

Report

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:-

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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.