



2011 CHAPTER 24

PART 9

MISCELLANEOUS

**Witness summons in magistrates' court**

**100.**—(1) For Article 118 of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) and the italicised cross heading before it substitute—

*“Witnesses: proceedings other than criminal proceedings*

**Summons to witness in proceedings (other than criminal proceedings) or warrant for arrest**

**118.**—(1) Where in any proceedings other than criminal proceedings a magistrates' court is satisfied that any person is able to give material evidence or produce any document or thing before the court, the court may issue a summons directed to that person requiring him to attend before the court at the time and place appointed in the summons to give evidence or to produce the document or thing.

(2) Where a person fails to attend before a magistrates' court in answer to a summons under paragraph (1), if—

- (a) the court is satisfied by evidence on oath that he is likely to be able to give material evidence or produce any document or thing likely to be material evidence in the proceedings; and
- (b) it is proved on oath or by affidavit or in such other manner as may be prescribed that the summons was duly served on that person or that he is evading service and that he is able to give material evidence; and

(c) no just excuse has been shown for the failure to attend, the court may issue a warrant to arrest that person and bring him before the court to testify and to produce such documents or things as may be required.

(3) Where a person is arrested on a warrant issued under this Article he shall be brought, as soon as practicable, before a magistrates' court which may, if desirable, discharge that person on his entering a recognizance to appear before that or any other magistrates' court at the time and place specified in the recognizance and, if necessary, to appear at every time and place to which during the proceedings the hearing may be adjourned.

*Witnesses: criminal proceedings*

**Issue of witness summons on application to magistrates' court**

**118A.**—(1) This Article applies where a magistrates' court is satisfied that—

- (a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, for the purpose of any criminal proceedings before the court, and
- (b) it is in the interests of justice to issue a summons under this Article to secure the attendance of that person to give evidence or to produce the document or thing.

(2) In such a case the magistrates' court shall, subject to the following provisions of this Article, issue a summons (a witness summons) directed to the person concerned and requiring him to—

- (a) attend before the magistrates' court at the time and place stated in the summons, and
- (b) give the evidence or produce the document or thing.

(3) A witness summons may only be issued under this Article on an application; and the magistrates' court may refuse to issue the summons if any requirement relating to the application is not fulfilled.

(4) An application must be made as soon as is reasonably practicable.

(5) An application must be made in accordance with magistrates' courts rules.

(6) Magistrates' courts rules—

- (a) may, in such cases as the rules may specify, require an application to be made by a party to the case;

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*Status: This is the original version (as it was originally enacted).*

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- (b) may, in such cases as the rules may specify, require the service of notice of an application on the person to whom the witness summons is proposed to be directed;
  - (c) may, in such cases as the rules may specify, require an application to be supported by an affidavit containing such matters as the rules may stipulate;
  - (d) may, in such cases as the rules may specify, make provision for enabling the person to whom the witness summons is proposed to be directed to be present or represented at the hearing of the application for the witness summons.
- (7) Provision contained in magistrates' courts rules by virtue of paragraph (6)(c) may in particular require an affidavit to—
- (a) set out any charge on which the proceedings concerned are based;
  - (b) specify any stipulated evidence, document or thing in such a way as to enable the directed person to identify it;
  - (c) specify grounds for believing that the directed person is likely to be able to give any stipulated evidence or produce any stipulated document or thing;
  - (d) specify grounds for believing that any stipulated evidence is likely to be material evidence;
  - (e) specify grounds for believing that any stipulated document or thing is likely to be material evidence.
- (8) In paragraph (7)—
- (a) references to any stipulated evidence, document or thing are to any evidence, document or thing whose giving or production is proposed to be required by the witness summons;
  - (b) references to the directed person are to the person to whom the witness summons is proposed to be directed.

### **Power to require advance production**

**118B.**—(1) A witness summons which is issued under Article 118A and which requires a person to produce a document or thing as mentioned in Article 118A(2) may also require him to produce the document or thing—

- (a) at a place stated in the summons, and
- (b) at a time which is so stated and precedes that stated under Article 118A(2),

for inspection by the person applying for the summons.

- (2) If—

- (a) a document or thing is produced in pursuance of a requirement imposed by a witness summons under paragraph (1),
- (b) the person applying for the summons concludes that a requirement imposed by the summons under Article 118A(2) is no longer needed, and
- (c) he accordingly applies to the magistrates' court for a direction that the summons shall be of no further effect,

the court may direct accordingly.

(3) An application under paragraph (2) must be made in accordance with magistrates' courts rules.

(4) Magistrates' courts rules may, in such cases as the rules may specify, require the effect of a direction under paragraph (2) to be notified to the person to whom the summons is directed.

#### **Application to make summons ineffective**

**118C.**—(1) If a witness summons issued under Article 118A is directed to a person who—

- (a) applies to the magistrates' court,
- (b) satisfies the court that he was not served with notice of the application to issue the summons and that he was neither present nor represented at the hearing of the application, and
- (c) satisfies the court 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,

the court may direct that the summons shall be of no effect.

(2) For the purposes of paragraph (1) it is immaterial—

- (a) whether or not magistrates' courts rules require the person to be served with notice of the application to issue the summons;
- (b) whether or not magistrates' courts rules enable the person to be present or represented at the hearing of the application.

(3) In paragraph (1)(b) "served" means—

- (a) served in accordance with magistrates' courts rules, in a case where such rules require the person to be served with notice of the application to issue the summons;
- (b) served in such way as appears reasonable to the magistrates' court, in any other case.

(4) The magistrates' court may refuse to make a direction under this Article if any requirement relating to the application under this Article is not fulfilled.

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(5) An application under this Article must be made in accordance with magistrates' courts rules.

(6) Magistrates' courts rules may, in such cases as the rules may specify, require the service of notice of an application under this Article on the person on whose application the witness summons was issued.

(7) Magistrates' courts rules may, in such cases as the rules may specify, require that where—

- (a) a person applying under this Article can produce a particular document or thing, but
- (b) he seeks to satisfy the court that the document or thing is not likely to be material evidence,

he must arrange for the document or thing to be available at the hearing of the application.

(8) Where a direction is made under this Article that a witness summons shall be of no effect, the person on whose application the summons was issued may be ordered to pay the whole or any part of the costs of the application under this Article.

#### **Issue of witness summons of court's own motion**

**118D.**—(1) For the purpose of any criminal proceedings before it, a magistrates' court may of its own motion issue a summons (a witness summons) directed to a person and requiring him to—

- (a) attend before the court at the time and place stated in the summons; and
- (b) give evidence or produce any document or thing specified in the summons.

(2) If a witness summons issued under this Article is directed to a person who—

- (a) applies to the magistrates' court, and
- (b) satisfies the court 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,

the court may direct that the summons shall be of no effect.

(3) The magistrates' court may refuse to make a direction under paragraph (2) if any requirement relating to the application under that paragraph is not fulfilled.

(4) An application under paragraph (2) must be made in accordance with magistrates' courts rules.

(5) Magistrates' courts rules may, in such cases as the rules may specify, require that where—

- (a) a person applying under paragraph (2) can produce a particular document or thing, but
- (b) he seeks to satisfy the court that the document or thing is not likely to be material evidence,

he must arrange for the document or thing to be available at the hearing of the application.

### **Further process to secure attendance of witnesses**

**118E.**—(1) If a magistrates' court is satisfied by evidence on oath that—

- (a) a witness in respect of whom a witness summons is in force is unlikely to comply with the summons; and
- (b) the witness is likely to be able to give evidence likely to be material evidence or produce any document or thing likely to be material evidence in the proceedings,

the magistrates' court may issue a warrant to arrest the witness and bring him before the court.

(2) Where a witness who is required to attend before a magistrates' court by virtue of a witness summons fails to attend in compliance with the summons, the magistrates' 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 sub-paragraph (a), issue a warrant to arrest him and bring him before the court.

(3) A witness brought before a magistrates' court in pursuance of a warrant under this Article 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.

(4) Where a witness attends a magistrates' court in pursuance of a notice under this Article, 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.”.

(2) In Article 119(1) of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (penalty for person served with summons under Article 118 who fails to appear)—

- (a) in sub-paragraph (a) after “118” insert “, 118A or 118D”;

(b) after sub-paragraph (a) insert—

“(aa) disobeys a requirement made by a magistrates’ court under Article 118B(1); or”.