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STATUTORY INSTRUMENTS

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**2005 No. 384**

**The Criminal Procedure Rules 2005**

**PART 7**

**COMMENCING PROCEEDINGS IN MAGISTRATES' COURTS**

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**Information and complaint**

**7.1.**—(1) An information may be laid or complaint made by the prosecutor or complainant in person or by his counsel or solicitor or other person authorised in that behalf.

(2) Subject to any provision of the Magistrates' Courts Act 1980<sup>(1)</sup> and any other enactment, an information or complaint need not be in writing or on oath.

*[Note. Formerly rule 4(1) and (2) of the Magistrates' Court Rules 1981(2). As to the form of an information, see rules 7.2 and 7.3.]*

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(1) 1980 c. 43.

(2) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1983/523, 1986/1332, 1993/1183, 2001/610 and 2003/1236.

### Statement of offence

**7.2.**—(1) Every information laid in, or summons, warrant or other document issued or made by, a magistrates' court shall be sufficient if it—

- (a) describes the offence with which the accused is charged, or of which he is convicted, in ordinary language avoiding as far as possible the use of technical terms; and
  - (b) gives such particulars as may be necessary to provide reasonable information about the nature of the charge.
- (2) It shall not be necessary for any of those documents to—
- (a) state all the elements of the offence; or
  - (b) negative any matter upon which the accused may rely.

(3) If the offence charged is one created by or under any Act, the description of the offence shall contain a reference to the section of the Act, or, as the case may be, the rule, order, regulation, bylaw or other instrument creating the offence.

*[Note. Formerly rules 4(3) and 100 of the Magistrates' Courts Rules 1981.]*

### Information to be for one offence only

**7.3.**—(1) Subject to any Act passed after 2nd October 1848, a magistrates' court shall not proceed to the trial of an information that charges more than one offence.

(2) Nothing in this rule shall prohibit two or more informations being set out in one document.

(3) If, notwithstanding paragraph (1), it appears to the court at any stage in the trial of an information that the information charges more than one offence, the court shall call upon the prosecutor to elect on which offence he desires the court to proceed, whereupon the offence or offences on which the prosecutor does not wish to proceed shall be struck out of the information; and the court shall then proceed to try that information afresh.

(4) If a prosecutor who is called upon to make an election under paragraph (3) fails to do so, the court shall dismiss the information.

(5) Where, after an offence has or offences have been struck out of the information under paragraph (3), the accused requests an adjournment and it appears to the court that he has been unfairly prejudiced, it shall adjourn the trial.

*[Note. Formerly rule 12 of the Magistrates' Courts Rules 1981.]*

### Duty of court officer receiving statutory declaration under section 14(1) of the Magistrates' Courts Act 1980

**7.4.** Where a magistrates' court officer receives a statutory declaration which complies with section 14(1) of the Magistrates' Courts Act 1980<sup>(3)</sup> (accused did not know of proceedings), he shall—

- (a) note the receipt of the declaration in the register; and
- (b) inform the prosecutor and, if the prosecutor is not a constable, the chief officer of police of the receipt of the declaration.

*[Note. Formerly rule 20 of the Magistrates' Courts Rules 1981. As to the requirement to keep a register, see rule 6.1.]*

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(3) Section 14(1) was amended by paragraphs 95 and 98 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and paragraph 205 of Schedule 8 to the Courts Act 2003 (c. 39).

### **Notice of order under section 25 of the Road Traffic Offenders Act 1988**

**7.5.**—(1) Where a magistrates' court makes an order under section 25 of the Road Traffic Offenders Act 1988(4) that an offender shall inform the court of his date of birth or sex or both and the offender is not present in court, the court officer shall serve notice in writing of the order on the offender.

(2) A notice under this rule shall be served by delivering it to the offender or by sending it to him by post in a letter addressed to him at his last known or usual place of abode.

*[Note. Formerly rule 108 of the Magistrates' Courts Rules 1981.]*

### **Statutory declaration under section 72 and 73 of the Road Traffic Offenders Act 1988**

**7.6.** Where a magistrates' court officer receives a statutory declaration under section 72 and 73 of the Road Traffic Offenders Act 1988(5) (fixed penalty notice or notice fixed to vehicle invalid) he shall send a copy of it to the appropriate chief officer of police.

*[Note. Formerly rule 112 of the Magistrates' Courts Rules 1981.]*

### **Form of summons**

**7.7.**—(1) A summons shall be signed by the justice issuing it or state his name and be authenticated by the signature of the clerk of a magistrates' court.

(2) A summons requiring a person to appear before a magistrates' court to answer to an information or complaint shall state shortly the matter of the information or complaint and shall state the time and place at which the defendant is required by the summons to appear.

(3) A single summons may be issued against a person in respect of several informations or complaints; but the summons shall state the matter of each information or complaint separately and shall have effect as several summonses, each issued in respect of one information or complaint.

(4) In this rule where a signature is required, an electronic signature incorporated into the document shall satisfy this requirement.

*[Note. Formerly rule 98 of the Magistrates' Courts Rules 1981. As to the service of a summons, see rule 4.1.]*

### **Summons or warrant to secure attendance of a parent or guardian at a youth court**

**7.8.** Where a child or young person is charged with an offence, or is for any other reason brought before a court, a summons or warrant may be issued by a court to enforce the attendance of a parent or guardian under section 34A of the Children and Young Persons Act 1933(6), in the same manner as if an information were laid upon which a summons or warrant could be issued against a defendant under the Magistrates' Courts Act 1980 and a summons to the child or young person may include a summons to the parent or guardian to enforce his attendance for the said purpose.

*[Note. Formerly rule 26 of the Magistrates' Courts (Children and Young Persons) Rules 1992(7).]*

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- (4) 1988 c. 53; section 25 was amended by paragraphs 140 and 142 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 118 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraph 311 of Schedule 8 to the Courts Act 2003 (c. 39).
- (5) Section 72 was amended by regulation 2(2) of, and paragraph 20 of Schedule 2 to, S.I. 1990/144; both sections were further amended by paragraphs 140 and 151 of Schedule 13 to the Access to Justice Act 1999 (c. 22).
- (6) 1933 c. 12; section 34A was inserted by section 56 of the Criminal Justice Act 1991 (c. 53) and amended by paragraph 1 of Schedule 5 to the Local Government Act 2000 (c. 22).
- (7) S.I. 1992/2071.

### **Magistrates' court officer to have copies of documents sent to accused under section 12(1) of the Magistrates' Courts Act 1980**

7.9. Where the prosecutor notifies a magistrates' court officer that the documents mentioned in section 12(1)(a) and 12(1)(b) of the Magistrates' Courts Act 1980(8) have been served upon the accused, the prosecutor shall send to the court officer a copy of the document mentioned in section 12(1)(b).

*[Note. Formerly rule 73 of the Magistrates' Courts Rules 1981. Section 12 of the Magistrates' Courts Act 1980 applies where a summons has been issued requiring a person to appear before a magistrates' court, other than a youth court, to answer an information for a summary offence punishable with not more than 3 months' imprisonment. The documents mentioned in section 12(1)(b) are: a notice stating the effect of section 12, and either a statement of the facts to be placed before the court if the accused pleads guilty by post, or copies of the statements of the prosecution witnesses.]*

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(8) Section 12(1) was substituted by section 45 of, and paragraph 1 of Schedule 5 to, the Criminal Justice and Public Order Act 1994 (c. 33) and amended by paragraphs 95 and 97 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and paragraph 203 of Schedule 8 to the Courts Act 2003 (c. 39), and is further amended by section 308 of, and Part 12 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.