

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Criminal Procedure

Section 61 - Transfer of justice of the peace court cases

279. This section introduces new provisions into the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) relating to the jurisdiction of the JP court in relation to the commencement and transfer of proceedings. Three new sections, 137CA, 137CB and 137CC, are inserted. The purpose is to make provision for JP courts similar to that which exists for the transfer of sheriff court cases under section 137A to 137C of the 1995 Act. It should be noted that consequential amendment to section 10A of the 1995 Act is made in Schedule 7 to this Act.
280. Section 137CA provides that where an accused person has been cited to a diet, or where citation has not taken place but proceedings have been commenced against an accused in a JP court, the prosecutor may apply to a justice to transfer the proceedings to another JP court in the same sheriffdom.
281. Subsections (1) and (2) of section 137CB provide that where the clerk of a JP court informs the prosecutor that due to unforeseen circumstances it is not practicable for that JP court or any other JP court in the sheriffdom to proceed with some or all of the cases due to call at a diet, the prosecutor may apply to the sheriff principal to transfer the proceedings to a JP court in another sheriffdom.
282. Subsections (3) and (4) provide that where an accused person has been cited to a diet, or where proceedings have been commenced against an accused person in a JP court, the prosecutor can apply to a justice to transfer the proceedings to a JP court in another sheriffdom, if there are proceedings against the accused in a JP court in that sheriffdom.
283. Subsections (5) and (6) provide that where it is intended to take proceedings against an accused person in a JP court, and there are proceedings against the accused in a JP court in another sheriffdom, the prosecutor may apply to a justice for authority to take proceedings against the accused in a JP court in the other sheriffdom.
284. Subsection (7) provides that where an application is made under subsection (2), a sheriff principal may only make the order with the consent of the sheriff principal of the other sheriffdom. Subsection (9) permits the sheriff principal who has made an order under subsection (7) to revoke or vary it, with the consent of the sheriff principal of the receiving sheriffdom.
285. Subsection (8) provides that where an application is made under subsection (4) or (6), the justice is to make the order sought if s/he considers it expedient and if a justice of the other sheriffdom consents. Subsection (10) provides that a justice who has made an

*These notes relate to the Criminal Justice and Licensing (Scotland)
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

order under subsection (8) (or any justice of the same sheriffdom) may revoke or vary that order, if a justice of the receiving sheriffdom consents.

286. Subsections (1) & (2) provide that where there are exceptional circumstances leading to an unusually high number of accused persons appearing from custody for a first calling in JP courts, and it is unlikely that those courts would be able to deal with all these cases, the prosecutor may apply to the sheriff principal for authority to take proceedings against some or all of the accused in a JP court in another sheriffdom. The sheriff principal may order that the proceedings are to be maintained at the receiving JP court, or at the original court. Under subsection (4), the order may be made in relation to a particular period of time, or particular circumstances.