

Our Ref. b/xbf2571 9/30/1(i)  
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29<sup>th</sup> August 2007



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FAO Gary Cox

Dear Sirs,

### **Consultation on proposed format for Statements of Reasons Licensing (Scotland) Act 2005**

I refer to the above.

#### **General**

We are concerned at the brevity of this consultation. We were expecting a more robust discussion document on the detail of what "stated case" actually meant rather than being asked our opinion on a proposed form.

The terminology used is confusing. The Licensing (Scotland) Act 2005, (the Act) refers, at section 131 to appeal by way of stated case, yet the proposed format refers to a statement of reasons. As the stated case has not been mentioned in the consultation does this mean it has been abandoned?

There is a considerable difference between the format of a stated case as currently practised in criminal appeals and statements of reasons issued by Licensing Authorities. The proposed format does not follow the style of a stated case. There is, for instance, no box allocated for findings in fact.

Is it proposed that there is a Hearing on Adjustments following the issue of a draft? If so, who should be involved in this? For preference we think that there should be no procedure imposed on the Clerk to consult with any of the parties involved, prior to the issuing of the Statement of Reasons. The Clerk can, in any case, consult anyone for clarification purposes as s/he sees fit.

#### **The Proposed Form**

From the point of view of national consistency we have no issue with a style to be followed. The form as proposed follows quite closely the format followed by Aberdeen City Licensing Board in drafting statements of reasons under the Licensing (Scotland) Act 1976, albeit it in a more formalised way. It seems to include all the essential elements. I would make one comment about the layout of the form however. Section 5 is likely to have a lot of items for listing, mainly letters of objection and information packs supplied for Members by applicants. It may be better

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to move that part of the form so it continues underneath Section 4 thus providing more space for completion. You may also wish to include a separate section to record the Members vote.

It would also be useful to have a separate heading setting out the type of application appealed against so that anyone picking up the document will know straight away what type of application is under issue. This should be at the beginning of the document, for instance Section 5, and everything else moved accordingly.

We are not sure what is meant in Section 9. Is this just to be a repetition of the sections of the Act? Is case law relevant here? If Members are refusing an application currently they will indicate what ground of refusal they are relying on. Is this what is meant here? If the decision is to grant the application, what legal powers are being used in this decision? Will "Licensing (Scotland) Act 2005" suffice in this instance?

How proscribed is the statement to be? Should authors list numerically the reasons for the decision, or is free text expected?

Yours Faithfully



**Brenda Flaherty**  
**Legal Manager**  
**District Court /Licensing Team**

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FAO Gary Cox

Dear Sirs,

**Consultation on Relevant Offences  
Licensing (Scotland) Act 2005**

I refer to the above.

We are pleased to see a clear statement in the Act that spent convictions do not count for these purposes. This simplifies the situation considerably compared with the procedure under the Civic Government (Scotland) Act 1982.

In the introduction, at Item 8 there is a statement that the Scottish Executive considers a single conviction for an offence to be sufficient. This appears to be in conflict with the terms of Section 129(3)(a) and (b).

Yours Faithfully

**Brenda Flaherty**  
**Legal Manager**  
**District Court /Licensing Team**