
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 9

SHERIFF COURT

**Act of Sederunt (Summary Applications,
Statutory Applications and Appeals etc. Rules)
Amendment (Licensing (Scotland) Act 2005) 2008**

Made - - - - *15th January 2008*

Coming into force - - *1st February 2008*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(1) and section 132(9) of the Licensing (Scotland) Act 2005(2), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Licensing (Scotland) Act 2005) 2008 and shall come into force on 1st February 2008.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of Summary Application Rules

2.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(3) is amended in accordance with paragraphs (2) and (3).

(2) After Part XXXIII of Chapter 2 (equality enactments)(4) insert—

(1) 1971 c. 58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and was extended by the Child Support Act 1991 (c. 48), sections 39(2) and 49 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2).

(2) 2005 asp 16.

(3) S.I.1999/929, amended by S.S.I. 2000/148 and 387, 2001/142, 2002/7, 129, 130, 146 and 563, 2003/26, 27, 98, 261, 319, 346 and 556, 2004/197, 222, 334 and 455, 2005/61, 473, 504 and 648, 2006/410,437 and 509 and 2007/6, 233, 339 and 440.

(4) Part XXXIII was inserted by S.S.I. 2006/509.

“PART XXXIV LICENSING (SCOTLAND) ACT 2005

Interpretation

3.34.1. In this Part, “the Act” means the Licensing (Scotland) Act 2005.

Application for stated case

- 3.34.2.**—(1) An appeal under section 131 of the Act—
- (a) must be by note of appeal in Form 33;
 - (b) must state the grounds of appeal; and
 - (c) must be lodged with the sheriff clerk of the sheriff court district in which the principal office of the Licensing Board is situated not later than 14 days after the relevant date.
- (2) The appellant must, at the same time as lodging the note of appeal, intimate a copy of it to—
- (a) the clerk to the Licensing Board; and
 - (b) all parties who appeared at the hearing before the Licensing Board.
- (3) Intimation under paragraph (2) and under paragraph (4) of rule 3.34.3 may be given by—
- (a) any of the methods of service provided for in Part II of Chapter 2 of this Act of Sederunt; or
 - (b) where intimation is to a party represented by a solicitor, by—
 - (i) personal delivery;
 - (ii) facsimile transmission;
 - (iii) first class ordinary post;
 - (iv) delivery to a document exchange,to that solicitor.
- (4) In this rule the “relevant date” means—
- (a) the date of the decision of the Licensing Board; or
 - (b) where a statement of reasons has been required under section 51(2) of the Act, the date of issue of the statement of reasons.

Adjustment of stated case

- 3.34.3.**—(1) The Licensing Board must, within 28 days of the lodging of a note of appeal, issue a draft case containing—
- (a) findings in fact and law or, where appropriate, a narrative of the proceedings before them;
 - (b) appropriate questions of law;
 - (c) a note stating the reasons for their decision with particular reference to the grounds of appeal; and
 - (d) in an appeal where questions of admissibility or sufficiency of evidence have arisen, a description of the evidence led before them to which these questions relate.
- (2) The clerk to the Licensing Board must send a copy of the draft stated case to the parties.
- (3) Within 14 days of the issue of the draft stated case—

- (a) a party may lodge with the clerk to the Licensing Board a note of any adjustments which he seeks to make; and
 - (b) a respondent may state any point of law which he wishes to raise in the appeal.
- (4) Any party–
- (a) lodging a note of adjustments; or
 - (b) stating a point of law,
- under paragraph (3) must at the same time intimate it to every other party.
- (5) The Licensing Board–
- (a) may, on the motion of a party or of their own accord; and
 - (b) must, where they propose to reject any proposed adjustment,
- allow a hearing on the adjustments.
- (6) A hearing under paragraph (5) must be held not later than 28 days after the expiry of the period mentioned in paragraph (3).
- (7) The Licensing Board may provide for such further procedure prior to the lodging of the stated case under rule 3.34.4 as they think fit.
- (8) The Licensing Board must, within 14 days after–
- (a) the latest date on which a note of adjustments has been or may be lodged; or
 - (b) any hearing on adjustments,
- state the case.
- (9) The stated case must include questions of law, framed by the Licensing Board, arising from the grounds of appeal and points of law stated by the parties and such other questions of law as they may consider appropriate.
- (10) Where the Licensing Board does not accept any adjustment sought under paragraph (3) they shall append to the case–
- (a) the terms of the adjustment and a note of any evidence rejected by them which is alleged to support that adjustment;
 - (b) their reasons for rejecting that adjustment and evidence; and
 - (c) a note of the evidence upon which they base any finding in fact challenged by a party at any hearing under paragraph (5) on the basis that it is unsupported by the evidence.
- (11) On cause shown the sheriff principal or, as the case may be, the sheriff may extend any period specified in paragraph (1), (3), (6) or (8) for such period or periods as he considers reasonable.

Lodging of stated case

3.34.4. The clerk of the Licensing Board must within 4 days of the case being stated by the Licensing Board–

- (a) authenticate the case;
- (b) lodge the case and all other documents and productions in the case with the sheriff clerk; and
- (c) send a copy of the case to the parties.

Appointment of hearing

3.34.5. On a stated case being lodged under rule 3.34.4 the sheriff clerk shall fix a hearing and intimate the date, time and place of that hearing to the parties.

Effect of and abandonment of appeal

3.34.6.—(1) When a note of appeal has been lodged, it may be insisted on by all other parties although they may not have lodged separate appeals.

(2) After a note of appeal has been lodged, the appellant shall not be at liberty to withdraw it except—

- (a) with the consent of the other parties, which may be incorporated in a joint minute; or
- (b) by leave of the sheriff principal or, as the case may be, the sheriff and on such terms as to expenses or otherwise as to him seem proper.

Hearing of appeal

3.34.7.—(1) Subject to section 132(2) of the Act, the sheriff principal or, as the case may be, the sheriff shall hear the parties or their solicitors or counsel orally on all matters connected with the appeal including liability for expenses, but if any party moves that the question of liability for expenses be heard after the sheriff principal or, as the case may be, the sheriff has given his decision the sheriff principal or, as the case may be, the sheriff may grant that motion.

(2) In the hearing of an appeal, a party shall not be allowed to raise questions of law of which notice has not been given except on cause shown and subject to such conditions as to expenses or otherwise as the sheriff principal or, as the case may be, the sheriff may consider appropriate.

(3) The sheriff principal or, as the case may be, the sheriff may permit a party to amend any question of law or to add any new question of law in accordance with paragraph (2).

Recall of suspension or revocation

3.34.8. An application under section 132(8) of the Act for recall of suspension or revocation of a premises licence shall be made by crave in the note of appeal and shall be heard and determined by the sheriff principal or sheriff, as the case may be, after such procedure as he may direct.”.

(3) In Schedule 1 in the appropriate place there shall be inserted the form set out in the Schedule to this Act of Sederunt.

Edinburgh
15th January 2008

A C HAMILTON
Lord President I.P.D.

SCHEDULE 1

Paragraph 2(3)

Rule 3.34.2.

FORM 33

NOTE OF APPEAL UNDER Licensing (Scotland) Act 2005

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.] *(design and state address)*, Appellant

The appeal is made in respect of *(state here the decision concerned, the date on which it was made and the Licensing Board which made it with reference to the relevant provisions of the Licensing (Scotland) Act 2005)*

The Licensing Board is requested to state a case.

The appellant appeals against the decision on the following grounds: *(state, in separate, numbered paragraphs the grounds on which the appeal is made with reference to section 131(3) and (4) of the Licensing (Scotland) Act 2005)*.

The appellant craves the court *(state here orders sought in respect of the appeal)*.

(insert place and date)

(signed)

[A.B.], Appellant

or

[X.Y.] *(state designation and business address)*

Solicitor for the Appellant

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt inserts a new Part XXXIV into the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 which sets out the procedure for appeals under section 131 of the Licensing (Scotland) Act 2005.