

WILD ANIMALS AND CIRCUSES (WALES) ACT 2020

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Wild Animals and Circuses (Wales) Act which was passed by Senedd Cymru on 15 July 2020 and received Royal Assent on 7 September 2020. They have been prepared by the Department for Economy, Skills and Natural Resources of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

RENAMING THE NATIONAL ASSEMBLY FOR WALES

2. Part 2 of the Senedd and Elections (Wales) Act 2020 renames the National Assembly for Wales as Senedd Cymru. The name change took effect on 6 May 2020, before the Wild Animals and Circuses (Wales) Act was passed, but after it had been introduced.
3. As the Act was introduced before the name change, the Act itself (apart from the words of enactment) refers to the “National Assembly for Wales”. Those references now have effect as references to Senedd Cymru by virtue of section 150A(2) of the Government of Wales Act 2006. The words of enactment refer to “Senedd Cymru” as it was the Senedd that passed the Act.

COMMENTARY ON SECTIONS

Section 1 – Offence to use wild animals in travelling circuses

4. Section 1 makes it an offence for an operator of a travelling circus to use, or cause or permit another person to use, a wild animal in a travelling circus. The offence is a summary offence and so is triable in the Magistrates’ Court. If an operator is found guilty of the offence, the Court may impose an unlimited fine.
5. A wild animal is “used” if the animal performs or is exhibited.
6. A wild animal “performs” if, for example, it does tricks or manoeuvres for an audience.
7. A wild animal is “exhibited” if it is on display to the public, even if it is on display outside the main circus arena. For example, deliberately positioning the wild animal so that it can be viewed by the public in fields next to the circus would be “exhibiting” the animal. “Exhibiting” would also include displaying the animal in a way intended to promote the travelling circus, for example next to a circus poster.

Operators of travelling circuses will not, however, commit an offence if anybody inadvertently viewed a wild animal which is in an outdoor enclosure (provided the wild animal was not deliberately placed there to be viewed).

8. An offence is committed whether or not payment is required or received to view the wild animal performing or being exhibited.
9. A wild animal does not need to have been transported with the travelling circus for the offence to be committed. Neither does the animal need to be owned by the travelling circus for the offence to be committed.
10. Despite section 1, travelling circuses may keep wild animals (provided they are not “used” by the travelling circus). See section 8 of these Explanatory Notes for changes to the Dangerous Wild Animals Act 1976 and Zoo Licensing Act 1981 relating to the licenses circuses may require to keep wild animals.
11. The Act does not affect the use of domesticated animals in travelling circuses, nor does it prevent wild animals being used for entertainment in settings other than travelling circuses.

Section 2 - Meaning of “operator”

12. Only the operator of a travelling circus can commit the offence in section 1.
13. The “operator” is the owner of the travelling circus or another person who does not own the travelling circus but has overall responsibility for its operation. If neither of those persons is present in the United Kingdom, the operator is the person in the United Kingdom responsible for the operation of the travelling circus.
14. See also section 6 of these Explanatory Notes for information about individuals who may be liable where the offence is committed by a company etc.

Section 3 - Meaning of “wild animal”

15. A “wild animal” is an animal of a kind which is not commonly domesticated in the British Islands. Animals considered commonly domesticated in a place other than the British Islands would be considered “wild animals” under the Act if they are not commonly domesticated in the British Islands.
16. There may be uncertainty or conflicting views about whether an animal is wild or not. Section 3(2) allows Welsh Ministers to make regulations to specify kinds of animals that are, or are not, to be regarded as wild for the purposes of the Act. This power does not require Welsh Ministers to list in regulations all the animals they consider to be, or do not consider to be, “wild animals” for the purpose of the Act.

17. "Animal" means vertebrate animals (see section 1 of the Animal Welfare Act 2006). But section 1(3) of the Animal Welfare Act 2006 allows Welsh Ministers by regulations to change that definition (which could include extending the definition of "animal" to include invertebrates).

Section 4 - Meaning of "travelling circus"

18. A "travelling circus" means a circus which travels from one place to another for the purpose of providing entertainment. A circus is considered a "travelling circus" despite there being periods when it does not travel; a travelling circus does not stop being a travelling circus during a break from the touring or closed season.
19. But a "travelling circus" does not include a normally static circus which travels to relocate to a new fixed base.
20. There may be uncertainty or conflicting views about whether a type of undertaking, act or entertainment is or is not a travelling circus. Section 4(3) allows Welsh Ministers to make regulations to specify a type of undertaking, act, entertainment or similar that is, and is not, to be regarded as a travelling circus for the purposes of the Act. This power does not require Welsh Ministers to list, in regulations, all types of undertakings, acts or entertainment which are to be regarded, or are not to be regarded, as a travelling circus for the purpose of the Act.

Section 5 - Powers of enforcement

21. This section introduces the Schedule, which makes provision about powers of enforcement.

Section 6 and 7 - Offences by bodies corporate etc.

22. Section 6 provides that certain individuals can be held criminally liable for the offence in section 1 where the offence is committed by certain bodies. This means, for example, that a director of a company could be criminally liable for the offence where the company that the person is a director of committed the offence.
23. This section applies to the offence in section 1 only and not to the offences in the Schedule.
24. Section 7 sets out how proceedings are to be brought against a partnership or an unincorporated association where they are alleged to have committed an offence under section 1.

Section 8 - Amendments relating to licensing of circuses

25. Although the use of wild animals in travelling circuses is prohibited by this Act, circuses may still keep wild animals. The amendments made by this section mean that in order to keep wild animals, circuses may be required to have a zoo licence or a dangerous wild animal licence.
26. Under the Dangerous Wild Animals Act 1976 ("the 1976 Act"), a licence is required to keep a "dangerous wild animal" (defined in section 7 of that Act), subject to some exemptions (set out in section 5 of that Act). The Wild Animals in Circuses Act 2019

amends section 5 of the 1976 Act so that circuses in England and Scotland are no longer exempt from that requirement.

27. Section 8(1) further amends section 5 of the 1976 Act so that circuses in Wales are also no longer exempt from that requirement. This means that any circus (travelling or static) in Wales which keeps a dangerous wild animal will require a licence under the 1976 Act, unless the circus is caught by the provisions of the Zoo Licensing Act 1981 (see section 5(1) of the 1976 Act).
28. Under the Zoo Licensing Act 1981 ("the 1981 Act"), a licence is required to operate a "zoo". Section 8(2) amends section 1(2) of the 1981 Act so that circuses in Wales fall within the definition of "zoo". This means that a circus in Wales could be required to obtain a zoo licence if the 1981 Act applies to it (there are some zoos to which the 1981 Act does not apply. See, for example, section 14 of the 1981 Act (dispensation for particular zoos)). If the 1981 Act does not apply, then the 1976 Act may apply and a circus may need a dangerous wild animals licence.

Section 9 - Power of High Court to declare unlawful an act or omission of the Crown

29. The Act binds the Crown and applies to persons in service of the Crown as it applies to other persons, but it does not make the Crown itself criminally liable (see section 28 of the Legislation (Wales) Act 2019). Section 9, however, provides that the High Court may declare unlawful an act or omission of the Crown.

Section 10 - Crown land: powers of entry

30. The power of entry is only exercisable in relation to Crown land with the consent of an "appropriate authority". "Crown land" is defined in section 10(2)(a). Who constitutes the "appropriate authority", and from whom consent is required, depends on the ownership or management of the Crown land in question, and is set out in section 10(2)(b). Where there is any uncertainty as to which authority should be giving consent, the Treasury decides.

Section 11 - Regulations

31. The powers to make subordinate legislation are to be exercised by statutory instrument and are subject to the affirmative procedure.

Section 12 - Coming into force

32. The Act comes into force on 1 December 2020.

Section 13 - Short title

33. The short title of this Act is the Wild Animals and Circuses (Wales) Act 2020.

Schedule - Powers of enforcement

34. The Schedule confers powers on inspectors to enforce the offence in section 1, sets out the extent of those powers and creates offences where a person hampers the exercise of those powers.

35. Paragraph 1 defines “inspector”, “power of entry” and “premises”. “Premises” specifically includes tents or a moveable structure and so includes, for example, caravans and mobile homes which are commonly associated with travelling circuses.
36. Paragraph 2 gives inspectors a power to enter premises which are not used wholly or mainly as dwellings and sets out the circumstances under which the power is exercisable.
37. Paragraph 3 gives inspectors a power to enter dwellings. The inspector must obtain a warrant from a Magistrate before exercising this power. This paragraph sets out the matters that must be satisfied before a warrant may be granted. Paragraph 4 provides that such a warrant authorises entry on one occasion only and must be used within 28 days beginning with the date it was issued.
38. Paragraph 5 requires an inspector, if asked by any person on the premises, to show evidence of their identity before exercising a power of entry and to state why the power is being exercised. If entering a dwelling under a warrant, the inspector must, if asked, show a copy of the warrant to any person on the premises, and provide a copy to the occupier or to a person who appears to be in charge of the premises. If neither is present, the inspector must leave a copy of the warrant in a prominent place. The inspector must leave the premises as effectively secured against unauthorised entry as they were when the inspector arrived.
39. Paragraph 6 requires an inspector to exercise a power of entry at a reasonable time unless the inspector believes that, by waiting for that reasonable time, the purpose for requiring entry and inspection may be frustrated.
40. Paragraph 7 allows an inspector to use reasonable force where necessary to exercise a power of entry.
41. Paragraph 8 allows an inspector to take on to the premises other persons and anything necessary (including equipment and materials) to assist in their duties. The assistants could include specialists, for example a zoological specialist to help identify animals, or a police constable.
42. Paragraph 9 sets out the powers of inspection, search and seizure available to an inspector when exercising a power of entry. An inspector cannot seize a wild animal, but may, for example, examine it or take samples. Paragraph 9(d) requires any person on the premises to assist the inspector. An inspector could, for example, require a person to give the inspector access to an animal enclosure, help the inspector handle an animal (to be able to take samples) or move a vehicle.
43. Paragraph 10 provides that any person brought onto the premises by the inspector is able to exercise the inspector’s powers under paragraph 9, provided that they are under the inspector’s supervision. For example, a veterinary surgeon accompanying an inspector could, under supervision, take samples from an animal for identification purposes.

44. Paragraph 11 makes additional provision about the power of seizure. Any item seized under paragraph 9(k) can be retained as long as is necessary. Paragraph 11(2) requires the inspector or an assistant of the inspector to keep a record of the item seized and, on request, to provide a record of the item seized to the person who occupied the premises at the time it was seized, or the person who had possession or control of the item immediately before it was seized. Paragraph 11(3) does not allow the seizure of items which could be subject to legal professional privilege, for example, documents containing advice from legal professionals.
45. A person commits an offence if they fail to comply with a request for assistance or intentionally obstruct an inspector when the inspector is carrying out their duties (paragraph 12). An offence under this paragraph is triable in the Magistrates' Court and the Court may impose an unlimited fine if a person is found guilty.
46. Paragraph 13 protects inspectors and any person taken onto premises by an inspector from liability in any civil and criminal proceedings for anything done or not done as a result of carrying out their duties. This exemption from liability does not apply where an inspector or the person under the supervision of the inspector acts in bad faith or if there were no reasonable grounds to act in such manner.

RECORD OF PROCEEDINGS IN THE SENEDD

47. The following table sets out the dates for each stage of the Act's passage through the Senedd. The Record of Proceedings and further information on the passage of this Act can be found on the Senedd website at:

<https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=25643>

Stage	Date
Introduced	8 July 2019
Stage 1 - Debate	7 January 2020
Stage 2 Scrutiny Committee – consideration of amendments	5 February 2020
Stage 3 Plenary - consideration of amendments	8 July 2020
Stage 4 Approved by the Senedd	15 July 2020
Royal Assent	7 September 2020