

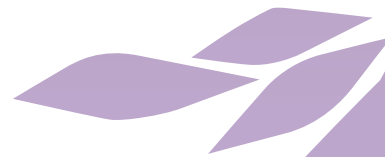


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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Wild Animals in Travelling Circuses (Scotland) Bill as amended at Stage 2



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Delegated Powers and Law Reform Committee

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

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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



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Introduction

1. At its meeting on 12th December 2017, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Wild Animals in Travelling Circuses (Scotland) Bill as amended at Stage 2 (“the Bill”).ⁱ The Committee submits this report to the Parliament under Rule 9.7.9 of the Standing Orders.
2. The Bill was introduced by the Cabinet Secretary for the Environment, Climate Change and Land Reform (Roseanna Cunningham MSP) on 10 May 2017. The lead committee for the Bill is Environment, Climate Change and Land Reform.
3. The Bill aims to respond to public concerns around the use of wild animals in travelling circuses. As amended at Stage 2, the Bill proposes to make it an offence for a person who is a circus operator to use, or cause or permit another person to use, a wild animal in a travelling circus in Scotland. The Bill also enables the enforcement of that offence.
4. The Scottish Government has provided the Parliament with a supplementary memorandum (“SDPM”) on the delegated powers provisions in the Bill.ⁱⁱ
5. The Committee previously reported on the delegated powers provisions in this Bill at Stage 1 in its 28th Report of 2017.ⁱⁱⁱ

ⁱ The Bill, as amended, is available [here](#).

ⁱⁱ The Supplementary Delegated Powers Memorandum is available [here](#).

ⁱⁱⁱ Delegated Powers and Law Reform Committee, 28th Report, 2017 is available [here](#).

Delegated Powers Provisions

6. The Committee considered each of the new delegated powers provisions in the Bill after Stage 2. The Bill was amended at Stage 2 to provide two new regulation-making powers, in sections 3A and 3B.
7. The Committee's comments and recommendations on the delegated powers are detailed below.

Committee Consideration: Section 3A

Section 3A - Power to specify animals as wild or not

- ***Power conferred on: the Scottish Ministers***
- ***Power exercisable by: Regulations***
- ***Parliamentary procedure: Affirmative***

Provisions

8. This new section confers a power on the Scottish Ministers to specify, under subsection (1)(a), a kind of animal that is to be regarded as wild and, under subsection (1)(b), a kind of animal that is not to be regarded as wild, for the purposes of the Bill.
9. Any regulations under subsection (1)(a) specifying a kind of animal as wild are without prejudice to the generality of section 2 of the Bill. That section provides a general definition of the expression "wild animal". In turn, the generality of section 2 is subject to whatever is done by regulations under subsection (1)(b) – the power to specify by regulations that a kind of animal is not to be regarded as wild for the purposes of the Bill.
10. Section 2(1) defines "wild animal" as an animal other than one of a kind that is commonly domesticated in the British Islands. For those purposes, section 2(2) provides that an animal is of a kind that is domesticated if the behaviour, life cycle or physiology of animals of that kind has been altered, as a result of the breeding or living conditions of multiple generations of animals of that kind being under human control.

Comment

11. The Committee notes initially that the amendments which have resulted in sections 3A and 3B of the Bill follow upon recommendations of the Environment, Climate Change and Land Reform Committee in its Report at Stage 1 of the Bill (9th Report of 2017).^{iv}
12. The Environment, Climate Change and Land Reform Committee reported, in relation to the Bill as introduced, that it believed that the definitions of "travelling

^{iv} Environment, Climate Change and Land Reform Committee, 9th Report, 2017 is available [here](#).

circus" and "wild animals" were open to interpretation, and strongly recommended that these should be tightened. The Committee also considered it essential that the Bill should include a definition of "circus" which is capable of covering relevant performances, and excluding those it did not set out to capture.^v

13. The SDPM explains that the power in section 3A will permit future detailed clarification of whether particular kinds of animal are, or are not, "wild animals" for the purpose of the Bill. The power is expected to be used only in cases of doubt, or where clarification would be deemed helpful. The distinction between kinds of animals which are wild and those of a kind commonly domesticated in the British Islands is not an immutable one, and there may be particular examples where it is unclear into which category an animal type falls. The power is therefore considered by the Scottish Government to be necessary to provide certainty in difficult or borderline cases, to ensure that circus operators know what kinds of animals may, or may not be, used in travelling circuses.
14. The effect of subsection (2)(a) of section 3A is different from the effect of subsection (2)(b). Whatever is done by regulations to specify a kind of animal that is to be regarded as wild is without prejudice to the generality of section 2 (the definition of "wild animal"). On the other hand, the generality of section 2 is subject to whatever is done by regulations to specify a kind of animal that is *not* to be regarded as wild. In other words, the regulations under subsection (1)(a)(what is a wild animal) will not alter the definition of "wild animal" in section 2, but regulations under subsection (1)(b) (what is not a wild animal) will exclude kinds of animal from the section 2 definition.
15. In relation to the regulations under subsection (1)(b), the Committee acknowledges that the Scottish Government's policy is that those regulations could specify kinds of animal which are to be excepted from the section 2 definition. The Committee is therefore content with that power, in principle, and that the exercise of the power should be subject to scrutiny by the affirmative procedure.

Recommendation

16. **The Committee considers that the effect of the power in section 3A(1)(a) and (2)(a) is unusual, in principle. If a kind of animal was to be specified in the regulations to be regarded as wild, this would not affect whether (in a doubtful or difficult case) the kind of animal in fact comes within the generality of the meaning of "wild animal" in section 2.**
17. **The regulations made under section 3A(1)(a) would therefore be indicative only, indicating the Scottish Government's interpretation (in doubtful or difficult cases) of kinds of animals which it considers come within the meaning of "wild animal" as specified by section 2. The Committee considers that regulations are not the appropriate form of instrument to**

^v See paragraphs 6 to 8 of the executive summary of the Environment, Climate Change and Land Reform Committee's stage 1 report.

provide such an interpretation. This could be done (for example) by published Scottish Government note or guidance.

18. The Committee recommends that the Scottish Government consider this further in advance of Stage 3 of the Bill.
19. The Committee agreed to write to the Scottish Government and to ask for a clarification of the use of the regulation-making powers in section 3A during the Stage 3 debate.
20. The Committee accepts the powers in section 3A(1)(b) and (2)(b) in principle, and that the exercise of those powers is subject to the affirmative procedure.

Committee Consideration: Section 3B

Section 3B - Power to describe what is or is not a travelling circus

- *Power conferred on: the Scottish Ministers*
- *Power exercisable by: Regulations*
- *Parliamentary procedure: Affirmative*

Provisions

21. Section 3B confers on the Scottish Ministers a power to make regulations to describe a particular type of undertaking, act, entertainment or similar thing that is, or is not, to be regarded as a “travelling circus” within the meaning of the Bill.
22. Provision in any regulations under subsection (1)(a) describing something as a “travelling circus” is without prejudice to the generality of section 3 of the Bill. Section 3 provides for the meaning of certain key terms used in the Bill, including a “travelling circus”. In turn, the generality of section 3 is subject to whatever is done under subsection (1)(b) – the power by regulations to describe a particular type of undertaking, act, entertainment or similar thing that is not be regarded as a travelling circus for the purposes of the Bill.
23. As for section 3A, section 3B follows upon the recommendations of the Environment, Climate Change and Land Reform Committee which are referred to at paragraph 11 above.
24. Section 3 provides that a “travelling circus” means a circus which travels, whether regularly or irregularly, from one place to another for the purpose of providing entertainment. It includes—
 - (i) a circus which so travels for that purpose, despite there being periods during which it does not travel from one place to another,

- (ii) any place where a wild animal associated with such a circus is kept (including temporarily).

However it does not include, for example, a circus which travels in order to relocate to a new fixed base, for use only or mainly as a place to give performances.

Comment

25. The SDPM explains that the Scottish Government considers that the powers in section 3B are appropriate, to permit further future detailed clarification of what a “travelling circus” is if necessary, in cases of real doubt and where clarification would be deemed helpful. Given the potential variety of forms of entertainment using wild animals, there may be cases where it is not possible to identify something definitively as a “travelling circus”.
26. The structure of the powers in section 3B is the same as for section 3A. The Committee considers that similar considerations arise as explained at paragraphs 14 to 17 above, when those considerations are applied to the meaning of a “travelling circus” which is specified in section 3 of the Bill.

Recommendation

27. **The Committee therefore considers that the effect of the power in section 3B(1)(a) and (2)(a) is unusual, in principle. If a type of undertaking, act, entertainment or similar thing was to be specified in the regulations to be regarded as a travelling circus, this would not affect whether (in a doubtful or difficult case) the undertaking, etc., in fact comes within the generality of the meaning of “travelling circus” in section 3.**
28. **The regulations made under section 3B(1)(a) would therefore be indicative only, indicating the Scottish Government’s interpretation (in doubtful or difficult cases) of the types of undertaking, etc., which it considers come within the meaning of “travelling circus” as specified by section 3. The Committee considers that regulations are not the appropriate form of instrument to provide such an interpretation. This could be done (for example) by published Scottish Government note or guidance.**
29. **The Committee recommends that the Scottish Government consider this further in advance of Stage 3 of the Bill.**
30. **The Committee agreed to write to the Scottish Government and to ask for a clarification of the use of the regulation-making powers in section 3B during the Stage 3 debate.**
31. **The Committee accepts the powers in section 3B(1)(b) and (2)(b) in principle, and that exercise of those powers is subject to the affirmative procedure.**

