

SHERIFFDOM OF SOUTH STRATHCLYDE DUMFRIES AND GALLOWAY  
AT DUMFRIES

[2019] SC DUM 15

B-403-18

NOTE BY SHERIFF GEORGE JAMIESON

in the cause

JASON McCARTHY

Pursuer

against

IAIN LIVINGSTONE, CHIEF CONSTABLE

Defender

**Pursuer: Maher;**  
**Defender: Raymond;**

Dumfries, 15 February 2019

The sheriff, having resumed consideration of the summary application, repels the defender's plea to the competency of the summary application, and (1) orders the defender to lodge Answers to the summary application no later than 7 March 2019, (2) allows parties to adjust their pleadings until 9 May 2019 at 4pm, (3) orders the pursuer to lodge a record of the adjusted pleadings with the sheriff clerk, and send a copy to the defender's agent, no later than 23 May 2019, and (4) fixes a hearing on evidence in respect of the summary application and Answers on 31 May 2019 at 10:00 am within Dumfries Sheriff Court.

## NOTE

[1] This is a summary application in which the pursuer combines appeals under the Firearms Act 1968 (refusal of shotgun certificate) and the Air Weapons and Licensing (Scotland) Act 2015 (refusal of air weapon certificate).

[2] I heard brief submissions on the competency of this summary application on 14 February 2019. Mrs Raymond, for the defender, submitted that as there were two statutory appeals under two different enactments, so there should have been two separate summary applications. Mr Maher, for the pursuer, pointed to "the procedure being exactly the same" (summary application) and the close link between the two appeals. In his view, the application for an air weapon certificate under the 2015 Act was a "formality" as it would also be refused if an application for a shotgun certificate were refused under the 1968 Act.

[3] In my opinion, the starting point is that statutory appeals under different enactments should normally, and preferably, be made by separate summary application. The only real exception is where, as here, the procedural law governing the appeals is virtually identical, albeit in two different enactments, and there is a close connection between the matters under appeal.

[4] On the first of these matters, a number of points may be noted.

[5] First, both appeals involve the same pursuer and defender (the chief constable).

[6] Secondly, jurisdiction in appeals under the 1968 Act is governed by part I of schedule 5 to the 1968 Act. Jurisdiction in the present appeal lies with "the sheriff within whose jurisdiction the appellant resides" (paragraph 1, Part I, schedule 5); jurisdiction in the present appeal under the 2015 Act lies with "a sheriff of the sheriffdom in which the appellant resides" (section 34(8)(a)).

[7] The wording is different, but the meaning is the same. In article 1 of condescence the pursuer correctly avers, for both appeals, that: "The pursuer has his place of residence within the sheriffdom, accordingly this court has jurisdiction".

[8] Thirdly, both appeals are made by summary application (see paragraph 1 of part III of schedule 5 to the 1968 Act for appeals under the 1968 Act; there is no equivalent provision in section 34 of the 2015 Act, but this follows from rule 1.4 of the Summary Application Rules). They are both to be determined on the merits (and not by way of review) and the sheriff hearing an appeal may consider the evidence or other matter, whether or not it was available when the decision was taken (sections 44(2) and (3), 1968 Act; sections 34(4) and (5) of the 2015 Act). On hearing an appeal under either Act, the sheriff may dismiss the appeal or give the chief constable such direction as thought fit (1968 Act)/considered appropriate (2015 Act) as respects the subject matter of the appeal (paragraph 3, Part III, schedule 5, 1968 Act; section 34(6), 2015 Act).

[9] Fourthly, an appeal against the decision of the sheriff may only be on a point of law (paragraph 4, Part III, schedule 5, 1968 Act; section 34(7), 2015 Act).

[10] Accordingly, it can be concluded that the procedural scope and scheme of the statutory appeals is virtually identical. This strongly points towards appeals under the two Acts being capable of being combined in the one summary application if there is a close connection between them. As to that connection, the pursuer's application for a shotgun certificate was lodged with the defender on or around 5 August 2018 and his application for an air weapon certificate was lodged with the defender on or around 11 October 2018. Both refusals were dated 7 December 2018 and the ground of refusal in both cases is averred to be "undisclosed historical considerations".

[11] There thus seems to me to be a sufficiently close connection between the two appeals as to permit them to be considered in the one summary application.

[12] There is one surprising difference between the two statutory appeals. The time limits for the appeals are different – an appeal under section 44 of the 1968 Act must be made within 21 days after the date on which the appellant has received notice of the decision (paragraph 2, Part III, 1968 Act); whereas an appeal under section 34 of the 2015 Act must be made within 21 days beginning on the date on which the decision appealed against was made. This means the appeal under the 2015 Act in this case was just in time and no more. The decision appealed under the 2015 Act was made on 7 December and the initial writ was lodged on 27 December 2017 (the last day for lodging the appeal, as the first of the 21 days began on 7 December). The time limit in respect of the appeal under the 1968 Act began to run on the day after receipt of the decision, which presumably was some time after 7 December, and so this appeal was more comfortably on time.

[13] I have concluded this difference does not affect the ability of the court to consider the two appeals combined in the one summary application. Had the appeal under the 2015 Act been out of time, but not the appeal under the 1968 Act, the court could no doubt have struck out the non-timeous appeal under the 2015 Act from the crave of the initial writ. Other than that, I see no procedural advantage in ordering the disjunction of the two appeals combined in this one summary application. Both will proceed by way of a re-hearing on the evidence available to the sheriff at the date of the hearing on evidence. Both will involve similar issues and will require determination of facts relevant to both appeals. Both require Answers and adjustment, which can be combined in a single process rather than two processes which might only ultimately be conjoined for proof.