

**REPORT TO BUSINESS SERVICES' LICENSING SUB-COMMITTEE –
4 DECEMBER 2020**

**CONSULTATION ON TRAVELLING FUNFAIRS (LICENSING)(SCOTLAND) BILL
NO 69**

1 Reason for Report/Summary

- 1.1 To consider questions asked by the Scottish Parliament's Local Government and Communities Committee in respect of the proposed Travelling Funfairs (Licensing)(Scotland) Bill ("the Bill") and agree a consultation response on behalf of Aberdeenshire Council to be lodged by 7th December 2020.

2 Recommendations

2.1 The Licensing Sub-Committee is asked to:

- 2.1.1 Consider the questions set out in Appendix 1 to this Report and the submissions drafted by Officers**

- 2.2.2 Amend any of the draft answers as required and approve the terms of the response to be submitted on behalf of Aberdeenshire Council**

- 2.2.3 Authorise the Head of Legal and Governance to submit the response to the Scottish Parliament by 7th December 2020.**

3 Purpose and Decision-Making Route

- 3.1 The purpose of this report is to submit a consultation response in respect of the Bill on behalf of Aberdeenshire Council.
- 3.2 This matter has not been presented to the Sub-Committee previously.

4. Discussion

- 4.1 The Travelling Funfairs (Licensing)(Scotland) Bill is a Member's Bill introduced to the Scottish Parliament by Richard Lyle MSP on 29 April 2020. You can read the Bill and accompanying documents at: <https://beta.parliament.scot/bills/travelling-funfairs-licensing-scotland-bill> The promoting MP believes that it is often too difficult and too expensive to get a licence for a travelling funfair and that this has put the whole sector at risk. He wants to make the system simpler across Scotland. He also wants to make it more uniform, meaning that Councils will not take significantly different approaches.
- 4.2 The promoting MP also believes that the current licensing system puts at risk the way of life of showpeople. These are the families who have traditionally put on funfairs around the country, often over several generations. He hopes the Bill will help the community to have a more viable future.

- 4.3 Travelling funfairs are currently licensed under the Civic Government (Scotland) Act 1982 via Public Entertainment Licences which can be temporary (up to 6 weeks), as issued in Aberdeenshire, or full (up to 3 years). Funfairs are amongst several types of public entertainments subject to these licensing rules. It is a key feature of the current system that Council's may take different approaches. There are differing fees, different requirements and one local authority has banned travelling funfairs.
- 4.4 The Bill begins with the following key provisions:
- It takes travelling funfairs out of the licensing regime in the 1982 Act
 - It provides a definition of "travelling funfair" including a maximum duration of 6 weeks
 - It states that anyone holding a travelling funfair needs a licence and that it is the local Council that decides whether to grant one.
- 4.5 Most of the rest of the Bill concerns the new licensing regime. This includes –
- Rules about the information the applicant needs to provide and in what format
 - A requirement for the council to consult the police and fire and rescue service about each application
 - Rules on time limits for deciding an application and for appeals against a decision – A local council must grant the licence within 21 days provided an operator meets certain application requirements. If a local Council does not come to a decision within 21 days, the licence will be granted automatically
 - Giving councils the power to impose certain types of condition when allowing a licence
 - Giving council officials and the police a right of entry and inspection to ensure a licence is being complied with
- 4.6 A key provision is that the fee for a licence is to be £50. It can be revised upwards in future years but only in line with inflation.
- 4.7 A copy of the draft Bill is set out at **Appendix 1** to this Report.
- 4.8 The call for views closes on 7th December 2020.
- 4.9 The Local Government and Communities Committee has asked a number of key questions. These are set out at **Appendix 2** to this report. Officers have drafted responses based on their experience of processing and issuing licences for funfairs under the existing licensing regime. The Sub-Committee is asked to consider the terms of the draft responses, make any amendments considered to be appropriate and approve the consultation response to be submitted on behalf of the Council

Current licensing System

- 4.10 Funfairs and circuses are licensed by way of Temporary Public Entertainment Licences. A licence is required for each site within Aberdeenshire.

- 4.11 Applications currently should be lodged at least 8 weeks in advance of the dates required and should be accompanied by
- The application fee of £151.00
 - A layout plan
 - A risk assessment
 - Public liability Insurance (£10 million - £1 million standard and £9 million Showman's Guild cover)
 - Checklist of safety certificates for all rides, electrical equipment
 - Request for extended opening hours where relevant.
- 4.12 We consult with:-
- Police Scotland
 - Scottish Fire and Rescue Service
 - Building Standards
 - Environmental Health
 - Landscape Services (where Council land to be used)
 - Health and Safety Executive who receive copies of applications and licences for information purposes.
- 4.13 Applications are frequently lodged with 2-3 weeks of the required dates and, often, required documentation is missing or out of date, particularly where one operator applies on behalf of a group of operators and we need to see documentation from different operators. This puts pressure on staff to get the application processed on time.
- 4.14 It can be difficult to arrange for hearings for funfairs if they are needed as many funfairs operate within Aberdeenshire over the summer months when the Committees are in recess. The majority of applications are, however, issued under delegated powers. There was also an amendment to the Scheme of Governance to allow officers to take certain decisions regarding extension of hours which has reduced the requirement for hearings. Applications would be considered at Area Committee level because they are location specific.
- 4.15 There are not many objections received to licence applications from members of the public as, given that temporary licences are applied for, there is no requirement for a site notice to be displayed or the application to be advertised. This means that the consultation period for funfairs is 21 days rather than the 28 days required for a full licence. It is more common to receive complaints while a funfair is operating or after a funfair has moved on, the most frequent complaint being noise nuisance and proximity of a fair to residential housing.
- 4.16 We have included our current process map for licences for fairgrounds as **Appendix 3** to this report so that the Sub-Committee can see how applications are currently processed.

5 Council Priorities, Implications and Risk

5.1 The following Council priorities are affected by this paper:-

- Our People – impact on the wellbeing of our local communities
- Our Environment – managing where and how funfairs can operate under the proposed scheme
- Our Economy – the set fee will not allow us to recover the cost of processing a licence. This will impact adversely on the licensing budget.

5.2 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed.

Subject	Yes	No	N/A
Financial	X		
Staffing	X		
Equalities			N/A
Fairer Scotland Duty			N/A
Town Centre First			N/A
Sustainability			N/A
Children and Young People's Rights and Wellbeing			N/A

5.3 An Equality Impact Assessment is not needed in this case as submitting a consultation response on the Bill does not adversely impact on any person with protected characteristics.

5.4 The following risks are identified in respect of the [Corporate](#) Risk Register:

ACORP001 – Budget Pressures – the Licensing Service does not have the budget capacity to absorb any shortfall in fees as a result of the licence fee proposed in the bill.

ACOR0994 – Business and organisational Change – the short processing time places staff under a lot of pressure to process when they are already dealing with a heavy workload

ACORP005 – Working with other organisation – the short processing time places the statutory consultees we work with under a lot of pressure, particularly Police Scotland

ACORP010 – Environmental Challenges – not every proposed location for funfairs in Aberdeenshire is suitable for the operation of funfairs, especially in the event of bad weather

5.5 The following risks are identified in respect of the [Directorate](#) Risk Register:

BSSR001 – Balancing the Books – the Licensing Service does not have the budget capacity to absorb any shortfall in fees as a result of the licence fee proposed in the bill.

BSSR004 – Community Empowerment – the proposed licensing system removes the ability for members of our community to have a say as to whether a licence should be granted or not.

6 Scheme of Governance

6.1 The Monitoring Officer within Business Services has been consulted in the preparation of this report and any comments have been incorporated into this report.

6.2 The Business Services Committee is able to consider and take a decision on this item in terms of Section C – Business Services: 1 – Committee Functions: 1.1 (a) of the List of Committee Powers in Part 2A of the Scheme of Governance which enables the Committee to decide on all policy issues and resources matters relating to the Civic Government (Scotland) Act 1982 matters with implications across Area boundaries where objections or observations are received. The Committee determined that the licensing function should be delegated to the Business Services Licensing Sub-Committee.

Ritchie Johnson
Director of Business Services

Report prepared by:- Fiona M. Stewart, Senior Solicitor (Democratic Services)

Date: 27th November 2020

References: sharepoint/licensing admin/licensing/meetings/licensing sub-committee/2020/4th December 2020/Licensing of Funfairs – Consultations Bill – Report for Licensing Sub.dox

Appendix 1 – The draft Bill
Appendix 2 - Questions and draft responses
Appendix 3 – current process map

APPENDIX 1
Travelling Funfairs (Licensing) (Scotland) Bill
[AS INTRODUCED]

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

Travelling Funfairs (Licensing) (Scotland) Bill

[AS INTRODUCED]

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

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

1 Meaning of travelling funfair

- (1) In this Act—
 - (a) a “funfair” is a number of structures and other equipment designed and operated to provide public entertainment, amusement or leisure activity, and
 - (b) a “travelling” funfair is one—
 - (i) in respect of which those operating it travel with those structures and equipment from site to site and operate the funfair in those sites, but
 - (ii) which, as respects its site, is being or is to be operated there for a period of not more than six weeks.
- (2) Examples of those structures and equipment are carousels and similar roundabouts, swings, roller-coasters and similar rides, helter-skelters and similar slides, coconut shies and similar stalls and dodgem cars.
- (3) But the presence or absence of any of those is not, of itself, conclusive.

2 Licence required for travelling funfairs and offence of unlicensed operation

1. A licence under this Act (a “licence”) is required for the operation of a travelling funfair.
2. A person who, whether or not its owner—
 - (a) is in charge of a travelling funfair, and
 - (b) without reasonable excuse, causes it to be operated without a licence,

commits an offence.

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

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

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

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

Licensing authority

4 Local council is licensing authority

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

Applications for licences

5 Application for licence: essential procedure, content etc

- (1) This section has effect for determining whether an application for a licence is a valid application.
- (2) To be valid, an application must—
- (a) be made by or on behalf of the person who (whether or not its owner) is to be in charge of the operation of the travelling funfair,
 - (b) be in writing and be signed by or on behalf of that person,
 - (c) state the full name and address of that person,
 - (d) be accompanied by the application fee of £50,
 - (e) describe the site where the funfair is proposed to be operated and do so sufficiently to enable the council to identify it for the purposes of their decision whether to grant the licence (and see subsection (3)),
 - (f) list and describe the structures and other equipment to be set up there,
 - (g) specify the dates when the funfair is proposed to be operated there (the earliest and latest of which must not be more than six weeks apart),
 - (h) be accompanied by copies (or originals) of all certificates and other documents—
 - (i) issued under the enactments about public safety and public health as they apply to the funfair, and
 - (ii) evidencing the compliance of the funfair and its structures and other equipment with those enactments,
 - (i) be received by the council not later than 28 days before the date specified in the application as the proposed first day of operation of the funfair (but see subsection (5)).
- (3) An applicant may, for the purposes of paragraph (e) of subsection (2), describe two ⁴⁰ sites, alternative to each other, and state the applicant’s order of preference.

- (4) An application made by virtue of subsection (3) is a valid application only if valid in relation to both sites.
- (5) Despite subsection (2)(i), the council must, for the purposes of that provision, treat an application received—
 - (a) later than the 28-day time limit, but
 - (b) not later than 14 days before the date referred to in subsection (2)(i),

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

- (6) The Scottish Ministers may by regulations substitute for the amount of the application fee such other amount as they think appropriate but only in order to take account of changes in the value of money.
- (7) Regulations under subsection (6) are subject to the negative procedure.

6 False statement in application: offence

- (1) An applicant (or other person making the application on the applicant's behalf) who, in an application—
 - (a) makes a statement knowing it to be false, or
 - (b) recklessly makes a statement that is false in a material particular,commits an offence.

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

Consultation and decision

7 Council to consult police and fire authorities

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

8 Time limit on decision on whether to grant licence

- (1) On a valid application being made to it, the council must decide, within the 21-day time limit, whether to grant the licence.
- (2) The 21-day time limit is 21 days beginning with—
 - (a) the day the council received the application, or
 - (b) where the invalidity of an application in the possession of the council has been cured, the day when that happened.

9 Grant and refusal of licences

- (1) The council must grant a validly applied for licence unless it is satisfied that one (or both) of the reasons for refusal applies.
- (2) The reasons for refusal are—
 - (a) that the applicant is not a fit and proper person to be a licensee,

- (b) that the operation of the funfair would be likely to jeopardise the safety or health of the public to an extent that cannot be reasonably mitigated by the attachment of a condition under section 11.
- (3) The grant of a licence authorises the operation of the travelling funfair on one site only.
- (4) Where the applicant has described two sites under section 5(3), that site is, for the period of operation of the funfair, to be—
 - (a) the one preferred by the applicant under that provision, or
 - (b) if, before the first day of operation of the funfair, the applicant (whether as a applicant or licensee) so notifies the council, the other one.
- (5) Subsection (4) does not prevent the council, in granting the licence, from attaching a condition under section 11 that has the effect of disallowing the use of one of the two sites.
- (6) On refusing a licence, the council must forthwith notify the applicant in writing of the reason or reasons it did so.

10 Grant by default

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

Conditional licences

11 Conditions

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

- (4) However, the council may attach conditions of the kinds described in subsection (2) to ⁴⁰ a licence granted by default under section 10; but may do so only within the period of 2 days beginning with the day next following that on which the licence was so granted.
- (5) Despite subsections (2) to (4), it is to be a condition of every licence that the licensee must, as soon as reasonably practicable, give notice in writing to the council that granted it of any material change of circumstances affecting—
- (a) anything set out in the application for the licence so far as not superseded by a condition or other provision of the licence, or
 - (b) a condition or other provision of the licence.
- (6) On attaching a condition under subsections (1) and (2) or (4) and being so asked by the licensee, the council must forthwith notify the licensee in writing of the reason or reasons it attached the condition.

12 Offence of breach of condition or other provision of licence

- (1) A licensee who, without reasonable excuse—
- (a) breaches a condition or other provision of the licence, or
 - (b) causes or permits such a breach,
- commits an offence.
- (2) A person who commits that offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Revocation of licences

13 Revocation of licence

- (1) The council that granted a licence may revoke it, but only for one (or both) of the reasons in subsection (2).
- (2) Those reasons are—
- (a) had the council when granting the licence been aware of a fact that it subsequently became aware of, it would not have granted the licence,
 - (b) a breach of a condition or other provision of the licence.
- (3) The reference in subsection (2)(a) to a fact that the council subsequently became aware of includes a change of circumstances occurring after the council granted the licence.
- (4) On revoking a licence, the council must forthwith notify the licensee in writing of the reason or reasons it did so.

Appeals

14 Appeals to the sheriff principal

- (1) The following appeals to the sheriff principal, on fact or law or both, are competent—
- (a) by an applicant against the decision of a council under section 9 to refuse to grant a licence,
 - (b) by a licensee against the decision of a council—
 - (i) to attach a condition to the licence,
 - (ii) to revoke the licence.

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

Entry, inspection and search

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

- (1) An authorised officer of a council that granted a licence or a constable in uniform may, for the purposes in subsection (2), enter the site for which the travelling funfair is licensed and inspect the site, the funfair and how it is being operated.
- (2) Those purposes are—
 - (a) finding out if the licence is being complied with, and
 - (b) if it appears not, getting information about the apparent non-compliance.
- (3) Subsections (1) and (2) do not extend to any—
 - (a) vehicle,
 - (b) caravan,
 - (c) structure, or
 - (d) other place,used as private living or sleeping accommodation.
- (4) Before exercising powers under this section, an authorised officer must use best endeavours to exhibit the officer's authorisation to the licensee and any other person acting on the licensee's behalf in the operation of the funfair.

- (5) A licensee or a person acting on a licensee's behalf who, without reasonable excuse, fails to permit or obstructs entry or inspection under this section commits an offence.
- (6) A person who commits that offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

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

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

General

17 Consequential amendments of Civic Government (Scotland) Act 1982

In the Civic Government (Scotland) Act 1982—

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

18 Commencement

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

19 Saving for procedure and licence under 1982 Act

- (1) This section relates to—
 - (a) an application—
 - (i) for a temporary public entertainment licence under section 41 of and paragraph 7 of Schedule 1 to the Civic Government (Scotland) Act 1982 for a travelling funfair,

- (ii) received by the council before the date of commencement of sections 2 to 17 of this Act, and
 - (iii) not disposed of before then,
 - (b) such a licence granted before that date for the operation of the travelling funfair wholly or partly after it.
- (2) In a case to which this section relates and despite the commencement of those sections of this Act—
- (a) that Act of 1982 continues to have effect for the purposes of—
 - (i) the disposal of the application and any licence granted upon it,
 - (ii) the licence referred to in subsection (1)(b), and
 - (b) those sections of this Act have no such effect.

20 Short title

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

Travelling Funfairs (Licensing) (Scotland) Bill

[AS INTRODUCED]

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

Introduced by: Richard Lyle

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

On: 29 April 2020

Bill type: Member's Bill

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APPENDIX 2

Draft Response to Call for Views

- 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.

Answer 1:

Any licensing system which is easier to comply with and is less expensive will be attractive to applicants.

Our concern is that the aim of a licensing system should be to reach a balance between the rights of funfair operators and the interests of our local communities. We do not believe that the proposed bill achieves this.

Our view is that, if replacing the existing system, local people should still be able to input into matters such as the suitability of the location of funfairs and the fitness of applicants, as well as health and safety issues. The bill does not allow for this, nor does it allow for refusal of a licence on the basis that the proposed location is unsuitable. It appears that the terms of the bill ignore the interests of local communities in favour of the fairground operators.

The licensing system for funfairs currently in existence is not the only licensing system which is operated in different ways across the country. The Civic Government (Scotland) Act 1982 was drafted to allow Councils to be able to address local circumstances. Why single out funfair licences for review and not all licences issued under the 1982 Act? Is this fair to other businesses who require to apply for licences under the 1982 Act? We believe it is not. Fairground operators would be less regulated than other licence holders under the 1982 Act. There have been a number of high-profile accidents arising from the operation of funfairs in recent years, involving both inflatable structures and mechanical rides. We have a high level of complaints arising from funfairs from our local communities. Our view is that the level of regulation of funfairs is currently appropriate.

The underlying purpose of any licensing regime, and particularly those licensed under the 1982 Act, is public safety. The proposed bill proposed a streamlined, fast licensing system which in effect is a paper exercise and does not address public safety.

We are extremely concerned that the procedures and timescales set out in the Bill are unrealistic and will not work in practice. They do not allow applications to be properly scrutinised, nor does it allow for due process, or compliance with the rules of natural justice by way of hearings, where there are objections or adverse representations. In essence, there is no provision for what happens to an application that is not straightforward, or in respect of which adverse representations are made.

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?

Answer 2:

What does this actually mean? Funfairs in Aberdeenshire either operate for 1-2 weeks per location or as part of a larger event for 1-2 days, such as an agricultural show. Does this relate to one site or does it cover multiple sites over a 6-week period? A separate licence is required for each site at the current time. Does this mean that permanent fairground sites, such as Codonas in Aberdeen, still have to operate under a public entertainment licence under the 1982 Act? This seems to be the only option available, why should travelling funfairs be subject to a different licence and regulatory requirements to those who operate all year round from a fixed location? The bill does not appear to address this type of business. We have little comment to make in relation to the definition, other than to observe that, in confining the definition to funfairs of up to six weeks, a two tier system of local authority licensing is likely to apply to funfairs, with travelling fairgrounds being regulated under the proposed new legislation and other, static or longer term, funfairs continuing to be regulated under the terms of the Civic Government (Scotland) Act 1982.

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?

Answer 3:

We are of the view that the proposed fee is not sufficient to cover the cost of such licences and ensuring compliance, even as part of a streamlined process. This is much lower than our current fee for a temporary public entertainment licence.

Fees under the 1982 Act require to be set to cover the cost of issuing a licence. When setting our fees, we carry out extensive reviews of costings, including staffing, the cost of hearings and other associated costs in line with our process mapping, and spread the cost fairly across all applicants applying for each licence type. We believe this is the correct approach to take.

If £50 is insufficient to cover the cost of processing a personal licence under the Licensing (Scotland) Act 2005, then it is also insufficient for the licence proposed. We

do not have the financial capacity to cover the shortfall. Who is going to cover the gap in Council's budgets resulting from this? Will the grant from the Scottish Governments be increased to cover the shortfall? Is the shortfall to be spread across other licences issued under the 1982 Act? Many of the organisations applying for public entertainment licences in Aberdeenshire are voluntary organisations. They are able to pay much higher fees for the licences they require. Fairgrounds are commercial businesses. Why should they attract a smaller fee when voluntary organisations require to pay more?

In addition to setting up a new licence regime, Councils will require to review and amend their Public Entertainment Licence Resolutions to remove this activity. This is a lengthy and costly process – the cost of which would be borne by other PEL Licence Holders.

The comparison of fees is not accurately represented. It does not show when fees were last reviewed by individual Councils. Some Councils may not review fees for a large number of years while others review annually to ensure the fee covers costs.

How do you prevent other operators classing themselves as funfairs to take advantage of the cheaper, less regulated process?

We believe Councils should continue to be able to set fees at a level to cover their costs, or the Bill should set a fee that is adequate to ensure costs can be met, and should rise annually with inflation, and be reviewed at regular intervals.

4. Key provisions concerning a council's decision-making role are that—
a. The council must decide on an application within 21 days, otherwise it will be granted by default,

Answer 4a:

We believe this to be unworkable. It does not take account of contentious applications or the need for hearings. Meetings have to be called in compliance with the Council's Scheme of Governance and are set under the terms of the Local Government (Scotland) Act 1973. Applicants and objectors have to be given fair notice in order to have sufficient time to prepare for a meeting, to enable the Council to conduct a hearing that is fair to all parties and can reach an evidenced decision. The bill does not allow for this. It does not allow for transparency in decision-making nor does it take account of the accountability of local Councillors to their communities.

Why should funfairs have a shorter processing period than any other person applying for a temporary licence under the 1982 Act?

Funfairs are one of a large number of licensing applications that our licensing team has to deal with. The short time scale places licensing staff and partner agencies such as Police Scotland, to process these applications as a matter of priority over other businesses applying for licences. Further, if consultees do not reply until near the end of 21-day consultation, Councils are left with little or no time in which to determine an application properly before a licence is deemed to be granted.

We enclose a copy of our process map for temporary PEL Licences for funfairs at the current time for background information.

We are concerned about late applications being lodged – as is frequently the case under the existing system. The bill indicates that the consultation period begins from the date an application is received. If the application is received 14 days before the dates required, then consultees have even less time to respond as the full consultation period cannot be achieved.

- b. 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,**

Answer 4b:

How is this to be determined without a hearing?

What is a valid application?

What criteria is the Council to take account of in determining if an applicant is a fit and proper person?

Paragraph 7 of Schedule 1 to the 1982 Act leaves decision making on temporary licences to Councils and does not set out specific grounds of refusal. This has been clarified by case law over a long period of time. We consider that any tightening of this discretion should be based on the grounds for refusal set out in Paragraph 5(3)(a) to (d) of that Schedule. Councillors know their local communities extremely well and should be able to rely on such things as the character/suitability of a proposed site, the extent of the proposed activity and public order and public nuisance considerations in determining applications.

This ground of refusal currently applies to all licensed activities under Part II of the 1982 Act. Why should it no longer apply to funfairs? Most complaints lodged with the Council relate to the suitability of a site for the operation of a funfair.

We note that conditions of licence could be attached under the terms of the Bill, having regard to public order and nuisance considerations. However, many of the issues the Council receives relates to the suitability of the site – being too close to nearby housing for example. As it stands, the Bill would prevent the refusal of applications on such grounds, even where events held in previous years had led to adverse issues. We would have to grant applications, unless objections were received relating to either the character of the applicant or health and safety risks, irrespective of the views of local communities.

We believe this to be especially important, given the reference to “alternative sites” being proposed under the Bill.

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

Answer 4c:

We already have the power to attach reasonable conditions to a licence under the 1982 Act.

- d. 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.**

Answer 4d:

The 1982 Act already provides adequate powers for a Council to suspend or revoke a licence. The existing Act gives Councils wider grounds upon which to do so in terms of paragraph 11 of Schedule 1. We do not support the narrower grounds set out in the Bill.

The 1982 Act also gives Councils powers in terms of paragraph 12 of Schedule 1 to suspend where there are serious public concerns about public safety. The bill does not replicate these powers.

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

Answer: No, for the reasons outlined above.

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—

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

Answer 5a:

We currently consult with Police Scotland, the Fire and Rescue Service, Building Standards and our Recreation Services. We also copy applications and licences to the Health and Safety Executive. We believe that Police and Fire only is not sufficient, especially as the Fire Service rarely input into any licence applications. Members of the public also have the ability to raise concerns with us both in respect of applications being processed and in terms of complaints about the previous operation of funfairs. We believe that that Council Services and members of the public should not be excluded from the process moving forward. We also believe that Councils should have the ability to publicise applications on their websites, rather than in newspapers as is done in some areas to raise awareness of applications at a local level and reduce costs.

Why should funfairs benefit from alternative sites? Other events do not get to apply for alternative sites nor do street traders or market operators. If a licence holder can't operate, they can't. A licence is a permission and not a mandate to operate. If, however, alternative sites are to be permitted, they sites should be included in the

application and comment sought on all sites applied for rather than just the primary site intended to be licensed.

Aberdeenshire is currently divided into 6 administrative areas, each with a Committee. Location specific licence applications are considered by the relevant Area Committee, where a hearing is required. If alternative sites are not within the same area, this will make the process of holding a hearing more complicated and therefore more time consuming.

The proposed fee and proposed timescale for determining applications should be rethought for the reasons set out above.

The legislation should provide that Councils “may” grant a licence, rather than “must” grant a licence.

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

Answer 5b:

Evidence of public liability insurance, the appropriate testing certificates, all valid and in date should be lodged with an application.

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

Answer 5c:

Why is appeal proposed to the Sheriff Principal and not the Sheriff? The vast majority of appeal provisions that exist are to the Sheriff, with the exception of some liquor applications.

What about the right of appeal for objectors? The Bill does not provide for this.

Decisions on licensing applications, including those under the 1982 Act, currently fall within the discretion of local authorities and appeals are by way of statutory application to the courts to review a Council’s decision, as in other areas of administrative law. Appeals are not by way of a rehearing into the facts. Why should this Bill be different?

Statements of Reasons should only be provided at the request of an applicant or an objector or a Sheriff as part of an appeal, as is the practice in most other licensing regimes. They should not be produced as a matter of course. We do not have the staff time or resources to accommodate this.

d. 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;

Answer 5d:

We have no comment on this. Enforcement would be a matter for Police Scotland

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

Answer 5e:

We would point out that the proposed bill is silent on compliance issues. What are the penalties for failing to comply with the terms of a licence.

Enforcement relates to an activity being conducted without a licence and is usually a criminal matter with enforcement being carried out by Police Scotland. Compliance relates to how an activity that is licensed is carried out. Failure to comply with the terms of a licence is usually a civil matter resulting in suspension or revocation, or refusal to grant or renew any further licences for specific reasons.

Councils currently have Civic Compliance Officers under the 1982 Act who are authorised to enter and inspect fairgrounds for the purposes of ensuring compliance with the terms of licences issued. These officers should have powers to inspect fairgrounds under the proposed legislation in addition to Health and Safety Executive Officers.

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.

Answer 6:

Given the 1982 Act is now almost 40 years old, our view is that the impact of the 1982 Act on all licence holders requires to be reviewed and modernised and not just one group of licence holders. The system needs to be fair for all licence holders, and also to the communities where licensed activities take place.

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

Answer 7:

£50 is not an adequate level for a licence fee.

Such a fee will have a huge impact on the level of fees for other civic government licences so that the Council can cover the shortfall in administering the proposed scheme. This is neither fair nor equitable to those other licence holders.

Summary

Finally, we our primary position is that:

- The Bill, as drafted, is not workable.
- The 1982 Act as a whole should be reviewed
- If proceeding to have a separate licence system for funfairs, the system must
- Set a fee set at an adequate level
- Safeguard the interests of our local communities balanced against the commercial needs of the operator
- Allow adequate time for processing, allowing for the ability to hold hearings to determine applications where required.
- Statement of Reasons should be issued on request and not on demand
- The right of appeal should be to the Sheriff and should be available to both applicants and objectors.

Public Entertainment Temporary – Fairground & Circuses £146.50

