



# 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 be brought before a court competent to deal with the case not later than in the course of the first day after he is taken into custody.
- (4) The reference in subsection (3) above to the first day after he is taken into custody shall not include a Saturday, a Sunday or a court holiday prescribed for that court under section 8 of this Act; but nothing in this subsection shall prevent a person being brought before the court on a Saturday, a Sunday or such a court holiday where the court is, in pursuance of the said section 8, sitting on such day for the disposal of criminal business.
- (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.

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#### 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—
- within six months after the contravention occurred;
  - 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 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)
- C4** S. 136 excluded (26.5.2008) by The Business Protection from Misleading Marketing Regulations 2008 (S.I. 2008/1276), **reg. 10(4)(5)**
- C5** 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))
- C6** 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)
- C7** S. 136 excluded (10.4.2009) by The Iran (United Nations Sanctions) Order 2009 (S.I. 2009/886), **art. 12(7)**

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- C8** 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)
- C9** S. 136(1) modified (21.7.1997) by 1997 c. 22, s. 21(4)(c); S.I. 1997/1672, **art. 2**
- C10** 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)**
- C11** 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)  
 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)
- C12** 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)

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- 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)**
- C13** 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**))
- C14** S. 136(3) applied (22.3.2008) by The Leader Grants (Scotland) Regulations 2008 (S.S.I. 2008/66), **reg. 23(4)**
- C15** 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)**
- C16** 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)**
- C17** 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)**
- C18** 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)**
- C19** 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)
- C20** 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)**
- C21** S. 136(3) applied (10.4.2009) by The Iran (United Nations Sanctions) Order 2009 (S.I. 2009/886), **art. 12(7)**
- C22** S. 136(3) applied (24.4.2009) by The Zimbabwe (Financial Sanctions) Regulations 2009 (S.I. 2009/847), **reg. 14(3)(b)**
- C23** 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)
- C24** 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))
- C25** 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)**
- C26** 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)**)
- C27** 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)
- C28** 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))
- C29** S. 136(3) applied (17.12.2010) by Terrorist Asset-Freezing etc. Act 2010 (c. 38), **ss. 36(2)(b)**, 55 (with s. 44)
- C30** 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)

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VALID FROM 10/03/2008

### [<sup>F1</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 in pursuance of section 137A(1) of this Act; or
    - (ii) transferred to, or taken at, a court by authority of an order made in pursuance of section 137B(1), (1A) or (1C) 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

- F1** 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)

VALID FROM 10/03/2008

### [<sup>F2</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

- F2** 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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VALID FROM 10/12/2007

### [<sup>F3</sup>137ZA] 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

**F3** 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>F4</sup>137A] Transfer of sheriff court summary proceedings within sheriffdom

- (1) Where an accused person has been cited to attend a diet of the sheriff court 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.
- (2) On an application under subsection (1) above the sheriff may make such order as is mentioned in that subsection.]

#### Textual Amendments

**F4** 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.



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#### [<sup>F4</sup>137B Transfer of sheriff court summary proceedings outwith sheriffdom

- (1) Where—
  - (a) an accused person has been cited to attend a diet of the sheriff court; or
  - (b) paragraph (a) does not apply but it is competent so to cite an accused person, and the prosecutor is informed by the sheriff clerk that, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for that court or any other sheriff court in that sheriffdom to proceed with the case, the prosecutor—
    - (i) may, where paragraph (b) above applies, so cite the accused; and
    - (ii) shall, where paragraph (a) above applies or the accused is so cited by virtue of paragraph (i) above, as soon as practicable apply to the sheriff principal for an order for the transfer of the proceedings to a sheriff court in another sheriffdom and for adjournment to a diet of that court.
- (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.
- (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.]

#### Textual Amendments

- F4** 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.

VALID FROM 10/03/2008

#### [<sup>F5</sup>137C Custody 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

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(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

**F5** 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)

VALID FROM 28/03/2011

#### <sup>F5</sup> <sup>F6</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

**F5** 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)

**F6** Ss. 137CA-137CC inserted (prosp.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 61](#), 206(1)

VALID FROM 28/03/2011

#### **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.

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- (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.
- (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

**F5** 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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**F6** Ss. 137CA-137CC inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 61, 206(1)

VALID FROM 28/03/2011

### 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.]]

#### Textual Amendments

- F5** 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)
- F6** Ss. 137CA-137CC inserted (prosp.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 61, 206(1)

VALID FROM 10/12/2007

### 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.

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- (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

**F5** 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)

**C31** 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\(1\)\(b\)](#)

### *Complaints*

#### **138 Complaints.**

- (1) All proceedings under this Part of this Act for the trial of offences or recovery of penalties shall be instituted by complaint signed by the prosecutor or by a solicitor on behalf of a prosecutor other than the procurator fiscal.
- (2) The complaint shall be in the form—
  - (a) set out in Schedule 5 to this Act; or
  - (b) prescribed by Act of Adjournal,or as nearly as may be in such form.
- (3) A solicitor may appear for and conduct any prosecution on behalf of a prosecutor other than the procurator fiscal.
- (4) Schedule 3 to this Act shall have effect as regards complaints under this Act.

#### **139 Complaints: orders and warrants.**

- (1) On any complaint under this Part of this Act being laid before a judge of the court in which the complaint is brought, he shall have power on the motion of the prosecutor—
  - (a) to pronounce an order assigning a diet for the disposal of the case to which the accused may be cited as mentioned in section 141 of this Act;
  - (b) to grant warrant to apprehend the accused where this appears to the judge expedient;
  - (c) to grant warrant to search the person, dwelling-house and repositories of the accused and any place where he may be found for any documents, articles, or property likely to afford evidence of his guilt of, or guilty participation in, any offence charged in the complaint, and to take possession of such documents, articles or property;
  - (d) to grant any other order or warrant of court or warrant which may be competent in the circumstances.

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- (2) The power of a judge under subsection (1) above—
  - (a) to pronounce an order assigning a diet for the disposal of the case may be exercised on his behalf by the clerk of court;
  - (b) to grant a warrant to apprehend the accused shall be exercisable notwithstanding that there is power whether at common law or under any Act to apprehend him without a warrant.

*Citation*

**140 Citation.**

- (1) This Act shall be a sufficient warrant for <sup>F7</sup>—
  - (a) <sup>F8</sup> .....
  - (b) the citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or any adjournment thereof.
- (2) <sup>F9</sup>Without prejudice to section 141(2A) of this Act,]such citation shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form and shall, in the case of the accused, proceed on an induciae of at least 48 hours unless in the special circumstances of the case the court fixes a shorter induciae.
- <sup>F10</sup>(2A) Where the charge in the complaint in respect of which an accused is cited is of committing a sexual offence to which section 288C of this Act applies, the citation shall include or be accompanied by notice to the accused—
  - (a) that, if he is tried for the offence, his defence <sup>F11</sup>(including at any commissioner proceedings)]<sup>F12</sup>and any proof ordered as is mentioned in section 288C(1) of this Act] may be conducted only by a lawyer;
  - (b) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and
  - (c) that, if he does not engage a solicitor for the purposes of his defence at the trial <sup>F13</sup>(or at any related commissioner proceedings)] , the court will do so.
- (2B) A failure to comply with subsection (2A) above does not affect the validity or lawfulness of any such citation or any other element of the proceedings against the accused.]
- <sup>F14</sup>(2C) In subsection (2A) above, “commissioner proceedings” means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.]
- <sup>F15</sup>(3) .....

**Textual Amendments**

**F7** S. 140(1)(a) and “(b)” inserted (1.8.1997) by 1997 c. 48, s. 57(2)(a); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

**F8** S. 140(1)(a) repealed (4.10.2004) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 33; S.S.I. 2004/405, art. 2, Sch. 1 (with savings in arts. 3-5)

**F9** Words in s. 140(2) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 61(2), 89; S.S.I. 2003/288, art. 2, Sch.

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- F10** S. 140(2A)(2B) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 3, **Sch. para. 8**; S.S.I. 2002/443, **art. 3**
- F11** Words in s. 140(2A)(a) inserted (23.4.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 35(2)(a)(i)**, 84; S.S.I. 2007/250, **art. 3(a)**
- F12** Words in s. 140(2A)(a) added (25.11.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 85, 89, **Sch. 4 para. 3(2)**; S.S.I. 2003/475, **art. 2**, Sch.
- F13** Words in s. 140(2A)(c) inserted (23.4.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 35(2)(a)(ii)**, 84; S.S.I. 2007/250, **art. 3(a)**
- F14** S. 140(2C) added (23.4.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 35(2)(b)**, 84; S.S.I. 2007/250, **art. 3(a)**
- F15** S. 140(3) repealed (1.8.1997) by 1997 c. 48, ss. 57(2)(b), 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

## 141 Manner of citation.

- (1) The citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or to any adjourned sitting or diet shall be effected by delivering the citation to him personally or leaving it for him at his dwelling-house or place of business with a resident or, as the case may be, employee at that place or, where he has no known dwelling-house or place of business, at any other place in which he may be resident at the time.
- (2) Notwithstanding subsection (1) above, citation may also be effected—
  - (a) where the accused or witness is the master of, or a seaman or person employed in a vessel, if the citation is left with a person on board the vessel and connected with it;
  - (b) where the accused is a partnership, association or body corporate—
    - (i) if the citation is left at its ordinary place of business with a partner, director, secretary or other official; or
    - (ii) if it is cited in the same manner as if the proceedings were in a civil court; or
  - (c) where the accused is a body of trustees, if the citation is left with any one of them who is resident in Scotland or with their known solicitor in Scotland.

[<sup>F16</sup>; and in sub-paragraph (b)(i) of this subsection references to the director or secretary or other official, in relation to a limited liability partnership, are to any member of the limited liability partnership]

- [<sup>F17</sup>(2A) Notwithstanding subsection (1) above and section 140(2) of this Act, citation of the accused may also be effected by an officer of law affixing to the door of the accused's dwelling-house or place of business a notice in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form—
- (a) specifying the date on which it was so affixed;
  - (b) informing the accused that he may collect a copy of the complaint from a police station specified in the notice; and
  - (c) calling upon him to appear and answer the complaint at such diet as shall be so specified.
- (2B) Where the citation of the accused is effected by notice under subsection (2A) above, the induciae shall be reckoned from the date specified by virtue of paragraph (a) of that subsection.]



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- (3) Subject to subsection (4) below [<sup>F18</sup>and without prejudice to the effect of any other manner of citation] , the citation of the accused or a witness to a sitting or diet or adjourned sitting or diet as mentioned in subsection (1) above shall be effective if it is <sup>F19</sup> . . . —
- (a) in the case of the accused, [<sup>F20</sup>signed by the prosecutor and]sent by post in a registered envelope or through the recorded delivery service; and
  - (b) in the case of a witness, sent [<sup>F20</sup>by or on behalf of the prosecutor]by ordinary post,
- to the dwelling-house or place of business of the accused or witness or, if he has no known dwelling-house or place of business, to any other place in which he may be resident at the time.
- (4) Where the accused fails to appear at a diet or sitting or adjourned diet or sitting to which he has been cited in the manner provided by this section, subsections (3) and (5) to (7) of section 150 of this Act shall not apply unless it is proved to the court that he received the citation or that its contents came to his knowledge.
- (5) The production in court of any letter or other communication purporting to be written by or on behalf of an accused who has been cited as mentioned in subsection [<sup>F21</sup>(2A) or] (3) above in such terms as to infer that the contents of such citation came to his knowledge, shall be admissible as evidence of that fact for the purposes of subsection (4) above.
- [<sup>F22</sup>(5A) The citation of a witness to a sitting or diet or adjourned sitting or diet as mentioned in subsection (1) above shall be effective if it is sent by the accused’s solicitor by ordinary post to the dwelling house or place of business of the witness or, if he has no known dwelling house or place of business, to any other place in which he may be resident at the time.]
- (6) When the citation of any person is effected by post in terms of this section or any other provision of this Act to which this section is applied, the *induciae* shall be reckoned from 24 hours after the time of posting.
- (7) It shall be sufficient evidence that
- [<sup>F23</sup>(a)] a citation has been sent by post in terms of this section or any other provision of this Act mentioned in subsection (6) above, if there is produced in court a written execution, signed by the person who signed the citation in the form prescribed by Act of Adjournal, or as nearly as may be in such form, together with the post office receipt for the relative registered or recorded delivery letter[<sup>F24</sup>; or]
  - [<sup>F25</sup>(b)] citation has been effected by notice under subsection (2A) above, if there is produced in court a written execution, in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form, signed by the officer of law who affixed the notice.]

#### Textual Amendments

**F16** Words in s. 141(2) inserted (6.4.2001) by S.S.I. 2001/128, reg. 5, **Sch. 4 para. 2**

**F17** S. 141(2A)(2B) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 61(3)(a)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

**F18** Words in s. 141(3) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 61(3)(b)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

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- F19** Words in s. 141(3) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(19)(a)(i), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F20** Words in s. 141(3)(a)(b) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(19)(a)(ii)(iii)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F21** Words in s. 141(5) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 61(3)(c)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F22** S. 141(5A) inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(19)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F23** Words in s. 141(7) renumbered as s. 141(7)(a) (27.6.2003) by virtue of Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 61(3)(d)(i)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F24** Word in s. 141(7) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 61(3)(d)(ii)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F25** S. 141(7)(b) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 61(3)(d)(ii)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

## Children

### 142 Summary proceedings against children.

- (1) Where summary proceedings are brought in respect of an offence alleged to have been committed by a child, the sheriff shall sit either in a different building or room from that in which he usually sits or on different days from those on which other courts in the building are engaged in criminal proceedings: and no person shall be present at any sitting for the purposes of such proceedings except—
  - (a) members and officers of the court;
  - (b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case;
  - (c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings;
  - (d) such other persons as the court may specially authorise to be present.
- (2) A sheriff sitting summarily for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child may, if he thinks fit to do so, proceed with the hearing and determination of the charge or application, notwithstanding that it is discovered that the person in question is not a child.
- (3) When a sheriff sitting summarily has remanded a child for information to be obtained with respect to him, any sheriff sitting summarily in the same place—
  - (a) may in his absence extend the period for which he is remanded provided that he appears before a sheriff or a justice at least once every 21 days;
  - (b) when the required information has been obtained, may deal with him finally, and where the sheriff by whom he was originally remanded has recorded a finding that he is guilty of an offence charged against him it shall not be necessary for any court which subsequently deals with him under this subsection to hear evidence as to the commission of that offence, except in so far as it may consider that such evidence will assist the court in determining the manner in which he should be dealt with.
- (4) Any direction in any enactment that a charge shall be brought before a juvenile court shall be construed as a direction that he shall be brought before the sheriff sitting as a court of summary jurisdiction, and no such direction shall be construed as restricting

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the powers of any justice or justices to entertain an application for bail or for a remand, and to hear such evidence as may be necessary for that purpose.

- (5) This section does not apply to summary proceedings before the sheriff in respect of an offence where a child has been charged jointly with a person who is not a child.

### Companies

#### 143 Prosecution of companies, etc.

- (1) Without prejudice to any other or wider powers conferred by statute, this section shall apply in relation to the prosecution by summary procedure of a partnership, association, body corporate or body of trustees.
- (2) Proceedings may be taken against the partnership, association, body corporate or body of trustees in their corporate capacity, and in that event any penalty imposed shall be recovered by civil diligence in accordance with section 221 of this Act.
- (3) Proceedings may be taken against an individual representative of a partnership, association or body corporate as follows:—
- (a) in the case of a partnership or firm, any one of the partners, or the manager or the person in charge or locally in charge of its affairs;
  - (b) in the case of an association or body corporate, the managing director or the secretary or other person in charge, or locally in charge, of its affairs,
- may be dealt with as if he was the person offending, and the offence shall be deemed to be the offence of the partnership, association or body corporate [<sup>F26</sup>; and in paragraph 3(b) of this subsection references to the managing director or the secretary, in relation to a limited liability partnership, are to any member of the limited liability partnership].

#### Textual Amendments

**F26** Words in s. 143(3) inserted (6.4.2001) by S.S.I. 2001/128, reg. 5, Sch. 4 para. 3

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

**C32** S. 143 applied (31.5.2002) by Anti-terrorism, Crime and Security Act 2001 (c. 24), s. 69(4)(b); S.I. 2002/1279, art. 2

S. 143 applied (1.4.2005) by Gangmasters (Licensing) Act 2004 (c. 11), ss. 21, 29; S.I. 2005/447, arts. 1, 2

S. 143 applied (1.4.2005) by Gangmasters (Licensing) Act 2004 (c. 11), ss. 22, 29; S.I. 2005/447, arts. 1, 2

S. 143 applied (20.1.2007, 6.4.2007, 1.10.2007 for certain purposes otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1130(2)(b)(ii), 1300 (with savings in s. 1133); S.I. 2006/3428, art. 3(2) (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); S.I. 2007/1093, art. 2(2)(c) (with arts. 4, 11); S.I. 2007/2194, art. 2(1)(3)(h) (with art. 12)

**C33** S. 143 applied (6.4.2008) by Serious Crime Act 2007 (c. 27), ss. 31(6)(b)(ii), 94; S.I. 2008/755, art. 15(1) (subject to paras. (2)(3))

S. 143 applied (6.4.2008) by Serious Crime Act 2007 (c. 27), ss. 32(5)(b)(ii), 94; S.I. 2008/755, art. 15(1) (subject to paras. (2)(3))

*Status:* Point in time view as at 30/06/2007. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* Criminal Procedure (Scotland) Act 1995, PART IX is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### First diet

#### 144 Procedure at first diet.

(1) Where the accused is present at the first calling of the case in a summary prosecution and—

- (a) the complaint has been served on him, or
- (b) the complaint or the substance thereof has been read to him, or
- (c) he has legal assistance in his defence,

he shall, unless the court adjourns the case under the section 145 [<sup>F27</sup>or 145ZA] of this Act and subject to subsection (4) below, be asked to plead to the charge.

(2) Where the accused is not present at a calling of the case in a summary prosecution and either—

- (a) the prosecutor produces to the court written intimation that the accused pleads not guilty or pleads guilty and the court is satisfied that the intimation has been made or authorised by the accused; or
- (b) counsel or a solicitor, or a person not being counsel or a solicitor who satisfies the court that he is authorised by the accused, appears on behalf of the accused and tenders a plea of not guilty or a plea of guilty,

subsection (3) below shall apply.

(3) Where this subsection applies—

- (a) in the case of a plea of not guilty, this Part of this Act except section 146(2) shall apply in like manner as if the accused had appeared and tendered the plea; and
- (b) in the case of a plea of guilty, the court may, if the prosecutor accepts the plea, proceed to hear and dispose of the case in the absence of the accused in like manner as if he had appeared and pled guilty, or may, if it thinks fit, continue the case to another diet and require the attendance of the accused with a view to pronouncing sentence in his presence.

[<sup>F28</sup>(3A) Where an accused charged with a sexual offence to which section 288C of this Act applies is present, whether or not with a solicitor, at a calling of the case in a summary prosecution, he shall be told—

- (a) that if he is tried for the offence, his defence [<sup>F29</sup>and any proof ordered as is mentioned in section 288C(1) of this Act] at his trial may be conducted only by a lawyer;
- (b) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and
- (c) that if he does not engage a solicitor for the purposes of his defence at the trial, the court will do so.

(3B) A failure to comply with subsection (3A) above does not affect the validity or lawfulness of anything done at the calling of the case or any other element of the proceedings against the accused.]

(4) Any objection to the competency or relevancy of a summary complaint or the proceedings thereon, or any denial that the accused is the person charged by the police with the offence shall be stated before the accused pleads to the charge or any plea is tendered on his behalf.

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- (5) No objection or denial such as is mentioned in subsection (4) above shall be allowed to be stated or issued at any future diet in the case except with the leave of the court, which may be granted only on cause shown.
- (6) Where in pursuance of subsection (3)(b) above the court proceeds to hear and dispose of a case in the absence of the accused, it shall not pronounce a sentence of imprisonment or of detention in a young offenders institution, remand centre or other establishment.
- (7) In this section a reference to a plea of guilty shall include a reference to a plea of guilty to only part of the charge, but where a plea of guilty to only part of a charge is not accepted by the prosecutor it shall be deemed to be a plea of not guilty.
- (8) It shall not be competent for any person appearing to answer a complaint, or for counsel or a solicitor appearing for the accused in his absence, to plead want of due citation or informality therein or in the execution thereof.
- (9) In this section, a reference to the first calling of a case includes a reference to any adjourned diet fixed by virtue of section 145 [<sup>F30</sup>, 145ZA][<sup>F31</sup> or 145A] of this Act.

#### Textual Amendments

- F27** Words in s. 144(1) inserted (30.6.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), ss. 75(a)(i), 79; S.S.I. 2007/334, art. 2(a), Sch. 1
- F28** S. 144(3A)(3B) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 3, Sch. para. 9; S.S.I. 2002/443, art. 3
- F29** Words in s. 144(3A)(a) added (25.11.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 85, 89, Sch. 4 para. 3(2); S.S.I. 2003/475, art. 2, Sch.
- F30** Words in s. 144(9) inserted (30.6.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), ss. 75(a)(ii), 79; S.S.I. 2007/334, art. 2(a), Sch. 1
- F31** Words in s. 144(9) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 63(2), 89; S.S.I. 2003/288, art. 2, Sch.

#### 145 Adjournment for inquiry at first calling.

- (1) [<sup>F32</sup>Where the accused is present] at the first calling of a case in a summary prosecution the court may, in order to allow time for inquiry into the case or for any other cause which it considers reasonable, adjourn the case under this section, for such period as it considers appropriate, without calling on the accused to plead to any charge against him but remanding him in custody or on bail or ordaining him to appear at the diet thus fixed; and, subject to subsections (2) and (3) below, the court may from time to time so adjourn the case.
- (2) Where the accused is remanded in custody, the total period for which he is so remanded under this section shall not exceed 21 days and no one period of adjournment shall, except on special cause shown, exceed 7 days.
- (3) Where the accused is remanded on bail or ordained to appear, no one period of adjournment shall exceed 28 days.

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#### Textual Amendments

**F32** Words in s. 145(1) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 63(3)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

### [<sup>F33</sup> 145Z Adjourment where assessment order made at first calling

Where the accused is present at the first calling of a case in a summary prosecution the court may, where it makes an assessment order in respect of the accused, adjourn the case under this section for a period not exceeding 28 days without calling on the accused to plead to any charge against him; and the court may so adjourn the case for a further period not exceeding 7 days.]

#### Textual Amendments

**F33** S. 145ZA inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 75(b)**, 79; S.S.I. 2007/334, **art. 2(a)**, Sch. 1

### [<sup>F34</sup> 145A Adjourment at first calling to allow accused to appear etc.

- (1) Without prejudice to section 150(1) to (7) of this Act, where the accused is not present at the first calling of the case in a summary prosecution, the court may (whether or not the prosecutor is able to provide evidence that the accused has been duly cited) adjourn the case under this section for such period as it considers appropriate; and subject to subsections (2) and (3) below, the court may from time to time so adjourn the case.
- (2) An adjourment under this section shall be—
  - (a) for the purposes of allowing—
    - (i) the accused to appear in answer to the complaint; or
    - (ii) time for inquiry into the case; or
  - (b) for any other cause the court considers reasonable.
- (3) No one period of adjourment under this section shall exceed 28 days.]

#### Textual Amendments

**F34** S. 145A inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 63(4)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

### 146 Plea of not guilty.

- (1) This section applies where the accused in a summary prosecution—
  - (a) pleads not guilty to the charge; or
  - (b) pleads guilty to only part of the charge and the prosecutor does not accept the partial plea.
- (2) The court may proceed to trial at once unless either party moves for an adjourment and the court considers it expedient to grant it.

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(3) The court may adjourn the case for trial to as early a diet as is consistent with the just interest of both parties, and the prosecutor shall, if requested by the accused, furnish him with a copy of the complaint if he does not already have one.

[<sup>F35</sup>(3A) Where, under subsection (3) above, the prosecutor furnishes an accused charged with a sexual offence to which section 288C of this Act applies with a copy of the complaint, it shall be accompanied by a notice to the accused—

- (a) that, if he is tried for the offence, his defence [<sup>F36</sup>and any proof ordered as is mentioned in section 288C(1) of this Act] at his trial may be conducted only by a lawyer;
- (b) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and
- (c) that, if he does not engage a solicitor for the purposes of his defence at the trial, the court will do so.

(3B) A failure to comply with subsection (3A) above does not affect the validity or lawfulness of any such copy complaint or any other element of the proceedings against the accused.]

(4) Where the accused is brought before the court from custody the court shall inform the accused of his right to an adjournment of the case for not less than 48 hours and if he requests such adjournment before the prosecutor has commenced his proof, subject to subsection (5) below, the adjournment shall be granted.

(5) Where the court considers that it is necessary to secure the examination of witnesses who otherwise would not be available, the case may proceed to trial at once or on a shorter adjournment than 48 hours.

(6) Where the accused is in custody, he may be committed to prison or to legalised police cells or to any other place to which he may lawfully be committed pending trial—

- (a) if he is neither granted bail nor ordained to appear; or
- (b) if he is granted bail on a condition imposed under section 24(6) of this Act that a sum of money is deposited in court, until the accused or a cautioner on his behalf has so deposited that sum.

(7) The court may from time to time at any stage of the case on the motion of either party or *ex proprio motu* grant such adjournment as may be necessary for the proper conduct of the case, and where from any cause a diet has to be continued from day to day it shall not be necessary to intimate the continuation to the accused.

(8) It shall not be necessary for the prosecutor to establish a charge or part of a charge to which the accused pleads guilty.

(9) The court may, in any case where it considers it expedient, permit any witness for the defence to be examined prior to evidence for the prosecution having been led or concluded, but in any such case the accused shall be entitled to lead additional evidence after the case for the prosecution is closed.

#### Textual Amendments

**F35** S. 146(3A)(3B) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 10](#); S.S.I. 2002/443, [art. 3](#)



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**F36** Words in s. 146(3A)(a) added (25.11.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 85, 89, Sch. 4 para. 3(2); S.S.I. 2003/475, art. 2, Sch.

### *Pre-trial procedure*

#### **147 Prevention of delay in trials.**

- (1) Subject to subsections (2) and (3) below, a person charged with an offence in summary proceedings shall not be detained in that respect for a total of more than 40 days after the bringing of the complaint in court unless his trial is commenced within that period, failing which he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.
- (2) The sheriff may, on application made to him for the purpose, extend the period mentioned in subsection (1) above and order the accused to be detained awaiting trial for such period as he thinks fit where he is satisfied that delay in the commencement of the trial is due to—
  - (a) the illness of the accused or of a judge;
  - (b) the absence or illness of any necessary witness; or
  - (c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.
- (3) The grant or refusal of any application to extend the period mentioned in subsection (1) above may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.
- (4) For the purposes of this section, a trial shall be taken to commence when the first witness is sworn.

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

- C34** S. 147 applied (with modifications) (1.10.1997) by S.I. 1997/1776, art. 2, Sch. 1 paras. 5-7; S.I. 1997/2200, arts. 1, 2 (subject to transitional provisions in art. 5)  
S. 147 extended (1.10.1997) by 1997 c. 43, s. 41, Sch. 1 Pt. II para. 10(1)(a); S.I. 1997/2200, art. 2 (subject to transitional provisions in art. 5)  
S. 147 modified (1.10.1997) by 1997 c. 43, s. 41, Sch. 1 Pt. II para. 11(1)(a); S.I. 1997/2200, art. 2 (subject to transitional provisions in art. 5)

#### **148 Intermediate diet.**

- (1) [<sup>F37</sup>The court may, when adjourning a case for trial in terms of section 146(3) of this Act, and may also, at any time thereafter, whether before, on or after any date assigned as a trial diet], fix a diet (to be known as an intermediate diet) for the purpose of ascertaining, so far as is reasonably practicable, whether the case is likely to proceed to trial on [<sup>F37</sup>any date assigned as a trial diet] and, in particular—
  - (a) the state of preparation of the prosecutor and of the accused with respect to their cases;
  - (b) whether the accused intends to adhere to the plea of not guilty; and
- [<sup>F38</sup>(ba) how many witnesses are required by—
  - (i) the prosecutor;

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- (ii) the accused,  
to attend the trial;]
  - (c) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.
- [<sup>F39</sup>(1A) At an intermediate diet in summary proceedings in the sheriff court, the court shall also—
  - (a) ascertain whether subsection (1B) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused, and
  - (b) if so, consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to person or, as the case may be, the accused.
- (1B) This subsection applies—
  - (a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness,
  - (b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.]
- (2) Where at an intermediate diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—
  - (a) [<sup>F40</sup>may] postpone the trial diet; and
  - (b) may fix a further intermediate diet.
- (3) [<sup>F41</sup>The] court may, if it considers it appropriate to do so, adjourn an intermediate diet.
- [<sup>F42</sup>(3A) At an intermediate diet, the court may consider an application for the purposes of subsection (1) of section 275 of this Act; and, notwithstanding subsection (1) above, the court may fix a diet under that subsection for the purpose only of considering such an application.
- (3B) Subsection (3A) above shall not operate so as to relieve any court prescribed by order under subsection (7) below of its duty, which arises by virtue of the operation of that subsection, to fix an intermediate diet for the purpose mentioned in subsection (1) above.]
- (4) At an intermediate diet, the court may ask the prosecutor and the accused any question for the purposes mentioned in subsection (1) [<sup>F43</sup>or (3A)] above [<sup>F44</sup> or for the purpose of ascertaining or considering any matter mentioned in subsection (1A) above].
- (5) The accused shall attend an intermediate diet of which he has received intimation or to which he has been cited unless—
  - (a) he is legally represented; and
  - (b) the court considers that there are exceptional circumstances justifying him not attending.
- (6) A plea of guilty may be tendered at the intermediate diet.
- (7) The foregoing provisions of this section shall have effect as respects any court prescribed by the Secretary of State by order, in relation to proceedings commenced after such date as may be so prescribed, with the following modifications—
  - (a) in subsection (1), for the word “may” [<sup>F45</sup>where it first appears,] there shall be substituted “ shall, subject to subsection (1A) below, ”; and
  - (b) after subsection (1) there shall be inserted the following subsections—

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“(1A) If, on a joint application by the prosecutor and the accused made at any time before the commencement of the intermediate diet, the court considers it inappropriate to have such a diet, the duty under subsection (1) above shall not apply and the court shall discharge any such diet already fixed.

(1B) The court may consider an application under subsection (1A) above without hearing the parties.”.

(8) An order under subsection (7) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F37** Words in s. 148(1) substituted (retrospective to 1.4.1996) by 1998 c. 10, s. 1(1)(a)(i)(ii)(2)
- F38** S. 148(1)(ba) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 18(a), 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S. I. 2007/527)
- F39** S. 148(1A)(1B) inserted (1.4.2007 for certain purposes and otherwise prosp.) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), ss. 2(5)(a), 25; S.S.I. 2007/101, art. 2, Sch. (with art. 4)
- F40** Words in s. 148(2)(a) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 18(b), 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S. I. 2007/527)
- F41** Word in s. 148(3) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 18(c), 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S. I. 2007/527)
- F42** S. 148(3A)(3B) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 8(5)(a); S.S.I. 2002/443, art. 3 (with art. 4(5))
- F43** Words in s. 148(4) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 8(5)(b); S.S.I. 2002/443, art. 3 (with art. 4(5))
- F44** Words in s. 148(4) inserted (1.4.2007 for certain purposes and otherwise prosp.) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), ss. 2(5)(b), 25; S.S.I. 2007/101, art. 2, Sch. (with art. 4)
- F45** Words in s. 148(7)(a) inserted (retrospective to 1.4.1996) by 1998 c. 10, s. 1(1)(b)(2)

#### [<sup>F46</sup>148A Interim diet: sexual offence to which section 288C of this Act applies

- (1) Where, in a case which is adjourned for trial, the charge is of committing a sexual offence to which section 288C of this Act applies, the court shall order that, before the trial diet, there shall be a diet under this section and ordain the accused then to attend.
- (2) At a diet under this section, the court shall ascertain whether or not the accused has engaged a solicitor for the purposes of his defence at the trial.
- (3) Where, following inquiries for the purposes of subsection (2) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence at his trial, it may adjourn the diet under this section for a period of not more than 48 hours and ordain the accused then to attend.
- (4) A diet under this section may be conjoined with an intermediate diet.
- (5) A court may, at a diet under this section, postpone the trial diet.
- (6) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—
  - (a) confirmed his engagement for that purpose; and

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- (b) requested that the diet be dispensed with.
- (7) Where—
  - (a) a solicitor has requested, under subsection (6) above, that a diet under this section be dispensed with; and
  - (b) before that diet has been held or dispensed with, the solicitor—
    - (i) is dismissed by the accused; or
    - (ii) withdraws,
 the solicitor shall forthwith inform the court in writing of those facts.
- (8) It is the duty of a solicitor who—
  - (a) was engaged for the purposes of the defence of the accused at the trial—
    - (i) at the time of a diet under this section; or
    - (ii) in the case of a diet which, under subsection (6) above, is dispensed with, at the time when it was so dispensed with; and
  - (b) after that time but before the trial diet—
    - (i) is dismissed by the accused; or
    - (ii) withdraws,
 forthwith to inform the court in writing of those facts.
- (9) On being so informed, the court shall order a further diet under this section.]

#### Textual Amendments

**F46** S. 148A inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 11](#); [S.S.I. 2002/443](#), [art. 3](#)

#### [<sup>F47</sup>148B Pre-trial procedure in sheriff court where no intermediate diet is fixed

- (1) Where, in any summary proceedings in the sheriff court, no intermediate diet is fixed, the court shall, at the trial diet before the first witness is sworn—
  - (a) ascertain whether subsection (2) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused and, if so, consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to the person or, as the case may be, the accused, and
  - (b) if—
    - (i) section 288E of this Act applies to the proceedings, or
    - (ii) an order under section 288F(2) has been made in the proceedings,
 ascertain whether or not the accused has engaged a solicitor for the purposes of his defence at the trial.
- (2) This subsection applies—
  - (a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness,
  - (b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or be likely to be, a vulnerable witness.
- (3) Where, following inquiries for the purposes of subsection (1)(b) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence

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at the trial, the court may adjourn the trial diet for a period of not more than 48 hours and ordain the accused then to attend.

- (4) At the trial diet, the court may ask the prosecutor and the accused any question in connection with any matter which it is required to ascertain or consider under subsection (1) above.]

#### Textual Amendments

**F47** S. 148B inserted (1.4.2007 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), ss. 9, 25; S.S.I. 2007/101, art. 2 (with art. 4); S.S.I. 2008/57, art. 2 (with art. 3)

VALID FROM 10/12/2007

#### <sup>F48</sup>148C Engagement, dismissal and withdrawal of solicitor representing accused

- (1) In summary proceedings, it is the duty of a solicitor who is engaged by the accused for the purposes of his defence at trial to notify the court and the prosecutor of that fact forthwith in writing.
- (2) The duty under subsection (1) above shall be regarded as having been complied with if the solicitor has represented the accused at the first calling of the case—
- (a) by submitting a written intimation of the accused's plea as described in subsection (2)(a) of section 144 of this Act; or
  - (b) by appearing on behalf of the accused—
    - (i) as described in subsection (2)(b) of that section; or
    - (ii) with the accused present,
- and has, when acting as described in paragraph (a) or (b) above, notified the court and the prosecutor orally or in writing that the solicitor is also engaged by the accused for the purposes of his defence at trial.
- (3) Where a solicitor referred to in subsection (1) above—
- (a) is dismissed by the accused; or
  - (b) withdraws,
- it is the duty of the solicitor to notify the court and the prosecutor of that fact forthwith in writing.

#### Textual Amendments

**F48** Ss. 148C, 148D inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 21, 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S.I. 2007/527)

*Status:* Point in time view as at 30/06/2007. This version of this part contains provisions that are not valid for this point in time.

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VALID FROM 10/12/2007

#### 148D Service etc. on accused through a solicitor

- (1) In summary proceedings, anything which is to be served on or given, notified or otherwise intimated to, the accused (except service of a complaint) shall be taken to be so served, given, notified or intimated if it is, in such form and manner as may be prescribed by Act of Adjournal, served on or given, notified or intimated to (as the case may be) the solicitor described in subsection (2) below at that solicitor's place of business.
- (2) That solicitor is any solicitor—
- (a) who—
    - (i) has given notice under subsection (1) of section 148C of this Act that that solicitor is engaged by the accused for the purposes of the accused's defence at the trial; and
    - (ii) has not given notice under subsection (3) of that section;
  - (b) who has represented the accused as mentioned in subsection (2) of that section; and—
    - (i) has given notice as mentioned in that subsection; and
    - (ii) has not given notice under subsection (3) of that section; or
  - (c) who—
    - (i) has been appointed to act for the purposes of the accused's defence at the trial under section 150A(4)(b) or (7) or 288D of this Act; and
    - (ii) has not been relieved of the appointment by the court.]

#### Textual Amendments

**F48** Ss. 148C, 148D inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 21, 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S.I. 2007/527)

#### <sup>F49</sup>149 Alibi.

It shall not be competent for the accused in a summary prosecution to found on a plea of alibi unless he gives, at any time before the first witness is sworn, notice to the prosecutor of the plea with particulars as to time and place and of the witnesses by whom it is proposed to prove it; and, on such notice being given, the prosecutor shall be entitled, if he so desires, to an adjournment of the case.

#### Textual Amendments

**F49** S. 149B substituted (10.12.2007) for ss. 149, 149A by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 19, 84; S.S.I. 2007/479, art. 3(1), Sch. (subject to art. 7) (as amended by S.S.I. 2007/527)

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## <sup>F50F51</sup> 149A Notice of defence plea of consent

- (1) It shall not be competent for the accused in a summary prosecution for an offence to which section 288C of this Act applies to found on a defence of consent unless, not less than 10 clear days before the trial diet, he gives notice to the prosecutor of the defence and of the witnesses by whom he proposes to maintain it.
- (2) The court may, however, on cause shown, allow the accused to maintain such a defence after giving such notice although given after the time limit specified in subsection (1) above.
- (3) In subsection (1) above, the reference to a defence of consent is a reference to the defence which is stated by reference to the complainer's consent to the act which is the subject matter of the charge or the accused's belief as to that consent.
- (4) In subsection (3) above, "complainer" has the same meaning as in section 274 of this Act.]

### Textual Amendments

- F50** S. 149A inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 6(2); S.S.I. 2002/443, art. 3 (with art. 4(4))
- F51** S. 149B substituted (10.12.2007) for ss. 149, 149A by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 19, 84; S.S.I. 2007/479, art. 3(1), Sch. (subject to art. 7) (as amended by S.S.I. 2007/527)

VALID FROM 10/12/2007

## <sup>F52</sup> 149B Notice of defences

- (1) It is not competent for an accused in a summary prosecution to found on a defence to which this subsection applies unless—
  - (a) notice of the defence has been given to the prosecutor in accordance with subsection (5) below; or
  - (b) the court, on cause shown, allows the accused to found on the defence despite the failure so to give notice of it.
- (2) Subsection (1) above applies—
  - (a) to a special defence;
  - (b) to a defence which may be made out by leading evidence calculated to exculpate the accused by incriminating a co-accused;
  - (c) to a defence of automatism or coercion;
  - (d) in a prosecution for an offence to which section 288C of this Act applies, to a defence of consent.
- (3) In subsection (2)(d) above, the reference to a defence of consent is a reference to the defence which is stated by reference to the complainer's consent to the act which is the subject matter of the charge or the accused's belief as to that consent.
- (4) In subsection (3) above, "complainer" has the same meaning as in section 274 of this Act.



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- (5) Notice of a defence is given in accordance with this subsection if it is given—
- (a) where an intermediate diet is to be held, at or before that diet; or
  - (b) where such a diet is not to be held, no later than 10 clear days before the trial diet,
- together with the particulars mentioned in subsection (6) below.
- (6) The particulars are—
- (a) in relation to a defence of alibi, particulars as to time and place; and
  - (b) in relation to that or any other defence, particulars of the witnesses who may be called to give evidence in support of the defence.
- (7) Where notice of a defence to which subsection (1) above applies is given to the prosecutor, the prosecutor is entitled to an adjournment of the case.
- (8) The entitlement to an adjournment under subsection (7) above may be exercised whether or not—
- (a) the notice was given in accordance with subsection (5) above;
  - (b) the entitlement could have been exercised at an earlier diet.]

#### Textual Amendments

**F52** S. 149B substituted (10.12.2007) for ss. 149, 149A by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 19**, 84; S.S.I. 2007/479, art. 3(1), Sch. (subject to art. 7) (as amended by S.S.I. 2007/527)

### *Failure of accused to appear*

#### **150 Failure of accused to appear.**

- (1) This section applies where the accused in a summary prosecution fails to appear at any diet of which he has received intimation, or to which he has been cited other than a diet which, by virtue of section 148(5) of this Act, he is not required to attend.
- (2) The court may adjourn the proceedings to another diet, and order the accused to attend at such diet, and appoint intimation of the diet to be made to him.
- (3) The court may grant warrant to apprehend the accused.
- [<sup>F53</sup>(3A) The grant, under subsection (3) above, at an intermediate diet [<sup>F54</sup>or a diet under section 148A of this Act] of a warrant to apprehend the accused has the effect of discharging the trial diet as respects that accused.
- (3B) Subsection (3A) above is subject to any order to different effect made by the court when granting the warrant.]
- (4) Intimation under subsection (2) above shall be sufficiently given by an officer of law, or by letter signed by the clerk of court or prosecutor and sent to the accused at his last known address by registered post or by the recorded delivery service, and the production in court of the written execution of such officer or of an acknowledgement or certificate of the delivery of the letter issued by the [<sup>F55</sup>postal operator] shall be sufficient evidence of such intimation having been duly given.

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- (5) Where the accused is charged with a statutory offence for which a sentence of imprisonment cannot be imposed in the first instance, or where the statute founded on or conferring jurisdiction authorises procedure in the absence of the accused, the court, on the motion of the prosecutor and upon being satisfied that the accused has been duly cited, or has received due intimation of the diet where such intimation has been ordered, may subject to subsections (6) and (7) below, proceed to hear and dispose of the case in the absence of the accused.
- (6) Unless the statute founded on authorises conviction in default of appearance, proof of the complaint must be led to the satisfaction of the court.
- (7) In a case to which subsection (5) above applies, the court may, if it considers it expedient, allow counsel or a solicitor who satisfies the court that he has authority from the accused so to do, to appear and plead for and defend him.
- (8) An accused who without reasonable excuse fails to attend any diet of which he has been given due notice, shall be guilty of an offence and liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale; and
  - (b) to a period of imprisonment not exceeding—
    - (i) in the district court, 60 days; or
    - (ii) in the sheriff court, 3 months.
- (9) The penalties provided for in subsection (8) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.
- (10) An accused may be dealt with for an offence under subsection (8) above either at his diet of trial for the original offence or at a separate trial.

#### Textual Amendments

- F53** S. 150(3A)(3B) inserted (retrospectively) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2002](#) (asp 4), [s. 1\(1\)\(2\)](#) (with [s. 1\(4\)](#))
- F54** Words in [s. 150\(3A\)](#) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#) (asp 9), [s. 3](#), [Sch. para. 12](#); S.S.I. 2002/443, [art. 3](#)
- F55** Words in [s. 150\(4\)](#) substituted (26.3.2001) by S.I. 2001/1149, [art. 3\(1\)](#), [Sch. 1 para. 104\(3\)](#) (subject to [art. 1\(3\)](#))

VALID FROM 10/12/2007

#### <sup>F56</sup>150A Proceedings in absence of accused

- (1) Where the accused does not appear at a diet (apart from a diet fixed for the first calling of the case), the court—
  - (a) on the motion of the prosecutor or, in relation to sentencing, of its own accord; and
  - (b) if satisfied as to the matters specified in subsection (2) below,

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may proceed to hear and dispose of the case in the absence of the accused in like manner as if the accused were present.

- (2) The matters referred in subsection (1)(b) above are—
  - (a) that citation of the accused has been effected or the accused has received other intimation of the diet; and
  - (b) that it is in the interests of justice to proceed as mentioned in subsection (1) above.
- (3) In subsection (1) above, the reference to proceeding to hear and dispose of the case includes, in relation to a trial diet, proceeding with the trial.
- (4) Where the court is considering whether to proceed in pursuance of subsection (1) above, it shall—
  - (a) if satisfied that there is a solicitor with authority to act—
    - (i) for the purposes of representing the accused's interests at the hearing on whether to proceed that way; and
    - (ii) if it proceeds that way, for the purposes of representing the accused's further interests at the diet (including, in relation to a trial diet, presenting a defence at the trial),
 allow that solicitor to act for those purposes; or
  - (b) if there is no such solicitor, at its own hand appoint a solicitor to act for those purposes if it considers that it is in the interests of justice to do so.
- (5) It is the duty of a solicitor appointed under subsection (4)(b) above to act in the best interests of the accused.
- (6) In all other respects, a solicitor so appointed has, and may be made subject to, the same obligations and has, and may be given, the same authority as if engaged by the accused; and any employment of and instructions given to counsel by the solicitor shall proceed and be treated accordingly.
- (7) Where the court is satisfied that—
  - (a) a solicitor allowed to act under subsection (4)(a) above no longer has authority to act; or
  - (b) a solicitor appointed under subsection (4)(b) above is no longer able to act in the best interests of the accused,
 the court may relieve that solicitor and appoint another solicitor for the purposes referred to in subsection (4) above.
- (8) Subsections (4)(b) and (7) above do not apply in the case of proceedings—
  - (a) in respect of a sexual offence to which section 288C of this Act applies;
  - (b) in respect of which section 288E of this Act applies; or
  - (c) in which an order has been made under section 288F(2) of this Act.
- (9) Reference in this section to a solicitor appointed under subsection (4)(b) above includes reference to a solicitor appointed under subsection (7) above.
- (10) Where the court proceeds in pursuance of subsection (1) above, it shall not in the absence of the accused pronounce a sentence of imprisonment or detention.
- (11) Nothing in this section prevents—

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- (a) a warrant being granted at any stage of proceedings for the apprehension of the accused;
- (b) a case subsequently being adjourned (in particular, with a view to having the accused present at any proceedings).]

#### Textual Amendments

**F56** S. 150A inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 14(4), 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S. I. 2007/527)

### *Non-availability of judge*

#### **151 Death, illness or absence of judge.**

- (1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, it shall be lawful for the clerk of court—
  - (a) where the diet has not been called, to convene the court and adjourn the diet;
  - (b) where the diet has been called but no evidence has been led, to adjourn the diet; and
  - (c) where the diet has been called and evidence has been led—
    - (i) with the agreement of the parties, to desert the diet *pro loco et tempore*; or
    - (ii) to adjourn the diet.
- (2) Where, under subsection (1)(c)(i) above, a diet has been deserted *pro loco et tempore*, any new prosecution charging the accused with the same or any similar offence arising out of the same facts shall be brought within two months of the date on which the diet was deserted notwithstanding that any other time limit for the commencement of such prosecution has elapsed.
- (3) For the purposes of subsection (2) above, a new prosecution shall be deemed to commence on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

### *Trial diet*

#### **152 Desertion of diet.**

- (1) It shall be competent at the diet of trial, at any time before the first witness is sworn, for the court, on the application of the prosecutor, to desert the diet *pro loco et tempore*.
- (2) If, at a diet of trial, the court refuses an application by the prosecutor to adjourn the trial or to desert the diet *pro loco et tempore*, and the prosecutor is unable or unwilling to proceed with the trial, the court shall desert the diet *simpliciter*.
- (3) Where the court has deserted a diet *simpliciter* under subsection (2) above (and the court's decision in that regard has not been reversed on appeal), it shall not be competent for the prosecutor to raise a fresh libel.

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### <sup>F57</sup> 152A Complaints triable together

- (1) Where—
  - (a) two or more complaints against an accused call for trial in the same court on the same day; and
  - (b) they each contain one or more charges to which the accused pleads not guilty, the prosecutor may apply to the court for those charges to be tried together at that diet despite the fact that they are not all contained in the one complaint.
- (2) On an application under subsection (1) above, the court is to try those charges together if it appears to the court that it is expedient to do so.
- (3) For the purposes of subsections (1) and (2) above, any other charges contained in the complaints are (without prejudice to further proceedings as respects those other charges) to be disregarded.
- (4) Where charges are tried together under this section, they are to be treated (including, in particular, for the purposes of and in connection with the leading of evidence, proof and verdict) as if they were contained in one complaint.
- (5) But the complaints mentioned in subsection (1)(a) above are, for the purposes of further proceedings (including as to sentence), to be treated as separate complaints.]

#### Textual Amendments

**F57** S. 152A inserted (10.12.2007) by *Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)*, ss. 13, 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S. I. 2007/527)

### 153 Trial in presence of accused.

- (1) Without prejudice to section 150 of this Act, and subject to subsection (2) below, no part of a trial shall take place outwith the presence of the accused.
- (2) If during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order—
  - (a) that he is removed from the court for so long as his conduct makes it necessary; and
  - (b) that the trial proceeds in his absence,
 but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.

<sup>F58</sup> 154 .....

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### Textual Amendments

**F58** S. 154 repealed (1.8.1997) by 1997 c. 48, ss. 28(1), 62(2), Sch. 3; S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

## 155 Punishment of witness for contempt.

- (1) If a witness in a summary prosecution—
  - (a) wilfully fails to attend after being duly cited; or
  - (b) unlawfully refuses to be sworn; or
  - (c) after the oath has been administered to him refuses to answer any question which the court may allow; or
  - (d) prevaricates in his evidence,he shall be deemed guilty of contempt of court and be liable to be summarily punished forthwith for such contempt by a fine not exceeding level 3 on the standard scale or by imprisonment for any period not exceeding 21 days.
- (2) Where punishment is summarily imposed as mentioned in subsection (1) above, the clerk of court shall enter in the record of the proceedings the acts constituting the contempt or the statements forming the prevarication.
- (3) Subsections (1) and (2) above are without prejudice to the right of the prosecutor to proceed by way of formal complaint for any such contempt where a summary punishment, as mentioned in the said subsection (1), is not imposed.
- (4) Any witness who, having been duly cited in accordance with section 140 of this Act—
  - (a) fails without reasonable excuse, after receiving at least 48 hours' notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or
  - (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,shall be liable to the like punishment as is provided in subsection (1) above.

## 156 Apprehension of witness.

- (1) Where a witness [<sup>F59</sup>in a summary prosecution], having been duly cited, fails to appear at the diet fixed for his attendance and no just excuse is offered by him or on his behalf, the court may, if it is satisfied that he received the citation or that its contents came to his knowledge, issue a warrant for his apprehension.
- (2) Where the court is satisfied by evidence on oath that a witness [<sup>F59</sup>in a summary prosecution] is not likely to attend to give evidence without being compelled so to do, it may issue a warrant for his apprehension.
- (3) A warrant of apprehension of a witness [<sup>F59</sup>in a summary prosecution] in the form mentioned in section 135(1) of this Act shall imply warrant to officers of law to search for and apprehend the witness, and to detain him in a police station, police cell, or other convenient place, until—
  - (a) the date fixed for the hearing of the case; or

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- (b) the date when security to the amount fixed under subsection (4) below is found,  
whichever is the earlier.
- (4) A witness apprehended under a warrant under subsection (1) or (2) above shall, wherever practicable, be brought immediately by the officer of law who executed that warrant before a justice, who shall fix such sum as he considers appropriate as security for the appearance of the witness at all diets.

#### Textual Amendments

**F59** Words in s. 156(1)(2)(3) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), ss. 25, 27(1), [Sch. para. 34](#); S.S.I. 2004/405, [art. 2](#), [Sch. 1](#) (with savings in arts. 3-5)

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

**C35** S. 156 applied (26.4.2004) by [Crime \(International Co-operation\) Act 2003](#) (c. 32), ss. 15, 30, 31, 94, [Sch. 1 para. 2](#), [Sch. 2 para. 2](#); S.I. 2004/786, [art. 3](#)

VALID FROM 10/03/2008

### [<sup>F60</sup>156A] Orders in respect of witnesses apprehended under section 156

- (1) Where a witness is brought before the court in pursuance of a warrant issued under section 156 of this Act, the court shall, after giving the parties and the witness an opportunity to be heard, make an order—
- (a) detaining the witness until the conclusion of the diet at which the witness is to give evidence;
  - (b) releasing the witness on bail; or
  - (c) liberating the witness.
- (2) The court may make an order under subsection (1)(a) or (b) above only if it is satisfied that—
- (a) the order is necessary with a view to securing that the witness appears at the diet at which the witness is to give evidence; and
  - (b) it is appropriate in all the circumstances to make the order.
- (3) Whenever the court makes an order under subsection (1) above, it shall state the reasons for the terms of the order.
- (4) Subsection (1) above is without prejudice to any power of the court to—
- (a) make a finding of contempt of court in respect of any failure of a witness to appear at a diet to which he has been duly cited; and
  - (b) dispose of the case accordingly.
- (5) Where—
- (a) an order under subsection (1)(a) above has been made in respect of a witness; and
  - (b) at, but before the conclusion of, the diet at which the witness is to give evidence, the court in which the diet is being held excuses the witness,



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that court, on excusing the witness, may recall the order under subsection (1)(a) above and liberate the witness.

- (6) On making an order under subsection (1)(b) above in respect of a witness, the court shall impose such conditions as it considers necessary with a view to securing that the witness appears at the diet at which he is to give evidence.
- (7) However, the court may not impose as such a condition a requirement that the witness or a cautioner on his behalf deposit a sum of money in court.
- (8) Section 25 of this Act shall apply in relation to an order under subsection (1)(b) above as it applies to an order granting bail, but with the following modifications—
  - (a) references to the accused shall be read as if they were references to the witness in respect of whom the order under subsection (1)(b) above is made;
  - (b) references to the order granting bail shall be read as if they were references to the order under subsection (1)(b) above;
  - (c) subsection (3) shall be read as if for the words from “relating” to “offence” in the third place where it occurs there were substituted “ at which the witness is to give evidence ”.]

#### Textual Amendments

**F60** Ss. 156-156D substituted (10.3.2008) for s. 156 by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 16, 84**; S.S.I. 2008/42, **art. 3, Sch.**

VALID FROM 10/03/2008

#### [<sup>F61</sup>156B Breach of bail under section 156A(1)(b)]

- (1) A witness who, having been released on bail by virtue of an order under subsection (1)(b) of section 156A of this Act, fails without reasonable excuse—
  - (a) to appear at any diet to which he has been cited; or
  - (b) to comply with any condition imposed under subsection (6) of that section,shall be guilty of an offence and liable on summary conviction to the penalties specified in subsection (2) below.
- (2) Those penalties are—
  - (a) a fine not exceeding level 3 on the standard scale; and
  - (b) imprisonment for a period—
    - (i) where conviction is in the JP court, not exceeding 60 days;
    - (ii) where conviction is in the sheriff court, not exceeding 12 months.
- (3) In any proceedings in relation to an offence under subsection (1) above, the fact that (as the case may be) a person—
  - (a) was on bail;
  - (b) was subject to any particular condition of bail;
  - (c) failed to appear at a diet;
  - (d) was cited to a diet,

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shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted.

(4) Section 28 of this Act shall apply in respect of a witness who has been released on bail by virtue of an order under section 156A(1)(b) of this Act as it applies to an accused released on bail, but with the following modifications—

- (a) references to an accused shall be read as if they were references to the witness;
- (b) in subsection (2), the reference to the court to which the accused's application for bail was first made shall be read as if it were a reference to the court which made the order under section 156A(1)(b) of this Act in respect of the witness;
- (c) in subsection (4)—
  - (i) references to the order granting bail and original order granting bail shall be read as if they were references to the order under section 156A(1)(b) of this Act and the original such order respectively;
  - (ii) paragraph (a) shall be read as if at the end there were inserted “ and make an order under section 156A(1)(a) or (c) of this Act in respect of the witness ”;
  - (iii) paragraph (c) shall be read as if for the words from “complies” to the end there were substituted “ appears at the diet at which the witness is to give evidence ”.]

#### Textual Amendments

**F61** Ss. 156-156D substituted (10.3.2008) for s. 156 by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 16, 84; S.S.I. 2008/42, art. 3, Sch.

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

**C36** S. 156B(2)(b)(i) applied (10.12.2007) by [The District Courts and Justices of the Peace \(Scotland\) Order 2007 \(S.S.I. 2007/480\)](#), art. 4(1)(c)

VALID FROM 10/03/2008

#### [<sup>F62</sup>156C Review of orders under section 156A(1)(a) or (b)]

- (1) Where a court has made an order under subsection (1)(a) of section 156A of this Act, the court may, on the application of the witness in respect of whom the order was made and after giving the parties and the witness an opportunity to be heard—
  - (a) recall the order; and
  - (b) make an order under subsection (1)(b) or (c) of that section in respect of the witness.
- (2) Where a court has made an order under subsection (1)(b) of section 156A of this Act, the court may, after giving the parties and the witness an opportunity to be heard—
  - (a) on the application of the witness in respect of whom the order was made—
    - (i) review the conditions imposed under subsection (6) of that section at the time the order was made; and

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- (ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (6) of that section;
  - (b) on the application of the party who made the application under section 156(1) of this Act in respect of the witness, review the order and the conditions imposed under subsection (6) of section 156A of this Act at the time the order was made, and—
    - (i) recall the order and make an order under subsection (1)(a) of that section in respect of the witness; or
    - (ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (6) of that section.
- (3) The court may not review an order by virtue of subsection (1) or (2) above unless—
  - (a) in the case of an application by the witness, the circumstances of the witness have changed materially; or
  - (b) in that or any other case, the witness or party making the application puts before the court material information which was not available to it when it made the order which is the subject of the application.
- (4) An application under this section by a witness—
  - (a) where it relates to the first order made under section 156A(1)(a) or (b) of this Act in respect of the witness, shall not be made before the fifth day after that order is made;
  - (b) where it relates to any subsequent such order, shall not be made before the fifteenth day after the order is made.
- (5) On receipt of an application under subsection (2)(b) above the court shall—
  - (a) intimate the application to the witness in respect of whom the order which is the subject of the application was made;
  - (b) fix a diet for hearing the application and cite the witness to attend the diet; and
  - (c) where it considers that the interests of justice so require, grant warrant to arrest the witness.
- (6) Nothing in this section shall affect any right of a person to appeal against an order under section 156A(1).]

#### Textual Amendments

**F62** Ss. 156-156D substituted (10.3.2008) for s. 156 by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 16, 84; S.S.I. 2008/42, art. 3, Sch.

VALID FROM 10/03/2008

#### [<sup>F63</sup>156D Appeals in respect of orders under section 156A(1)]

- (1) Any of the parties specified in subsection (2) below may appeal to the High Court against—
  - (a) any order made under subsection (1)(a) or (c) of section 156A of this Act;
  - (b) where an order is made under subsection (1)(b) of that section—

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- (i) the order;
  - (ii) any of the conditions imposed under subsection (6) of that section on the making of the order; or
  - (iii) both the order and any such conditions.
- (2) The parties referred to in subsection (1) above are—
- (a) the witness in respect of whom the order which is the subject of the appeal was made;
  - (b) the prosecutor; and
  - (c) the accused.
- (3) A party making an appeal under subsection (1) above shall intimate it to the other parties specified in subsection (2) above; and, for that purpose, intimation to the Crown Agent shall be sufficient intimation to the prosecutor.
- (4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such enquiry and hearing of the parties as shall seem just.
- (5) Where the witness in respect of whom the order which is the subject of an appeal under this section was made is under 21 years of age, section 51 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the witness's age for trial and sentence.]

#### Textual Amendments

**F63** Ss. 156-156D substituted (10.3.2008) for s. 156 by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 16, 84; S.S.I. 2008/42, art. 3, Sch.

## 157 Record of proceedings.

- (1) Proceedings in a summary prosecution shall be conducted summarily *viva voce* and, except where otherwise provided and subject to subsection (2) below, no record need be kept of the proceedings other than the complaint, or a copy of the complaint certified as a true copy by the procurator fiscal, the plea, a note of any documentary evidence produced, and the conviction and sentence or other finding of the court.
- (2) Any objection taken to the competency or relevancy of the complaint or proceedings, or to the competency or [<sup>F64</sup>(subject to subsection (3) below)] admissibility of evidence, shall, if either party desires it, be entered in the record of the proceedings.
- [<sup>F65</sup>(3) An application for the purposes of subsection (1) of section 275 of this Act, together with the court's decision on it, the reasons stated therefor and any conditions imposed and directions issued under subsection (7) of that section shall be entered in the record of the proceedings.]

#### Textual Amendments

**F64** Words in s. 157(2) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 8(6)(a); S.S.I. 2002/443, art. 3 (with art. 4(5))

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**F65** S. 157(3) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 8(6)(b); S.S.I. 2002/443, art. 3 (with art. 4(5))

### **158 Interruption of summary proceedings for verdict in earlier trial.**

Where the sheriff is sitting in summary proceedings during the period in which the jury in a criminal trial in which he has presided are retired to consider their verdict, it shall be lawful, if he considers it appropriate to do so, to interrupt those proceedings—

- (a) in order to receive the verdict of the jury and dispose of the cause to which it relates;
- (b) to give a direction to the jury on any matter on which they may wish one from him, or to hear a request from them regarding any matter,

and the interruption shall not affect the validity of the proceedings nor cause the instance to fall in respect of any person accused in the proceedings.

### **159 Amendment of complaint.**

- (1) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the complaint or any notice of previous conviction relative thereto by deletion, alteration or addition, so as to—
  - (a) cure any error or defect in it;
  - (b) meet any objection to it; or
  - (c) cure any discrepancy or variance between the complaint or notice and the evidence.
- (2) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if it appears to the court that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as appears to the court to be just.
- (3) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of the court.

### **160 No case to answer.**

- (1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—
  - (a) on an offence charged in the complaint; and
  - (b) on any other offence of which he could be convicted under the complaint were the offence charged the only offence so charged.
- (2) If, after hearing both parties, the judge is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of subsection (1) above, he shall acquit him of the offence charged in respect of which the submission has been made and the trial shall proceed only in respect of any other offence charged in the complaint.

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- (3) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (2) above, he shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.

**161 Defence to speak last.**

In any trial the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

*Verdict and conviction*

**162 Judges equally divided.**

In a summary prosecution in a court consisting of more than one judge, if the judges are equally divided in opinion as to the guilt of the accused, the accused shall be found not guilty of the charge or part thereof on which such division of opinion exists.

**163 Conviction: miscellaneous provisions.**

- (1) Where imprisonment is authorised by the sentence of a court of summary jurisdiction, an extract of the finding and sentence in the form prescribed by Act of Adjournal shall be a sufficient warrant for the apprehension and commitment of the accused, and no such extract shall be void or liable to be set aside on account of any error or defect in point of form.
- (2) In any proceedings in a court of summary jurisdiction consisting of more than one judge, the signature of one judge shall be sufficient in all warrants or other proceedings prior or subsequent to conviction, and it shall not be necessary that the judge so signing shall be one of the judges trying or dealing with the case otherwise.

**164 Conviction of part of charge.**

A conviction of a part or parts only of the charge or charges libelled in a complaint shall imply dismissal of the rest of the complaint.

**165 “Conviction” and “sentence” not to be used for children.**

The words “conviction” and “sentence” shall not be used in relation to children dealt with summarily and any reference in any enactment, whether passed before or after the commencement of this Act, to a person convicted, a conviction or a sentence shall in the case of a child be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding as the case may be.

**166 Previous convictions: summary proceedings**

- (1) This section shall apply where the accused in a summary prosecution has been previously convicted of any offence and the prosecutor has decided to lay a previous conviction before the court.
- (2) A notice in the form prescribed by Act of Adjournal or as nearly as may be in such form specifying the previous conviction shall be served on the accused with the complaint

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where he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead.

- (3) The previous conviction shall not [<sup>F66</sup>, subject to section 275A(1) of this Act,] be laid before the judge until he is satisfied that the charge is proved.
- (4) If a plea of guilty is tendered or if, after a plea of not guilty, the accused is convicted the prosecutor shall lay the notice referred to in subsection (2) above before the judge, and—
  - (a) in a case where the plea of guilty is tendered in writing the accused shall be deemed to admit any previous conviction set forth in the notice, unless he expressly denies it in the writing by which the plea is tendered;
  - (b) in any other case the judge or the clerk of court shall ask the accused whether he admits the previous conviction,and if such admission is made or deemed to be made it shall be entered in the record of the proceedings; and it shall not be necessary for the prosecutor to produce extracts of any previous convictions so admitted.
- (5) Where the accused does not admit any previous conviction, the prosecutor unless he withdraws the conviction shall adduce evidence in proof thereof either then or at any other diet.
- (6) A copy of any notice served on the accused under this section shall be entered in the record of the proceedings.
- (7) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.
- (8) Nothing in this section shall prevent the prosecutor—
  - (a) asking the accused questions tending to show that the accused has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 266 of this Act; or
  - (b) leading evidence of previous convictions where it is competent to do so—
    - (i) as evidence in support of a substantive charge; or
    - (ii) under section 270 of this Act.

#### Textual Amendments

**F66** Words in s. 166(3) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), [s. 10\(2\)](#); [S.S.I. 2002/443](#), [art. 3](#) (with [art. 4\(5\)](#))

VALID FROM 10/03/2008

#### [<sup>F67</sup> 166A Post-offence convictions

Where a person is convicted of an offence on summary complaint, the court may, in deciding on the disposal of the case, have regard to any convictions which—

- (a) were imposed on the person between the date of the offence and the date of conviction in respect of the offence;
- (b) are specified in a notice laid before the court by the prosecutor; and
- (c) are—



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- (i) admitted by the person; or
- (ii) proved by the prosecutor on evidence adduced then or at another diet.]

#### Textual Amendments

**F67** S. 166A inserted (10.3.2008) by *Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)* , **ss. 12(2)** , 84 ; *S.S.I. 2008/42* , **art. 3** , Sch. (subject to art. 5 )

VALID FROM 10/12/2007

#### <sup>F68</sup>166B Charges which disclose convictions

- (1) Nothing in section 166 of this Act prevents—
  - (a) the prosecutor leading evidence of previous convictions where it is competent to do so as evidence in support of a substantive charge;
  - (b) the prosecutor proceeding with a charge—
    - (i) which discloses a previous conviction; or
    - (ii) in support of which evidence of a previous conviction may competently be led,
 on a complaint which includes a charge in relation to which the conviction is irrelevant; or
  - (c) the court trying a charge—
    - (i) which discloses a previous conviction; or
    - (ii) in support of which evidence of a previous conviction may competently be led,
 together with a charge on another complaint in relation to which the conviction is irrelevant.
- (2) But subsections (1)(b) and (c) above apply only if the charges are of offences which—
  - (a) relate to the same occasion; or
  - (b) are of a similar character and amount to (or form part of) a course of conduct.
- (3) The reference in subsection (1)(c) above to trying a charge together with a charge on another complaint means doing so under section 152A of this Act.]

#### Textual Amendments

**F68** S. 166B inserted (10.12.2007) by *Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)* , **ss. 12(2)** , 84 ; *S.S.I. 2007/479* , **art. 3(1)** , Sch. (as amended by *S.S.I. 2007/527* )

### 167 Forms of finding and sentence.

- (1) Every sentence imposed by a court of summary jurisdiction shall unless otherwise provided be pronounced in open court in the presence of the accused, but need not be written out or signed in his presence.

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- (2) The finding and sentence and any order of a court of summary jurisdiction, as regards both offences at common law and offences under any enactment, shall be entered in the record of the proceedings in the form, as nearly as may be, prescribed by Act of Adjournal.
  - (3) The record of the proceedings shall be sufficient warrant for all execution on a finding, sentence or order and for the clerk of court to issue extracts containing such executive clauses as may be necessary for implement thereof.
  - (4) When imprisonment forms part of any sentence or other judgement, warrant for the apprehension and interim detention of the accused pending his being committed to prison shall, where necessary, be implied.
  - (5) Where a fine imposed by a court of summary jurisdiction is paid at the bar it shall not be necessary for the court to refer to the period of imprisonment applicable to the non-payment thereof.
  - (6) Where several charges at common law or under any enactment are embraced in one complaint, a cumulo penalty may be imposed in respect of all or any of such charges of which the accused is convicted.
  - (7) [<sup>F69</sup>Subject to section 204A of this Act,] a court of summary jurisdiction may frame—
    - (a) a sentence following on conviction; or
    - (b) an order for committal in default of payment of any sum of money or for contempt of court,so as to take effect on the expiry of any previous sentence [<sup>F70</sup>for a term] or order which, at the date of the later conviction or order, the accused is undergoing.
- [<sup>F71</sup>(7A) Where the court imposes a sentence as mentioned in paragraph (a) of subsection (7) above for an offence committed after the coming into force of this subsection, the court may—
- (a) if the person is serving or is liable to serve the punishment part of a previous sentence, frame the sentence to take effect on the day after that part of that sentence is or would be due to expire; or
  - (b) if the person is serving or is liable to serve the punishment parts of two or more previous sentences, frame the sentence to take effect on the day after the later or (as the case may be) latest expiring of those parts is or would be due to expire.
- (7B) Where it falls to the court to sentence a person who is subject to a previous sentence in respect of which a punishment part requires to be (but has not been) specified, the court shall not sentence the person until such time as the part is either specified or no longer requires to be specified.
- (7C) In subsections (7A) and (7B) above, any reference to a punishment part of a sentence shall be construed by reference to—
- (a) the punishment part of the sentence as is specified in an order mentioned in section 2(2) of the 1993 Act; or
  - (b) any part of the sentence which has effect, by virtue of section 10 of the 1993 Act or the schedule to the Convention Rights (Compliance)(Scotland) Act 2001 (asp 7), as if it were the punishment part so specified,
- and “the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9).]

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- (8) It shall be competent at any time before imprisonment has followed on a sentence for the court to alter or modify it; but no higher sentence than that originally pronounced shall be competent, and—
- (a) the signature of the judge or clerk of court to any sentence shall be sufficient also to authenticate the findings on which such sentence proceeds; and
  - (b) the power conferred by this subsection to alter or modify a sentence may be exercised without requiring the attendance of the accused.

#### Textual Amendments

- F69** Words in s. 167(7) inserted (30.9.1998) by 1998 c. 37 , s. 119 , **Sch. 8 para. 122** ; S.I. 1998/2327 , **art. 2(1)(y)(2)(kk)** (subject to arts. 5-8 )
- F70** Words in s. 167(7)(b) inserted (1.12.2003) by Criminal Justice (Scotland) Act 2003 (asp 7) , **ss. 26(2)(a)** , 89 ; S.S.I. 2003/475 , **art. 2** , Sch.
- F71** S. 167(7A)-(7C) inserted (1.12.2003) by Criminal Justice (Scotland) Act 2003 (asp 7) , **ss. 26(2)(b)** , 89 ; S.S.I. 2003/475 , **art. 2** , Sch.

#### 168 Caution.

- (1) This section applies with regard to the finding, forfeiture, and recovery of caution in any proceedings under this Part of this Act.
- (2) Caution may be found by consignation of the amount with the clerk of court, or by bond of caution signed by the cautioner.
- (3) Where caution becomes liable to forfeiture, forfeiture may be granted by the court on the motion of the prosecutor, and, where necessary, warrant granted for the recovery of the caution.
- (4) Where a cautioner fails to pay the amount due under his bond within six days after he has received a charge to that effect, the court may—
  - (a) order him to be imprisoned for the maximum period applicable in pursuance of section 219 of this Act to that amount or until payment is made; or
  - (b) if it considers it expedient, on the application of the cautioner grant time for payment; or
  - (c) instead of ordering imprisonment, order recovery by civil diligence in accordance with section 221 of this Act.

#### 169 Detention in precincts of court.

- (1) Where a court of summary jurisdiction has power to impose imprisonment or detention on an offender it may, in lieu of so doing and subject to subsection (2) below, order that the offender be detained within the precincts of the court or at any police station, till such hour, not later than eight in the evening on the day on which he is convicted, as the court may direct.
- (2) Before making an order under this section a court shall take into consideration the distance between the proposed place of detention and the offender's residence (if known to, or ascertainable by, the court), and shall not make any such order under this section as would deprive the offender of a reasonable opportunity of returning to his residence on the day on which the order is made.

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### Miscellaneous

#### **170 Damages in respect of summary proceedings.**

- (1) No judge, clerk of court or prosecutor in the public interest shall be found liable by any court in damages for or in respect of any proceedings taken, act done, or judgment, decree or sentence pronounced in any summary proceedings under this Act, unless—
  - (a) the person suing has suffered imprisonment in consequence thereof; and
  - (b) such proceedings, act, judgment, decree or sentence has been quashed; and
  - (c) the person suing specifically avers and proves that such proceeding, act, judgment, decree or sentence was taken, done or pronounced maliciously and without probable cause.
- (2) No such liability as aforesaid shall be incurred or found where such judge, clerk of court or prosecutor establishes that the person suing was guilty of the offence in respect whereof he had been convicted, or on account of which he had been apprehended or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence.
- (3) No action to enforce such liability as aforesaid shall lie unless it is commenced within two months after the proceeding, act, judgment, decree or sentence founded on, or in the case where the Act under which the action is brought fixes a shorter period, within that shorter period.
- (4) In this section “judge” shall not include “sheriff”, and the provisions of this section shall be without prejudice to the privileges and immunities possessed by sheriffs.

#### **171 Recovery of penalties.**

- (1) All penalties, for the recovery of which no special provision has been made by any enactment may be recovered by the public prosecutor in any court having jurisdiction.
- (2) Where a court has power to take cognisance of an offence the penalty attached to which is not defined, the punishment therefore shall be regulated by that applicable to common law offences in that court.

#### **172 Forms of procedure.**

- (1) The forms of procedure for the purposes of summary proceedings under this Act and appeals therefrom shall be in such forms as are prescribed by Act of Adjournal or as nearly as may be in such forms.
- (2) All warrants (other than warrants of apprehension or search), orders of court, and sentences may be signed either by the judge or by the clerk of court, and execution upon any warrant, order of court, or sentence may proceed either upon such warrant, order of court, or sentence itself or upon an extract thereof issued and signed by the clerk of court.
- (3) Where, preliminary to any procedure, a statement on oath is required, the statement may be given before any judge, whether the subsequent procedure is in his court or another court.

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