



Council Offices, Almada Street
Hamilton, ML3 0AA

Monday, 16 November 2020

Dear Councillor

Licensing Committee

The Members listed below are requested to attend a meeting of the above Committee to be held as follows:-

Date: Tuesday, 24 November 2020
Time: 10:00
Venue: By Microsoft Teams,

The business to be considered at the meeting is listed overleaf.

Yours sincerely

Cleland Sneddon
Chief Executive

Members

David Shearer (Chair), Julia Marrs (Depute Chair), John Ross (ex officio), Stephanie Callaghan, Andy Carmichael, Poppy Corbett, Mary Donnelly, Grant Ferguson, Geri Gray, George Greenshields, Lynsey Hamilton, Mark Horsham, Martin Grant Hose, Martin Lennon, Richard Lockhart, Eileen Logan, Katy Loudon, Catherine McClymont, Kenny McCreary, Mark McGeever, Jim McGuigan, Davie McLachlan, Gladys Miller, Richard Nelson, Bert Thomson, Jim Wardhaugh

Substitutes

Alex Allison, John Bradley, Robert Brown, Jackie Burns, Janine Calikes, Margaret Cowie, Maureen Devlin, Ann Le Blond, Lynne Nailon, Carol Nugent, Mo Razzaq, Graham Scott, Collette Stevenson, Jared Wark

BUSINESS

1 Declaration of Interests

- 2 **Minutes of Previous Meeting** 5 - 8
Minutes of the meeting of the Licensing Committee held on 10 November 2020 submitted for approval as a correct record. (Copy attached)

Item(s) for Decision

- 3 **Update on the Travelling Funfairs (Licensing) Scotland Bill** 9 - 26
Report dated 4 November 2020 by the Executive Director (Finance and Corporate Resources). (Copy attached)

Urgent Business

- 4 **Urgent Business**
Any other items of business which the Chair decides are urgent.

Exclusion of Press and Public

- 5 **Exclusion of Press and Public**
It is recommended that the Committee makes the following resolution:-

"That, in terms of Section 50A(4) of the Local Government (Scotland) Act 1973, the press and public be excluded from the meeting for the following item(s) of business on the grounds that it is likely that there will be disclosure of exempt information in terms of Paragraph 14 of Part I of Schedule 7A of the Act."

Item(s) for Decision

- 6 **Civic Government (Scotland) Act 1982 (As Amended) - Consideration of Suspension or Revocation of Private Hire Car Driver's Licence No 337**
 - Exempt information in terms of Paragraph 14 of Part I of Schedule 7A of the Act
- 7 **Civic Government (Scotland) Act 1982 (As Amended) - Application for Renewal of Private Hire Car Driver's Licence No 337**
 - Exempt information in terms of Paragraph 14 of Part I of Schedule 7A of the Act
- 8 **Civic Government (Scotland) Act 1982 (As Amended) - Application for Renewal of Private Hire Car Operator's Licence No 1058**
 - Exempt information in terms of Paragraph 14 of Part I of Schedule 7A of the Act

9 Civic Government (Scotland) Act 1982 (As Amended) - Application for a Taxi Driver's Licence

- Exempt information in terms of Paragraph 14 of Part I of Schedule 7A of the Act

For further information, please contact:-

Clerk Name: Carol Lyon

Clerk Telephone: 01698 455652

Clerk Email: carol.lyon@southlanarkshire.gov.uk

LICENSING COMMITTEE

2

Minutes of meeting held via Microsoft Teams on 10 November 2020

Chair:

Councillor David Shearer

Councillors Present:

Councillor Stephanie Callaghan, Councillor Andy Carmichael, Councillor Poppy Corbett, Councillor Mary Donnelly, Councillor Maureen Devlin (*substitute for Councillor Lynsey Hamilton*), Councillor Grant Ferguson, Councillor Mark Horsham, Councillor Martin Grant Hose, Councillor Martin Lennon, Councillor Eileen Logan, Councillor Katy Loudon, Councillor Julia Marrs (Depute), Councillor Catherine McClymont, Councillor Kenny McCreary, Councillor Jim McGuigan, Councillor Davie McLachlan, Councillor Gladys Miller, Councillor Richard Nelson, Councillor Mo Razzaq (*substitute for Councillor Bert Thomson*), Councillor Jim Wardhaugh

Councillors' Apologies:

Councillor Geri Gray, Councillor George Greenshields, Councillor Richard Lockhart, Councillor Mark McGeever, Councillor John Ross (ex officio), Councillor Bert Thomson

Attending:

Finance and Corporate Resources

J Burke, Administration Assistant; C Lyon, Administration Officer; C McKee, Licensing and Registration Co-ordinator; G Mays, Legal Services' Adviser; L Wyllie, Administration Assistant

1 Declaration of Interests

No interests were declared.

2 Minutes of Previous Meeting

The minutes of the meeting of the Licensing Committee held on 6 October 2020 were submitted for approval as a correct record.

The Committee decided: that the minutes be approved as a correct record.

3 Urgent Business

There were no items of urgent business.

4 Exclusion of Press and Public

The Committee decided: that, in terms of Section 50A(4) of the Local Government (Scotland) Act 1973, the press and public be excluded from the meeting for the following items of business on the grounds that it was likely that there would be disclosure of exempt information in terms of Paragraphs 6 and 14 of Part I of Schedule 7A of the Act.

5 Civic Government (Scotland) Act 1982 (As Amended) - Application to Vary the Terms of Second-Hand Dealer's Licence No 017

A report dated 22 October 2020 by the Executive Director (Finance and Corporate Resources) was submitted on an application to vary the terms of second-hand dealer's licence No 017 in terms of the Civic Government (Scotland) Act 1982 (as amended).

The Committee decided: that the following application to vary the terms of second-hand dealer's licence No 017 be granted subject to the conditions specified by the Executive Director (Finance and Corporate Resources):-

Applicant:	R L Cars Limited and R Lynn
Type of Licence:	Second-hand dealer
Premises:	307 Eaglesham Road, Jackton
Current Days/Hours:	Monday to Saturday from 9.00am to 5.00pm
Days/Hours Requested:	Monday to Saturday from 9.00am to 5.00pm Sunday from 10.00am to 4.30pm
Days/Hours Granted:	Monday to Saturday from 9.00am to 5.00pm Sunday from 10.00am to 4.30pm

6 Civic Government (Scotland) Act 1982 (As Amended) – Application for a Private Hire Car Driver's Licence

A report dated 22 October 2020 by the Executive Director (Finance and Corporate Resources) was submitted on an application for a private hire car driver's licence in terms of the Civic Government (Scotland) Act 1982 (as amended).

In terms of the Civic Government (Scotland) Act 1982 (as amended), the opportunity of a hearing had been offered to the applicant who was present and heard in support of his application. A representation had been received from Police Scotland and Inspector McGovern was heard. Inspector McManus, Police Scotland was also in attendance.

Following discussion, Councillor Lennon, seconded by Councillor McLachlan, moved that the licence be refused. Councillor Callaghan, seconded by Councillor Logan, moved as an amendment that the licence be granted for a period of 1 year.

On a vote being taken by roll call, members voted as follows:-

Motion

Andy Carmichael, Poppy Corbett, Mary Donnelly, Grant Ferguson, Martin Grant Hose, Martin Lennon, Katy Loudon, Kenny McCreary, Jim McGuigan, Davie McLachlan, Julia Marrs, Gladys Miller, Richard Nelson, David Shearer

Amendment

Stephanie Callaghan, Maureen Devlin, Mark Horsham, Eileen Logan, Catherine McClymont, Mo Razzaq, Jim Wardhaugh

7 members voted for the amendment and 14 for the motion which was declared carried.

The Committee decided: that the application by F Latif, 37 Croft Gardens, Cambuslang for a private hire car driver's licence in the Cambuslang and Rutherglen zone be refused.

7 Civic Government (Scotland) Act 1982 (As Amended) – Application for a Taxi Driver's Licence

A report dated 22 October 2020 by the Executive Director (Finance and Corporate Resources) was submitted on an application for a taxi driver's licence in terms of the Civic Government (Scotland) Act 1982 (as amended).

At its meeting on 6 October 2020, the Committee agreed that the applicant be requested to attend a future meeting of this Committee for a hearing.

In terms of the Civic Government (Scotland) Act 1982 (as amended), the opportunity of a hearing had been offered to the applicant who was present and heard in support of his application. H McDonald, Lanark Taxis was in attendance to support the applicant. A representation had been received from Police Scotland and Inspector McGovern was heard. Inspector McManus, Police Scotland was also in attendance.

The Committee decided: that the application by A Watson, 34 Melvinhall Road, Lanark for a taxi driver's licence in the Clydesdale zone be granted.

[Reference: Minutes of 6 October 2020 (Paragraph 6)]

Report

3

Report to:	Licensing Committee
Date of Meeting:	24 November 2020
Report by:	Executive Director (Finance and Corporate Resources)

Subject:	Update on the Travelling Funfairs (Licensing) Scotland Bill
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ update Members on the Travelling Funfairs (Licensing) (Scotland) Bill (“the Bill”)
- ◆ advise Members of the proposed responses to the following consultation requests from the Scottish Parliament in relation to the Bill:-
 - ◆ Local Government and Communities Committee (LGCC) Call for Views on the Bill
 - ◆ Finance and Constitution Committee (FCC) Call for Views in relation to the Bill’s Financial Memorandum

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the principal provisions of the Bill be noted;
- (2) that the assessment of the potential impact on the Council be noted; and
- (3) that the Council’s proposed responses to the LGCC and FCC calls for views attached at Appendix 1 and 2 of this report be approved for submission to the Scottish Parliament.

3. Background

3.1. Richard Lyle MSP introduced a Private Members Bill to the Scottish Parliament on 29 April 2020 to reform licensing of travelling funfairs. The Bill is currently being considered by the LGCC at Stage 1 of the legislative process.

3.2. The purpose of the Bill is to make it easier for operators to obtain licences for traveling funfairs. The aim of the Bill is intended to be achieved by removing travelling funfairs from the Civic Government (Scotland) Act 1982 licensing regime and by creating a new system with set fees and processing timescales.

3.3. The Council responded to a previous consultation on the proposed Bill in February 2018. The response is attached at Appendix 3 for information.

3.4. Travelling funfairs have on occasion attracted adverse comments from local residents and the involvement of elected members. Special meetings of the Licensing Committee have been required to consider licence applications in these circumstances.

4. Main Provisions of the Bill compared with current licensing system

- 4.1. A new definition of “travelling funfair” is proposed, being “a number of structures or other equipment designed and operated to provide public entertainment, amusement or leisure activity” and in respect of which the operators travel with the equipment from site to site, staying no longer than six weeks in one place. Currently such funfairs would require a temporary public entertainment licence (TPEL) with the following exception, in terms of the Council’s Public Entertainment Resolution, community events with no more than two rides and for which no charge is made do not require a licence.
- 4.2. It will be a criminal offence to operate a funfair without a licence. This, and the enforcement powers, are broadly similar to current legislation.
- 4.3. A licence application, to be valid, must include certain standard information such as a description of the site, list of structures/equipment and necessary health and safety certificates. These are similar to current requirements, so similar levels of staff input will be required to process applications, for example in relation to checking safety and insurance certificates. If the Bill is passed it will be possible for the applicant to include two alternative sites.
- 4.4. Currently the Council operates a single application process for both consent to use Council land and the TPEL application (where it is proposed that a funfair take place on Council land). The Bill contains no requirement for landowner’s consent to be obtained or exhibited so this process would require to be revised. It is likely that this would result in licences requiring to be granted in circumstances where the landowner (whether or not the Council) has not consented to the use of the land for the proposed funfair.
- 4.5. The Bill proposes a flat fee of £50.00 and processing timescale of 21 days, after which the licence will be deemed to have been granted. Currently the Council charges £152 and has a processing timescale of 28 days. The fee is calculated and revised on a cost recovery basis. The reason for the proposed standardised approach is that there is wide variation across the country (as detailed in the Financial Memorandum) in relation to fees and timescales. The current timescale is extremely tight where there is significant local opposition or other matters arising which may require that an application be considered by Committee. The proposed fee would not cover the costs involved in these processes.
- 4.6. The Bill proposes a finite list of conditions which may be added to licences in relation to such matters as dates and times of operation; health and safety; public order; reinstatement of ground surfaces; protecting neighbours from undue noise and light nuisance, whereas currently the Council may add such conditions as it thinks fit. Consideration of conditions will necessitate the continuing involvement of Environmental and Land Services, and the restrictions on what can be contained in conditions may limit the extent to which wider public concerns may be addressed.
- 4.7. A licence refusal will be competent only where the applicant is not a fit and proper person, or on health and safety grounds. The current grounds of refusal are wider and include additional factors as suitability of location, public nuisance, and some other good reason.

- 4.8. The Bill proposes a new right of appeal against refusal to the Sheriff Court. Currently there is no statutory right of appeal and a refusal can be challenged only by judicial review.

5. Employee Implications

- 5.1. It is anticipated that while application processes would require to be adapted the substance of the work carried out by employees would be similar to current tasks. The introduction of a new appeal process could result in additional litigation work.

6. Financial Implications

- 6.1. The reduction in fee income is estimated in the Financial memorandum to be £2352 per annum. The new right of appeal may result in additional costs such as Sheriff Court dues and legal expenses if the Council was unsuccessful at appeal.

7. Climate Change, Sustainability and Environmental Implications

- 7.1. This is a response to a consultation and as such does not of itself have any implications for climate change, sustainability and the environment.

8. Other Implications

- 8.1. There is a risk that the implementation of the Bill could lead to a perception that the Council is not taking the views of local communities and elected members into consideration when making decisions about travelling funfairs. It should be noted that the current statutory regime does not provide for objections or representations to be made, however, there would be less scope for consideration of matters of public concern given the restricted ground of refusal, limited range of conditions, and new appeal process.

9. Equality Impact Assessment

- 9.1 The Policy Memorandum addresses the impact of the Bill on equal opportunities.

Paul Manning

Executive Director (Finance and Corporate Resources)

4 November 2020

Link(s) to Council Values/Ambitions/Objectives

- ◆ Accountable, effective, efficient and transparent

Previous References

- ◆ None

List of Background Papers

- ◆ None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact: -

Geraldine McCann, Head of Administration and Legal Services

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Email: geraldine.mccann@southlanarkshire.gov.uk

or

Gerry Mays, Legal Services Adviser

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Travelling Funfairs (Licensing) (Scotland) Bill

Local Government and Communities Committee – Call for Views

Our questions for you

1. **The main aim of the Bill is to make the licensing system for travelling funfairs less restrictive and less expensive for applicants. Do you agree with this aim? Do you agree that the Bill will achieve this aim?**

We agree that the Bill will make the licensing system less restrictive and expensive for applicants.

2. **Section 1 of the Bill sets out a definition of “travelling fairground”. Amongst other things, this provides that it cannot go on in one location for more than 6 weeks. (If the plan is for it to go on for longer than this, the current licensing law will apply.) Do you think the definition used in section 1 is a good one?**

The proposed definition does not specify a minimum number of “structures” nor any requirement of operation for commercial purposes. This could mean that small scale charitable events featuring one or two children’s rides would require a licence which they currently do not need in terms of South Lanarkshire Council’s Public Entertainment Resolution.

3. **The Bill imposes a flat fee of £50 for a license application. This may be increased but only in line with “changes in the value of money” (section 5(2)(d) and (6)) In the vast majority of cases, this will be less than applicants are paying under the current law. Do you agree with this?**

No. The proposed licence fee would not cover the cost of administrative and enforcement work which the local authority must carry out. There is no meaningful reduction in the responsibilities of local authorities compared with the current legislation. If the provisions results in a loss of income to the council, this would need to be met through a separate financial memorandum.

4. **Key provisions concerning a council’s decision-making role are that—**
 - a. The council must decide on an application within 21 days, otherwise it will be granted by default,
 - b. It must allow a validly made application unless (a) the applicant is not a “fit and proper person” or (b) there are safety or health concerns about the funfair that would not be reasonably mitigated by attaching conditions to the licence,
 - c. It may grant a licence subject to conditions (section 11 lists the type of conditions that may be imposed),
 - d. It can only revoke a licence if (a) it becomes aware of a fact not previously shared that would have led it to decide the application differently or (b) if a condition or other provision of the licence is not met.

Are you satisfied that these provisions give councils the right level of control and choice over the licensing process?

SLC considers that 28 days is a reasonable timescale to allow responses to be obtained from consultees and sufficient time for processing, particularly where there are issues which may require to be determined by

Committee in relation to possible refusal or additional conditions being added. Time pressure could lead to applications being refused which might otherwise be granted, or worse, a default grant in circumstances which could jeopardise public safety. Restrictions on conditions and grounds of refusal may prevent issues of wider public concern being addressed.

5. We welcome views on any other aspect of the licensing system set out in the Bill that you consider important, for example, provisions on—

- a. What persons a council must consult before deciding any application (the Bill mentions two: the police, and the fire and rescue service),
- b. The matters that an applicant has to address in their application; for instance, whether you think anything important is missing,
- c. The right of an applicant to appeal a council's decision to the Sheriff Principal,
- d. The criminal penalties set out in the Bill, for instance, where a person operates a travelling funfair without a licence or makes false statements in support of an application;
- e. powers to enter and inspect a travelling fairground: who may do so and for what reasons.

Consultation with other council departments such as Road and Environmental and Land Services as well as the external consultees in the Bill is essential when considering possible safety concerns.

Timescales do not allow for late responses from consultees. Timescales for external consultees are not within the control of the Local Authority.

There is no requirement that the applicant obtain or exhibit consent of the landowner of the proposed site.

The introduction of a Sheriff Court appeal process is likely to result in additional costs for local authorities and may be of limited efficacy in view of the timescales involved.

6. The MSP who introduced the Bill thinks it will help protect the way of life of Scotland's showpeople, a distinct community associated with putting on travelling fairgrounds. Do you agree the Bill will make a difference in this way?

Any other comments on the Bill's impact (positive or negative) on equalities, human rights and quality of life issues for local communities are also welcome as part of any response to question 6.

While there are clear benefits to showpeople in having a cheaper, standardised system, there requires to be a balance with the interests of local communities when considering applications for funfairs. Applying a subsidised license fee could be regarded as state aid for a particular industry.

7. What financial impact do you think the Bill will have – on operators of travelling fairgrounds, on councils, on local economies, or on others.

The reduction in fee income will have a negative financial impact on the Council which will not be offset by a reduction in administrative costs.

Travelling Funfairs (Licensing) (Scotland) Bill

Finance and Constitution Committee Questionnaire

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by the Travelling Funfairs (Licensing) (Scotland) Bill

In addition to the questions below, please add any other comments you may have which would assist the Committee's scrutiny of the FM.

Consultation

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Yes – Financial information was provided as to the application fee and work involved in processing this. However, it was not possible to provide detailed comments, based on the limited information available.

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

The Financial Memorandum appears to accurately reflect the limited comments we were able to make

3. Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs

4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

Yes, the FM accurately reflects that local authorities will bear an increased cost burden.

5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

No. The fee charged by South Lanarkshire Council is now £152 rather than £148 as advised at that time. This means that the loss the Council will incur will be greater.

In addition, the Council expects that as well as losing income, there will be additional costs anticipated by the changes as proposed, as there will be more work rather than less. This will include the sheriff court appeal process.

In the current financial climate, there is no spare capacity within budgets of local authorities to meet any additional burdens of new legislation.

6. **As the Bill progresses, efforts should be made to confirm the costs for local authorities. Additional funding should be provided by the Scottish Government to cover any associated costs in respect of additional administration and loss of income, associated with the Bill.** If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

No. We are not satisfied that we will continue to be able to operate on the basis of cost recovery as the reduced fee does not reflect the work involved.

In the current financial climate, there is no spare capacity within budgets of local authorities to meet any additional burdens of new legislation.

As the Bill progresses, efforts should be made to confirm the costs for local authorities. Additional funding should be provided by the Scottish Government to cover any associated costs in respect of additional administration and loss of income, associated with the Bill.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

The Financial Memorandum reflects the uncertainty associated with the estimated costs. However, it has an unreasonably optimistic view of associated savings to Local Authorities as there is unlikely to be a reduction in administrative work.

Wider Issues

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

The Financial Memorandum reasonably captures costs but has an unreasonably optimistic view of associated savings to Local Authorities as there is unlikely to be a reduction in administrative work.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs

It is not possible to comment without further information.



Report

Agenda Item

4

Report to:	Licensing Committee
Date of Meeting:	20 February 2018
Report by:	Executive Director (Finance and Corporate Resources)

Subject:	Civic Government (Scotland) Act 1982 (As Amended) - Consultation Regarding Funfairs
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ♦ consider the proposed response to a consultation exercise relating to a possible Private Member's Bill to exempt travelling funfairs from public entertainment licensing requirements and to create a distinct new licensing system for travelling funfairs in Scotland

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the proposed response, attached at Appendix 1, be approved and returned to Richard Lyle MSP by the due date of 26 February 2018.

3. Background

- 3.1. Before a person can operate a funfair, a temporary public entertainment licence is required.
- 3.2. In terms of the Civic Government (Scotland) Act 1982 (as amended), each application requires to be dealt with on its own merits.

4. Present Position

- 4.1. A consultation exercise has been issued by Richard Lyle MSP with a view to the lodging of a Private Member's Bill to make it less burdensome and more financially viable for those who provide travelling funfairs to manage and operate their businesses.
- 4.2. The consultation document refers to the fact that, as funfairs operating in the rest of the UK do not require a public entertainment licence, those managing them do not face many of the same barriers to conducting their businesses as travelling funfairs in Scotland. They are not subject to varying, often high, fees (which are non-refundable if unsuccessful); they are not subject to a lengthy application and decision-making process and they are not tied to one specific site, so can switch sites more easily if they need to do so. Funfairs which operate in Scotland are, according to the consultation documents, at a disadvantage compared to those operating in the rest of the UK.

5. Funfair Regulation in the Rest of the UK

- 5.1. Funfairs do not require a specific licence to operate in the rest of the UK. Funfairs are not "regulated entertainment" and so are not "licensable activities" for the purposes of the Licensing Act 2003 which applies to England and Wales. Funfairs on private land in England and Wales require the permission of the landowner and if they wish to operate on Council owned land they must notify the Council in advance. Only notification, rather than permission, is required, unless local byelaws have been passed to require otherwise. Where byelaws are in place they often relate to issues such as opening hours and control of litter and waste.
- 5.2. Across the UK (including Scotland), health and safety aspects of funfairs are regulated by the Health and Safety at Work etc Act 1974 (HSW). The Health and Safety at Work etc Act 1974 applies to all employers, employees and people who are self-employed. The Act protects people whilst at work, and also extends to protecting volunteers and members of the public who may be affected by a work activity, which includes funfairs. To comply with the Health and Safety at Work etc Act 1974 various codes of practice and guidance must be adhered to.
- 5.3. The Fairgrounds and Amusement Parks: Guidance on Safe Practice, published by the Health and Safety Executive in 2007, shows in detail the many health and safety requirements that funfairs need to comply with in the UK. There is another relevant document "Managing Grounds Safely: Agenda for organiser at events and venues" which relates to safe crowd management. In terms of issues such as noise nuisance, Council environmental health departments have a statutory duty to prevent noise nuisance so would be involved in any such issues relating to a funfair.
- 5.4. Depending on what activities may be part of a funfair, other licences/notices may be required in England and Wales, such as a temporary event notice or street trading licence, to cover the sale of alcohol and/or food. Such applications can be approved or refused by a local council.
- 5.5. In Northern Ireland, funfairs are also not part of national public entertainment legislation and are instead able to be controlled by Councils by passing bye-laws with regards to issues such as the hours of operation, safety and minimising negative impacts on local areas.

6. Consultation on Proposed Private Members Bill

- 6.1. Richard Lyle MSP has launched a consultation to assist to inform a Private Members Bill which he is considering introducing in the Scottish Parliament 2018. He considers that further guidance is required to assist local authorities in dealing with applications for funfairs in their areas. He argues that this would be more effective than changing the current legislation, or bringing forward new legislation to tackle these issues. In July 2017 the Scottish Government published new guidance on public entertainment licences in respect of funfairs. However, this did not compel local authorities to change their current practices. The 2017 guidance is also (according to the consultation document) not guaranteed to improve consistency across all local authorities, as each authority will consider and act upon it on an individual, rather than a collective, basis.

7. How this Proposal will Address the Current Problems

- 7.1. Currently, according to the consultation document, operators in Scotland who want to hold a travelling funfair and, despite complying with all required health and safety legislation, still have to apply to the Council for a Public Entertainment licence. Forms need to be filled in and a fee, which could be up to £4,133, sent in with the application. South Lanarkshire Council charge £140 for a temporary public entertainment application fee for a funfair. The Council can then take up to 3 months to consider the application and up to 6 months to come to a decision (for applications received after 1 May 2018 9 months). If the application is turned down, the Council may keep some or all of the fee. In this scenario the organisers would be out of pocket, unable to hold the funfair, and have also been prevented from planning other fairs in other locations, as the outcome of the relevant application was not known. If the application was successful, but on the day of arrival the funfair cannot be set up on the licensed site as it is waterlogged due to bad weather, the organiser cannot hold the funfair on an alternate site as it has no licence for that site and the organiser has no option of trying to recoup the money spent on the licence.
- 7.2. Mr Lyle's proposal, according to the consultation document, seeks to take funfairs out of the public entertainment licensing system, which the document describes as inconsistent and unnecessarily complex. This, according to the consultation document would create a separate simple, fair and proportionate process in Scotland, tailored to the needs of the funfair sector.
- 7.3. The proposal, it claims, would seek to minimise red-tape and create an appropriate balance between regulating funfairs, ensuring that operators have permission to stage them and comply with all required legislation, and ensuring that operators can conduct their businesses more reasonably, without being subject to delays, high fees and an inflexible system. This proposal is, therefore, to make legislative changes to remove the scope for interpretation and inconsistency.

8. Detail of the Proposed Private Members Bill

- 8.1. Proposed content of the Bill
The Bill would firstly exempt funfairs from the current licensing requirements by amending the Civic Government (Scotland) Act 1982. The Bill would also establish a new permissions process for the operation and management of travelling funfairs in Scotland.

In particular, the proposed new system would:-

- ◆ shorten the time local authorities are permitted to consider and decide upon applications by setting a shorter and fixed timescale
- ◆ ensure that any fees charged are proportionate and for administrative purposes only (possibly by capping fees that can be charged and/or setting a fixed fee consistent across all local authorities)
- ◆ create sufficient flexibility to deal with situations where alternative sites are required at short notice

The consultation reiterates that this proposal would not affect the current health and safety requirements (the Bill would make no change to health and safety law) which all funfairs must adhere to, and would not compromise standards in this regard. A Scottish Parliament Bill, in any case, could not amend health and safety law, as it is reserved to the UK Parliament under the devolution legislation.

8.2. Who would the Proposed Bill affect and how?

The Bill would predominantly affect 4 groups of people:-

- ◆ those who manage and operate travelling funfairs
- ◆ those responsible for licensing/approving funfairs
- ◆ those who attend funfairs
- ◆ local communities in the vicinity of a funfair

8.3. Operators

By establishing a clear, simple, proportionate and flexible system for those people operating and managing funfairs to work within, the proposed Bill is intended to have a positive effect on the up to 2,000 showpeople living and working in Scotland, and anyone else operating funfair businesses. This is intended to include direct impacts, such as the requirements for being able to hold a funfair being less costly and bureaucratic, and also indirect benefits, such as being able to better plan their business activities over the short, medium and long term, and being able to better manage considerations such as accommodation and education requirements for children of travelling showpeople.

8.4. Regulators

The proposed Bill would have an effect on local authorities, which would no longer be able to license funfairs under the 1982 Act, and would be required to implement the new process created by this proposal. The proposal shortens the time available to local authorities to process and decide on applications, and also ensures that fees charged must only cover any outlay costs. Any local authority currently profiting from applications would no longer continue to do so, but no local authority would suffer costs to it as a result of the proposal.

8.5. Attendees

For those visiting funfairs, or wanting to visit funfairs, the proposal is intended to have a positive impact, as it should be easier for funfairs to operate, and therefore for fairs to be held across Scotland for people to enjoy.

8.6. Communities

For local communities that may have concerns about the appropriate management of funfairs, it is unclear what role local authorities would have in approving the staging of funfairs as it would be regulated by guidance, the terms of which are not known. Other legislation, for example the Health and Safety Act, would continue to apply. The role of the Health and Safety Executive relating to health and safety and issues such as noise pollution or anti-social behaviour would not be affected by this proposal and would continue to apply.

8.7. Alternative approaches

In bringing forward the proposal contained in the consultation document, possible alternative courses of action were considered, including:-

- ◆ making no legislative change but encouraging the Scottish Government to issue strong guidance to all local authorities on how they should be approaching licensing of funfairs
- ◆ proposing a member's bill to amend the 1982 Act to change some of the requirements of the public entertainment licensing system
- ◆ proposing a member's bill to remove travelling funfairs from the 1982 Act only (and not replace that with a new bespoke process)

- 8.8. The first of these options is one that Mr Lyle has indicated he intends to pursue. However, no such guidance has been issued to date and there is no guarantee when any such guidance may appear or what it would state. Even if such guidance does come forward it would be just that, guidance and, therefore, local authorities would still enjoy the current flexibility to manage and license funfairs as they see fit.
- 8.9. Amending the 1982 Act to try and deliver the desired changes would be problematic as it would either involve amending the public entertainment licence process as a whole, which would not be appropriate to address the needs of one specific sector, or would involve complex amendment that would not easily be transparent or accessible or fit for the funfair sector.
- 8.10. Exempting funfairs from the 1982 Act without creating a bespoke process to replace it would disempower local authorities inappropriately from being able to have any input into decision-making. For these reasons, these options were discounted and the proposal relating to the private Member's Bill is the one deemed to be the most effective way to guarantee delivering the changes required whilst maintaining an appropriate balance between operators and regulators.
- 9. Employee Implications**
- 9.1. There are no employee implications as staff are already in post. Staff carry out a number of various tasks. Temporary Public Entertainment licences relating to funfairs form a small part.
- 10. Financial Implications**
- 10.1. Changing the licensing system as outlined in this consultation would be likely to have financial implications predominantly on:-
- ◆ those currently paying the fees (showpeople and other operators)
 - ◆ those currently charging and receiving the fees (local authorities). However this would depend on the amount of fee charged and the work involved in processing such applications
- 11. Equality Impact Assessment and Consultation Arrangements**
- 11.1. Showpeople are occupational travellers rather than being part of the gypsy/traveller community, but that they can face many similar issues to gypsy travellers, in terms of education issues and discrimination. Showpeople are business people often of many generations of proud tradition, whose livelihood and wellbeing is dependent on being able to travel and stage funfairs around the country. An improved and more proportionate licensing system should, according to the consultation document, therefore have a positive impact for showpeople.
- 11.2. There is no requirement to carry out an impact assessment in terms of the proposals contained within this report as it is a consultation document.

Paul Manning
Executive Director (Finance and Corporate Resources)

31 January 2018

Link(s) to Council Values/Ambitions/Objectives

- ◆ Making Communities Safer, Stronger and Sustainable

Previous References

- ◆ None

List of Background Papers

- ◆ None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

Teresa Stone, Licensing and Registration Manager

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E-mail: teresa.stone@southlanarkshire.gov.uk

SECTION 2 - YOUR VIEWS ON THE PROPOSAL**Aim and approach**

1. Which of the following best expresses your view of the proposal to exempt funfairs from Public Entertainment Licensing requirements and to create a distinct new licensing system for funfairs in Scotland?

- ☐ Fully supportive
☐ Partially supportive
☒ Neutral (neither support nor oppose)
☐ Partially opposed
☐ Fully opposed
☐ Unsure

Please explain the reasons for your response.

Due to the lack of detail of the proposals the Council is unable to provide full comments. It would require more in depth details of the alternative regime proposed to replace existing system to allow it to do so. The Fee currently charged by South Lanarkshire Council is £140. As it is £140 does not always reflect the amount of work involved in processing funfair applications.

2. Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)?

- ☐ Yes
☐ No
☒ Unsure

Please explain the reasons for your response.

Need further details as to what exactly is proposed under the new regime.

3. What do you think would be the main advantages, if any, of the proposal?

Without further details of how proposals will work it is difficult to provide comments.

4. What do you think would be the main disadvantages, if any, of the proposal?

The consultation document refers to the Health and Safety Executive and the ability of Environmental Services to serve statutory notices to prevent noise nuisance. No reference is made to any proposals to allow the community the right to comment on applications nor is there any proposals on how issues which cause disturbance to neighbours but fall short of statutory noise nuisance will be responded to, for example, fairground rides sited too close to houses. This could lead to local authorities dealing with numerous complaints from neighbours and elected members with no powers to address these issues.

5. What do you think the maximum time available should be for local authorities to make a decision on an application to hold a funfair?

- ☐ less than 14 days (please specify)
☐ 14 days
☐ more than 14 days and less than 28 days (please specify)
☐ 28 days
☐ more than 28 days (please specify)
☒ no fixed maximum
☐ Unsure

Please explain the reasons for your response.

There should be a minimum time given to Local Authorities to process application. Generally funfair licences are not issued until day of event due to the difficulties in obtaining certificates/insurances for rides etc. Applications are sometimes lodged much later than 28 days before the event. We always try to process application on time for event but this means that other applications have to be reprioritised.

6. How do you think fees should be determined for local authorities to process an application?

- ☒ fee at local authority's discretion
- ☐ fee must not exceed the cost of processing the application
- ☐ maximum fee set in statute
- ☐ single fee fixed in statute
- ☐ power of Ministers to set scale of fees
- ☐ Unsure

Please explain the reasons for your response, including details of the amount of any suggested fees.

The fee charge should reflect work involved. Traditionally South Lanarkshire Council have always charged lower fee for funfairs probably due to short duration. Fee does not always reflect work involved. Some funfairs involve more work than others.

7. What is your view on what should happen to the fee in cases where an application is refused?

- ☐ Full fee returnable to the applicant
- ☒ Part of the fee returnable to the applicant
- ☐ None of the fee returnable to the applicant
- ☐ Unsure

Please explain the reasons for your response.

Depends if application had to go before Committee for a Hearing. If not then partial refund possible. If refused after a Hearing none of fee should be refunded.

Financial implications

8. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

Showpeople

- ☐ Significant increase in cost
- ☐ Some increase in cost
- ☐ Broadly cost-neutral
- ☐ Some reduction in cost
- ☐ Significant reduction in cost
- ☒ Unsure – will vary from authority to authority

Local authorities

- ☐ Significant increase in cost
- ☐ Some increase in cost
- ☐ Broadly cost-neutral
- ☐ Some reduction in cost
- ☐ Significant reduction in cost
- ☒ Unsure – depends on procedures to be put in place.

General public

- ☐ Significant increase in cost
- ☐ Some increase in cost
- ☐ Broadly cost-neutral
- ☐ Some reduction in cost
- ☐ Significant reduction in cost
- ☒ Unsure

Please explain the reasons for your response.

Unable to provide full comments as the proposals are not fully defined. It will depend on what fee is set. If fee is higher than currently charged this could be passed onto general public.

Equalities

9. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation?

- ☐ Positive
- ☐ Slightly positive
- ☒ Neutral (neither positive nor negative)
- ☐ Slightly negative
- ☐ Negative
- ☐ Unsure

Please explain the reasons for your response.

The Council already takes account of the Equality Act in all decision making.

In what ways could any negative impact of the Bill on equality be minimised or avoided?

Ensure all applications dealt with fairly based on the information available.

Sustainability of the proposal

10. Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

- ☐ Yes
- ☐ No
- ☒ Unsure

Please explain the reasons for your response.

General

- 11. Do you have any other comments or suggestions on the proposal to exempt funfairs from Public Entertainment Licensing requirements and to create a distinct new licensing system for funfairs in Scotland?**

Would need to see the full proposals prior to commenting further.