

Proposed Licensing of Funfairs (Scotland) Bill

Page 2: About you

Are you responding as an individual or on behalf of an organisation?

an individual

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

Academic with expertise in a relevant subject

Please select the category which best describes your organisation

No Response

Please choose one of the following:

I would like this response to be anonymous (the response may be published, but no name)

Please insert your name or the name of your organisation. If you choose the first option above, this should be the name as you wish it to be published. If you choose the second or third option, a name is still required, but it will not be published.

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

Page 7: Your views on the proposal - Aim and approach

Q1. 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?

Partially supportive

Please explain the reasons for your response

It is regrettable that the vast majority of Scotland's citizens are supportive of fairgrounds and are unlikely to

Q1. 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?

be aware of the reasons why the industry no longer has a presence during local holidays. At one point, every town and city had an annual fair, however in recent years this has declined rapidly, which is unusual as travelling fairgrounds across Europe including England are thriving. The absence of a local fair may be perceived as part of a general decline of funfairs, when in fact the current licensing regime has contributed significantly to the financial viability of the funfair itself. Scotland appears to stand in opposition a great many other European countries who are supportive of the travelling funfair industry, recognising their unique social contribution to cultural life. Indeed, countries like, Belgium, Germany and France have granted UNESCO Intangible Cultural Status to such fairs. As a final year doctoral student, who has been researching the negative impact of the current licensing regime, I am supportive of this bill because my research highlights how the current system is being interpreted by local authorities to the detriment to the travelling fairground industry. I have tracked and documented over 30 years of campaigning on this issue by the Showmen's Guild and various individual showmen. As the Showmen's Guild is operated by its own members; it is highly significant that its members have consistently maintained the position that the current system is detrimental to the industry. My findings suggest that the concerns of the Showmen's Guild are not given equal weight in comparison to similar industries and issues, when there are opportunities for legislative change. For example, the Scottish Showmen's Guild was a key contributor to the Regulatory Reform Group up until 2012, submitting reports and often referred to in official documentation; however they were not included in the resultant bill, despite the Regulatory Reform Group acknowledging their concerns. Yet, legislation for comparable travelling businesses (mobile food traders) was introduced that simplified legislation across all 32 local authorities in Scotland. Therefore there is scope and precedent in which to make policy changes for travelling businesses and delete the licensing system and align the system to the UK, where this type of additional legislation does not exist. It is a fallacy to suggest that Scottish funfairs require more regulation than other funfairs across the UK. There is no credible evidence base to suggest such a position.

Q2. Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)?

No

Please explain the reasons for your response

Many proposals to improve and make better the current system put forward by Showmen to improve policy has not been taken forward by policymakers. I have researched over 1000 documents in national and local archives and the Scottish Guild's own archive that document these concerns and proposals to various MP's, MSP's, Ministers, Committees and the Cross-Party Working Group of the Scottish Showmen's Guild, including a petition to the Scottish Parliament in 2004. The Showmen's Guild have also proactively pursued meetings with COSLA, who have consistently refused to meet with the Scottish Showmen's Guild. Even the formation of the Scottish Showmen's Cross Party Working Group has produced no policy change at the margins, which is unusual in comparison to other Cross Party groups. Indeed, after considerable delay, the guidance document referred to in the consultation process, interprets the Civic Government (Scotland) Act 1982 section 42 in the most highly negative and disproportionate manner. The guidelines appear to be making recommendations based on the very worst interpretations made by local authorities which are the very interpretations Scottish Showmen have highlighted as discriminatory and disproportionate. An opportunity was also lost in through the Scottish Government's Better Regulation agenda which aimed to "eliminate obsolete and inefficient regulation, tackle inconsistencies in regulatory systems and enhance Scotland's competitiveness by championing the five principles of Better Regulation - The purpose is to ensure opportunities for all of Scotland to flourish, through increasing sustainable economic growth. Through this framework, the Scottish Government had an opportunity to tackle the inconsistent application of the Civic Government (Scotland) Act 1982. As mentioned other similar business models have benefitted from this agenda such as Mobile Food Traders when it was clear existing legislation brought financial losses to traders. Bed and Breakfast operators also benefitted from this agenda. There was no rational justification as to why Scottish Showpeople could not have benefited from this process, yet they were clearly excluded. It should also be noted that Showmen are unlikely to use the courts since they are individual businesses. Such actions may negatively impact on their relationship with local authorities. Therefore it is unlikely, that there is any other route to change legislation as most other means have been exhausted by the Scottish Showmen's Guild.

Q3. What do you think would be the main advantages, if any, of the proposal?

The main advantage of this bill would be to stop the decline of this industry, much of which has been driven by a negative policy agenda over the last 30 or so years. It cannot be overstated that this industry once lost, cannot be rebuilt. The bill would also maintain a livelihood and tradition that has been part of Scotland's cultural history for hundreds of years. It is very easy to demonstrate the significance historically of funfairs and the Showmen who run them, from being the very first business people to invest in innovative transport from bicycles to steam engines, and the introduction of travelling theatres and early cinema. However the contemporary contribution of showmen is overlooked and undervalued. Most showmen carry considerable financial risk to introduce novel and innovative show and rides, from modern trampolines to the development of soft play areas via the 'bouncy castle'. Therefore contemporary showmen play a key role in the development of Scottish leisure industries. It would be a mistake to stifle this valuable hub of creativity, the benefit of this bill is that it would not only create a more sustainable future for the industry, it would also impact positively on the leisure industry itself. It should also be pointed out that although the consultation speaks specifically about Showmen: this industry supports a number of jobs indirectly; from traditional tilt makers to the food and drinks industry, as such it can only benefit other jobs in the economy. Last, there are advantageous to the general public, to whom fees are inevitably passed on when licensing costs are high.

Q4. What do you think will be the main disadvantages, if any, of the proposal?

In comparison to leaving the current system in place, there would likely be no disadvantage to either the local authorities, showmen or the general public. As stated in the consultation document, travelling funfairs are already subject to a greater degree of health and safety regulation than other businesses and legislation already exists to control for noise and public order. Moreover, any additional conditions can be included in the let of the land, as already happens in some cases.

Q5. What do you think the maximum time available should be for local authorities to make a decision on an application to hold a funfair?

unsure

Please explain the reasons for your response.

The current unpredictability and variance within local authority processing times means travelling fair operators cannot plan their businesses effectively in the same way as other businesses do and thereby the current system stifles economic development in the industry. There should be a period of time in which Showmen can apply for other licences elsewhere if one application is refused. My research has uncovered many occasions when local authorities grant licences the day before a fair is due to be held, this prevents the fairground operator from reapplying to other areas, given the lack of time available. This disproportionately affects the smaller businesses that attend these fairs, and is a practise that is patently unjust. The Showmen's Guild in Scotland have been advised by other fairground operators from neighbouring regions and other Western European countries that they will not come to Scotland due to the unpredictable nature of the licensing regime, i.e. they cannot justify the outlay on lets and travel only to be unable to trade if a licence is refused or not granted in time. The consultation also states that local authorities are "dependent on the resources available... and the pressures that are on them at any given time". This suggests that there is a need to simplify the current process, which would significantly reduce the burden on local authorities.

Q6. How do you think fees should be determined for local authorities to process an application?

single fee fixed in statute

Please explain the reasons for your response, including details of the amount of any suggested fees.

It should be noted that travelling fairs operators already pay significant amounts of money to rent

Q6. How do you think fees should be determined for local authorities to process an application?

fairground sites from local authorities or private persons along with various associated charges and bonds. It is usual to leave fees to the discretion of the local authorities; however, some local authorities have been charging exorbitant fees, not in keeping with the value and viability of the fair. Many local authorities do not appear to recognise the cultural and social significance of the fair, viewing the fair simply as a revenue raising opportunity. There is no transparency in the decision making that result in these high fees. Fees do not include a breakdown of the service they provide and appear at odds in terms of scale with other comparable licensing fees. Therefore it is undesirable for local authorities to continue to set fees. The fees should be set in consultation with the Showmen's Guild, taking into account the average number of days lost due to bad weather, a point that should be made explicit to policymakers is that this business is wholly dependent on the vagaries of Scottish weather and therefore is unenviably vulnerable to an unpredictable climate. In contrast to festival-goers, families tend not to visit funfairs in the rain.

Q7. What is your view on what should happen to the fee in cases where an application is refused?

None of the fee returnable to the applicant

Please explain the reasons for your response

If the fees are for administrative costs only, i.e. based on a 'recovery basis' only then there should be no need for refunds as the cost of fees would be small. The hourly cost of a senior administrator to process applications is much the same across all local authorities, so there is no reason why applications fees should have such a wide variance anyway.

Page 14: Financial implications

Q8. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

	Significant increase in cost	Some increase in cost	Broadly cost-neutral	Some reduction in cost	Significant reduction in cost	Unsure
(a) Showpeople				X		
(b) Local authorities				X		
(c) General public					X	

Please explain the reasons for your response

There would be some reduction in costs to Showmen, since fees would be set more realistically. Smaller operators would see the most significant reduction in costs, since costs incurred by operators inevitably get passed on to stall holders, kiosks etc. This is an important point, as due to the increasingly unpredictable nature of the funfair applications, many small operators have left the industry and funfairs have lost their unique British characteristics, with some funfairs consisting of large amusement rides and very few smaller enterprises, similar to US style 'carnivals'. Thus, the financial impact would benefit smaller enterprises to a greater extent. It is worth pointing out that recent rulings by the Competition and Markets Authority (CMA) have made entry to the fairground industry more accessible, and more competitive, therefore the review of the licensing system should take into consideration how the licensing system in Scotland appears to stifle competition, given the very large fees in some areas. Local authorities would also benefit financially, as they are no longer duplicating administrative practises that exist in other bureaucratic procedures. i.e. the let of the land. The general public would see a positive financial benefit

Q8. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

as they will no longer be subject to increased costs being passed onto the cost of the rides and stalls, plus as fairs as become more competitive costs will decrease.

Page 15: Equalities

Q9. 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?

Slightly positive

Please explain the reasons for your response

Showmen and their families are often confused with Gypsies and Travellers. The general public often have a literal understanding of these groups, and therefore Showpeople often face discrimination without enjoying the protection of equalities legislation. The implementation of this proposal should be viewed as a positive step towards ensuring that this cultural tradition continues to thrive. Since the goal of sustainable development is to enable all people to enjoy a better quality of life "without exception". If the current licensing regime prevails then Scotland will be the only country in Western Europe to be without its own fairground industry and community. If this happens, these cultural traditions can never be re-established. That would be a poor indictment on the Scottish Government commitment to preserving its rich and varied cultural heritage traditions. This is an important point since it has been recognised within the Scottish Parliament that some Showmen have faced "outright hostility" from some local authorities. As Showpeople are a minority population, the Scottish Parliament should seek to address such attitudes.

Q10. In what ways could any negative impact of the proposed Bill on equality be minimised or avoided?

There is no negative impact associated with this Bill in relation to equality duties.

Page 17: Sustainability

Q11. Do you consider that the proposed Bill can be delivered sustainably i.e. without having likely future disproportionate economic, social and/or environmental impacts?

Yes

Please explain the reasons for your response:

Sustainable economic growth is supported by this proposal, which will help free small and medium sized business from overly-bureaucratic regulation which is stifling their economic viability. The current system is having a negative impact on not only the economic sustainability of those who put on funfairs, but also on local communities. Where fairs are held they are likely to have a positive economic impact on local areas, bringing tourists and visitors into the area, and therefore simplifying the system will see a positive economic impact on communities. Unique to funfairs, there are no social, cultural or age barriers to attending funfairs; therefore their value to community cohesion is unrivalled. This is an aspect of cultural life that sadly, gains little policy or research attention. There are creative opportunities in this area, which many cultural organisations across Europe have recognised; hopefully this Bill will go some way in which to recognise their positive social impact. That said there is often a perception that funfairs 'attract' anti-social behaviour. As for public disorder, a wide ranging report on fairgrounds in 2001 (the Ninth Report)

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stated that the belief that fairgrounds 'attracted' crime and disorder did not stand up to scrutiny, and that these beliefs were often based on misplaced perceptions and superstition. Credit has to be given to the Scottish Showmen's Guild who supported the ban on the consumption of alcohol outdoors. This demonstrates that Showmen are only interested in securing the welfare of attendees of these fairs; their livelihoods depend on their satisfaction. Therefore it is simply preposterous to suggest there would be a negative social impact. As for environmental impact, fairground operators already pay substantial bonds to use local authority leased lands. It is in their interest to take care of the land they are parked upon. Indeed, a benefit of travelling funfairs is that they encourage people to visit local parks and common land, which may be underutilised.

Page 18: General

Q12. 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?

It should be pointed out that fairground operators are making multiple applications over a short summer season for a license that lasts only a few days in some cases. Therefore, the volume and variance of the licensing regime has a disproportionate effect on the industry making the business unsustainable in the long term. It is not just the fees that showmen are concerned with; my findings suggest that the interpretation of the legislation is equally concerning and often more of a concern. This is an important point that appears to be remiss in the consultation document and is central to the way that travelling funfairs operate. Showmen are used to managing a considerable amount of paperwork and documentation with regards to health and safety, transport and business documentation. However, many local authorities change the application process on a whim, with no notification system in place. Often Showmen are only aware of new changes once the application is being processed. Also very little is mentioned in the consultation document about how some local authorities are incorrectly interpreting the notification scheme mentioned in the current legislation. It is also clear from the legislation that this scheme is intended for the use of permanent licenses, however many local authorities are using this element arbitrarily, and in a way that is not in the spirit of the original legislation. Using this system for short-term fairs of only two – three days is unnecessary and disproportionate, and undoubtedly presents a negative image of travelling fairs given it invites 'objections', pressurising local elected representatives to act upon the views of a tiny minority of local populations. The vast majority of local communities support fairgrounds; however a few very vocal members of the community can skew the licensing system to support their opposition. For example, one such example was the rejection of a license to hold a fair based on the grounds that a resident's dog did not like the noise from a visiting fair. The consequences of such a system means unreasonable conditions can often be placed on operators which are seriously detrimental to the character of the fair, for example the placement of signs around the fair that asks for children not to scream. Such a system is also biased against the Showmen as they are not ordinarily resident in the area they propose to hold a fair. Some acknowledgement of this could be taken into account in any upcoming review. The appeals process is also often redundant in the current system, since quite often, operators are not informed of a decision on a licence application until the day before the fair is due to start, meaning that considerable investment needs to be made without knowing that a licence will be granted; and thus leaving a number of fairground operators who are in transit to the proposed site, without projected income for that fair. Under these circumstances, there is no right of appeal, given the event will have passed by the time a legal challenge can be made. In conclusion, the current system as it stands is seriously detrimental to Showmen, even across the 32 local authorities, the system produces a measure of confusion as to how the act should be interpreted, with some local authorities attempting to impose their own health and safety standards which should only be applied using national standards, the HSE is a higher authority in such matters. Moreover, if viewed within the existing regulatory framework offends much of the 5 key regulatory principles: transparency in the way that fees are set and decisions are made: proportionality in the way that fees, and the lack of flexibility disproportionality affects funfair operators: consistency as per 32 different local interpretations of the bill and finally, the system appears to target this industry where existing regulation already exists. As for accountability, much is made of local decision making, however there appears to be no reason why application forms and guidance material should be consistent across all local authorities, this is itself

Q12. 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?

would be a useful policy change at the margins. In opposition to the consultation document, I am of the opinion that funfairs can be exempted from the Civic Government (Scotland) Act 1982 as the relevant section already exempts a number of activities/venues from the public entertainment licensing regime such as athletic/sport grounds and educational establishments. Showmen of Scotland have consistently stated over many years that the current system is harmful to their business, sacrificing much of their private time and financial resources while trying to run their own businesses. It is remarkable and hugely surprising that successive governments have not acknowledged and acted upon these concerns. It is also highly significant that Scotland appear to be at odds with the rest of Europe in recognising their cultural significance. This Bill presents an opportunity for Scottish policy makers to acknowledge the long-time concerns of the travelling funfair industry as a legitimate concern and a recognise their cultural importance in doing so.