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# Travelling Funfairs (Licensing) (Scotland) Bill

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The Travelling Funfairs (Licensing) (Scotland) Bill is a Member's bill. It would create a bespoke regime for licensing travelling funfairs to replace the current requirement to have a public entertainment licence.



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# The Bill - an overview

The [Policy Memorandum](#) explains the policy objectives of the Bill (paragraph 3):

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

The Bill would remove the requirement for travelling funfairs to have a public entertainment licence under the Civic Government (Scotland) Act 1982. It would create a bespoke licensing regime to replace this requirement.

The main features of the licensing regime proposed in the Bill are:

- As with public entertainment licensing, the local authority for the area where a fair is to take place would be the licensing authority.
- There would be a fixed fee of £50 for applications.
- The deadline for applications would be 28 days before the funfair is due to start.
- There would be limited grounds for councils to refuse licences; similarly, their discretion to attach conditions would also be limited.

# The Bill - relevant dates, documents and procedure

The Travelling Funfairs (Licensing) (Scotland) Bill was introduced in the Scottish Parliament on 29 April 2020. It is a Member's bill, introduced by Richard Lyle MSP.

All the documents relating to the Bill can be found on the [Travelling Funfairs \(Licensing\) \(Scotland\) Bill page](#). These include:

- the [Bill as introduced](#) <sup>1</sup>
- the [Policy Memorandum](#) <sup>2</sup>
- the [Explanatory Notes](#) <sup>3</sup>
- the [Financial Memorandum](#) <sup>4</sup> .

The Local Government and Communities Committee is the lead committee for scrutiny of the Bill. Its [call for views](#) closes on 7 December 2020.

## **Parliamentary rules set down the steps required to be able to introduce a Member's bill**

The relevant requirements can be found at rule 9.14 of Chapter 9 of the [Standing Orders of the Scottish Parliament](#) <sup>5</sup> . In particular, the rules require:

- that the member follows various consultation requirements - the "[Consultation on the proposals](#)" section discusses the consultation for this Bill in more detail
- that the member receives the support of at least 18 other MSPs, representing at least half of the political parties or groups in the Scottish Parliament with five or more MSPs
- that the Scottish Government does not make a statement indicating it intends to introduce legislation for the same purpose within two years (or before the Scottish Parliament is dissolved for the next election, if shorter).

# The current licensing process for travelling funfairs

Currently, travelling funfairs are required to have a public entertainment licence. This licence is issued by local authorities under the Civic Government (Scotland) Act 1982.

This part of the briefing looks at:

- [the need for discretion and flexibility in civic government licensing](#)
- [problems with the current licensing system for travelling funfairs](#)
- [requirements for a public entertainment licence](#)
- [health and safety requirements for travelling funfairs.](#)

## The need for discretion and flexibility in civic government licensing

The Civic Government (Scotland) Act 1982 covers licensing for a wide range of activities, from taxis, through window cleaners to market operators. The same standard licensing procedure covers most forms of licence.

### **The current licensing system gives local authorities significant discretion as to what and how they license**

For most types of licence created by the 1982 Act, licensing is optional. The local authority can choose whether to create a licensing regime covering a particular activity. The local authority has to pass a resolution before any licensing can take effect. Local authorities therefore have responsibility for deciding what they license.

The standard procedure set out in the 1982 Act also gives local authorities significant discretion in how they license. For example, they can set their own fee scales and processing times, as long as they are within the overall parameters set in legislation. They have wide powers to attach conditions to licences.

The system is intended to enable local authorities to create licensing systems which meet local circumstances. However, it has also resulted in wide variation.

This local discretion is an important part of the system. For example, in some areas, the local authority's objective may be to encourage more people to undertake an activity because there is a local need. In another part of the country, licensing may be geared towards controlling specific types of risk.

### **The administrative requirements for public entertainment licences are flexible to cover a wide variety of circumstances**

Public entertainment licences are part of the optional licensing regime. A resolution to introduce public entertainment licensing will address which specific sorts of public entertainment-related activity the local authority wants to license.

The Policy Memorandum (paragraph 17) confirms that all local authorities currently require a licence for travelling funfairs. However, there is significant variation around what other activities may require a public entertainment licence.

Local authority requirements have to be flexible enough to deal with the wide range of events which can require a public entertainment licence. Large concerts and festivals will typically require a public entertainment licence, as will smaller events such as gala days.

But a host of other activities are also covered. Glasgow City Council requires public entertainment licences for tanning salons, pool halls and ice rinks (among other activities). Comhairle nan Eilean Siar (Western Isles Council) includes sheepdog trials and parachute jumps.

## **Problems with the current licensing system for travelling funfairs**

Mr Lyle MSP argues that the wide-ranging nature of public entertainment licensing has resulted in the regime failing to meet the specific needs of travelling funfairs. The Policy Memorandum (paragraph 11) highlights the following issues as major stumbling blocks for travelling funfairs:

- fees which vary significantly between local authorities and which operators, in some cases, consider to be too high to be sustainable for their businesses
- administrative deadlines which are too long to meet the needs of funfairs which regularly move venues
- significant variation in the application process and likely licensing conditions between local authorities
- no mechanism by which the location of an event can be switched at short notice (for example, because land is flooded).

## **Requirements for a public entertainment licence**

A local authority can require a public entertainment licence for any premises where "members of the public are admitted or may use any facilities for the purposes of entertainment or recreation" (Civic Government (Scotland) Act 1982, section 41(2)).

Note that there are some exceptions to the requirement to have a public entertainment licence, for example, sports grounds and theatres when being used as such.

Local authorities must pass a resolution requiring public entertainment to be licensed, and the resolution will state which specific types of public entertainment are covered.

### **The 1982 Act makes provision for both full and temporary licences**

Public entertainment licences are issued under the standard regime set out in the 1982 Act. The features of this regime include those discussed below, as well as processes for

publicising applications and making objections, and for varying, reviewing and revoking licences. Licences issued under the 1982 Act can last for up to three years.

However, the 1982 Act also makes provision for temporary licences, lasting not more than six weeks. The truncated process for issuing these misses out a number of requirements for full licences. Given the nature of travelling funfairs, the temporary licence process is the one that most licences would be issued under at present.

Key features of the temporary licensing regime are:

- **The fit and proper test** - licence holders must be "fit and proper persons" - this essentially means that they must be suitable to hold a licence. The local authority will consider things like any criminal record or past problems in relation to licensing.
- **Discretion to refuse a licence** - a licence can be refused because the applicant is unsuitable, because the venue is unsuitable or for any "other good reason".
- **Discretion to attach conditions** - local authorities can attach "such conditions as they see fit" to a licence. The only limits to this power are that local conditions must not be inconsistent with any mandatory conditions set by the Scottish Government, and they must not deal with fire safety issues (as these are regulated separately).
- **Timescales for consideration** - local authorities usually have nine months to deal with an application. They must consider it within three months and have a further six months to reach a final decision. Note that local authorities will often have procedures in place to allow for quicker consideration of temporary licences.
- **Fees are set on a full cost recovery basis** - local authorities must ensure that "the total amount of fees receivable by the authority is sufficient to meet the expenses of the authority in exercising their functions". In addition, the Provision of Services Regulations 2009 (Regulation 18(4)) require that the fees charged cannot exceed the reasonable costs of administering a licensing scheme.
- **There is no appeals process for temporary licences**, although decisions in relation to full licences can be appealed to the sheriff within 28 days.

## Health and safety requirements for travelling funfairs

Those involved in running funfairs have various duties under the Health and Safety at Work etc. Act 1974. These responsibilities are entirely separate from the licensing regime and are supervised by the [Health and Safety Executive](#).

### Competence for legislating for health and safety is reserved to the UK Parliament

The Bill would not change health and safety law as it applies to funfairs. The Policy Memorandum states (paragraph 24):

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

## There is a detailed regime in place to ensure the health and safety of those attending and working at travelling funfairs

The 1974 Act creates duties to protect the health and safety of employees, visitors and others who might be affected by how a place of work is run. Designers, manufacturers and suppliers of equipment (including fairground equipment) have duties in relation to its safe operation.

The 1974 Act is supplemented by various regulations dealing with more specific aspects of health and safety - for example, regulating the safe set up and take down of equipment.

The Health and Safety Executive has also published [guidance dealing specifically with funfairs](#).

## Health and Safety Executive guidance for funfairs

The Health and Safety Executive publishes guidance on fairground safety - [Fairgrounds and amusement parks: Guidance on safe practice](#) (2017)<sup>6</sup>. This summarises the health and safety responsibilities of those involved as follows:

**Table 1: health and safety responsibilities at travelling funfairs**

Role	Duties
<b>Designers, manufacturers, suppliers and importers</b> of fairground attractions	<ul style="list-style-type: none"> <li>to ensure attractions are safe for use when first supplied</li> <li>to provide instructions for safe operation and maintenance</li> </ul>
<b>Organisers</b> with overall control of a funfair	<ul style="list-style-type: none"> <li>to ensure safe site layout and operation</li> <li>to plan for emergencies</li> </ul>
<b>Controllers</b> of individual attractions	<ul style="list-style-type: none"> <li>to operate and maintain the attraction in a safe manner</li> </ul>
<b>Operators</b> with immediate control of individual attractions	<ul style="list-style-type: none"> <li>to operate the attraction in a safe manner</li> </ul>
<b>Attendants</b> who help operate an attraction	<ul style="list-style-type: none"> <li>to take reasonable care for their own and others' safety</li> <li>to follow instructions</li> </ul>

The guidance sets up an inspection regime for fairground attractions. The system of checks are:

- **pre-use inspection** - carried out by an independent inspection body to check the safety of an attraction before it is first brought into use
- **daily inspection** - carried out by operators or attendants before use each day
- **periodic checks** - carried out by operators or controllers in accordance with risk assessments and manufactures' instructions
- **annual inspection** - carried out by an independent inspection body on a yearly basis.



# The Bill

The Bill would create a bespoke licensing regime for travelling funfairs to replace the requirement to have a public entertainment licence. This section of the briefing looks at the following issues:

- [consultation on the proposals](#)
- [when a licence is required](#)
- [timescales for considering a licence application](#)
- [the fee for a licence application](#)
- [granting or refusing a licence](#)
- [provision for alternative venues](#)
- [attaching conditions to a licence](#)
- [challenging licensing decisions.](#)

## Consultation on the proposals

Mr Lyle MSP undertook a consultation on his proposals as part of the process of developing the Bill.

- The consultation document - [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](#)<sup>7</sup> - was published in 2017
- An analysis of responses - [Licensing of Funfairs \(Scotland\) Bill: summary of consultation responses](#)<sup>8</sup> - is also available.

There were 189 responses to the consultation. The majority of these were from individuals - mainly people with connections to the business of running travelling funfairs. There were nine responses from local authorities.

Overall, a significant majority of those responding appeared to be in favour of the Bill's proposals. However, further analysis shows that many respondents were in favour of removing the requirement for travelling funfairs to have a public entertainment licence but not of creating a new licensing regime.

## When is a licence required?

The Bill would remove the requirement to have a public entertainment licence to hold a travelling funfair at a particular place. However, it would still be a legal requirement to have a site-specific licence, issued under the licensing regime created in the Bill. And it would be a criminal offence to operate a travelling funfair without one.

Licences would be issued by the local authority in whose area the travelling funfair takes place.

Section 1(1) of the Bill defines a travelling funfair thus:

(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.

### **There would be exemptions from the need to hold other types of licence**

Someone with a travelling funfair licence would be exempted from needing two other forms of licence which may be relevant to the operation of a funfair. Under section 17 of the Bill, someone with a travelling funfair licence does not need:

- **a street traders' licence** - normally required for selling goods (including food) and services in a public place (if the local authority licenses this type of activity)
- **a late hours catering licence** - normally required for selling food or beverages from premises between 11pm and 5am (if the local authority licenses this type of activity).

These provisions replicate exemptions which existed for holders of public entertainment licences.

### **There would also be an exemption from an offence relating to the use of sound-producing equipment**

The offence is committed if someone uses sound-producing equipment "so as to give any other person reasonable cause for annoyance and fails to desist on being required to do so by a constable in uniform" (Civic Government (Scotland) act 1982, section 54).

There is an existing exemption for the use of a loudspeaker "by a travelling showman on land which is being used for the purposes of a pleasure fair." The Bill would add an exemption for the use of a loudspeaker "as part of the operation of a travelling funfair licensed under the Travelling Funfairs (Licensing) (Scotland) Act 2020".

## **Timescales for considering a licence application**

Applications for a travelling funfair licence would be required to be received at least 28 days before the event. A local authority would have 21 days to reach a decision on whether to grant the licence.

Note though that section 5(5) of the Bill would require a local authority to consider a licence application received up to 14 days before the event unless "it thinks it impracticable

in the time available" to deal with the application.

The short deadlines reflect concerns that the current timescales for consideration of public entertainment licence applications are too long to meet the needs of travelling funfairs. This means that funfair operators may struggle to plan their schedules with certainty.

### **Licences can be issued by default where a local authority misses the 21 day deadline**

Where a local authority fails to process a valid application within the 21 day timescale, it would be granted by default. This creates a strong incentive for local authorities to deal with applications timeously. But there is also a risk that licences would be granted without proper scrutiny.

### **Only two councils currently process licences for funfairs in the timescales proposed in the Bill**

The Financial Memorandum (Table 1, page 7) contains details of current processing times for licences for travelling funfairs under the temporary public entertainment licensing regime.

Of the 30 local authorities which provided responses, 19 take six weeks or more to process an application, with 11 taking less than six weeks. Argyll and Bute Council currently processes applications in 21 days, with Falkirk Council stating it takes "two to three weeks minimum". Several other local authorities have a 28 day turn-around.

This means that there are likely to be resource implications for most local authorities in meeting the processing timescales set in the Bill. However, as the Financial Memorandum notes (paragraph 23), the Bill would introduce a simplified procedure for dealing with applications. This may enable faster consideration.

## **The fee for a licence application**

The Bill would introduce a £50 flat fee for a travelling funfair licence application. This reflects concerns that the fees charged by some local authorities under the present system are unsustainable for travelling funfairs.

Under section 5(6) of the Bill, it would only be possible to increase licence fees in future in line with inflation.

### **Only one council currently processes licences within the fee level set in the Bill**

The Financial Memorandum (Table 1, page 7) contains details of the current fees charged by local authorities for funfair licences under the temporary public entertainment licensing regime. Note that fees can vary depending on the size or length of the event, making direct comparison difficult.

Of those that responded, 29 local authorities charge one-off fees. Fourteen of those charged less than £250, with 15 charging £250 or more. Fife Council charged the least (at £50). City of Edinburgh Council charged the most, with fees ranging up to £6,148 depending on the capacity of the event.

Note that Comhairle nan Eilean Siar (Western Isles Council) charged £21 per day, meaning that it would be possible for a licence to cost less than £50, if the funfair lasted one or two days.

### **The reduced fee income may have financial implications for most local authorities**

As well as seeing reduced fee income, most local authorities will also have to process applications quicker than at present. This may require more staff or other resources.

The licensing procedure created in the Bill is simpler than the current process, which may generate some savings. However, if local authorities cannot cover their costs for processing travelling funfair licences, the work will have to be subsidised from other parts of their budgets.

Table 2 of the Financial Memorandum (page 11) estimates the actual loss to local authorities, based on the number of licences they issue. The total annual loss is estimated to be £106,378, with no individual local authority facing losses of more than £18,000.

## **Granting or refusing a licence**

Local authorities would have limited grounds to refuse a validly presented licence application, reflecting concerns that local authorities have too much discretion under the current system.

Under the Bill, the two grounds for refusal would be:

- that the applicant is not a "fit and proper person" to hold a licence
- that the operation of the funfair would be likely to risk the safety or health of the public (and the risk cannot be reduced to acceptable levels by attaching conditions to the licence).

### **What is the fit and proper person test?**

The fit and proper person test is a standard feature of many licensing and regulatory regimes in the UK. Local authorities will be used to applying it in other contexts. It is designed to ensure that the applicant is of suitable character to hold a licence.

The licensing body will look at things like criminal convictions and previous compliance with the licensing regime. However, it can take a wide range of factors into consideration.

### **Local authorities' discretion to refuse licences would be reduced in comparison to the current licensing system**

The public entertainment licensing process gives local authorities wide discretion. It allows a licence to be refused:

- because the applicant is unsuitable - either because they fail the fit and proper person test or because they have been disqualified by the courts from holding a licence of that nature
- because the venue is unsuitable - because (among other things) there would be a risk

to public order, public safety, or that undue public nuisance would be caused, or

- for any "other good reason".

In particular, the public entertainment licensing process brings matters of public order into consideration. This is a key feature of the whole licensing regime in the Civic Government (Scotland) Act 1982.

## Provision for alternative venues

One of the problems highlighted in the Policy Memorandum (paragraph 11) in relation to the current licensing system is that it is not possible to switch locations at short notice.

The public entertainment licensing process allows a licence to be granted for a specific location. If that location becomes unusable for any reason, the licence holder must apply for a new licence.

### **The Bill would allow those applying for licences to designate an alternative location for the travelling funfair to use**

All the requirements of the licensing process would have to be met in relation to both sites for the application to be valid.

When a licence is granted, it would give permission for the licence-holder to use their first preference site. However, they would be able to notify the local authority at any time before the first day of the funfair that they intend to use the other site.

It would also be possible for a local authority to grant the licence in relation to only one site where there are public safety or health concerns in relation to the other site.

## Attaching conditions to a licence

The Bill would create a limited list of acceptable types of conditions which could be applied to a travelling funfair licence. This reflects concerns that the public entertainment licensing regime allows for too much variance between local authorities.

The conditions which would be covered are those relating to:

- the dates and times of operation
- public safety and public health legislation
- ensuring public order
- protecting the environment
- restoration of the site used by the travelling funfair
- protecting neighbours from noise or light nuisance.

**Local authorities have very wide discretion to attach conditions to licences under**

## **the public entertainment licensing regime**

Local authorities can attach "such conditions as they see fit" to temporary public entertainment licences. The only limits to this discretion are that conditions must not deal with fire safety issues (which are regulated separately) and that they must not be inconsistent with mandatory conditions set by the Scottish Government.

Note that the Bill does not replicate the powers in the Civic Government (Scotland) Act 1982 enabling Scottish Ministers to set mandatory conditions. This power has not yet been used for public entertainment licences.

## **Challenging a licence decision**

The Bill would provide for appeal to the Sheriff Principal in relation to decisions to:

- refuse a licence
- attach a particular condition to a licence
- revoke a licence.

The Sheriff Principal is the senior judge in one of Scotland's six sheriff court regions.

There is no onwards appeal to a higher court.

An applicant would also be entitled to be given written reasons for any of those decisions from the local authority.

### **Judicial review is the only method for challenging decisions in relation to temporary public entertainment licences**

The Civic Government (Scotland) Act 1982 does not make any provision for challenging decisions in relation to temporary licences, although full licences can be challenged by appeal to the sheriff. This would leave judicial review as the only avenue for challenging a temporary licence decision.

Judicial review is a form of court action for challenging the decisions of public bodies. It looks at the administrative process behind the decision rather than the merits of the decision itself. In broad summary, the three main grounds for judicial review are:

- the decision went beyond the powers of the public body making it
- the body did not follow a fair process
- the decision was irrational (so unreasonable that no reasonable person acting reasonably could have made it).

Actions for judicial review are expensive, in part because they can only be raised in Scotland's most senior court, the Court of Session. They can also be risky.

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