

**WILD ANIMALS IN
TRAVELLING
CIRCUSES**

**THE REPORT OF THE CHAIRMAN OF THE
CIRCUS WORKING GROUP**

OCTOBER 2007

"We know so little about the physiology and the sentience of the exotic species that often used to be seen - and still are - in some travelling circuses."

Lord Soulsby of Swaffham Prior FRCVS

**Debate on the Animal Welfare
Bill in Grand Committee,
House of Lords,
23 May 2006**

CHAIRMAN'S FOREWORD

I would like to make four important points at the outset of this Report.

First, I am conscious that, to varying degrees, all the members of the Circus Working Group have had serious reservations about participating in the process we have undertaken. This was perhaps inevitable in bringing together two groups of people with diametrically opposed views about the continued use of non-domesticated animals in circuses. Those from the industry clearly wish to see their traditional livelihood secured and protected, while all the welfare organisations involved have long campaigned for a total ban on the use of non-domesticated animals in circuses. It is not surprising if the industry regarded the process with suspicion and not a little fear, while the welfare organisations were concerned that the Working Group was a mechanism to frustrate their ultimate objective. There have been a number of occasions when it seemed that the process might fail altogether. Most, if not all, of the participants have been on the point of walking away at least once, and I think it is some achievement to have completed our work with only a single refusal to participate and one resignation during the process. An exercise of this nature cannot please everyone - possibly the outcome will please no one - but however the various participants view the conclusion, I hope they feel that their views have been treated seriously, objectively, and with due respect. Against this background, I would like to take this opportunity to pay tribute to all the members of the Working Group for their time, their effort, and the professional manner in which they have advanced their respective arguments.

Second, I wish to emphasise that the primary purpose of the exercise has been to subject scientific evidence submitted by each side of the controversy to independent expert review better to inform Ministers and the wider debate about the use of non-domesticated animals in circuses. Although I have explored various issues separately with each side, the Working Group was not intended to be a negotiating forum. Neither side has been asked to compromise its principles during our work, and neither has done so. Furthermore, involvement with the Working Group has not prevented either side from continuing to campaign for its particular viewpoint.

Third, it must be understood that this is the Chairman's Report, not that of the Working Group. With the exception of Chapter 5, which is the work of the Academic Panel, this Report represents my personal analysis and conclusions. The members of the Circus Working Group have not been party to the compilation of the Report, and I have not sought their views or agreement prior to its publication. Indeed, the final Report was delivered to Ministers before its contents were presented to the Working Group. It follows that none of the members of the Working Group – neither as individuals nor on behalf of the organizations they represent – should be taken to have endorsed the Report's contents or to be a party to them.

Fourth, the contribution of the Academic Panel has been invaluable and much appreciated. The distinguished and learned nominees who served on the Panel not only undertook a complex and onerous task, but the credibility of the entire exercise

has been wholly dependent on their individual and collective analysis of the available evidence and also their personal expertise, reputation and standing.

Finally, I would like to take this opportunity to thank all those who have contributed to the activities of the Circus Working Party: the members of the Group itself; the members of the Academic Panel, especially its Chairman, Mike Lomas, whose efforts succeeded in producing a unanimous view of the evidence; Laura John, who was responsible for the administration associated with establishing the Working Group; Hugh Togher and Charlotte Coles, for administrative and technical support; and Jennifer Anderson, for undertaking documentary research. In particular, however, I would like to express my gratitude to Helen Odom whose intellect, initiative, organisational skills, and good humour combined to make an indispensable contribution to the activities of the Working Group and the contents of this Report.

MIKE RADFORD
Aberdeen, October 2007

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1. EXECUTIVE SUMMARY

- The number of non-domesticated animals used in circuses in the United Kingdom is less than 50, but the issue generates strongly held opinions on both sides of the debate and a considerable degree of public and political interest. In addition, there is potentially an international dimension to the issue as the scope and number of non-domesticated animals used in circuses throughout continental Europe is much greater than is the case in this country.
- The Academic Panel considered that, in order to justify a change to the status quo, the balance of the evidence would have to present a convincing and coherent argument for change. On the basis of the scientific evidence submitted to it, the Panel concluded that such an argument had not been made out.
- The Academic Panel concluded that there appears to be 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.
- It is concluded that in relation to England, Wales, and Scotland, the consequence of the Academic Panel's Report is that Ministers do not have before them scientific evidence sufficient to demonstrate that travelling circuses are not compatible with meeting the welfare needs of any type of non-domesticated animal presently being used in the United Kingdom. It is further submitted that such a decision must be based on scientific evidence, and other considerations are extraneous, and therefore unlawful in the context of section 12. Furthermore, in the absence of compelling scientific evidence, any attempt to ban the use of an animal would fall foul of the principle of proportionality. Accordingly, it is proposed that further primary legislation would be required to have any realistic prospect of achieving a lawful ban.

- The status quo is not a tenable option.
- It is submitted that if a partial or complete ban on the use of non-domesticated animals used in travelling circuses is to be introduced, it would have to be done by means of primary legislation.
- The circus industry has indicated that it is receptive to the principle of regulation but, to be credible, any such regulation must not only ensure high standards of welfare for the animals, it must also result in a significant degree of transparency and accountability if it is to win over public confidence.
- Regulation could be introduced under the authority of section 13 of the Animal Welfare Act using the Zoo Licensing Act as a model.
- If the use of any non-domesticated animals is to remain lawful, the issue of blanket bans by local authorities on the use of their land requires further consideration.
- The overriding conclusion of this exercise is that our present state of knowledge about the welfare of non-domesticated animals used in circuses is such that we cannot look to scientific evidence for a steer in the development of policy; it is, ultimately, an entirely political decision. Once the relevant policy is decided upon, its implementation is essentially a question of politics and law; science, on this occasion, provides no relevant guidance as to the appropriate principle to be adopted.

2. BACKGROUND

2.1 THE MINISTERIAL STATEMENT OF 8TH MARCH 2006

- 2.1.1. A week before Report and Third Reading of the Animal Welfare Bill in the House of Commons, the Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs, Ben Bradshaw MP, made the following Written Statement relating to circuses:

I have previously made it clear that I sympathise with the view that performances by some wild animals in travelling circuses are not compatible with meeting their welfare needs. The Animal Welfare Bill will itself represent a significant step forward: Clause 8 [now Section 9] imposes a requirement that someone responsible for an animal, such as a circus proprietor, should meet its reasonable welfare needs.

But having listened carefully to the arguments of hon. Members of this House at Second Reading and during Standing Committee I am not convinced that by itself this element of the Animal Welfare Bill will provide sufficient clarity to circus proprietors and enforcers on what is permitted and what is not. To provide this clarity I intend to use a regulation under clause 10 of the Animal Welfare Bill [now section 12 of the Act] to ban the use in travelling circuses of certain non-domesticated species whose welfare needs cannot be satisfactorily met in that environment. In drawing up proposals for secondary legislation we intend to ensure a clear read-across between zoo licensing standards and those standards that we will require from permanent circus premises. Individuals or organisations who train performing animals will be subject to inspection. This will be in addition to existing proposals that we introduce a code of practice for circuses and performing animals to deal with other issues such as training activities, trainer competences and accommodation needs for animals when travelling.

The ban will apply to travelling circuses only—zoo performances, performances in the audio-visual industry and performances in static circuses will not be affected. Discussions will start shortly with industry, welfare organisations and other Government Departments on the content of draft regulations, which will then go to public consultation.¹

2.2. THE REMIT OF THE CIRCUS WORKING GROUP

- 2.2.1. The Circus Working Group was subsequently established in June 2006 with a remit derived directly from this statement. In its initial letter advising representatives of interested parties of the establishment of the Working Group

1 8 March 2006, col 60WS.

and inviting them to participate in its work, Defra wrote:

Mr Bradshaw's written statement to the House of Commons on 8 March 2006 explained that we intend to introduce a ban, using a regulation made under clause 12 of the Animal Welfare Bill, on the use of certain non-domesticated species in travelling circuses. This is on the basis that we accept that the welfare needs of certain non-domesticated species cannot be readily met in a travelling circus environment....

The remit of the group is to provide, and consider, evidence relating to the transportation and housing needs of non-domesticated species. It will look at the possibility of a read across between the welfare standards for non-domesticated animals being kept in zoos with those being used in travelling circuses. Training will not be included in the remit as it is being considered as part of the wider Defra review of the regulation of animals used in performance.

For the purposes of this working group, a non-domesticated animal is a member of a species that is not normally domesticated in the British Islands; that is to say, a species 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....

2.2.2. The letter further indicated that the members of the Working Group would be asked to provide evidence and, on the basis of this evidence, "to consider, which, if any, non-domesticated species are suitable for use in travelling circuses". The scope of the evidence was to include material relating to:

- welfare during transportation;
- accommodation standards;
- behavioural needs, and whether these can be met in a travelling circus environment;
- the future of those animals deemed unsuitable for a circus environment, but already represented in circuses;
- the percentage of time that animals are on tour with travelling circuses and the extent to which they may also be travelling and in temporary accommodation for use in media other than circuses;
- the ability of the industry to meet the cost of higher welfare standards.

2.2.3. The Department also indicated that it would look to the Working Group to offer advice on how to define the term 'travelling circuses'. The letter indicated that, in order to distinguish these from zoos and audio-visual performances, it was intended to define 'travelling circus' in terms of the length of time the animals spend away from their permanent premises and the Working Group was asked for its views on what this length of time ought to be.²

2 Defra, Invitation Letter, 13 June 2006.

2.2.4. It will be noted from the above that issues relating to the training and performance of non-domesticated circus animals were expressly omitted from the Working Group's terms of reference as these matters are currently being considered by a separate working group concerned with the training and performance of animals generally. While one can understand that any duplication of effort would be undesirable and there is a logic in looking at the subject of training and performance in the round and in all its various contexts, it is nevertheless the case that in consequence the remit of the Circus Working Group and, accordingly, the focus of this Report is concerned only with two of the four factors which impact on the welfare of non-domesticated animals used in circuses, namely transportation and housing. 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.

2.3. MEMBERSHIP OF THE WORKING GROUP

2.3.1. The membership of the Circus Working Group consisted of the following:

Chairman

Mike Radford (Reader in Law, University of Aberdeen)

Chairman of the Academic Panel

Mike Lomas (formerly Deputy Head of Animal Welfare Veterinary Division, Defra)

Industry Sub-Group

Chris Barltrop	Equity
Malcolm Clay	Association of Circus Proprietors of Great Britain
Peter Jolly Jr	Jollys' Circus
Peter Jolly Sr	Jollys' Circus
Carol MacManus	Circus Mondao
Arie Oudenes	European Circus Association
Laura Van Der Meer	European Circus Association
Moira Roberts	Bobby Robert's Super Circus
Albert Tyler-Moore	The Great British Circus

Welfare Organisations Sub-Group

Rob Atkinson	RSPCA
Ros Clubb	RSPCA
Helder Constantino	Animal Defenders International
Jan Creamer	Animal Defenders International
Chris Draper	Born Free Foundation

Mike Flynn	Scottish SPCA
Sasha Foreman	RSPCA
Tim Phillips	Animal Defenders International
Will Travers	Born Free Foundation
Daniel Turner	Born Free Foundation

Secretariat

Helen Odom	Animal Welfare Act Team, Defra
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- 2.3.2. Representatives of a number of other interested organisations were kept informed of the Working Group's activities as were officials of Defra; the Department for Culture, Media, and Sport; the Arts Council of England; the Scottish Government; and the Welsh Assembly Government.
- 2.3.3. Administrative support was provided by Defra, but the Working Group has at all times acted independently of the Department.

2.4. HOW THE WORKING GROUP FUNCTIONED

- 2.4.1. The phrase 'Working Group' is somewhat misleading, as it suggests a body which works together towards a common end. In this case, however, the nature of the exercise was to engage with those representing both sides of the debate, and to ask them to submit such evidence as they considered relevant for review by an independent expert panel.
- 2.4.2. Defra contacted appropriate organisations in June 2006, inviting them to participate in the Circus Working Group. Of those, only the Captive Animals Protection Society declined to take part.
- 2.4.3. The Chairman of the Working Group and the Chairman of the Academic Panel were both appointed by Defra.
- 2.4.4. The first meeting of the Group was held on 10 July 2006 at which it was agreed that the nature of the task and the respective positions of the two sides necessitated the formation of two sub-groups, one made up of the representatives from the industry, the other comprising representatives from the welfare organisations.
- 2.4.5. Formal meetings were held with each Sub-Group on three occasions. In addition, there were regular informal contacts between the Chairman and the members of the two Sub-Groups; the Chairman also made a two-day visit to The Great British Circus on 10 and 11 June, 2007.
- 2.4.6. In order to carry out its remit, the Working Group was required to identify for submission to an Academic Panel all relevant evidence which might assist in our understanding of the effects of transport and housing on the welfare of non-domesticated circus animals. This was achieved by the Industry Sub-

Group and the Welfare Organisations Sub-Group working independently of each other to draw up their respective submissions and supporting evidence. In addition, although beyond a strict view of our remit, it became clear that, to be useful, this Report would have to include some consideration of relevant regulatory issues, and both Sub-Groups were therefore invited to submit a paper on this topic.

2.4.7. The Sub-Groups were therefore asked to perform four functions:

1. To identify and submit evidence which their respective members considered relevant to the Working Group's remit.
2. To nominate individuals with the appropriate degree of scientific knowledge, expertise and experience to act as members of the Academic Panel.
3. To submit their views on regulatory issues arising from the Working Group's remit.
4. To provide further explanation and background information about the use of non-domesticated animals in circuses from their particular perspective.

3. THE SIGNIFICANCE OF THE ISSUE

- 3.1. According to the information provided by the Industry Sub-Group, there are only four British circuses currently using non-domesticated animals. At present, a total of no more than 47 animals are involved:³

The Great British Circus	1 Kangaroo 2 Llamas 4 Reindeer 5 Lions 7 Tigers 7 Camels 1 Zebra
Bobby Robert's Super Circus	1 Elephant (touring, but retired from performance) 1 camel
Circus Mondao	3 Zebras 2 Llamas and acquiring 2 Camels
Jollys' Circus	2 crocodiles 1 Zebra 1 Ankole 1 Llama 6 Snakes

- 3.2. We are concerned, then, with only a handful of animals. However, the significance of this issue cannot be measured only by reference to the number of animals involved. For the use of non-domesticated animals in circuses generates deeply held but entirely divergent views: those who use such animals in circuses consider that they are doing nothing wrong, are caring for their animals to a high standard, and should be allowed to continue to make a living by this traditional, and hitherto entirely legal, means; whereas their opponents believe the use of non-domesticated animals is morally unacceptable, their welfare inevitably poor, and regard the relatively few animals still being used in this way in the United Kingdom to be a measure of their success in campaigning against circuses.

- 3.3. It is claimed by the welfare organisations that a majority of the population are opposed to the use of non-domesticated animals in circuses. While it may be countered that opinion polls can be used to demonstrate anything, it is

3 The precise number of animals involved is entirely dependent on the definition to be attached to the term 'non-domesticated animals'.

undoubtedly the case that there exists a influential body of opinion which wishes to see an end to non-domesticated animals in circuses. Moreover, the issue is of some political significance: members of both Houses of Parliament took a keen interest in it during the passage of the Animal Welfare Bill and of those who expressed a view, the vast majority were against the practice.

- 3.4. In addition, there is a wider, international dimension to the debate. In many European countries the tradition of the travelling circus remain strong, and both the number and the range of animals involved is significantly greater than in the United Kingdom. The European Circus Association has provided what it describes as 'an indicative list' of domesticated and non-domesticated animals featured in circuses in Europe, which is reproduced below. Those most commonly used are indicated by an asterisk.

Mammals

Elephant* African/Asian
Sea Lion*
Alpaca
Snow Leopard
Antelope
Tapir
Baboon
Tiger*
Bison
Water Buffalo
Black Bear
Wolf
Bovine animal*
Zebra*
Camel*
Zebu
Cat (several races)
Chimpanzee
Dog (several races)
Donkey
Dromedary*
Eland
European brown bear
Fox
Giraffe
Goat*
Guanaco*
Hippopotamus
Horse (several types)*
Hyena
Jaguar
Kangaroo
Leopard
Liger
Lion*

Llama*
Mule
Panther
Pig*
Pony*
Puma*
Pygmy Hippopotamus
Reindeer
Rhesus Monkey
Rhinoceros

Birds

Canary
Emu
Ostrich
Parakeet
Parrot (several types such as macaw)
Penguin
Pigeon*
Vulture

Reptiles

Alligator
Snakes (several types including Indian Python and African Python)*

- 3.5. Those who wish to see an end to the use of such animals in circuses campaign in many other European countries, and the industry seeks to protect its position throughout the continent. Consequently, although the number of animals presently being used in the United Kingdom is very small, the contents of this Report, and the way in which the Government decides to respond to it, will be keenly watched not only in the UK but also throughout the rest of Europe.

4. CONSIDERATION OF THE EVIDENCE

4.1. THE NATURE OF THE EVIDENCE TO BE CONSIDERED

- 4.1.1. The Minister of State, Lord Rooker, explained to the House of Lords the nature of the evidence that the Government would take into account in developing its policy:

When deciding whether types of wild animals are suitable for performance in travelling circuses, decisions will need to be anchored in what the available scientific evidence tells us, but we recognise the need to listen to those with experience of wild animals in circuses. That obviously includes those in the industry, as well as welfare organisations and people who have gained evidence and experience from direct observation. Just because they are not commercially involved in running a circus does not mean to say that they do not have a view that is worth taking into account....

The Government are willing to consider any evidence that has a sound scientific base, preferably peer-reviewed and conducted in an environment where the animals were performing and travelling. We acknowledge that there is likely to be a lack of scientific evidence related to animals used specifically in entertainment, and we would be willing to consider sound scientific results obtained on species kept in different conditions, if we can establish that those results could reasonably be extrapolated to other circumstances. We do not consider photographic or video evidence to be sufficient to base policy decisions on. Such evidence can be open to misinterpretation and gives only a snapshot in time. A film showing a lion pacing up and down may indicate evidence of stereotypical behaviour, but equally the film may have been shot when the lion had seen its keeper approaching with food. So the context in which the film was made is important and the evidence has to go wider.

On evidence of particular instances of cruelty, while that is distressing, it is of course not sufficient to demonstrate that a particular environment necessarily causes animal suffering. Animals in any environment may be subject to particular instances of cruelty—private pet ownership is the most common example, even though one assumes that animals are safe and well looked after in those circumstances. In order to establish that a certain environment inevitably causes suffering or distress to an animal, supporting scientific evidence set out in published papers that have been peer reviewed would have to be submitted. The point here is that it must be demonstrated that animals suffer and are in distress simply by being in a certain environment, and that is why it is not something that can be proved with a snapshot.⁴

- 4.1.2. This statement provided the basis for defining the scope and character of the

4 23 May 2006, Col GC176-7.

evidence which would be considered during this exercise. The two Sub-Groups were invited to submit a paper outlining their case, together with citations of the evidence they sought to rely upon. At a meeting between the Chairman of the Working Group and the Chairman of the Academic Panel held on 4th December 2006, consideration was given to these submissions before they were sent to the other Sub-Group for its comments. These were restricted to issues of fact, accuracy, and interpretation. The respective submissions and the comments on them were considered further by the Chairman of the Working Group and the Chairman of the Academic Panel on 24th January 2007 before they were forwarded to the Academic Panel.

- 4.1.3. In drawing up the body of evidence, four issues arose. First, whether all the evidence had to be of a scientific nature; second, whether it had to be peer-reviewed; third, whether any photographs or video material was to be permitted; and, finally, the relevance of court proceedings and the accompanying evidence. Although these issues required considerable time and diplomacy, the only one which could not be resolved informally was that relating to court proceedings. The Welfare Organisations Sub-Group sought to submit a significant volume of material, including video evidence, which had been used in the successful prosecution for cruelty of Mary Chipperfield and Roger Crawley. The Chairman of the Working Group and the Chairman of the Academic Panel agreed that this fell outside the conditions laid down by the Minister, and the material was not put forward. Apart from this, everything of a scientific nature which the Sub-Groups submitted was considered by the Academic Panel.

4.2. APPOINTMENT OF THE ACADEMIC PANEL

- 4.2.1. The Chairman of the Academic Panel was Mike Lomas, a veterinarian with considerable experience and formerly Deputy Head of Animal Welfare Veterinary Division at Defra.
- 4.2.2. The other members of the Panel were appointed by Defra, having been nominated by the Sub-Groups: the Industry Sub-Group made three nominations, as did the Welfare Organisations Sub-Group. All the nominations were accepted and appointed. Each member of the Academic Panel acted as an independent expert; their role was not to promote the interests of the Sub-Group which had nominated them. None of the members of the Academic Panel was paid or otherwise rewarded for their services by the organisations which nominated them.

4.3. MEMBERS OF THE ACADEMIC PANEL

- 4.3.1. The Members of the Academic Panel were:

Mike Lomas BVSc MRCVS JP (Chairman)

Professor Sir Patrick Bateson MA PhD ScD FRS

Professor of Ethology, University of Cambridge, UK

Professor Ted Friend PhD

Department of Animal Science, Texas A&M University, United States

Dr Marthe Kiley-Worthington BSc DPhil MPhil

Director Centre of Eco-Etho Research and Education, Drome, France

Fellow, Berkeley, University of California

Samantha Lindley BVSc MRCVS

Veterinary Surgeon Behaviourist, United Kingdom

Professor Georgia Mason BSc PhD

Canada Research Chair in Animal Welfare

University of Guelph, Canada

Visiting Professor in Animal Welfare, Royal Veterinary College, UK

Peter Scott MSc BVSc FRCVS

RCVS Specialist in Zoo and Wildlife Medicine

Biotope Specialist Veterinary Consultancy, Winchester, UK

4.4. THE ACADEMIC PANEL'S TERMS OF REFERENCE

4.4.1. The Academic Panel received: the submissions from both Sub-Groups; each Sub-Group's comments on the other Group's submission; and all the references which were cited to support the respective submissions.

4.4.2. The members of the Academic Panel were asked:

- to assess the quality of the evidence in the submissions provided by the Welfare and Industry Sub-Groups; and
- to consider any evidence with a sound scientific basis, preferably peer-reviewed and conducted in an environment where the animals were performing and travelling, to support a ban in relation to a particular non-domesticated species.

4.4.3. A bibliography of the relevant reference is set out in the Appendix to this Report.

4.5. HOW THE ACADEMIC PANEL CARRIED OUT ITS TASK

4.5.1. The Panel did not meet; it carried out all its deliberations by email. Its work was co-ordinated by the Chairman of the Panel. The Chairman of the Working Group took no part in its work.

4.5.2. Having considered all the material which was submitted to it, the Academic Panel agreed the Report which is set out in the following chapter.

5. THE REPORT OF THE ACADEMIC PANEL

Having considered all the material which was submitted to them, the members of the Academic Panel have agreed the following Report.

5.1. INTRODUCTION

- 5.1.1. In general, the Academic Panel was disappointed with the evidence submitted by both the Welfare and Industry Sub-Groups and was divided over which Sub-Group presented the stronger argument. For the status quo to be changed the balance of evidence would have to present a convincing and coherent argument for change.
- 5.1.2. The opinion of the Academic Panel members is that such an argument, based on a sound scientific basis, has not been made.
- 5.1.3. There appears to be 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.
- 5.1.4. When seeking submissions, Defra anticipated that identifying research meeting its stated criteria might prove difficult. At the outset of the exercise, it acknowledged “that there is likely to be a lack of scientific evidence relating to animals used specifically in entertainment, and would be willing to consider sound scientific results obtained on species kept in different conditions, if it can be established that those results can reasonably be extrapolated to other circumstances.”⁵
- 5.1.5. The opinion of the Academic Panel is that the environment in circuses is too different from those of farms or zoos for helpful comparisons of research findings to be made. Legitimate comparisons could possibly be made with animals transported regularly to shows or competitions involving a high degree of training and human contact but the data are not available at present although even this could be problematic as these are usually domesticated animals.
- 5.1.6. Non-domesticated circus animals have been the subjects of research carried out by two members of the Panel as well as others. Although this research has not found evidence of adverse welfare, the Panel encourages continued monitoring and research on the welfare of circus animals.

5 Defra, Invitation Letter, 13 June 2006.

5.2. GENERAL COMMENTS ON THE EVIDENCE

- 5.2.1. Unfortunately, significant parts of the submissions, and the comments on submissions, tended to err towards being adversarial and, in the view of the Academic Panel, without any evidence being presented to support a ban.
- 5.2.2. Perhaps understandably, both submissions rely heavily on ‘cherry-picking’ the references or parts of references which support their particular case. Both submissions also interpret such evidence as there is in a way to support the case being presented. Two examples of this, stereotypic behaviour and transport, are detailed below.
- 5.2.3. The results of opinion polls were disregarded, as they do not provide evidence of suffering in circus animals.
- 5.2.4. A significant part of the Industry submission concerned regulatory issues (to be considered separately) and this was disregarded by the Panel.
- 5.2.5. Much of the background presented by the industry, although interesting, did not present credible evidence that animals in circuses do not suffer, and was disregarded. However, there have been several studies conducted on aspects of the behaviour of circus animals and those studies did not identify inherent problems with the welfare of the animals that were studied. However, some members of the Group felt that this still needs corroborating with larger samples, physiological as well as behavioural data, and a reference population for comparison.

5.3. HOUSING

- 5.3.1. Comparisons were made with zoos where some animals might be more confined than circuses whereas, in others, they might have more space.
- 5.3.2. The extra stimuli experienced by animals in circuses by way of performing, being trained, being transported, and a regularly changing environment was said to be negative by the Welfare Sub-Group and positive by the Industry Sub-Group with little supporting evidence. Although the Academic Panel has not considered evidence relating to performance and training this, nevertheless, accounts for a significant part of the time budget of animals and makes circus animals different from other animals in captivity.
- 5.3.3. It should be noted that there is an element of selection for animals in circuses. Animals that are difficult to transport or which react adversely to performance and the presence of crowds are unlikely to be retained in the circus. The Panel debated whether such selection might ‘pass on’ welfare problems but that was outside the remit of this Report.
- 5.3.4. Whilst it was accepted that animals kept in circuses were more confined than

in the wild the opinion of most of the Panel was that this did not, necessarily, lead to adverse welfare.

5.4. TRAVEL

- 5.4.1. The Welfare Sub-Group made much of transport being a cause of stress to animals and cited papers relating to the transport of farm animals. They stated that, as circus animals were transported regularly, this meant that they must be subject to more stress than animals in zoos. The Industry Sub-Group argued the opposite. All transport will cause some stress but if the conditions are good and the animals are properly trained then that stress may be minimised. Circus animals are often transported in containers/vehicles that are also 'home'; therefore the stress of a novel environment may be reduced. They infrequently appear to object to being loaded and unloaded compared to animals not used to being transported regularly, although systematic data on this have not yet been collected.
- 5.4.2. There is much made of the distance and the duration of journeys whereas it is well documented that it is the quality of the journey that is important and other factors such as poor means of transport, poor handling/driving and inappropriate feeding/watering contribute to increased stress.
- 5.4.3. The Panel concluded that, although circus animals are transported regularly, there is no evidence that this, of its own nature, causes the animals' welfare to be adversely affected.

5.5. STEREOTYPIC BEHAVIOUR

- 5.5.1. The exchanges between Panel members indicated that this is a very complex area. There appears to be no data to indicate that the presence of stereotypic behaviour proves bad welfare or that the absence of stereotypic behaviour proves that welfare is good. Where animals have been brought in to circuses, separating the stereotypic behaviour resulting from earlier experience from current experience is difficult. Some researchers concluded that a significant number of stereotypic behaviours in circus tigers and elephants are anticipatory and not indicative of poor welfare. However, others, who argue that these could still be triggered by frustration or a poor environment, contest this.
- 5.5.2. Thus the Panel concluded that it is very difficult to make a decision on welfare based on stereotypic behaviour alone.

5.6. PHYSICAL HEALTH

- 5.6.1. Although some health problems (for example, arthritis and foot problems in elephants) are reported, in general, the overall health of animals, based on some of the papers cited, in travelling circuses is reported as being good. It is

true that the state of performing animals is fully open to public view during the travelling season although some concerns have been expressed about the conditions in winter quarters.

- 5.6.2. The Panel concluded that there is little evidence that the health of circus animals is any better or worse than animals in other captive environments.

5.7. THE FUTURE

- 5.7.1. The Academic Panel believes that circus animals should continue to receive full protection under the law that can be addressed by

- the effective enforcement of existing legislation together with the provisions of the new Animal Welfare Act;
- the development of codes of practice (for example Association of Circus Proprietors and Performing Animals Welfare Standards International); and
- the revision of the Performing Animals (Registration) Act 1925 concerning the registration of trainers of performing animals.

- 5.7.2. It is worth emphasising the word ‘effective’ in the first bullet point. It is the view of the Panel that a significant number of statutory instruments fail, not because of inherent flaws, but because of ineffective enforcement.

- 5.7.3. The Panel urges further investigation and research. For example,

- improving the knowledge base to enable behavioural and physiological comparisons of circus animals with conspecifics in other environments; and
- comparative data on other animals regularly transported to shows and competitions, for example horses and dogs.

5.8 ACKNOWLEDGMENT

- 5.8.1. The Academic panel acted entirely independently and separately from their nominating sub-group. The six members of the Panel generously gave their time voluntarily and were not reimbursed by their nominating Sub-Group or Defra.

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6. THE IMPLICATIONS OF THE ACADEMIC PANEL'S REPORT

6.1. INTRODUCTION

- 6.1.1. During the passage of the Animal Welfare Bill, the Minister told the House of Commons that the Circus Working Group will consider the scientific evidence and make recommendations to inform Ministers and to inform the debate. However, its role is to inform, not to prepare a binding list, and it is premature to draw conclusions as to the evidence that it will provide.⁶
- 6.1.2. The process adopted provided both the Industry Sub-Group and the Welfare Organisations Sub-Group with a substantial degree of autonomy: each was invited to set out its respective arguments; to identify and marshal the scientific evidence which it judged best advanced its case; and to nominate appropriate experts to assess the material.
- 6.1.3. On the basis of the evidence they were asked to consider, those experts have agreed that there appears to be little evidence to demonstrate that the welfare of animals kept in travelling circuses is any better or any worse than that of animals kept in other captive environments.
- 6.1.4. In the light of the Academic Panel's conclusions, it would be inappropriate to make any specific recommendation; better to consider the implications of its Report with a view to informing Ministers and informing the debate.

6.2. THE SIGNIFICANCE OF THE ACADEMIC PANEL'S CONCLUSIONS

- 6.2.1. The significance of the Academic Panel's conclusions is twofold.
- 6.2.2. First, the conclusions should not be regarded as establishing conclusively one way or the other whether the welfare of non-domesticated circus animals is either compromised or of an acceptable standard. The Panel did not undertake its own investigations, neither was any independent research commissioned as part of the present process. The Panel could reach its conclusions only on the basis of the evidence which was submitted by the two Sub-Groups, and it is apparent from the Panel's report that it had serious reservations about the cogency and relevance of much of the material. Thus, the Panel states that it was "disappointed with the evidence". It further concluded that the particularity of the circus environment was such that research findings relating to animals kept in other contexts was not helpful, and there was a difference of

opinion on the significance to be attached to the studies which were concerned with circus animals.

- 6.2.3. Despite the best efforts of the respective Sub-Groups to present what each regarded to be the most persuasive evidence to support its case, the question as to the precise effect of the circus environment on the welfare of non-domesticated animals remains open. Accordingly, neither side of the debate should regard the issue to have been adequately resolved. As the eminent veterinarian, Lord Soulsby of Swaffham Prior, observed when this issue was debated in the House of Lords, “We know little about the physiology and the sentience of the exotic species that often used to be seen – and still are – in some travelling circuses.”⁷
- 6.2.4. Notwithstanding this situation, the Academic Panel’s conclusions undoubtedly have profound legal implications in the present context. This is the second area of significance of its Report and is further discussed below.

6.3. MINISTERIAL POLICY

- 6.3.1. During the passage through Parliament of the Animal Welfare Bill, responsible Ministers adopted a consistent policy towards non-domesticated animals in circuses: they rejected proposals for a blanket ban, indicating instead that they were minded to introduce a ban on specific types of animals by means of a regulation made under the authority of section 12. In doing so, they repeatedly indicated that the basis of such a ban would be scientific evidence that the welfare needs of the animal to which it applied cannot be satisfactorily met in that environment.
- 6.3.2. Thus, in Standing Committee, Ben Bradshaw responded to an amendment which would have had the effect of banning the use of all non-domesticated animals in circuses in the following terms:

...we should think very carefully about banning an activity unless we are convinced that it is unavoidably cruel or that the welfare needs of all animals involved cannot be met....We should acknowledge that most of the wild animals used in circuses are, in fact, captive bred. With all species...there is a debate about where we should draw the line, not only on the animal’s definition but on whether it is strictly the case that it is impossible in circus conditions to meet the welfare needs of every animal that we would normally describe as wild. I am advised that it is not possible to say that categorically. For me, that doubt is one reason – a fundamental one – to oppose the banning of wild animals....The fundamental point I want to get across is that I share my hon. Friend’s concerns – in some circuses, current practices do not meet acceptable welfare standards. I also accept that it is likely that the welfare needs of some, if not most, cannot be met in circus conditions. However, both these concerns are best met by regulation

7 House of Lords, 23 May 2006, col GC 169.

rather than a blanket ban.⁸

6.3.3. Similarly, in his Statement of 8 March 2006 setting out the Government's policy, the Minister said that he intended "to use a regulation under clause 10 of the Animal Welfare Bill [now section 12 of the Act] to ban the use in travelling circuses of certain non-domesticated species whose welfare needs cannot be satisfactorily met in that environment."⁹

6.3.4. As has already been noted,¹⁰ Lord Rooker told the House of Lords that "When deciding whether types of wild animals are suitable for performance in travelling circuses, decisions will need to be anchored in what the available scientific evidence tells us".

6.3.5. He explained further at Third Reading:

The Government's commitment to ban certain non-domesticated species will be based on scientific evidence.¹¹

6.3.6. Later in the same debate, Lord Rooker reiterated the point: "We have always proposed to ban certain species of wild animals on the basis of scientific evidence"; he then repeated it only two paragraphs later: "The Government's commitment to ban certain non-domesticated species will be based on scientific evidence"¹².

6.4. THE CONSEQUENCES OF THIS REPORT

(a) England

6.4.1. The power to make regulations under the authority of section 12 is wide, but nevertheless must be used in accordance with the normal principles of administrative law. In particular, Ministers are required to have regard to relevant considerations and disregard irrelevant considerations; it may be used only for the purpose which Parliament intended; and it must be used in a proportionate manner.

6.4.2. Ministers will wish to receive the advice of their own lawyers but, taking account of these ministerial statements in the context of the Academic Panel's Report, it is submitted that to introduce a ban on the use of any type of non-domesticated animal presently in use by circuses in the United Kingdom – and possibly a ban of a more general nature – by way of a Regulation made under the authority of section 12 of the Animal Welfare Act would be vulnerable to legal challenge.

8 Standing Committee A, 24 January 2006, col 237.

9 8 March 2006, col 60WS.

10 See para 4.1.1. above.

11 1 November 2006, col 315.

12 1 November 2006, col 317.

- 6.3.7. This conclusion is based on four considerations.
- 6.3.8. First, in their statements, Ministers clearly stated or otherwise implied that their decisions would be based on consideration of the scientific evidence. It is suggested that they are bound by the conclusions that have been drawn from that evidence unless there are very pressing reasons to bring other factors into account. To adopt a policy which did not follow the evidence, especially in circumstances where a group had been established specifically for the purpose of identifying and reviewing that evidence, would be vulnerable to legal challenge.
- 6.3.9. Second, the power to make regulations under section 12 is provided for the purpose of promoting the welfare of animals. The term ‘animal welfare’ is not defined in the Animal Welfare Act, but it is widely accepted to be scientific in nature. The Committee of Inquiry into Hunting with Dogs in England and Wales (the Burns Committee) described it in the following terms:
- Animal welfare is a scientific discipline which has developed rapidly in recent years. It is essentially concerned with assessing the ability of an animal to cope with its environment: if an animal is having difficulty in coping with its environment, or is failing to cope, then its welfare may be regarded as poor. This judgement is distinct from any ethical or moral judgements about the way in which the animal is being treated.¹³
- 6.3.10. Precisely so. While section 12 does not specify that regulations introduced under its authority must be based on scientific evidence (unlike, for example, the enabling power contained in section 1(4)), even if Ministers had not committed themselves to basing their decision on the scientific evidence, it is submitted that the generally held meaning of the term ‘animal welfare’ would have required them to focus on the available science. In particular, a decision which was based on ethical or moral considerations as to the acceptability or otherwise of using non-domesticated animals in circuses would, it is suggested, be liable to legal challenge.
- 6.3.11. Third, it is considered that to impose a ban on the use of non-domesticated animals in circuses by way of delegated legislation in the absence of compelling scientific evidence would be susceptible to legal challenge on the ground that such a measure was disproportionate.
- 6.3.12. The fourth point focuses on the nature of the power contained in section 12. On the one hand, it provides the appropriate national authority with the power by means of regulations to make such provision as the authority thinks fit for the purpose of promoting the welfare of animals for which a person is responsible. On the one hand, the subjective test – “as the authority thinks fit” – provides it with considerable discretion; on the other, the scope of the power is restricted in that, as has already been discussed, it must be for the purpose of promoting animal welfare. It may be reasonably argued that the term ‘animal

welfare’ means more in this context than simply an assessment of how an animal is ‘coping’ with its environment. One of the underlying policy objectives of the legislation is to secure a reasonable quality of life for protected animals. Accordingly, by reference to section 9, it can be reasonably implied that ‘animal welfare’ is intended to be principally, if not exclusively, concerned with meeting an animal’s needs.

6.3.13. When this provision was considered by the House of Lords’ Committee on Delegated Powers and Regulatory Reform, it explicitly stated that:

paragraph 38 of the memorandum [submitted to it by Defra] refers to a proposed use of the power to prohibit the use of certain species of wild animals in travelling circuses. The power is not just about prescribing welfare standards. It appears to the Committee to be sufficiently wide to prohibit or restrict (for the stated purpose) well-established activities, such as horseracing, greyhound racing, keeping of game birds and managing circuses.¹⁴

6.3.14. It is for the courts to give an authoritative view of the precise scope of the power, but it is submitted that if the provision is indeed sufficiently extensive to enable an activity to be banned – and it is arguable that it is not – a very high threshold would have to be met: it would be incumbent on Ministers not only to identify the relevant scientific evidence on which their decision was based, but also to demonstrate how a ban would promote animal welfare by ensuring the needs of the animals involved. In other words, it is submitted that Ministers would not only have to identify nature of the welfare problem they were seeking to address, but also explain how a ban would improve the situation. It is suggested that on the basis of the evidence before Ministers, these requirements would be extremely difficult to meet in relation to animals presently being used by circuses in the United Kingdom.

(b) Wales

6.3.15. Ministers of the Welsh Assembly Government are in a slightly different position than those of the UK Government because they are not bound by express Parliamentary statements, neither were they directly party to the establishment of the Circus Working Group. Nevertheless, for the reasons set out in the proceeding paragraphs, it is submitted that in law Ministers are in essentially the same position as their Westminster counterparts.

(c) Scotland

6.3.16. The situation in Scotland is potentially somewhat different. For example, the equivalent provision contained in the Animal Health and Welfare (Scotland) Act 2006 provides that

14 House of Lords, Select Committee on Delegated Powers and Regulatory Reform (2006), Eighteenth Report, para 7.

The Scottish Ministers may by regulations make provision for the purposes of, and in connection with, securing the welfare of

- (a) animals for which a person is responsible,
- (b) the progeny of such animals.¹⁵

- 6.3.17. It is submitted that the adoption of the verb ‘secure’ provides a more extensive power than that provided by the verb ‘promote’ in the Animal Welfare Act. ‘Promote’ suggests furthering the progress of a cause, venture, or aim, whereas ‘secure’ generally means to succeed in obtaining a particular objective. Furthermore, section 26(2)(a) and (3) expressly provide that such regulations may include provision prescribing general or specific requirements or prohibitions relating to, inter alia, the prevention of suffering; the way in which animals are kept and looked after and the conditions in which they are kept; and how animals are transported.
- 6.3.18. Furthermore, section 28 provides an enabling power of which there is no equivalent in the Animal Welfare Act. Namely, secondary legislation may be introduced which prohibits the keeping at either domestic or other premises of any animals of a kind specified in the regulations. Such regulations must be for the purpose of securing the welfare of animals and, in determining whether to make such regulations in relation to a type of premises, the Scottish Ministers must have regard to whether (and the extent to which) adequate provision for the welfare of animals of the kind in question is capable of being made, and is likely to be made, at that type of premises.¹⁶
- 6.3.19. However, notwithstanding these more extensive powers, it is submitted that in the light of the Academic Panel’s Report, Scottish Ministers would nevertheless have difficulty in justifying the imposition of a ban by way of regulations.
- 6.3.20. It is concluded, then, that in relation to England, Wales, and Scotland, the consequence of the Academic Panel’s Report is that Ministers do not have before them scientific evidence sufficient to demonstrate that travelling circuses are not compatible with meeting the welfare needs of any type of non-domesticated animal presently being used in the United Kingdom. It is further submitted that such a decision must be based on scientific evidence, and other considerations are extraneous, and therefore unlawful in the context of section 12. Furthermore, in the absence of compelling scientific evidence, any attempt to ban the use of an animal would fall foul of the principle of proportionality. Accordingly, it is proposed that further primary legislation would be required to have any realistic prospect of achieving a lawful ban.

15 Section 26(1).

16 Section 28(3), (5).

7. THE NEED FOR REFORM

7.1. CONSIDERATION OF THE ACADEMIC PANEL'S RECOMMENDATIONS

- 7.1.1. In the view of the Academic Panel, the general provisions of the Animal Welfare Act should be relied upon to protect the welfare of non-domesticated circus animals, together with codes of practice and a revision of the legislative regime relating to the trainers of performing animals. In addition, the Panel considers that there is a need for further investigation and research.
- 7.1.2. It is a truth universally acknowledged, that a scientist in possession of a report must be in want of further research. The submissions of the two Sub-Groups have confirmed the paucity of material in the scientific literature directly relevant to non-domesticated animals in travelling circuses. Furthermore, the Academic Panel concluded that the literature relating to the housing and transport of animals in other contexts, such as agriculture and zoos, could not be applied to circus animals. It would seem, therefore, that based on the scientific literature alone, our understanding of the impact of the circus environment on the welfare of non-domesticated animals is somewhat limited. Nevertheless, in view of the relatively small number of animals involved, it is doubted that the results of further research would be sufficiently meaningful and robust better to inform the debate. On this basis, it would be difficult to justify the expense, and could be regarded in some quarters as merely a delaying tactic.
- 7.1.3. The Academic Panel's suggestion that the general provisions of the Animal Welfare Act together with a code of practice can be relied upon to protect the welfare of the animals involved may seem appropriate from a scientific perspective, but these would not in themselves adequately address the associated political, legal and administrative issues.
- 7.1.4. It is the case that the Animal Welfare Act imposes greater legal obligations on those responsible for circus animals than hitherto, as, indeed, it does on all those who have assumed responsibility for an animal. They are now under a duty to take such steps as are reasonable in all the circumstances to ensure that the needs of their animals are met to the extent required by good practice.¹⁷ To rely exclusively on this provision would seem to be unsatisfactory for a number of reasons. First, the number of animals involved is so small that it would be difficult to lay down an objective test which precisely defines 'good practice' in this context. Second, a breach of any such code would not in itself constitute an offence; it would still have to be established beyond reasonable doubt that the responsible person had not taken such steps as are reasonable in all the circumstances to ensure the needs of an animal. Third, the circumstances to which it is relevant to have regard when applying this test specifically include any lawful purpose for which the animal is kept, and any lawful activity undertaken in relation to an animal. Their use in circuses

17 Animal Welfare Act 2006, s 9(1).

would remain a lawful activity and, depending on the attitude of the courts, this provision might serve to undermine the potential effectiveness in this context of the duty to ensure welfare. Conversely, as a result of a successful prosecution, whether brought by a public authority or by means of a private prosecution, the circus industry could find that practices which it had assumed remained lawful were no longer so. In consequence, it is thought that reliance on the duty to ensure welfare alone would not provide sufficiently clear and robust standards to satisfy either political opinion or the need for certainty and specificity as to what is, and what is not, required of circuses.

- 7.1.5. This is the same conclusion reached by the Minister. Ben Bradshaw specifically rejected the suggestion that what is now section 9 was, in itself, sufficient to regulate the use of non-domesticated animals in circuses because he was not convinced “that by itself this element of the Animal Welfare [Act] will provide sufficient clarity to circus proprietors and enforcers on what is permitted and what is not”.¹⁸

7.2. THE STATUS QUO IS NOT AN OPTION

- 7.2.1. Accordingly, notwithstanding the conclusion of the Academic Panel, it is submitted that the status quo is not a tenable option. First, expectations have been raised that the Government will do something. Second, the circus industry is exceptional in that the use of animals in most other commercial contexts is generally subject to specific regulation. Third, the present state of uncertainty confronting circuses requires resolution. Fourth, it is considered that the present situation is acting against the interests of the animals involved. For example, it has been suggested that circus proprietors are reluctant to make significant further investment in their facilities unless they have sufficient confidence that the use of the relevant animals will remain lawful. Similarly, there appears to be force in the contention that prohibitions by local authorities on the use of their land is forcing circuses to use private sites which in many cases are less suitable for the animals. Finally, and most significantly, there is support from all sides of the debate for reform.
- 7.2.2. First and foremost, it is self-evident from events surrounding the enactment of the Animal Welfare Act that Parliament is exercised and concerned by this issue. During the passage of the Bill amendments were put down in the Commons which would have respectively banned the use of wild animals in circuses, banned all animals in circuses, and permitted only (undefined) designated animals to be used. In the Lords, amendments were proposed which would: have banned all animals in circuses subject to the possibility of exemptions; banned all wild animals from circuses; and have made it an offence to keep or use a circus animal not designated by regulations.
- 7.2.3. In addition, the Environment, Food and Rural Affairs Committee, as part of its pre-legislative scrutiny of the Animal Welfare Bill, recommended that what it referred to as ‘wild animals’ should be phased out by imposing a prohibition

on circuses “either to bring in new wild animals or to breed from their existing wild animals”.¹⁹ Furthermore, an Early Day Motion which urged that the Animal Welfare Bill be used “to end the use of animals in traveling circuses and to take measures to protect performing animals in permanent facilities through regulation” attracted 144 signatures (an opposing amendment gained only 4 signatures),²⁰ and a further EDM which called on the Government “to introduce measures to end the use of wild animals in circuses in the forthcoming Animal Welfare Bill” secured 114 signatures.²¹

- 7.2.3. Similarly, the circus industry itself accepts the need for change. In the memorandum it submitted to the Environment, Food and Rural Affairs Committee, the Association of Circus Proprietors of Great Britain recognised that “the present legislation on the keeping and training of animals used in entertainment is inadequate”,²² and the Association’s Secretary stated in his oral evidence to the Committee that “we welcome legislation which seeks to regulate circuses”, observing that “We are a surprisingly unregulated industry”.²³ For its part, the European Circus Association has stated that it “strongly supports good regulation for circuses and performing animals in order to establish and maintain a high standard across the circus sector”.²⁴ Finally, it goes without saying that the animal welfare organisations have pursued long-standing campaigns for reform.
- 7.2.4. However, while there is widespread agreement about the need for change, there is no consensus about the form it should take.

19 *The Draft Animal Welfare Bill* (2004), HC 52-I, para 381.

20 EDM 1626 Animal Welfare (No 2), 13 February 2006.

21 EDM 468 Circus Animal Welfare, 29 June 2006.

22 *The Draft Animal Welfare Bill* (2004), HC 52-II, Ev 216.

23 *Ibid.*, Q507.

24 European Circus Association, *Proposed Model Regulations for the Care, Transport, and Presentation of Animals in the Circus* (in draft, 2007), Introductory Note.

8. THE OPTIONS

8.1. THE PRESENT SITUATION

- 8.1.1. At present, travelling circuses are not subject to any regulation relating to the protection of animals over and above that which applies to any person who assumes responsibility for an animal under the Animal Welfare Act, except that those who exhibit or train performing animals are required to register with his or her local authority (the Performing Animals (Regulation) Act 1925). This legislation is not, however, intended to promote welfare and its provisions are widely regarded to be ineffective.
- 8.1.2. Travelling circuses are specifically excluded from the ambit of the Dangerous Wild Animals Act 1976 and the Zoo Licensing Act 1981 (in *South Kesteven DC v Mackie* it was held that the exemption under the DWA extended to circus winter quarters).

8.2. SELF REGULATION

- 8.2.1. It is submitted that self-regulation represented by, for example, the Association of Circus Proprietors' 'Standards for the Care and Welfare of Circus Animals on Tour', has proved to be inadequate to meet public and political concern to which this issue gives rise. Indeed, it is the perceived failure of self-regulation which has contributed to the demand for reform. If non-domesticated animals are to continue to be used in travelling circuses, it is considered that public opinion will require a regulatory system which delivers independence, transparency and accountability.

8.3. THE IMPOSITION OF A BAN

- 8.3.1. There was a widespread assumption at the outset of the Circus Working Group's task that it would lead eventually to a ban on the use of at least some types of non-domesticated animals. As has been explained, this cannot be achieved in present circumstances using secondary legislation; there would need to be primary legislation.
- 8.3.2. In enacting primary legislation, Parliament is, of course, in a very different situation from that of a Minister bringing forward regulations. Parliament would not, for example, be confined to taking account of the scientific evidence. It could legitimately give consideration to ethical issues, public opinion, and it is able to attach greater weight to the interests of the animals involved. Furthermore, where there is uncertainty as to the impact on the welfare of the animals, Parliament may give them the benefit of the doubt in a manner which is simply not open to a minister employing delegated statutory powers.

- 8.3.3. To stand any realistic chance of succeeding, proposals would have to be brought forward in either a Government Bill, or a Private Member's Bill sponsored by an MP with a high position in the ballot.
- 8.3.4. Leaving aside the vagaries of the parliamentary process, it has been questioned whether such legislation could be drafted so as to be compatible with either EU law or the Human Rights Act 1981. The sponsors of such a Bill would need to take detailed legal advice on the matter. However, the decision of the Court of Appeal in the challenges to the Hunting Act²⁵ would appear to be relevant to the present case (while it remains good law at the time of writing, the decision is subject to appeal before the House of Lords). It will be recalled that the court rejected the challenges to the Act, holding that it was compatible both with EU law and the Human Rights Act. In so doing, the court gave weight to the fact that, in its view, the objective of the Hunting Act is a composite one of preventing or reducing unnecessary suffering to, in this case, wild mammals, together with the view that causing suffering for sport is unethical.
- 8.3.5. Furthermore, in response to a complaint that Austria had banned wild animals in circuses, it is understood that the European Commission concluded that the question of how to protect wild animals in circuses is not one to be decided at Community level, but rather should be left to Member States.

8.4. STATUTORY REGULATION

- 8.4.1. If it were decided to introduce a system of independent regulation, perhaps the most straightforward way of proceeding would be to amend the Zoo Licensing Act so as to bring circuses within its terms so far as is appropriate. However, this strategy would give rise to three issues. First, the Act contains no relevant enabling power, so primary legislation would be necessary to effect such a change. Second, the Zoo Licensing Act, as amended, gives effect to the EU Zoos Directive, which does not apply to circuses and not all of the Act's provisions are relevant. In particular, the Directive requires zoos to be involved in education and conservation programmes. It is acknowledged that some circuses claim to make a contribution to education and/or conservation, but these are unconvincing compared to the resources and expertise which zoos now devote to these activities. Third, it is understood that the zoo community would might be less than enthusiastic at the prospect.
- 8.4.2. Nevertheless, the provisions of the Zoo Licensing Act do seem to have much to offer: they provide an established and, at least in part, appropriate model, thereby avoiding the need to work up a regulatory system from scratch. Furthermore, Ministers have already indicated that they intend to refer to zoo standards in relation to circus winter quarters,

25 *R (on the application of the Countryside Alliance and others) v Attorney General and others; R (on the application of Derwin and others) v Attorney General and others* [2006] EWCA Civ 817.

- 8.4.3. If the continued use of non-domesticated animals in circuses is to be permitted, it is therefore suggested that consideration be given to introducing a regulation under section 13 of the Animal Welfare Act to instigate a licensing regime for circuses which use non-domesticated animals, such a scheme to be based on the relevant provisions of the Zoo Licensing Act.
- 8.4.4. Such regulations would make it an offence to operate a circus to which the regulations applied except under the authority of a licence. Under the regulations, circuses (adapting the language of section 1A (c)-(f)) would be required to:
1. Accommodate their animals under conditions which aim to satisfy the biological requirement of the species to which they belong, including –
 - i. providing each animal with an environment well adapted to meet the physical, psychological and social needs of the species to which it belongs; and
 - ii. providing a high standard of animal husbandry with a developed programme of preventative and curative veterinary care and nutrition.
 2. Preventing the escape of animals and putting in place measures to be taken in the event of any escape or unauthorized release of animals.
 3. Preventing the intrusion of pests and vermin into the circus premises.
 4. Keeping up-to-date records of the circus's collection, including records of –
 - i. the numbers of different animals;
 - ii. acquisitions, births, deaths, disposals and escapes of animals;
 - iii. the causes of any such deaths; and
 - iv. the health of animals.
- 8.4.5. The basis of the standards to be imposed on circuses could be the relevant parts of the Secretary of State's Standards of Modern Zoo Practice. For example, those relating to: the provision of food and water, a suitable environment, animal health care, the opportunity to express most normal behaviour, and protection from fear and distress; transportation and movement of live animals; stock records; and staff training. It is also considered that an amended form of the requirement which is placed on zoos to have an ethical review process would also promote public confidence in the practices and procedures adopted by circuses. In addition, much of the advice contained in the Zoos Forum Handbook relating to the ethical review process and, especially, animal welfare and its assessment would appear to be directly relevant to circuses.
- 8.4.6. A further significant source of relevant standards may be the Proposed Model Regulations for the Care, Transport and Presentation of Animals in Circuses which is in the process of being agreed by the European Circus Association. A confidential draft of this document has been submitted to the Chairman, and both its nature and its contents would appear to represent a positive and significant development on the part of the industry, the terms of which could be incorporated into a legislative regulatory scheme.

- 8.4.7. Because of the very number of circuses using non-domesticated animals, it is thought more appropriate for an licensing scheme to be carried out in the name of the Secretary of State. Members of the Zoo Licensing Inspectorate would undertake the principal inspections. Local authority officers would have a role in carrying out a secondary inspection to ensure the prior agreed standards were being adhered to.
- 8.4.8. If a regulatory system were introduced which involved circus proprietors in significant amounts of expenditure to improve standards, any subsequent ban which Parliament might introduce would have to take this expenditure into account as part of a compensation scheme.

8.5. LOCAL AUTHORITY BANS

- 8.5.1 Many local authorities throughout Britain have banned circuses with animals from using their land. It has been suggested that the legal status of at least some of these bans may be uncertain. If the use of non-domesticated animals is to continue to be permitted, and if it were to be regularised through a licensing system, local authorities would be advised to reconsider whether these bans were still appropriate and lawful.

8.6. CONCLUSION

- 8.6.1. In a circular issued in 2002, the Government stated that

It believes that all captive animals should enjoy the same minimum welfare standards, aimed at ensuring a quality of life as good as can reasonably be achieved in the type of regime in which they are held. They should be held in accommodation, which is suitable in every key respect; adequately fed and watered; provided with veterinary care as necessary; and not be subjected to unnecessary suffering. Wherever practicable, standards should go beyond that – for example, to provide a rich and stimulating environment.²⁶

- 8.6.2. How these sentiments can best be put into practice is a political issue. The overriding conclusion of this exercise is that our present state of knowledge about the welfare of non-domesticated animals used in circuses is such that we cannot look to scientific evidence for a steer in the development of policy; it is, ultimately, an entirely political decision. Once the relevant policy is decided upon, its implementation is essentially a question of politics and law; science, on this occasion, provides no relevant guidance as to the appropriate principle to be adopted.

26 DEFRA, 'The Keeping of Wild Animals', Circular 1/2002

APPENDIX

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