



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART IX

#### SUMMARY PROCEEDINGS

##### *General*

#### **133 Application of Part IX of Act.**

- (1) This Part of this Act applies to summary proceedings in respect of any offence which might prior to the passing of this Act, or which may under the provisions of this or any Act, whether passed before or after the passing of this Act, be tried summarily.
- (2) Without prejudice to subsection (1) above, this Part of this Act also applies to procedure in all courts of summary jurisdiction in so far as they have jurisdiction in respect of—
  - (a) any offence or the recovery of a penalty under any enactment or rule of law which does not exclude summary procedure as well as, in accordance with section 211(3) and (4) of this Act, to the enforcement of a fine imposed in solemn proceedings; and
  - (b) any order *ad factum praestandum*, or other order of court or warrant competent to a court of summary jurisdiction.
- (3) Where any statute provides for summary proceedings to be taken under any public general or local enactment, such proceedings shall be taken under this Part of this Act.
- (4) Nothing in this Part of this Act shall—
  - (a) extend to any complaint or other proceeding under or by virtue of any statutory provision for the recovery of any rate, tax, or impost whatsoever; or
  - (b) affect any right to raise any civil proceedings.
- (5) Except where any enactment otherwise expressly provides, all prosecutions under this Part of this Act shall be brought at the instance of the procurator fiscal.

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### 134 Incidental applications.

- (1) This section applies to any application to a court for any warrant or order of court—
  - (a) as incidental to proceedings by complaint; or
  - (b) where a court has power to grant any warrant or order of court, although no subsequent proceedings by complaint may follow thereon.
- (2) An application to which this section applies may be made by petition at the instance of the prosecutor in the form prescribed by Act of Adjournal.
- (3) Where it is necessary for the execution of a warrant or order granted under this section, warrant to break open shut and lockfast places shall be implied.

#### Modifications etc. (not altering text)

- C1** S. 134 applied (20.11.2002) by [Copyright, Designs and Patents Act 1988 \(c. 48\)](#) , ss. 114B(2)(a) , 204B(2)(a) , 297D(2)(a) (as inserted by [Copyright, etc. and Trade Marks \(Offences and Enforcement\) Act 2002 \(c. 25\)](#) , ss. 3 , 4 , 5 ; S.I. 2002/2749 , art. 2 )
- S. 134 applied (7.3.2005) by [The Electromagnetic Compatibility Regulations 2005 \(S.I. 2005/281\)](#) , reg. 98(1)

### 135 Warrants of apprehension and search.

- (1) A warrant of apprehension or search may be in the form prescribed by Act of Adjournal or as nearly as may be in such form, and any warrant of apprehension or search shall, where it is necessary for its execution, imply warrant to officers of law to break open shut and lockfast places.
- (2) A warrant of apprehension of an accused in the form mentioned in subsection (1) above shall imply warrant to officers of law to search for and to apprehend the accused, and to bring him before the court issuing the warrant, or before any other court competent to deal with the case, to answer to the charge on which such warrant is granted, and, in the meantime, until he can be so brought, to detain him in a police station, police cell, or other convenient place.
- (3) A person apprehended under a warrant or by virtue of power under any enactment or rule of law shall wherever practicable [<sup>F1</sup>(if not liberated under section 22(1B)(a) of this Act)] be brought before a court competent to deal with the case not later than in the course of the first day [<sup>F2</sup>on which the court is sitting] after he is taken into custody.
- (4) <sup>F3</sup>.....
- (5) A warrant of apprehension or other warrant shall not be required for the purpose of bringing before the court an accused who has been apprehended without a written warrant or who attends without apprehension in answer to any charge made against him.

#### Textual Amendments

- F1** Words in s. 135(3) inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#) , ss. 7(3) , 84 ; S.S.I. 2008/42 , art. 3 , Sch. (subject to art. 4 )
- F2** Words in s. 135(3) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#) , ss. 80 , 84 , Sch. para. 17(a) ; S.S.I. 2007/479 , art. 3(1) , Sch. (as amended by S.S.I. 2007/527 )

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**F3** S. 135(4) repealed (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84, **Sch. para. 17(b)**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)

**Modifications etc. (not altering text)**

**C2** S. 135(3) excluded (19.2.2001) by 2000 c. 11, ss. 41, 53, Sch. 7 para. 6, **Sch. 8 para. 27(4)(a)**; S.I. 2001/421, **art. 2**

**136 Time limit for certain offences.**

- (1) Proceedings under this Part of this Act in respect of any offence to which this section applies shall be commenced—
  - (a) within six months after the contravention occurred;
  - (b) in the case of a continuous contravention, within six months after the last date of such contravention,and it shall be competent in a prosecution of a contravention mentioned in paragraph (b) above to include the entire period during which the contravention occurred.
- (2) This section applies to any offence triable only summarily and consisting of the contravention of any enactment, unless the enactment fixes a different time limit.
- (3) For the purposes of this section proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if the warrant is executed without undue delay.

**Modifications etc. (not altering text)**

- C3** S. 136(3): savings for effects of S.I. 2011/548 art. 15(3)(b) by S.I. 2011/548 art. 19 (as inserted (3.3.2011) by **The Libya (Asset-Freezing) Regulations 2011** (S.I. 2011/605), regs. 1(1), **20** (with reg. 18))
- C4** S. 136 excluded (1.4.1999) by 1998 c. 39, s. **33(4)**; S.I. 1998/2574, art. 2(2), **Sch. 2**  
S. 136 excluded (3.6.1999) by S.I. 1999/1516, **reg. 9(5)**  
S. 136 excluded (25.10.1999) by 1973 c. 35, s. **11A(3)** (as inserted (25.10.1999) by 1999 c. 26, s. 31, **Sch. 7 para. 5**); S.I. 1999/2830, art. 2(1), **Sch. 1, Pt. I**  
S. 136 excluded (16.2.2001) by 2000 c. 41, s. **151(3)**; S.I. 2001/222, art. 2, **Sch. 1 Pt. I** (subject to transitional provisions in **Sch. 1 Pt. II**)  
S. 136 excluded (16.3.2001 in accordance with art. 1(2)(3) of the amending S.I.) by S.I. 2001/947, **art. 16(8)**  
S. 136 excluded (10.10.2001 in accordance with art. 1(2) of the amending S.I.) by S.I. 2001/3365, **art. 10(6)**  
S. 136 excluded (25.1.2002) by S.I. 2002/111, **art. 20(9)**  
S. 136 excluded (24.10.2002) by S.I. 2002/2628, **art. 16(8)**  
S. 136 excluded (14.6.2003) by S.I. 2003/1519, **art. 20(8)**  
S. 136 excluded (13.2.2004) by S.I. 2004/348, **art. 15(8)**  
S. 136 excluded (11.2.2005) by S.I. 2005/253, **art. 9(8)**  
S. 136 excluded (7.3.2005) by S.I. 2005/281, **reg. 93**  
S. 136 excluded (1.10.2005) by S.I. 2005/1803, **reg. 41(2)**  
S. 136 excluded (20.7.2007) by S.I. 2006/3418, **reg. 54** (with savings in regs. 7-14, 63, 64)
- C5** S. 136 excluded (26.5.2008) by **The Business Protection from Misleading Marketing Regulations 2008** (S.I. 2008/1276), **reg. 10(4)(5)**
- C6** S. 136 excluded (26.5.2008) by **The Consumer Protection from Unfair Trading Regulations 2008** (S.I. 2008/1277), **reg. 14(4)(5)** (with reg. 28(2)(3))

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- C7** S. 136 restricted (26.11.2008) by Planning Act 2008 (c. 29), ss. 58(6)(7), 236, 241, **Sch. 12 para. 9** (with s. 226)
- C8** S. 136 excluded (10.4.2009) by The Iran (United Nations Sanctions) Order 2009 (S.I. 2009/886), **art. 12(7)**
- C9** S. 136 excluded (10.7.2009) by The North Korea (United Nations Sanctions) Order 2009 (S.I. 2009/1749), **art. 14(7)** (as amended by S.I. 2009/3213)
- C10** S. 136(1) modified (21.7.1997) by 1997 c. 22, s. 21(4)(c); S.I. 1997/1672, **art. 2**
- C11** S. 136(3) applied (1.4.1999) by 1998 c. 39, s. 33(5)(b); S.I. 1998/2574, art. 2(2), **Sch. 2**  
S. 136(3) applied (30.4.1998) by S.I. 1998/955, **reg. 8(4)**  
S. 136(3) applied (1.7.1996) by S.I. 1996/1500, **reg. 16(5)**  
S. 136(3) applied (1.8.1996) by S.I. 1996/2005, **reg. 11(4)**  
S. 136(3) applied (3.12.1996) by S.I. 1996/2999, **reg. 11(4)**  
S. 136(3) applied (2.8.1999) by S.I. 1999/1872, **reg. 109(5)**  
S. 136(3) applied (16.12.1999) by S.I. 1999/3315, **reg. 8(5)**  
S. 136(3) applied (17.12.1999) by S.S.I. 1999/186, **reg. 8(6)**  
S. 136(3) applied (29.1.2001) by S.S.I. 2000/448, **reg. 14(4)**  
S. 136(3) applied (10.10.2001 in accordance with art. 1(2) of the amending S.I.) by S.I. 2001/3365, **art. 10(6)**  
S. 136(3) applied (19.3.2001) by S.S.I. 2001/40, **reg. 11(4)** (which S.S.I. was revoked 2.7.2001 by S.S.I. 2001/220, **art. 13**)  
S. 136(3) applied (12.5.2001) by S.S.I. 2001/140, **reg. 16(5)**  
S. 136(3) applied (2.7.2001) by S.S.I. 2001/220, **reg. 11(4)**  
S. 136(3) applied (28.9.2001) by S.S.I. 2001/300, **reg. 17(4)**  
S. 136(3) applied (1.1.2002) by S.S.I. 2001/445, **reg. 24(2)**  
S. 136(3) applied (22.3.2002) by S.S.I. 2002/139, **reg. 20(2)**  
S. 136(3) applied (28.6.2002) by S.S.I. 2002/278, **reg. 15(4)**  
S. 136(3) applied (1.4.2002) by 1980 c. 45, s. 72(3C) (as inserted (1.4.2002) by 2002 asp 3, s. 65(3) (with s. 67)); S.S.I. 2002/118, **art. 2(3)**  
S. 136(3) applied (1.10.2004) by 1999 c. 33, s. 92B(7) (as inserted (1.10.2004) by 2004 c. 19, ss. 39(7), 48(1)-(3)); S.I. 2004/2523, **art. 2**, Sch.)  
S. 136(3) applied (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 100(5), 263; S.S.I. 2005/604, **art. 2**  
S. 136(3) applied (18.3.2004) by S.I. 2004/70, **reg. 21(2)**  
S. 136(3) applied (31.12.2005) by S.S.I. 2005/613, **art. 45(9)**
- C12** S. 136(3) extended (1.4.1996) by 1995 c. 39, ss. 4(3), 53(2)  
S. 136(3) extended (4.5.1999) by S.I. 1999/1110, **reg. 7(6)**  
S. 136(3) applied (26.3.2006 at 0600 hours) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 5(2), 43 (with s. 10); S.S.I. 2005/492, **art. 3(d)**  
S. 136(3) applied (1.3.2005) by S.I. 2005/218, **reg. 12(10)**  
S. 136(3) applied (18.4.2005) by S.S.I. 2005/143, reg. 25, **Sch. 4 para. 9(2)**  
S. 136(3) applied (12.5.2005) by S.I. 2005/1259, **art. 10(3)**  
S. 136(3) applied (15.5.2005) by S.S.I. 2005/225, **reg. 21(4)**  
S. 136(3) applied (9.6.2005) by S.I. 2005/1517, **art. 10(3)**  
S. 136(3) applied (1.10.2005) by S.I. 2005/1803, **reg. 41(3)**  
S. 136(3) applied (16.12.2005) by S.I. 2005/3432, **art. 12(3)(b)**  
S. 136(3) applied (2.12.2005) by S.S.I. 2005/569, **reg. 21(2)**  
S. 136(3) applied (1.9.2006) by Human Tissue (Scotland) Act 2006 (asp 4), ss. 21(2), 62; S.S.I. 2006/251, **art. 3**  
S. 136(3) applied (1.7.2006) by S.S.I. 2006/319, **art. 10(7)**  
S. 136(3) applied (9.6.2006) by S.I. 2006/1454, **art. 13(3)(b)**  
S. 136(3) applied (9.10.2006) by S.I. 2002/3026, reg. 30(2C) (as inserted by S.I. 2006/2530, **reg. 11(2)**)  
S. 136(3) applied (12.10.2006) by S.I. 2006/2657, **art. 14(3)(b)** (with arts. 18, 19)

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- S. 136(3) applied (16.11.2006) by S.I. 2006/2952, **art. 14(3)(b)** (with art. 18)
- S. 136(3) applied (16.11.2006) by S.I. 2006/2958, **art. 13(3)(b)** (with art. 17)
- C13** S. 136(3) applied (9.2.2007) by The Iran (Financial Sanctions) Order 2007 (S.I. 2007/281), **art. 13(3)(b)** (with art. 17)
- S. 136(3) applied (3.5.2007) by The Iran (European Community Financial Sanctions) Regulations 2007 (S.I. 2007/1374), **reg. 13(3)(b)** (with reg. 16)
- S. 136(3) applied (28.9.2007) by The Less Favoured Area Support Scheme (Scotland) Regulations 2007 (S.S.I. 2007/439), **reg. 21(2)**
- C14** S. 136(3) applied (20.1.2007, 6.4.2007, 1.10.2007, 6.4.2008, 1.10.2008 for certain purposes and 1.10.2009 otherwise) by Companies Act 2006 (c. 46), **ss. 1128(2)**, 1300 (with savings in s. 1133); S.I. 2006/3428, **art. 3(2)** (with art. 6); S.I. 2007/1093, **art. 2(2)(c)** (with arts. 4, 11); S.I. 2007/2194, **art. 2(1)(l)(3)(h)** (with art. 12); S.I. 2007/3495, arts. 3(3)(g), **5(3)(a)** (with arts. 7, 12); S.I. 2008/2860, **art. 3(s)** (with arts. 5, 7, 8, Sch. 2 (as amended by: S.I. 2009/1802, **art. 18**; S.I. 2009/1941, **art. 13**; and S.I. 2009/2476, **reg. 2**))
- C15** S. 136(3) applied (22.3.2008) by The Leader Grants (Scotland) Regulations 2008 (S.S.I. 2008/66), **reg. 23(4)**
- C16** S. 136(3) applied (24.3.2008) by The Agricultural Processing, Marketing and Co-operation Grants (Scotland) Regulations 2008 (S.I. 2008/64), **reg. 12(4)**
- C17** S. 136(3) applied (29.3.2008) by The Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008 (S.S.I. 2008/100), **reg. 22(4)**
- C18** S. 136(3) applied (15.5.2008) by The Rural Development Contracts (Land Managers Options) (Scotland) Regulations 2008 (S.S.I. 2008/159), regs. 1(1), **21(4)**
- C19** S. 136(3) applied (18.5.2008) by The Land Managers Skills Development Grants (Scotland) Regulations 2008 (S.S.I. 2008/162), **reg. 13(4)**
- C20** S. 136(3) applied (27.11.2008) Counter-Terrorism Act 2008 (c. 28), ss. 62, 100, **Sch. 7 para. 35(2)** (with s. 101(2), Sch. 7 para. 43)
- C21** S. 136(3) applied (26.1.2009) by The Operation of Air Services in the Community Regulations 2009 (S.I. 2009/41), **reg. 30(5)**
- C22** S. 136(3) applied (10.4.2009) by The Iran (United Nations Sanctions) Order 2009 (S.I. 2009/886), **art. 12(7)**
- C23** S. 136(3) applied (24.4.2009) by The Zimbabwe (Financial Sanctions) Regulations 2009 (S.I. 2009/847), **reg. 14(3)(b)**
- C24** S. 136(3) applied (10.8.2009) by The Terrorism (United Nations Measures) Order 2009 (S.I. 2009/1747), **art. 22(3)(b)** (with art. 25)
- C25** S. 136(3) applied (1.10.2009) by Criminal Justice Act 1993 (c. 36), s. 61A(3) (as inserted by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 141** (with art. 10))
- C26** S. 136(3) applied (1.1.2010) by The Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009 (S.I. 2009/3263), **reg. 10(7)**
- C27** S. 136(3) applied by Child Support Act 1991 (c. 48), s. 14A(8) (as inserted (14.1.2010) by Welfare Reform Act 2009 (c. 24), **ss. 55(3)**, 61; S.I. 2010/45, **art. 2(3)**)
- C28** S. 136(3) applied (8.4.2010) by The Al- Qaida and Taliban (Asset-Freezing) Regulations 2010 (S.I. 2010/1197), regs. 1(1), **11(3)(b)** (with reg. 13)
- C29** S. 136(3) applied (2.7.2010) by The Less Favoured Area Support Scheme (Scotland) Regulations 2010 (S.S.I. 2010/273), regs. 1(1), **21(2)** (with reg. 1(3))
- C30** S. 136(3) applied (17.12.2010) by Terrorist Asset- Freezing etc. Act 2010 (c. 38), **ss. 36(2)(b)**, 55 (with s. 44)
- C31** S. 136(3) applied (4.1.2011) by The Somalia (Asset-Freezing) Regulations 2010 (S.I. 2010/2956), **reg. 16(3)(b)** (with reg. 19)
- C32** S. 136(3) applied (27.2.2011) by Libya (Financial Sanctions) Order 2011 (S.I. 2011/548), arts. 1(1), **15(3)(b)** (with art. 18)

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**C33** S. 136(3) applied (3.3.2011) by [The Libya \(Asset-Freezing\) Regulations 2011 \(S.I. 2011/605\)](#), regs. 1(1), **15(3)(b)** (with reg. 18)

#### [<sup>F4</sup>136A Time limits for transferred and related cases

- (1) This section applies where the prosecutor recommences proceedings by complaint containing both—
- (a) a charge to which proceedings—
    - (i) transferred to a court by authority of an order made [<sup>F5</sup>under section 137A or 137CA] of this Act; or
    - (ii) transferred to, or taken at, a court by authority of an order made [<sup>F6</sup>under 137B or 137CB] of this Act,
 relate; and
  - (b) a charge to which previous proceedings at that court relate.
- (2) Where this section applies, proceedings for an offence charged in that complaint are, for the purposes of—
- (a) section 136 of this Act (so far as applying to the offence);
  - (b) any provision of any other enactment for a time limit within which proceedings are to be commenced (so far as applying to the offence); and
  - (c) any rule of law relating to delay in bringing proceedings (so far as applying to the offence),
- to be regarded as having been commenced when any previous proceedings for the offence were first commenced.]

#### Textual Amendments

- F4** S. 136A inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. **23**, **84**; S.S.I. 2008/42, **art. 3**, Sch. (subject to arts. 4 - 6)
- F5** Words in s. 136A(1)(a)(i) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), **sch. 7 para. 52(a)**; S.S.I. 2011/178, art. 2, sch.
- F6** Words in s. 136A(1)(a)(ii) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), **sch. 7 para. 52(b)**; S.S.I. 2011/178, art. 2, sch.

#### [<sup>F7</sup>136B Time limits where fixed penalty offer etc. made

- (1) For the purposes of section 136 of this Act, and any provision of any other enactment for a time limit within which proceedings are to be commenced, in calculating the period since a contravention occurred—
- (a) where a fixed penalty offer is made under section 302(1) of this Act, the period between the date of the offer and—
    - (i) the receipt by the procurator fiscal of a notice under section 302(4) of this Act;
    - (ii) a recall of the fixed penalty by virtue of section 302C of this Act, shall be disregarded;
  - (b) where a compensation offer is made under section 302A(1) of this Act, the period between the date of the offer and—
    - (i) the receipt by the procurator fiscal of a notice under section 302A(4) of this Act;

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- (ii) a recall of the offer by virtue of section 302C of this Act, shall be disregarded;
  - (c) where a work offer is made under section 303ZA(1) of this Act, the period between the date of the offer and—
    - (i) if the alleged offender does not accept the offer in the manner described in section 303ZA(5) of this Act, the last date for notice of acceptance of the offer;
    - (ii) if the alleged offender accepts the offer as so described, but fails to complete the subsequent work order, the date specified for completion of the order,shall be disregarded.
- (2) A certificate purporting to be signed by or on behalf of the prosecutor which states a period to be disregarded by virtue of subsection (1) above is sufficient authority for the period to be disregarded.]

#### Textual Amendments

- F7** S. 136B inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#) , ss. [54](#) , [84](#) ; S.S.I. 2008/42 , [art. 3](#) , Sch. (subject to [art. 6](#) )

### 137 Alteration of diets.

- (1) Where a diet has been fixed in a summary prosecution, it shall be competent for the court, on a joint application in writing by the parties or their solicitors, to discharge the diet and fix an earlier diet in lieu.
- (2) Where the prosecutor and the accused make joint application to the court (orally or in writing) for postponement of a diet which has been fixed, the court shall discharge the diet and fix a later diet in lieu unless the court considers that it should not do so because there has been unnecessary delay on the part of one of more of the parties.
- (3) Where all the parties join in an application under subsection (2) above, the court may proceed under that subsection without hearing the parties.
- (4) Where the prosecutor has intimated to the accused that he desires to postpone or accelerate a diet which has been fixed, and the accused refuses, or any of the accused refuse, to make a joint application to the court for that purpose, the prosecutor may make an incidental application for that purpose under section 134 of this Act; and after giving the parties an opportunity to be heard, the court may discharge the diet and fix a later diet or, as the case may be, an earlier diet in lieu.
- (5) Where an accused had intimated to the prosecutor and to all the other accused that he desires such postponement or acceleration and the prosecutor refuses, or any of the other accused refuse, to make a joint application to the court for that purpose, the accused who has so intimated may apply to the court for that purpose; and, after giving the parties an opportunity to be heard, the court may discharge the diet and fix a later diet or, as the case may be, an earlier diet in lieu.

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### [<sup>F8</sup>137Z] ~~Refixing diets~~

- (1) This section applies where in a summary prosecution any diet has been fixed for a non-sitting day.
- (2) The court may at any time before the non-sitting day—
  - (a) discharge the diet; and
  - (b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed.
- (3) That is, by acting—
  - (a) of the court's own accord; and
  - (b) without the need for a hearing for the purpose.
- (4) In the case of a trial diet—
  - (a) the prosecutor;
  - (b) the accused,
 shall be entitled to an adjournment of the new diet fixed if the court is satisfied that it is not practicable for that party to proceed with the case on that date.
- (5) The power of the court under subsection (1) above is not exercisable for the sole purpose of ensuring compliance with a time limit applying in the proceedings.
- (6) In subsections (1) and (2) above, a “non-sitting day” is a day on which the court is under this Act not required to sit.]

#### Textual Amendments

**F8** S. 137ZA inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 39\(2\)](#), 84; [S.S.I. 2007/479](#), [art. 3\(1\)](#), Sch. (as amended by [S.S. I. 2007/527](#))

### [<sup>F9</sup>137A] **Transfer of sheriff court summary proceedings within sheriffdom**

- (1) Where [<sup>F10</sup>this subsection applies,] the prosecutor may apply to the sheriff for an order for the transfer of the proceedings to a sheriff court in any other district in that sheriffdom and for adjournment to a diet of that court.
 

[ Subsection (1) above applies—

  - <sup>F11</sup>(1A) (a) where the accused person has been cited in summary proceedings to attend a diet of the court; or
  - (b) if the accused person has not been cited to such a diet, where summary proceedings against the accused have been commenced in the court.]
- (2) On an application under subsection (1) above the sheriff may make such order as is mentioned in that subsection.

#### Textual Amendments

**F9** Ss. 137A, 137B inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 58\(2\)](#), 89; [S.S.I. 2003/288](#), [art. 2](#), Sch.

**F10** Words in s. 137A(1) substituted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 22\(1\)\(a\)](#), 84; [S.S.I. 2008/42](#), [art. 3](#), Sch. (subject to arts. 4 - 6)



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**F11** S. 137A(1A) inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 22\(1\)\(b\)](#), 84; [S.S.I. 2008/42](#), [art. 3](#), [Sch.](#) (subject to arts. 4 - 6)

### **137B Transfer of sheriff court summary proceedings outwith sheriffdom**

[<sup>F12</sup>(1) Where the sheriff clerk informs the prosecutor that, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for the sheriff court or any other sheriff court in the sheriffdom to proceed with some or all of the summary cases due to call at a diet, the prosecutor shall as soon as practicable apply to the sheriff principal for an order for—

- (a) the transfer of the proceedings to a sheriff court in another sheriffdom; and
- (b) adjournment to a diet of that court.]

[<sup>F13</sup>(1A) Where this subsection applies, the prosecutor may apply to the sheriff for an order for—

- (a) the transfer of the proceedings to a sheriff court in another sheriffdom; and
- (b) adjournment to a diet of that court,

if there are also summary proceedings against the accused person in that court in the other sheriffdom.

(1B) Subsection (1A) above applies—

- (a) where the accused person has been cited in summary proceedings to attend a diet of the court; or
- (b) if the accused person has not been cited to such a diet, where summary proceedings against the accused have been commenced in the court.

(1C) Where the prosecutor intends to take summary proceedings against an accused person in the sheriff court, the prosecutor may apply to the sheriff for an order for authority for the proceedings to be taken at a sheriff court in another sheriffdom if there are also summary proceedings against the accused person in that court in the other sheriffdom.]

(2) On an application under subsection (1) above the sheriff principal may make the order sought, provided that the sheriff principal of the other sheriffdom consents.

[<sup>F14</sup>(2A) On an application under subsection (1A) or (1C) above, the sheriff is to make the order sought if—

- (a) the sheriff considers that it would be expedient for the different cases involved to be dealt with by the same court; and
- (b) a sheriff of the other sheriffdom consents.]

(3) On the application of the prosecutor, a sheriff principal who has made an order under subsection (2) above may, if the sheriff principal of the other sheriffdom mentioned in that subsection consents—

- (a) revoke; or
- (b) vary so as to restrict the effect of, that order.

[<sup>F15</sup>(4) On the application of the prosecutor, [<sup>F16</sup>the sheriff who has made an order under subsection (2A) above (or another sheriff of the same sheriffdom)] may, if a sheriff of the other sheriffdom mentioned in paragraph (b) of that subsection consents—

- (a) revoke; or
- (b) vary so as to restrict the effect of,

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that order.]]

#### Textual Amendments

- F9** Ss. 137A, 137B inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#) , [ss. 58\(2\)](#) , 89 ; [S.S.I. 2003/288](#) , [art. 2](#) , Sch.
- F12** S. 137B(1) substituted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#) , [ss. 22\(2\)\(a\)](#) , 84 ; [S.S.I. 2008/42](#) , [art. 3](#) , Sch.
- F13** S. 137B(1A)-(1C) inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#) , [ss. 22\(2\)\(b\)](#) , 84 ; [S.S.I. 2008/42](#) , [art. 3](#) , Sch.
- F14** S. 137B(2A) inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#) , [ss. 22\(2\)\(c\)](#) , 84 ; [S.S.I. 2008/42](#) , [art. 3](#) , Sch.
- F15** S. 137B(4) added (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#) , [ss. 22\(2\)\(d\)](#) , 84 ; [S.S.I. 2008/42](#) , [art. 3](#) , Sch.
- F16** Words in s. 137B(4) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#) , s. 206(1) , [sch. 7 para. 53](#) ; [S.S.I. 2011/178](#) , art. 2 , sch.

#### [<sup>F17</sup>137CCustody cases: initiating proceedings outwith sheriffdom

- (1) Where the prosecutor believes—
- (a) that, because of exceptional circumstances (and without an order under subsection (3) below), it is likely that there would be an unusually high number of accused persons appearing from custody for the first calling of cases in summary prosecutions in the sheriff courts in the sheriffdom; and
  - (b) that it would not be practicable for those courts to deal with all the cases involved,
- the prosecutor may apply to the sheriff principal for the order referred to in subsection (2) below.
- (2) For the purposes of subsection (1) above, the order is for authority for summary proceedings against some or all of the accused persons to be—
- (a) taken at a sheriff court in another sheriffdom; and
  - (b) maintained—
    - (i) there; or
    - (ii) at any of the sheriff courts referred to in subsection (1) above as may at the first calling of the case be appointed for further proceedings.
- (3) On an application under subsection (1) above, the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.
- (4) An order under subsection (3) above may be made by reference to a particular period or particular circumstances.]

#### Textual Amendments

- F17** Ss. 137C, 137D inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#) , [ss. 22\(3\)](#) , 84 ; [S.S.I. 2008/42](#) , [art. 3](#) , Sch. (subject to arts. 4 - 6)

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### **[<sup>F18</sup>137CA] Transfer of JP court proceedings within sheriffdom**

- (1) Subsection (2) applies—
  - (a) where the accused person has been cited in summary proceedings to attend a diet of a JP court, or
  - (b) if the accused person has not been cited to such a diet, where summary proceedings against the accused have been commenced in a JP court.
- (2) The prosecutor may apply to a justice for an order for the transfer of the proceedings to another JP court in the sheriffdom (and for adjournment to a diet of that court).
- (3) On an application under subsection (2), the justice may make the order sought.
- (4) In this section and sections 137CB and 137CC, “justice ” does not include the sheriff.

#### **Textual Amendments**

**F18** Ss. 137CA-137CC inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#) , **ss. 61** , 206(1) ; S.S.I. 2011/178 , art. 2 , sch.

### **137CB Transfer of JP court proceedings outwith sheriffdom**

- (1) Subsection (2) applies where the clerk of a JP court informs the prosecutor that, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for the JP court or any other JP court in the sheriffdom to proceed with some or all of the summary cases due to call at a diet.
- (2) The prosecutor shall as soon as practicable apply to the sheriff principal for an order for the transfer of the proceedings to a JP court in another sheriffdom (and for adjournment to a diet of that court).
- (3) Subsection (4) applies where—
  - (a) either—
    - (i) the accused person has been cited in summary proceedings to attend a diet of a JP court, or
    - (ii) if the accused person has not been cited to such a diet, summary proceedings against the accused have been commenced in a JP court, and
  - (b) there are also summary proceedings against the accused person in a JP court in another sheriffdom.
- (4) The prosecutor may apply to a justice for an order for the transfer of the proceedings to a JP court in the other sheriffdom (and for adjournment to a diet of that court).
- (5) Subsection (6) applies where—
  - (a) the prosecutor intends to take summary proceedings against an accused person in a JP court, and
  - (b) there are also summary proceedings against the accused person in a JP court in another sheriffdom.
- (6) The prosecutor may apply to a justice for an order for authority for the proceedings to be taken at a JP court in the other sheriffdom.

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- (7) On an application under subsection (2), the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.
- (8) On an application under subsection (4) or (6), the justice is to make the order sought if—
  - (a) the justice considers that it would be expedient for the different cases involved to be dealt with by the same court, and
  - (b) a justice of the other sheriffdom consents.
- (9) On the application of the prosecutor, the sheriff principal who has made an order under subsection (7) may, with the consent of the sheriff principal of the other sheriffdom—
  - (a) revoke the order, or
  - (b) vary it so as to restrict its effect.
- (10) On the application of the prosecutor, the justice who has made an order under subsection (8) (or another justice of the same sheriffdom) may, with the consent of a justice of the other sheriffdom—
  - (a) revoke the order, or
  - (b) vary it so as to restrict its effect.

#### Textual Amendments

**F18** Ss. 137CA-137CC inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 61**, 206(1); [S.S.I. 2011/178](#), art. 2, sch.

### 137CC Custody cases: initiating JP court proceedings outwith sheriffdom

- (1) Subsection (2) applies where the prosecutor believes—
  - (a) that, because of exceptional circumstances (and without an order under subsection (3)), it is likely that there would be an unusually high number of accused persons appearing from custody for the first calling of cases in summary prosecutions in the JP courts in the sheriffdom, and
  - (b) that it would not be practicable for those courts to deal with all the cases involved.
- (2) The prosecutor may apply to the sheriff principal for an order authorising summary proceedings against some or all of the accused persons to be—
  - (a) taken at a JP court in another sheriffdom, and
  - (b) maintained—
    - (i) at that JP court, or
    - (ii) at any of the JP courts referred to in subsection (1) as may at the first calling of the case be appointed for further proceedings.
- (3) On an application under subsection (2), the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.
- (4) An order under subsection (3) may be made by reference to a particular period or particular circumstances.]

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#### Textual Amendments

**F18** Ss. 137CA-137CC inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#) , [ss. 61](#) , [206\(1\)](#) ; [S.S.I. 2011/178](#) , [art. 2](#) , [sch.](#)

### [<sup>F17</sup> **137D** Transfer of JP court proceedings to the sheriff court

- (1) Where an accused person is due to be sentenced at a sheriff court for an offence, the prosecutor may apply to the sheriff for an order for—
  - (a) the transfer to the sheriff court of any case against the accused in respect of which sentencing is pending at any JP court in the sheriffdom; and
  - (b) the case to call at a diet of the sheriff court.
- (2) On an application under subsection (1) above, the sheriff is to make the order sought if the sheriff considers that it would be expedient for the different cases to be disposed of at the same court at the same time.
- (3) If, in a case transferred under subsection (1) above, the finding of guilt was before a justice of the peace, the sentencing powers of the sheriff in the case are restricted to those of the justice.]

#### Textual Amendments

**F17** Ss. 137C, 137D inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#) , [ss. 22\(3\)](#) , [84](#) ; [S.S.I. 2008/42](#) , [art. 3](#) , [Sch.](#) (subject to arts. 4 - 6)

#### Modifications etc. (not altering text)

**C34** S. 137D(1)(a) applied (10.12.2007) by [The District Courts and Justices of the Peace \(Scotland\) Order 2007 \(S.S.I. 2007/480\)](#) , [art. 4\(1\)\(b\)](#)

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