

Travelling Funfairs (Licensing) (Scotland) Bill

[AS INTRODUCED]

CONTENTS

Section

Travelling funfairs to be licensed under this Act, not the Civic Government (Scotland) Act 1982

- 1 Meaning of travelling funfair
- 2 Licence required for travelling funfairs and offence of unlicensed operation
- 3 Travelling funfairs no longer licensable under Civic Government (Scotland) Act 1982

Licensing authority

- 4 Local council is licensing authority

Applications for licences

- 5 Application for licence: essential procedure, content etc
- 6 False statement in application: offence

Consultation and decision

- 7 Council to consult police and fire authorities
- 8 Time limit on decision on whether to grant licence
- 9 Grant and refusal of licences
- 10 Grant by default

Conditional licences

- 11 Conditions
- 12 Offence of breach of condition or other provision of licence

Revocation of licences

- 13 Revocation of licence

Appeals

- 14 Appeals to the sheriff principal

Entry, inspection and search

- 15 Powers of entry and inspection of licensed travelling funfairs: offence
- 16 Warrants for entry and search of unlicensed travelling funfairs: offence

General

- 17 Consequential amendments of Civic Government (Scotland) Act 1982
- 18 Commencement
- 19 Saving for procedure and licence under 1982 Act
- 20 Short title

**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 69-EN), a Financial Memorandum (SP Bill 69-FM), a Policy
Memorandum (SP Bill 69-PM) and statements on legislative competence (SP Bill 69-LC).**

Travelling Funfairs (Licensing) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to provide anew for the licensing of travelling funfairs.

Travelling funfairs to be licensed under this Act, not the Civic Government (Scotland) Act 1982

1 Meaning of travelling funfair

(1) In this Act—

5 (a) a “funfair” is a number of structures and other equipment designed and operated to provide public entertainment, amusement or leisure activity, and

(b) a “travelling” funfair is one—

(i) in respect of which those operating it travel with those structures and equipment from site to site and operate the funfair in those sites, but

10 (ii) which, as respects its site, is being or is to be operated there for a period of not more than six weeks.

(2) Examples of those structures and equipment are carousels and similar roundabouts, swings, roller-coasters and similar rides, helter-skelters and similar slides, coconut shies and similar stalls and dodgem cars.

15 (3) But the presence or absence of any of those is not, of itself, conclusive.

2 Licence required for travelling funfairs and offence of unlicensed operation

(1) A licence under this Act (a “licence”) is required for the operation of a travelling funfair.

(2) A person who, whether or not its owner—

(a) is in charge of a travelling funfair, and

20 (b) without reasonable excuse, causes it to be operated without a licence,
commits an offence.

(3) A person who commits that offence is liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000 (or both).

3 **Travelling funfairs no longer licensable under Civic Government (Scotland) Act 1982**

In section 41(2) of the Civic Government (Scotland) Act 1982 (premises etc that are not “places of public entertainment” for the purposes of licensing) after paragraph (f) there is inserted—

“(fa) the site of a travelling funfair within the meaning given by section 1 of the Travelling Funfairs (Licensing)(Scotland) Act 2020;”.

Licensing authority

4 **Local council is licensing authority**

- (1) The council for the area that includes the site in which a travelling funfair is to be operated is the licensing authority for the operation of the funfair there.
- (2) “Council” means a council constituted under the Local Government etc (Scotland) Act 1994.

Applications for licences

5 **Application for licence: essential procedure, content etc**

- (1) This section has effect for determining whether an application for a licence is a valid application.
- (2) To be valid, an application must—
 - (a) be made by or on behalf of the person who (whether or not its owner) is to be in charge of the operation of the travelling funfair,
 - (b) be in writing and be signed by or on behalf of that person,
 - (c) state the full name and address of that person,
 - (d) be accompanied by the application fee of £50,
 - (e) describe the site where the funfair is proposed to be operated and do so sufficiently to enable the council to identify it for the purposes of their decision whether to grant the licence (and see subsection (3)),
 - (f) list and describe the structures and other equipment to be set up there,
 - (g) specify the dates when the funfair is proposed to be operated there (the earliest and latest of which must not be more than six weeks apart),
 - (h) be accompanied by copies (or originals) of all certificates and other documents—
 - (i) issued under the enactments about public safety and public health as they apply to the funfair, and
 - (ii) evidencing the compliance of the funfair and its structures and other equipment with those enactments,
 - (i) be received by the council not later than 28 days before the date specified in the application as the proposed first day of operation of the funfair (but see subsection (5)).
- (3) An applicant may, for the purposes of paragraph (e) of subsection (2), describe two sites, alternative to each other, and state the applicant’s order of preference.
- (4) An application made by virtue of subsection (3) is a valid application only if valid in relation to both sites.

(5) Despite subsection (2)(i), the council must, for the purposes of that provision, treat an application received—

- (a) later than the 28-day time limit, but
- (b) not later than 14 days before the date referred to in subsection (2)(i),

5 as valid unless, in the circumstances, it thinks it impracticable in the time available to consider and decide whether to grant the licence applied for.

(6) The Scottish Ministers may by regulations substitute for the amount of the application fee such other amount as they think appropriate but only in order to take account of changes in the value of money.

10 (7) Regulations under subsection (6) are subject to the negative procedure.

6 False statement in application: offence

(1) An applicant (or other person making the application on the applicant's behalf) who, in an application—

- (a) makes a statement knowing it to be false, or
- (b) recklessly makes a statement that is false in a material particular,

15 commits an offence.

(2) A person who commits that offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

Consultation and decision

20 7 Council to consult police and fire authorities

Before granting or refusing a licence, the council must consult the chief constable and the Scottish Fire and Rescue Service.

8 Time limit on decision on whether to grant licence

(1) On a valid application being made to it, the council must decide, within the 21-day time limit, whether to grant the licence.

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- (2) The 21-day time limit is 21 days beginning with—
- (a) the day the council received the application, or
 - (b) where the invalidity of an application in the possession of the council has been cured, the day when that happened.

30 9 Grant and refusal of licences

(1) The council must grant a validly applied for licence unless it is satisfied that one (or both) of the reasons for refusal applies.

(2) The reasons for refusal are—

- (a) that the applicant is not a fit and proper person to be a licensee,
- (b) that the operation of the funfair would be likely to jeopardise the safety or health of the public to an extent that cannot be reasonably mitigated by the attachment of a condition under section 11.

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(3) The grant of a licence authorises the operation of the travelling funfair on one site only.

- (4) Where the applicant has described two sites under section 5(3), that site is, for the period of operation of the funfair, to be—
- (a) the one preferred by the applicant under that provision, or
 - (b) if, before the first day of operation of the funfair, the applicant (whether as applicant or licensee) so notifies the council, the other one.
- (5) Subsection (4) does not prevent the council, in granting the licence, from attaching a condition under section 11 that has the effect of disallowing the use of one of the two sites.
- (6) On refusing a licence, the council must forthwith notify the applicant in writing of the reason or reasons it did so.

10 Grant by default

- (1) If the council does not decide finally on a timeous valid application within the 21-day time limit, the licence applied for is to be treated as granted by it on the day next following the expiry of that limit.
- (2) References in this Act to the grant of a licence are to be construed accordingly.
- (3) A “timeous valid application” is one that—
- (a) was received by the council in accordance with the 28-day stipulation in section 5(2)(i), and
 - (b) was valid on the day that is 28 days before the date specified in the application as the proposed first day of operation of the funfair.
- (4) The 21-day time limit is the time limit set out in section 8.

Conditional licences

11 Conditions

- (1) In granting a licence, the council may attach conditions to it.
- (2) The following are the only kinds of conditions that may be attached—
- (a) those that limit the dates on which, and times during which, the travelling funfair may be operated,
 - (b) those that promote the observance of the relevant enactments about public safety and public health,
 - (c) those that secure public order,
 - (d) those that protect the environment from undue damage,
 - (e) those that require the repair or restoration of ground surfaces or any other things damaged or displaced by, or as a direct consequence of, the operation of the funfair,
 - (f) those that protect persons in the neighbourhood of the site of the funfair from undue noise or light nuisance.
- (3) Subsections (1) and (2) do not apply in the case of the grant by default of a licence under section 10.
- (4) However, the council may attach conditions of the kinds described in subsection (2) to a licence granted by default under section 10; but may do so only within the period of 2 days beginning with the day next following that on which the licence was so granted.

(5) Despite subsections (2) to (4), it is to be a condition of every licence that the licensee must, as soon as reasonably practicable, give notice in writing to the council that granted it of any material change of circumstances affecting—

(a) anything set out in the application for the licence so far as not superseded by a condition or other provision of the licence, or

(b) a condition or other provision of the licence.

(6) On attaching a condition under subsections (1) and (2) or (4) and being so asked by the licensee, the council must forthwith notify the licensee in writing of the reason or reasons it attached the condition.

12 Offence of breach of condition or other provision of licence

(1) A licensee who, without reasonable excuse—

(a) breaches a condition or other provision of the licence, or

(b) causes or permits such a breach,

commits an offence.

(2) A person who commits that offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Revocation of licences

13 Revocation of licence

(1) The council that granted a licence may revoke it, but only for one (or both) of the reasons in subsection (2).

(2) Those reasons are—

(a) had the council when granting the licence been aware of a fact that it subsequently became aware of, it would not have granted the licence,

(b) a breach of a condition or other provision of the licence.

(3) The reference in subsection (2)(a) to a fact that the council subsequently became aware of includes a change of circumstances occurring after the council granted the licence.

(4) On revoking a licence, the council must forthwith notify the licensee in writing of the reason or reasons it did so.

Appeals

14 Appeals to the sheriff principal

(1) The following appeals to the sheriff principal, on fact or law or both, are competent—

(a) by an applicant against the decision of a council under section 9 to refuse to grant a licence,

(b) by a licensee against the decision of a council—

(i) to attach a condition to the licence,

(ii) to revoke the licence.

(2) The council may be a party to the appeal.

(3) In considering an appeal, the sheriff principal may receive evidence.

- (4) On determining an appeal, the sheriff principal may make ancillary orders (including an order as to the expenses of the appeal).
- (5) A decision appealed against continues to have effect during the appeal process.
- (6) But the sheriff principal may, if satisfied that on the balance of convenience it is right to do so—
- (a) suspend a condition,
- (b) recall a revocation,
- pending the determination of the appeal.
- (7) The sheriff principal may, in upholding an appeal—
- (a) remit the case back to the council for reconsideration and decision within such time limits as the sheriff principal thinks fit,
- (b) reverse the council's decision, or
- (c) substitute for its decision such other decision (of a kind that it could have made) as the sheriff principal thinks appropriate.
- (8) The determination of an appeal under this section is final.
- (9) A sheriff principal may, generally or specifically, authorise any other sheriff of the same sheriffdom to deal with appeals under this section or, as the case may be, a specific such appeal.

Entry, inspection and search

15 Powers of entry and inspection of licensed travelling funfairs: offence

- (1) An authorised officer of a council that granted a licence or a constable in uniform may, for the purposes in subsection (2), enter the site for which the travelling funfair is licensed and inspect the site, the funfair and how it is being operated.
- (2) Those purposes are—
- (a) finding out if the licence is being complied with, and
- (b) if it appears not, getting information about the apparent non-compliance.
- (3) Subsections (1) and (2) do not extend to any—
- (a) vehicle,
- (b) caravan,
- (c) structure, or
- (d) other place,
- used as private living or sleeping accommodation.
- (4) Before exercising powers under this section, an authorised officer must use best endeavours to exhibit the officer's authorisation to the licensee and any other person acting on the licensee's behalf in the operation of the funfair.
- (5) A licensee or a person acting on a licensee's behalf who, without reasonable excuse, fails to permit or obstructs entry or inspection under this section commits an offence.
- (6) A person who commits that offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

16 Warrants for entry and search of unlicensed travelling funfairs: offence

- 5 (1) A sheriff or justice of the peace, on being satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an unlicensed travelling funfair is being operated, may grant a warrant authorising any constable in uniform to enter and search the site of the funfair and the structures and equipment there.
- (2) A constable may use reasonable force in carrying out the warrant.
- (3) A person who, without reasonable excuse, fails to permit or obstructs entry or search under this section commits an offence.
- 10 (4) A person who commits that offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

*General***17 Consequential amendments of Civic Government (Scotland) Act 1982**

In the Civic Government (Scotland) Act 1982—

- 15 (a) in section 39(3) (cases in which street trader's licence not required), in paragraph (e) after "section" there is inserted "or under the Travelling Funfairs (Licensing) (Scotland) Act 2020",
- (b) in section 42(4) (cases in which late hours catering licence not required), in paragraph (b) after "licence" there is inserted "or a licence for a travelling funfair under the Travelling Funfairs (Licensing) (Scotland) Act 2020",
- 20 (c) in section 54(3) (exemption of certain uses of loudspeakers from offence of persistent annoying playing of music etc), after paragraph (f) there is inserted—
- “(fa) as part of the operation of a travelling funfair licensed under the Travelling Funfairs (Licensing) (Scotland) Act 2020.”.

18 Commencement

- 25 (1) This Act (except this section and sections 19 and 20) comes into force on the expiry of the period of 6 months beginning with the day of Royal Assent.
- (2) Those sections come into force on the day after Royal Assent.

19 Saving for procedure and licence under 1982 Act

- 30 (1) This section relates to—
- (a) an application—
- (i) for a temporary public entertainment licence under section 41 of and paragraph 7 of Schedule 1 to the Civic Government (Scotland) Act 1982 for a travelling funfair,
- (ii) received by the council before the date of commencement of sections 2 to 35 17 of this Act, and
- (iii) not disposed of before then,
- (b) such a licence granted before that date for the operation of the travelling funfair wholly or partly after it.

- (2) In a case to which this section relates and despite the commencement of those sections of this Act—
- (a) that Act of 1982 continues to have effect for the purposes of—
 - (i) the disposal of the application and any licence granted upon it,
 - (ii) the licence referred to in subsection (1)(b), and
 - (b) those sections of this Act have no such effect.

20 Short title

The short title of this Act is the Travelling Funfairs (Licensing) (Scotland) Act 2020.

Travelling Funfairs (Licensing) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to provide anew for the licensing of travelling funfairs.

Introduced by: Richard Lyle

Supported by: Clare Adamson, Jackson Carlaw, Maurice Corry, Mary Fee, Christine Grahame, Bill Kidd, Richard Leonard, Fulton MacGregor, Ruth Maguire, Gillian Martin, Stuart McMillan, Alex Neil, Gil Paterson, David Torrance, Maureen Watt, Annie Wells

On: 29 April 2020

Bill type: Member's Bill

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