
STATUTORY INSTRUMENTS

2005 No. 384

The Criminal Procedure Rules 2005

PART 28

WITNESS SUMMONSES AND ORDERS

Application to set aside witness summons issued on application to the Crown Court

28.5.—(1) This rule applies to an application under section 2C of the Criminal Procedure (Attendance of Witnesses) Act 1965⁽¹⁾ and in this rule references to “the application” and “the applicant” shall, unless the contrary intention appears, be construed accordingly.

(2) The application shall be made in writing to the Crown Court officer and shall—

- (a) state that the applicant was not served with notice of the application to issue the summons and that he was neither present nor represented at any hearing of that application; and
- (b) set out the reasons why the applicant considers that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence.

(3) On receiving the application, the court officer shall serve notice of the application on the person on whose application the witness summons was issued.

(4) The court shall not grant or, as the case may be, refuse the application unless the applicant and the person on whose application the witness summons has been issued have been given an opportunity of making representations, whether at a hearing or (where they agree to do so) in writing without a hearing.

(5) In a case where the witness summons to which the application relates imposed a requirement to produce any document or thing, then if—

- (a) the applicant can produce that document or thing; but
- (b) he seeks to satisfy the court that the document or thing is not likely to be material evidence, the applicant must, unless the judge directs otherwise, arrange for the document or thing to be available at the hearing of the application.

(6) Any hearing under this rule shall, unless the judge directs otherwise, take place in private and the proceedings at the hearing shall be recorded.

(7) The court officer shall notify the applicant and the person on whose application the witness summons was issued of the decision of the court in relation to the application.

[Note. Formerly rule 23ZB of the Crown Court Rules 1982.]

(1) Section 2C was inserted by the Criminal Procedure and Investigations Act 1996 (c. 25), section 66(1) and (2) and amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 126(c).