

Travelling Funfairs (Licensing) (Scotland) Bill

Policy Memorandum

Introduction

1. As required under Rule 9.3.3A of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Travelling Funfairs (Licensing) (Scotland) Bill introduced in the Scottish Parliament on 29 April 2020. It has been prepared by the Parliament's Non-Government Bills Unit on behalf of Richard Lyle MSP, the member who introduced the Bill.

2. The following other accompanying documents are published separately:

- statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 69–LC);
- a Financial Memorandum (SP Bill 69–FM);
- Explanatory Notes (SP Bill 69–EN).

Policy objectives of the Bill

3. The aim of the Travelling Funfairs (Licensing) (Scotland) Bill (“the Bill”) is to make it less burdensome and more financially viable for those who put on travelling funfairs (funfairs that travel from site to site rather than being located on a single site on a permanent or semi-permanent basis) to manage and operate their businesses. A broader aim of the Bill is to help ensure the survival and viability of the many communities of showpeople in Scotland, whose way of life and successful future, Richard Lyle believes, are being threatened by current law and practices.

4. The Bill seeks to achieve its aims by exempting travelling funfairs from the current licensing legislation and establishing a new licensing

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

regime suitable for the needs of travelling funfairs. The aim is to create a simplified, consistent, fair and proportionate licensing process.

5. The new process replicates, in a simplified form, appropriate elements of the current licensing system whilst making changes to deliver the main policy objectives sought by Richard Lyle, which are to—

- reduce the costs to operators and make them consistent;
- reduce the timescales involved and make them more consistent;
- allow a licence to be transferable to another site, for example, if the original site is unusable;
- restrict the categories of conditions which can be attached to a licence, and the grounds on which an application may be refused; and
- ensure that operators know application requirements, condition categories, and refusal grounds in advance.

Background

6. Richard Lyle believes that the ability of showpeople effectively and successfully to manage and operate travelling funfairs across the country is being hampered by the current approaches to licensing being taken by Scotland's local authorities, under the Civic Government (Scotland) Act 1982¹ ("the 1982 Act"). It is Mr Lyle's view that the "public entertainment" licensing regime established by the 1982 Act is not suitable for regulating travelling funfairs. In his view, a new licensing approach is needed to enable Scotland's showpeople to effectively plan and manage their businesses.

7. Detailed information about the 1982 Act and its application to travelling fairs is set out below. However, in summary, the Act allows each local authority (as the licensing authority) to pass a resolution to require public entertainment licences for various activities, including travelling fairs. All 32 local authorities in Scotland have passed such a resolution, meaning

¹ The Civic Government (Scotland) Act 1982 (c.45). Available at: <http://www.legislation.gov.uk/ukpga/1982/45/contents>.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

that travelling funfairs cannot lawfully operate anywhere in Scotland without a public entertainment licence.

8. The 1982 Act makes provision for full licences (which can last up to three years) and temporary licences (which can last up to six weeks). The Act sets out the various rules and procedures which must, or may, be followed throughout the process. Temporary licences are subject to some of the same provisions as full licences but are exempted from other parts of the Act which were presumably considered to be unsuited to short term licences (such as some notification and consultation requirements).

9. Whilst the Act includes various mandatory provisions, it gives authorities significant flexibility in how to implement the licensing regime. For example, each licensing authority can decide—

- what fee should be charged for applying for the licence (the Act only specifies that fees should be “reasonable” and should meet the expenses of the authority);
- the timescales for considering and deciding on an application (subject only to considering applications within 3 months and making decisions within 6 months after that);
- what information is required to be provided with an application;
- what conditions can be attached to a licence; and
- on what grounds a licence can be refused.

10. The public entertainment provisions in the 1982 Act also apply to a wide variety of public entertainments and the Act’s provisions are therefore sufficiently generic to be able to be applied to such a wide range of activities. This has, in Richard Lyle’s opinion, had a negative effect on travelling funfairs, as the 1982 Act contains many provisions which, he believes, are not suitable for licensing travelling funfairs.

11. The effects of the 1982 Act on travelling funfairs are that operators—

- are often subject to fees which they consider to be too high and unsustainable and which have placed some businesses in financial hardship;
- are often subject to administrative timescales which are too long to allow them to manage their businesses effectively; and

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

- face considerable variations in what is required to apply for a licence, and how the system will operate, across Scotland's 32 licensing authority areas.

12. Consider, for example, the operator of a travelling funfair who is planning to visit, say, six sites in six local authority areas on a tour, and so has to make six separate applications, one for each site. Each local authority involved could charge a different fee (differing by hundreds, or even thousands of pounds), require different information and take differing amounts of time to decide on the applications (with timescales differing by weeks or even months).

13. There is also nothing in the 1982 Act to deal with situations where a licensed site is not available for use at short notice (for example, due to flooding). Operators in that situation will usually have no option other than to cancel the fair, which means additional expense, disruption and loss of income. There is also no provision in the 1982 Act to allow operators to appeal against any decisions made by the licensing authority, such as refusal to grant, or revocation of, a temporary public entertainment licence, or conditions attached to a licence.

14. The Bill addresses these problems by establishing a process which is fairer to travelling funfair operators, making it simpler for licences to be applied for, with a duty placed on local authorities to grant licences if clearly set out criteria are met. The new licensing process ensures that appropriate permissions to hold travelling funfairs continue to be managed by Scotland's local authorities (therefore acting as a safeguard for attendees and local communities), but with lower fees and shorter timescales, and without the current inconsistencies and unnecessary bureaucracy, for operators. Operators can also appeal should a valid application be refused or granted and then revoked. Appeals can also be made against conditions attached to a licence. Richard Lyle believes that the Bill will help to reverse the damaging cultural and economic effect of the current legislation on showpeople in Scotland.

Definition of a travelling funfair

15. The aim of the Bill is to establish a new licensing regime suitable for the needs of travelling funfairs – that is, funfairs that travel from site to site (remaining on a single site for no longer than six consecutive weeks). It does not apply to funfairs located on a single site on a permanent or semi-

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

permanent (longer than six consecutive weeks). It therefore exempts only travelling funfairs from the 1982 Act, meaning that all other fairs (including static fairs, semi-permanent fairs, and theme parks) will continue to be subject to the 1982 Act. Travelling funfairs, as defined in the Bill, will be exempt from the 1982 Act, and will, instead, be subject to the replacement provisions of the Bill.

16. The Bill defines a funfair as “a number of structures and other equipment designed and operated to provide public entertainment, amusement or leisure activity” and defines a travelling funfair as one which travels from site to site, remaining on a site for no longer than six consecutive weeks. The Bill also provides examples of what typically identifies a funfair, such as rides, amusements and stalls.

Current law governing travelling funfair licensing in Scotland

17. As stated above, the Civic Government (Scotland) Act 1982² gives licensing authorities the power to require public entertainment licences, if they choose to do so, by passing a resolution. All 32 authorities in Scotland have passed such resolutions and so require travelling funfairs to hold a public entertainment licence.

18. Public entertainment licences do not regulate health and safety aspects of funfairs. Issues such as the safety and maintenance of rides and the hygiene of food and drink available at funfairs are covered by other legislation (see below for further information).

19. Public entertainment licences do not govern the leasing of land. Therefore, any charge for leasing land, whether public or private, will be a matter between the operator and the landowner. This includes leasing arrangements for nominated backup sites.

How the law is applied by Scotland’s 32 local authorities

20. Due to the discretion local authorities enjoy with regards to public entertainment licensing arrangements for travelling funfairs, referred to above, there are significant disparities in the process amongst authorities, particularly in the fees charged and the time taken to process applications.

² The Civic Government (Scotland) Act 1982 (c.45). Available at: <http://www.legislation.gov.uk/ukpga/1982/45/contents>.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

Fees vary greatly across the country, from £50 to over £6,000 (and can depend on factors such as the length of the fair, the number of rides, and the capacity of the fair³), and application deadlines and processing times vary from 21 days to four months.⁴

21. To aid the preparation of the policy and financial memorandums accompanying the Bill, every local authority in Scotland was contacted and asked various questions about their current licensing of travelling funfairs. Information relating to the cost of, and time taken to process, an application is set out in the Financial Memorandum.

22. This table shows that one local authority is currently charging £50 for a licence application, which is the same amount fixed in the Bill, and that two authorities are usually processing applications within 21 days which is the maximum period allowed by the Bill (with a further nine authorities able to process applications in 28 days, which is the minimum period in the Bill by which application are required to be made). This suggests that the Bill is not setting unachievable fees and time periods as part of the new licensing process.

23. The table also highlights the significant variance in fees and time periods across Scotland's local authorities that are causing such difficulties for operators. It is not clear why, for example, one authority charges £50 to process a licence application, whilst another charges £6148 to licence the largest fairs, or why one can process an application in 21 days, while another takes 3-4 months. Richard Lyle believes that such variation, high costs and lengthy time periods are unjustifiable and unacceptable.

Health and safety requirements and legislation

24. Health and Safety is a reserved matter that the Scottish Parliament cannot legislate about, and therefore the Bill makes no change to the Health and Safety requirements that apply to travelling funfairs.

³ It is not clear how a local authority would determine the capacity of a fair, or be able to know how many people, at any one time, were attending a fair, given that many travelling funfairs are operated in parks and towns with no specific entrance or exit points.

⁴ The Financial Memorandum to the Bill contains details of every local authorities' fees and process times.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

25. In Scotland (as is the case in all parts of the UK), health and safety aspects of funfairs are regulated by the Health and Safety at Work etc Act 1974⁵ (HSW Act). The HSW Act applies to all employers, employees and people who are self-employed. The HSW 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 HSW Act various codes of practice and guidance must be adhered to.

26. The third edition of the Fairgrounds and Amusement Parks: Guidance on Safe Practice, published by the Health and Safety Executive in 2017⁶, shows in detail the many health and safety requirements that funfairs need to comply with in the UK. Council environmental health departments also have a statutory duty to prevent noise nuisance, so could be involved should any such issues arise with a funfair.

Licensing of, or offences relating to, related activities

27. The 1982 Act exempts holders of public entertainment licences from requiring either a street trader's licence, or a late hours catering licence, which means that operators do not require these separate licences to sell food and drink as part of a fair. This Bill replicates those exemptions, so holders of the new travelling funfair licence will not require these licences to be able to sell food and drink (including at late hours).

28. The 1982 Act also exempts the use of a loudspeaker "by a travelling showman on land which is being used for the purposes of a pleasure fair" from committing an offence under section 54 (Playing instruments, singing, playing radios, etc.) of the 1982 Act and that will also be the case for anyone holding a licence under the Bill.

29. As is the case under the 1982 Act, a separate licence will be required for the use of air weapons as part of a fair.

⁵ Health and Safety at Work etc Act 1974 (c.37). Available at: <http://www.legislation.gov.uk/ukpga/1974/37>.

⁶ Health and Safety Executive (2017). Fairgrounds and Amusement Parks – Guidance on Safe Practice Available at: <http://www.hse.gov.uk/pubns/priced/hsg175.pdf>.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

Travelling funfair regulation in the rest of the UK

30. Travelling funfairs do not require a specific licence to operate in the rest of the UK. Travelling funfairs are not “regulated entertainment” and so are not “licensable activities” for the purposes of the Licensing Act 2003⁷ which applies to England and Wales. Travelling 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 often 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.

31. In Northern Ireland, travelling funfairs are also not part of national public entertainment legislation⁸ and district councils can control them only by passing bye-laws⁹ with regards to issues such as the hours of operation, safety, and minimising negative impacts on local areas.

32. As is the case in Scotland, depending on what activities may be part of a travelling funfair, other licences or notices may be required from the local council, such as a temporary event notice¹⁰ or a street trading licence¹¹ to cover the sale of alcohol and/or food.

Scottish Government activity and guidance

33. In 2014, acknowledging the complexities for operators of having 32 local authorities applying 32 variations of licensing and fee structures, the then Minister for Local Government and Planning announced that a

⁷ Licensing Act 2003 (c.17). Available at:
<http://www.legislation.gov.uk/ukpga/2003/17/contents>.

⁸ The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. Available at:
<http://www.legislation.gov.uk/nisi/1985/1208/contents>.

⁹ Under article 67 of the Pollution Control and Local Government (Northern Ireland) Order 1978. Available at:
<http://www.legislation.gov.uk/nisi/1978/1049/article/67>.

¹⁰ Temporary Event Notice for England and Wales. Details available at:
<https://www.gov.uk/temporary-events-notice>.

¹¹ Street Trading Licence for England and Wales. Details available at:
<https://www.gov.uk/street-trading-licence>.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

working group would consider the matter¹². This led, in 2016, to a meeting with the Scottish Showmen's Guild to discuss the difficulties further¹³. In turn, this led, in July 2017, to the publication of new Scottish Government guidance on public entertainment licences in respect of funfairs.¹⁴

Policy

34. Richard Lyle does not consider the public entertainment licensing provisions of the 1982 Act to be fit for purpose for proportionally regulating travelling funfairs, and the Bill therefore exempts travelling funfairs from that Act and those provisions. Mr Lyle believes that the current system allows barriers to be put in place which makes it difficult for operators to secure a licence, whereas the new system provided for in the Bill redresses this by removing barriers and facilitating licences.

35. However, some aspects of the Act's temporary licence provisions remain appropriate elements of an effective and responsible licensing system and they also form part of the new licensing process set out in the Bill. These measures include—

- the principle of requiring a licence for each travelling funfair held (over a number of consecutive days) on a particular site (whether publicly or privately owned);
- the licensing authority being the local authority (council);
- the licensing authority being required to send copies of licence applications to the police and fire service (to give them the opportunity to raise any concerns);
- powers of enforcement, including: powers of entry, inspection and search and the power to revoke a licence;

¹² Scottish Parliament Official Report (19 June 2014). Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9261&i=88107>.

¹³ Parliamentary Question S5W-00149 and answer. Available at: <https://www.parliament.scot/S5ChamberOffice/WA20160526.pdf>.

¹⁴ Scottish Government (20 July 2017). Civic Government (Scotland) Act 1982 - Guidance on public entertainment licences in respect of funfairs. Available at: <http://www.gov.scot/Publications/2017/07/5619>.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

- it being an offence not to abide by various aspects of the licensing regime, including it being an offence to hold a fair without a licence; and
- exempting licence holders from requiring any additional licences in order to sell food and drink (see above).

36. As is the case with the temporary licence provision in the 1982 Act, there is no requirement in the Bill for licensing authorities to give public notice of an application or to consult anyone other than the police and fire services; there is no provision for public objections to an application or a right to make representations; and authorities have no power to vary the terms of a licence. Richard Lyle does not consider these necessary, proportionate, and/or reasonable parts of a temporary licensing system (with licences limited to a maximum period of six weeks).

37. To ensure that the Bill is applied as consistently as possible across Scotland's 32 local authorities, the Bill requires all travelling funfair operators to have a licence under the Bill from the relevant local authority to operate. This means that the Bill's licensing regime will be mandatory for all local authorities. This is a departure from the 1982 Act, in which the public entertainment licence process is an opt-in one for local authorities. As all 32 local authorities have opted in to the process, this doesn't represent a change in practice. However, it removes local authorities' discretion and ensures that operators will always have a consistent process to follow in all parts of the country.

38. The other main ways in which the Bill differs from the 1982 Act are all intended to better support and benefit operators, while ensuring that the process remains fit for purpose and proportionate. Aspects of the new system are set out below.

Application process

39. The Bill lists the requirements that operators must meet when applying for a licence. If these requirements are met then the application is valid, and the relevant local authority must grant it, unless one or more of the refusal criteria are met. This will bring consistency and clarity to the application process, based on a presumption in the operator's favour (that is, it puts the onus on the local authority to justify any rejection of an application as invalid, or any refusal of a validly-made application).

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

40. The application requirements are intended to deliver an appropriate balance between ensuring that a local authority has the information it needs in order to consider the application and making the application process efficient for operators (particularly when planning a tour covering multiple local authority areas). For an application to be valid, it must—

- be accompanied by a fee of £50 (the Scottish Ministers will be able to uprate this in line with inflation in future years);
- be made no later than 28 days before the first day of the fair (although councils will be able to grant late applications up to 14 days before a fair begins);
- list and describe the site (or sites, see below) on which the fair is to be held, and the amusements and rides that will be used;
- state the dates of the fair (the first and last of which must be no more than 6 weeks apart); and
- be supported by copies of all relevant documents needed to ensure compliance with legal requirements, for example health and safety certificates and insurance documents).

Processing times

41. The Bill requires local authorities to decide on a valid application within 21 days. While this is a significant shortening of the current statutory time allowed for a local authority to decide, Richard Lyle considers this a reasonable timeframe, given that several local authorities are already processing applications within this, or a similar, period.

42. By setting a reasonably short processing timescale, the Bill greatly enhances operators' ability to plan and manage their businesses effectively. By submitting applications early, they can ensure that final decisions are also made well ahead of when fairs are due to take place. If applications are granted, the operator has advance certainty, and can finalise arrangements confident that fairs can go ahead as planned; but if one is refused, this should be early enough to give the operator time to make alternative plans. By contrast, under the present arrangements, even operators who submit applications well in advance sometimes find (with some local authorities) that decisions are not made until shortly before the fair is due to take place. Even if the eventual decision is favourable, the uncertainty beforehand can cause stress and inconvenience to operators; and if the decision is a refusal, they can find themselves with no time to re-

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

arrange, having already incurred costs that cannot be recovered. This, in turn, can lead to individual fairs or even complete tours having to be cancelled – or even, in extreme cases, to operators going out of business.

43. To avoid operators being left in limbo in situations where a local authority does not decide within 21 days, and to incentivise authorities to comply with the Bill, an application (made, and being valid, at least 28 days before the first day of a fair) will be granted by default, in the terms set out in the application, if no decision has been made by the end of the 21-day period.

Back-up site

44. As a further measure to ensure that the new system supports and benefits operators, the Bill allows operators to specify a back-up site in an application, and then (if the licence is granted in respect of both sites) to switch, before the fair starts, from the primary site to the back-up site by notifying the council. This allows operators to put in place, in advance, a fall-back option they can use if their first choice of site is not available at short notice. This will help avoid situations experienced under the current 1982 Act process when a licensed site becomes unavailable at short notice, for example due to flooding or other damage, and operators can only operate the fair on the planned dates if a new licence is successfully applied for (which will almost certainly not be possible due to timescales).

Grant and refusal of licences

45. The Bill requires a valid application to be granted unless the local authority considers that one or more of a set list of refusal criteria has been met. The refusal criteria include that the applicant is not a “fit and proper person” (this would likely be raised by the police as part of the consultation process), and/or that the fair would present a risk to public safety and/or health to an extent that could not be mitigated by adding a condition to the licence.

46. Again, as with the application process, the Bill deliberately creates a presumption in the operator’s favour, so that an authority cannot refuse a valid application except by reference to the list of set refusal criteria and only after seeking to mitigate impacts by applying conditions to a licence. The Bill still ensures that authorities can refuse applications in appropriate cases (e.g. to prevent rogue operators whose equipment has not been

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

maintained); but it also protects operators from the prospect of arbitrary refusal, or from the complexities that arise if each authority uses different refusal criteria or if those criteria change without notice or are applied inconsistently.

Conditions

47. Following on from the approach taken with applications for a licence, and with the criteria for refusal, the Bill also clarifies and simplifies the ability of authorities to attach conditions to a licence, by restricting them to a set list of conditions. These include conditions relating to: dates and times the fair may operate; public safety, health and order; the prevention of environmental damage; repair and/or restoration of any damage caused; and the prevention of any undue light or noise nuisance.

48. The system is designed so that potential concerns an authority may have with an application should be resolved if possible by attaching appropriate conditions to the licence, rather than by refusing an application altogether.

49. If a licence is granted by default, the only condition that applies at that point is the standard condition that applies to all licences (that licensees must tell the council about any material changes which affect the information included in their application or a condition or provision of the licence). However, a local authority can then attach other conditions to the licence during the first 48 hours after the default licence is deemed to have been granted (i.e. after the expiry of the 21-day period). This ensures that a local authority that has not made a decision as required within 21 days still has an opportunity to attach conditions to the default licence, but also that operators will still have at least 5 days' notice of any conditions before a fair begins.

Appeals

50. The 1982 Act does not provide for any appeals to be made against decisions taken in relation to a temporary public entertainment licence. This is addressed in the Bill, which allows operators to appeal to the sheriff principal against: the refusal of a valid application for a licence; the revocation of a licence; and any conditions attached to a licence. This is a further additional benefit for operators and supports the broader policy aim

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

of seeking to facilitate the operation of travelling funfairs and to remove as many barriers which prohibit and/or limit that as possible.

Saving provision and commencement

51. The Bill will come into force six months after it receives Royal Assent (which normally happens 4-6 weeks after a Bill is passed by the Scottish Parliament). This 6-month lead-time is to allow local authorities to prepare for the introduction of the new system and ensure that all relevant staff are confident and familiar with the new requirements.

52. On the date the Bill comes into force, there may be applications for temporary licences under the 1982 Act pending a decision (and for which fees have been paid); there may also be 1982 Act licences that have been granted for fairs due to take place after that date. Such applications and licences will remain valid, governed by the 1982 Act, and those applicants and licensees will not require a licence under the Bill. From the time the Bill comes into force, all new applications to hold a travelling funfair will require to be made under the new legislation.

Alternative approaches

53. When first considering his draft proposal, Richard Lyle considered whether he could deliver his policy aims by seeking to amend the 1982 Act. As has been noted above, Mr Lyle acknowledges that there are several aspects of the 1982 Act which are appropriate and working effectively, and which have been largely replicated in the Bill. Consideration was therefore given to bringing forward amending legislation to change the parts of the process which Mr Lyle considers are not fit for purpose.

54. However, Mr Lyle's view was that several aspects of the 1982 Act (such as public entertainment licences being opt-in in the first place) made it unsuitable for amending to deliver the simplified process he sought to deliver. He was of the view that trying to amend the 1982 Act would likely result in an increase in complexity and lack of transparency for both operators and licensing authorities.

55. Mr Lyle also considered excluding travelling funfairs from the 1982 Act, but not legislating for any replacement licensing process, instead leaving it to individual local authorities to determine how to approach management of travelling funfairs in their respective area. This approach

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

was supported (at that time) by some operators of travelling fairs, and by the Scottish Showman's Guild, who responded to Richard Lyle's consultation by expressing support for exempting travelling fairs from statutory licensing requirements altogether. Many of those who expressed that view were of the understanding that there is no licensing requirement for travelling fairs in the rest of the UK, and that Scotland should put itself on the same footing by ensuring that travelling fairs do not require a licence to operate.

56. Following his consultation, Mr Lyle engaged further with the Scottish Showmen's Guild on this issue. In doing so he noted that while it is true that travelling fairs in the rest of the UK are excluded from equivalent primary legislation, it also appears that there is no consistent process in operation. Licensing authorities in the rest of the UK seem able to decide upon their own processes and requirements, which includes, in some cases, the passing of byelaws to create, in effect, something not dissimilar to the existing licensing process in Scotland. The result is a patchwork of provision that lacks consistency or certainty for showpeople.

57. Mr Lyle is therefore convinced that exempting travelling funfairs from statutory licence provisions would not deliver his objectives and would leave operators in a weak position in relation to individual local authorities. He believes that only establishing a new, streamlined, licensing process, which is simple, consistent, and designed with a presumption in operators' favour, will guarantee practical benefits to operators. Those benefits include making the application process cheaper and quicker, and giving responsible operators the advance certainty they require that when they turn up at a particular location, they will have the right to operate a fair there (including, if need be, on a back-up site), and won't be faced by ad hoc or unreasonable objections or obstacles at any point in the process.

58. Richard Lyle also has previously had engagement with the Scottish Government on this issue, as has the Scottish Showmen's Guild. Such engagement contributed to the Scottish Government issuing guidance to local authorities on the approach that should be taken, and factors that should be considered, when considering licence applications from travelling funfairs. Mr Lyle could have sought to try to deliver the aims of his policy by lobbying the Scottish Government to issue further guidance and introduce more stringent monitoring of the guidance. However, Mr Lyle recognises the limits that the 1982 Act imposes on how far any guidance can improve

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

the current situation and considers that only legislative change will guarantee the delivery of the policy outcomes he is seeking.

Consultation

59. Richard Lyle carried out a consultation¹⁵ on a draft proposal¹⁶ which he lodged on 4 December 2017. The consultation ran from 5 December 2017 until 26 February 2018. There were 189 responses¹⁷ to the consultation and a summary¹⁸ of those responses was published along with his final proposal.

60. Twenty-four responses (13% of the total number) were from organisations, and the remaining 165 (87% of the total number) were from individuals. Respondents were mostly from three categories: funfair operators and showpeople (and their representative organisations); local authorities; and members of the public (either funfair goers or people in communities which host funfairs).

61. A substantial majority of respondents (87%) stated that they were supportive (either fully or partially) of the proposed Bill. Funfair operators and showpeople, who accounted for a majority of all responses, mostly said they were either fully or partially supportive of the proposal – but most went on to express support for the removal of funfairs from licensing altogether on the grounds that funfairs operating in the rest of UK, and in

¹⁵ Richard Lyle MSP (4 December 2017). Proposed Licensing of Funfairs (Scotland) Bill, consultation document. Available at: [https://www.parliament.scot/S5MembersBills/Funfairs_consultation_FINAL\(1\).pdf](https://www.parliament.scot/S5MembersBills/Funfairs_consultation_FINAL(1).pdf).

¹⁶ The draft proposal wording was as follows: Proposed Licensing of Funfairs (Scotland) Bill - a proposal for a Bill to exempt travelling funfairs from public entertainment licensing requirements and to create a distinct new licensing system for travelling funfairs in Scotland.

¹⁷ Consultation responses available at: <http://www.richardlylemsp.org/consultation-responses.html>.

¹⁸ Proposed Licensing of Funfairs (Scotland) Bill, consultation summary document (26 March 2019). Available at: https://www.parliament.scot/S5MembersBills/20190326_Final_Consultation_Summary.pdf.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

Europe, did not require a license and that the system in Scotland was unnecessary, inconsistent and inflexible, and was putting operators out of business. The Showmen's Guild of Scotland stated that it has been expressing concerns about the current licensing arrangements for over 30 years and that the current system is having a disproportionate effect on the industry which has created a stark decline in the number of fairs operating in Scotland.

62. Some operators/showpeople who were fully supportive of the proposal also expressed support for replacing the current system with a new, bespoke, fairer, licensing system, as they believed it could address the current problems whilst ensuring that funfairs were appropriately regulated.

63. The local authority view was mixed, but there was consensus that there should be some form of licensing, and that it was important that appropriate time was given to assess applications and consult with relevant groups, including local communities.

64. The small response from members of the public was also mixed, with funfair attendees/enthusiasts supportive of removing funfairs from licensing altogether, or of replacing the current system with a new regime as per the proposal, while some people living in communities where funfairs are held expressed concerns about the negative impact fairs could have on the local area and the importance of proper consultation and approval procedures being in place.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

65. It is important to note that showpeople are occupational travellers rather than being part of the gypsy/traveller community. However, showpeople can face similar issues to gypsy/travellers in terms of discrimination and barriers to accessing services, such as education provision or disability support. Showpeople are business people, often of many generations of proud tradition, whose livelihoods and wellbeing are dependent on being able to travel and stage funfairs around the country.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

An improved and more proportionate licensing system should therefore have a positive impact for showpeople.

66. Currently, showpeople are often unable to plan their activities effectively, due to the lengthy timescales involved in applying for licences. This can make it difficult for them to plan necessities, such as accommodation requirements for different times of the year, and education requirements for their children. The high fees being charged currently in some parts of Scotland to apply for a licence are also creating financial hardship for some showpeople.

67. The Bill therefore has significant potential to impact positively on travelling showpeople from an equality perspective, both in terms of their cultural traditions, and in terms of their ability to access education and other public services.

Human rights

68. The Scotland Act 1998 places a duty on the Scottish Ministers and the Scottish Parliament to act in accordance with the European Convention on Human Rights (ECHR). The Bill aims to make it less burdensome and more financially viable for travelling funfair operators to manage and operate their businesses. The member considers that the way it does so is fully compatible with the European Convention on Human Rights.

Island communities

69. Any travelling fair which wishes to operate on one of Scotland's islands will be subject to the licensing process set out in the Bill. Given the additional planning and expense which is likely to be required to bring travelling fairs to some islands, the new consistent, simplified, fair and proportionate process required by the Bill should be particularly important in enabling travelling fairs to plan and operate visits to island communities.

70. Information received from local authorities about the number of temporary licences granted in the last year for travelling funfairs indicates that there are very few fairs operated on Scotland's islands annually, with the total number being in single figures. Should the Bill be passed, this number may increase.

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Local government

71. The Bill will have an impact on local authorities, as the licensing authorities for their respective geographical areas.

72. The 1982 Act gives licensing authorities scope to decide whether to require public entertainment licences for certain activities. All 32 local authorities in Scotland currently require travelling fairs to be licensed, in accordance with the 1982 Act. As the Bill excludes travelling fairs from the 1982 Act, local authorities will no longer be able to require traveling fairs to hold a licence under that Act to operate.

73. However, local authorities will be required to comply with the new process for licensing travelling fairs as set out in the Bill. The new process reduces flexibility for local authorities and establishes a consistent system across all 32 local authorities. Rather than having 32 different sets of requirements, as at present, there will be one set system which will require to be followed by all authorities.

74. Given that local authorities have lengthy experience of licensing travelling fairs (and other forms of public entertainment), switching from one licensing process to another should not present significant difficulties, especially as many of the fundamental aspects of the licensing process will be essentially unchanged. Also, as noted elsewhere in this document, some local authorities are currently operating a system (including in terms of timescales and fees) similar to that set out in the Bill.

75. The main impacts of moving from one system to the other are expected to be—

- process – the new system makes a variety of changes to the process that authorities have been operating under the 1982 Act. This will require relevant staff to become familiar with the new process and its requirements;
- fees – a fixed fee of £50 (subject to inflation-uprating) will be chargeable for each application, removing local authorities' current discretion to determine the level of the fee. From the information gathered from local authorities about current fee levels, it seems likely that this will mean some reduction in fee income for almost all local authorities, and a large reduction for a few authorities; and

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- processing times – maximum processing times will be reduced by the Bill. Currently, authorities can take up to three months to consider an application and up to a further six months to reach a final decision. The Bill requires a final decision to be made within 21 days and provides for applications to be granted by default if that deadline is not met.

76. As noted above, in acknowledgement of this the Bill will come into force six months after it has received Royal Assent.

Sustainable development

77. The Bill is expected to improve the sustainability of travelling fairs, and the showpeople who provide them, by simplifying the regulatory system they are required to work within.

78. Travelling fairs are usually operated and managed by communities of showpeople that are, in reality, small or medium-sized businesses (SMEs). These SMEs are currently often subjected to excessive and overly-bureaucratic regulation that stifles their economic viability. The Bill will support the principle of sustainable economic growth by replacing the current system with a simpler, consistent, fair and proportionate licensing process.

79. In turn, the Bill should also have a positive effect on the cultural heritage and traditions of showpeople communities in Scotland. Making it easier for showpeople to operate and manage their fairs, including planning tours and travel, could improve the wellbeing of showpeople and help to ensure economic and social viability for future generations.

80. The Bill is also expected to improve the economic and social sustainability of local communities. Simplifying the regulatory environment for travelling fair operators, as well as making it consistent, fair and proportionate, should make it easier for fairs to be held in Scotland. An increase in the number of fairs should see a positive economic and social impact on local communities, providing low cost, family entertainment and bringing tourists and visitors into the area.

81. Should the Bill lead to an increase in the number of funfairs held in Scotland then there would be an increase in the related environmental

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impact (energy required for travel, powering rides, any impact/damage to grass/land etc). However, these same impacts are currently successfully managed by funfairs around the country, and efforts to minimise any negative impacts would continue to be made. The Bill allows conditions to be attached to licences aimed at preventing, limiting or mitigating any environmental impact and/or damage.

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