

Regulatory Committee

9.00am, Friday, 16 March 2018

Consultation Response: Licensing of Funfairs (Scotland) Bill

Item number	8.1
Report number	
Executive/routine	
Wards	All
Council Commitments	N/A

Executive Summary

The Licensing of Funfairs (Scotland) Bill is currently before the Scottish Parliament.

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.

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

The attached response was submitted and is retrospectively reported to Committee for information.

Consultation Response: Licensing of Funfairs (Scotland) Bill

1. Recommendations

The Regulatory Committee is asked to:

- 1.1 Note the response, submitted after consultation with the Convenor.

2. Background

- 2.1 The Council is a Licensing Authority under a range of legislation including the Civic Government (Scotland) Act 1982.
- 2.2 The Civic Government (Scotland) Act 1982 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.
- 2.3 Public entertainment licences are not required to regulate health and safety aspects of funfairs. Matters such as the safety and maintenance of rides and hygiene of food and drink available at funfairs are covered by other legislation.
- 2.3 Richard Lyle MSP is consulting on proposals to create a new licensing system that allows local authorities to retain control of funfair applications, but also allows operators to be able to manage their businesses more effectively. This will inform a Member's Bill that he intends to introduce in the Scottish Parliament in 2018.

3. Main report

- 3.1 The Civic Government (Scotland) Act 1982 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.
- 3.2 The City of Edinburgh Council currently requires funfair operators to obtain a public entertainment licence.

- 3.3 The proposal would seek to ensure that operators have permission to stage funfairs and comply with all required legislation, whilst ensuring that operators can conduct their businesses 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.
- 3.4 The closing date for consultation was 26 February 2018 and it was not possible to have the draft response considered by Committee before the submission date. Officers therefore prepared the draft response and circulated it to committee members for comment. The final version attached at appendix 1 was agreed by the Convenor.
- 3.5 Officers would not support the proposals as it is believed that they would have a detrimental effect on public safety. There is no local evidence to support the implementation of these proposals and the proposal would make it difficult to ensure community involvement in the licensing consultation process.

4. Measures of success

- 4.1 That the regulation of funfairs is as robust as possible.

5. Financial impact

- 5.1 None arising directly from the contents of this report.

6. Risk, policy, compliance and governance impact

- 6.1 The matters contained in this report will have an impact on residents and businesses within the city.

7. Equalities impact

- 7.1 Matters described in this report have no relationship to the public sector general equality duty, thus there is no direct equalities impact arising from this report

8. Sustainability impact

- 8.1 There is no environmental impact arising from the contents of this report.

9. Consultation and engagement

- 9.1 This is an initial consultation. If the Bill is introduced, further consultation will take place.

10. Background reading/external references

10.1 [Consultation](#)

Paul Lawrence

Executive Director of Place

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11. Appendices

Appendix 1 - Submission

Appendix 1

SECTION 1 - ABOUT YOU 1.

Are you responding as:

on behalf of an organisation

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

Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)

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

Name/organisation:

The City of Edinburgh 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:

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City of Edinburgh Council

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SECTION 2 - YOUR VIEWS ON THE PROPOSAL

Aim and approach

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

Fully opposed

Please explain the reasons for your response

It is disproportionate to legislate for an activity of this nature and create a single type of licence.

A further Licensing Act will confuse the public and make the Local Authority's role more challenging. In addition the proposals contained in the Bill will weaken the public's right to participate and object to licences for no good reason.

The factual basis for of the Bill is not accurate from the City of Edinburgh Council's perspective and should not be relied upon as a basis of introducing new legislation.

Page 7: - 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).

Whilst other areas of legislation may assist in the regulation of Funfairs the ability to licence funfairs under the Civic Government (Scotland) Act 1982 and the council's Public Entertainment Resolutions afford the Local Authority and general public a wider range of controls and ability to have a say about the management of events of this nature.

More Specifically in terms of Health and Safety the Health and Safety Executive (HSE) are already challenged in their ability to inspect and monitor the current number of funfair events throughout the country. Some of the reporting to the HSE comes from Local Authority inspections and findings. LAs assist in the process of regulation (through licensing) by ensuring compliance with the Guide (Guidance on Safe Practice Fairgrounds and Amusement Parks). It should be noted that the Guide does not, and cannot, give advice on "local" matters like ground conditions, nearby structures, hidden or overhead services, proximity to housing etc. although it does ask organisers to "consider" these.

The Guide also asks organisers to produce and share emergency plans and to consult LAs to allow comment.

In this Authority's experience the localised conditions need to be carefully considered and managed, like the load bearing capacity of the ground, tendency to flood, hidden services etc. Matters like steps, ramps handrails etc. to provide safe passage on sloped or uneven surfaces are poorly considered and often badly constructed. Similarly access for disabled persons tends to be a secondary consideration.

Page 7:The larger fees being charged are clearly therefore not just to cover the cost of administration and authorities must be profiting from them.....

The City of Edinburgh Council strongly reject the suggestion of "profiting".

In terms of the Civic Government (Scotland) Act 1982 ("the Act") the Council, as the licensing authority, when determining the amount of licence application fees, is required to ensure that the total amount of fees receivable by the authority is sufficient to meet the costs of the authority in exercising its functions in respect of

the Act. Funfairs attract significant council officer involvement, with many involving multiple inspections and planning meetings and often at short notice.

Page 7: 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.

The “1982 Act” was amended by the Air weapons and Licensing (Scotland) Act 2015 which extended the period in which a Local Authority can consider an application to 9 months. The majority of Public Entertainment licences are granted well within this period. In an Edinburgh context the decision is not dependent on resources, larger events will be managed through an Events Management Group Process and this can be delayed as a result of incomplete documentation, permission or detail about what is actually planned.

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

Yes.

Please explain the reasons for your response.

The Council’s Position remains that the “1982 Act” requires a fundamental review and whilst it already provides a framework for licensing events of this nature any concerns would be better address through this framework.

In addition a guidance document similar to that produced in 2017, aimed at organisers would, hopefully, produce a consistent approach across the country.

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

None.

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

It would weaken existing regulations and undermine the “1982 Act”

It would weaken the public’s right to participate, make comment or observation and or object to licences.

Exempting funfairs would remove essential safety checks and monitoring of funfairs.

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?

More than 28 days (please specify)

Please explain the reasons for your response.

The current Time scales are appropriate and allow for proper consultation and planning of events to take place.

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

Fee at local authority's discretion

Please explain the reasons for your response

In terms of the Civic Government (Scotland) Act 1982 ("the Act") the Council, as the licensing authority, when determining the amount of licence application fees, is required to ensure that the total amount of fees receivable by the authority is sufficient to meet the costs of the authority in exercising its functions in respect of the Act. This is a process that has served the council well and is open and transparent. If fees are set by statute the process to revise fees is cumbersome and they can become frozen with no mechanism to allow for a rise in line with inflation.

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

None of the fee returnable to the applicant

Please explain the reasons for your response.

Few if any applications are refused and this can be avoided by early discussion with the local authority and local residents where necessary. The majority of the costs associated with an application are up front and relate to the administrative cost of processing, officer time examine documentation and engagement with organisers and consultation.

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 reduction in cost

Local authorities

Some increase in cost

General public

Broadly cost-neutral

Please explain the reasons for your response.

Any change to process will simply increase profit margin of the Funfair

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?**

Neutral (neither positive nor negative) for the organisers

Negative for the Public

Please explain the reasons for your response.

In the experience of this Local Authority, organisers and operators are not good at providing access and sanitary arrangements for (example) disabled persons without prompting.

- 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?**

No

Please explain the reasons for your response

The proposals would prevent due process and would not allow Local Authorities to consider the impact on local communities both economically and socially or the impact on the environment.

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?**

In the last number of years there have been a number of accidents involving funfair rides which have resulted in serious injury or in a fatality in reality rather deregulating the industry it may be more appropriate to look at more stringent measure to ensure compliance with health and safety and environment health legislation.

The proposals would appear to be a reaction to pressures within the industry to reduce fees and accountability. Any other alternative system would have to be funded and costs would still be incurred by organisers and operators.