

CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007

EXPLANATORY NOTES

INTRODUCTION

Part 2 - Proceedings

Transfer of summary cases

Section 22: Transfer of proceedings

145. This section introduces new provisions extending the jurisdiction of the sheriff court in relation to the commencement and transfer of proceedings, including proceedings initiated in the JP court. The purpose is to increase the flexibility of the provisions relating to the transfer of business between different courts and (in certain cases) different sheriffdoms. It should be noted that paragraph 11 of the schedule to this Act introduces a new section 10A to the 1995 Act for purposes associated with this section.
146. Subsection (1) amends section 137A(1) of the 1995 Act and inserts a new subsection (1A). The effect of these amendments is that, where accused persons have been cited in summary proceedings to a diet or where citation has not taken place but summary proceedings have been commenced against an accused in a sheriff court, the prosecutor may apply to the sheriff to transfer the proceedings to another sheriff court in the same sheriffdom.
147. Subsection (2) amends section 137B of the 1995 Act by substituting a new subsection (1) and inserting five new subsections (1A), (1B), (1C), (2A) and (4). Subsection (1) as substituted provides that where a sheriff clerk informs the prosecutor that due to unforeseen circumstances it is not practicable for that sheriff court or any sheriff court within the sheriffdom to proceed with any of the summary cases to call at a diet, the prosecutor may apply to the sheriff principal for authority to transfer the proceedings to another sheriff court outwith the sheriffdom, and for an adjournment to that court.
148. Subsections (1A) & (1B) as inserted provide that where an accused has been cited to a diet in summary proceedings or summary proceedings have been commenced against an accused in a sheriff court the prosecutor may apply to the sheriff for an order for authority to transfer the proceedings to another sheriff court in another sheriffdom where there are other proceedings against the accused in that court.
149. Subsection (1C) as inserted provides that where the prosecutor intends to take summary proceedings against an accused in the sheriff court the prosecutor may apply for an order to the sheriff for authority to take those proceedings against the accused in another sheriffdom where there are other summary proceedings against that accused in that sheriffdom.
150. Subsection (2A) as inserted provides that where an application is made under section (1A) or (1C) the sheriff to whom the application is made is to make the order if s/he

considers it expedient, and a sheriff of the receiving sheriffdom consents. Subsection (4) as inserted provides that the sheriff who made the order under subsection (2A) may revoke or vary the order transferring the proceedings if the sheriff of the receiving court consents.

151. Subsection (3) inserts a new section 137C into the 1995 Act. It provides that summary proceedings against an accused appearing from custody may be initiated outwith the sheriffdom where the proceedings would normally be commenced.

New section 137C

152. Subsections (1) & (2) as inserted provide that where there are exceptional circumstances leading to an unusually high number of accused appearing from custody under summary procedure, and it is unlikely that the sheriff courts in the sheriffdom will be able to deal with all these cases, the prosecutor may apply to the sheriff principal for an order that proceedings may be taken against some or all of the accused at another sheriff court in another sheriffdom. Proceedings can be maintained there or at the original court or be transferred to any of the sheriff courts in the sheriffdom where the offences are alleged to have taken place
153. Subsections (3) & (4) provide that the sheriff principal may only make the order if the sheriff principal from the receiving court agrees, and that the order may be for a particular period of time or to deal with a particular set of circumstances.

New Section 137D

154. Section 137D as inserted provides that a sheriff may order that proceedings in a JP court may be transferred to the sheriff court if there are proceedings outstanding for sentence there.
155. Section 137D as inserted provides that the prosecutor may apply to the sheriff to transfer cases awaiting sentence at a JP court to the sheriff court where there are outstanding cases for sentence. If the sheriff considers it expedient to make that order s/he will be limited to the sentencing power of the JP for any cases which were heard before a JP.

Section 23: Time bar for transferred and related cases

156. This section amends the law on time bar as it relates to transferred cases. It inserts a new section 136A into the 1995 Act.

New Section 136A

157. The section provides that where proceedings have been transferred from one sheriff court to another and those proceedings are contained in a new complaint, the date of commencement of proceedings in relation to the charges, including those at the court to which the proceedings have been transferred, is to be taken as the date on which proceedings on the complaints originally commenced.