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*This article was first published on Lexis®PSL on 17 July 2013.
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Is this the end for circus elephants?

17/07/2013

Corporate Crime analysis: Are the government's plans to ban the use of wild animals in circuses too far reaching? Paula Sparks, a barrister at Doughty Street Chambers and Chair of the Association of Lawyers for Animal Welfare, discusses the issues

Original news

Report: Wild animals in circuses

The government's plans to ban the use of wild animals in travelling circuses from late 2015 need to be more clearly defined, the Environment, Food and Rural Affairs (Defra) Committee has reported. The Committee has recommended the government should include a proscribed list of animals which can no longer be used in travelling circuses in the Bill.

On what grounds was the ban proposed?

The House of Commons agreed to a motion calling on the government to ban the use of wild animals in circuses under the Animal Welfare Act 2006 (AWA 2006), after Animal Defenders International released secretly obtained footage of staff at the Bobby Roberts Super Circus beating an Asian elephant who was travelling with the circus.

On 1 March 2012 the government committed to pursue a ban in England through primary legislation as it considered it arguable whether the powers contained in AWA 2006 could be applied only on welfare grounds. Furthermore, there was insufficient evidence of 'irredeemable welfare problems' among wild animals in travelling circuses. The conclusion that there was insufficient evidence of welfare problems to justify a ban was based upon the findings of the Circus Working Group in 2007--there was 'little evidence to demonstrate that the welfare of animals kept in travelling circuses is any better or worse than that of animals kept in other captive environments'.

However, critics argue those findings are undermined by the fact that Defra only permitted the Working Group to look at published scientific studies and a large amount of evidence submitted by Animal Defenders International and other groups about the effects of captivity upon wild animals was excluded from the Academic Panel's deliberations.

Animal welfare groups like the RSPCA, the Born Free Foundation and Animal Defenders International all support the ban. They disagree that there is insufficient evidence of suffering among wild animals that are subject to confinement and constant transportation.

Opponents argue the ban is unnecessary, particularly when the government concedes there are no animal welfare issues involved, and they draw analogies to animals used in film and television performances which also have to travel and perform on public display. In their opinion, the Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012, SI 2012/2932, which were introduced from 20 January 2013 to regulate the use of wild animals in travelling circuses until the primary legislation could be enacted, is sufficient.

What legal challenges does the ban on animals in circuses pose?

The Committee acknowledged 'public opinion overwhelmingly supports an outright ban' but it was their belief that public opinion stemmed from a perception that large numbers of elephants and big cats are still used in performances by travelling circuses, whereas most of the small number of animals concerned are snakes, camels, zebra or racoons. The Committee was concerned that the challenge of ensuring the welfare of some wild species (eg elephants and other big animals) was greater than other species, such as snakes or parrots that can be purchased in pet shops and kept as pets or may be used in television programmes. The Committee therefore recommended the government revise its approach to the Bill so that it contains a Schedule with a proscribed list of animals who cannot be used.

On what grounds could the ban be challenged?

A similar ban in Austria based on welfare grounds was opposed in 2005 as being contrary to the free movement of services in the EU and discriminatory, since animals could be used in other contexts such as film sets. An EU Commission opinion said a total ban was a restrictive measure that should be applied only if there was no alternative. The Commission reconsidered in 2009 and released a second opinion which said a restriction could be justified on grounds of animal welfare, although the European Ombudsman subsequently criticised the Commission for closing infringement proceedings on those grounds.

It has been pointed out the ban in Austria was introduced on welfare grounds, which the Commission held was a matter for individual states. Therefore, the government's reliance on ethical considerations may be a distinguishing factor which could lead to the Commission taking a different position in relation to any infringement proceedings arising from the proposed ban in England.

What are the difficulties in imposing bans or licensing arrangements?

Licensing conditions set out the requirements for the provision of care. However a licensing system is strongly opposed by the main animal welfare groups who chose not to respond to the public consultation on the Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012. The British Veterinary Association, along with animal welfare groups argue the welfare of animals cannot be met in the travelling circus environment. A significant concern is that regulation of the use of animals in travelling circuses simply cannot be enforced. A further concern is regulation could encourage new and different wild animals to be introduced to circuses, including sea lions, primates and orcas.

How does the UK approach fit in with European developments?

According to a report by Eurogroup for Animals in 2010, European states vary in their approach to this issue with Austria, Bulgaria, Estonia, Croatia, Latvia, Poland and Hungary favouring a ban on wild or wild born animals whereas Germany, Belgium and Italy have opted for regulation. Other states (Finland and Sweden) prohibit the use in circuses of certain proscribed species, while Denmark bans the use of non-domesticated species for circus performances, but allows the use of Asian elephants, camels and llamas, on the basis that they are, or can be, domesticated in their country of origin.

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