

Civic Government (Scotland) Act 1982

Guidance on public entertainment licences in respect of funfairs

July 2017

Introduction

1. Scottish licensing authorities often adopt differing approaches to aspects of civic licensing. This allows them to respond most appropriately to local concerns and generally works well.
2. This non-statutory guidance relates to the licensing of funfairs as places of public entertainment, under the Civic Government (Scotland) Act 1982 (“the 1982 Act”).
3. This guidance is intended to assist those seeking to operate funfairs across Scotland, those involved in the processing of applications and those with an interest in the licensing of funfairs. It is intended to encourage licensing authorities to adopt best practice to support and encourage operators in running funfairs across the length and breadth of Scotland. Where possible the guidance provides examples of good practice for applicants for a public entertainment licence, and for licensing authorities when considering licence applications.
4. The guidance should not be taken as an authoritative statement as to the law. Local authorities must ensure that their procedures enable them to comply with the requirements of the legislation. The interpretation of the law is ultimately a matter for the courts. This guidance should not be seen as a replacement for independent legal advice.

Legislative background

Who needs a licence?

5. The licensing of funfairs can be required by section 41 of the 1982 Act. This section 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 recreation¹.
6. We understand that all the Scottish licensing authorities have decided to operate a public entertainment licensing regime, and also to include funfairs within this.
7. Therefore if you intend to hold a funfair, you should contact the local authority for the location where it will take place.
8. The licensing authority is responsible for considering and granting applications for public entertainment licences. There are separate licensing authorities for every Scottish local authority area, each dealing with applications in their own geographical area. Each application is considered by the particular licensing authority and any enquiries should be made direct to the licensing authority itself.

¹ Section 41(2) also provides a list of certain premises that are exempt from public entertainment licensing requirements.

Types of licence

9. There are two types of public entertainment licence, a full licence and a temporary licence. A full licence can be granted for a period up to three years. A temporary licence can be granted to have effect for a period not exceeding six weeks.
10. The licensing authority may offer the ability to apply for a temporary licence. However there is no obligation for the licensing authority to make provision for temporary licences. Enquiries about the appropriate licence application should be made direct to the local licensing authority.
11. This guidance highlights the difference between the two types of licence, and applicants should consider carefully which would be most appropriate for their needs.

The application process

12. The steps which must be followed in applying for a licence, and the procedure which the local licensing authority follows once they have received an application for a public entertainment licence, are contained within Schedule 1 of the 1982 Act.
13. An application for a public entertainment licence should be made to the licensing authority, together with the appropriate fee.
14. The licensing authority may also request that further documents are required with the application. For funfairs, the documents are likely to be the relevant public liability insurance certificates, the health and safety risk assessment and an event safety plan.

Full Licences

15. Where an application for a **full** public entertainment licence has been submitted, the applicant must display a notice at the proposed premises for a period of 21 days. The notice should provide details about the licence application, the applicant and details with regards to making objections and representations.
16. Once the licensing authority has received the application for a full licence, they shall send a copy of the application to the chief constable and the relevant fire authority. The police and fire authority can object to an application for a full licence, and can also make representations to the licensing authority about the application.
17. Members of the public can object to the application, or make representations regarding it. The notice should advise that objections or representations can be made to the local licensing authority, and of the date that objections and representations should be received.

18. The notice should also advise that any objection or representation to the licence application should be made in writing within 28 days of whichever is the later or latest of certain dates set out in the 1982 Act, for example, the date when public notice was first given. Written objections and representations should specify the grounds of objection or nature of the representations, contain the contact details of the person making them, and be signed by them.
19. The licensing authority will consider if the objections or representations have been made correctly. They will also forward a copy of all relevant objections to the applicant, who should be given the opportunity to respond.
20. Once the 21 day site notice period has passed, the certificate must be forwarded to the licensing authority confirming that the notice was displayed.
21. It is for the licensing authority to consider whether any failure to display the notice is reasonable. If they do not consider it reasonable, they may order that the notice be displayed for a further 21 days before considering the application.
22. There are a number of organisations and council departments who will have an interest in the licence application. Examples include Scottish Ambulance Service, Police Scotland, Environmental Health, Leisure Services, Planning Services, Building Services, the Roads Service and the Emergency Planning Unit. Local authorities can however be structured in different ways, and it may be that across Scotland the same role is carried out by different departments.
23. The applicant must liaise with all relevant departments and ensure that they have the correct permissions, licences or certificates to hold a funfair. The licensing authority can provide further advice about the departments which should be consulted.
24. When they are considering the application, the licensing authority may make reasonable inquiries as they see fit. Where they intend to include the results of those inquiries in any decision making, they should notify the applicant of this intention.
25. The licensing authority may also consider that a visit to the proposed site would be useful when dealing with the application. In some local authority areas, the funfair is visited prior to opening to check test certificates and insurances for each ride is in place and to ensure all safety standards are adhered to. Some local licensing authorities set conditions that the licence will not come into effect until a satisfactory inspection takes place.
26. In the case of an application for a full licence, the licensing authority may hold a hearing to consider the application.
27. At that hearing, a licensing committee will consider the application, as well as any relevant representations and objections which have been made by the police, fire authority, or members of the public.

28. The applicant can also make representations for consideration by the licensing authority, addressing any objections.
29. Having considered any and all representations, the licensing authority will decide to either grant the application (subject to conditions) or refuse it.
30. A full licence can be valid for three years, from the date granted by the licensing authority. The licensing authority can grant the licence for a shorter period.
31. A full licence can be renewed, and an application for renewal of a licence is made in the same manner as an application for a new licence. If an application for renewal is made before an existing licence expires, the existing licence remains in force until the renewal of the licence is granted or, if it is refused, until the timescale for an appeal has lapsed or the appeal has been determined or abandoned.

Temporary licences

32. There is no requirement for a notice to be displayed when an application for a temporary licence has been made.
33. Where an application for a temporary licence has been submitted, the licensing authority need only consult the chief constable, and if necessary, the fire authority.
34. The licensing authority can grant a temporary licence subject to conditions.
35. A temporary licence cannot be granted for longer than six weeks, and cannot be renewed. The holder of, or the applicant for, a temporary licence can however also make an application for a full licence for the same activity. If an application for a full licence (for the same activity) is made, the temporary licence, if granted, continues until the full licence is granted or, if it is refused, until the timescale for an appeal has lapsed or the appeal has been determined or abandoned.

Conditions

36. Conditions are specific requirements that the licence holder must comply with, otherwise the licence could be refused, suspended or revoked.
37. The licensing authority can attach standard conditions for all licences granted for funfairs, they may also impose individual conditions to full licences, and also to temporary licences.

38. By way of example, such licence conditions could:

- Restrict the use of the premises to specific kinds of activity.
- Limit the number of persons to be admitted to the premises.
- Fix the days and times when the premises may be open.

39. The licensing authority should give careful consideration as to whether the condition proposed is necessary. The licensing authority should also consider whether, in all the circumstances, the condition is reasonable and proportionate.

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

Fees

41. The appropriate fee for the licence should accompany the licence application.

42. Each local licensing authority should ensure that fees are set at a reasonable rate.

Varying the licence

43. A temporary licence cannot be amended. Any change or variation will require a new licence application to be submitted. This should be borne in mind when applying for a temporary licence.

44. The licensing authority has a wide discretion to vary the terms of a **full** licence.

45. They can do so at any time they see fit, whether or not the licence holder has made an application.

46. The licensing authority shall notify the licence holder, the chief constable and the relevant fire authority of the proposed variation of the licence.

47. The licence holder, the chief constable and the relevant fire authority, have the opportunity to be heard at any consideration of the proposed variation.

48. The licence holder must notify the licensing authority as soon as possible of any material change of circumstances affecting the holder of a licence or the activity to which the licence relates.

49. The licence holder must provide the licensing authority with the details of the change proposed.

50. The licence authority shall consult with the chief constable and the relevant fire authority on the change proposed.

51. It is ultimately for the licensing authority to consider the change proposed, and whether or not to consent to it.

52. Any failure to disclose something which the authority decides is a material change could be considered to be misconduct and may have a bearing on fitness to hold a licence and may lead to prosecution.

Appeals

53. A decision not to grant a full licence, or to suspend a full licence, would be capable of appeal. An appeal can be to the Sheriff in the first instance and could be on the grounds that the authority erred in law, based their decision on an incorrect fact, acted contrary to natural justice or exercised their discretion in an unreasonable manner.

54. Any appeal in relation to a public entertainment licence must be made within 28 days of the licence application being determined.

55. Where an application for a temporary public entertainment licence has been refused, the only avenue of appeal is by way of judicial review.

Conclusion

56. The 1982 Act makes clear that any decision made by the local authority, when considering applications for public entertainment 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.

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

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

59. Any query about any public entertainment licensing requirements for funfairs should be directed to the local authority.



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