



# Criminal Procedure (Attendance of Witnesses) Act 1965

## 1965 CHAPTER 69

An Act to make new provision for securing the attendance of witnesses in criminal proceedings before courts of assize and quarter sessions; to abolish the binding over of prosecutors for the purpose of such proceedings; to restrict the issue of subpoenas for securing the attendance of witnesses before magistrates' courts; and for connected purposes. [5th August 1965]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Order by examining justices for attendance of witness at court of trial**

- (1) A magistrates' court acting as examining justices shall in respect of each witness examined by the court, other than the accused and any witness of his merely to his character, make an order (in this Act referred to as a witness order) requiring him to attend and give evidence before the court of assize or quarter sessions before which the accused is to be tried.
- (2) Where it appears to the court, after taking into account any representation made by the accused or the prosecutor, that the attendance at the trial of any witness is unnecessary on the ground that his evidence is unlikely to be required or is unlikely to be disputed, then—
  - (a) any witness order to be made by the court in his case shall be a conditional order requiring him to attend the trial if notice in that behalf is given to him and not otherwise; and
  - (b) if a witness order other than a conditional order has previously been made by the court in his case, the court shall direct that that order be treated as a conditional order.

- (3) A magistrates' court on committing any person for trial shall inform him of his right to require the attendance at the trial of any witness in respect of whom a conditional witness order, or an order treated as a conditional witness order, has been made, and of the steps he must take for the purpose of enforcing the attendance.
- (4) Section 5 of the Magistrates' Courts Act 1952 (which requires a magistrates' court acting as examining justices to bind over witnesses to attend and give evidence before the court at which the accused is to be tried and also to bind over the prosecutor to prosecute the accused before that court) shall cease to have effect, but without prejudice to any recognisance entered into under that section before the commencement of this Act.

## **2 Summons to witness to attend court of assize or quarter sessions**

- (1) For the purpose of any criminal proceedings before a court of assize or quarter sessions a witness summons, that is to say, a summons requiring the person to whom it is directed to attend before the court and give evidence or produce any document or thing specified in the summons, may be issued out of that court or out of the High Court.
- (2) If any person in respect of whom a witness summons has been issued applies to the court out of which the summons was issued or to the High Court, and satisfies the court that he cannot give any material evidence or, as the case may be, produce any document or thing likely to be material evidence, the court may direct that the summons shall be of no effect.
- (3) The provisions of Schedule 1 to this Act shall have effect in relation to applications under the last foregoing subsection.

## **3 Punishment for disobedience to witness order or witness summons**

- (1) Any person who without just excuse disobeys a witness order or witness summons requiring him to attend before any court shall be guilty of contempt of that court and may be punished summarily by that court as if his contempt had been committed in the face of the court.
- (2) No person shall by reason of such disobedience be liable to imprisonment for a period exceeding three months.
- (3) In section 4(5) of the Criminal Justice Administration Act 1962 (power of legally qualified chairman of quarter sessions to sit alone where no other member of the court is available) references to dealing or further dealing with the case of a person committed to the court for trial shall include references to dealing or further dealing with a person under this section.

## **4 Further process to secure attendance of witness**

- (1) If a judge of the High Court is satisfied by evidence on oath that a witness in respect of whom a witness order or witness summons is in force is unlikely to comply with the order or summons, the judge may issue a warrant to arrest the witness and bring him before the court before which he is required to attend:

Provided that a warrant shall not be issued under this subsection in the case of a witness subject to a conditional witness order unless notice has been given requiring him to attend the trial, nor in the case of a witness subject to a witness summons unless the

judge is satisfied by such evidence as aforesaid that the witness is likely to be able to give material evidence or produce any document or thing likely to be material evidence in the proceedings.

- (2) Where a witness who is required to attend before a court of assize or quarter sessions by virtue of a witness order or a witness summons fails to attend in compliance with the order or summons, that court may—
  - (a) in any case, cause to be served on him a notice requiring him to attend the court forthwith or at such time as may be specified in the notice;
  - (b) if the court is satisfied that there are reasonable grounds for believing that he has failed to attend without just excuse, or if he has failed to comply with a notice under paragraph (a) above, issue a warrant to arrest him and bring him before the court.
- (3) A witness brought before a court in pursuance of a warrant under this section may be remanded by that court in custody or on bail (with or without sureties) until such time as the court may appoint for receiving his evidence or dealing with him under section 3 of this Act; and where a witness attends a court in pursuance of a notice under this section the court may direct that the notice shall have effect as if it required him to attend at any later time appointed by the court for receiving his evidence or dealing with him as aforesaid.

## **5 Provisions supplementary to s. 4**

- (1) Subject to the following provisions of this section, if at the time when a witness is arrested under section 4 of this Act he cannot forthwith be brought before the court of assize or quarter sessions specified in the warrant because that court is not being held, the warrant shall have effect as if it directed him to be brought before a magistrates' court for the place where he is arrested; and that court shall commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before that court of assize or quarter sessions.
- (2) If the judge or court issuing a warrant in respect of any witness under section 4 of this Act is of opinion that it is appropriate to do so, the judge or court may endorse the warrant for bail, and in any such case—
  - (a) on the arrest of the witness under the warrant he shall, unless he can forthwith be brought before the court specified in the warrant, be taken to a police station; and
  - (b) the officer in charge of the station shall release him from custody if he, and any sureties required by the endorsement and approved by the officer, enter into recognisances of such amount as may be fixed by the endorsement, conditioned for the appearance of the witness before the court specified in the warrant; and
  - (c) subsection (1) above shall not apply except where the witness is unable to secure his release in accordance with this subsection.
- (3) If a court issuing a warrant in respect of any witness under section 4(2) of this Act is of opinion that the evidence of the witness can be dispensed with but that consideration should be given to dealing with him under section 3 of this Act, it may endorse the warrant as issued for the purposes of the said section 3, and in any such case—
  - (a) the magistrates' court shall not commit a witness to custody under subsection (1) above unless satisfied that the court specified in the warrant will be held within seven days after the date of the committal; and

- (b) if not so satisfied the magistrates' court may, instead of releasing him on bail, commit him to custody to be brought before a judge of the High Court or a commissioner of assize, and that judge or commissioner shall in respect of the witness have all the powers of the court under section 3 of this Act.
- (4) Where a witness appears before a court in pursuance of a recognisance entered into under section 4(3) of this Act or this section, the court may enlarge his recognisance and those of his sureties, if any, to any later time appointed by the court for receiving the evidence of that person or dealing with him under section 3 of this Act.
- (5) Without prejudice to the enforcement of any recognisance entered into as aforesaid, section 4 of this Act shall apply to any witness who fails to attend before a court in compliance with such a recognisance as it applies to a witness who fails to attend in obedience to a witness order or witness summons, and the foregoing provisions of this section shall have effect accordingly.

## **6 Special provision for transferred trials**

- (1) If, under section 14(2) of the Criminal Justice Act 1925, a court of assize or quarter sessions directs that a person committed for trial be tried or retried before another such court, the following powers of the court under this Act, that is to say—
  - (a) the powers conferred by subsection (2) of section 4 in the case of a witness who has failed to attend the court; and
  - (b) the powers conferred by subsection (3) of that section or subsection (4) of section 5 in the case of a witness who is brought or attends or appears before the court pursuant to a warrant, notice or recognisance,may be exercised by the first-mentioned court for the purpose of securing the attendance or further attendance of the witness before that other court; and references to the court in those provisions shall be construed accordingly.
- (2) The provision made under subsection (3) of section 14 of the said Act of 1925 and under subsection (5) of section 11 of the Administration of Justice (Miscellaneous Provisions) Act 1938 for the alteration of proceedings and documents where a case is transferred under those sections shall extend to all process issued under this Act, and subsection (1) of this section shall be without prejudice to the provision made under the said section 14(3).

## **7 Witness orders by coroners**

- (1) The provisions of this Act relating to witness orders shall be included among the provisions which may be applied by rules under section 25(2) of the Coroners (Amendment) Act 1926 to proceedings in the case of persons charged by a coroner's inquisition.
- (2) So much of section 5(1) of the Coroners Act 1887 as relates to the binding over of witnesses and prosecutors shall cease to have effect, but without prejudice to any recognisance entered into under that section before the commencement of this Act.

## **8 Abolition of subpoenas in certain proceedings**

No subpoena ad testificandum or subpoena duces tecum shall issue after the commencement of this Act in respect of any proceedings for the purpose of which a witness summons may be issued under section 2 of this Act or in respect of any

proceedings for the purpose of which a summons may be issued under section 77 of the Magistrates' Courts Act 1952 (process for attendance of witnesses in magistrates' courts).

## **9 Powers of Parliament of Northern Ireland**

Notwithstanding anything in the Government of Ireland Act 1920 the Parliament of Northern Ireland shall have power to make laws for purposes similar to the purposes of this Act.

## **10 Short title, consequential amendments and repeals, commencement, interpretation and extent**

- (1) This Act may be cited as the Criminal Procedure (Attendance of Witnesses) Act 1965.
- (2) Section 9 of the Vagrancy Act 1824 and section 19 of the Canals (Offences) Act 1840 (recognisances to give evidence in appeals etc. at quarter sessions) shall cease to have effect, but without prejudice to any recognisance entered into under either of those sections before the commencement of this Act.
- (3) The enactments mentioned in Part I of Schedule 2 to this Act shall have effect subject to the amendments specified in the second column of that Part, and the enactments mentioned in Part II of that Schedule are hereby repealed to the extent specified in the third column of that Part; but the said amendments and repeals shall not affect the operation of those enactments in relation to any recognisance entered into before the commencement of this Act.
- (4) This Act shall come into force at the expiration of the period of two months beginning with the date on which it is passed.
- (5) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended, and as including a reference thereto as extended or applied, by any other enactment.
- (6) Section 9 extends to Northern Ireland and so much of this section and Schedule 2 to this Act as relates to the Writ of Subpoena Act 1805 extends to Scotland and Northern Ireland, but, save as aforesaid, this Act does not extend to Scotland and Northern Ireland.

## SCHEDULES

### SCHEDULE 1

Section 2.

#### APPLICATION FOR DIRECTION THAT WITNESS SUMMONS BE OF NO EFFECT

##### *Procedure*

- 1 Any application under section 2(2) of this Act for a direction in respect of a witness summons shall be made in accordance with rules of court or, in the case of an application to a court of quarter sessions, the standing orders of that court.
- 2 Provision shall be made by rules of court or, as the case may be, standing orders—
- (a) for requiring the service of notice of any such application on the person at whose instance the witness summons was issued;
  - (b) for enabling any such application to the High Court to be heard and determined by a judge of that Court in chambers;
  - (c) for enabling any such application to a court of quarter sessions to be heard and determined otherwise than in court—
    - (i) in the case of quarter sessions for a county or a London commission area, by the chairman or any deputy chairman;
    - (ii) in the case of quarter sessions for a borough, by the recorder or any deputy or assistant recorder.

##### *Costs*

- 3 Where on any such application a direction is given that a witness summons shall be of no effect, the person at whose instance the summons was issued may be ordered to pay the whole or any part of the costs of the application.
- 4 Any costs payable under such an order shall be taxed by the proper officer of the court, and payment of those costs shall be enforceable in the same manner as an order for payment of costs made by the High Court in a civil case or as a sum adjudged summarily to be paid as a civil debt.

### SCHEDULE 2

Section 10.

#### CONSEQUENTIAL AMENDMENTS AND REPEALS

#### PART I

The Writ of Subpoena Act 1805.  
 45 Geo. 3. c. 92.

In sections 3 and 4 references to a writ of subpoena requiring the appearance of a person to give evidence shall be construed as
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<p>The Quarter Sessions Act 1842. 5 &amp; 6 Vict. c. 38.</p>	<p>including references to a witness summons under section 2 of this Act.</p>
<p>The Assizes Relief Act 1889. 52 &amp; 53 Vict. c. 12.</p>	<p>In section 3 references to a recognisance to give evidence shall be construed as references to a witness order or conditional witness order.</p>
<p>The Criminal Justice Act 1925. 15 &amp; 16 Geo. 5. c. 86.</p>	<p>In section 3(1) the words from " and persons have been bound over " to " for any county or place " shall be omitted and for the words " that court " there shall be substituted the words " a court of quarter sessions for any county or place "</p>
<p>The Magistrates' Courts Act 1952. 15 &amp; 16 Geo. 6 &amp; 1 Eliz. 2. c. 55.</p>	<p>In section 13(3), in paragraph (a), for the words " whose attendance at the trial is stated to be unnecessary in accordance with the provisions of this section " there shall be substituted the words " in respect of whom a conditional witness order, or an order treated as a conditional witness order, has been made under section 1 of the Criminal Procedure (Attendance of Witnesses) Act 1965 ", and in proviso (ii), for the words from " whose attendance " to " aforesaid " there shall be substituted the words " in respect of whom such an order as aforesaid has been made "</p>
	<p>In section 122(1)(e) for the words " of persons bound over conditionally by examining justices to attend a trial on indictment" there shall be substituted the words " at a trial on indictment of persons in respect of whom conditional witness orders, or orders treated as conditional witness orders, have been made under section 1 of the Criminal Procedure (Attendance of Witnesses) Act 1965 "</p>

## PART II

Chapter	Short Title	Extent of Repeal
<p>1 Edw. 6. c. 1. 38Geo. 3. c. 52.</p>	<p>The Sacrament Act 1547. The Counties of Cities Act 1798.</p>	<p>Section 3.</p> <p>In section 3 the words from "and to cause the prosecutors " to " adjoining county ".</p> <p>In section 5 the words from the beginning to " franchise", the words from "for the appearance as well of witnesses " to " aforesaid,</p>

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Chapter	Short Title	Extent of Repeal
5 Geo. 4. c. 83.	The Vagrancy Act 1824.	as ", the words " to give evidence upon such bill of indictment, or", the words "prosecute or give or be ready to give evidence" and the words from "prosecute, give" to " inquisition "
7 Geo. 4. c. 64.	The Criminal Law Act 1826.	Section 9.
3 & 4 Vict. c. 50.	The Canals (Offences) Act 1840.	In section 31, the words from " to prosecute" to " misdemeanor, or ".
5 & 6 Vict. c. 38.	The Quarter Sessions Act 1842.	Section 19.
7 & 8 Vict. c. 2.	The Admiralty Offences Act 1844.	In section 3, the words from the beginning to " to try, and ", the words " prosecute and " and the words "prosecuting such offence ".
14 & 15 Vict. c. 55.	The Criminal Justice Administration Act 1851.	In section 3 the words from " and shall have authority " to " accused " and the words " and recognizances ".
14 & 15 Vict. c. 100.	The Criminal Procedure Act 1851.	In section 19, the words from " and the recognizances " to " next adjoining county " and the word " recognizances" where it next occurs.
42 & 43 Vict. c. 22.	The Prosecution of Offences Act 1879.	In section 27 the words from " and may respite" to the end.
50 & 51 Vict. c. 71.	The Coroners Act 1887.	In section 7, the first paragraph, and in the second paragraph, the words " had been bound over to prosecute and ".
52 & 53 Vict. c. 12.	The Assizes Relief Act 1889.	In section 5(1), the words from " and shall bind by recognizance " to the end.  In section 20(2), the words " prosecute, give evidence, or " in both places where they occur
		In section 1(2) the words " prosecute or ".
		In section 3(1), the words from " and persons have



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Chapter	Short Title	Extent of Repeal
15 & 16 Geo. 5. c. 49.	The Supreme Court of Judicature (Consolidation) Act 1925.	been bound over" to " for any county or place " In section 78(4), the words " to appear and give evidence".
16 & 17 Geo. 5. c. 59.	The Coroners (Amendment) Act 1926.	In section 25(2), the words " to bind over witnesses and ".
15 & 16 Geo. 6. & 1 Eliz. 2. c. 55.	The Magistrates' Courts Act 1952.	Section 5.