

**REPORT TO:** Licensing Sub-Committee

**MEETING DATE:** 8 February 2018

**BY:** Depute Chief Executive (Resources & People Services)

**SUBJECT:** Scottish Government Licensing Consultations on (1) Sexual Entertainment Venues and (2) Funfairs and consideration on whether to make a resolution to licence Sexual Entertainment Venues

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## **1 PURPOSE**

- 1.1 To remind the Sub-Committee of the current consultation on issues of relevance to Civic Government Licensing and to seek comments on proposed response. To seek guidance from the Sub-Committee regarding a formal resolution to licence Sexual Entertainment Licences.

## **2 RECOMMENDATIONS**

- 2.1 That the Sub-Committee-
- (i) Further consider the consultation on funfairs described at Paragraph 3 below.
  - (ii) Advise the Service Manager (Licensing, Administration & Democratic Services) of the general direction and tenor of any response which the Sub-Committee would wish to submit and any specific points they would wish to make.
  - (iii) instruct the Service Manager (Licensing, Administration & Democratic Services) to initiate the process of making a resolution on Sexual Entertainment Venues or confirm that no such venues are to be licensed in East Lothian.
  - (iv) authorise the Service Manager (Licensing, Administration & Democratic Services) and such staff as she may designate to respond to the consultation on funfairs incorporating the views of the Sub-Committee,
  - (v) authorise the Service Manager (Licensing, Administration & Democratic Services) and such staff as she may designate to initiate an amendment to the resolution on Public Entertainment

Licensing to make allowance for the upcoming statutory changes with regard to Theatres.

- (vi) Accept a further report providing the final terms of the responses to both consultations as issued.

### **3 BACKGROUND**

- 3.1 The Scottish Government have issued a consultation document on the Guidance on the Provisions for Licensing of Sexual Entertainment Venues and Changes to Licensing of Theatres. This consultation was annexed to the report to the Sub-Committee dated 14 December 2017. That consultation closed on 7 February 2018.
- 3.2 Consideration is now required as to whether East Lothian Council should make a resolution in respect of Sexual Entertainment Venues and draft the necessary Statement of Policy which would be required in that connection, or to make a formal declaration that such venues are not to be permitted in East Lothian. There is not currently a licensing regime in place in East Lothian for such venues. If no decision is taken either way, such venues would be able to set up and operate without any licensing control.
- 3.3 The draft guidance also deals with the prospective repeal of the provisions of the Theatres Act 1968 which currently deal with theatre licensing. Once the legislation is in effect, it would be open to the Council to add theatres to the list of activities covered by the resolution on Public Entertainment, which will require a further amendment to the present resolution, and would allow the Sub-Committee also to look again at any issues which have arisen in respect of the recently approved amendment of said resolution. The Sub-Committee are recommended to authorise the initiation of this process, given the nine-month lead-in time to any changes taking effect.
- 3.4 The legislation in respect of these issues is not currently in force but is expected to be activated relatively soon, so that consideration should be taken now as to how these matters will be dealt with by East Lothian Licensing Authority.
- 3.5 A Consultation has been issued by Richard Lyle MSP regarding his proposal for a bill aimed at setting up a new licensing regime for funfairs, outwith the public entertainment umbrella. A copy of this consultation was also attached to the previous report to the Sub-Committee of 14 December 2017
- 3.6 Given recent issues with regard to funfairs in Musselburgh, it is considered that this is an opportunity to comment on potential changes to the law in this area. There are not many questions in the consultation. The Sub-Committee are asked for their comments regarding how these should be responded to. This Consultation is open until 25 February 2018.

#### **4 POLICY IMPLICATIONS**

4.1 None

#### **5 EQUALITIES IMPACT ASSESSMENT**

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

#### **6 RESOURCE IMPLICATIONS**

6.1 Financial- None

6.2 Personnel - none

6.3 Other - None

#### **7 BACKGROUND PAPERS**

7.1 Consultation on Sexual Entertainment Venues and Theatres

7.2 Consultation on licensing of funfairs

7.3 Report to Licensing Sub-Committee of 14.12.17

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<b>DATE</b>	31 January 2018



# **Air Weapons and Licensing (Scotland) Act 2015**

**Consultation on:  
Guidance on the Provisions for Licensing of  
Sexual Entertainment Venues and Changes  
to Licensing of Theatres**

**November 2017**

# **CONSULTATION ON GUIDANCE ON THE PROVISIONS FOR LICENSING OF SEXUAL ENTERTAINMENT VENUES AND CHANGES TO LICENSING OF THEATRES**

## **Introduction**

1. The key aims of civic licensing are the preservation of public safety and order and the prevention of crime. The Scottish Government considers that it is appropriate that sexual entertainment venues should be licensed in order that both performers and customers benefit from a safe, regulated environment and that the licensing of these venues would help limit the risk of criminality, such as prostitution and human trafficking.
2. The Air Weapons and Licensing (Scotland) Act 2015 (the '2015 Act') therefore provides for the creation of a new licensing regime for sexual entertainment venues (SEV), such as lap dancing clubs. The provisions, when commenced, will allow local authorities to licence such venues under the Civic Government (Scotland) Act 1982 (the "1982 Act"). We understand that there are currently only around a dozen such establishments in Scotland.
3. The draft guidance is a work in progress primarily to support implementation of the new licensing regime for SEV. It also includes material on the repeal of the existing mandatory licensing regime for theatrical performances under section 12 of the Theatre Act 1968 and the ability of local authorities to licence theatres under the more flexible public entertainment licence requirements contained within the 1982 Act. The 2015 Act provides for this but much will depend on commencements or amendments to secondary legislation that are still to be made. In particular, details of the timeline will be dependent on the particulars of any commencement order and the guidance will be updated to reflect the final position before publication.

## **Background**

4. The SEV provisions in the 2015 Act were subject to detailed stakeholder engagement, consultation and parliamentary scrutiny. In developing the licensing regime care was taken to balance individual freedom of choice with the right of local authorities to exercise appropriate control and regulation of sexual entertainment venues that operate within their areas.
5. The provisions at section 76 of the 2015 Act establish a specific licensing regime for the regulation of SEV. This allows for greater local control over the provision of such venues by allowing local authorities to licence SEV and to set the number able to operate in their area taking account of local circumstances.
6. However, this is not a mandatory regime and it will be for individual local authorities to determine whether they wish to licence SEV. If a local authority passes a resolution to licence SEV, the resolution must specify a date when it is to take effect, which is at least one year from the date the resolution is passed and the local authority must also prepare a policy statement. Both the resolution

and the policy statement should be published, at the same time and in the same manner, not less than 28 days prior to the resolution taking effect.

7. Where a resolution is in place, the established procedure for considering applications to operate SEV, which is laid out at Schedule 2 of the 1982 Act, should be followed. Where no resolution is in place, no licence will be required to operate SEV.

### **Purpose of Consultation**

8. In carrying out its functions in relation to SEV, a local authority must have regard to non-statutory guidance issued by Ministers. The purpose of this consultation is to invite views on the draft non-statutory guidance which has been developed prior to it being finalised and published.

9. The non- statutory *Guidance on the Provisions for Licensing of Sexual Entertainment Venues and Changes to Licensing of Theatres* at **Annex A** is a technical document to support the operation of the new licensing regime, as such, the guidance cannot go much beyond explaining the legislation in layman's terms. While the interpretation of the primary legislation is ultimately a matter for the courts, the guidance aims to provide advice to local authorities, SEV operators, local people and other interested parties on the new measures introduced by the legislation.

10. The draft guidance takes account of engagement with local authority stakeholders. The views of Scottish Government policy officials with an interest in violence against women and girls, prostitution and human trafficking have also been taken on board to ensure that it recognises the relationship between licensing SEV and other strategies such as *Equally Safe: Scotland's strategy for preventing and eradicating violence against women* and the *Trafficking and Exploitation Strategy*.

11. A non- prescriptive approach has been taken to drafting the guidance as we consider that local authorities are best placed to reflect the views of the communities they serve and to determine whether sexual entertainment establishments should be licensed within their areas and if so, how many and under what conditions.

12. The prime intention of the draft guidance is to assist local authorities in taking forward work in relation to licensing SEV and to help ensure that such activities take place in safe and regulated environments.

13. **It is important that the guidance meets its aims and we would welcome comments on :**

- a) **any areas within the draft non-statutory guidance which you found were unclear or not easily understood, please specify the paragraph**
- b) **other issues which you believe should be taken into account within the guidance.**

14. Please note that this consultation is not seeking views on the legislation relating to the licensing of SEV which was fully explored during the parliamentary passage of the 2015 Act.

### **Deadline for responding**

15. You are invited to send your views and comments on the draft Guidance on the Provisions for Licensing of Sexual Entertainment Venues and Changes to Licensing of Theatres by **midnight on 07/02/2018**.

### **Responding to this Consultation**

16. Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/justice/licensing-of-sexual-entertainment-venues>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before consultation closes at midnight on 07/ 02/ 2018.
17. If you are unable to respond online you can submit a response along with a completed Respondent Information Form (see "Handling your Response" below) to:

Licensing.Consultation@gov.scot

### **Handling your response**

18. If you respond using Citizen Space (<http://consult.scotland.gov.uk>) you will be directed to complete the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.
19. If you are unable to respond via Citizen Space please complete the Respondent Information Form provided at **Annex B** and submit it alongside your response. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.
20. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

21. Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.



22. Following the closing date, all responses will be analysed and considered along with any other available evidence. Responses will be published where we have been given permission to do so.

### **Comments and complaints**

23. If you have any comments about how this consultation exercise has been conducted, please send them to [Licensing.Consultation@gov.scot](mailto:Licensing.Consultation@gov.scot)

### **Scottish Government consultation process**

24. Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work. You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

25. Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

26. Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented.

27. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



**ANNEX A**

**DRAFT GUIDANCE ON THE PROVISIONS FOR LICENSING OF SEXUAL  
ENTERTAINMENT VENUES AND CHANGES TO LICENSING OF THEATRES**

# **AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015**

## **GUIDANCE ON THE PROVISIONS FOR LICENSING OF SEXUAL ENTERTAINMENT VENUES AND CHANGES TO LICENSING OF THEATRES**

## **AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015**

### **GUIDANCE ON THE PROVISIONS FOR LICENSING OF SEXUAL ENTERTAINMENT VENUES AND CHANGES TO LICENSING OF THEATRES**

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## Introduction

The key aims of civic licensing are the preservation of public safety and order and the prevention of crime. A specific licensing regime for sexual entertainment venues will allow local authorities to consider local circumstances in setting the number of venues able to operate within their areas (this could be nil) and to exercise appropriate control and regulation of these venues. A published sexual entertainment policy statement will provide local communities with a clear indication of the local authority's policy and examples of licensing conditions, along with enforcement details. The policy should also demonstrate how the local authority intends to help protect the safety and wellbeing of performers, customers and the wider public.

## Legislation

1. The Air Weapons and Licensing (Scotland) Act 2015<sup>1</sup> (the 2015 Act) received Royal Assent on 4 August 2015. The provisions of the Act which relate to the licensing of sexual entertainment venues (SEV) come into force on **[Date to be agreed]**. However this is not a mandatory licensing regime and it will be for local authorities to determine whether they wish to licence SEV, whether to limit their numbers and to determine individual licence applications. When doing so local authorities will need to consider the implications, opportunities and risks of their decisions. We would envisage that SEV licences may be required in some areas from **[Date to be agreed]**.
2. Section 76 of the 2015 Act inserts sections 45A, 45B and 45C into Part III of the Civic Government (Scotland) Act 1982<sup>2</sup> ( the 1982 Act). These provisions establish a specific licensing regime for the regulation of SEV and allow for greater local control over the provision of such venues. Although licensing of SEV follows a similar pattern to that covered by Part I, Part II and Schedule 1 of the 1982 Act, local authorities may wish to note that these provisions have no application to Part III licences which are solely governed by Schedule 2 of the Act.
3. While this guidance is primarily in respect of the SEV licensing regime, it also includes details at paragraphs 87-88 of the repeal of the existing mandatory licensing regime for theatrical performances under section 12 of the Theatre Act 1968 and the ability of local authorities to licence theatres under the more flexible public entertainment licence requirements contained within the 1982 Act. **To allay concerns raised, it is worth emphasising that theatrical performances will not fall under the provisions for SEV.**
4. Information in respect of both SEV and the theatre provisions is provided at: paragraph 90 on commencement; at paragraphs 93-96 on transitional provisions; and at paragraphs 101-102 on the consequential changes required to The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007 as a

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2015/10/contents>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/1982/45/contents>

result of the creation of a SEV licensing regime and the changes to theatre licensing.

5. This guidance also makes reference to the Licensing (Scotland) Act 2005 (the 2005 Act<sup>3</sup>), which provides a licensing regime for the sale of alcohol. The 1982 Act, and the 2005 Act provide for a variety of different licences, and it is possible that the same activity may require more than one licence. Care should therefore be taken to ensure that the requirement to obtain a licence and any exemptions from the requirement to obtain a licence are carefully considered.
6. The 1982 Act sets out that civic licensing decisions are the responsibility of the licensing authority, a committee made up of locally elected councillors. The 2005 Act provides that liquor licensing decisions are the responsibility of the local Licensing Board. These terms are used throughout this guidance. In practice the relevant committees may be known by different names, or different licensing regimes may be covered by the same local authority committee. Where different committees are involved in the licensing of the same business, then it can be useful to co-ordinate in relation to the setting of licence conditions etc.
7. Where a local authority opts to licence SEV within its area, the provisions at section 45A of the 1982 Act require a licence for premises operated as SEV where the sexual entertainment is performed live, is for the direct or indirect financial benefit of the organiser and is for the sole or principal purpose of sexual stimulation of members of the audience. However, premises where sexual entertainment is provided on no more than 4 occasions in a twelve month period are not to be treated as SEV. The *Licensing of sexual entertainment venues: interpretation* section at paragraphs 80-86 of this guidance provides additional definitions and further information.
8. The following link shows the passage of the Air Weapons and Licensing (Scotland) Bill through the Scottish Parliament, and includes further documentation that may be of interest including the Explanatory Notes and Policy memorandum:  
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/76383.aspx> .

### The Guidance

9. Section 45B(7) of the 1982 Act requires that, in carrying out its functions, a local authority must have regard to guidance issued by Ministers. This non-statutory guidance is intended to assist local authorities, but other parties such as the Police, venue operators, relevant organisations and performers may also find it useful.
10. The guidance should be read in conjunction with the relevant legislation, particularly Part III and Schedule 2 of the 1982 Act and the relevant accompanying documents for the Air Weapons and Licensing (Scotland) Act

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<sup>3</sup> <http://www.legislation.gov.uk/asp/2005/16/contents>

2015. This guidance however should not be seen as a replacement for independent legal advice.

## Background

11. On 24 March 2005, previous Scottish Ministers set up a Working Group on Adult Entertainment to review the scope and impact of adult entertainment activity and make recommendations on the way forward. This followed concerns expressed about the lack of controls on adult entertainment activity. The Group<sup>4</sup> made a number of recommendations aimed at improving standards in the industry, ensuring the safety of performers and customers, regulating the impact on the locality, improving local accountability and control and ensuring that there was no inadvertent impact on artistic freedoms.
12. At that time, it was felt that, as SEV also sold alcohol and therefore required alcohol licences, it was best left to local licensing boards to regulate adult entertainment via the existing licensing regime for alcohol.
13. In 2010 Sandra White MSP introduced amendments to provide for a specific system of licensing for sexual entertainment which were considered by the Scottish Parliament as part of its scrutiny of the Criminal Justice and Licensing Bill at Stages 2 and 3. The proposed provisions broadly mirrored those that had been introduced in England and Wales in section 27 of the Policing and Crime Act 2009. While the Scottish Government supported the proposals, Parliament rejected them due to concerns about the effect of operating a dual licensing system and concerns about the lack of opportunity to fully consider the proposals.
14. Since then, the court judgment in *BrightCrew Limited v City of Glasgow Licensing Board* [2011] CSIH 46XA86/10<sup>5</sup> called into question the ability of Licensing Boards to set conditions that stray beyond the sale of alcohol. As a result, Scottish Ministers considered that a specific licensing regime for SEV was the best solution for future regulation of the industry and to remove uncertainty around attempting to regulate under alcohol licensing matters that go beyond the remit of that regime.
15. A consultation was published in June 2013<sup>6</sup> (the consultation) inviting views on the establishment of a licensing regime based on the draft provisions that Ms White had proposed in 2010. Section 76 of the 2015 Act amends the 1982 Act to provide for this.

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<sup>4</sup> <http://www.gov.scot/Publications/2006/04/24135036/0>

<sup>5</sup> <https://www.scotcourts.gov.uk/search-judgments/judgment?id=2a9286a6-8980-69d2-b500-ff0000d74aa7>

<sup>6</sup> <http://www.gov.scot/Publications/2013/06/3607>

## Relationship with other Strategies

16. In response to the consultation there was wide support for the principle of a new licensing regime including from local authorities, Police, violence against woman and gender groups.
17. However, some concerns were raised that licensing SEV encouraged unhealthy attitudes to women and therefore damaged society as a whole.
18. The Scottish Government accepts the freedom of adults to engage in legal activities and employment. However, it will continue to promote, through all relevant means, gender equality and actions that tackle out-dated attitudes that denigrate or objectify particular groups or individuals.
19. *Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls*<sup>7</sup> was first published in 2014 and updated in 2016. It sets out a definition of violence against women and girls which includes 'commercial sexual exploitation, including prostitution, lap dancing, stripping, pornography and human trafficking'.
20. Whilst recognising the conflict between this definition and the licensing of sexual entertainment venues this guidance will help to ensure that such activities take place in safe and regulated environments. When deciding whether to licence, and whether to limit, SEV in their area local authorities will need to consider the interaction with their own local policies and strategies, as well as the legal implications to minimise the risk of legal challenge.
21. Equally Safe's aim is to work collaboratively with key partners across all sectors to prevent and eradicate all forms of violence against women and girls and the attitudes which perpetuate them. Its priorities are: achieving gender equality; intervening early and effectively to prevent violence; and maximising the safety and wellbeing of women, children and young people.
22. The *Trafficking and Exploitation Strategy*<sup>8</sup>, required under section 35 of the Human Trafficking and Exploitation (Scotland) Act 2015 was published on 30 May 2017. It sets out the Scottish Government's strategy to work with partners to make Scotland a more hostile place for human trafficking. The aims of the strategy are to identify victims and support them to safety and recovery; identify perpetrators and disrupt their activity; and address the conditions that foster trafficking and exploitation.
23. In developing the licensing regime care has therefore been taken to balance individual freedom of choice with the right of local authorities to exercise appropriate control and regulation of SEV that operate within their areas.

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<sup>7</sup> <https://beta.gov.scot/policies/violence-against-women-and-girls/equally-safe-strategy/>

<sup>8</sup> <http://www.gov.scot/Publications/2017/05/6059>



24. Ministers consider that local authorities are best placed to reflect the views of the communities they serve and to determine whether sexual entertainment establishments should be licensed within their areas and if so, under what conditions:
25. A local authority licensing SEV will have to publish a SEV policy statement, developed in consultation with relevant interest groups (including violence against women partnerships) which will provide local communities with a clear indication of the local authority's policy. Where a SEV is approved, licensing conditions, along with enforcement, will help reduce the risk of criminality such as prostitution and human trafficking; and help protect the safety and wellbeing of performers, customers and the wider public. The community should, in turn, benefit from a safe, regulated environment.
26. This is a complex area and local authorities will have to consider the local circumstances and balance the legal obligations of legislation including, but not limited to, the EU Services Directive, the Regulatory Reform (Scotland) Act 2015 with the needs of their communities to mitigate the risks of legal challenge and any rights SEV operators may have particularly under Article 1, Protocol 1 of the European Convention of Human Rights (entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

#### **Licensing of sexual entertainment venues**

27. Section 76 of the 2015 Act introduces a licensing regime for SEV. It achieves that by amending the existing licensing scheme for sex shops provided for in Part III and Schedule 2 of the 1982 Act so that the provisions, with necessary modification, also apply to SEV. It is however not mandatory for a local authority to licence SEV.
28. When deciding whether to licence SEV, local authorities should consider the legal complexities it introduces and ensure they are able to mitigate the risks of legal challenge to an acceptable level.

#### Local Authority Resolution

29. Where a local authority decides to licence SEV, section 45B of the 1982 Act, requires the local authority to pass a resolution in order for SEV licensing to have effect in their area.
30. In considering whether to pass a resolution a local authority should consider whether they will wish to control SEVs either now or in the future. If there is no resolution in place, then no licence is required to operate an SEV. It may therefore be appropriate to determine a resolution even where there are no current SEV in operation if the local authority considers that it is likely to be thought that it would be inappropriate for any SEV to operate in its area in the future. Otherwise it will be possible for a SEV to operate there unregulated until a SEV licensing regime is put in place.

31. In considering whether to pass a resolution to licence SEV, local authorities may wish to look carefully at their localities and consider a range of issues such as:

- whether there are any sexual entertainment venues already operating
- the location of schools
- the location of places of worship
- the location of heavily residential areas
- whether there have been incidents involving anti-social behaviour, sexual assaults or more minor harassment reported in any particular area
- whether there have been incidents of human trafficking or exploitation locally.

32. Local authorities have extensive experience of engaging with local people and will know what works best in their individual areas and may wish, as a matter of good practice, to seek the views of local people and businesses prior to deciding whether to pass a resolution. In doing so, local authorities may wish to make any relevant information available to local people in order to inform their understanding. Local authorities may also wish to engage with known SEV as soon as a decision has been made, to ensure that they are aware of what action they will need to take, and to seek input from the local Police Scotland human trafficking champion or the Human Trafficking Unit at Gartcosh.

33. In considering whether to pass a resolution to licence SEV, local authorities must also have cognisance of other relevant legislation such as the EU Services Directive, the Regulatory Reform (Scotland) Act 2015 and any rights SEV operators may have particularly under Article 1, Protocol 1 of the European Convention of Human Rights (entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression). Local authorities should consider whether the decision is proportionate and justifiable.

34. If licensing SEV, a local authority must determine, from time to time, the number of SEV that they consider appropriate for their area and each relevant locality. Nil may be considered the appropriate number. The determination should be publicised. Further guidance on what a local authority may wish to consider in determining numbers and localities is provided below in relation to developing the policy statement.

#### Specified Day

35. Where a local authority passes a resolution, it must specify a date from when it is to take effect in their area. This must be at least one year from the date the resolution is passed. The local authority must also publish notice that they have passed a resolution not less than 28 days prior to the date the resolution is to take effect. The notice must state the general effect of the licensing procedure and provisions at Schedule 2 of the 1982 Act, as modified for SEV, and be published either electronically or in a local newspaper.

## Statements of policy in relation to sexual entertainment venues

36. Section 45C of the 1982 Act requires that where a local authority has passed a resolution under section 45B(1) that a licensing regime for SEV will have effect in their area, they will then be required to prepare and publish a sexual entertainment venue policy statement. The statement of policy should set out and justify the position of the local authority with regards to licensing SEV and should support local authorities should they face any legal challenges.

### Content

37. The policy statement should include details of the impact a local authority considers the licensing of SEV will have in its area. Section 45C(3) of the 1982 Act states:

“In preparing a SEV policy statement, a local authority must—

(a) consider the impact of the licensing of SEV in their area, having regard, in particular, to how it will affect the objectives of—

- (i) preventing public nuisance, crime and disorder,
- (ii) securing public safety,
- (iii) protecting children and young people from harm,
- (iv) reducing violence against women, and

(b) consult such persons or bodies as they consider appropriate.”

38. For the purposes of the section, “children” are defined as persons under the age of 16 and “young people” as persons aged 16 or 17.

39. Policy statements should be published at the same time and in the same manner as the notice of resolution is published i.e. it should be published not less than 28 days prior to the date the resolution is to take effect, either electronically or in a local newspaper.

40. The policy statement should provide local communities with a clear indication of the local authority’s policy and must be consistent with the licensing objectives and procedures set out in the 1982 Act as amended.

41. The statement might include information on where the local authority is likely to consider to be appropriate or inappropriate locations for SEV and indicate how many SEV are considered to be appropriate for a particular locality in its area along with explaining the reasons behind this.

42. In developing the statement, local authorities may also wish to take account of whether any sexual entertainment venues are already operating in its area under the existing regime for alcohol licensing and, if so, whether they wish to continue to licence the same number of venues as are currently operating.

43. The local authority may wish to reflect on whether reducing the number of venues, or setting the number at zero, in their area will have a disproportionate effect on business and on whether they may leave themselves open to legal challenges e.g. under Article 1, Protocol 1 (entitles every person to the peaceful enjoyment of their possessions) of the European Convention of Human Rights.
44. Where there are currently no sexual entertainment venues operating, a local authority may wish to consider if there may be benefit in making a resolution to give effect to the licensing regime even where it considers that the number should be set at zero. In setting the number at zero, a local authority should be able to demonstrate proportionality by evidencing that the competing interests of individuals alongside those of the community had been fairly considered and appropriately balanced.
45. In developing the policy statement, we consider it best practice for local authorities to consult with persons with an interest and this should include organisations such as violence against women partnerships, child protection committees and community councils.
46. In exercising any functions in relation to the licensing of SEV, the local authority is required to have regard to their SEV licensing policy statement. It is also required, from time to time, to review the policy statement, revise it as appropriate and publish the revised statement. We suggest that it may be best practice to align the review of both the resolution and the policy statement. However it will be for individual local authorities to determine the timeframe for undertaking the reviews required.

#### Licensing Conditions

47. Under paragraph 9 of Schedule 2 to the 1982 Act local authorities have a power to impose reasonable licence conditions. In doing this local authorities need to be flexible in responding to each application and in some cases additional or more tailored conditions reflecting local circumstances may be appropriate.
48. Conditions are specific requirements that the licence holder must comply with, otherwise the licence could be refused or revoked. Paragraph 19(1)(c) of Schedule 2 states that a licence holder who, without reasonable excuse, knowingly contravenes or permits the contravention of a specified condition will be guilty of an offence.
49. The local authority can attach standard conditions for all licences granted for SEV, they may also impose individual conditions to licences.

50. By way of example, such licence conditions could regulate:

- the display of advertisements on or connected to the venue.
- the days and times when the premises may be used as a SEV.
- the visibility of the interior of the SEV to passers by
- the number of persons to be admitted to the premises.

51. The local authority should give careful consideration as to whether the condition proposed is necessary. The local authority should also consider whether, in all the circumstances, the condition is reasonable and proportionate and therefore not open to challenge.

52. Any condition attached to the licence must be clear, so that the licence holder is aware of his obligation to comply.

53. Part of the local authority's role is to ensure improved working conditions and a safer environment for the women who work in SEV. They may wish to encourage operators to actively identify potential victims of human trafficking in their recruitment procedures and to work with agencies such as the Trafficking Awareness Raising Alliance (TARA) to combat the trafficking of individuals and families.

54. In terms of how a premises licensed as a SEV should be run, local authorities may wish to consider adopting some or all of the following non-exhaustive list of suggestions and develop them as model conditions within their Policy Statement:

- list of full names, dates of birth, nationality and contact details (address or telephone number) for all performers to be available on the premises for immediate production if requested by Police or local authority officers.
- ensure immigration status is in order and performers have not been the victims of human trafficking
- employment of security guards
- use and storage of CCTV
- provision of hygienic changing facilities and a toilet with access to hot water exclusively for the use of the performers
- set break times for performers
- the provision of a break room exclusively for the use of the performers
- performers to be escorted by security to nominated taxi or to their car at end of shift
- performers to remain clothed outwith performance area
- no physical contact between performers and customers
- rules to be displayed at appropriate locations within the venue of customer conduct that is deemed acceptable e.g. customers to remain fully clothed at all times
- performers not to accept offer from customer of payment in return for sexual favours
- performers not to accept any form of contact details from customers
- performers not to engage in any unlawful activity within SEV
- no photographs or video recordings to be taken.

55. It should be borne in mind that it is extremely likely that SEV will also require to have a premises licence under Part 3 of the 2005 Act and care will be required to ensure that any SEV conditions are attached to the SEV licence and that they do not contradict the conditions applied to the alcohol licence. In the event that the SEV does not also require an alcohol licence, local authorities may wish to consider whether any of the conditions attached to such licences would be appropriate to that particular SEV.

## **Applications**

56. The local authority resolution will specify a date from which the SEV licensing regime is to take effect in its area. Under paragraph 25(3) of Schedule 2 of the 1982 Act a local authority cannot consider any application for a SEV licence prior to the date specified in the resolution and cannot grant any licence until it has considered all applications received.

57. Local authorities will therefore wish to consider developing new application forms specifically in respect of SEV licences. Authorities will also have to determine when these forms should be made available to operators / prospective operators. It may also be appropriate to intimate in the resolution when applications will be considered by the local authority.

58. Paragraph 25 of Schedule 2 also provides that where a SEV is trading in the area before the resolution has been published and before the specified day of effect has applied for a SEV licence under Schedule 2, then they may continue trading until the application is considered. If the application is refused they may continue to trade until the timescale for an appeal under paragraph 24 has lapsed or the appeal has been determined or abandoned.

59. We suggest that in considering an application for a SEV licence, with the view to reaching an evidence based decision on whether it should be granted, local authorities will wish to look carefully at the proposed location and take account of

- the existing character and function of the area in which it will be located
- whether there are any schools near the vicinity of the SEV
- whether there any places of worship in that vicinity
- whether there are other relevant businesses or charities operating in the area e.g. homelessness shelters, supported accommodation, recovery units etc.
- whether the SEV is close to heavily residential areas
- whether there have been incidents involving anti-social behaviour, sexual assaults or more minor harassment reported in that area
- the views of residents and other relevant interested persons
- input from the local Police Scotland human trafficking champion or the Human Trafficking Unit at Gartcosh.

60. It is important to note that a SEV licence will be required for premises where sexual entertainment is provided on more than 4 occasions in a twelve month period even where that entertainment is booked by the person hiring the venue.

## Consideration

61. Local authorities will follow the established procedure for considering applications laid out at Schedule 2 of the 1982 Act. The procedure is applicable to licensing sex shops and has been modified to apply to SEV. Paragraph 9(3) sets out a list of persons to whom a licence may not be granted and paragraph 9(5) lists grounds on which a local authority may refuse an application for the granting or renewal of a licence. Each licence application should be fully considered on its own merits. However note, under paragraph 9(5)(c), where the number of venues in the local authority's area or relevant locality at the time the application is made is equal to or exceeds the number which the local authority consider is appropriate for their area or that locality the local authority should refuse the application without further consideration.
62. The provisions in relation to making an application for a licence or the renewal of a licence are detailed at paragraph 6 of Schedule 2. In considering an application, the local authority will wish to satisfy itself that the applicant is not an unsuitable person to hold a licence by reason of having been convicted of an offence or for any other reason.
63. The local authority can at any time decide to vary a licence on any grounds it thinks fit or revoke a licence in line with the provisions set out at paragraph 13 of Schedule 2.
64. A decision not to grant a licence or to revoke a licence may be subject to appeal. An appeal would be to a Sheriff in the first instance and could be on the grounds that the authority erred in law, based their decision on an incorrect material fact, acted contrary to natural justice or exercised their discretion unreasonably.
65. Any appeal in relation to a SEV licence must be made within 28 days of the date of the decision appealed against.
66. Under paragraph 12(2)(b) of Schedule 2 a local authority may grant a SEV licence for one year or such other period that it deems appropriate.

## Notification

67. Applicants will require to advertise their applications for a licence in a local newspaper specified by the local authority and for a notice to be displayed on or near the relevant premises. The legislation imposes a further duty at paragraph 7(3C) of Schedule 2 requiring each applicant for a licence to operate a SEV to send a copy of their application to such persons or bodies as have been determined by the local authority within 7 days of making the application and to certify to the local authority that they have done so. There is also a new obligation on local authorities at paragraph 7(3D), requiring them to determine which persons and bodies are to receive copies of applications and to publicise that list as they consider appropriate.

### List of appropriate persons

68. In relation to notification of a SEV licence application, the Cabinet Secretary for Justice stated during Stage 3 consideration of the legislation:

“Although the current process already allows for robust notification procedures, with requirements for both newspaper advertising and notices to be publicly displayed, there are advantages in requiring specific notification to particular bodies that will have an interest in the licensing of sexual entertainment venues. There is a practical advantage in ensuring important stakeholders, including violence against women partnerships and community councils are notified of applications early, so that they have sufficient time to consider applications and to make such representations to the authority as they consider appropriate. There is also an advantage in that it will send a very clear message that groups identified as being appropriate to receive copies of the application, including violence against women partnerships and community groups, are at the heart of the licensing process.”

69. In line with this, we suggest that it is essential to ensure that those with an interest are notified as early as possible and that particular organisations such as violence against women partnerships and community councils should be considered important stakeholders in the licensing process. They should therefore be included on the published local authority list of those who are to receive copies of applications.

70. Local authorities may also wish to consider including on the list businesses, schools, places of worship, child protection committees, residents who are in the vicinity of the proposed SEV along with anyone else they consider appropriate.

### ECHR Issues

71. When taking a decision to refuse an application local authorities should take account of any rights SEV operators may have, particularly under Article 1, Protocol 1 of the European Convention of Human Rights (entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression). Local authorities may wish to consider whether there is any interference with the applicant's human rights. And if so is it necessary and proportionate for the prevention of disorder or crime, the protection of health or the protection of the rights and freedom of others and whether the interference can be justified in the general public interest.

72. In implementing the SEV legislative provisions local authorities will wish to ensure that they do so in compliance with the Convention rights and that they put in place flexible policies which take account of individual circumstances.



## Fees

73. Paragraph 18 of Schedule 2 provides that a local authority should charge a reasonable fee which is sufficient to meet the expenses incurred by the authority in exercising its functions under the Schedule. In setting fees, local authorities will wish to have regard to the EU Services Directive.

## Enforcement

74. Offences and sanctions which relate to SEV licensing fall wholly under Schedule 2 of the 1982 Act and are set out in paragraph 19 of Schedule 2. Local authorities will wish to be aware that these provisions only apply where a resolution to licence SEV has been made.

75. The powers to enter and inspect and to enter and search licensed SEV are set out at paragraphs 20 and 21 of Schedule 2. These are similar to the provisions relating to Part II licences.

## Conclusion

76. The 1982 Act makes clear that any decision made by the local authority, when considering applications for SEV licences, should be reasonable. This applies to fees, conditions which may be added to the licence, and to the time taken to consider the application.

77. The local authority should consider the facts of individual licence applications, and make decisions which are based on local priorities and circumstances.

78. The local authority should, where possible, ensure that there is consistency in these decisions, and in the conditions which may be attached to any licence granted.

## **Licensing of sexual entertainment venues: interpretation**

79. Part III of the 1982 Act currently allows local authorities to control the number and location of sex shops in their area and Schedule 2 contains the detailed licensing procedures and provisions for sex shops. Section 76 of the 2015 Act creates a new licensing regime for SEV. It inserts sections 45A - 45C into Part III of the 1982 Act; modifies Schedule 2 so that it applies when a local authority resolves to licence SEV; and amends the title of Part III to "Control of sex shops and sexual entertainment venues".

## Definitions

80. Section 76(3) inserts an interpretation section, which underpins the SEV licensing regime, into the 1982 Act at Part III, section 45A. The relevant definitions are:

"(2) "Sexual entertainment venue" means any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.

(3) For the purposes of that definition—

“audience” includes an audience of one,

“financial gain” includes financial gain arising directly or indirectly from the provision of the sexual entertainment,

“organiser”, in relation to the provision of sexual entertainment in premises, means—

- (a) the person (“A”) who is responsible for—
  - (i) the management of the premises, or
  - (ii) the organisation or management of the sexual entertainment, or

- (b) where A exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise), that other person,

“premises” includes any vehicle, vessel or stall but does not include any private dwelling to which the public is not admitted,

“sexual entertainment” means—

- (a) any live performance, or
- (b) any live display of nudity,

which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

(4) For the purposes of the definition of “sexual entertainment”, “display of nudity” means—

- (a) in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus,
- (b) in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals or anus.”

81. In summary, the provisions at section 45A of the 1982 Act require a licence for premises operated as SEV where the sexual entertainment is performed live, is for the direct or indirect financial benefit of the organiser and is for the sole or principal purpose of sexual stimulation of members of the audience.

### Exemptions

82. However, premises where sexual entertainment is provided on no more than 4 occasions in a twelve month period are not to be treated as SEV. This exemption is to avoid drawing into the SEV licensing regime venues where the main purpose is clearly not to provide regular sexual entertainment e.g. venues which have the very odd stag or hen party providing such entertainment. Section 45A(10) specifies how occasional use is to be calculated:

“(a) each continuous period during which sexual entertainment is provided on the premises is to be treated as a separate occasion, and

(b) where the period during which sexual entertainment is provided on the premises exceeds 24 hours, each period of 24 hours (and any part of a period of 24 hours) is to be treated as a separate occasion.”

83. It is important to note that a SEV licence will be required where such entertainment occurs on more than 4 occasions in a twelve month period even where that entertainment is booked by the person hiring the venue. It is also important that any premises where sexual entertainment may be performed are properly supervised, as breach of the above limit without a licence is an offence.

#### Sex shops

84. Section 45A specifically identifies sex shops as not being sexual entertainment venues and provides a power to allow Ministers to specify other premises which do not fall into the category of sexual entertainment venues. A further power is provided so that Ministers can specify descriptions of performances or displays of nudity that are not to be treated as sexual entertainment for the purposes of the legislation.

#### Under 18s

85. Paragraph 19(1) of Schedule 2 of the 1982 Act prevents anyone under the age of 18 being employed in a SEV. Section 45B(6)(g) of the 1982 Act modifies paragraph 19(1)(e) of Schedule 2 in respect of SEV to make it an offence for a licence holder or their agents to knowingly permit a person under the age of 18 entry to the sexual entertainment venue at a time when sexual entertainment is being provided, or at any other time without reasonable excuse. An example of a reasonable excuse might be where a plumber’s mate is called upon to fix an emergency leak.

#### Public entertainment

86. Section 41 of the 1982 Act enables a licensing authority to direct that a public entertainment licence is necessary for certain types of activity. Section 41(2) of the 1982 Act provides that a “place of public entertainment” is any place where members of the public are admitted or may use any facilities for the purposes of entertainment or recreation. Section 76(2) of the 2015 Act amends section 41(2) of the 1982 Act to exclude a sexual entertainment venue from being licensed under a public entertainment licence.

### **Licensing of Theatres**

#### Repeal of existing mandatory licensing provisions

87. The provisions at section 74 of the 2015 Act repeal the existing mandatory requirement for theatrical performances to be licensed under the Theatre Act 1968<sup>9</sup> (the 1968 Act) and supporting provisions in the 1968 Act that allow for

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<sup>9</sup> <http://www.legislation.gov.uk/ukpga/1968/54>

powers of entry and inspection. The section also removes the exemption for premises licensed under the 1968 Act from the 1982 Act. This means that local authorities will be able to licence theatres under the public entertainment licence requirements contained in section 41 of the 1982 Act. Section 74 also inserts an equivalent of the anti-censorship provisions from the 1968 Act into the 1982 Act, so that licensing authorities will not be able to censor theatrical performances under the public entertainment licensing regime within the 1982 Act.

#### Local Authority resolution

88. Following the repeal of the theatre licensing provisions within the 1968 Act, local authorities may wish to consider making a public entertainment licensing resolution under section 9 of the 1982 Act to licence theatres. This requires local consultation, publicity and a 9 month period of notice before having effect. Local authorities are familiar with setting a resolution to bring activities within the scope of public entertainment licensing as the public entertainment licensing regime is currently used for licensing activities such as concerts, funfairs, variety shows etc. Having the local authority set out the scope of the public entertainment regime allows for greater flexibility and local authorities will, for example, be able to exclude premises offering plays to very small audiences from the licensing requirement where they consider that appropriate and proportionate.

#### **Commencement of licensing of theatres and sexual entertainment venues**

89. The Air Weapons and Licensing (Scotland) Act 2015 (Commencement No. 1) Order brought section 76(1) and 76(3) into force on 1 December 2015 for the purpose of inserting section 45A into the 1982 Act, but only for the purposes of making orders under section 45A(7)(b) and (11) of that Act. These provisions enable subordinate legislation to be made under the 1982 Act.

90. The provisions at section 74 and the outstanding provisions at section 76 of the 2015 Act are to be fully commenced on **[Date to be agreed]** by the Air Weapons and Licensing (Scotland) Act 2015 (Commencement No. XX and Saving Provisions) Order 2018.

91. In commencing the primary legislation, careful consideration was given as to how and when any existing primary legislation either removed or amended should be 'switched off' and the new provisions take effect and also as to whether the legislation being commenced had any impact on existing secondary legislation which required it to be amended.

92. The transitional and consequential amendments to existing legislation as a result of the provisions at section 74 and 76 of the 2015 Act are detailed below.

#### Transitional provisions

##### *Section 74 - Theatres*

93. To ensure a smooth transition from the mandatory theatre licensing regime under the 1968 Act to the optional public entertainment licensing regime within the 1982

Act the latest expiry date for a licence granted under the 1968 provisions is [**Date to be agreed**] This is intended to allow local authorities sufficient time to consider whether to licence theatres under the 1982 Act and for any resolution to take effect before the licensing regime under the 1968 Act ends.

94. This means that licences granted prior to the commencement of section 74 of the 2015 Act will be able to continue for their natural duration and that new applications and renewal requests can be considered and granted under the 1968 Act until either a local authority resolution comes into effect or until [**Date to be agreed**] whichever comes first.

#### *Section 76 – SEV*

95. Section 45B(1) - (3) of the 1982 Act provides:

“(1) A local authority may resolve that Schedule 2 (as modified for the purposes of this section) is to have effect in their area in relation to SEV.

(2) If a local authority passes a resolution under subsection (1), Schedule 2 (as so modified) has effect in their area from the day specified in the resolution.

(3) The day mentioned in subsection (2) must not be before the expiry of the period of one year beginning with the day on which the resolution is passed.”

96. This means that existing SEV will not be allowed to continue trading indefinitely. Following a local authority resolution being passed to licence SEV, they will be able to trade for not less than a year under existing arrangements and then will have to submit an application for a licence for a sexual entertainment venue. There should be no assumption that an existing establishment should be allowed to continue under the new regime even when a premises licence under the Part 3 of the 2005 Act is in place. Each licence application should be fully considered on its own merits.

97. Local authorities may wish to be aware of court judgements in:

- Thompson R v Oxford City Council [2013] EWHC 1819 (admin) (28 June 2013)<sup>10</sup> and
- Thompson R v Oxford City Council & Anor [2014] EWCA Civ 94 (11 February 2014)<sup>11</sup>

98. The ‘Oxford’ cases stressed that the grant of a licence should not be viewed as a grant for eternity and that a new licensing committee can take a different view of the same facts.

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<sup>10</sup><http://www.bailii.org/ew/cases/EWHC/Admin/2013/1819.html>

<sup>11</sup><http://cases436.rssing.com/browser.php?indx=12680078&item=11604>

Consequential Amendments in relation to liquor – The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007

99. Following a review of secondary legislation we noted that amendments were required to secondary legislation related to liquor licensing, namely **The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007**<sup>12</sup> (the Regulations). These liquor regulations include a definition of adult entertainment and a reference to theatre licensing.
100. These Regulations specify conditions which must be imposed by a Licensing Board on the granting of a liquor premises licence where the operating plan specifies that the premises will, on any occasion, be open for a continuous period beginning on one day and ending after 1am on the following day.
101. **Local authorities may wish to be aware that, as sexual entertainment venues now fall to be regulated under a separate specific licensing scheme it is no longer necessary to provide a definition of “adult entertainment” in these liquor Regulations. Similarly, as licensing of theatres now falls under the optional public entertainment licensing scheme, reference to section 12 of the Theatres Act 1968 (which has been repealed by section 74(3) of the 2015 Act) is not required.**
102. The Regulations therefore will be amended to remove the definition of “adult entertainment” in regulation 1(2) and the reference to “adult entertainment” in section 3(2)(a)(iii); the reference at section 3(3)(c) to section 12 of the Theatres Act 1968 will also be removed.

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<sup>12</sup><http://www.legislation.gov.uk/ssi/2007/336/regulation/1/made>

# **Licensing of Funfairs (Scotland) Bill**



**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**

**Consultation by Richard Lyle MSP  
Scottish National Party Member for Uddingston and Bellshill**

4 December 2017

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## FOREWORD



The purpose of this proposal is to consult on the removal of travelling fairs from the licensing regime created by the Civic Government (Scotland) Act 1982, and the establishment of a new licensing system that is fair, consistent and proportionate.

Travelling fairs, or funfairs as they are also known, are predominately a place of "free to enter" entertainment made up of a number of rides and stalls ranging from dodgems to carousels. These fairs will travel from place to place offering a space where people from all walks of life can come together and have fun together.

This important community role has been recognised by UNESCO who included the travelling fair industry as within their definition of "Intangible Cultural Heritage". The Scottish Government has also recognised the importance of these fairs as places of social and leisure activity which is fundamentally part of the human condition. In 2009, at a Parliamentary reception in Holyrood, then First Minister Alex Salmond said—

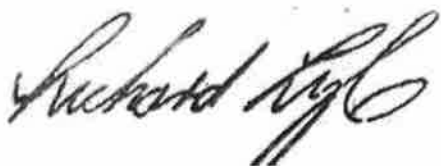
"Travelling showpeople are an important part of Scotland's culture, history and economy and combine a strong tradition of family and community with a high level of entrepreneurship and business acumen".

Owing to local authorities having a wide degree of flexibility when applying the licensing regime, operators are at the mercy of local variances ranging from a refusal to accept temporary applications to having a requirement for the applicant to pay a separate fee for each ride at the fair. The totality of these local variances is untenable and intolerable for travelling fairs. The reality is that the licensing framework under the 1982 Act creates a barrier of local "red-tape" which has resulted in a decimation of these important cultural, social and family events. My proposal will address these problems by creating a new fair, proportionate and consistent licensing system that allows local authorities to retain control of applications, but also allows operators to be able to manage their businesses more effectively.

It is important to stress that my proposal will not affect the health and safety aspect of travelling fairs, which is of course of vital importance, as that is regulated through the Health and Safety Executive.

I encourage all those with views on fairground licensing to take part in this consultation process – community groups, businesses, local authorities, Police Scotland, and individuals. Hearing views from a wide range of stakeholders will aid understanding of the issues and the best way forward. This will inform a Member's Bill that I intend to introduce in the Scottish Parliament in 2018.

I look forward to hearing your views.

A handwritten signature in black ink, appearing to read "Richard Lyle". The signature is written in a cursive style with a large, prominent initial 'R'.

**Richard Lyle MSP**

## HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at—

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at: Richard Lyle MSP, 188 Main Street, Bellshill, North Lanarkshire, ML4 1AE; 01698 479900, email: [Richard.Lyle.msp@parliament.scot](mailto:Richard.Lyle.msp@parliament.scot).

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website under Parliamentary Business/Bills/Proposals for Members' Bills/Session 5 Proposals:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/12419.aspx>.

## **AIM OF THE PROPOSED BILL**

The aim of this proposal is to make it less burdensome and more financially viable for those who put on travelling funfairs to manage and operate their businesses. The proposal is to achieve this by—

- taking travelling funfairs out of current public entertainment licensing requirements, which are being applied inconsistently, disproportionately and inflexibly; and
- creating a new bespoke licensing process for travelling funfairs in Scotland, that is consistent, proportionate and flexible.

A broader aim of the proposal is to help to ensure the survival and viability of the many communities of showpeople in Scotland, whose way of life and successful future is being threatened by current law and practices.

## **BACKGROUND**

### **Definition of a travelling fair**

This proposal relates specifically to travelling fairs, i.e. funfairs which move from location to location across the country and are invariably operated by showpeople.

### **Summary**

The ability of people, most usually Scotland's proud and historic communities of showpeople, to manage and operate travelling funfairs across the country is being threatened by the current approaches to licensing being taken by Scotland's local authorities.

Those wishing to hold a travelling funfair in a particular location—

- need to apply for a licence from the relevant local authority a long time in advance (often up to 3 months);
- are charged a range of fees (often non-refundable if the application is unsuccessful), some of which are economically unviable for showpeople; and
- are unable to move to an alternative site if the licensed site is not in a fit state to hold the funfair when it arrives.

This proposal seeks to address these problems by ensuring the continued appropriate permissions to hold travelling funfairs are controlled by Scotland's local authorities, but without the current inconsistencies and red-tape which is having such a damaging cultural and economic effect on showpeople in Scotland, and is increasingly preventing people across Scotland from being able to enjoy all the fun of the fair.

## **Current law governing funfair licensing in Scotland**

Scotland's 32 local authorities currently enjoy discretion when deciding whether to require public entertainment licences.

The Civic Government (Scotland) Act 1982 (c.45)<sup>1</sup> gives local authorities the power to require public entertainment licences, if they choose to do so, by passing a resolution. It is therefore an optional, rather than a required, licensing arrangement.

However, all 32 local authorities in Scotland have passed such resolutions and, as such require public entertainment licences for funfairs. However, local authorities have a great deal of discretion as to how the licensing system operates within their areas. Scotland therefore has 32 different systems in place for licencing funfairs, which have a wide variety of terms, conditions and fees attached to them.

**It is important to note that public entertainment licences are not required to regulate health and safety aspects of funfairs.** Very important issues such as the safety and maintenance of rides and hygiene of food and drink available at funfairs, are covered by other legislation (see below for further information).

### **Application of the law across Scotland's 32 local authorities**

Due to the discretion local authorities enjoy for deciding on their own licensing arrangements for funfairs, there is great disparity amongst authorities. Perhaps the best, and most problematic, example of this is in the fees charged. Fees vary greatly across the country, from £45 to over £4000. Councils are also able to retain fees, which are payable on application, even when an application is not successful and many of them are doing so. Whilst it is understandable that councils do not refund the cost of processing an application (which is not dependent on the outcome of that application) any such processing fee should be modest and should not vary significantly from authority to authority. The larger fees being charged are clearly therefore not just to cover the cost of administration and authorities must be profiting from them. Refusing to refund any part of these larger fees therefore has a significant negative impact on the applicants.

The time it takes for local authorities to process applications also varies considerably. The 1982 Act gives local authorities up to three months to consider an application, and six months to come to a decision. Within these statutory parameters, the actual time an applicant can expect a decision is therefore dependent on the resources available to individual local authorities and the pressures that are on them at any given time.

Details of fees charged and processing times across Scotland's 32 local authorities can be seen in the table below (information obtained in October 2017)—

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

<b>Local Authority</b>	<b>Cost of License</b>	<b>Processing Time</b>
Aberdeen City	£324 (temporary), £695 (full)	Apply 28 days in advance
Aberdeenshire	£375 (3 year)	8 Weeks' Notice
Angus	tiered	At least 28 days
Argyll and Bute	£151 (year)	Not Known
City of Edinburgh	Fees range from £1035 for 2-5 devices to £4133 for around 20 devices	62 days on average
Clackmannanshire	3 year- £211, temp- £107	8 weeks' notice
Dumfries and Galloway	£368 (1-7 days)	Apply 28 days in advance
Dundee City	£255 (full license)	Apply 28 days in advance
East Ayrshire	£248 (full license)	Apply 28 days in advance
East Dunbartonshire	£50 (temporary), £248 (full)	Apply 28 days in advance
East Lothian	£94	4-6 weeks
East Renfrewshire	£239 (year)	6-8 weeks
Falkirk	£255 (temporary)	3-4 weeks
Fife	£145 (3 year)	4-6 weeks
Glasgow	£597	Not Known
Highland	£508 (temporary)	Not Known
Inverclyde	£165 (year), £495 (3 years)	28 days
Midlothian	£109	3 Months' Notice
Moray	£208 (under 200 capacity), £917 (over 500 capacity)	4 Months
Western Isles	£259	4-6 weeks
North Ayrshire	£285	2 Weeks' Notice
North Lanarkshire	£315	Not Known
Orkney Islands	£128 (year)	Not Known
Perth and Kinross	£300 (year), £480 (3 years)	6-8 weeks
Renfrewshire	£853	3 Months
Scottish Borders	£538 (3 years), £178 (year)	Not Known
Shetland Islands	£161 including application fee (temporary)	Up to six months
South Ayrshire	£895 (3 year)	Apply 28 days in advance
South Lanarkshire	£267	Apply 28 days in advance
Stirling	£113 (1 year)	10 weeks
West Dunbartonshire	£606	90 calendar days
West Lothian	£97	3 months with 35 day notice

These inconsistencies across Scotland are causing a number of difficulties for those who are seeking to hold funfairs, the vast majority of whom are families of travelling showpeople with many years of tradition and experience.

Showpeople are finding it increasingly difficult to—

- pay the very high fees being charged by some local authorities;
- cope with the economic impact of applications being denied but fees being retained; and
- plan their activities (which are, by their very nature, temporary and travelling) due to the lengthy and often bureaucratic processes involved.

As any funfair operating in the rest of the UK does not require a public entertainment licence, those managing them do not face many of the same barriers to 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 disadvantage compared to those operating in the rest of the UK.

### **Case studies**

#### *Case study 1*

A member of the Showmen's Guild applied for a Temporary Public Entertainment Licence in relation to a 500 capacity fair taking place in the North of Scotland. The fee for the application was £255 which was non-refundable.

The applicant had 45 years' experience in running fairs and an unblemished record. Within the six months prior to the application the applicant had run shows in a number of other local authority areas and was able to provide letters from a council and past neighbours confirming that the fair had been operated to a high standard and without complaint.

A number of objections were made including one from Environmental Health in relation to potential noise. A hearing was held and, despite the operator committing to a number of control measures and agreeing a noise management plan with environmental health officials, the application was refused. There was no viable appeal route. The Fair, which was only a week away, was therefore cancelled meaning that a number of families had no work for an extended period of time. Had the licence application been determined sooner then the applicant could have tried to identify an alternative site.

### *Case study 2*

The operator of a travelling fair on a shopping centre car park (with the consent of the shopping centre) had to move the location of the fair a short distance within the car park to allow for works to be carried out. The local authority insisted that a fresh temporary public entertainment licence was required. This meant that the fair had to stop trading for six weeks while the application was determined despite the shopping centre being happy for the fair to continue trading in this new location.

## **Funfair regulation in the rest of the UK**

Funfairs do not require a specific licence to operate in the rest of the UK. Funfairs are not “regulated entertainment” and so are not “licensable activities” for the purposes of the Licensing Act 2003<sup>2</sup> which applies to England and Wales. Funfairs on private land in England and Wales require the permission of the landowner, and if they wish to operate on council owned land they must notify the council in advance. Only notification, rather than permission, is required, unless local byelaws have been passed to require otherwise. Where byelaws are in place they often relate to issues such as opening hours, and control of litter and waste.

Across the UK (including Scotland), health and safety aspects of funfairs are regulated by the Health and Safety at Work etc Act 1974<sup>3</sup> (HSW). The HSW Act applies to all employers, employees and people who are self-employed. The Act protects people whilst at work, and also extends to protecting volunteers and members of the public who may be affected by a work activity, which includes funfairs. To comply with the HSW Act various codes of practice and guidance must be adhered to.

The Fairgrounds and Amusement Parks: Guidance on Safe Practice, published by the Health and Safety Executive in 2007<sup>4</sup>, shows in detail the many health and safety requirements that funfairs need to comply with in the UK. Another relevant document relates to safe crowd management<sup>5</sup>. In terms of issues such as noise nuisance, council environmental health departments have a statutory duty to prevent noise nuisance so would be involved in any such issues relating to a funfair.

Depending on what activities may be part of a funfair, other licences/notices may be required in England and Wales, such as a temporary event notice<sup>6</sup> or street trading

<sup>2</sup> Licensing Act 2003 (c.17). Available at: <http://www.legislation.gov.uk/ukpga/2003/17/contents>.

<sup>3</sup> Health and Safety at Work etc Act 1974 (c.37). Available at: <http://www.legislation.gov.uk/ukpga/1974/37>.

<sup>4</sup> Health and Safety Executive (2007). Fairgrounds and Amusement Parks – Guidance on Safe Practice Available at: <http://www.hse.gov.uk/pubns/priced/hsg175.pdf>.

<sup>5</sup> Health and Safety Executive (2000). Managing crowds safely: A guide for organisers at events and venues. Available at: <http://www.hse.gov.uk/pubns/priced/hsg154.pdf>.

<sup>6</sup> Temporary Event Notice for England and Wales. Details available at: <https://www.gov.uk/temporary-events-notice>.



licence<sup>7</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>8</sup> and are instead able to be controlled by district councils by passing bye-laws<sup>9</sup> with regards to issues such as the hours of operation, safety, and minimising negative impacts on local areas.

### **Scottish Government view**

I led a member's debate on the 125th anniversary of the showmen's guild, which addressed many of the issues in this consultation, on 19 June 2014. At the end of that debate, the Minister for Local Government and Planning in the Scottish Government stated that—

“On the subject of regulation, very valid points were made about regulations and the complexity of having 32 local authorities applying 32 variations of licensing and fee structures. I am sure that members will welcome the fact that work is in hand to look at greater consistency in fees and at harmonisation across the country. That work is being done by a working group.”<sup>10</sup>

In answer to a Parliamentary Question I put down in May 2016 asking the Scottish Government what progress it was making in developing guidance to assist licensing authorities that are considering funfair applications, the Cabinet Secretary for Justice replied—

“Scottish Government officials are engaging with stakeholders with a view to developing guidance to assist licensing authorities in their consideration of funfair applications. To that end, a meeting has been arranged with the Showmen's Guild on 31 May 2016.”<sup>11</sup>

The Scottish Government's view is that, rather than changing the current legislation, or bringing forward new legislation, to tackle these issues, it is best dealt with by issuing guidance to local authorities. In July 2017 the Scottish Government published new

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<sup>7</sup> Street Trading Licence for England and Wales. Details available at: <https://www.gov.uk/street-trading-licence>.

<sup>8</sup> The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. Available at: <http://www.legislation.gov.uk/nisi/1985/1208/contents>.

<sup>9</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>.

<sup>10</sup> Scottish Parliament Official Report (19 June 2014). Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9261&i=88107>.

<sup>11</sup> Parliamentary Question S5W-00149 and answer. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-00149&ResultsPerPage=10>.

guidance on public entertainment licences in respect of funfairs.<sup>12</sup> However, there is no compulsion on local authorities to change their current practices.

This guidance is also not guaranteed to improve consistency across all local authorities, as each authority will consider and act upon it on an individual, rather than a collective, basis.

## **HOW THIS PROPOSAL WILL ADDRESS THE CURRENT PROBLEMS**

Currently, operators in Scotland can find themselves in the situation of wanting to hold a travelling funfair and, despite complying with all required health and safety legislation, still having to apply to the council for a Public Entertainment Licence. Forms need to be filled in and a fee, which could be up to £4133, sent in with the application. The council can then take up to three months to consider the application and up to 6 months to come to a decision. If the application is turned down, the council may keep some or all of the fee. The organisers are out of pocket, are not able to hold the funfair, and have also been prevented from planning other fairs in other locations, as the outcome of the relevant application was not known. Or, if the application was successful, but on the day of arrival the funfair cannot be set up on the licensed site as it is waterlogged due to bad weather, the organisers cannot hold the funfair on an alternate site as it has no licence for that site and the organiser has no option of trying to recoup the money spent on the licence.

This proposal seeks to take funfairs out of the inconsistent and unnecessarily complex public entertainment licensing system, and create a separate simple, fair and proportionate process in Scotland, tailored to the needs of the funfair sector.

The proposal would seek to minimise red-tape and create an appropriate balance between regulating funfairs, ensuring that operators have permission to stage them and comply with all required legislation, and ensuring that operators can conduct their businesses more reasonably, without being subject to delays, high fees and an inflexible system. **This proposal is therefore to make legislative changes to remove the scope for interpretation and inconsistency.**

## **DETAIL OF THE PROPOSED BILL**

### **Proposed content of the Bill**

The Bill would firstly exempt funfairs from the current licensing requirements by amending the Civic Government (Scotland) Act 1982. The Bill would also establish a new permissions process for the operation and management of travelling funfairs in Scotland.

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<sup>12</sup> Scottish Government (20 July 2017). Civic Government (Scotland) Act 1982 Guidance on public entertainment licences in respect of funfairs. Available at: <http://www.gov.scot/Publications/2017/07/5619>.

In particular, the proposed new system would—

- shorten the time local authorities are permitted to consider and decide upon applications by setting a shorter and fixed timescale;
- ensure that any fees charged are proportionate and for administrative purposes only (possibly by capping fees that can be charged and/or setting a fixed fee consistent across all local authorities); and
- create sufficient flexibility to deal with situations where alternative sites are required at short notice.

**It is important to reiterate that this proposal would not affect the current health and safety requirements (the Bill would make no change to health and safety law) which all funfairs must adhere to, and would not compromise standards in this regard. A Scottish Parliament Bill, in any case, could not amend health and safety law, as it is reserved to the UK Parliament under the devolution legislation.**

#### **Who would the Bill affect and how?**

The Bill would predominantly affect four groups of people—

- those who manage and operate travelling funfairs;
- those responsible for licensing/approving funfairs;
- those who attend funfairs; and
- local communities in the vicinity of a funfair.

#### *Operators*

By establishing a clear, simple, proportionate and flexible system for those people operating and managing funfairs to work within, the Bill should have a positive effect on the up to 2000 showpeople living and working in Scotland, and anyone else operating funfair businesses. This should include direct impacts, such as the requirements for being able to hold a funfair being less costly and bureaucratic, and also indirect benefits, such as being able to better plan their business activities over the short, medium and long term, and being able to better manage considerations such as accommodation and education requirements for children of travelling showpeople.

#### *Regulators*

The proposal would have an effect on local authorities, which would no longer be able to license funfairs under the 1982 Act, and would be required to implement the new process created by this proposal. The proposal shortens the time available to local authorities to process and decide on applications, and also ensures that fees charged must only cover any outlay costs. Any local authority currently profiting from applications would no longer continue to do so, but no local authority would suffer costs to it as a result of the proposal.

#### *Attendees*

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 for fairs to be held across Scotland for people to enjoy.

### *Communities*

For local communities that may have concerns about the appropriate management of funfairs, the continued role of local authorities in approving the staging of funfairs should offer reassurance. Also, as detailed above, other legislation and the role of the Health and Safety Executive relating to health and safety and issues such as noise pollution or anti-social behaviour would not be affected by this proposal and would continue to apply.

### **Alternative approaches**

In bringing forward this proposal, possible alternative courses of action were considered, including—

- making no legislative change but encouraging the Scottish Government to issue strong guidance to all local authorities on how they should be approaching licensing of funfairs;
- proposing a member's bill to amend the 1982 Act to change some of the requirements of the public entertainment licensing system;
- proposing a member's bill to remove travelling funfairs from the 1982 Act only (and not replace that with a new bespoke process).

The first of these options is one the Scottish Government has indicated it intends to pursue. However, no such guidance has been issued to date and there is no guarantee when any such guidance may appear or what it would state. Even if such guidance does come forward it would be just that, guidance, and therefore local authorities would still enjoy the current flexibility to manage and license funfairs as they see fit.

Amending the 1982 Act to try and deliver the desired changes would be problematic as it would either involve amending the public entertainment licence process as a whole, which would not be appropriate to address the needs of one specific sector, or would involve complex amendment that would not easily be transparent or accessible or fit for the funfair sector.

Exempting funfairs from the 1982 Act without creating a bespoke process to replace it would disempower local authorities inappropriately from being able to have any input into decision-making.

For these reasons, these options were discounted and this proposal is the one I consider to be the most effective way to guarantee delivering the changes required whilst maintaining an appropriate balance between operators and regulators.

## **Financial implications**

Changing the licensing system as outlined in this consultation would be likely to have financial implications predominantly on—

- those currently paying the fees (showpeople and other operators); and
- those currently charging and receiving the fees (local authorities).

### *Operators*

In the vast majority of cases, possibly in all cases, the fees paid by showpeople and other operators would reduce as a result of the proposal and therefore the proposal would reduce costs for travelling fair businesses, many of which are small and medium sized enterprises.

### *Regulators*

The fees received by local authorities would also reduce. However, as stated above, as the intention of the proposal is to ensure that fees charged relate to administrative cost covering only, whilst any authorities currently profiting from funfair licensing will no longer do so, authorities will only lose any additional profits they are currently making on funfair licences as a result of the proposal.

There may also be other financial implications for local authorities, for example, being required to process applications faster than the current legislation allows may have resource implications for some authorities, but this is not judged to be significant as authorities already have staff processing applications.

If this proposal led to more funfairs being held around Scotland, there may be an impact on local authorities, and on public services, such as Police Scotland and emergency services, in ensuring that funfairs were operated safely for all concerned, including local communities.

## **Equalities**

It is important to note that showpeople are occupational travellers rather than being part of the gypsy/traveller community, but that they can face many similar issues to gypsy travellers, in terms of education issues and discrimination. Showpeople are business people often of many generations of proud tradition, whose livelihood and wellbeing is dependent on being able to travel and stage funfairs around the country. An improved and more proportionate licensing system should therefore have a positive impact for showpeople.

In 2009, the then First Minister, Alex Salmond, said that—

“showpeople are an important part of Scotland’s culture, history and economy and combine a strong tradition of family and community with a high level of entrepreneurship and business acumen.”<sup>13</sup>

Currently, showpeople are often unable to plan their activities effectively, due to the lengthy timescales involved in applying for licences. This can make it difficult for them to plan necessities, such as accommodation requirements for different times of the year, and education requirements for children of showpeople. The high fees being charged currently in some parts of Scotland to apply for a licence, which are often non-refundable if not successful, are creating financial hardship for some showpeople.

The proposal therefore has significant potential to positively impact on travelling showpeople from an equalities perspective, in terms of the cultural traditions, as well as from an age (access to education) and possibly gender (depending on the roles of female and male members of showpeople communities) perspective.

### **Sustainability of the proposal**

The Scottish Government’s website states that—

“The goal of sustainable development is to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations.

The Scottish Government has as its overall purpose to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.”<sup>14</sup>

That emphasis on sustainable economic growth is supported by this proposal, which will help to free the small and medium sized business involved 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 hopefully see positive impacts in communities too. The wellbeing of showpeople should also be enhanced by the proposal, which will have a positive impact on future generations. Should this proposal lead to an increase in the number of funfairs held in Scotland then there would be an increase in the related environmental impact (energy required for travel, powering rides, any impact/damage to grass/land etc). However, these same impacts are current managed by funfairs around the country with efforts made to minimise any negative impacts, which would continue to be the case.

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<sup>13</sup> Scottish Government news release from 2009, available at: <http://www.wired-gov.net/wg/wg-news-1.nsf/0/FCBB48A2B4C029EC8025765D00440C77?OpenDocument>.

<sup>14</sup> Scottish Government. Sustainable Development. Available at: <http://www.gov.scot/Topics/Environment/SustainableDevelopment>.

## QUESTIONS

### SECTION 1 - ABOUT YOU

**1. Are you responding as:**

- an individual – in which case go to Q2A  
 on behalf of an organisation? – in which case go to Q2B

**2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)**

- Politician (MSP/MP/Peer/MEP/Councillor)  
 Professional with experience in a relevant subject  
 Academic with expertise in a relevant subject  
 Member of the public

**2B. Please select the category which best describes your organisation:**

- Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)  
 Commercial organisation (company, business)  
 Representative organisation (trade union, professional association)  
 Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)  
 Other (e.g. club, local group, group of individuals, etc.)

**3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.**

- I am content for this response to be attributed to me or my organisation  
 I would like this response to be anonymous (the response may be published, but no name)  
 I would like this response to be confidential (no part of the response to be published)

Name/organisation:

**4. 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.)**

Contact details:

## **SECTION 2 - YOUR VIEWS ON THE PROPOSAL**

### **Aim and approach**

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?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

**Please explain the reasons for your response.**

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

- Yes
- No
- Unsure

**Please explain the reasons for your response.**

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

- less than 14 days (please specify)
- 14 days
- more than 14 days and less than 28 days (please specify)
- 28 days
- more than 28 days (please specify)
- no fixed maximum
- Unsure

**Please explain the reasons for your response.**

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



- fee at local authority's discretion
- fee must not exceed the cost of processing the application
- maximum fee set in statute
- single fee fixed in statute
- power of Ministers to set scale of fees
- Unsure

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

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

- Full fee returnable to the applicant
- Part of the fee returnable to the applicant
- None of the fee returnable to the applicant
- Unsure

**Please explain the reasons for your response.**

### **Financial implications**

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

#### *Showpeople*

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

#### *Local authorities*

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

#### *General public*

- Significant increase in cost

- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

**Please explain the reasons for your response.**

### **Equalities**

**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?**

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

**Please explain the reasons for your response.**

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

### **Sustainability of the proposal**

**11. 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
- No
- Unsure

**Please explain the reasons for your response.**

### **General**

**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?**

## HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

### **Format of responses**

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

#### *Online survey*

To respond via Smart Survey, please follow this link:

<http://www.smartsurvey.co.uk/s/LicensingofFunfairs/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the Data Protection Act 1998. Any information you send in response to this consultation (including personal data and sensitive personal data) will be seen by the MSP progressing the Bill and by specified staff in NGBU, and may be added manually to Smart Survey.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or directly from this link:

<https://www.smartsurvey.co.uk/privacy-policy>

#### *Electronic or hard copy submissions*

If possible, please submit your response electronically – preferably in MS Word document. Please keep formatting of this document to a minimum, and avoid including any personal data other than your name (or the name of the group or organisation on whose behalf you are responding).

Any additional personal data (e.g. contact details) should be provided in the covering e-mail (or a covering letter).

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain the role of that organisation and how the view expressed in the response was arrived at (for example, whether it reflects an established policy or was voted on by members).

### **Where to send responses**

Responses prepared electronically should be sent by e-mail to:  
[Richard.Lyle.msp@parliament.scot](mailto:Richard.Lyle.msp@parliament.scot)

Responses prepared in hard copy should be sent by post to:

Richard Lyle MSP  
188 Main Street  
Bellshill,  
North Lanarkshire  
ML4 1AE

You may also contact Richard Lyle's office by telephone on 01698 479900.

### **Deadline for responses**

All responses should be received no later than **26 February 2018**.

### **How responses are handled**

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received on my website <http://www.richardlylemsp.net/>. As published, responses will normally include the name of the respondent, but other personal data (signatures, addresses and contact details) will not be included.

Copies of all responses will be provided to the Scottish Parliament's Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member's Bill). NGBU will treat responses in accordance with the Data Protection Act 1998. The summary may cite, or quote from, your response and may name you as a respondent to the consultation – unless your response is to be anonymous or confidential (see below).

I am also obliged to provide copies of all responses to the Scottish Parliament's Information Centre (SPICe). SPICe may make responses (other than confidential responses) available to MSPs or staff on request.

### **Requests for anonymity or confidentiality**

If you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly. You still need to supply your name, but any response treated as anonymous will be published without the name (attributed only to "Anonymous"), and only the anonymised version will be provided to SPICe. If you request anonymity, it is your responsibility to ensure that the content of your response does not allow you to be identified.

If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly. If the response is treated as confidential (in whole or in part), it (or the relevant part) will not be published. However, I would still be obliged to provide a complete copy of the response to NGBU, and a copy of any non-confidential parts (i.e. a redacted copy) to SPICe when lodging my final proposal. As the Scottish Parliament is subject to the Freedom of Information (Scotland) Act 2002 (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Scottish Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

In summarising the results of this consultation, NGBU will aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published (or published only in part).

#### **Other exceptions to publication**

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory statements or material. If I think your response contains such material, it may be returned to you with an invitation to provide a justification for the comments or remove them. If the issue is not resolved to my satisfaction, I may then disregard the response and destroy it.

#### **Data Protection Act 1998**

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or confidentiality. I will not publish your signature or personal contact information, or any other information which could identify you and be defined as personal data.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at: [www.ico.gov.uk](http://www.ico.gov.uk).

**Freedom of Information (Scotland) Act 2002**

As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the FOISA. So if the information you send me is requested by third parties the Scottish Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, potentially even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about Freedom of Information can be found at:

[www.itspublicknowledge.info](http://www.itspublicknowledge.info).