

To: Regulatory Functions Board

On: 1st February 2018

Report by: Director of Finance and Resources

Heading: Response to Consultation: Licensing of Funfairs (Scotland) Bill

1. Summary

- 1.1 The purpose of this report is to advise the Board of a consultation on a proposed Member's Bill in relation to the licensing of funfairs and to seek approval of a proposed response to the consultation.
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2. Recommendations

- 2.1 It is recommended that the Board:-
- 2.1.1 Agree the terms of the proposed response to consultation attached at Appendix 1; and
- 2.1.2 Otherwise note the contents of the report.
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3. Background

- 3.1 The Council has a policy, similar to all other local authorities in Scotland, which requires funfairs in its area to be licensed as a type of public entertainment under the licensing provisions of the Civic Government (Scotland) Act 1982 ("the 1982 Act").

- 3.2 In December 2017, a consultation was published by Richard Lyle MSP in relation to a proposed Member's Bill. Although the terms of a Bill have not been published, the consultation document proposes a change to the licensing of these events. The consultation suggests that funfairs should no longer be regulated under the licensing provisions of the 1982 Act and that a new licensing regime should be introduced under separate legislation. The consultation is available online at http://www.parliament.scot/S5MembersBills/Funfairs_consultation_FIN_AL.pdf
- 3.3 In the consultation document, Mr Lyle highlights various concerns in relation to the existing system of licensing for funfairs. In particular, he states that the existing licensing system is applied inconsistently across the country, with differing timescales for processing applications and varying fee structures. He states that the current system has a damaging effect on showpeople in Scotland. He also notes that the existing licensing system does not allow an alternative site to be licensed where the site requested in the original licence application becomes unavailable at short notice. The consultation document suggests these factors limit flexibility for fairground operators and their businesses.
- 3.4 Mr Lyle acknowledges the importance of ensuring health and safety at funfairs, but states that public entertainment licensing is not required to regulate this aspect of these events.
- 3.5 The consultation document contains twelve questions which seek views on the proposed Bill. A proposed response to these questions is attached at Appendix 1. The Board is asked to approve the terms of this proposed response as recommended at Paragraph 2.1.1 above.

Implications of the Report

1. **Financial** – There are no implications at this stage. Should a Member's Bill be introduced and become law, there may be financial implications for the Council as the proposal envisages that reduced fees may be payable to local authorities.
2. **HR & Organisational Development** - None

3. **Community Planning – None**
4. **Legal** – There are no implications at this stage, as there is only a proposal, at this stage, to bring forward a Member’s Bill.
5. **Property/Assets – None**
6. **Information Technology - None**
7. **Equality & Human Rights -**
 - (b) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals’ human rights have been identified arising from the recommendations contained in the report, which only seeks approval of a consultation response.
8. **Health & Safety - None**
9. **Procurement – None**
10. **Risk - None**
11. **Privacy Impact - None**
12. **Cosla Policy Position – None**

List of Background Papers- None.

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Proposed Response to Consultation

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

Our position on the exemption of funfairs from licensing under the Civic Government (Scotland) Act 1982 (“the 1982 Act”) and to create a distinct new licensing system for funfairs is best classified in the “partially opposed” category. We have a number of reservations on the existing proposal.

In particular, the 1982 Act allows local authorities to consider refusal of a licence application for a funfair on various grounds. Applications are sent to Police Scotland who may respond with any concerns they hold on the fitness of an applicant. In addition, the 1982 Act allows local licensing authorities to refuse a licence where the proposed location/ land is unsuitable. This may be due to the location, character or condition of a site, the nature and extent of the proposed funfair, the people likely to attend the event and the possibility of undue public nuisance, or factors relating to public order or public safety.

While we note the aims of the proposal are to allow flexibility to fairground operators and to achieve consistency in application processes across Scotland, we also consider it important that local licensing authorities continue to have a broad discretion to license and regulate these events. Our experience is that funfairs are capable of generating significant concerns from local residents. We have seen recent examples of this (for example, proximity to neighbouring residences or sensitive sites). Notwithstanding that in Renfrewshire we advertise and consult beyond the minimum statutory requirements, members of the public still feel, on occasion, that the amount of consultation and advertising of these events does not go far enough. We would therefore be concerned that each application for a funfair licence continues to be subject to the wide consultation we currently undertake, which is possible due to the current licensing provisions of the 1982 Act.

We also have concerns that there should continue to be proper scrutiny of these applications by local licensing authorities. Where a representation or objection under the 1982 Act is made, local authorities require to be able to decide applications in accordance with both the applicable legislation (for example, there are statutory deadlines for arranging Council meetings) and their own governance arrangements. Usually, contentious applications are decided by a Board or committee of elected members. This means adequate time is needed to consult on an application and to arrange a hearing before Councillors, if necessary.

Given that the suitability of a site is a key issue during the consultation on an application, it is therefore also difficult to see how a request to license an alternative

site can be properly scrutinised, and approved, at short notice. A failure to properly consider the suitability of an alternative site, or to do so without effective public engagement, may not be in the interests of local communities.

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

We consider that the change envisaged by the proposal would need a Bill, although it may be that some of the aims may be able to be achieved through a more limited amendment of the 1982 Act- for example, a reduction in the statutory consultation periods for these applications could be clarified as an amendment to the 1982 Act, to achieve more consistency.

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

We can see that the proposal may be attractive to showmen. However, we do have a number of concerns about the proposal, as set out in the response to Question 1.

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

We refer to the response to Question1, above. We are concerned that a reduction in the scrutiny of applications, or reduced scope for local licensing authorities to engage with local communities or other interested bodies, could be detrimental to the interests of the general public.

Question 5- What do you think the maximum time available should be for local authorities to make a decision on an application to hold a funfair?

We think that more than 28 days is required.

In Renfrewshire, notwithstanding the information contained at page 8 of the consultation document, we have accepted a number of temporary applications to facilitate licence applications for such events at relatively short notice.

This does not come across from the terms of the consultation document. We do *request* public entertainment licence applications, where possible, three months in advance of the event, given (a) the potential for objections to be made, which would necessitate a hearing before Councillors, and (b) the potential for an appeal to the sheriff court by an objector against the grant of a full licence (which could preclude a licence being issued timeously). However, we have accepted later applications, which applicants make at an increased risk to themselves of not being licensed by the time of their event.

It would therefore be incorrect to state that we reject applications unless they are made three months prior to a funfair. Equally, the information on page 8 of the consultation document is not a correct estimate of how long applications in respect of funfairs currently take to be processed in Renfrewshire.

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

In relation to fees under the 1982 Act, these require to be set to ensure that the fees recovered are sufficient to meet the expenses of the local licensing authority. This should include the staffing and other associated costs relating to the licensing process. We do not see that this position should change.

In relation to fees, while Renfrewshire's fee for licensing funfairs is one of the higher fees shown, the reason for this is that the Council has a policy of advertising these particular applications, which are seen as carrying a higher risk of causing public concern, in a local newspaper. The cost of doing so is expensive, amounting to a substantial proportion of the licensing fee charged. If the cost of advertising were removed from the charge, the application fee in Renfrewshire would be less than that applying in a number of other authorities. It is stated on page 7 of the consultation document that some authorities "must be profiting" from the fees charged. We challenge this assumption, given the above circumstances, in Renfrewshire.

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

Reference is made to the response to Question 6. Fees for licensing applications are, as a rule, based on cost recovery. Cost recovery would not be achieved if fees for unsuccessful applications were returned. In addition, it is not clear to us why applications with merit should attract a fee, on the one hand, while applications found to be without merit (but which still involve the same, or a similar, amount of work) should be free.

Question 8- Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on: showpeople/ local authorities/ general public?

We have not seen a draft Bill at this stage and, as such, it is therefore difficult to comment on this.

From the terms of the consultation document, the terms of the consultation may be correct in its assertion that the proposal would have a positive financial impact on showpeople. However, we would observe that some funfairs form part of a wider entertainment event including live music and other attractions. The removal from public entertainment licensing of the funfair element of such an event could therefore result in two separate licences being required, one under the 1982 Act and another under a new system of funfair licensing.

This could have the effect of two licence application fees being payable, rather than one, at local events. As such, the effect of the proposal might in some cases be to increase the overall costs to event organisers or funfair operators.

We are not sure what financial impact there could be on the general public.

The impact on local licensing authorities would depend upon what local authorities are expected to do, on the one hand, and the level of fee to be payable in return. As indicated in the response to Question 6 above, in Renfrewshire applications are advertised in a local newspaper. If a new licensing system were to preclude this approach, the cost of advertising applications would no longer be incurred. In the absence of details of any proposed new licensing regime, and any proposed fee, we cannot comment further on the financial impact of the proposal.

Question 9- What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation?

We note the comments on pages 15 and 16 of the consultation document. We have no further observations to make.

Question 10- In what ways could any negative impact of the Bill on equality be minimised or avoided?

Given the response to Question 9, we have nothing further to add.

Question 11- Do you consider that the Bill can be delivered sustainably, ie without having likely future disproportionate economic, social and/or environmental impacts?

As noted above, we cannot comment in detail in advance of publication of a draft Bill. However, we would have concerns, as noted in the response to Question 1, if any proposed new system were to involve less engagement from local communities. Our experience is that funfairs may from time to time generate considerable concern from the public in relation to noise, litter and the suitability (perhaps including also the sensitivity) of a proposed site. We would therefore be concerned if the public were to be excluded, or involved less, in the licensing process.

Question 12- Do you have any other comments or suggestions on the proposal to exempt funfairs from Public Entertainment Licensing requirements and to create a distinct new licensing system for funfairs in Scotland?

We feel that any new system of funfair licensing, should it be introduced, must strike a balance which safeguards the interests of the general public as well as addressing the business interests of fairground operators.

While we appreciate that the consultation document states that issues such as health and safety are not the concern of licensing authorities, we have concerns that the absence of a robust licensing system could result in genuine local concerns being overlooked. Although the licensing system may not be the appropriate forum in which to address all the concerns which might be raised, as the licensing authority we do require to have regard to public order and public safety.

Further, we have recently required to be involved in discussions with other agencies, in relation to health and safety and other matters, arising from our role as licensing authority.

In particular, following upon a recent decision in Renfrewshire to license a funfair, we received strong representations from the Health and Safety Executive (HSE) that a site we had licensed was completely unsuitable, having regard to the location being in a COMAH zone (Control of Major Accident Hazards site). The HSE looked to us as licensing authority to resolve the situation, notwithstanding the existence of other legislation and the HSE's own role. This resulted in this authority adopting a policy to consult further in the vicinity of such sites and to create a rebuttable presumption that an application in the vicinity of these hazards would be refused.

We would be concerned, against the above background, if we were no longer able to follow this increased consultation procedure, or to refuse applications for sites identified as clearly unsuitable.

A further example of the expectations upon local licensing authorities arose following a fairground accident at Strathclyde Park, Hamilton, in June 2016. A circular was sent to local licensing authorities by the HSE setting out a clear expectation that safety certificates for rides be scrutinised by the local licensing authority, with a view to them being updated with further non-destructive testing (in circumstances where the certificates produced showed checks had been carried out by a particular engineer). The consultation document does not reflect that local licensing authorities, across the country, are already carrying out checks that appropriate safety and insurance documentation exist, prior to issuing a licence for a funfair.

In summary, we are anxious that any new licensing system will continue to give local licensing authorities sufficient discretion to fully scrutinise the suitability of both fairground operators and the locations at which they propose to operate, to ensure the safety of communities and to protect them from undue public nuisance.