EXPLANATORY MEMORANDUM TO

THE WELFARE OF WILD ANIMALS IN TRAVELLING CIRCUSES (ENGLAND) REGULATIONS 2012

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Welfare of Wild Animals in Travelling Circuses (England) Regulations introduce a set of minimum welfare standards for all 'wild' animals (meaning an animal belonging to a species which is not normally domesticated in Great Britain) used by travelling circuses in England. These standards will be enforced by Defra through a licensing scheme.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 None

4. Legislative Context

4.1 The Welfare of Wild Animals in Travelling Circuses (England) Regulations are introduced using powers conferred on the Secretary of State for Defra by section 13 of the Animal Welfare Act 2006 to make regulations to provide for licensing systems for certain activities involving animals. This is only the second time the powers contained in section 13 of the Animal Welfare Act 2006 have been so used.

4.2 These Regulations fulfil undertakings given by the Government to Parliament to introduce secondary legislation under the Animal Welfare Act 2006 to protect further the welfare of wild animals in travelling circuses (*Hansard:* Secretary of State for Environment, Food and Rural Affairs 13 May 2011 : Column 48WS, and The Minister of State, Department for Environment, Food and Rural Affairs 1 March 2012 : Column 41WS).

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

Lord Taylor of Holbeach, Parliamentary Under Secretary of State, has made the following statement regarding Human Rights:

In my view the provisions of the Welfare of Wild Animals in Travelling Circuses (England) Regulations are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The Animal Welfare Act 2006 provides powers to the Secretary of State to introduce secondary legislation to promote the welfare of vertebrate animals in England. This instrument will promote the welfare of wild animals kept in travelling circuses.

7.2 There are currently two pieces of legislation that can be used to address the welfare of wild animals in travelling circuses: the Animal Welfare Act 2006 and the Performing Animals (Regulation) Act 1925. However, both Acts rely on general provisions applicable to all relevant animals in most environments. Neither Act sets down any specific welfare requirements for wild animals being used in a travelling circus environment. Where similar species of wild animal are kept in other environments, such as zoos or private collections, they are covered by legislation (respectively the Zoo Licensing Act 1981 and the Dangerous Wild Animals Act 1976) that sets down specific standards for those animals in those environments. There is no animal welfare legislation in England that sets down specific standards for wild animals in a travelling circus.

7.3 On 1 March 2012 (*Hansard: Column 41WS*) the Government confirmed its intention to pursue a ban on the use of wild animals in travelling circuses in England on ethical grounds (the position on the lack of sufficient evidence on welfare grounds to justify a ban being unchanged). However, an ethical ban would have to be by primary legislation which would take time. Therefore, in the meantime, the Government would seek to introduce a licensing scheme.

7.4 There are about 3 travelling circuses in England that have wild animals. The number of wild animals being used in those circuses is approximately 40. Without any statutory duty on circuses to report the numbers of wild animals being used the precise numbers are difficult to ascertain as circuses have access to animal acts from overseas and can bring in new animals, either from abroad or from existing livestock, each season.

7.5 Public interest in this area is high. Reports in the media of the treatment of wild animals in travelling circuses are routine. A previous Defra consultation on this subject in 2009/10 elicited some 13,000 responses. Since May 2010 Defra has received some 2,500 pieces of correspondence on the issue of animals in circuses. During the 2010-12 parliamentary session there were also Backbench Business Committee and Westminster Hall debates on the issue of wild animals in travelling circuses, as well as six Early Day Motions tabled and over 100 parliamentary questions raised.

7.6 It is accepted in other legislation (zoos and private collections – see paragraph 7.2 above) that the welfare needs of similar wild animals are generally less widely understood than domestic species and require additional regulation and guidelines. By definition, travelling circuses frequently transport animals to numerous sites. There is a risk to welfare from transportation in its own right, as well as making it more difficult for local authorities to take enforcement action when circuses are only on one site for a short space of time and frequently cross local authority boundaries. In order to ensure that such animals have their welfare safeguarded, the Government is seeking to introduce a licensing scheme which would set out clearly the welfare standards that apply to travelling circuses and enable effective enforcement at a national level. A 'self regulatory'

regime was considered but lacked support from both the industry and welfare groups and the likely costs of setting up an open, auditable and effective regime were deemed likely to be disproportionate to the actual size of the industry.

7.7 This instrument requires that all travelling circuses in England that use wild animals must be licensed. Licensing conditions set out requirements for: provision of care plans; controlling who may access animals; arranging for full veterinary care; and welfare requirements for display, training and performance as well as environment and transportation.

- Consolidation

7.8 None

8. Consultation outcome

8.1 A public consultation on the proposed Regulations took place between 1 March and 25 April 2012. The consultation process was supplemented by use of a zoo licensing inspector, appointed by the Animal Health and Veterinary Laboratory Agency (AHVLA), to visit the three travelling circuses known to be using wild animal acts to help 'road test' the draft standards. The consultation only ran for 8 weeks, reflecting a previous 12 week consultation on this issue (carried out between 21 December 2009 and 15 March 2010) and the Government's aim for Regulations to be laid before Parliament by Summer 2012.

8.2 A total of 236 responses were received to the formal public consultation exercise. The consultation sought interested parties' views on the detail of the licensing proposals only (reflecting the existence of the previous consultation). 93% of respondents agreed that core welfare standards should be put in the Regulations and supplemented with species-specific guidance and general guidance. 80% of respondents agreed that the proposed licence conditions and welfare standards addressed all aspects of life of a wild animal in a travelling circus. Just under 80% of respondents agreed that a licence should cover the wild animals used in travelling circus acts. 63% of respondents agreed with the number and type of inspections proposed. 52% of respondents agreed that the draft guidance was sufficiently clear. However, some 52% of respondents disagreed that the draft definitions accurately defined who and what should be covered by the Regulations. The main animal welfare groups chose not to respond to the consultation.

8.3 The Government has made changes to the draft definitions proposed in the consultation and these are used in the Statutory Instrument. A number of other changes to the proposed standards and supporting guidance have been made as a result of individual comments submitted to the consultation and following feedback from the road-testing. A full summary of the responses to the public consultation, plus the details of how the standards were amended as a result of the 'road-testing', along with the Government's formal response, has been published on the Defra website at:

http://www.defra.gov.uk/consult/files/circus-animals-summary-responses-120712.pdf

9. Guidance

9.1 Draft guidance was published as part of the public consultation on the regulations and is currently being revised to take account of the comments received during the

consultation as well as discussions with the industry. The guidance will be made available via the Internet and will be sent to the known travelling circuses using wild animal acts.

10. Impact

10.1 The impact on business, charities or voluntary bodies is fully discussed in the Impact Assessment.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business. The three travelling circuses currently using wild animal acts each employ approximately 20 to 30 people. However, a large proportion of those working in the circus would be family members or seasonal, i.e. not full time, employees.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to consider flexibility for future licence lengths and numbers of inspections. We anticipate initial licences to be required annually and need three inspections. Thereafter, length of licences could be varied (up to a maximum of three years) as well as the number of inspections after conducting an assessment of the risk to animal welfare posed by the business. For example, a travelling circus with a very small number of wild animals and a good record of compliance could be considered, where allowed, for a longer licensing period and / or fewer inspections.

11.3 The basis for the final decision on what action to take to assist small business was developed after contact with the three travelling circuses likely to be involved and the main industry representatives. Responses to the consultation and other stakeholder engagement indicate that the businesses would want licensing regulations that would require the circuses to be inspected. This, they believe, would allow them to demonstrate that they can comply with a system that safeguards the welfare of the wild animals in their care.

12. Monitoring & review

12.1 The Regulations should promote and safeguard the welfare of all wild animals being used in travelling circuses in England. The Regulations will be subject to a full review by the Secretary of State no later than 5 years after they have come into force and the legislation amended or repealed as necessary. There will also be a preliminary review conducted by Defra on the effectiveness of the Regulations after the first set of annual licences issued have expired (likely to be January 2014, assuming the first licences are issued by February 2013). This preliminary review will look at how successful the circuses have been in meeting the licensing conditions and whether there have been any particular areas of difficulty in implementing the Regulations.

13. Contact

Any queries regarding the instrument can be emailed to the Department for Environment, Food and Rural Affairs at circusanimalwelfare@defra.gsi.gov.uk