

**Licensing of Funfairs (Scotland) Bill**

**Response to a proposal for a Bill to exempt travelling funfairs from public entertainment licensing requirements and to create a distinct new licensing system for travelling funfairs in Scotland**

**The Showmen's Guild of Scotland**

## Introduction

Travelling fairs have operated in Scotland since the Roman era, but they rose to major prominence in Scottish cultural life in the middle ages. Charter Fairs (operating under a charter granted by the monarch) such as the Lammas Fair in St Andrews, Kirkcaldy Links Market<sup>1</sup> and Glasgow Fair all date to this period, and continue to this day. Fairs intersect and support major local festivals and traditions, such as the Common Ridings in the Borders, or are, like the Links Market or the Rood Fair in Dumfries, major events in their own right.

Over this period fairs have had a significant impact on Scotland's social and economic development – whether in stimulating commerce through the great medieval fairs, or changing the way in which Scots enjoyed their leisure time. Popular theatre, cinema, Bingo, Video Games and of course, thrill rides all trace their beginnings to Scottish travelling fairs and therefore the travelling fairground acts as an important innovation hub for new trends and innovations in the leisure industry. The cinema, bicycle, video amusement game, trampoline, were all brought to the wider public by the investments of showmen who often shouldered significant financial risk long before these innovations were taken up by other industries. The fairground industry is also supported by a number of secondary and tertiary businesses, with many small traditional companies relying on the fairground industry to survive.

The vast majority of Scotland's citizens are supportive of fairgrounds and are unlikely to be aware of the reasons why the industry no longer has a presence during local holidays. The absence of a local fair may be perceived as part of a general decline, when in fact the current licensing regime has contributed significantly to a decline in the financial viability of the funfair itself.

The Showmen's Guild is the main organisation that represents showmen, and have been the accepted negotiating body at both national and local level since 1908.<sup>2</sup>

The evidence presented in this response is based on spans over 30 years of concerns expressed to various MP's, MSP's, Ministers, licensing committees and the Cross-Party Working Group of the Scottish Showmen's Guild.

## Why are we responding?

It is clear from the evidence presented in this document that the current licensing regime has a disproportionate effect on the industry. Despite concerns being raised about its detrimental impact for over 30 years, and a stark decline in the numbers of the members of the Scottish section of the Showmen's Guild (see table below), no action has been taken by successive Scottish Governments. Currently, the application process to hold a travelling funfair in a particular location

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<sup>1</sup>National Fairground and Circus Archive <https://www.sheffield.ac.uk/nfca/researchandarticles/kirkcaldylinksmarket>

<sup>2</sup> <http://scottishshowmensguild.org/>

involves various inconsistencies which act as deterrent for future generations who may wish to enter the business.

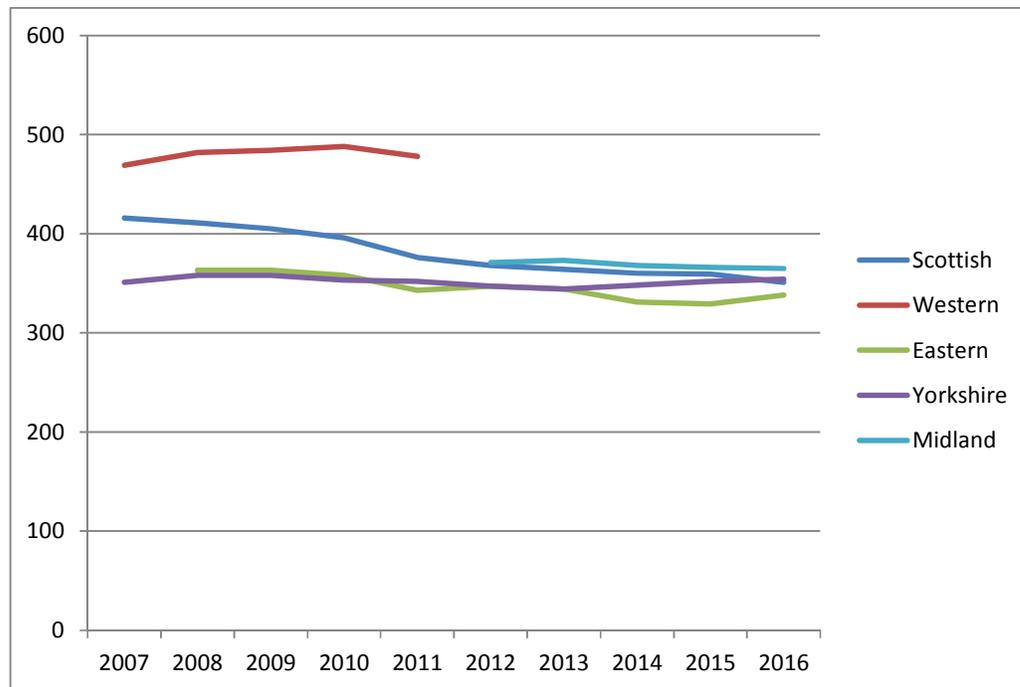


Table 1: Falling membership of the Scottish section of the Showmen's Guild Source: Showmen's Guild of Great Britain

These inconsistencies across Scotland are causing a number of difficulties for fairground operators, who find it increasingly difficult to:

- cope with the economic uncertainty given the inability to ascertain whether an application will be determined in time and then if refused the lack of an efficient method of appeal
- manage the arbitrary nature of local conditions that are often imposed with little or no consultation
- deal with the conflict created by a few objectors
- manage the sheer scale of the bureaucracy with no legal assistance
- carry the financial risk where a licence being refused or not being granted can mean that family and colleagues will not be paid
- deal with an inflexible system that does not recognise the unique characteristics of the industry
- maintain a viable business given the high fees being charged in some parts of the country (costs relating to temporary public entertainment licence and any other necessary permissions).

**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*

The Showmen's Guild thank and welcome Mr Lyle MSP for raising the damaging impact that the public entertainment licensing regime has on the Guild's members. This impacts on our member's business and in turn their family life. If they are unable to make a living by operating travelling fairs then they need to find a new way of life. Every time this happens the rich cultural life of Scotland is diminished. We have long raised our concerns with MP, MSP, government officials, and council officers to no avail.

We respectfully submit that the proposal set out in the consultation simply does not go far enough. It is the Showmen's Guild's position that the Bill should exempt travelling fairs from the current licensing requirements by amending the Civic Government (Scotland) Act 1982. A half-way house such as a new licensing regime will only allow local authorities to continue to thwart our member's attempts to operate travelling funfairs and to earn a living. An exemption from the licensing regime would hopefully allow travelling fairs to flourish and protect our member's way of life.

**Existing Health and Safety obligations**

In coming to the view that travelling fairs should be exempt from the licensing regime it has been noted that there is a system in place to make sure that all rides must comply with regulations under the Health and Safety Executive (HSE). This role is narrated by the "Fairgrounds and Amusement Parks: Guidance of Safe Practice" rules (HSG175:2007)

This means travelling fairs in the UK are one Europe's most highly regulated outdoor events. Given this active involvement on the part of HSE it is unnecessary for local authorities to have the ability to impose conditions relating to health and safety; given that the HSE is a higher authority in such matters.

The development of best practice and minimum safety requirements for funfairs has been enshrined in the above legislation through the involvement and co-operation of the Showmens Guild of Great Britain<sup>3</sup> who have worked hand in hand with HSE officers to promote the highest standards of public safety. The steering group which has oversight of the guidance is the Fairgrounds and Amusement Parks Joint Advisory Committee (FJAC) which is a body made up of the HSE and various trade bodies including the Showmen's Guild of Great Britain (of which the

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<sup>3</sup> The Showmens Guild of Great Britain. <http://www.showmensguild.co.uk/home>

Scottish Section is a division). The Showmen's Guild has been at the very forefront of safety and best practice for decades.

### **How to exempt travelling funfairs**

It is useful to note that the relevant section of the Civic Government (Scotland) Act 1982 already exempts a number of activities/venues from the public entertainment licensing regime such as athletic/sport grounds and educational establishments. Therefore, there is an existing system of exemptions that can be utilised.

In order to amend the 1982 Act we must identify beyond doubt what constitutes a travelling fair so to give local authorities and police clarity. The starting point for a definition of a travelling fair can be found in part 12 of the Gambling Act 2005, which states—

“286 Interpretation: travelling fair

For the purposes of this Act—

- (a) “fair” means a fair consisting wholly or principally of the provision of amusements, and
- (b) a fair held on a day in a calendar year is a “travelling fair” if provided—
  - (i) wholly or principally by persons who travel from place to place for the purpose of providing fairs, and
  - (ii) at a place no part of which has been used for the provision of a fair on more than 27 days in that calendar year.”<sup>4</sup>

While useful this interpretation does not quite reflect the modern practice of fairs where due to a decrease in available sites a site may be utilised for additional periods during the calendar year. For the avoidance of doubt, it is not proposed that a fair would exceed 27 consecutive days in duration so there is no suggestion that this proposal is seeking to undermine permanent public entertainment licensing.

As a consequence the Section 286(b)(ii) could be reworded as follows:

“(ii) at a place no part of which has been used for the provision of a fair on more than 27 consecutive days.”

By way of example, the site of a fair may be used for 15 days during the Scottish Gala season in June and then used again for 20 days during the October school holidays.

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<sup>4</sup> Gambling Act 2005 – Part 12, section 286. Available at: <http://www.legislation.gov.uk/ukpga/2005/19/section/286>.

This amendment – in our submission – is easily achieved and can be drafted in such a fashion that is understandable and offers all parties certainty.

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

*No*

As Mr Lyle MSP refers to in his consultation document, he has – with the Guild's support and thanks – led a number of efforts to reduce the regulatory burden on our members and travelling funfairs. These efforts have frustratingly come to naught.

Most disappointingly was the Scottish Government's promise to issue "*...guidance to assist licensing authorities in their consideration of funfair applications*". This guidance merely reinstates the terms of the 1982 Act with no additional guidance to licensing authorities.<sup>5</sup> This is disappointing since the Showmen's Guild has raised concerns about the licensing regime from the date of its inception some thirty years ago. Even if these guidelines were to be amended in the future, without legislative change, there would be no compulsion on local authorities to change their current practices. Moreover, this would not improve consistency across all local authorities, as each authority will consider and act upon it on an individual, rather than a collective, basis.

### **What do you think would be the main advantages, if any, of the proposal?**

It is important to note that in our submission many different groups in the community would be impacted on by these changes:

#### **Operators and associated businesses**

By removing travelling fairs from the licensing regime the Bill should have a positive effect on the 400 or so businesses operating across Scotland. This would have a direct impact as the requirements to hold a funfair would be less costly and bureaucratic.

It would also help support our way of life – one that is a struggle for many due to the burden of over regulation. As noted elsewhere in this document children are turning away from the Showpeople way of life owing to these difficulties

There would also be a number of indirect benefits, such as being able to better plan business activities over the short, medium and long term. The proposal will also affect the myriad of local businesses that support local fairs, from engineers to food retailers.

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<sup>5</sup> <http://www.gov.scot/Publications/2017/07/5619>

### **Attendees and enthusiasts**

For those visiting funfairs, or wanting to visit funfairs, the proposal should have a positive impact, as it should be easier for funfairs to operate, and therefore fairs can be held across Scotland for people to enjoy. The public would be less inhibited by last minute cancellation of fairs, funfairs, and enthusiasts would be able to attend more fairs.

### **Communities**

It is important to note that travelling funfairs would still need the consent of the landowner to operate. An exemption from the licensing regime does not in any way trigger a "free for all". For example, if a travelling funfair was to operate on local authority owned land then that local authority could seek to impose additional conditions on the operator by way of the licence to occupy or lease.

Communities would benefit from a tradition that has no cultural barriers and brings many direct and indirect, social and economic benefits to the local area.

### **What do you think would be the main disadvantages, if any, of the proposal?**

It is difficult to identify any disadvantages that this change may bring about. This view is underpinned by the fact that travelling funfairs operating in the rest of the UK do not require a public entertainment licence or similar permission and we are unaware of any adverse consequences.

Therefore, operators in England and Wales do not face many of these barriers when conducting their businesses. They are not subject to varying, often high, fees (which are non-refundable if unsuccessful); they are not subject to a lengthy application and decision-making process; and they are not tied to one specific site, so can switch sites more easily if they need to do so. Funfairs which operate in Scotland are therefore at a distinct disadvantage, compared to those operating in the rest of the UK.

Travelling fairs do not require a specific licence to operate in the rest of the UK. Funfairs are not categorised as "regulated entertainment" and so are not "licensable activities" for the purposes of the Licensing Act 2003<sup>6</sup> which applies to England and Wales. The premise of the licensing regime was to regulate activities around music at large festivals and concerts and given that music in fairgrounds was considered incidental to the activity undertaken at fairgrounds, therefore no licensing regime in England was adopted.

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<sup>6</sup> Licensing Act 2003 (c.17). Available at: <http://www.legislation.gov.uk/ukpga/2003/17/contents>.

Depending on what activities may be part of a travelling fair, other licences/notices may be required in England and Wales, such as a temporary event notice<sup>7</sup> or street trading licence<sup>8</sup>, to cover the sale of alcohol and/or food. Such applications can be approved or refused by a local council. In Northern Ireland, funfairs are also not part of national public entertainment legislation<sup>9</sup> and are instead able to be controlled by district councils by passing bye-laws<sup>10</sup> with regards to issues such as the hours of operation and safety.

Therefore there appears to be no reason why Scotland should operate a more rigorous licensing regime for travelling fairs than other parts of the UK.

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

*Less than 14 days – 7 days*

It should be noted that our response to this question is premised on the Scottish Parliament rejecting our proposal that travelling fairs should be deregulated.

The holding of a travelling fair is of course an outdoor activity and therefore, showpeople are at the mercy of the weather and the condition of the ground. Often fairs will need to be relocated due to waterlogging or other unforeseen circumstances. Our members have experiences of having to reapply for a new licence for a site a few metres from the original site – this left the member facing a six-month waiting period.

The period suggested strikes a reasonable and proportionate balance between the needs of applicants to change the location of a travelling fair late in the day and the local authority's need to approve the proposed location.

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

*Power of Ministers to set scale of fees*

It should be noted that our response to this question is premised on the Scottish Parliament rejecting our main proposal that travelling fairs should be deregulated.

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<sup>7</sup> Temporary Event Notice for England and Wales. Details available at: <https://www.gov.uk/temporary-events-notice>.

<sup>8</sup> Street Trading Licence for England and Wales. Details available at: <https://www.gov.uk/street-trading-licence>.

<sup>9</sup> The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. Available at: <http://www.legislation.gov.uk/nisi/1985/1208/contents>.

<sup>10</sup> Under article 67 of the Pollution Control and Local Government (Northern Ireland) Order 1978. Available at: <http://www.legislation.gov.uk/nisi/1978/1049/article/67>.

Local authorities have consistently demonstrated that they are unable or unwilling to set a scale of fees that complies with the relevant legislative requirements, i.e. the fees do not comply with the principle that fees should be cost neutral.

We fear that local authorities see licensing fees as a revenue generator and therefore are unwilling to amend fees so to reflect the actual cost involved.

It should be noted that whilst Scottish Government officials may advise that fees can be challenged, this can only be done by way of a judicial review. This is a cost prohibitive procedure and a success court action will not necessarily mean that other local authorities will fall into line.

The Guild notes that the Licensing (Scotland) Act 2005 allows ministers to set a scale of fees and this appears to work well in practice.

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

*Part of the fee returnable to the applicant*

It should be noted that our response to this question is premised on the Scottish Parliament rejecting our main proposal that travelling fairs should be deregulated.

In the event of a refusal of an application local authorities should be obliged to return the portion of the fee linked to work that has yet to be carried out. For example, if the application was refused prior to council officers attending a site to carry out inspections then a substantial portion should be returned. It is manifestly unfair for the local authority to in effect profit from the refusal of an application. Such a return would support the notion that licensing should be cost neutral.

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

*Showpeople: Significant reduction in cost*

*Local authorities: Broad cost-neutral*

*General public: No cost implications*

Our answers to this question are based on the Bill removing travelling funfairs from the licensing regime.

### **Showpeople**

An exemption from the licensing regime would represent a truly significant cost saving. Such a saving would be a vital first step in protecting Showpeople's way of life. There is first and foremost the cost of applying for a licence. However, a number of licensing authorities have introduced extra judicial elements to the light touch temporary public entertainment licensing regime, for example a requirement to display a site notice.

These are also the intangible benefits such as not having to spend time and resources completing forms, liaising with the council and possibly appearing at a hearing. This time and energy can be invested into operating the business.

### **Local authorities**

As noted elsewhere in this response local authorities are under a statutory obligation to make sure that the administration and enforcement of licensing matters are "cost neutral". Therefore, we must assume that exempting travelling funfairs from the licensing regime will be cost neutral.

### **General public**

No cost implications as the licensing regime is supposedly cost neutral and therefore the general public should see no financial impact.

### **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?**

Our proposal to modify this Bill so to exempt travelling funfairs from the licensing regime is fundamentally about fairness, and bringing fairness to operators who have been disadvantaged by the current licensing arrangements. The proposal seeks to establish a level playing field between Scotland and England and Wales. Consequently, fairground operators will no longer find themselves economically worse off than similar operators in England, and other parts of the UK.

The Bill itself should have no disproportionate effect, or indeed any negative or positive effect, on any particular group with characteristics protected by the Equality Act 2010. This is because the vast majority of fairground operators are members of the showpeople community, and not members of the Scottish Gypsy/Traveller community who are a legally defined ethnic community. However, it is important to note that Scottish Showpeople can face many similar issues to Scottish Gypsy/Travellers, in terms of discrimination, which the Equalities Act 2010 covers by placing a legal responsibility on local authorities to act in a non-discriminatory manner as a public body to anyone discriminated against on the grounds of mistaken perception.

Showpeople are both a business and cultural community, often of many generations, whose livelihood and wellbeing is dependent on being able to travel and stage funfairs around the country. Showpeople report that their own children and grandchildren are becoming less and less inclined to follow and support the family business because of the difficulties they experience through the uncertainty of income from the licensing system, leading to considerable concern that this way of life is under threat. An improved and more proportionate licensing system should ensure this cultural tradition which exists across many countries in Western Europe, will continue in Scotland.

Given that the Scottish Government is committed to equalities and its commitment to a fair and inclusive national identity it should review the current legislation to make sure it does not constitute direct discrimination.

**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 – as outlined elsewhere in our response this will potentially support the showpeople's way of life and be of real economic and cultural benefit to them. Furthermore, it is the Guild's submission that by allowing travelling funfairs to flourish and in turn create a meeting point for cultures that social cohesion will be strengthened.

**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?**

The Showmen's Guild are a non-profit trade association and the governing body for all funfairs and fairground rides operated by guild members in Scotland. We represent around 400 members each being a small business in their own right, totalling over 2,000 showpeople in Scotland.

With this experience it is our submission that the only way to protect showpeoples' way of life is to exempt travelling funfairs from the 1982 Act. The fact that the travelling funfairs are not regulated in England and Wales without adverse comment and the stringent health and safety requirements travelling funfair operators comply mean that there is no prejudice to public safety by exempting this activity from the licensing regime.