



# Licensing (Scotland) Act 2005

## 2005 asp 16

### PART 9

#### MISCELLANEOUS AND GENERAL

#### *Appeals*

#### **131 Appeals**

- (1) A decision of a Licensing Board specified in the left-hand column of schedule 5 may be appealed by the person specified in the right-hand column of that schedule.
- (2) An appeal under this section is to be made by way of stated case, at the instance of the appellant, to—
  - (a) where the decision appealed is specified in Part 1 of schedule 5, the sheriff principal, or
  - (b) where the decision appealed is specified in Part 2 of that schedule, the sheriff, of the appropriate sheriffdom.
- (3) The grounds on which a Licensing Board's decision may be appealed under this section are—
  - (a) that, in reaching the decision, the Licensing Board—
    - (i) erred in law,
    - (ii) based their decision on an incorrect material fact,
    - (iii) acted contrary to natural justice, or
    - (iv) exercised their discretion in an unreasonable manner, or
  - (b) where the decision is to take any of the steps mentioned in subsection (4), that the step taken is disproportionate in all the circumstances.
- (4) Those steps are—
  - (a) at a review hearing in respect of a premise licence—
    - (i) issuing a written warning to the licence holder,
    - (ii) revoking or suspending the licence, or
    - (iii) making a variation of the licence, or
  - (b) making an order revoking, suspending or endorsing a personal licence.

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*Status: This is the original version (as it was originally enacted).*

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- (5) Where the sheriff principal or, as the case may be, sheriff upholds an appeal against a Licensing Board's decision under this section, the sheriff principal or sheriff may—
- (a) remit the case back to the Licensing Board for reconsideration of the decision,
  - (b) reverse the decision, or
  - (c) make, in substitution for the decision, such other decision as the sheriff principal or sheriff considers appropriate, being a decision of such nature as the Licensing Board could have made.
- (6) In this section, “the appropriate sheriffdom” means the sheriffdom in which the principal office of the Licensing Board whose decision is being appealed is situated.

### **132 Appeals: supplementary provision**

- (1) A Licensing Board whose decision is appealed under section 131 may be a party to the appeal.
- (2) In considering the appeal, the sheriff principal or, as the case may be, sheriff may hear evidence.
- (3) On determining the appeal, the sheriff principal or sheriff may make such ancillary order (including an order as to the expenses of the appeal) as the sheriff principal or sheriff thinks fit.
- (4) A sheriff principal may authorise, whether generally or specifically, any other sheriff of the sheriff principal's sheriffdom to consider and determine an appeal made to the sheriff principal under section 131(2)(a).
- (5) In this section and section 131, references to a sheriff principal include references to any sheriff authorised under subsection (4).
- (6) Any party to an appeal under section 131 may appeal to the Court of Session on a point of law against the sheriff principal's or sheriff's decision on the appeal.
- (7) A decision of a Licensing Board which is appealed under section 131 continues to have effect despite the appeal, subject to subsection (8).
- (8) Where an appeal is taken against a decision of a Licensing Board to suspend or revoke a premises licence, the sheriff principal may—
- (a) on the application of the appellant, and
  - (b) if satisfied on the balance of convenience that it is appropriate to do so, recall the suspension or revocation pending determination of the appeal.
- (9) Further provision as to the procedure in any appeal under section 131, including in particular provision as to the times by which such an appeal is to be made or determined, may be prescribed by Act of Sederunt.