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Stage 1 Report on the Travelling Funfairs (Licensing) (Scotland) Bill



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Local Government and Communities Committee

To consider and report on communities, housing, local government, measures against poverty, planning and regeneration matters falling within the responsibility of the Cabinet Secretary for Communities and Local Government.



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Introduction

1. The [Travelling Funfairs \(Licensing\) \(Scotland\) Bill](#) was introduced into the Parliament on 29 April 2020. It is a Member's Bill and the Member in Charge is Richard Lyle MSP. The Local Government and Communities Committee was appointed lead committee to report to Parliament on the general principles of the Bill at Stage 1.
2. Regional fairs, each with their own place on the calendar, have a long history in Scotland, with many dating back centuries. They are a colourful component of Scottish life. For many, especially the young, the highlight of the fair is the fairground, and a visit to "the shows" has been a rite of passages for generations of Scots children. The traditional entertainment on offer is ingrained in our shared cultural memory.
3. Richard Lyle believes traditional travelling fairgrounds are under threat in Scotland and, with this, the distinct way of life of Scotland's showmen and show-women: the travelling families who "follow the fair", organising fairgrounds at shows all over Scotland - and sometimes further afield. Running a fairground is, overwhelmingly, a family business and most showman families have links with the trade that go back generations.
4. Travelling funfairs in Scotland require a licence under the public entertainment licensing system. The aim of the Bill is to create a new bespoke licensing system for them that Mr Lyle considers will be more fair, more consistent, less costly and less complex than the current one. He thinks this will boost a trade whose decline he attributes mainly to what he sees as expensive and often needlessly complex regulation and red tape around licensing. He told us he believed that current provisions:

 ... are not proportionate or appropriate for travelling funfairs. Over time, individual local authorities have developed layers of unnecessary bureaucracy which, when combined with inconsistent and often unacceptable high fees and processing times, threaten the survival of travelling funfairs across Scotlandⁱ
5. This told us that the new system under the Bill "tips the balance more towards the interests of showpeople than towards those of councils". In doing so, he hopes he will enable the trade to survive in Scotland.
6. Mr Lyle consulted on his proposal before the Bill was introduced, and was assisted in policy development, consultation and drafting by the Parliament's Non-Government Bills Unit. This pre-introductory work is reflected in his Policy and Financial Memorandums, and Explanatory Notes, which provide further background on the Bill and how it is intended to work. There is also a Scottish Parliament Information Centre (SPICe) [briefing on the Bill](#).

Committee scrutiny

7. The Committee launched a call for views on the Bill over the summer, posing seven

ⁱ Official Report, 3 February, col 33

key questions . We received **115 responses** that were accepted as evidence. The vast majority were from members of the public, many of whom identified in their evidence as showpeople. This testifies to the high level of interest in the Bill from within the trade. The other main source of written responses was local government. A small number of responses came from other sources: academics, the police, public bodies, and some businesses who support travelling funfairs.

8. We held **three panels of oral evidence** over two meetings in January and February 2021. Two of these were with stakeholders comprising:
 - representatives of two council licensing departments (West Dunbartonshire and South Ayrshire);
 - SOLAR, the representative body for council in-house lawyers and administrators;
 - the Scottish Showmen's Guild;
 - Fair Scotland (a group is dedicated to promoting the heritage of Scottish Showpeople and fairground culture); and
 - Andrew Masterton, an experienced showman.
9. The **third and final session** was with Mr Lyle and supporting officials from the Parliament's Non-Government Bills unit.
10. Our thanks to all those who contributed to our scrutiny.
11. The Bill was introduced into the Parliament less than 12 months before the end of this 5-year Parliamentary session and, unfortunately, at the height of lockdown. Consideration of the Bill has taken place under the constant shadow of the pandemic, meaning that, regrettably, no fact-finding visits in connection with the Bill could take place. The necessity of focusing on more urgent matters for much of 2020 - many of them Covid-related - also slightly delayed our formal scrutiny of the Bill. We appreciate that the last year has been extremely tough and challenging for showpeople.
12. Whilst the Bill addresses a relatively narrow and specialist matter, it quite quickly became apparent that this is not simply a "technical" Bill tidying up a few drafting matters that most agree need corrected, in a way that most agree will work. It is more complicated than that.
13. Under other circumstances, this might have led to more information-gathering and fact-finding. In particular, we would have liked more opportunity to explore the views of local communities on fairgrounds in their area. But with the clock running down to the end of this session, we concluded it was more important to report now, so as to give the Parliament, and the wider audience of interested stakeholders, an opportunity to consider our views on a matter which Richard Lyle and others have put so much work into.

Scottish Government position

14. The Scottish Government was offered an opportunity to provide Stage 1 oral evidence but declined as it considered its direct interest in the Bill to be relatively marginal. It did provide a written memorandum for the Committee's consideration. In it, the Scottish Government reserves its overall position on the legislation, inviting the Committee to reflect on the balance of interests within this policy area. The Memorandum states that:

” The Scottish Government recognises the contribution funfairs make to community life. It is important that funfair operators should be treated fairly and that their concerns about any disproportionate burdens arising from the licensing of funfairs are taken seriously.

The key aims of the civic government licensing regimes are the preservation of public safety and order and the prevention of crime. With that in mind, the Scottish Ministers are keen to ensure that all licensing regimes operate effectively and proportionately while protecting the public and offering them a voice on local decisions that affect themⁱⁱ.

15. The Memorandum continues that:

” More generally, the Scottish Government holds the view that the day to day administration of the public entertainment licensing regime is appropriately administered by licensing authorities who are best placed to take local circumstances into account in the decision making process to ensure that they provide safe and appropriate services for members of the publicⁱⁱⁱ.

16. The Committee notes that, in the relatively recent past, the Scottish Government has recognised, and sought to act on, perceptions from showpeople that they were not always being well served by the licensing system. Paragraph 33 of the Policy Memorandum states that:

” In 2014, acknowledging the complexities for operators of having 32 local authorities applying 32 variations of licensing and fee structures, the then Minister for Local Government and Planning announced that a working group would consider the matter. This led, in 2016, to a meeting with the Scottish Showmen's Guild to discuss the difficulties further. In turn, this led, in July 2017, to the publication of new Scottish Government guidance on public entertainment licences in respect of funfairs.

17. However, the introduction of the Bill, which has the strong support of the Scottish Showmen's Guild, indicates that this work did not resolve the community's concerns.

Current licensing system

18. Travelling funfairs are currently licensed under the Civic Government (Scotland) Act

ⁱⁱ Scottish Government, written evidence

ⁱⁱⁱ Scottish Government, written evidence

1982. These are not rules specifically for funfairs; they are rules allowing councils to authorise “public entertainment licences” for different types of events, which include travelling funfairs.

19. Public entertainment licences under the 1982 Act may be temporary; up to 6 weeks, or full; up to three years. The Scottish Showmen's Guild, the main trade and promotional body for Scottish showpeople, told us that all their members utilise temporary licences when they seek to put on a funfair.^{iv} Key aspects of the process for temporary licences include:
 - Licence holders must be “fit and proper persons”. The local authority may consider things like any criminal record or past problems in relation to licensing.
 - In addition, a licence can be refused because the applicant is unsuitable, because the venue is unsuitable or for any “other good reason”.
 - 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).
 - Local authorities usually have up to 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.
 - 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. (Decisions in relation to full licences can be appealed to the sheriff within 28 days.)
20. There is more information on the current licensing system in the [SPICe briefing on the Bill](#).
21. It is evident from information in the Policy and Financial Memorandums and from Stage 1 evidence that, within these parameters, there is significant variation in how councils apply the rules. This is not a “loophole”: it was always intended that the rules should permit councils to operate in this way (hence phrases like “as they see fit”). That said, a key theme in Stage 1 was whether some councils had gone too far in using their discretion.
22. The Showmen's Guild told us that the inclusion of travelling fairs in the current licencing regime was due to an oversight during the passage of the 1982 Act in Westminster. They said that a similar Act passed by Westminster to modernise civic licensing laws in England and Wales, the Local Government (Miscellaneous Provisions) Act 1982, was amended to exempt travelling fairs, but no such exemption was applied to the Scottish Act. The Act in Scotland is in fact silent on travelling fairs, leaving it to the local authority to decide what forms of entertainment

^{iv} Scottish Showmen's Guild, supplementary submission

should be caught by the regime. We refer to this issue again in paragraph 67 of the report.

23. Richard Lyle's main criticisms of the current rules include:

- The cost, which can vary quite widely across councils, but can be high. The Financial Memorandum gives examples of several councils charging in the high hundreds for a single temporary licence and one instance of a council (Edinburgh) charging over £6000. This is for an application, which could be refused, in relation to an event that might not go ahead as planned (because of the weather, for instance), in which case there is no refund;
- Time limits in the 1982 Act. Whilst by no means all councils commonly make full use of these, Mr Lyle considers they are far too generous and disruptive for anyone trying to run a business already subject to so many contingencies;
- The lack of a right to appeal a refusal of a temporary licence or the imposition of particular conditions;
- Complexity: he believes the rules that exist, or have built up, are not proportionate or appropriate for a system the point of which is to determine whether a travelling funfair should be allowed in a particular place at a particular time. That the approach may vary (sometimes quite markedly) across 32 local authorities adds to the complexity. These are rules applying to small or medium-sized family firms operating in a tough commercial environment, and partly at the mercy of uncontrollable external factors, such as the weather.

24. In his evidence to us, Mr Lyle was clear in his belief that there is a direct link between the decline in the number of shows being put on in Scotland and the current licensing system. He affirmed that, in his view, it is the "single biggest reason" for that decline.^v

Outline of the Bill

25. The Bill is in 20 sections. The first four sections:

- Take travelling funfairs out of the licensing regime in the 1982 Act, but provide that the licensing body for the new regime will remain the council where the funfair is to take place;
- Provide a definition of "travelling funfair". This includes provision that a funfair lasting more than six weeks is not a "travelling" funfair (in which case the 1982 Act rules would apply). There are some illustrative provisions to help clarify what would constitute a funfair; primarily the presence of particular types of kit.

26. The rest of the Bill mainly concerns the ground-rules of the new licensing regime. These provisions specify:

- What information the applicant must provide: this includes who will be running the funfair, where, when and with what equipment. The applicant is allowed to

^v Official Report, 3 February, col 34

specify an alternative venue alongside their first choice provided it is in the same council area;

- That the council must consult the police and the fire and rescue authority before deciding an application;
 - That the council must also decide on an application within 21 days, otherwise it will be granted by default;
 - That the council must allow a valid 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;
 - That 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.
27. The cost of an application is to be a flat fee of £50. The Bill allows this to be revised in future years but only in line with inflation.
28. The Bill maintains a council's right to impose conditions when granting a licence but only in relation to a list of prescribed matters. These include conditions:
- About the dates and times when the funfair may take place;
 - That promote health and safety law or public order in relation to the event;
 - That require the operator to restore any damage to the site after the event;
 - That reduce light or noise nuisance in the neighbourhood.
29. The Bill also establishes a right to appeal a council's decision to the sheriff principal. An appeal may be against:
- A refusal of an application;
 - A revocation of a licence;
 - A particular condition imposed on the licence.
30. Finally, the Bill makes provision to allow council officers to enter and inspect a fairground for specific purposes (such as to ascertain whether conditions are being met). And it provides for criminal penalties in the event of matters such as running an unlicensed fairground or providing false information in the application. These largely replicate existing provisions.
31. Health and safety legislation is a matter reserved to Westminster. Whilst, as noted above, a council is entitled under the Bill to take into account health and safety concerns during the licensing process (as it can also do currently), travelling funfair providers are themselves bound to comply with health and safety legislation, and to take relevant guidance into account. The Bill does not change this.^{vi}

vi Policy Memorandum, paragraph 24-26

32. Taking this package as a whole, the Policy Memorandum states that the aims are:



- To reduce the costs to operators and make them consistent;
- To reduce the timescales involved and make them more consistent;
- To allow a licence to be transferable to another site, for example, if the original site is unusable;
- To restrict the categories of conditions which can be attached to a licence, and the grounds on which an application may be refused; and
- To ensure that operators know application requirements, condition categories, and refusal grounds in advance.

General principles

33. The Committee's main role at Stage 1 is to report to the Parliament on the general principles of the Bill. It appears to us that the general principles of the Bill are as follows:

to replace one set of rules for the licensing of travelling funfairs by local authorities, which are general rules applying to public entertainment events, with another set of rules, which apply only to travelling funfairs.

These new rules are a package of measures intended overall to make it easier to get a licence whilst, in the view of the Member in Charge, still providing appropriate checks and balances to safeguard the interests of the council and others.

The new set of rules are also intended to practically eliminate any area-based differentiation in approach. Each of Scotland's 32 local authorities will be expected to follow the same rules in much the same way.

Views on the current system

34. The Bill proceeds from the assumption that the current licensing regime is fundamentally unfit for purpose. We accordingly sought views at Stage 1 on whether stakeholders agreed.
35. Different stakeholders will clearly have different perspectives, depending on their main interests in relation to travelling funfairs. Overall, our aim was to build up a picture of whether the current system strikes the right balance between interests and whether stakeholders have faith in the system as a level-playing field.
36. For showpeople, travelling funfairs are their way of life. Their main interest in the system is being able to navigate it successfully so that, in the end, they can put on a funfair. The local authority will have a different perspective and, amongst other things, will want a system that takes adequate account of the views of local residents. A number of councils told us that public safety was the paramount consideration of any licensing system. The vast majority of written evidence came from these two sectors. We did not hear directly from many members of the public living in areas visited by fairs, as we would have sought to do had we been able to arrange any visits.

Is the current system killing the trade?

37. Showpeople unanimously agreed that the current regime is not proportionate or fair, and pose a threat to their way of life. Their criticisms largely mirror those of Mr Lyle set out in para 23 above: about matters including cost, complexity, delays, and the lack of an appeal mechanism. They could not understand why working practices for the same process often varied so widely in different areas, for instance in relation to typical processing times for an application.^{vii} (We note that not all councils accepted the processing times presented in the Policy Memorandum as wholly accurate.^{viii})
38. Showpeople also criticised the system for its inflexibility. Andrew Masterton gave the example of an event in 2019 that had to be cancelled because the venue became waterlogged after heavy rain. He forfeited his £325 application fee, as well as any income from the event. He said that there was another nearby venue that he could potentially have used but the system did not permit this. Several other submissions commented on the disruption and worry of not knowing whether an event was allowed until just days before the event.^{ix}
39. Another major concern was that the licensing process could often amount in practice to a duplication of efforts, with organisers of funfairs being asked to verify matters covered either by other legislation or commercial agreements. In this context, the Scottish Showmen's Guild told us that around 90% of travelling funfairs took place on council-owned land. It is likely that the council and the operator would have in place a detailed lease agreement.^x

vii Official Report, 20 January, col 20

viii Renfrewshire Council, written evidence

ix Official Report, 29 January, col 3-4

40. The Scottish Showmen's Guild summed up many views when it stated that:

” ... the current licensing regime is not fit for purpose and its operation creates a democratic deficit whereby our members and their families are adversely impacted by an overly burdensome regime that is neither reasonable nor proportionate. Over the years, licensing authorities have developed their own version of a public entertainment licensing free of judicial oversight or transparency such as in setting licensing fees. At the moment, our members are barred from challenging decisions owing to both the lack of a statutory appeal function and the cost and time involved in a judicial review. Moreover, the current regime does not recognise the unique challenges travelling funfairs deal with such as sites becoming unavailable at the last moment.^{xi}

41. This view was not restricted to showpeople. John McKissock, a solicitor with experience of the public entertainment licensing system, commented:

” I have seen at first hand actions by parties involved in the granting of a licence which I have regarded as both inequitable and flawed in law. The bureaucratic requirements of operating a fun fair in Scotland have, in my respectful opinion, evolved far beyond what is reasonable and necessary to provide licensing authorities with the means of effecting their control over an activity which has subsisted for centuries.^{xii}

42. Mr McKissock's evidence was amongst several to query whether councils were sometimes exceeding their authority in relation to the granting of temporary licences, and imposing requirements only needed for full public entertainment licences. As already noted, the Scottish Showmen's Guild was clear that its members would always be applying for temporary and not full licences.^{xiii} However, it said that, in practice, operators were commonly being required to undertake matters, such as advertising proposed events in the local press, that were not required for temporary licences. The Guild said that:

” ... members are, in effect, force [sic] to apply for a “full” licence even though it is a temporary event which falls under the temporary licensing process, purely because the local authority wishes to impose a greater degree of administration.^{xiv}

43. Although we did not see much hard data, Mr Lyle's contention that the travelling funfair trade in Scotland is in decline, and is increasingly threatened as a viable way to make a living, was not directly contested in any evidence, and was strongly supported by showmen and some others. This evidence also made clear that these troubles long predated the pandemic, with much or most of the blame being laid on the 1982 Act. Fair Scotland's evidence referred to the “decimation” of the trade. It said:

x Official Report, 20 January, col 3

xi Scottish Showmen's Guild, written evidence

xii John McKissock, written evidence

xiii Scottish Showmen's Guild, supplementary submission

xiv Scottish Showmen's Guild, supplementary submission

” The current regulatory system has unfairly and disproportionately influenced self-employment patterns within the Show communities in Scotland. Firstly, members of the Scottish Showmen’s Guild have fallen by approximately 20% in the last decade. Secondly, many members have relocated to other European countries where funfair regulation is considerably less prohibitive. Third, Showmen based on the continent are choosing not to work in Scotland given the current regulations, which is historically significant given that funfairs evolved as part of European commercial fairs and travel within Europe has always been a core feature of the industry. Fourth, traditional funfairs have declined dramatically in the last decade. The additional impact of COVID-19 has resulted in many operators going without income for a full year, and in 2021 many businesses are likely to be unviable.^{xv}

44. A number of other submissions, including from showpeople outside Scotland, confirmed that operators were voting with their feet, and avoiding Scotland because of the tough regulatory environment.
45. An issue less explored in evidence (and not touched on in the Policy Memorandum) was whether factors other than the regulatory climate might be at play in this decline; for example changing public tastes or fewer younger people in the showpeople community choosing to enter the trade. The Committee is not satisfied we had the opportunity to fully test views and data (if any) on this issue in the limited time available to us. Nevertheless, it is clear that it is the lived experience of many showpeople that the current licensing system is, at the very least, a significant element in the decline of the trade. The Scottish Showmen's Guild said:

” Showpeople are a recognised cultural subset of society and our way of life is not comparable to a “typical” applicant for a licence. It is our way of life which is threatened by the existing system. Without significant change travelling funfairs are at real risk of disappearing in Scotland. We call on the Committee to take action to protect what UNESCO has recognises as “intangible cultural heritage”.^{xvi}

Views from local government

46. Most written evidence from the local government sector indicated its view that the current system is broadly satisfactory.^{xvii} As discussed below, local government respondents were uniformly opposed to the Bill, with most seeing the proposals as deeply flawed. Whilst it did not arise as a strong theme in evidence, the Committee is also aware from five years' work scrutinising council budgets of the financial pressures that many local authorities are under. When finances are tight, regulatory departments within councils are often amongst the first to feel the strain. From the consumer's perspective, this can sometimes look like "needless" and a frustrating delay.
47. Some councils agreed that the present system was far from perfect. For instance,

^{xv} SOLAR, written evidence

^{xvi} Scottish Showmen's Guild, supplementary submission

^{xvii} Angus Council, written evidence

West Lothian Council sympathised with views that the current system has become hard to navigate, in part because of the diverse approaches taken across different councils. However, it queried whether travelling funfairs should be looked at in isolation. It considered there was a need to consider the licensing system in the 1982 Act in the round.^{xviii}

48. SOLAR agreed with this. Its representative told us that licensing lawyers "work to the best of our ability to make the existing legislation work" but that is antiquated. She told us:

” The 1982 act is now almost 40 years old. Life has moved on from the circumstances that applied when it was implemented. It no longer reflects how modern-day life, events and activities take place. For example, it does not reflect the electronic age. The whole act needs an overhaul so that all licences are updated, revised, and brought into the modern age, and so that processes are streamlined at the same time as maintaining support for the public safety reasons for which the act was brought in.^{xix}

Fees

49. For showpeople, the issue of costs is a clear instance of how the 1982 Act has gone wrong. It was not disputed that applications for bigger shows could take longer and raise more complex issues. Other than that, they could see little justification for such a wide variation in fee regimes across 32 local council areas and felt that in the vast majority of cases costs were higher than they should be for an administrative process which legislation expressly stipulates must be revenue neutral. Views included that fees were "scandalous", that councils were "ripping the fairs off", and that the current system had become a "stealth tax" on the funfairs." Councils in the larger urban areas were singled out for particular criticism.

50. Referring to oral evidence from the representative of West Dunbartonshire Council, Richard Lyle said that in his view there was a clear correlation between higher fees and fewer shows:

” At your last meeting ... one council stated that it had only three fairs in a year. Its licence cost is £708. I suggest that that cost reduces the number of applications.^{xx}

51. For his part, West Dunbartonshire Council's representative told us the figure of £708 had been arrived follow an "in-depth fee review" in 2014 with an aim of breaking even, after years of setting low fees that left the department operating at a loss. He said there was no guidance to councils on setting fees for public entertainment licences. He also told us that:

” Because we do not have a bespoke fee for temporary public entertainment, those are covered under public entertainment.^{xxi}

^{xviii} West Lothian Council, written evidence

^{xix} Official Report, 20 January, col 7

^{xx} Official Report, 3 February, col 35

52. We take this to mean that applicants for temporary licence applications at West Dunbartonshire Council pay the same as applicants for full licences. We are not certain whether this would make that council an outlier or whether it is a relatively common practice.^{xxii} It might be that there are defensible reasons for such a policy (i.e because it is no cheaper to administer one process than the other) but it again raises questions as to whether councils sometimes blur the distinction between full and temporary licences.
53. Every other council to express a view on how they calculated fees confirmed that, in their view, it was done solely on a cost-recovery basis. Some queried the accuracy of some of the information on fees provided in the Financial Memorandum.
54. The Scottish Government's otherwise largely neutral memorandum to the Committee on the Bill raised questions as to whether all councils were setting fees on the basis of cost recovery, given the wide disparity in prices.

The broader culture around funfairs, licensing and showpeople

55. A number of stakeholders considered that the application process brought to light negative views and stereotypes about travelling funfairs and about showpeople. The suggestion was that the current process was not a level playing field, not only because of its formal rules, but because of some underlying assumptions that influenced how the system was applied.
56. As already noted, there were, at the very least, suspicions that some councils were setting high fees because they did not want travelling funfairs. If so, this would appear to be unlawful on the face of it, although it would require a test case to establish whether, on the facts, any council was actually doing so. The Committee notes comments in the Financial Memorandum that one council had stated that travelling funfairs have been prohibited since 1993, but that operators had indicated (to the Parliament's Non-Government Bills Unit, who prepared on the Memorandum on Mr Lyle's behalf) that some travelling funfairs have in fact been held there since then.^{xxiii}
57. Fair Scotland commented that:

^{xxi} Official Report. 20 January, Col 32

^{xxii} The Financial Memorandum says that councils were asked to provide information on the cost of applying for a temporary public entertainment licences.

^{xxiii} Table 1

” Fundamentally, we believe that a minority of Local Authorities do not use the flexibility offered in the current legislation in a positive manner, choosing instead to use the policy tools encased in the Civic Government Act 1982 as a blunt instrument to restrict the economic activities of Showpeople based on a negative discourse around ‘travellers’ and historical tropes around the fair as a place of danger. Showmen have abided by laws and regulations since the establishment of the Showmen's Guild over 150 years ago, and have been instrumental in shaping health and safety legislation on fairs deemed a “low risk industry” by the Health and Safety Executive, a fact not well publicised by the media, who prefer to sensationalise rare incidents that are far more prevalent in comparable sectors.^{xxiv}

58. We also heard views that, whatever the original intentions, processes under the 1982 Act had become bureaucratic and legalistic. Alex James Colquhoun of the Showmen's Guild told us it was not an environment many showpeople felt comfortable in, and they had to recruit lawyers in order, in their view, to have a level playing field with the council.^{xxv} He said some councils' application of the rules risked making the situation for operators "unworkable" with some parts of Scotland becoming "no-go areas" for travelling funfairs.^{xxvi}
59. Although they have a travelling lifestyle, not all showpeople consider themselves to be Travellers.^{xxvii} Andrew Masterton confirmed Fair Scotland's evidence that showmen are often perceived as being Travellers, with all the negative stereotyping that may entail. He told us of experiences of being called to public hearings late in the day to respond to complaints based on what he called hearsay, speculation, nimbyism, or pure prejudice. Whether a show that had been weeks or months in preparation could go ahead would hang on the outcome of the hearing.^{xxviii}
60. Both the Member in Charge and the Scottish Showmen's Guild emphasised that they remained keen to work with and not against councils, and to have good working relations. Alex James Coloquhoun told us some councils were "fair and excellent" in their application of the rules. Fife Council was one example of a council cited positively in evidence by showpeople.^{xxix} We note that its fee regime (a £50 flat fee) serves as a template for the one in the Bill, whilst its standard application handling time (28 days) is closer to the 21-day limit set out in the Bill than most other councils.^{xxx}
61. Councils which did provide evidence contested views that their approach was

^{xxiv} Fair Scotland, written evidence

^{xxv} Official Report, 20 January col 9; John McKissock, written evidence

^{xxvi} Official Report, 20 January, col 3-5

^{xxvii} Scottish Showmen's Guild, supplementary evidence

^{xxviii} Official Report, 20 January, col 17-18

^{xxix} Official Report, 20 January, col 20

^{xxx} It should be stressed that these are the facts as reported by other sources, including the Financial Memorandum and Policy Memorandum, and Stage 1 evidence. We did not receive evidence directly from Fife Council.

disproportionate, and that this might indicate any sort of presumption against allowing funfairs. They said the job of councils as licensing authorities was to balance different views and interests in order to reach an outcome that was fair to everyone; to ensure local residents had the opportunity to comment and to protect public safety. Some councils indicated that there were particular sensitivities around travelling funfairs. Renfrewshire Council told us that "funfairs can generate more adverse interest from local communities than many other licensing activities under that Act [the 1982 Act]".^{xxx}

62. As regards perceptions of delays or last-minute decision-making, local government representatives said that travelling funfair applications would be amongst a diverse range of matters a licensing department would be considering. Licensing departments work to deadlines and, if the law required one type of licence to be fast-tracked, that would have consequences for the others.^{xxx} Representatives also told us some perceived "delays" in processing applications could be due to missing information or because there needed to be a site visit. This was not evidence of a failing or unfair system but of council staff being attentive to their responsibilities.^{xxx}

^{xxx} Renfrewshire Council, written evidence

^{xxx} Official Report, 20 January, col 35

^{xxx} Official Report, 20 January, col 32

Views on the Bill

General views

63. The overall package of measures set out in the Bill marks a rebalancing to enable licences to be granted more easily, more cheaply, and - it is hoped - more often. In the case of the local government sector which was unanimously opposed to the Bill, objections in principle to the Bill were expressed not in terms of objecting to this aim, but more as an accumulation of objections to specific provisions in the Bill, as discussed further below. This led some councils to describe the Bill in terms such as "unrealistic" and "unworkable".^{xxxiv} Particular concerns were expressed about the Bill's impact on public safety.^{xxxv} In its introductory comments on the Bill, SOLAR said:

” The aim of a licensing system should be to reach a balance between the rights of funfair operators and the interests of local communities. We do not believe that the proposed bill achieves this. The bill, as currently drafted, is weighted towards operators and ignores the interests of local communities. 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.^{xxxvi}

64. SOLAR was also amongst a number of council stakeholders to object in principle to drawing up a bespoke licensing system solely for travelling funfairs and, in so doing, fettering councils' discretion to tailor the process:

” 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 by implemented licensing systems at local levels. Why single out funfair licences for review and not all licences issued under the 1982 Act? Is this a fair to other businesses who require to apply for licences under the 1982 Act?^{xxxvii}

65. We also note views put forward that reducing councils' regulatory discretion (within the parameters of the 1982 Act) should be opposed because is a centralisation of power.^{xxxviii}
66. As might be expected, there was almost unanimous support from the showpeople community and from some others. They saw the Bill as an opportunity to help revitalise not only the showman way of life but also a centuries-old tradition - part of our intangible heritage - that they thought was at risk of extinction unless we take

^{xxxiv} Renfrewshire Council, South Ayrshire Council, written evidence

^{xxxv} SOLAR, written evidence

^{xxxvi} SOLAR, written evidence

^{xxxvii} SOLAR, written evidence

^{xxxviii} James Hunter, written evidence

action soon. Passing the Bill would also be a recognition of the distinctive place of fairs in our history and laws, and would help address and reverse some of the historical discrimination and marginalisation it was felt showpeople have encountered.^{xxxix} This body of evidence also saw wider benefits in encouraging more shows to take place, for instance increased footfall in town centres, and the opportunity to take shows -or bring them back - to smaller communities, because of the reduced financial risk under the new process. Historic Environment Scotland argued that:

” ... travelling funfairs can play a wider role in the regeneration of our historic places. Travelling funfairs can help to reactivate vacant parts of our towns and cities and drive economic development in these locations. We therefore support measures that will promote the temporary re-use of vacant and derelict land.

67. A significant body of opinion, while supporting the Bill as a step forward, considered it would be better still to remove any requirement for travelling funfairs to go through a statutory licensing process. The Member in Charge and the Scottish Showmen's Guild referred to a "39-year mistake" that had led to a licensing regime being imposed on travelling funfairs in the first place. The Guild's Alex James Colquhoun told us that the then Parliamentary agent for the Showmen's Guild of Great Britain "did not pick up on" the 1982 Act and its impact on the Guild's Scottish membership when it was going through Westminster and that the showpeople community in Scotland had been paying the price ever since. He said the 1982 Act "came in through the back door".^{xi}
68. The Guild told us Scotland's position was an anomalous position not only in a UK context but in an international one. In England, funfairs are not within the ambit of the Licensing Act 2003, whilst the Guild's European counterparts had told them (in communications shared with the Committee^{xli}) that there was nothing equivalent to the Scottish level of regulation on the continent. The Guild said that, because of this, operators would not come to Scotland. We note views that the seemingly more favourable position for fair operators in England may also be for partly historic reasons, including the relatively more privileged and protected status of fairs and markets under English statutes.^{xlii}
69. The Guild and others argued that the regulation of particular funfairs could be left to the general law (including health and safety law) and to commercial arrangements made between the council and the operator. Some other evidence indicated that this could be backed up with a system of "portable" licences (establishing the operator as a fit and proper person etc) that attach to the person and not the event, and that they could carry across council boundaries. The Guild said that this was more or less the system in place in England, where a document known as a "licence to occupy" (which we understand to be a private arrangement between the council and the operator) is the key working document. In its supplementary evidence, the Guild provided some materials from English councils as examples of

^{xxxix} Official Report, 29 January, col 26-27

^{xi} Official Report, 20 January, col 4-5

^{xli} Annexes to supplementary submission

^{xlii} Official Report, 3 February, col 43

this different approach.

70. Nonetheless, the Guild made clear at Stage 1 that its strong preference was for the Bill to be passed, as it would be a step forward compared to the status quo. We note the views of a licensing solicitor in private practice who feared that, whatever the good intentions behind the Bill, it could result in the same drift towards "bureaucratic overreach" (as he saw it) that had taken place under the 1982 Act. He said it would be better to take travelling funfairs out of the licensing system entirely.^{xliii}

Views on specific provisions in the proposed new system

71. Definition of travelling funfair: most evidence considered the definition used in the Bill to be adequate and sufficiently clear.^{xliv} Questions were raised on some definitional matters, such as whether it might capture very small events not within the ambit of the current licensing system. The Committee's notes view that the six week time limit would be likely to exclude one long-established temporary funfair: the Burntisland fair in Fife. This does not mean the funfair could no longer go ahead: the operator would either have to apply for a permanent licence under the 1982 Act, or put on a shorter show.
72. Fees: Evidence was sharply divided on fees. Funfair operators considered a flat fee of £50 to be adequate, citing the example of Fife Council. Councils said this proposal was simply not realistic as it did not reflect the real cost of handling applications. This might include holding hearings at which public objections could be raised or making site visits. The representative of South Ayrshire Council told us that, with its current fee of £222 for a temporary entertainment licence, the council "barely washes its face".^{xlv}
73. Councils told us that the proposals would mean that handling applications would become a loss-making activity requiring shortfalls to be made up elsewhere. One suggestion was the losses would likely be covered by increasing the charge for remaining types of public entertainment licences.^{xlvi} It was even suggested that the low fee would be so attractive that it might change the behaviour of some applicants for public entertainment licences.^{xlvii}
74. Decision period and whether the Bill allows hearings: Views were just as divided on the provision requiring decisions on applications to be made within 21 days of the application being received, otherwise the licence would be automatically granted. Showpeople considered this to be sufficient time to process the application. Given

^{xliii} John McKissock, written evidence

^{xliv} An exception was West Lothian which considered that the definition risked being too wide.

^{xlv} Official Report, 29 January, col 32

^{xlvi} West Lothian Council, written evidence

^{xlvii} SOLAR, written evidence

that most fairs take place on council land, handing in the application was highly unlikely to be the first intimation to the council that the operator wished to stage an event. The Member in Charge told us that "nobody in their right mind" would leave it until 21 days beforehand to notify the council.^{xlvi}

75. Councils indicated that the 21-day limit would often simply be unworkable. As mentioned earlier, they did not accept that handling an application was a paper process.^{xlix} Some said the 21-day limit could lead to applications being refused on grounds of public safety if the alternative is that they are timed out and are automatically granted without due diligence having been done.

76. Whilst some councils indicated they might be able to work with a time limit of 28 days,ⁱ most thought more time would be needed, not least to allow committee meetings or hearings. They queried whether the Bill would actually require committee meetings or public hearings in connection with the application. The Bill is silent on this matter, but the Policy Memorandum states:

” As is the case with the temporary licence provision in the 1982 Act, there is no requirement in the Bill for licensing authorities to give public notice of an application or to consult anyone other than the police and fire services; there is no provision for public objections to an application or a right to make representations; and authorities have no power to vary the terms of a licence. Richard Lyle does not consider these necessary, proportionate, and/or reasonable parts of a temporary licensing system (with licences limited to a maximum period of six weeks).ⁱⁱ

77. Local government evidence indicated that committee meetings or public hearings are a vital element of the current process. It also queried how licensing authorities could exercise the remaining responsibilities (such as establishing that the operator is a fit and proper person) without the ability to hold hearings or meetings where this appears necessary. SOLAR's representative said that, if hearings were to be allowed under the Bill, 8-12 weeks would seem a reasonable overall time period, as this would also allow time for applicants to consider and respond to objections.^{lii}

78. As mentioned earlier, we heard views that many objections under the 1982 Act are made on the basis of prejudice or misinformation, and that this is one of the main reasons for showpeople losing confidence in the system. Another concern is that an objections process tends to privilege the voices of objectors over the majority who may have no complaint.^{liii} Andrew Masterton told us that local communities should be given the opportunity to make representations about the allocation of travelling fair licences and that he was happy, as an operator himself, to go before a licensing committee to assess his suitability based on his track record. He said that the requirement to consult the police under the Bill would allow the suitability of an applicant to be determined based on their criminal record and, through police liaison work, could also be the "funnel" for community welfare considerations to be

xlvi Official Report, 3 February, col 38

xlix West Lothian Council, written evidence

i East Ayrshire Council, written evidence

ii At paragraph 36

lii Official Report, 20 January, col 22

channelled.^{liv}

79. Information to be provided to councils: again, most evidence from showpeople considered this provision to be largely adequate. Councils considered that some important elements were lacking, for instance the operator's insurance cover, site plans or safety certificates. Some councils agreed with operators that the requirement to propose an alternative venue for the funfair was a good one, and an improvement on the current law.^{lv} But SOLAR asked why this should not also be extended to other applicants for public entertainment licences.^{lvi}
80. Statutory consultees: we heard various suggestions as to who, alongside the police and fire service, ought to be consulted under the Bill. Some suggestions related to internal council departments. As the council is the licensing authority, it would seem unnecessary for this to appear on the face of the Bill. Other suggestions included the Health and Safety Executive, community councils and NHS bodies and ambulance services.
81. Appeals system: some evidence (including from the Scottish Courts and Tribunal Service) queried why the appeal was to the Sheriff Principal rather than to the Sheriff Court, which would seem a more standard provision. The lack of detail on the face of the Bill as to what appeals would entail was also criticised. It was not clear to some respondents how well an appeals provision would benefit operators, given that the appeal might not be heard until after the event.

Member in charge's views

82. We invited Richard Lyle to respond to critical comments about some aspects of the new process. In relation to proposals to amend time limits to enable councils to hold hearings and hear any objections, as well as views in favour of an application, Mr Lyle said that:

” If we adopted SOLAR’s suggestion of six to eight weeks, what would be the point of the bill? We are presently at three months. Six to eight weeks is not an option—we might as well leave matters as they are.^{lvii}
83. Mr Lyle added that health and safety matters would not need to be comprehensively addressed during the 21-day period, as operators were already bound by health and safety requirements^{lviii}. In relation to views that councils should consult community councils on applications, Mr Lyle expressed no clear view, saying that this was something a council could do.^{lix}

^{liii} Official Report, 20 January, col 29

^{liv} Official Report, 20 January, col 17

^{lv} West Lothian Council, written evidence

^{lvi} SOLAR, written submission

^{lvii} Official Report 3 February, col 37

^{lviii} Official Report 3 February, col 38

84. In relation to provisions in the Bill on fees, Mr Lyle indicated that he would be open to discussing amendments to bring the fee level up to around £150, but that the higher fees currently charged by several councils were "ridiculous".^{lix}
85. Speaking in more general terms, Mr Lyle acknowledged views that had arisen in evidence that the 1982 Act required to be overhauled. He said that, if the Bill was timed out in this Session of Parliament, he hoped the next Scottish Government would revisit the whole issue early in the next Session, to resolve the unfairness showpeople experience under the current system. Mr Lyle expressed his frustration that prior efforts by the Scottish Government to improve the situation, via the working group and the 2017 guidance, had "not come to much", because councils had left the guidance "on a shelf".^{lxi}

lix Official Report 3 February, col 42

lx Official Report 3 February, col 40

lxi Official Report 3 February, col 41-42

Conclusions and recommendations

86. The Committee thanks Richard Lyle for bringing this Bill forward. It has shone a light on an important but sometimes neglected part of Scottish life. The Committee agrees with Richard Lyle that travelling funfairs are a living, breathing element of our cultural heritage that should be celebrated. We strongly support the underlying aim of the Bill: to have a flourishing travelling funfair trade, enjoyed by Scottish families, which showpeople can make a decent living from, and pass on to the next generation.
87. We are persuaded by evidence at Stage 1 that the trade is in trouble and that its future is not secure. This is a long-term issue that precedes the pandemic. We are not certain that the evidence we have received at Stage 1 firmly establishes that the current licensing system, under the Civic Government (Scotland) Act 1982, is the only major cause of this decline. More research would need to be done. But we agree that the current licensing system is a significant element in that decline. Showpeople look on a system that seems more complex and legalistic than it needs to be, creates significant financial risk, and - they feel - may sometimes give undue influence to a vocal minority of objectors.
88. Views that some licensing authorities (i.e. councils) are exercising their powers so as to deter funfairs from taking place are also concerning. And it strains credulity that those councils charging fees many hundreds, or even thousands, of pounds, for temporary travelling funfair licences are doing so on the basis of cost recovery. If the cost is truly as high, then something has gone wrong.
89. It was reassuring to note views that in some areas the working relationship between licensing authorities and funfair operators remains good. In other cases, the relationship appears to have almost broken down. It was concerning to note evidence of an "oppositional" culture, with council officials seemingly viewed as operator's "opponents" in their bid to obtain a licence, rather than impartial arbiters of a regulatory system that is about balancing interests fairly. There is a need for a reset in the relationship.
90. However, the Committee consider the Bill to be a flawed vehicle for bringing about the positive change that is needed. Our reasons include:
- Time-limits: we consider that the 21-day limit set out in the Bill will often be inadequate for councils to apply due diligence. In practice, this would lead to other licensing matters being pushed back in the queue in the rush to get the application through. It could also create a perverse incentive for councils to refuse an application on a precautionary basis because if they do not, the application will be granted by default, thus defeating the aim of having more, not fewer, licences granted;
 - Public involvement: We accept there are views that the current system may over-prioritise a "noisy minority" of objectors over a "silent majority" who have no objection to a funfair taking place within a community. We are also concerned by evidence that objections can be ill-informed or based on prejudice. However, local residents are entitled to have their say and it

appears there is no formal process to allow this under the Bill. Even if there were, it would be hard to achieve this within 21 days;

- Fees: we agree there is a need to look at fees currently charged. But councils who gave evidence were unanimous that a flat fee of £50 would not enable cost recovery. There is a strong risk of councils pushing up fees in other areas to cover losses under the new system;
- Appeals system: we are not opposed in principle to having a right to appeal the refusal or revocation of a temporary licence, or conditions in a licence. But more detail is needed on how the appeal right would work in practice to assure us that it is meaningful especially given the representations made on the need for a swift process.

91. The Committee agrees that there is a desperate need for reform in this area. The evidence we've received highlights very real barriers to putting on travelling funfairs, which are an important part of Scotland's culture. However, we have not had time to fully investigate the issues at stake, and our concerns about the specific proposals contained in the Bill are highlighted in the paragraph above. Very generally, we agree that there are three broad options for reform, as set out below, but we were unable to come to a position as to which of these would provide an appropriate means of achieving the Bill's intended purpose:

- reform of the 1982 Act to address the issues raised by travelling showpeople and highlighted in this Bill
- the creation of a separate licensing system for travelling funfairs, as proposed in this Bill
- to remove travelling funfairs from the licensing system altogether, so that – as in England - controls on how a fair is run are negotiated as part of the lease of the land the fair takes place on.

We therefore recommend that the Scottish Government works with the sector to review these options early next session and brings forward proposals to support travelling funfairs. Separately, the Committee agrees that there are wider issues with the 1982 Act, which would benefit from reforms dealing with other licensable activities.

92. The Committee has not been able to gather sufficient information to support the general principles of the Bill.

