

Travelling Funfairs (Licensing) (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Travelling Funfairs (Licensing) (Scotland) Bill, introduced in the Scottish Parliament on 29 April 2020. They have been prepared by the Parliament's Non-Government Bills Unit on behalf of Richard Lyle MSP, the member who introduced the Bill.

2. The following other accompanying documents are published separately:

- statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 69–LC);
- a Financial Memorandum (SP Bill 69–FM);
- a Policy Memorandum (SP Bill 69–PM).

3. The Explanatory Notes are intended to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

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The Bill

4. The Bill exempts travelling funfairs (which are defined in the Bill) from being licensable under the Civic Government (Scotland) Act 1982¹ and requires them to be licensed under a new regime which is set out in the Bill.

5. The Bill is in 20 sections as follows—

- Section 1 defines travelling funfairs;
- Sections 2-4 provide for travelling funfairs to be licensed, by local authorities, under the Bill rather than under the Civic Government (Scotland) Act 1982 and make it an offence to operate such a funfair without a licence;
- Sections 5 and 6 deal with licence applications, including by making it an offence to make false statements;
- Sections 7-11 deal with the process for handling applications, including timescales, consultation, grounds for refusal and licence conditions;
- Section 12 makes it an offence to breach a condition or other provision of a licence;
- Section 13 allows local authorities to revoke a licence;
- Section 14 allows for appeals against decisions made by the licensing authority;
- Sections 15 and 16 provide for entry, inspection and search powers and procedures; and
- Sections 17-20 are general provisions, including consequential amendments, commencement and saving provisions and the short title.

¹ The Civic Government (Scotland) Act 1982 (c.45). Available at: <http://www.legislation.gov.uk/ukpga/1982/45/contents>.

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Commentary on sections

Travelling funfairs to be licensed under this Act, not the Civic Government (Scotland) Act 1982

Section 1: Meaning of travelling funfair

6. Subsection (1) defines a travelling funfair for the purposes of the Bill. This describes the type of activity which will no longer be licensable under the 1982 Act, and which also will be subject to the new licensing regime provided for in the Bill.

7. The definition includes that a funfair is only a travelling funfair under the Bill while it remains on a site for no longer than six weeks (see paragraph 9). Therefore, any funfair which is to remain on a site for longer than six consecutive weeks would not be licensable under the Bill in respect of that site.

8. Subsection (2) provides examples of the structures and equipment commonly found at funfairs, but subsection (3) makes clear that those examples are not to be taken as definitive, i.e. a travelling funfair need not feature all the examples to be classified as a travelling funfair under the Bill.

Section 2: Licence required for travelling funfairs and offence of unlicensed operation

9. Subsection (1) provides that a travelling funfair (as defined in section 1) must have a licence under the Bill to operate. Subsection (2) provides that an offence is committed by the person in charge of a travelling funfair who, without reasonable excuse, causes its operation without a licence. Subsection (3) provides that an offence under this section is liable, on summary conviction², to a maximum penalty of six months in prison, or a £20,000 fine, or to both.

² Summary procedure is used for cases deemed to be less serious. Such cases may be tried before a sheriff or justice of the peace and are conducted without a jury.

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Section 3: Travelling funfairs no longer licensable under Civic Government (Scotland) Act 1982

10. This section adds the site of a travelling funfair to the list of places that do not count as “places of entertainment” under the Civic Government (Scotland) Act 1982. The effect is that, where a local authority has opted to license places of public entertainment under the 1982 Act, this will no longer include travelling funfairs. This section does not otherwise affect the operation of the “public entertainment licence” regime under the 1982 Act.

Licensing authority

Section 4: Local council is licensing authority

11. The licensing authority responsible for licence applications under the Bill will be the council (local authority) for the area that includes the site on which the funfair is to be held. In practice, this means that if a licence application includes (under section 5(3)) an alternative site, this must be located in the same council area as the preferred site.

Applications for licences

Section 5: Application for licence: essential procedure, content etc.

12. This section defines what constitutes a valid application for a licence under the Bill.

13. Subsection (2) lists the requirements for a valid application. This includes that an application need not be made (or signed) by the person who will be in charge of the operation of the fair (i.e. the applicant and prospective licensee) but can be made (or signed) by someone else on that person’s behalf (paragraphs (a) and (b)). It also includes a requirement to include certificates or documents required under applicable enactments relating to public safety or public health. The enactments themselves are not listed as they may vary over time; the certificates or documents might include, for example, those demonstrating that funfair rides have been checked by someone qualified to assess that they are working safely.

14. Subsection (3) allows applicants to describe two sites on an application. This provision allows operators to make advance provision for an alternative site to be used if their preferred site become unusable (or

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otherwise unavailable) before a funfair is scheduled to begin. If an applicant does name two sites on an application, an order of preference must be set out. If the application is granted in respect of both sites, the funfair may only be operated on one of them (see section 9).

15. If two sites are described on an application, subsection (4) provides that the application must be valid in relation to both sites for the application as a whole to be valid. This means, in particular, that an operator would need to describe both sites sufficiently to enable the council to identify them (under section 5(2)(e)). It also means (for example) that, if the list of structures and equipment to be set up on the alternative site differs from the list of structures and equipment to be set up on the preferred site, the certificates provided with the application would need to cover all the structures and equipment on both lists.

16. Under subsection (2)(i), applications must normally be made no later than 28 days before the first day of the funfair. However, subsection (5) requires an application received less than 28 but more than 14 days before the day on which the funfair is to begin also to be treated as valid by the licensing authority, unless it considers that it does not have enough time to consider and decide on the application. An application received less than 14 days before a funfair is to begin is automatically invalid.

17. Subsection (6) gives the Scottish Ministers power to amend, by regulations, the £50 application fee provided for in subsection (2)(d) but only to reflect inflation. Such regulations are subject to the “negative procedure” – that is, they must be laid before the Parliament after they are made and come into force on the day specified in the regulations unless annulled by resolution of the Parliament within 40 days of being laid. The Delegated Powers Memorandum gives further information about this regulation-making power.

Section 6: False statement in application: offence

18. An applicant who makes a false statement in an application, whether knowingly or recklessly, commits an offence under section 6. The offence may also be committed by a person who completes the application on the applicant’s behalf (see section 5(2)(a)) if that person knows the information is false or is reckless in that regard. The maximum penalty, on summary conviction, is a fine at level 4 on the standard scale (currently £2,500).

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Consultation and decision

Section 7: Council to consult police and fire authorities

19. The licensing authority is required to consult Police Scotland and the Scottish Fire and Rescue Service before deciding on a licence application. This is to give the police and fire authorities an opportunity to comment, for example, on whether the applicant has a criminal record that may be relevant to deciding whether he or she is a “fit and proper person” to hold a licence; or on whether the site described raises any particular concerns about public order that might justify an appropriate condition being added.

Section 8: Time limit on decision on whether to grant licence

20. A licensing authority must decide whether or not to grant a valid application within a period of 21 days. This period normally begins when the application is received; but if the application was invalid when first received (for example, because a certificate required under section 5(2)(h) was not attached), the period begins only when the application is made valid (for example, by the council receiving the missing certificate). This means that, if an applicant submits an application only shortly before the 28-day time limit (that is, only slightly more than 28 days before the first day on which the fair is to be operated) and the council then identifies an error or omission that it takes the applicant some days to rectify, the 21-day period might not expire until after the first planned day of operation of the funfair.

Section 9: Grant and refusal of licences

21. A local authority must grant a valid application for a licence unless it is satisfied that one or both of the refusal criteria (set out in subsection (2)) have been met.

22. The first reason for refusal is that the applicant is not a “fit and proper” person to be a licensee. There is no statutory definition of “fit and proper” but it would be understood to exclude, for example, people with previous relevant criminal convictions.

23. The second reason for refusal relates to concerns that operation of the fair might jeopardise the safety and health of the public, but such concerns can justify wholesale refusal only if they cannot be reasonably mitigated by the imposition of conditions on the licence under section 11.

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For example, if the concerns relate only to a particular ride, the council could impose a condition preventing that ride being used, as a more proportionate way of protecting the public than refusing the application altogether.

24. Subsection (3) provides that the granting of a licence allows a travelling funfair to operate on one site only. Where the licence authorises the use of a preferred site and an alternative site, the “one site” referred to in subsection (3) can be either the preferred site or, following notification to the local authority, the alternative site (see subsection (4)). The funfair operator can switch to the alternative site either before or after the licence is granted, but subsection (4) prevents the fair being relocated during its period of operation. Subsection (5) allows a local authority to add a condition to the licence, under section 11, preventing the use of one of the two sites described in an application. This is to address the situation where the local authority believes that there are grounds to refuse a licence for one of two sites named, but not both. Under subsection (6), the local authority must notify the applicant, in writing, of its reasons for refusing a licence application. This is to assist the applicant in deciding whether to appeal against the refusal (under section 14).

Section 10: Grant by default

25. Under subsection (3), a “timeous” valid application is an application that was received at least 28 days before the day on which the fair is to start, and was valid in the same timescale (i.e. it either complied with all the requirements of section 5(2) when received, or any initial invalidity had been resolved at least 28 days before the day on which the fair is to start). Subsections (1) and (4) provide that, if a local authority has not decided on such an application by the day on which the 21-day limit (see section 8) expires then the application is to be treated as granted (i.e. granted by default) on the following day. As a result, an application that is first received after the 28-day deadline, or that is received before that deadline but is only made valid in other respects after the deadline, cannot be granted by default.

26. Subsection (2) provides a general rule that references in the Bill to the grant of a licence include a licence granted by default and should be read as such. A specific exception to this is made in section 11(3) (see below) regarding conditions that can be attached to a licence.

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Conditional licences

Section 11: Conditions

27. Subsection (1) gives local authorities the power to attach certain conditions to a licence at the time it is granted. Subsections (3) and (4) disapply this in the case of a licence granted by default (under section 10), but instead allow the local authority to attach equivalent conditions in the first two days after the licence is granted. Since (under section 10(1)) a licence is granted by default on the day after the 21-day period expires (day 22), this means that any conditions must be attached on either day 23 or day 24. This ensures that the operator still has a few days' notice of the conditions before the first day of operation of the fair.

28. Subsection (2) lists the only types of conditions which may be attached to a licence. A condition under paragraph (a) could prevent the fair operating on one or more of the days applied for, and/or restrict the fair to operating only during more restricted hours than those applied for; but it could not authorise operation on days or at times other than those applied for. Paragraph (b) allows conditions to be set on health and safety grounds, but only by reference to statutory requirements. The net effect of the various conditions that may be attached under this subsection could be to disallow the use of one of the two sites described in an application – if, for example, it would be impossible to operate the fair on that site, at the times applied for, without causing undue noise nuisance to people living in the neighbourhood (see section 9(5)).

29. Subsection (5) provides for a standard condition which applies to all licences (including those granted by default under section 10), which is that licensees must inform the relevant local authority in writing (letter, email, etc) of any significant change of circumstances that may affect the licence, including anything included in an application, or anything which may affect a condition or other provision of the licence.

30. Subsection (6) states that, if requested by the licensee, a local authority must explain in writing why conditions were attached. This is to assist the licensee in deciding whether to appeal against the decision to attach conditions (under section 14).

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Section 12: Offence of breach of condition or other provision of licence

31. It is an offence for a licensee, without reasonable excuse, to breach, or cause or permit a breach, of a condition or other provision of a licence. The maximum penalty on summary conviction for such an offence is a fine at level 3 on the standard scale (currently £1,000).

Revocation of licences

Section 13: Revocation of licence

32. A local authority has the power to revoke a licence it granted (or that was granted by default under section 10) only for one or both of the reasons set out in subsection (2).

33. The first reason is that it has become aware of something it didn't know at the time it granted the licence, either something that it could have known at the time but didn't, or something that only became true in the interim. For example, the council could revoke the licence on the grounds that the licensee is not a fit and proper person, either because of an earlier conviction that it wasn't aware of at the time it granted the licence, or because the licensee has been convicted since the licence was granted.

34. The second reason for revocation is that a condition or other provision of the licence has been breached.

35. A local authority must explain in writing to the licensee its reasons for revoking a licence. This is to assist the licensee in deciding whether to appeal against the revocation (under section 14).

Appeals

Section 14: Appeals to the sheriff principal

36. Subsection (1) provides a right of appeal to the sheriff principal against a decision to refuse a valid application (under section 9), a decision to attach a condition to a licence (under section 11), or a decision to revoke a licence (under section 13). Subsection (2) allows the local authority to be a party to any appeal against its decision. Subsection (3) allows the sheriff principal to receive evidence (something that would not normally be necessary, since most appeals to the sheriff principal are appeals from the

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sheriff court, where all the evidence would already have been considered). Subsection (4) allows the sheriff principal to make ancillary orders, including orders as to how the expenses of the appeal are to be allocated to the parties. Subsection (5) provides that any decision which is being appealed against continues to have effect until the appeal is decided. However, subsection (6) allows the sheriff principal to recall the revocation of a licence or suspend an appealed-against licence condition pending the outcome of an appeal – for example, to allow a fair to continue to operate in the interim. Subsection (7) sets out the range of disposals available to the sheriff principal. Subsection (8) provides that the sheriff principal's decision is final. Subsection (9) allows the sheriff principal to authorise any other sheriff in the same sheriffdom to deal with any particular appeal under this section, or with such appeals generally.

Entry, inspection and search

Section 15: Powers of entry and inspection of licensed travelling funfairs: offence

37. Under this section, officers authorised for the purpose by a local authority, and uniformed police officers, have the power to enter and inspect a licensed travelling funfair to find out whether the terms of the licence are being complied with. If there are concerns that a licence is not being complied with, the attending officer has the power to gather relevant information. A local authority officer seeking to enter and/or inspect a funfair must make every effort to make the licensee (and anyone else acting on behalf of the licensee) aware of their authority to do so. Subsection (3) prevents the inspection powers in this section being used to enter or inspect any place (such as a vehicle or caravan) while it is being used for private living or sleeping accommodation.

38. Subsection (5) makes it an offence for a licensee (or anyone acting on behalf of the licensee) not to permit, or to obstruct, entry or inspection under this section without reasonable excuse. The maximum penalty for this offence, on summary conviction, is a fine at level 3 on the standard scale (currently £1,000).

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Section 16: Warrants for entry and search of unlicensed travelling funfairs: offence

39. If it is suspected that a travelling funfair is operating without a licence, a sheriff or justice of the peace may grant a warrant enabling a uniformed police officer to enter and search the site and funfair in question, using reasonable force if required. Anyone who, without reasonable excuse, fails to permit or obstructs such entry or search commits an offence. The maximum penalty for an offence under this section, on summary conviction, is a fine at level 3 on the standard scale (currently £1,000).

General

Section 17: Consequential amendments of Civic Government (Scotland) Act 1982

40. The 1982 Act provides various exemptions from other licence or offence provisions for the holders of a public entertainment licence, or for funfair operators specifically. As the effect of the Bill is that travelling funfairs will be licensed separately, rather than by means of public entertainment licences, those exemptions have been replicated in the Bill to ensure that travelling funfairs continue to benefit from the existing exemptions.

41. Paragraph (a) amends section 39 of the 1982 Act to ensure that holders of a licence under the Bill will not require a street trader's licence to, for example, sell goods as part of a funfair. Section 39(3)(e) of the 1982 Act exempts any activity licensed under other provisions of the Act (which currently includes the activity of operating a travelling funfair under a public entertainment licence).

42. Paragraph (b) amends section 42(4) of the 1982 Act to ensure that holders of a licence under the Bill will not require a late hours catering licence to, for example, sell food after 11 pm or before 5 am. Section 42(4)(b) of the 1982 Act exempts premises being used in accordance with a public entertainment licence (which currently includes the sites of travelling funfairs).

43. Paragraph (c) amends section 54(3) of the 1982 Act to ensure that holders of a licence under the Bill will not be committing an offence (under section 54(1)) by operating a loudspeaker as part of a travelling

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funfair. Section 54(3)(f) of the 1982 Act already exempts the use of a loudspeaker “by a travelling showman on land which is being used for the purposes of a pleasure fair”; the new paragraph (fa) will sit alongside this to ensure that all uses of loudspeakers in the context of a funfair licensed under the Bill are exempted from the section 54 offence. This would not, however, prevent the local authority attaching a condition to the licence (under section 11(2)(f)) to prevent undue noise from loudspeakers; breach of that condition could still be an offence, but this would be under section 12 of the Bill rather than under section 54 of the 1982 Act.

Section 19: Saving for procedure, licence etc following pre-commencement application under 1982 Act

44. Under this section, any application for a temporary public entertainment licence under the Civic Government (Scotland) Act 1982 to operate a travelling funfair, which the licensing authority has not decided on at the time the Bill’s new licensing regime comes into force, remains subject to the relevant provisions of that Act. This enables the local authority to grant such an application and subsequently enforce the licence under the terms of the 1982 Act, and for the licensee to operate the funfair under those terms, after the Bill’s alternative licensing regime is in place.

45. In addition, the section ensures that any temporary public entertainment licences for travelling funfairs, granted (under the 1982 Act) before the Bill’s new licensing regime comes into force, will continue to be valid for fairs taking place thereafter. This enables the funfair operator to use a licence validly obtained under the 1982 Act, and for the local authority to enforce the licence under the terms of that Act, after the Bill’s alternative licensing regime is in place.

46. In neither of these circumstances would a licence also be required under the Bill.

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