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## STATUTORY INSTRUMENTS

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# 2005 No. 384

## The Criminal Procedure Rules 2005

### PART 28

#### WITNESS SUMMONSES AND ORDERS

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##### Application to a magistrates' court for summons to witness or warrant for his arrest

**28.1.**—(1) An application for the issue of a summons or warrant under section 97 or 97A of the Magistrates' Courts Act 1980(1) or paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998(2) may be made by the applicant in person or by his counsel or solicitor.

(2) An application for the issue of such a summons may be made by delivering or sending the application in writing to the magistrates' court officer.

*[Note. Formerly rule 107 of the Magistrates' Courts Rules 1981(3).]*

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- (1) 1980 c. 43; relevant amendments were made to section 97 by the Criminal Justice (International Co-operation) Act 1990, Schedule 4, paragraph 2, the Criminal Procedure and Investigations Act 1996 (c. 25), section 51 and Schedule 1, Part 1, paragraph 7 and Schedule 5 and by S.I. 1996/675, Schedule, paragraph 2(4). Section 97 is further amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 230 and Schedule 10, with effect from a date to be appointed. Section 97A was inserted by the Criminal Procedure and Investigations Act 1996 (c. 25), Schedule 1, paragraph 8; it was amended by the Access to Justice Act 1999 (c. 22), Schedule 13, paragraphs 95 and 111. Section 97A is further amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 231 and Schedule 10, and is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 51(1), (6)(a) and Schedule 37, Part 4, with effect from dates to be appointed.
- (2) 1998 c. 37; paragraph 4 of Schedule 3 was amended by the Access to Justice Act 1999 (c. 22), Schedule 13, paragraph 179(1) and (2) and by S.I. 2004/2035, Schedule, paragraphs 35, 37(1) and (3). It is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 15, 20(1), (4) and Part 2, paragraphs 68 and 72, with effect from a date to be appointed.
- (3) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1983/523, 1997/706, 2001/610 and 2001/3361.

### **Taking a deposition in a magistrates' court**

**28.2.**—(1) Where a person attends before a justice of the peace in pursuance of section 97A of the Magistrates' Courts Act 1980 or paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998 the justice shall—

- (a) where that person attends for the purpose of giving evidence, cause his evidence to be put in writing;
- (b) where that person attends for the purpose of producing a document or other exhibit, cause the document or exhibit to be handed over for examination and any evidence given by that person in respect of it to be put in writing;
- (c) where that person refuses to have his evidence taken or to produce the document or other exhibit, as the case may be, explain to him the consequences of so refusing without just excuse, and ask him to explain why he has so refused; and
- (d) cause a record of any such refusal to be made in writing.

(2) As soon as practicable after the examination by the prosecutor of a witness whose evidence is put in writing the justice shall cause his deposition to be read to him, and shall require the witness to sign the deposition.

(3) Any such deposition shall be authenticated by a certificate signed by the justice.

(4) Subject to rule 10.5 (material to be sent to Crown Court following committal) the court officer, on sending a copy of any deposition or documentary exhibit to the prosecutor under section 97A(9) or (10) of the 1980 Act, as the case may be—

- (a) shall retain the original deposition or documentary exhibit; and
- (b) may retain any other exhibit produced in pursuance of that section.

*[Note. Formerly rule 4A of the Magistrates' Courts Rules 1981(4).]*

### **Application to the Crown Court for witness summons**

**28.3.**—(1) This rule applies to an application under section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965(5) for the issue of a witness summons and in this rule references to “the application” and “the applicant” shall be construed accordingly.

(2) Subject to paragraphs (8) to (10), the application shall be made in writing to the Crown Court officer and shall—

- (a) contain a brief description of the stipulated evidence, document or thing;
- (b) set out the reasons why the applicant considers that the stipulated evidence, document or thing is likely to be material evidence;
- (c) set out the reason why the applicant considers that the directed person will not voluntarily attend as a witness or produce the document or thing; and
- (d) if the witness summons is proposed to require the directed person to produce a document or thing—
  - (i) inform the directed person of his right to make representations in writing and at a hearing, under paragraph (5), and

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(4) [S.I. 1981/552](#); relevant amending instruments are [S.I. 1997/706](#), [2001/610](#) and [2001/3361](#).

(5) [1965 c. 69](#); section 2 was substituted, together with sections 2A-2E, by the Criminal Procedure and Investigations Act [1996 \(c. 25\)](#), section 66(1) and (2). Section 2 was amended by the Crime and Disorder Act [1998 \(c. 37\)](#), Schedule 8, paragraph 8 and the Courts Act [2003 \(c. 39\)](#), Schedule 8, paragraph 126(a). It is further amended by the Criminal Justice Act [2003 \(c. 44\)](#), Schedule 3, Part 2, paragraph 42(a), with effect from a date to be appointed.

- (ii) state whether the applicant seeks a requirement also to be imposed under section 2A of the 1965 Act (advance production)(6) and, if such a requirement is sought, specify the place and time at which the applicant wishes the document or thing to be produced.
- (3) The application shall be supported by an affidavit—
  - (a) setting out any charge on which the proceedings concerned are based;
  - (b) specifying the stipulated evidence, document or thing in such a way as to enable the directed person to identify it;
  - (c) specifying grounds for believing that the directed person is likely to be able to give the stipulated evidence or to produce the stipulated evidence or thing; and
  - (d) specifying grounds for believing that the stipulated evidence is likely to be material evidence or, as the case may be, that the stipulated document or thing is likely to be material evidence.
- (4) A copy of the application and the supporting affidavit shall be served on the directed person at the same time as it is served on the court officer.
- (5) The directed person may, within 7 days of receiving a copy of the application under paragraph (4) above, inform the court officer whether or not he wishes to make representations, concerning the issue of the witness summons proposed to be directed to him, at a hearing and may also make written representations to the court officer.
- (6) The court officer shall—
  - (a) if the directed person indicates that he wishes to have the application considered at a hearing, fix a time, date and place for the hearing;
  - (b) if the directed person does not indicate in accordance with paragraph (5) that he wishes to make representations at a hearing, refer the application to a judge of the Crown Court for determination with or without a hearing; and
  - (c) notify the applicant and, where paragraph (6)(a) above applies, the directed person of the time, date and place fixed for any hearing of the application.
- (7) Any hearing under this rule shall, unless the judge directs otherwise, take place in private and the proceedings at the hearing shall be recorded.
- (8) In the case of an application for a witness summons which it is proposed shall require the directed person to give evidence but not to produce any document or thing, that application may be made orally to a judge or in writing and, in such a case—
  - (a) paragraphs (3) to (7) shall not have effect; and
  - (b) the application shall, in addition to the matters set out in paragraph (2)(a) to (c), specify—
    - (i) any charge on which the proceedings concerned are based, and
    - (ii) the grounds for believing that the directed person is likely to be able to give the stipulated evidence.
- (9) Subject to paragraph (10), in the case of an application for a witness summons which it is proposed shall require the directed person to produce any document or thing and which is made within 7 days of the date fixed for trial, the court officer shall refer the notice of application to the trial judge, or such other judge as may be available, to determine the application or to give such directions as the judge to whom the notice is referred considers appropriate, and paragraphs (2)(d) (i) and (4) to (6) shall not have effect.

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(6) Section 2A was inserted by the Criminal Procedure and Investigations Act 1996 (c. 25), section 66(1) and (2).

(10) In the case of an application for a witness summons which it is proposed shall require the directed person to produce any document or thing and which is made during the trial, such application shall be made orally to the trial judge, to determine the application or to give such directions as he considers appropriate, and in such a case—

- (a) paragraphs (3) to (7) shall not have effect; and
- (b) the application shall, in addition to the matters set out in paragraph (2)(a) to (c), specify the grounds for believing that the directed person is likely to be able to produce the document or thing.

(11) In this rule references to “the directed person” and “the stipulated evidence, document or thing” shall be construed in accordance with section 2(10) of the 1965 Act.

*[Note. Formerly rule 23 of the Crown Court Rules 1982(7).]*

#### **Application to set aside Crown Court witness summons where no longer needed**

**28.4.**—(1) This rule applies to an application under section 2B of the Criminal Procedure (Attendance of Witnesses) Act 1965(8) and references in this rule to “the applicant” and “the application” shall be construed accordingly.

(2) The application shall be made in writing to the Crown Court officer as soon as reasonably practicable after the document or thing has been produced for inspection in pursuance of a requirement imposed by the witness summons under section 2A of the 1965 Act.

(3) The application shall state that the applicant concludes that the requirement imposed by the witness summons under section 2(2) of the 1965 Act is no longer needed.

(4) If a direction is given under section 2B of the 1965 Act following the application, the court officer shall notify the person to whom the witness summons is directed as to the effect of the direction.

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

#### **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(9) 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.

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(7) [S.I. 1982/1109](#); amended by [S.I. 1999/598](#); there are other amending instruments but none is relevant to this Part.

(8) Section 2B 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(b).

(9) 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).

(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.]*

#### **Application to set aside witness summons issued of Crown Court's own motion**

**28.6.**—(1) Rule 28.5 shall apply to an application under section 2E of the Criminal Procedure (Attendance of Witnesses) Act 1965(10) as it applies to an application under section 2C, subject to the following modifications.

(2) Paragraphs (2)(a) and (3) shall be omitted.

(3) In paragraphs (4) and (7), the words “and the person on whose application the witness summons was issued” shall be omitted.

(4) In paragraph (4), for the words “(where they agree to do so)”, there shall be substituted the words “(where he agrees to do so)”.

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

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(10) Section 2E 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(d).