

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

Travelling Funfairs (Licensing) (Scotland) Bill

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Travelling Funfairs (Licensing) (Scotland) Bill, introduced in the Scottish Parliament on 29 April 2020. It has been prepared by the Parliament's Non-Government Bills Unit on behalf of Richard Lyle MSP, the member who introduced the Bill.

2. The following other accompanying documents are published separately:

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

Background

Policy objectives of the Bill

3. The aim of the Travelling Funfairs (Licensing) (Scotland) Bill (“the Bill”) is to make it less burdensome and more financially viable for those who put on travelling funfairs to manage and operate their businesses. A broader aim of the Bill is to ensure the survival and viability of the many communities of showpeople in Scotland, whose way of life and successful future, Richard Lyle believes, is being threatened by current law and practices.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

4. The Bill seeks to achieve its aims by exempting travelling funfairs from the current relevant licensing legislation, and creating a new simplified, consistent, fair and proportionate licensing process. The new process replicates (albeit often in a simplified form) appropriate elements of the current licensing system whilst making changes to deliver the main policy objectives sought by Mr Lyle, which are to—

- reduce the costs to operators and make them more consistent;
- reduce the timescales involved and make them more consistent;
- allow a licence to be transferable to another site, for example if the original site is unusable;
- restrict the categories of conditions which can be attached to a licence, and the grounds on which an application may be refused; and
- ensure that operators know condition categories and refusal grounds in advance.

Overview of anticipated financial impacts

5. The Bill's anticipated costs and savings are set out in detail below. In summary, however, the financial impacts of the Bill will mainly fall on local authorities and travelling funfair operators. Local authorities, as the licensing authority for their respective areas, will receive a fee for each application and will be required to process applications, incurring the costs of the administration involved. It is expected that net costs to most local authorities will increase as a result of the Bill. Operators will be required to pay a fee to make a licence application, and otherwise abide by the requirements of the licensing process. It is expected that operators will see a cost saving as a result of the Bill. The Bill therefore broadly rebalances the current cost impacts of travelling funfair licensing between local authorities and operators.

6. It should be noted that there are other likely cost impacts of holding a travelling funfair that are outwith the parameters of the Bill. One of the most significant of these likely costs relates to the leasing of the land on which the travelling funfair is to operate. The Bill requires operators to hold a licence to hold a specific fair but is not concerned with any arrangements for leasing the land (public or privately owned) on which to hold a fair. Such costs, along with other costs associated with operating a travelling funfair

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

(equipment, maintenance, health and safety, etc), are not directly related to the costs of licensing travelling funfairs and are therefore not covered by this memorandum.

Current law governing travelling funfair licensing in Scotland

7. The Civic Government (Scotland) Act 1982 (c.45)¹ (“the 1982 Act”) gives licensing authorities the power to require public entertainment licences, if they choose to do so, by passing a resolution. All 32 authorities in Scotland have passed such resolutions and require travelling funfairs to hold a public entertainment licence.
8. Paragraph 15 of Schedule 1 to the 1982 Act states that licensing authorities (local authorities) shall charge “reasonable” fees for the application of a public entertainment licence. Paragraph 15 also states that an authority shall “... seek to ensure that from time to time the total amount of fees receivable by the authority is sufficient to meet the expenses of the authority ...”. Details of the fees charged by local authorities can be found below.
9. Under the 1982 Act, operators can apply for either a permanent public entertainment licence which can apply for up to three years or, using a simplified process, for a temporary licence which can last up to six weeks.
10. Public entertainment licences do not regulate health and safety aspects of funfairs. Issues such as the safety and maintenance of rides and the hygiene of food and drink available at funfairs are covered by other legislation.
11. Public entertainment licences do not govern the leasing of land. Therefore, any charge for leasing land, whether public or private, will be a matter between the operator and the land owner.
12. The 1982 Act exempts the holders of a public entertainment licence from requiring a street traders’ licence and/or a late hours catering licence. The Bill carries these exemptions over and exempts the holder of a

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

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

travelling funfair licence under the Bill from requiring either of those licences.

13. The 1982 Act also exempts the use of a loudspeaker “by a travelling showman on land which is being used for the purposes of a pleasure fair” from committing an offence under section 54 (Playing instruments, singing, playing radios, etc.) of the 1982 Act and that will also be the case for anyone holding a licence under the Bill.

Definition of a travelling funfair

14. The Bill defines a funfair as “a number of rides, structures and other equipment designed and operated to provide public entertainment, amusement or leisure activity” and defines a travelling funfair as one which travels from site to site, remaining on a site for no longer than six consecutive weeks. The Bill also provides examples of what typically identifies a funfair, such as rides, amusements and stalls.

Costs on the Scottish administration

Costs on the criminal justice system

Offences

15. The Bill creates five offences—

- operating a travelling funfair without a licence (section 2(2));
- making a false statement in an application to hold a funfair (section 6(1));
- breaching a licence condition, or any of its terms (section 12(1));
- refusing or obstructing entry to or search of a licensed fair by an authorised council officer (section 15(5)); and
- refusing or obstructing entry to or search of an unlicensed fair to a uniformed constable (section 16(3)).

16. The above offences are equivalent to those in the 1982 Act, as are the attached penalties. As a result, under the new system, anyone convicted of operating a travelling funfair without a licence will be subject to imprisonment for a term not exceeding six months or a fine not exceeding £20,000 or to both. In addition, anyone found guilty of making a false

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

statement on an application will be subject to a fine not exceeding level 4 on the standard scale.² Finally, the offences which relate to refusing or obstructing entry to or search of a fair (whether licensed or unlicensed) carry a maximum fine of level 3 on the standard scale, as do those which relate to the breach of the terms or conditions of a licence.³

17. The enforcement of offences and penalties will impose costs on the Scottish Courts and Tribunals Service and the Crown Office and Procurator Fiscal Service (COPFS). However, as the same offences and penalties already operate under the 1982 Act, it is not expected that their inclusion in this Bill would lead to any additional costs for those parties.

18. As an example of the potential costs involved, Scottish Government figures show that, in cases where COPFS pursues a prosecution, the average cost for a summary case tried in the sheriff court would be £430 per procedure.⁴

19. Should a prosecution be made under the Bill, the average cost as outlined above would apply. However, given that equivalent offences already exist under the 1982 Act, the Bill does not increase the likely number of prosecutions, and so should not lead to any net increase in enforcement, prosecution or court costs.

Costs on local authorities

20. The costs of the Bill fall mostly on local authorities. As noted above, at present, each local authority administers its own licensing system for travelling funfairs under the public entertainment licence provisions of the 1982 Act. This means that the fees charged, and time taken to consider and decide upon an application vary between local authority areas (subject to the fee being “reasonable” and to applications being considered within 3 months and decisions made within 6 months after that). The 1982 Act also allows licensing authorities to decide what information must be provided

² Level 4 is currently set at a maximum fine of £2,500.

³ Level 3 is currently set at a maximum fine of £1,000.

⁴ Cost of the Criminal Justice System in Scotland dataset, December 2019: <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

with the application and what conditions can be attached to a licence being granted.

21. Richard Lyle's Bill creates a standardised system by setting a fixed £50 fee⁵ to make an application and by requiring local authorities to consider and decide upon applications within 21 days. In addition, unlike under the 1982 Act, a licensing authority will only be able to refuse a valid application if one or more statutory grounds of refusal are met⁶ and the only conditions that authorities will be able to attach are those provided for under the Bill. These provisions are consistent with the Member's policy aims of—

- reducing the costs to operators, which he believes are mostly unnecessarily and unacceptably high;
- making the costs as consistent as possible across local authority areas, to help operators to be able to better plan and manage their businesses; and
- reducing the time authorities may take to decide on an application, again to help operators to be able to better plan and manage their businesses.

Standardisation of fees

22. As referred to above, the 1982 Act does not set fees for the licensing of travelling funfairs but allows each local authority to set its own fees. Table 1 sets out the fees currently being charged by local authorities for temporary public entertainment licences for travelling funfair licences.⁷ Whilst the amounts involved vary greatly (from £50 for a fair lasting 6

⁵ It should be noted that the Bill gives the Scottish Government the power to increase the £50 fee to account for inflation.

⁶ This is on the condition that the application has been made correctly, on time and with the correct fee paid, and insurance documents. Under the 1982 Act, licensing authorities have an open-ended right to refuse applications.

⁷ Whilst all 32 local authorities were asked to respond to queries made in the preparing this memorandum, one did not respond, and others did not provide all requested figures. Where this is the case, the table has been marked accordingly (as has table 2).

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

weeks in one local authority area, to over £6,000⁸ for a particularly large fair held in another), almost every local authority currently charges more than £50 for a temporary funfair licence. Although the majority of local authorities charge a standard fee for a temporary funfair licence, some vary the amount charged depending on the capacity of the funfair or on the number of rides employed at the event.

Table 1: Current local authority fees etc. for travelling funfairs

Local authority	Current cost of a temporary licence ⁹	Processing time	Loss of fee income under new regime (per application) ¹⁰	Timescale deficit under new regime
Aberdeen City	Aberdeen City Council stated that travelling funfairs have been prohibited since 1993. However, operators have confirmed that some travelling funfairs have been held in that time. It is therefore unclear on what basis the council operates the prohibition or licenses any fairs which do take place.			
Aberdeenshire	£147	6 weeks minimum	£97	3 weeks
Angus	£156 to £834 depending on the capacity of the fair. For the purposes of this memorandum, the midpoint figure of £495 is used.	6 - 8 weeks	£445	3-5 weeks
Argyll and Bute	£137	3 weeks	£87	zero
City of Edinburgh	£970 to £6,148 depending on the capacity of the fair/number of rides. For the purposes of this	28 days	£3,509	7 days

⁸ The Meadows Festival Funfair paid £6,148 for a licence. The fee charged by the City of Edinburgh Council depends on the capacity of the fair and the number of devices used. In this case there were 35 rides and a maximum capacity of 1,000.

⁹ The figures used here were provided by local authorities in response to queries made to inform this memorandum. Where a range of figures were provided, the midpoint figure has been used (lowest figure plus highest figure, divided by 2)

¹⁰ This is based on the current cost of temporary licence as set out in column 2, minus the new £50 fee.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

Local authority	Current cost of a temporary licence ⁹	Processing time	Loss of fee income under new regime (per application) ¹⁰	Timescale deficit under new regime
	memorandum, the midpoint figure of £3,559 is used.			
Clackmannanshire	£222	6 weeks minimum	£172	3 weeks
Dumfries and Galloway	£368 to £441 depending on the length of the fair. For the purposes of this memorandum, the midpoint figure of £405 is used.	2 months	£355	5 weeks
Dundee City	£150	28 days minimum	£100	1 week
East Ayrshire	£255	Up to 90 days	£205	69 days
East Dunbartonshire	No response			
East Lothian	£190 to £760 depending on the capacity of the fair. For the purposes of this memorandum, the midpoint figure of £475 is used.	6-8 weeks	£425	3-5 weeks
East Renfrewshire	£276	56 days	£226	Up to 5 weeks
Eilean Siar	£21 per day	28 days	N/A ¹¹	1 week
Falkirk	£263	2-3 weeks minimum	£213	No deficit
Fife	£50	4 weeks	Zero	1 week
Glasgow	£597	12 weeks	£547	9 weeks
Highland	£254	Usually 3 months	£204	9 weeks
Inverclyde	£170	28 days minimum	£120	1 week
Midlothian	£117	3 months	£67	9 weeks
Moray	£294 to £1,296 depending on the capacity of the fair. For the purposes of this	3-4 months preferred (although 28	£745	1 – 13 weeks

¹¹ There is no fixed figure for loss of income as the current fee is variable dependent on the length of the fair.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

Local authority	Current cost of a temporary licence ⁹	Processing time	Loss of fee income under new regime (per application) ¹⁰	Timescale deficit under new regime
	memorandum, the midpoint figure of £795 is used.	days possible)		
North Ayrshire	£314	6 weeks	£264	3 weeks
North Lanarkshire	£102	12 weeks	£52	9 weeks
Orkney Islands	£138	6 weeks minimum	£88	3 weeks
Perth and Kinross	£305	6-8 weeks	£255	3-5 weeks
Renfrewshire	£891	3 months	£841	9 weeks
Scottish Borders	£51 to £325 depending on the number of rides at the fair. For the purposes of this memorandum, the midpoint figure of £188 is used.	6 weeks	£138	3 weeks
Shetland Islands	£158 to £1,672 depending on the capacity of the fair. For the purposes of this memorandum, the midpoint figure of £915 is used.	28 days minimum	£865	1 week
South Ayrshire	£222	28 days	£172	1 week
South Lanarkshire	£148	28 days minimum	£98	1 week
Stirling	£186	3 months	£136	9 weeks
West Dunbartonshire	£681	3 months	£631	9 weeks
West Lothian	£104	35 days minimum	£54	2 weeks

23. The Bill seeks to simplify the application procedure by removing some of the procedural elements required under the 1982 Act and standardising the process. This may in turn reduce the administrative costs for local authorities. Additionally, there should be scope for local authorities to adjust their procedures to take into account the reduced fee income and thus allow them to continue to operate broadly on the basis of cost recovery.

24. In response to inquiries made to inform this memorandum, a clear majority of local authorities stated that the amount they currently charge for

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

a temporary licence application covers the cost of processing the application alone and that there are no surplus funds generated by the fees. Further to this, a few of the authorities stated that the fee currently charged for the licence does not cover the cost of processing the application. If this is taken at face value, where it currently costs an authority £150 to process an application, with the introduction of the £50 standard fee, there would be a shortfall of at least £100 for each application, which the local authority would have to cover. However, as stated above, it should be noted that the fee income under the Bill funds a different, simplified, licensing system, and therefore a reduction in administration can also be expected.

25. As demonstrated, most local authorities are likely to receive less fee income under the new system and may therefore choose to review their internal processes in order to ensure their administrative costs can be recovered by the £50 fee. Should a local authority's costs exceed £50 for each application it would need to absorb additional costs within its existing budget. It is anticipated that any additional costs will be low when considered in the context of the overall budgets of local authorities.

26. Whilst acknowledging the disparity between the fee currently charged by the majority of local authorities and the new proposed fee, Mr Lyle is of the view that the £50 fee to be charged under the new system will provide a reasonable contribution towards the cost of processing an application for a temporary travelling funfair licence.

27. In addition, it should be noted that not every local authority would lose fee income under the new system, with Fife Council currently charging £50 as a standard set fee for a temporary licence application, demonstrating that it is possible to process a licence application for the fee proposed in the Bill.

28. Table 2 sets out the overall annual loss of fee income that each local authority would face should the number of applications remain the same each year. As shown, the loss to a local authority will vary depending on how much it currently charges for a temporary licence and how many applications it receives, with no loss expected for Fife Council, which

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

currently charges £50 for a temporary licence application, and the net loss for the City of Edinburgh Council likely to be the greatest at £17,545.¹²

29. The figures in table 2 suggest that, where figures are available, the anticipated annual loss of income for most local authorities would be less than £1,000 (9 local authorities) or between £1,000 and £5,000 (11 local authorities). Based on the methodology applied in this memorandum, none of the 32 local authorities will see an annual loss of fee income greater than £20,000.

30. Based on the figures estimated in table 2, the total reduction in local authority fee income each year following the Bill’s enactment would be approximately £106,378.¹³ It should be noted that any loss of income for local authorities would be matched by equivalent savings for funfair operators, thus effectively redistributing funds.

Table 2: Anticipated annual loss of fee income for local authorities under the Bill

Local authority	Loss of income under the new regime (per application)	Number of annual temporary funfair licence applications ¹⁴	Annual loss of fee income (if number of applications remains the same) ¹⁵
Aberdeen City	Aberdeen city council stated that travelling funfairs have been prohibited since 1993. However, operators have confirmed that some travelling funfairs have been held in that time. It is therefore		

¹² This is based on midpoint of the range of figures that the City of Edinburgh Council has charged for temporary funfair licences in 2018-19 (£3,559) multiplied by the number of travelling funfairs which took place in the council areas during this timeframe (5), less the 5 x £50 fee income under the Bill.

¹³ Based on the approximate annual loss of fee income as set out in table 2 being added together.

¹⁴ Local authorities were contacted in late 2018 and were asked for numbers in the last year.

¹⁵ Based on current fee for temporary licence less £50 (proposed new fee) multiplied by number of applications received in 2018-19. Where fees are variable (e.g. according to the size of the fair), the midpoint figure has been used (lowest figure plus highest figure, divided by 2).

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

Local authority	Loss of income under the new regime (per application)	Number of annual temporary funfair licence applications ¹⁴	Annual loss of fee income (if number of applications remains the same) ¹⁵
	unclear on the basis on which the council operates the prohibition or licences any fairs which do take place.		
Aberdeenshire	£97	39	£3,783
Angus	£445	13	£5,785
Argyll and Bute	£87	3	£261
City of Edinburgh	£3,509	5	£17,545
Clackmannanshire	£172	3	£516
Dumfries and Galloway	£355	5	£1,775
Dundee City	£100	4	£400
East Ayrshire	£205	5	£1,025
East Dunbartonshire	Figure not known	Figure not known	Figure not known
East Lothian	£425	15	£6,375
East Renfrewshire	£226	16	£3,616
Eilean Siar	N/A ¹⁶	1	N/A
Falkirk	£213	18	£3,834
Fife	Zero	56	Zero
Glasgow	£547	15	£8,205
Highland	£204	6	£1,224
Inverclyde	£120	20	£2,400
Midlothian	£67	14	£938
Moray	£745	24	£17,880
North Ayrshire	£264	60	£15,840
North Lanarkshire	£52	7	£364
Orkney Islands	£88	4	£352
Perth and Kinross	£255	2	£510
Renfrewshire	£841	3	£2,523
Scottish Borders	£138	32	£4,416
Shetland Islands	£865	0	N/A
South Ayrshire	£172	5	£860
South Lanarkshire	£98	24	£2,352
Stirling	£136	5	£680
West Dunbartonshire	£631	3	£1,893
West Lothian	£54	19	£1,026
Total			£106,378

¹⁶ No figure is given for loss of income as the current fee is variable dependent on the length of the fair, and there was only one fair in the past year, making it difficult to estimate likely fee income in a typical year.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

31. As the Bill sets out to make the process of applying for a funfair licence less burdensome and more financially viable for operators, the new system may lead to an increase in the number of applications made. However, given the finite number of travelling funfairs operating in Scotland, in most cases, any impact on the number of applications made is expected to be low.

32. In considering the impact of the standardisation of fees, it can be concluded that almost all local authorities will face a reduction in fee income following the introduction of the new system for licensing travelling funfairs. Any shortfall in costs between fee income and administration will need to be covered by the authorities. Aside from a few exceptions, the amounts involved will range from a few hundred pounds to a few thousand pounds per annum. However, it is hoped that the simplified application process established by the Bill will ensure that the process is not as expensive as at present, with the new £50 set fee making a reasonable contribution to the costs of processing the application.

Standardisation of timeframe

33. As noted, the Bill creates a standard 21-day timeframe for local authorities to process and make a determination on applications. Valid applications must be made at least 28 days before the first day of the fair, although authorities will also be expected to process late applications (made at least 14 days before the first day of the fair) unless doing so would be impracticable.

34. As table 1 demonstrates, the time currently taken by local authorities to process applications ranges from a minimum of two to three weeks up to three to four months. In many cases the time currently taken is not radically different from what is proposed by the Bill, with most authorities indicating that they take somewhere between four and eight weeks to process an application, and two local authorities stating that they can complete the process in three weeks or less.¹⁷

35. For the local authorities working to shorter timescales under the new licensing system, there may be some pressure on resources, with staff

¹⁷ Under current legislation, local authorities must consider applications within 3 months and reach a decision within 6 months after that.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

having to meet tighter deadlines than at present. In order to accommodate this, local authorities may decide to redistribute resources or make adjustments to working practices. However, in most local authority areas the number of applications for funfair licences are relatively low (as demonstrated in table 2), and expected to remain low following the Bill's enactment, so it is unlikely that a substantial amount of resource will need to be reallocated.

36. Those local authorities which currently take several months to process applications may have to make considerable adjustments to their processes in order to accommodate the new timescales. However, this will, again, be somewhat offset by the relatively low number of applications which are likely to be made.

Back-up site

37. The Bill permits funfair operators, as part of their application, to nominate a back-up site if they wish to do so, which can be used if the first-choice site is not available (something that is not possible under the 1982 Act). This is intended to negate the risk to operators of having to cancel a funfair at short notice should, for example, a site be flooded and unfit for use. Such cancellations can lead to disruption and loss of income for operators.

38. There will be a small degree of financial impact on local authorities as they will have to commit time and resource to undertaking any relevant checks and administrative processes should an application name two sites rather than one. Associated costs are to be funded by the £50 application fee, with any additional cost to be met by existing local authority budgets.

Staff training

39. Each licensing authority will have staff members who are responsible for the processing and management of all licenses granted by the local authority. Those staff will have substantial expertise in the work involved in operating licensing systems, including the licensing of travelling funfairs as provided for under the 1982 Act.

40. While the new licensing system is similar in many aspects to the current system, some training will be needed to take account of the

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

differences between the two regimes. As the Bill is generally simpler (and brings in lower fee income), than the process under the 1982 Act, authorities may take the opportunity to simplify their processes to minimise the staff time required.

Offences

41. As noted above, the Bill contains offences which are equivalent to those in the 1982 Act which relate to public entertainment licences. Under section 2 of the Bill, anyone operating a funfair without a licence will be committing an offence. As this will be enforced by council officers it follows that some cost will be incurred in ensuring there are sufficient resources in place to do so. In addition, section 15 of the Bill makes it an offence to obstruct or refuse entry to a fair by an authorised officer. Again, this will be enforced by council officers and it therefore follows that some costs will be incurred.

42. However, given that these offences are equivalent to those in the 1982 Act, there is no reason to suppose that they will be committed any more (or less) often than they are at present, or that any more (or less) resource will be needed to enforce them. Therefore, the expectation is that the offence provisions in the Bill will be cost-neutral – neither increasing nor decreasing costs for local authorities or any other bodies.

Appeals

43. The Bill allows operators to appeal to the sheriff principal against: the refusal of a valid application for a licence; the revoking of a licence; and any conditions attached to a licence. Should an appeal be made against a local authority, it would be subject to legal and court fees¹⁸ in defending the case. However, the extent of those costs would be determined by whether the local authority won or lost the case, with the losing party normally being expected to pay the legal expenses of the winning party. More details of the estimated costs of lodging an appeal, and thus the potential expenses to be paid by the local authority should it lose the case, are set out below in paragraphs 44-47.

¹⁸ Court of Session etc. Fees Order 2018:
<http://www.legislation.gov.uk/ssi/2018/83/made>.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

Costs on other bodies, individuals and businesses

Showpeople and funfair operators

44. As noted above, under the Bill, operators can appeal to the sheriff principal against a decision by a local authority to refuse, revoke or attach conditions to a travelling funfair licence. Should the operator choose to appeal to the sheriff principal, it would be subject to legal and court fees, the most substantial of which would be the engagement of legal advice and representation.

45. As noted, the costs to the operator would largely be determined by whether it won or lost the case. Should the operator lose the case, it would normally be required to pay the local authority's legal expenses, as well as its own. On the other hand, should the operator win the case, the local authority would normally be required to pay the operator's expenses, as well as its own.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

46. The estimated costs of appealing to the sheriff principal (based on a one-day hearing) are set out in the table below.

Table 3: Example cost of an appeal to the Sheriff Principal¹⁹

Item	Cost
Making an appeal to the Sheriff Principal	£120
Service of summons or claim form by sheriff office	£13 plus Sheriff Officer Fee ²⁰
Lodging of a written motion or minute and the lodging of any written opposition to any such motion or minute	£51
Hearing fee per day or part thereof (bench of 1)	£242
Cost of counsel ²¹ (per day)	£875.50 (junior counsel), £1,339 (senior counsel)
TOTAL	Approx. £2,670 ²²

47. As demonstrated, any appeal is likely to generate costs for both sides, primarily in relation to legal representation. Although appeals are expected to be rare, there is an inherent difficulty in predicting whether or how often the appeal mechanism would be used.

Police Scotland and Scottish Fire and Rescue Service

48. Under the new system, licensing authorities will be required to consult with police and fire services before granting a licence for a travelling funfair. As an equivalent requirement applies under the 1982 Act, this aspect of the

¹⁹ Court fees do not provide specific costs on appealing to the Sheriff Principal other than that of ‘making an appeal to the Sheriff Principal’. The other fees in table 3 are based on costs of appealing to the Sheriff Appeals Court.

²⁰ The Fees for Sheriff Officers are set out in Act of Sederunt (Fees of Messengers-at-Arms, Sheriff Officers and Shorthand Writers) (Amendment) 2018 <http://www.legislation.gov.uk/ssi/2018/126/schedule/2/made> They vary depending on whether the service is made in person to an address or by postal service.

²¹ Cost of counsel based on Scottish Legal Aid Board legal assistance fees- <https://www.slab.org.uk/solicitors/legal-assistance-fees/>.

²² The total is based on both senior and junior counsel being instructed. If only junior counsel were instructed, the total would be approx. £1330.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

Bill should be cost neutral. However, in cases where an applicant names two sites on an application, the police and fire services will be consulted on both. In such cases there is likely to be a very small increase in costs, as views will be sought on two sites rather than one. Such costs are expected to be minimal and absorbed by existing budgets.

49. Similarly, the powers of the police to enforce offences under the Bill are equivalent to existing powers to enforce equivalent 1982 Act offences, and there is no reason to suppose these costs will change as a result of the Bill.

Scottish Legal Aid Board

50. As detailed above, the Bill creates five new offences are equivalent to those in the 1982 Act. In cases where an individual faces prosecution for one of those offences, the Scottish Legal Aid Board (SLAB) may provide legal assistance. Scottish Government figures²³ show that for a summary case tried in the Sheriff Court, the average legal assistance costs are £604 per procedure.

51. Again, as these offences are the equivalent to those under the 1982 Act, it is not expected that any additional costs will be generated for SLAB.

52. In addition, SLAB may provide legal assistance to an operator which decides to appeal against a decision of the local authority to refuse, revoke or place conditions on a licence. The Board's list of fees payable for legal counsel²⁴ does not include any specific costs on appealing to a sheriff principal. However, as an example, it lists a fee of £1,339 for an appeal to the Sheriff Appeal Court when using Senior Counsel. Depending on the circumstances, SLAB may be subject to similar costs, in addition to any further fees incurred, each time an appeal is raised under the Bill's provisions.

²³ Cost of the Criminal Justice System in Scotland dataset, December 2019: <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustscot/costcrimjustdataset>.

²⁴ Scottish Legal Aid Board, legal aid fees: <https://www.slab.org.uk/solicitors/legal-assistance-fees/#>.

Savings for other bodies, individuals and businesses

Showpeople and funfair operators

Standardisation of fees

53. As demonstrated in table 1, funfair operators are currently subject to differing fees when applying for a temporary licence, depending on where the fair will take place. As noted, under the new system, the fee will be set at £50 per application regardless of which local authority area the fair will take place in and the fee shortfalls experienced by local authorities, as set out in tables 1 and 2, should translate directly into savings for funfair operators.

54. Depending on the areas in which a funfair operates, the savings made by individual operators could be substantial. A travelling fair which tours Scotland could expect to make savings of hundreds or even thousands of pounds over the course of the tour where fees which once amounted to several hundreds of pounds in some cases are now set at £50. Given that many funfair operators are small businesses, often operating with small budgets, such savings could have a significant impact on their viability.

Standardisation of timeframe

55. As set out in table 2, many local authorities take a substantial amount of time to reach a decision on whether to grant a funfair licence. This means that funfair operators are often unable to plan their activities effectively, creating uncertainty around what level of income they will be able to generate each year.

56. By requiring local authorities to reach a decision within 21 days, the Bill will ensure operators are given a relatively quick decision on their application, allowing them to plan their tours with much greater advance certainty. This will better enable them to make ancillary arrangements that could benefit other individuals and businesses – for example, by booking local accommodation or offering casual employment opportunities.

57. In addition, under the new regime, there is less risk of a licence being refused at short notice. This will reduce the risks of operators losing income

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

due to having to cancel a fair. Should an application (assuming it has been made reasonably far in advance) be refused under one of the grounds set out in the Bill, there should still be enough time for the operator to make alternative arrangements.

Simplified process

58. The Bill aims to simplify the process of applying for a licence for a travelling funfair by making it clearer and more consistent. This will be achieved by standardising fees and timescales as well as restricting the categories of conditions which can be attached to a licence and the grounds on which an application may be refused.

59. It is Richard Lyle's intention that by creating a simplified, consistent, fair and proportionate licensing process, including the standardisation of fees and timescales, it will become easier for operators to apply for licences, and for licences to subsequently be granted. As a result, operators will be better able to manage and operate their businesses in a more cost-effective manner.

Travelling funfair attendees

60. The Bill may also create a saving for those attending a travelling funfair. It may be the case that, where the cost of running a fair has been substantially reduced due to a significant reduction in the cost of applying for a licence, funfair operators will be in a position to reduce ride prices, making it cheaper for the public to attend fairs.

This document relates to the Travelling Funfairs (Licensing) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 29 April 2020

Travelling Funfairs (Licensing) (Scotland) Bill

Financial Memorandum

□ Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -
www.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
www.parliament.scot/documents