

Agenda item	<b>6</b>
Report no	<b>HLC/008/18</b>

**THE HIGHLAND COUNCIL**

**Committee:** THE HIGHLAND LICENSING COMMITTEE

**Date:** 6 February 2018

**Report title:** Proposed Licensing of Funfairs (Scotland) Bill – Consultation response

**Report by:** The Principal Solicitor – Regulatory Services

**1. Purpose/Executive summary**

- 1.1** This report relates to a consultation document received in relation to the 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.

**2. Recommendation**

- 2.1** Members are asked to consider the attached draft consultation response and thereafter agree a response to be submitted to the Scottish Government.

### **3. Background**

- 3.1** The Scottish Government have issued a document titled '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'. A copy of this document and consultation is attached in Appendix 1 of this report.
- 3.2** This document details a notice of intention to put forward a new system of licensing funfairs. It should be noted that this is not the bill, which has not yet been written, but a proposal for a bill.
- 3.3** Completed consultation responses from interested parties require to be submitted to the Scottish Government by 26 February 2018.

### **4. Summary**

- 4.1** Currently Licensing Authorities have discretion as to the types of activities which they licence as public entertainment under Section 41 of the Civic Government (Scotland) Act 1982.
- 4.2** Highland Council, as well as many other Licensing Authorities, have resolved to licence travelling funfairs as one of the activities which requires to be licensed under Section 41.

### **5. Draft response**

- 5.1** Appendix 2, attached, details a suggested response to the consultation for Members consideration.

### **6. Implications**

- 6.1** Not applicable.

Date: 13 December 2017

Author: Michael Elsey

Background Papers: Appendix 1 – Consultation documents relating to the licensing of funfairs  
Appendix 2 – Suggested response to consultation

# 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**

**Consultation by Richard Lyle MSP  
Scottish National Party Member for Uddingston and Bellshill**

4 December 2017

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## FOREWORD



The purpose of this proposal is to consult on the removal of travelling fairs from the licensing regime created by the Civic Government (Scotland) Act 1982, and the establishment of a new licensing system that is fair, consistent and proportionate.

Travelling fairs, or funfairs as they are also known, are predominately a place of "free to enter" entertainment made up of a number of rides and stalls ranging from dodgems to carousels. These fairs will travel from place to place offering a space where people from all walks of life can come together and have fun together.

This important community role has been recognised by UNESCO who included the travelling fair industry as within their definition of "Intangible Cultural Heritage". The Scottish Government has also recognised the importance of these fairs as places of social and leisure activity which is fundamentally part of the human condition. In 2009, at a Parliamentary reception in Holyrood, then First Minister Alex Salmond said—

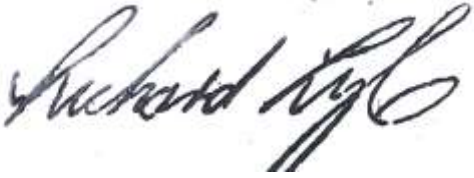
"Travelling showpeople are an important part of Scotland's culture, history and economy and combine a strong tradition of family and community with a high level of entrepreneurship and business acumen".

Owing to local authorities having a wide degree of flexibility when applying the licensing regime, operators are at the mercy of local variances ranging from a refusal to accept temporary applications to having a requirement for the applicant to pay a separate fee for each ride at the fair. The totality of these local variances is untenable and intolerable for travelling fairs. The reality is that the licensing framework under the 1982 Act creates a barrier of local "red-tape" which has resulted in a decimation of these important cultural, social and family events. My proposal will address these problems by creating a new fair, proportionate and consistent licensing system that allows local authorities to retain control of applications, but also allows operators to be able to manage their businesses more effectively.

It is important to stress that my proposal will not affect the health and safety aspect of travelling fairs, which is of course of vital importance, as that is regulated through the Health and Safety Executive.

I encourage all those with views on fairground licensing to take part in this consultation process – community groups, businesses, local authorities, Police Scotland, and individuals. Hearing views from a wide range of stakeholders will aid understanding of the issues and the best way forward. This will inform a Member's Bill that I intend to introduce in the Scottish Parliament in 2018.

I look forward to hearing your views.

A handwritten signature in black ink, appearing to read "Richard Lyle". The signature is written in a cursive, flowing style with some loops and flourishes.

**Richard Lyle MSP**

## HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at—

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at: Richard Lyle MSP, 188 Main Street, Bellshill, North Lanarkshire, ML4 1AE; 01698 479900, email: [Richard.Lyle.msp@parliament.scot](mailto:Richard.Lyle.msp@parliament.scot).

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website under Parliamentary Business/Bills/Proposals for Members' Bills/Session 5 Proposals:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/12419.aspx>.

## **AIM OF THE PROPOSED BILL**

The aim of this proposal is to make it less burdensome and more financially viable for those who put on travelling funfairs to manage and operate their businesses. The proposal is to achieve this by—

- taking travelling funfairs out of current public entertainment licensing requirements, which are being applied inconsistently, disproportionately and inflexibly; and
- creating a new bespoke licensing process for travelling funfairs in Scotland, that is consistent, proportionate and flexible.

A broader aim of the proposal is to help to ensure the survival and viability of the many communities of showpeople in Scotland, whose way of life and successful future is being threatened by current law and practices.

## **BACKGROUND**

### **Definition of a travelling fair**

This proposal relates specifically to travelling fairs, i.e. funfairs which move from location to location across the country and are invariably operated by showpeople.

### **Summary**

The ability of people, most usually Scotland's proud and historic communities of showpeople, to manage and operate travelling funfairs across the country is being threatened by the current approaches to licensing being taken by Scotland's local authorities.

Those wishing to hold a travelling funfair in a particular location—

- need to apply for a licence from the relevant local authority a long time in advance (often up to 3 months);
- are charged a range of fees (often non-refundable if the application is unsuccessful), some of which are economically unviable for showpeople; and
- are unable to move to an alternative site if the licensed site is not in a fit state to hold the funfair when it arrives.

This proposal seeks to address these problems by ensuring the continued appropriate permissions to hold travelling funfairs are controlled by Scotland's local authorities, but without the current inconsistencies and red-tape which is having such a damaging cultural and economic effect on showpeople in Scotland, and is increasingly preventing people across Scotland from being able to enjoy all the fun of the fair.



## Current law governing funfair licensing in Scotland

Scotland's 32 local authorities currently enjoy discretion when deciding whether to require public entertainment licences.

The Civic Government (Scotland) Act 1982 (c.45)<sup>1</sup> gives local authorities the power to require public entertainment licences, if they choose to do so, by passing a resolution. It is therefore an optional, rather than a required, licensing arrangement.

However, all 32 local authorities in Scotland have passed such resolutions and, as such require public entertainment licences for funfairs. However, local authorities have a great deal of discretion as to how the licensing system operates within their areas. Scotland therefore has 32 different systems in place for licencing funfairs, which have a wide variety of terms, conditions and fees attached to them.

**It is important to note that public entertainment licences are not required to regulate health and safety aspects of funfairs.** Very important issues such as the safety and maintenance of rides and hygiene of food and drink available at funfairs, are covered by other legislation (see below for further information).

### Application of the law across Scotland's 32 local authorities

Due to the discretion local authorities enjoy for deciding on their own licensing arrangements for funfairs, there is great disparity amongst authorities. Perhaps the best, and most problematic, example of this is in the fees charged. Fees vary greatly across the country, from £45 to over £4000. Councils are also able to retain fees, which are payable on application, even when an application is not successful and many of them are doing so. Whilst it is understandable that councils do not refund the cost of processing an application (which is not dependent on the outcome of that application) any such processing fee should be modest and should not vary significantly from authority to authority. The larger fees being charged are clearly therefore not just to cover the cost of administration and authorities must be profiting from them. Refusing to refund any part of these larger fees therefore has a significant negative impact on the applicants.

The time it takes for local authorities to process applications also varies considerably. The 1982 Act gives local authorities up to three months to consider an application, and six months to come to a decision. Within these statutory parameters, the actual time an applicant can expect a decision is therefore dependent on the resources available to individual local authorities and the pressures that are on them at any given time.

Details of fees charged and processing times across Scotland's 32 local authorities can be seen in the table below (information obtained in October 2017)—

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

<b>Local Authority</b>	<b>Cost of License</b>	<b>Processing Time</b>
Aberdeen City	£324 (temporary), £695 (full)	Apply 28 days in advance
Aberdeenshire	£375 (3 year)	8 Weeks' Notice
Angus	tiered	At least 28 days
Argyll and Bute	£151 (year)	Not Known
City of Edinburgh	Fees range from £1035 for 2-5 devices to £4133 for around 20 devices	62 days on average
Clackmannanshire	3 year- £211, temp- £107	8 weeks' notice
Dumfries and Galloway	£368 (1-7 days)	Apply 28 days in advance
Dundee City	£255 (full license)	Apply 28 days in advance
East Ayrshire	£248 (full license)	Apply 28 days in advance
East Dunbartonshire	£50 (temporary), £248 (full)	Apply 28 days in advance
East Lothian	£94	4-6 weeks
East Renfrewshire	£239 (year)	6-8 weeks
Falkirk	£255 (temporary)	3-4 weeks
Fife	£145 (3 year)	4-6 weeks
Glasgow	£597	Not Known
Highland	£508 (temporary)	Not Known
Inverclyde	£165 (year), £495 (3 years)	28 days
Midlothian	£109	3 Months' Notice
Moray	£208 (under 200 capacity), £917 (over 500 capacity)	4 Months
Western Isles	£259	4-6 weeks
North Ayrshire	£285	2 Weeks' Notice
North Lanarkshire	£315	Not Known
Orkney Islands	£128 (year)	Not Known
Perth and Kinross	£300 (year), £480 (3 years)	6-8 weeks
Renfrewshire	£853	3 Months
Scottish Borders	£538 (3 years), £178 (year)	Not Known
Shetland Islands	£161 including application fee (temporary)	Up to six months
South Ayrshire	£895 (3 year)	Apply 28 days in advance
South Lanarkshire	£267	Apply 28 days in advance
Stirling	£113 (1 year)	10 weeks
West Dunbartonshire	£606	90 calendar days
West Lothian	£97	3 months with 35 day notice

These inconsistencies across Scotland are causing a number of difficulties for those who are seeking to hold funfairs, the vast majority of whom are families of travelling showpeople with many years of tradition and experience.

Showpeople are finding it increasingly difficult to—

- pay the very high fees being charged by some local authorities;
- cope with the economic impact of applications being denied but fees being retained; and
- plan their activities (which are, by their very nature, temporary and travelling) due to the lengthy and often bureaucratic processes involved.

As any funfair operating in the rest of the UK does not require a public entertainment licence, those managing them do not face many of the same barriers to conducting their businesses. 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 therefore at a disadvantage compared to those operating in the rest of the UK.

## **Case studies**

### *Case study 1*

A member of the Showmen's Guild applied for a Temporary Public Entertainment Licence in relation to a 500 capacity fair taking place in the North of Scotland. The fee for the application was £255 which was non-refundable.

The applicant had 45 years' experience in running fairs and an unblemished record. Within the six months prior to the application the applicant had run shows in a number of other local authority areas and was able to provide letters from a council and past neighbours confirming that the fair had been operated to a high standard and without complaint.

A number of objections were made including one from Environmental Health in relation to potential noise. A hearing was held and, despite the operator committing to a number of control measures and agreeing a noise management plan with environmental health officials, the application was refused. There was no viable appeal route. The Fair, which was only a week away, was therefore cancelled meaning that a number of families had no work for an extended period of time. Had the licence application been determined sooner then the applicant could have tried to identify an alternative site.

### *Case study 2*

The operator of a travelling fair on a shopping centre car park (with the consent of the shopping centre) had to move the location of the fair a short distance within the car park to allow for works to be carried out. The local authority insisted that a fresh temporary public entertainment licence was required. This meant that the fair had to stop trading for six weeks while the application was determined despite the shopping centre being happy for the fair to continue trading in this new location.

## **Funfair regulation in the rest of the UK**

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<sup>2</sup> 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.

Across the UK (including Scotland), health and safety aspects of funfairs are regulated by the Health and Safety at Work etc Act 1974<sup>3</sup> (HSW). The HSW Act 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 HSW Act various codes of practice and guidance must be adhered to.

The Fairgrounds and Amusement Parks: Guidance on Safe Practice, published by the Health and Safety Executive in 2007<sup>4</sup>, shows in detail the many health and safety requirements that funfairs need to comply with in the UK. Another relevant document relates to safe crowd management<sup>5</sup>. 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.

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<sup>6</sup> or street trading

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<sup>2</sup> Licensing Act 2003 (c.17). Available at: <http://www.legislation.gov.uk/ukpga/2003/17/contents>.

<sup>3</sup> Health and Safety at Work etc Act 1974 (c.37). Available at: <http://www.legislation.gov.uk/ukpga/1974/37>.

<sup>4</sup> Health and Safety Executive (2007). Fairgrounds and Amusement Parks – Guidance on Safe Practice Available at: <http://www.hse.gov.uk/pubns/priced/hsg175.pdf>.

<sup>5</sup> Health and Safety Executive (2000). Managing crowds safely: A guide for organisers at events and venues. Available at: <http://www.hse.gov.uk/pubns/priced/hsg154.pdf>.

<sup>6</sup> Temporary Event Notice for England and Wales. Details available at: <https://www.gov.uk/temporary-events-notice>.

licence<sup>7</sup>, to cover the sale of alcohol and/or food. Such applications can be approved or refused by a local council.

In Northern Ireland, funfairs are also not part of national public entertainment legislation<sup>8</sup> and are instead able to be controlled by district councils by passing bye-laws<sup>9</sup> with regards to issues such as the hours of operation, safety, and minimising negative impacts on local areas.

### **Scottish Government view**

I led a member's debate on the 125th anniversary of the showmen's guild, which addressed many of the issues in this consultation, on 19 June 2014. At the end of that debate, the Minister for Local Government and Planning in the Scottish Government stated that—

“On the subject of regulation, very valid points were made about regulations and the complexity of having 32 local authorities applying 32 variations of licensing and fee structures. I am sure that members will welcome the fact that work is in hand to look at greater consistency in fees and at harmonisation across the country. That work is being done by a working group.”<sup>10</sup>

In answer to a Parliamentary Question I put down in May 2016 asking the Scottish Government what progress it was making in developing guidance to assist licensing authorities that are considering funfair applications, the Cabinet Secretary for Justice replied—

“Scottish Government officials are engaging with stakeholders with a view to developing guidance to assist licensing authorities in their consideration of funfair applications. To that end, a meeting has been arranged with the Showmen's Guild on 31 May 2016.”<sup>11</sup>

The Scottish Government's view is that, rather than changing the current legislation, or bringing forward new legislation, to tackle these issues, it is best dealt with by issuing guidance to local authorities. In July 2017 the Scottish Government published new

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<sup>7</sup> Street Trading Licence for England and Wales. Details available at: <https://www.gov.uk/street-trading-licence>.

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

<sup>9</sup> 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>.

<sup>10</sup> Scottish Parliament Official Report (19 June 2014). Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9261&i=88107>.

<sup>11</sup> Parliamentary Question S5W-00149 and answer. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-00149&ResultsPerPage=10>.

guidance on public entertainment licences in respect of funfairs.<sup>12</sup> However, there is no compulsion on local authorities to change their current practices.

This guidance is also 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.

## **HOW THIS PROPOSAL WILL ADDRESS THE CURRENT PROBLEMS**

Currently, operators in Scotland can find themselves in the situation of wanting to hold a travelling funfair and, despite complying with all required health and safety legislation, still having to apply to the council for a Public Entertainment Licence. Forms need to be filled in and a fee, which could be up to £4133, sent in with the application. The council can then take up to three months to consider the application and up to 6 months to come to a decision. If the application is turned down, the council may keep some or all of the fee. The organisers are out of pocket, are not able 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. Or, 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 organisers 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.

This proposal seeks to take funfairs out of the inconsistent and unnecessarily complex public entertainment licensing system, and create a separate simple, fair and proportionate process in Scotland, tailored to the needs of the funfair sector.

The proposal 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.**

## **DETAIL OF THE PROPOSED BILL**

### **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.

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<sup>12</sup> 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>.

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); and
- create sufficient flexibility to deal with situations where alternative sites are required at short notice.

**It is important to reiterate 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.**

### **Who would the Bill affect and how?**

The Bill would predominantly affect four groups of people—

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

#### *Operators*

By establishing a clear, simple, proportionate and flexible system for those people operating and managing funfairs to work within, the Bill should have a positive effect on the up to 2000 showpeople living and working in Scotland, and anyone else operating funfair businesses. This should 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.

#### *Regulators*

The proposal 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.

#### *Attendees*

For those visiting funfairs, or wanting to visit funfairs, the proposal should 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.

### *Communities*

For local communities that may have concerns about the appropriate management of funfairs, the continued role of local authorities in approving the staging of funfairs should offer reassurance. Also, as detailed above, other legislation and 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.

### **Alternative approaches**

In bringing forward this proposal, 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).

The first of these options is one the Scottish Government has indicated it 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.

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.

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 this proposal is the one I consider to be the most effective way to guarantee delivering the changes required whilst maintaining an appropriate balance between operators and regulators.



## **Financial implications**

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); and
- those currently charging and receiving the fees (local authorities).

### *Operators*

In the vast majority of cases, possibly in all cases, the fees paid by showpeople and other operators would reduce as a result of the proposal and therefore the proposal would reduce costs for travelling fair businesses, many of which are small and medium sized enterprises.

### *Regulators*

The fees received by local authorities would also reduce. However, as stated above, as the intention of the proposal is to ensure that fees charged relate to administrative cost covering only, whilst any authorities currently profiting from funfair licensing will no longer do so, authorities will only lose any additional profits they are currently making on funfair licences as a result of the proposal.

There may also be other financial implications for local authorities, for example, being required to process applications faster than the current legislation allows may have resource implications for some authorities, but this is not judged to be significant as authorities already have staff processing applications.

If this proposal led to more funfairs being held around Scotland, there may be an impact on local authorities, and on public services, such as Police Scotland and emergency services, in ensuring that funfairs were operated safely for all concerned, including local communities.

## **Equalities**

It is important to note that 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 therefore have a positive impact for showpeople.

In 2009, the then First Minister, Alex Salmond, said that—

“showpeople are an important part of Scotland’s culture, history and economy and combine a strong tradition of family and community with a high level of entrepreneurship and business acumen.”<sup>13</sup>

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 children of showpeople. The high fees being charged currently in some parts of Scotland to apply for a licence, which are often non-refundable if not successful, are creating financial hardship for some showpeople.

The proposal therefore has significant potential to positively impact on travelling showpeople from an equalities perspective, in terms of the cultural traditions, as well as from an age (access to education) and possibly gender (depending on the roles of female and male members of showpeople communities) perspective.

### **Sustainability of the proposal**

The Scottish Government’s website states that—

“The goal of sustainable development is to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations.

The Scottish Government has as its overall purpose to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.”<sup>14</sup>

That emphasis on sustainable economic growth is supported by this proposal, which will help to free the small and medium sized business involved from overly-bureaucratic regulation which is stifling their economic viability. The current system is having a negative impact on not only the economic sustainability of those who put on funfairs, but also on local communities. Where fairs are held they are likely to have a positive economic impact on local areas, bringing tourists and visitors into the area, and therefore simplifying the system will hopefully see positive impacts in communities too. The wellbeing of showpeople should also be enhanced by the proposal, which will have a positive impact on future generations. Should this proposal lead to an increase in the number of funfairs held in Scotland then there would be an increase in the related environmental impact (energy required for travel, powering rides, any impact/damage to grass/land etc). However, these same impacts are current managed by funfairs around the country with efforts made to minimise any negative impacts, which would continue to be the case.

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<sup>13</sup> Scottish Government news release from 2009, available at: <http://www.wired-gov.net/wg/wg-news-1.nsf/0/FCBB48A2B4C029EC8025765D00440C77?OpenDocument>.

<sup>14</sup> Scottish Government. Sustainable Development. Available at: <http://www.gov.scot/Topics/Environment/SustainableDevelopment>.

## QUESTIONS

### SECTION 1 - ABOUT YOU

**1. Are you responding as:**

- an individual – in which case go to Q2A  
 on behalf of an organisation? – in which case go to Q2B

**2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)**

- Politician (MSP/MP/Peer/MEP/Councillor)  
 Professional with experience in a relevant subject  
 Academic with expertise in a relevant subject  
 Member of the public

**2B. Please select the category which best describes your organisation:**

- Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)  
 Commercial organisation (company, business)  
 Representative organisation (trade union, professional association)  
 Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)  
 Other (e.g. club, local group, group of individuals, etc.)

**3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.**

- I am content for this response to be attributed to me or my organisation  
 I would like this response to be anonymous (the response may be published, but no name)  
 I would like this response to be confidential (no part of the response to be published)

Name/organisation:

**4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)**

Contact details:

## **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.**

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.**

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

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.**

**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.**

### **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

#### *Local authorities*

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

#### *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.**

### **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.**

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

### **Sustainability of the proposal**

**11. 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**

**12. 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?**

## HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

### **Format of responses**

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

#### *Online survey*

To respond via Smart Survey, please follow this link:

<http://www.smartsurvey.co.uk/s/LicensingofFunfairs/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the Data Protection Act 1998. Any information you send in response to this consultation (including personal data and sensitive personal data) will be seen by the MSP progressing the Bill and by specified staff in NGBU, and may be added manually to Smart Survey.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or directly from this link:

<https://www.smartsurvey.co.uk/privacy-policy>

#### *Electronic or hard copy submissions*

If possible, please submit your response electronically – preferably in MS Word document. Please keep formatting of this document to a minimum, and avoid including any personal data other than your name (or the name of the group or organisation on whose behalf you are responding).

Any additional personal data (e.g. contact details) should be provided in the covering e-mail (or a covering letter).

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain the role of that organisation and how the view expressed in the response was arrived at (for example, whether it reflects an established policy or was voted on by members).

## **Where to send responses**

Responses prepared electronically should be sent by e-mail to:

[Richard.Lyle.msp@parliament.scot](mailto:Richard.Lyle.msp@parliament.scot)

Responses prepared in hard copy should be sent by post to:

Richard Lyle MSP  
188 Main Street  
Bellshill,  
North Lanarkshire  
ML4 1AE

You may also contact Richard Lyle's office by telephone on 01698 479900.

## **Deadline for responses**

All responses should be received no later than **26 February 2018**.

## **How responses are handled**

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received on my website <http://www.richardlylemsp.net/>. As published, responses will normally include the name of the respondent, but other personal data (signatures, addresses and contact details) will not be included.

Copies of all responses will be provided to the Scottish Parliament's Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member's Bill). NGBU will treat responses in accordance with the Data Protection Act 1998. The summary may cite, or quote from, your response and may name you as a respondent to the consultation – unless your response is to be anonymous or confidential (see below).

I am also obliged to provide copies of all responses to the Scottish Parliament's Information Centre (SPICe). SPICe may make responses (other than confidential responses) available to MSPs or staff on request.

## **Requests for anonymity or confidentiality**

If you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly. You still need to supply your name, but any response treated as anonymous will be published without the name (attributed only to "Anonymous"), and only the anonymised version will be provided to SPICe. If you request anonymity, it is your responsibility to ensure that the content of your response does not allow you to be identified.



If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly. If the response is treated as confidential (in whole or in part), it (or the relevant part) will not be published. However, I would still be obliged to provide a complete copy of the response to NGBU, and a copy of any non-confidential parts (i.e. a redacted copy) to SPICe when lodging my final proposal. As the Scottish Parliament is subject to the Freedom of Information (Scotland) Act 2002 (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Scottish Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

In summarising the results of this consultation, NGBU will aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published (or published only in part).

### **Other exceptions to publication**

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory statements or material. If I think your response contains such material, it may be returned to you with an invitation to provide a justification for the comments or remove them. If the issue is not resolved to my satisfaction, I may then disregard the response and destroy it.

### **Data Protection Act 1998**

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or confidentiality. I will not publish your signature or personal contact information, or any other information which could identify you and be defined as personal data.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at: [www.ico.gov.uk](http://www.ico.gov.uk).  
**Freedom of Information (Scotland) Act 2002**

As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the FOISA. So if the information you send me is requested by third parties the Scottish Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, potentially even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about Freedom of Information can be found at:

[www.itspublicknowledge.info](http://www.itspublicknowledge.info).

## QUESTIONS

### SECTION 1 - ABOUT YOU

#### 1. Are you responding as:

- an individual – in which case go to Q2A  
 on behalf of an organisation? – in which case go to Q2B

#### 2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)

- Politician (MSP/MP/Peer/MEP/Councillor)  
 Professional with experience in a relevant subject  
 Academic with expertise in a relevant subject  
 Member of the public

#### 2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)  
 Commercial organisation (company, business)  
 Representative organisation (trade union, professional association)  
 Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)  
 Other (e.g. club, local group, group of individuals, etc.)

#### 3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.

- I am content for this response to be attributed to me or my organisation  
 I would like this response to be anonymous (the response may be published, but no name)  
 I would like this response to be confidential (no part of the response to be published)

Name/organisation: **Highland Council**

#### 4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)

Contact details: **susan.blease@highland.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. It is not possible to identify the main advantages of the proposal without seeing details of the “distinct new licensing system” which is proposed.

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. For the same reasons as detailed in question 1 above.

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

It is not possible to identify the main advantages of the proposal without seeing details of the “distinct new licensing system” which is proposed.

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

For the same reason as given in answer 3, it is not possible to identify the main disadvantages of the proposal.

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) Three months would be the absolute minimum period.
- no fixed maximum
- Unsure

**Please explain the reasons for your response.**

**The maximum time for determination of an application must be significantly more than 28 days. Three months would be the absolute minimum period required. The proposal has to recognise that time is needed to allow for the following:**

- a. Time to process the application, i.e. to publish notice of it and issue copies to consultees (e.g. Police, Fire Service, Environmental Health and the relevant roads authority)**
- b. Time for consultees to assess the application and the proposed site and to prepare and submit consultation responses (usually 28 days for other forms of licence application)**
- c. Time for members of the public to prepare and submit representations/objections (usually 28 days)**
- d. Time for all consultation responses, representations and objections to be collated and forwarded to the applicant to give him fair notice of any objection or adverse representations and the opportunity to consider these and, if possible, take measures to satisfy the objectors' concerns.**
- e. In the event of objections or adverse representations, time for a report on these to be prepared (and published with the agenda) for the next scheduled meeting of the Committee of elected members which determines licence applications (in Highland, these meetings take place on a 5-6 weekly cycle, with dates fixed a year in advance; reports must be published in advance of the meeting).**
- f. For fair notice to be given to the applicant, objectors, other interested parties of the date of the hearing before the Committee of elected members (normally at least 14 days notice for other forms of licence application hearings)**
- g. For the hearing then to take place before the Committee and the notice of determination (grant or refusal) then issued (normal requirement for other licence applications is that the notice of determination is issued within 7 days of the date of the Committee decision).**

**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.

It is difficult to express a view on appropriate fees in the absence of details of the “distinct new licensing system” proposed, or of the procedural requirements which will be built in to that proposal. Whatever the details of the proposal, however, it is not possible to assess the precise cost of processing and determining an individual application without incurring additional cost in doing so. So this option should be ruled out.

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. None of the fee should be returnable in the event of refusal of an application. Local authority staff undertake more work in cases of refusal, as these will be cases where objections have been received and the application has therefore had to be referred to Committee (see additional steps involved at points d. to g. at answer 5 above). Refusals therefore effectively cost local authorities more than grants.

### 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

*Local authorities*

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

### 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. There will certainly be some increase in cost because of the set-up costs involved for local authorities (e.g. setting up new procedures, application forms, guidance notes, and undertaking staff and Member training).**

### 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. It is not possible to identify impact on equality without seeing details of the “distinct new licensing system” which is proposed.**

**10. In what ways could any negative impact of the Bill on equality be minimised or avoided? It is not possible to identify any negative impact on equality without seeing details of the “distinct new licensing system” which is proposed.**

### Sustainability of the proposal

**11. 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. It is not possible to answer this without seeing details of the “distinct new licensing system” which is proposed.**

## General

**12. 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.**

**We would wish the opportunity to comment further once details of the `distinct new licensing system for funfairs' proposed are available.**