Scottish Government, and indeed the people of Scotland. There has long been public concern regarding the use of wild animals in travelling circuses. Much of this concern has centred on the perceived inability of travelling circuses to be able to provide for the welfare needs of wild animals. In order to take forward the Scottish Parliament's original 2004 commitment to a ban using secondary legislation under the Animal Health and Welfare (Scotland) Act 2006 it would have been necessary to obtain robust scientific evidence that the welfare of wild animals was compromised by being part of a travelling circus. The outcome of the Radford Report effectively ruled out this approach.

However, while the Radford Report concluded that there was insufficient evidence to support banning wild animals in travelling circuses on welfare grounds, it also noted that this did not preclude there being a welfare issue, and indeed stated that the status quo was not a tenable option. Since the Radford Report, therefore, consideration has been given to alternative approaches to protecting the welfare of wild animals in travelling circuses. This has included an interim regulatory approach recently adopted by Defra in England, along with alternative mechanisms for banning such use.

Due to the lack of comprehensive scientific data on the welfare and requirements of wild animals within the travelling circus environment, and the inherent difficulty in gathering such information for the range of species potentially involved, the Scottish Government does not consider that a regulatory mechanism is an appropriate long term solution. While we anticipate that welfare improvements might result from a regulatory scheme, such as that recently introduced in England, we consider it questionable as to whether completely satisfactory welfare could be achieved with current knowledge. Perhaps more importantly from Scotland's perspective, given the very small numbers of animals involved and the fact that travelling circuses with wild animals appear to come to Scotland only rarely, such a mechanism would require a disproportionate resource to implement, monitor and enforce in Scotland.

There are clearly serious and on-going concerns surrounding the use of wild animals in travelling circuses, both within the Scottish Parliament and among large numbers of the public. Despite the absence of robust welfare evidence, it appears that there is an ethical

concern over the use of these animals in that particular environment. Therefore, measures may be required that address specifically these ethical concerns.

The Radford report suggested that Parliament might have more flexibility to enact primary legislation than a Minister would bringing forward regulations. For example, Parliament would not be confined to taking account of the scientific evidence - it could legitimately give consideration to ethical issues and public opinion, and could be able to attach greater weight to the interests of the animals involved. Such primary legislation could potentially be developed and implemented in Scotland only, or Scotland could perhaps take advantage of the work being undertaken by Defra, joining in with a wider GB/UK Bill.

The primary objective of this consultation, and any legislative developments that follow, is, therefore, the identification and resolution of any ethical concerns associated with the use of wild animals in travelling circuses in Scotland.

The Scottish Government has held off consulting with a view to clarifying whether, in principle, implementation of a ban would be legal in Scotland. The process of investigating the legality of a ban in Scotland has proved lengthy due to the complex legal situation in Scotland, which is influenced by Devolution arrangements with the UK, and by UK and EU legislation. Although we have not yet been able to completely clarify this matter, the Scottish Government now feels that it is appropriate to issue the consultation so that the results may assist consideration of the legal position; we ask for your responses within this context.

Factors for consideration

As discussed previously, the Scottish Government is aware that many moral objections relate to the perceived welfare of the animals concerned. In line with the Radford Report, we consider that the concerns raised regarding cruel training regimes should already be dealt with under existing legislation. Unnecessarily long confinement should also be dealt with in this manner. In terms of the welfare impact of the travelling environment on wild animals, although we acknowledge a large body of opinion that this is compromised, there is currently no evidence that wild animals in travelling circuses suffer any more or less than a variety of animals in other circumstances generally accepted at present.

However, there are wider ethical considerations that go beyond the question of whether an animal is suffering. Further information on the ethical framework that this consultation is based on can be found in Annex 1; however, in brief, a 'good life' for an animal is considered by many to be a full and active life characteristic of its kind. Unlike domesticated animals, captive wild animals have much the same genetic makeup as counterparts in the wild and retain their wild nature and natural instinctive behaviours. It could be argued that wild animals in travelling circuses are, given the environment in which they are placed, obstructed in the pursuit of activities natural to them. It could also be argued that this obstruction is wrong, regardless of whether or not the animal suffers, as it compromises the integrity of that animal's nature and therefore its well-being.

There is increasing recognition that wild animals have intrinsic value and that we should respect their inherent wildness and consider the implications of this for their treatment. The use of wild animals in travelling circuses reflects a traditional, but perhaps outdated, view of wild animals. Once one of the few ways to see and learn about wild animals, they have for some time been superseded by modern and well managed zoos and world class wildlife documentaries, which arguably convey greater respect for the intrinsic value of the animal and species, and for the natural environment in which their wild counterparts live. With this in mind, from an ethical perspective, it is perhaps becoming increasingly difficult to justify keeping wild animals in travelling circuses and requiring them to perform unnatural tricks.

For the purposes of this consultation, the main ethical points being reflected on during consideration of whether or not to ban wild animals in travelling circuses are, therefore:

- **Respect for Animals** - Many people consider it outdated and morally wrong to make animals to perform tricks and acts, which they would not otherwise perform naturally, in order to entertain or impress a paying public.
- **Travelling environment** - There are specific concerns that the well-being of wild animals, in travelling circuses, in terms of their wild nature and instinctive behaviours, is compromised by the necessity of being transported. Many consider that touring accommodation compares unfavourably with that in which a similar animal might be housed in a zoo. Concerns also surround frequent travel.
- **Ethical costs and benefits** - While certain potential welfare issues should already be dealt with under existing legislation, there remains the question of whether the wider potential for the wild animals' well-being to be compromised outweighs any benefit to humans that might be gained from continuing to use wild animals in travelling circuses.

This consultation aims to collect evidence on the views of interested parties on these and any other ethical considerations put forward in order to inform further consideration of whether a ban should be put in place in Scotland.

Definitions and scope of the potential ban

Definitions

For the purposes of this consultation and any future legislation, "animal" is taken from the Animal Health and Welfare (Scotland) Act 2006 and is defined as a vertebrate, other than man.

A wild animal is defined under the same Act as a non-domesticated animal of a kind that is not commonly domesticated in Great Britain. This would include animals whose collective behaviour, life cycle or physiology remains unaltered from the wild type despite their breeding and living conditions being under human control for multiple generations.

Potential scope of a ban

The Scottish Government is currently considering banning:

- The use (not ownership) of wild animals by travelling circuses.
- “Use” of a wild animal in a travelling circus includes a performance by the animal and any exhibition of it as part of the circus.

Performance would include, for example, a parade of animals in the ring while exhibition would extend to the display of, for example, a lion in a cage. As there are no circuses using wild animals presently based in Scotland, this would effectively mean that no circus that uses wild animals would be allowed to tour Scotland.

Such a ban could potentially be applied to all wild animals, as defined in the previous section. However, in the event that this is not considered proportionate, it will be important to identify those species that cause greatest concern.

Situations falling outside the scope of this consultation

It is important to note the difference between wild animals performing in a travelling circus and other performing and/or wild animals. This consultation seeks views on the use of wild animals in a performance or for exhibition by a travelling circus. It is **not** seeking views on:

- The use of domesticated animals for performance or exhibition in travelling circuses.
- The use of wild animals for performance or exhibition in static circuses with permanent quarters.
- The use of wild animals that may be transported for use in the audio-visual industry.
- The keeping of wild animals by private collectors or static circuses.
- The use of wild animals used in zoo performances
- The use of birds of prey in travelling demonstrations.

Bans elsewhere

Austria, Costa Rica, Israel, Singapore ; the Czech Republic, Denmark, Finland, India, Sweden, Belgium, Estonia and Poland all have bans or restrictions of some description relating to the use of wild animals in travelling circuses. The exact nature of the bans varies with country, and it appears that many are not as comprehensive as that currently being considered in Scotland, and indeed across the UK more widely.

Previous consultation

There has been no previous official consultation in Scotland specifically regarding wild animals in travelling circuses. However, concerns were highlighted during the consultation on the Animal Health and Welfare Bill in 2004 and there has been on-going discussion with key stakeholders regarding the issue since that time.

Part III – Detailed considerations

Respect for Animals

The British circus industry has a rich heritage dating back over two centuries. For many years wild animals were an integral part of the circus experience - travelling circuses were once one of the few ways to see and learn about wild animals, and it was considered acceptable to require them to perform tricks to entertain the public that was effectively paying for their collection and maintenance.

Over the years there has been a general shift in how wild animals are perceived by the general public, from novel items of entertainment to sentient creatures that should be respected and valued. This is at least partly due to a greater awareness of the beauty, variety and complexity of wild animals and their place in the wider ecosystem through the work of world class nature programmes, a wide-reaching education system and education programmes at well managed zoos. These methods of learning about wild animals tend to convey greater respect for the intrinsic value of wild animals and species, and for the natural environment that they come from.

There is increasing recognition that wild animals have intrinsic value and that we should respect their inherent wild nature and consider the implications of this for their treatment. In light of this general shift in attitude, many people now consider it outdated, morally wrong and potentially harmful to make wild animals perform circus tricks and acts that they would not otherwise perform naturally simply to entertain or impress a paying public. They believe that wild animals should be treated with respect and should not be used simply to provide public entertainment.

There are also related concerns regarding the potential impact of wild animals in travelling circuses on developing attitudes towards animals in children and young people. Exposure to an environment in which wild animals are made to perform unnatural tricks purely for entertainment value could promote a perception of animals as an entertainment commodity rather than as sentient beings with their own needs. This could inhibit the development of respectful and responsible attitudes towards animals in the future.

The main factor that we need to consider from an ethical perspective is whether a modern Scottish society considers that the exhibitions and performances required of wild animals in travelling circuses compromise respect for animals and are therefore objectionable. Factors to consider might be whether the required acts are physically difficult due to the animal's physiology, how the acts portray the animals in question (positively or negatively), and whether performing the act benefits the animal/species in any way, either directly or through educational or public relations impact.

Consultation Question 1 Do you believe that the exhibitions and performances required of wild animals in travelling circuses compromise respect for the animals concerned? Why?

Consultation question 2 Do you believe that the exhibitions and performances required of wild animals in travelling circuses have an adverse impact on the development of respectful and responsible attitudes towards animals in children and young people? Why?

Consultation Question 3 Do you consider that concerns relating to respect for animals could be resolved without banning the use of wild animals in travelling circuses. If so, how?

Travelling environment

It is now recognised that all species of animals have, over generations, developed behaviours adapted to the environment in which those species have evolved, for example relating to social groupings, migration, hunting, and parasite control. It is known that there is often a strong and instinctive urge to perform at least some of those behaviours even when an animal is not in its native environment, sometimes even after multiple generations of being bred in captivity. Unlike domesticated animals, captive wild animals have much the same genetic makeup as counterparts in the wild and retain their wild nature and natural instinctive behaviours.

A 'good life' for an animal is considered by many to be a full and active life characteristic of its kind. It could be argued that wild animals in travelling circuses are, given the environment in which they are placed, obstructed in the pursuit of those activities natural to them, and that this obstruction is wrong, regardless of whether or not the animal suffers, as it compromises the integrity of that animal's nature and therefore its well-being.

For example, many consider that the type of accommodation that is used when animals are touring compares unfavourably with the accommodation that a similar animal in a zoo might enjoy in terms of size and complexity. For example indoor facilities may simply be the waggon in which they are transported, outdoor paddocks may be limited in size by the site available to the circus and security concerns, environmental enrichment may be limited by time constraints and space factors. In addition, by their nature, travelling circuses and their wild animals spend much of their time travelling from one site to another, which further significantly curtails the ability of wild animals to undertake their natural and instinctive activities.

While regulation could improve conditions to some extent, the practical challenges faced when keeping wild animals in temporary accommodation and frequently transporting them could arguably mean that many behaviours natural to wild animals can never be catered for, and the time available to indulge in those activities that can be provided for will always be significantly curtailed. Some might argue that the time spent training and performing provides mental and physical stimulation for the animals concerned and therefore makes up for the limitations in natural behaviours. However, even if this was viewed positively in

terms of animal welfare, it would not resolve the fact that this environment is apparently compromising the integrity of the nature and therefore the broader well-being of those animals involved. Indeed the requirement for training and performance could be viewed as further curtailing the time available to wild animals to undertake their natural activities.

The main factor that we need to consider from an ethical perspective is whether a modern Scottish society considers that the ability of wild animals to undertake natural behaviours is curtailed within the travelling circus environment and that the integrity of the nature and therefore the well-being of these animals is therefore inherently compromised in this environment.

Consultation Question 4 Do you believe that the ability of none, some, or all wild animals to undertake natural behaviours are compromised within the travelling circus environment? Which species? Which needs? Why?

Consultation Question 5 Do you consider that it is possible to facilitate the natural behaviour of none, some or all wild animals within the travelling circus environment? Which species? How?

Consultation 6 Do you consider that the concerns raised surrounding the travelling environment could be resolved without banning the use of wild animals in travelling circuses? How?

Ethical costs and benefits

The infliction of unnecessary suffering on animals is both illegal under the Animal Health and Welfare (Scotland) Act 2006 and unacceptable. As outlined previously, cruelty concerns relating to the use of wild animals in travelling circuses have arisen from allegations relating to physical abuse and long periods of close confinement. There have been some well documented, and in some cases successfully prosecuted, instances of cruelty in travelling circuses based in England; however the same could unfortunately be said for a minority of animals being kept in a variety of situations currently accepted by society, for example livestock and pets.

The main factor that we need to consider from an ethical perspective is whether a modern Scottish society considers that the keeping and use of wild animals in circuses compromises the wider well-being of such animals, as discussed in the previous section, for no significant benefit and is therefore objectionable.

For example, many consider that there is little or no educational, conservational, research or economic benefit to be derived from wild animals in travelling circuses that might justify their use and the loss of their ability to behave naturally as a wild animal. Even the entertainment benefit is considered by some to be tenuous since the public could still attend numerous successful circuses that do not use wild animals and continue to enjoy the experience and the varied and exciting acts.

Factors to consider could include the extent to which the ability of such animals to undertake activities natural to them is compromised (for example due to the cumulative impact of the requirement for training and performances, temporary accommodation and travelling on their ability to perform certain behaviours) and whether there are any significant benefits to be gained from accepting any compromise (for example benefits to the animal/species, either directly or through educational or public relations impacts, benefits to the viewing public other than being entertained).

Consultation Question 7 Do you consider that there are any benefits to be gained from having wild animals in travelling circuses? What are they?

Consultation Question 8 Do you believe that there are sufficient benefits to justify the potential compromise to the wider well-being of wild animals kept in a travelling circus ? Why?

Consultation Question 9 Do you consider that the potential conflict between compromising the well-being of wild animals and obtaining any benefit could be resolved without banning the use of wild animals in travelling circuses. If so, how?

Financial impacts of a ban

It has been suggested that overall attendances at particular travelling circuses using wild animals would fall if a ban were imposed in Scotland. For example, if imposing a ban on using wild animals has a material impact on the enjoyment of people who go along to see travelling circuses, there may be a drop in the number of people would still visit such circuses without wild animals. It is also possible that such circuses would no longer include visits to Scotland in their itinerary, or they may need to make alternative accommodation arrangements for the wild animals if they were not permitted to bring them into Scotland. This might all result in a financial loss to the circuses. There might also be a loss of revenue to venue owners in Scotland who currently rent out their venue to travelling circuses with wild animals, though given the apparent rarity of such visits to Scotland, it is thought that any such loss will be small..

Conversely, it is also possible that a ban might encourage those that enjoy visiting circuses to go to see static circuses with wild animals or to see travelling circuses without wild animal acts instead, i.e. the revenue could simply be displaced to other circuses. Indeed, revenue could even be retained or increased at circuses that stop using wild animals due to people that may have boycotted them in the past due to their use of wild animals now choosing to attend. Putting an end to the use of wild animals could improve their public standing and may increase their future viability.

In line with changing public perceptions, the number of travelling circuses using wild animals has greatly declined in recent years, and, to our knowledge, there have been no travelling circuses with wild animals visiting Scotland in recent years. According to one welfare group, in 1997 there were 124 'exotic' or wild animals in the UK in some 20 circuses, compared with only 21 wild animals in two circuses today. Conversely, animal

welfare groups also suggest that visitor numbers have increased for circuses that have voluntarily given up using wild animals in the past. The majority of England's travelling circuses, which number approximately 20, already operate without the use of wild animals.

Consultation Question 10 As far as you are aware, how often have travelling circuses that use wild animals in performances or for exhibition visited Scotland in the last 5 years and in the last 12 months?

Consultation question 11 What effect do you think a ban on the use and exhibition of wild animals would have on the revenue of such circuses? Why?

Consultation Question 12 If a ban on the use and exhibition of wild animals was imposed, do you think that such circuses would still visit Scotland without the wild animals? Why?

Consultation question 13 What effect do you think a ban on the use and exhibition of wild animals in travelling circuses would have on the revenue of other types of circus (e.g. static or those travelling without wild animals)? Why?

Consultation question 14 What effect do you think a ban on the use and exhibition of wild animals in travelling circuses would have on the revenue of circus venues? Why?

Wider film and television industry

It has been suggested that if wild animals were banned from travelling circuses, this would have a negative impact on the wider film and television industry since circus animals are trained and handled in such a way that they are able to do unique close work, involving closer contact with actors and doubles. However, since wild animals are used in a minority of productions and the number of animals in British-based circuses is so small, it is probable that suitable animals are already being sourced from elsewhere. In addition, it could be argued that the increasing use of computer generated graphics in the film industry means that the requirement to use closely trained animals is reducing.

Consultation Question 15 Do you consider that a ban on wild animals in travelling circuses could have an impact on other industries? If so, which industries, what would be the effect and why?

Should Scotland ban the use of wild animals in travelling circuses?

Now that you have considered all of the information and issues raised in this consultation, we would be grateful for your overall views on whether a ban should be introduced in Scotland, and on what form this should take.

Consultation Question 16 Do you agree that the use of wild animals for performance in travelling circuses should be banned in Scotland? Why?

Consultation Question 17 Do you agree that the use of wild animals for exhibition in travelling circuses should be banned in Scotland? Why?

Consultation Question 18 Do you consider that any ban should be a blanket ban on all wild animals in travelling circuses? Why?

Consultation Question 19 Do you consider that any specific species of animal not commonly domesticated in the British Islands should be permitted to be used in travelling circuses in Scotland? If so, which species and why?

Consultation Question 20 Do you consider that there are key species that should be covered by a ban in the event that a blanket ban could not be achieved? If so, which species and why?

Part IV – Any other Comments

The question of whether or not to ban the use of wild animals in travelling circuses is an emotive issue. While we have done our best to explain the issues facing us clearly, there may be aspects that you feel we have not explained well or have not covered at all. The last questions in this consultation paper are to provide you with the opportunity to raise such points, and to provide us with feedback on the consultation itself.

Consultation Question 21. Do you have any other comments on whether/how the use of wild animals in travelling circuses should be banned in Scotland?

Consultation Question 22. Do you consider that the consultation paper explained the key issues sufficiently for you to properly consider your responses?

Consultation Question 23. Do you consider that you had sufficient time to respond to the consultation?

Consultation Question 24. Do you have any other comments on the way this consultation has been conducted?

Potential Ethical Grounds for a Ban

Animal telos

Although many people will never have heard this phrase, the idea of an animal having a telos was first proposed by Aristotle. He proposed that every organism has a final cause or purpose (telos) that explains why an organism has become, and must have become, as it is. He considered that every part of an animal must be explained with regard to its telos, i.e. its nature. Essentially this suggests that the whole purpose of an animal's physical structure and psychology is to enable it to perform those actions natural to it. Since the whole organisation of the animal is directed to achieving those purposes or ends natural to it, those ends must be regarded as 'good' from the perspective of the animal. A good life for an animal is therefore seen as a full and active life characteristic of its kind.

Aristotle considered that an organism needs each particular trait natural to it to be complete and all natural traits and their ultimate purpose are all interdependent. This ultimately suggests that if an animal is prevented from expressing any one of those traits it is robbed of its identity and its existence has lost its purpose. Whether the animal suffers due to the obstruction is considered irrelevant since the prevention of those 'good' ends is still considered to be wrong in itself, even if an organism is not itself aware of it.

This school of thought suggests that it is irrelevant whether a tiger confined in a small wagon for hours at a time suffers (though many assume that they do) – it is wrong because it significantly compromises the tiger's telos by preventing it from expressing natural tiger traits, for example behaviours such as hunting, or seeking out a mate. Indeed, it could be considered even more wrong if the tiger seemed content with its lot, as the animal would be considered to have lost some intrinsic 'tigerishness'.

Consequential Utilitarianism

Utilitarianism is a theory of ethics originally proposed by David Hume and later given a definitive formulation in the 18th century by Jeremy Bentham and others such as Stuart Mill. It requires the quantitative maximisation of good for a population. The 'good' to be maximised is generally happiness, pleasure or preference satisfaction - consequences generally considered to have an impact on the welfare of people or animals.

Consequentialism, or results based ethics, developed from utilitarianism and was originally proposed by Jeremy Bentham in 1789. Since then it has become an area of increasingly complex debate with many sometimes conflicting schools of thought. However, it is essentially based on two principles: whether an act is right or wrong depends on the results of the act, and the more good consequences an act produces the more right the act.

Many would argue that the whole point of morality is to take the good of others into account. Animal rights organisations would argue that the well-being of all animal species deserves equal consideration with that given to human beings. While many others would not entirely agree with this view, it is generally accepted that animals should not be required to suffer without good reason.

When applied to animal welfare, consequential utilitarianism requires us to make a cost-benefit analysis comparing the consequences for the animal with the benefits for humans. This school of thought suggests that the less benefit there is to be gained from using wild animals in travelling circuses, the fewer/smaller are the negative consequences to the animal that are ethically acceptable.

How these relate to a ban on wild animals in travelling circuses

If we take the concept of an animal's telos into account, we must accept that a consequence does not necessarily have to include suffering to be considered negative. If we use the concept of consequential utilitarianism, this suggests that if there is no benefit to humans we should impose no negative consequences on wild animals. This would in turn suggest that banning the use of wild animals in travelling circuses is the most ethical choice to make if we believe that the telos of wild animals will inherently be compromised in a travelling circus environment.

It is unlikely that a clear cut ethical position will be reached as a result of this consultation, not least because similar arguments could be applied to animal use in a variety of situations currently accepted by society at large. However, these concepts provide an ethical framework to on which to base consideration of a ban.



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