

C02/2018



**Command Paper on a draft Bill to make
provision for offences relating to the use of
animals in travelling circuses.**

**Presented to Parliament by
the Minister with responsibility for the Environment.**

by Command of Her Majesty

11th September 2018

1. Draft Bill

2. Draft Explanatory Memorandum

Comments on this Command Paper should be sent by email to command.papers@gibraltar.gov.gi or delivered to –

Command Papers Consultation c/o Karl Tonna, Ministry of Health Care and Justice, Zone 1, Level 7, St Bernard's Hospital, Harbour Views Road, Gibraltar, no later than 9th October 2018.

Any comments received later than 9th October 2018 may not be taken into account for the purposes of the relevant consultation.

BILL

FOR

AN Act to make provision for offences relating to the use of animals in travelling circuses, and to provide for the enforcement of those offences, and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Animals in Travelling Circuses Act 2018.

Commencement.

2. This Act comes into operation on the day of publication.

Interpretation

3. In this Act–

“animal” means any member of the animal kingdom;

“circus operator”, in relation to a circus, means–

- (a) the owner of the circus;
- (b) any person, other than the owner, with overall responsibility for the operation of the circus;
- (c) if neither of the persons mentioned in paragraph (a) or (b) is present in Gibraltar, the person in Gibraltar who is ultimately responsible for the operation of the circus;

“domestic premises”–

- (a) means premises, or a part of premises, used (or used for the time being) exclusively as a dwelling-house; and

- (b) includes any land or structure–
 - (i) belonging to or usually enjoyed with the dwelling-house; or
 - (ii) adjacent to and for the time being enjoyed with the dwelling-house;

“inspector” means a person appointed by the Minister as an inspector under section 7(2) of this Act;

“travelling circus”–

- (a) means a circus which travels, whether regularly or irregularly, from one place to another for the purpose of providing entertainment;
- (b) includes–
 - (i) a circus which travels as mentioned in paragraph (a) for the purpose mentioned there, despite there being periods during which it does not travel from one place to another;
 - (ii) any place where an animal associated with such a circus is kept (including temporarily),

(but not, 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).

“Minister” means the minister with responsibility for the Environment;

“officer” has the same meaning as “authorised officer” in the Animals Act;

“premises” includes–

- (a) land;
- (b) any other place, including–
 - (i) a vehicle or vessel;

- (ii) a tent or other moveable structure;

“relevant power” means a power conferred on an inspector or an officer by this Act.

Animals in travelling circuses: offence.

4.(1) A person who is a circus operator commits an offence if the person uses, or causes or permits another person to use, an animal in a travelling circus.

(2) An offence under this section is committed in relation to a travelling circus only if the animal is transported, whether regularly or irregularly, from one place to another where it is used in the travelling circus, but—

- (a) the animal need not be in the course of being transported for the offence to be committed;
- (b) it is immaterial to the commission of the offence whether or not the transportation of the animal is with, or is part of, the travelling circus.

(3) For the purpose of this section, an animal is used if the animal—

- (a) performs; or
- (b) is displayed or exhibited.

(4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Power to describe what is or is not a travelling circus.

5.(1) The Minister may by regulations describe a particular type of undertaking, act, entertainment or similar thing that—

- (a) is to be regarded as a travelling circus;
- (b) is not to be regarded as a travelling circus,

for the purposes of this Act.

(2) For the avoidance of doubt—

- (a) whatever is done by regulations under subsection (1)(a) is without prejudice to the generality of section 4;
- (b) the generality of section 4 is subject to whatever is done by regulations under subsection (1)(b).

Individual culpability where organisation commits offence.

6. Where an offence under section 4 is committed by a body corporate and is proved—

- (a) to have been committed with the consent or connivance of an officer or manager of the body corporate; or
- (b) to be attributable to any neglect on the part of an officer or manager of the body corporate,

the officer or manager (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

Powers of enforcement.

7.(1) For the purposes of this section, “offence” means an offence under section 4.

(2) The Minister may by Notice in the Gazette, appoint inspectors for the purpose of this Act.

(3) An inspector may enter any premises (other than domestic premises)—

- (a) if there are reasonable grounds for believing that an offence has been or is being committed at the premises; and
- (b) for the purpose of ascertaining whether or not an offence has been or is being committed at the premises.

(4) A justice of the peace may grant a warrant under this subsection if satisfied—

- (a) that there are reasonable grounds for believing—
 - (i) that an offence has been or is being committed at any premises; or
 - (ii) that evidence of the commission of, or participation in, an offence is to be found at any premises; and
- (b) that condition A or condition B is satisfied in relation to the premises.

(5) Condition A is—

- (a) that—
 - (i) admission to the premises has been refused; or
 - (ii) such a refusal may reasonably be expected; and
- (b) that—
 - (i) notice of the intention to seek a warrant has been given to the occupier of the premises; or
 - (ii) the giving of such notice would frustrate the purpose for which the warrant is sought.

(6) Condition B is—

- (a) that the premises are unoccupied; or
- (b) that the occupier is temporarily absent.

(7) A warrant under subsection (4) authorises an inspector or an officer—

- (a) to enter the premises;
- (b) to search for and examine any animal; and

- (c) to search for, examine and seize any equipment, document or other thing tending to provide evidence of the commission of, or participation in, an offence.

(8) An inspector or an officer may exercise the powers in subsection (9) without a warrant under subsection (4)–

- (a) if it appears to the inspector or, as the case may be, officer that any delay would frustrate the purpose for which the powers are to be exercised; and
- (b) in relation only to premises other than domestic premises.

(9) The powers are–

- (a) to enter premises;
- (b) to search for and examine any animal; and
- (c) to search for, examine and seize any equipment, document or other thing tending to provide evidence of the commission of, or participation in, an offence.

Stopping and detailing vehicles.

8.(1) An officer in uniform may stop and detain a vehicle or vessel for the purpose of the exercise of a relevant power.

(2) An inspector, if accompanied by an officer in uniform, may stop and detain a vehicle or vessel for the purpose of the exercise of a relevant power.

(3) A vehicle or vessel may be detained under subsections (1) or (2) for so long as it is reasonably required for the purpose of the exercise of the power concerned.

(4) The power concerned may be exercised either at the place where the vehicle or vessel was first detained or nearby.

(5) In this section, “vehicle” includes a caravan.

Entry and associated powers: supplementary.

9.(1) A warrant granted under section 7(4) remains in force for a period of 28 days beginning with the day on which it was granted.

(2) A person exercising a relevant power must do so at a reasonable time unless it appears to the person that the purpose of exercising the power would be frustrated by exercising it at such a time.

(3) A person may, if necessary, use reasonable force when exercising a relevant power, other than powers conferred by section 7(3).

(4) A person exercising a relevant power must, if required, produce evidence of the person's authority.

(5) A relevant power includes power to take onto premises—

- (a) such persons for assistance as are required for the purpose of exercising the power; and
- (b) such equipment as is required for that purpose.

(6) A relevant power includes power to do or secure the doing of any of the following—

- (a) the carrying out of tests on, and taking of samples from—
 - (i) an animal;
 - (ii) any equipment, substance or other thing;
- (b) the identifying of an animal by use of a mark, microchip or any other method of identification.

(7) A person mentioned in subsection (8) must—

- (a) comply with any reasonable direction made by an inspector, or an officer, exercising a relevant power; and
- (b) in particular, give the inspector or officer such information and assistance as the inspector or officer may reasonably require.

(8) The persons are—

- (a) the occupier of premises in relation to which a relevant power is being exercised;
- (b) as respects the premises of a circus in relation to which a relevant power is being exercised, the circus operator;
- (c) a person who appears to be under the direction or control of a person mentioned in paragraph (a) or (b).

(9) A person exercising a relevant power in relation to unoccupied premises must leave the premises as effectively secured against entry as the person found them.

Offences.

10.(1) A person who, without reasonable excuse, contravenes section 9(7) commits an offence.

(2) A person who intentionally obstructs an inspector or officer in the exercise of a relevant power commits an offence.

(3) A person who commits an offence under subsections (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Liability of inspectors.

11.(1) An inspector is not liable in any civil or criminal proceedings for anything done in the purported performance of the inspector's functions under this Act where the inspector acts on reasonable grounds and in good faith.

(2) Section 11(1) applies to any person taken onto premises by an inspector under section 9(5)(a) as it applies to an inspector if the person is in the company, and under the supervision, of an inspector exercising functions under this Act.

Explanatory Memorandum

The Act makes it an offence for a circus operator to use, or to cause or permit another person to use, an animal in a travelling circus in Gibraltar and allows for the enforcement of that offence.

For the purposes of the Act, an animal is “used” if it is made to perform or is displayed or exhibited. The offence is committed whether or not payment of money is required to view the performance, exhibition or display.

A key criterion for an offence to have been committed, in relation to a travelling circus, is that the animal is transported, whether regularly or irregularly, from one place to another, where it is used in the travelling circus. It does not matter whether that transportation takes place along with the rest of the circus while it travels, or whether it takes place under separate arrangements that the travelling circus may have made.

Only a “circus operator” can commit the offence in section 4. This means circus owners, people who do not own a circus but have overall charge of its operations or (if no-one in those categories is in Gibraltar) any other person present in Gibraltar who has ultimate responsibility for the circus operations.

A circus is a “travelling circus” even though there are periods when the circus is not travelling from one place to another (for example during temporary tour stops). A circus is, however, not a travelling circus for the purpose of the Act if it travels merely in order to relocate to a new fixed base which is then used only or mainly as a place to give performances.

In addition, section 5 confers on the Minister 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” for the purposes of the Act.

Section 6 makes provision for certain persons associated with different types of organisations to be held criminally liable for committing the offence

under section 4 even though it is the organisation that has committed the offence. For that to happen, those persons must have consented to, or connived in, the organisation's commission of the offence, or have been guilty of neglect resulting in the organisation's committing the offence.

Sections 7 to 9, deal with enforcement of the Act's provisions. They confer powers on inspectors appointed under the Act, and on police officers, to take enforcement action under the Act. It sets out the range and extent of those enforcement powers and creates offences in relation to hampering enforcement. It also provides for the circumstances when an inspector or officer is authorised to exercise their powers (such as powers of entry and inspection) with or without a warrant.