



# Magistrates' Courts Act 1980

## 1980 CHAPTER 43

### PART IV

#### WITNESSES AND EVIDENCE

##### *Procuring attendance of witness*

#### 97 Summons to witness and warrant for his arrest.

[<sup>F1</sup>(1) Where a justice of the peace is satisfied that—

- (a) any person in England or Wales is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, at the summary trial of an information or hearing of a complaint <sup>F2</sup>... by a magistrates' court, and
- (b) it is in the interests of justice to issue a summons under this subsection to secure the attendance of that person to give evidence or produce the document or thing,

the justice shall 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) If a justice of the peace is satisfied by evidence on oath of the matters mentioned in subsection (1) above, and also that it is probable that a summons under that subsection would not procure the attendance of the person in question, the justice may instead of issuing a summons issue a warrant to arrest that person and bring him before such a court as aforesaid at a time and place specified in the warrant; but a warrant shall not be issued under this subsection where the attendance is required for the hearing of a complaint <sup>F3</sup>... .

[<sup>F4</sup>(2A) A summons may also be issued under subsection (1) above if the justice is satisfied that the person in question is outside the British Islands but no warrant shall be issued under subsection (2) above unless the justice is satisfied by evidence on oath that the person in question is in England or Wales.]

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- [<sup>F5</sup>(2B) A justice may refuse to issue a summons under subsection (1) above in relation to the summary trial of an information if he is not satisfied that an application for the summons was made by a party to the case as soon as reasonably practicable after the accused pleaded not guilty.
- (2C) In relation to the summary trial of an information, subsection (2) above shall have effect as if the reference to the matters mentioned in subsection (1) above included a reference to the matter mentioned in subsection (2B) above.]
- (3) On the failure of any person to attend before a magistrates' court in answer to a summons under this section, 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 in such other manner as may be prescribed, that he has been duly served with the summons, and that a reasonable sum has been paid or tendered to him for costs and expenses; and
  - (c) it appears to the court that there is no just excuse for the failure,
- the court may issue a warrant to arrest him and bring him before the court at a time and place specified in the warrant.
- (4) If any person attending or brought before a magistrates' court refuses without just excuse to be sworn or give evidence, or to produce any document or thing, the court may commit him to custody until the expiration of such period not exceeding [<sup>F6</sup>one month] as may be specified in the warrant or until he sooner gives evidence or produces the document or thing [<sup>F7</sup>or impose on him a fine not exceeding [<sup>F8</sup>£2,500] or both].
- <sup>F9</sup>[(5) A fine imposed under subsection (4) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.]

#### Textual Amendments

- F1** S. 97(1) substituted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 169(2), 178**; [S.I. 2005/1521](#), {art. 3} (subject to art. 3(4)(5))
- F2** Words in s. 97(1)(a) repealed (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 99** Table; [S.I. 2014/954](#), art. 2(d) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F3** Words in s. 97(2) repealed (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 99** Table; [S.I. 2014/954](#), art. 2(d) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F4** S. 97(2A) inserted (10.6.1991) by [Criminal Justice \(International Co-operation\) Act 1990 \(c. 5\)](#), SIF 39:1, s. 31(1), **Sch. 4 para. 2**; [S.I. 1991/1072](#), art. 2(a), **Schedule Pt. I**.
- F5** S. 97(2A)(2B) inserted (4.7.1996, with effect as mentioned in s. 51(2)(3) of the inserting Act) by 1996 c. 25, s. **51(1)** (with s. 78(1)); [S.I. 1997/682](#), **art. 2(1)(b)**
- F6** Words substituted by [Contempt of Court Act 1981 \(c. 49\)](#), SIF 39:3, s. 14(5), **Sch. 2 Pt. III para. 7**
- F7** Words added by [Contempt of Court Act 1981 \(c. 49\)](#), SIF 39:3, s. 14(5), **Sch. 2 Pt. III para. 7**
- F8** Word in s. 97(4) substituted (1.10.1992) by virtue of [Criminal Justice Act 1991 \(c. 53\)](#), SIF 39:1, s. 17(3)(a), **Sch. 4 Pt. I, Sch. 12 para. 6** (with s. 28); [S.I. 1992/333](#), art. 2(2), **Sch. 2**.
- F9** S. 97(5) substituted (20.9.1993) by 1993 c. 36, s. 65(3), **Sch. 3 para. 6(3)**; [S.I. 1993/1968](#), art. 2(2), **Sch. 2**

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

- C1 S. 97 extended (14.10.1991) by S.I. 1991/1395, **rule 33**  
S. 97 extended (14.10.1991) by S.I. 1991/1991, **rule 16(2)**
- C2 S. 97 extended by **Licensing Act 1964** (c. 26, SIF 68A:1), **s. 196A** (as inserted by **Licensing Act 1988** (c.17, SIF 68A:1), s. 19, **Sch. 3 para. 19**)
- C3 S. 97 applied (5.4.1993) by S.I. 1993/617, rule 3, **Sch. 2 para. 13**
- C4 S. 97 excluded (30.6.2011 for a period of 12 months for pilot purposes in specified areas, 7.10.2011 for a period of 12 months for pilot purposes in specified areas, 30.6.2012 for specified purposes, 8.3.2014 in so far as not already in force) by **Crime and Security Act 2010** (c. 17), **ss. 27(10), 59(1)**; S.I. 2011/1440, arts. 2, 3; S.I. 2011/2279, arts. 2, 3; S.I. 2012/1615, arts. 2, 3; S.I. 2014/478, art. 2(a)
- C5 S. 97(1) applied (with modifications) by S.I. 2010/60, rule 62.16 (as substituted (4.4.2011) by **The Criminal Procedure (Amendment No. 2) Rules 2010** (S.I. 2010/3026), rules 1, 9, **Sch. 2**)
- C6 S. 97(1) modified (3.10.2011) by **The Criminal Procedure Rules 2011** (S.I. 2011/1709), **rule 62.16(3)(d)**
- C7 S. 97(1) modified (1.10.2012) by **The Criminal Procedure Rules 2012** (S.I. 2012/1726), **rule 62.16(2)(3)(d)**
- C8 S. 97(1) modified (7.10.2013) by **The Criminal Procedure Rules 2013** (S.I. 2013/1554), **rule 62.16(2)(3)(d)** (with rule 2.1)
- C9 S. 97(1) modified (6.10.2014) by **The Criminal Procedure Rules 2014** (S.I. 2014/1610), **rule 62.16(2)(3)(d)** (with rule 2.1)
- C10 S. 97(1) modified (5.10.2015) by **The Criminal Procedure Rules 2015** (S.I. 2015/1490), **rule 48.16(2)(3)**
- C11 S. 97(1) modified (5.10.2020) by **The Criminal Procedure Rules 2020** (S.I. 2020/759), **rule 48.16(2)(3)**
- C12 S. 97(3) extended by **Licensing (Occasional Permissions) Act 1983** (c. 24, SIF 68A:1), **s. 2(7)**
- C13 S. 97(1)(3)(4) extended (1.1.1996) by 1995 c. 21, **ss. 268(3), 316(2)** (with s. 312(1))
- C14 S. 97(4) extended by **Licensing (Occasional Permissions) Act 1983** (c. 24, SIF 68A:1), **s. 2(7)**

**[<sup>F10</sup>97A Summons or warrant as to committal proceedings.**

- [<sup>F11</sup>(1) Subsection (2) below applies where a justice of the peace <sup>F12</sup>. . . is satisfied that—
- (a) any person in England or Wales is likely to be able to make on behalf of the prosecutor a written statement containing material evidence, or produce on behalf of the prosecutor a document or other exhibit likely to be material evidence, for the purposes of proceedings before a magistrates' court inquiring into an offence as examining justices, [<sup>F13</sup>and]
  - [<sup>F14</sup>(b) it is in the interests of justice to issue a summons under this section to secure the attendance of that person to give evidence or to produce the document or other exhibit, <sup>F15</sup>. . . ]
  - (c) <sup>F15</sup> . . . . .
- (2) In such a case the justice shall issue a summons directed to that person requiring him to attend before a justice at the time and place appointed in the summons to have his evidence taken as a deposition or to produce the document or other exhibit.
- (3) If a justice of the peace is satisfied by evidence on oath of the matters mentioned in subsection (1) above, and also that it is probable that a summons under subsection (2) above would not procure the result required by it, the justice may instead of issuing a summons issue a warrant to arrest the person concerned and bring him before a justice at the time and place specified in the warrant.
- (4) A summons may also be issued under subsection (2) above if the justice is satisfied that the person concerned is outside the British Islands, but no warrant may be issued

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under subsection (3) above unless the justice is satisfied by evidence on oath that the person concerned is in England or Wales.

(5) If—

- (a) a person fails to attend before a justice in answer to a summons under this section,
- (b) the justice is satisfied by evidence on oath that he is likely to be able to make a statement or produce a document or other exhibit as mentioned in subsection (1)(a) above,
- (c) it is proved on oath, or in such other manner as may be prescribed, that he has been duly served with the summons and that a reasonable sum has been paid or tendered to him for costs and expenses, and
- (d) it appears to the justice that there is no just excuse for the failure,

the justice may issue a warrant to arrest him and bring him before a justice at a time and place specified in the warrant.

(6) Where—

- (a) a summons is issued under subsection (2) above or a warrant is issued under subsection (3) or (5) above, and
- (b) the summons or warrant is issued with a view to securing that a person has his evidence taken as a deposition,

the time appointed in the summons or specified in the warrant shall be such as to enable the evidence to be taken as a deposition before a magistrates' court begins to inquire into the offence concerned as examining justices.

(7) If any person attending or brought before a justice in pursuance of this section refuses without just excuse to have his evidence taken as a deposition, or to produce the document or other exhibit, the justice may do one or both of the following—

- (a) commit him to custody until the expiration of such period not exceeding one month as may be specified in the summons or warrant or until he sooner has his evidence taken as a deposition or produces the document or other exhibit;
- (b) impose on him a fine not exceeding £2,500.

(8) A fine imposed under subsection (7) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

(9) If in pursuance of this section a person has his evidence taken as a deposition, the [F16designated officer for] the justice concerned shall as soon as is reasonably practicable send a copy of the deposition to the prosecutor.

(10) If in pursuance of this section a person produces an exhibit which is a document, the [F16designated officer for] the justice concerned shall as soon as is reasonably practicable send a copy of the document to the prosecutor.

(11) If in pursuance of this section a person produces an exhibit which is not a document, the [F16designated officer for] the justice concerned shall as soon as is reasonably practicable inform the prosecutor of the fact and of the nature of the exhibit.]]

#### Textual Amendments

**F10** S. 97A inserted (4.7.1996, with effect as mentioned in Sch. 1 Pt. III para. 39 of the inserting Act) by 1996 c. 25, s. 47, **Sch. 1 Pt. I para. 8** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

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- F11** S. 97A repealed (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 3 para. 51(6)(a)**; S.I. 2012/1320, art. 4(1)(c)(2)(3) (with art. 5) (see S.I. 2012/2574, art. 4(2) and S.I. 2013/1103, art. 4); S.I. 2012/2574, art. 2(2)(3)(c), Sch. (with arts. 3, 4) (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with S.I. 2013/1103, art. 4); S.I. 2013/1103, art. 2(1)(c)(2)(3) (with arts. 3, 4)
- F12** Words in s. 97A(1) repealed (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1)(3), 110, Sch. 8 para. 231(2)(a), **Sch. 10**; S.I. 2005/910, **art. 3(y)(aa)**
- F13** Words in s. 97A(1)(a) inserted (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 231(2)(b)**; S.I. 2005/910, **art. 3(y)**
- F14** S. 97A(1)(b) substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. **169(3)**, 178; S.I. 2005/1521, **art. 3** (subject to art. 3(4)(5))
- F15** S. 97A(1)(c) and the preceding word "and" repealed (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1)(3), 110, Sch. 8 para. 231(2)(c), **Sch. 10**; S.I. 2005/910, **art. 3(y)(aa)**
- F16** Words in s. 97A(9)-(11) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 231(3)**; S.I. 2005/910, **art. 3(y)**

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