

# Regulatory Committee

9.00am, Monday, 18 January 2021

## Response to Consultation: Travelling Funfairs (Licensing) (Scotland) Bill

Executive/routine	N/A
Wards	All
Council Commitments	

### 1. Recommendations

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- 1.1 Regulatory Committee is asked to note the attached report and the consultation response submitted to the Scottish Parliament Local Government Committee's call for views about a Bill to change the licensing system for operators of travelling funfairs in Scotland.

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## Response to Consultation: Travelling Funfairs (Licensing) (Scotland) Bill

### 2. Executive Summary

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- 2.1 This report informs the Committee of a response made to the Scottish Parliament's Local Government Committee's call for views about a Bill to change the licensing system for operators of travelling funfairs in Scotland. The Bill aims to make the system quicker, simpler, cheaper and more uniform across council areas. The Council's response was submitted after consultation with the Convener and Vice Convener, as the response date arose between Committee meetings. Members of the Committee were also given an opportunity to provide comments prior to the draft response being agreed.

### 3. Background

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- 3.1 The call for views came from a Private Members Bill, lodged with the Scottish Parliament, which seeks to change the legislation for travelling funfairs after these issues were considered by the Local Government and Communities Committee of the Scottish Parliament.

### 4. Main report

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- 4.1 The Travelling Funfairs (Licensing) (Scotland) Bill seeks to remove travelling funfairs from the scope of licensing under the Civic Government (Scotland) Act 1982 ('the 1982 Act') and to create a new licensing system for these businesses.
- 4.2 The Bill would require decisions on licence applications to be made within 21 days, reduces the reasons for which the Council could refuse a licence and sets a level of fee which is significantly lower than what most licensing authorities currently charge under the 1982 Act.
- 4.3 On 20 October 2020 the Council received a call for views on the Bill. As the deadline for submission of responses fell between Committee meetings the Council's response was submitted after consultation with the Convener and Vice Convener.

- 4.4 Prior to submission, a draft was circulated to all members of the Committee and comments received were incorporated.

## **5. Next Steps**

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- 5.1 The response has been submitted and the Local Government Committee will decide whether to progress the Bill beyond stage 1.

## **6. Financial impact**

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- 6.1 None at present. If passed in its current form there would be some loss of licensing income to the Council.

## **7. Stakeholder/Community Impact**

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- 7.1 Stakeholders and community groups were able to respond to the consultation directly.

## **8. Background reading/external references**

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- 8.1 None

## **9. Appendices**

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- 9.1 Appendix 1 - Response to Scottish Government call for views on the Travelling Funfairs (Licensing) (Scotland) Bill

## Appendix 1 – City of Edinburgh Council Response to Scottish Government call for views on the Travelling Funfairs (Licensing) (Scotland) Bill

*Please note that the sections marked in red below are the points on which specific responses were asked for.*

### **1. The main aim of the Bill is to make the licensing system for travelling funfairs less restrictive and less expensive for applicants. Do you agree with this aim? Do you agree that the Bill will achieve this aim?**

*A key way in which the Bill seeks to achieve this overall aim is to create a uniform approach, meaning that councils must all follow the same rules. (The current law allows councils to take different approaches to licensing travelling funfairs.) In answering question 1, you may wish to express a view on whether you agree that this is the best approach or that it is necessary to achieve the aims of the Bill.*

The Civic Government (Scotland) Act 1982 was designed to allow Local Authorities to licence and regulate certain activities taking cognisance of:

- the preservation of public order and safety; and
- the prevention crime.

The 1982 Act allows for local discretion and accountability and provides a number of safeguards for local communities.

Whilst it might be desirable to introduce a system that is less restrictive and less expensive for applicants, the cost to the council will be dependent on the size and location of a travelling funfair and this will dictate the level of planning and local engagement with communities.

A uniform approach will potentially remove the current safeguards and prevent the Local Authority from addressing local issues and accountability that are built into the 1982 Act.

The current system allows the local authority to look at individual applications on a case by case basis and on the merits of the application.

The desire to lift certain items out of the 1982 Act and then create ad hoc licenses undermines the basic fundamentals and principles of the 1982 Act and is not helped if categories are lifted out of the “parent” act and licensed in a new way.

The Council has previously expressed a view to your predecessor committee that whilst the 1982 should be reviewed the piecemeal amendment of licensing laws is unhelpful in absence of a review. It is accepted that there is a complexity to the 1982 Act, and it could well benefit from a wider review to streamline processes and simply the language but that has to be off set against the need to ensure public safety and community engagement.

**2. Section 1 of the Bill sets out a definition of “travelling fairground”. Amongst other things, this provides that it cannot go on in one location for more than 6 weeks. (If the plan is for it to go on for longer than this, the current licensing law will apply.) Do you think the definition used in section 1 is a good one?**

The definition provided for in Section 1 makes reference “to a funfair being a number of structures and other equipment designed and operated to provide public entertainment, amusement or leisure activity.” What constitutes “a number of”, would this apply in the case of two or more structures etc. which is not uncommon in relation to events being run in the City of Edinburgh. In addition, what is proposed in relation to individual funfair rides or structures, does this mean that Local Authorities would be required to operate both the 1982 Act and the proposed Bill if so, this is likely to create confusion rather than providing greater clarity.

The City of Edinburgh Council currently require travelling Funfairs to apply for temporary Public Entertainment Licence and have restricted the grant of such a licence to 28 days. Whilst it is possible to apply for a successive licence this enables the Local Authority to control the period of time over which an event can take place and reduce the impact on local communities. The City of Edinburgh Council are currently consulting on our Public Space Management Plan and the impact Hospitality and Tourism has on local communities and businesses.

**3. The Bill imposes a flat fee of £50 for a license application. This may be increased but only in line with “changes in the value of money” (section 5(2)(d) and (6)) In the vast majority of cases, this will be less than applicants are paying under the current law. Do you agree with this?**

A flat fee of £50 would not cover the current administrative cost of producing a licence nor would it cover any of the associated planning and inspections costs associated with events of this nature.

Any fee should be linked to the costs associated with the production of a licence and a full costing exercise should be carried out to ensure that this is achieved.

**Key provisions concerning a council’s decision-making role are that—**

**The council must decide on an application within 21 days, otherwise it will be granted by default,**

**It must allow a validly made application unless (a) the applicant is not a “fit and proper person” or (b) there are safety or health concerns about the funfair that would not be reasonably mitigated by attaching conditions to the licence,**

**It may grant a licence subject to conditions (section 11 lists the type of conditions that may be imposed),**

**It can only revoke a licence if (a) it becomes aware of a fact not previously shared that would have led it to decide the application differently or (b) if a condition or other provision of the licence is not met.**

**4. Are you satisfied that these provisions give councils the right level of control and choice over the licensing process?**

The ground to refuse an application are limited and would prevent a Local Authority from refusing an application based on detriment or disruption to the local community or on the suitability of the location.

The proposed time frame of 21 days is an unrealistic period of time to allow the council to carry out any form of due diligence, conduct any enquiries or carryout any form of consultation it thinks appropriate prior to the grant of a licence.

Also, of concern is the “grant by default” proposal whilst linked to the requirement to have submit a valid application, it is not clear what if any steps can be taken if a valid application is not received. Nor does it provide an option to extend an application period if as is often the case additional information is required in support of an application.

In relation to the information required for a valid application it is the City of Edinburgh Council’s experience that not all of the criteria listed will be available or submitted at time of an application, but it should be.

**5. We welcome views on any other aspect of the licensing system set out in the Bill that you consider important, for example, provisions on—**

**What persons a council must consult before deciding any application (the Bill mentions two: the police, and the fire and rescue service),**

**The matters that an applicant has to address in their application; for instance, whether you think anything important is missing,**

**The right of an applicant to appeal a council’s decision to the Sheriff Principal,**

**The criminal penalties set out in the Bill, for instance, where a person operates a travelling funfair without a licence or makes false statements in support of an application;**

**powers to enter and inspect a travelling fairground: who may do so and for what reasons.**

Whilst the bill proposes that the council must consult with the Chief Constable and the Fire and Rescue Service it does not impose a duty on either to provide a response or timeframe within which they must respond to an application.

In addition to the council the applicant should be required to consult the local community that may be affected by the Travelling funfair, given the proposed time framed this could be by way of a public notice in a newspaper or site notice at the proposed location.

In addition, the Traveling Funfair should provide evidence of right to occupy land.

It is unclear why “Powers of Entry and Inspection” would be limited to a constable in uniform.

**6. The MSP who introduced the Bill thinks it will help protect the way of life of Scotland's showpeople, a distinct community associated with putting on travelling fairgrounds. Do you agree the Bill will make a difference in this way?**

*Any other comments on the Bill's impact (positive or negative) on equalities, human rights and quality of life issues for local communities are also welcome as part of any response to question 6.*

The City of Edinburgh Council do 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.

Whilst the Bill may well be intended to help protect the way of life of Scotland's showpeople the proposals are effectively creating an individually tailored piece of legislation for one particular group of people at the risk of excluding communities from the process. That is potentially divisive and unfair, decisions like this should be made as close as possible to all the communities they have an impact on and those communities should have an equal say and right to object.

**7. What financial impact do you think the Bill will have – on operators of travelling fairgrounds, on councils, on local economies, or on others.**

The introduction of this bill in association with the proposed fee of £50 will have a financial impact on both the City of Edinburgh Council and other Licence holders. The flat fee of £50 would not cover the current administrative cost of producing a licence nor would it cover any of the necessary planning or inspections costs associated with an event of this nature. Accordingly, any short fall in funding would have to be significantly subsidised by the council or at the cost of other licence holders.