



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.

- (1) Where a justice of the peace for any county, any London commission area or the City of London is satisfied that 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 any inquiry into an indictable offence by a magistrates' court for that county, that London commission area or the City (as the case may be) or at the summary trial of an information or hearing of a complaint by such a court and that that person will not voluntarily attend as a witness or will not voluntarily 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.

[^{F1}(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.]

- (3) On the failure of any person to attend before a magistrates' court in answer to a summons under this section, if—

Status: Point in time view as at 10/06/1991. This version of this part contains provisions that are not valid for this point in time.

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- (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 [^{F2}one month]as may be specified in the warrant or until he sooner gives evidence or produces the document or thing [^{F3}or impose on him a fine not exceeding [^{F4}£1,000]or both].

Textual Amendments

- F1** 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**.
- F2** Words substituted by Contempt of Court Act 1981 (c. 49, SIF 39:3), s. 14(5), **Sch. 2 Pt. III para. 7**
- F3** Words added by Contempt of Court Act 1981 (c. 49, SIF 39:3), s. 14(5), **Sch. 2 Pt. III para. 7**
- F4** Words substituted by S.I. 1984/447, art. 2(3), **Sch. 3**

Modifications etc. (not altering text)

- C1** 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**)
- C2** S. 97(1) extended by Licensing (Occasional Permissions) Act 1983 (c. 24, SIF 68A:1), **s. 2(7)**
- C3** S. 97(3) extended by Licensing (Occasional Permissions) Act 1983 (c. 24, SIF 68A:1), **s. 2(7)**
- C4** S. 97(4) extended by Licensing (Occasional Permissions) Act 1983 (c. 24, SIF 68A:1), **s. 2(7)**

VALID FROM 04/07/1996

[^{F5}97A] **Summons or warrant as to committal proceedings.**

- (1) Subsection (2) below applies where a justice of the peace for any commission area 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,
 - (b) the person will not voluntarily make the statement or produce the document or other exhibit, and
 - (c) the magistrates' court mentioned in paragraph (a) above is a court for the commission area concerned.
- (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.

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- (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 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 clerk of 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 clerk of the justice concerned shall as soon as is reasonably practicable send a copy of the document to the prosecutor.

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(11) If in pursuance of this section a person produces an exhibit which is not a document, the clerk of 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

F5 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)**

Evidence generally

98 Evidence on oath.

Subject to the provisions of any enactment or rule of law authorising the reception of unsworn evidence, evidence given before a magistrates' court shall be given on oath.

99 Proof of non-payment of sum adjudged.

Where a magistrates' court has ordered one person to pay to another any sum of money, and proceedings are taken before that or any other magistrates' court to enforce payment of that sum, then—

- (a) if the person to whom the sum is ordered to be paid is a clerk of a magistrates' court, a certificate purporting to be signed by the clerk that the sum has not been paid to him; and
- (b) in any other case a document purporting to be a statutory declaration by the person to whom the sum is ordered to be paid that the sum has not been paid to him,

shall be admissible as evidence that the sum has not been paid to him, unless the court requires the clerk or other person to be called as a witness.

100 Statement of wages to be evidence.

A statement in writing to the effect that wages of any amount have been paid to a person during any period, purporting to be signed by or on behalf of his employer, shall be evidence of the facts therein stated in any proceedings taken before a magistrates' court—

- (a) for enforcing payment by the person to whom the wages are stated to have been paid of a sum adjudged to be paid by a summary conviction or order; or
- [^{F6}(b) on any application made by or against that person for the making of a magistrates' court maintenance order, or for the variation, revocation, discharge or revival of such an order]

Textual Amendments

F6 S. 100(b) substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(1)(2), Sch. 2 para. 87, Sch. 3 paras. 1, 6

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101 Onus of proving exceptions, etc.

Where the defendant to an information or complaint relies for his defence on any exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence or matter of complaint in the enactment creating the offence or on which the complaint is founded, the burden or proving the exception, exemption, proviso, excuse or qualification shall be on him; and this notwithstanding that the information or complaint contains an allegation negating the exception, exemption, proviso, excuse or qualification.

Modifications etc. (not altering text)

C5 S. 101 applied (with modifications) (1.4.1997) by S.I. 1997/704, rule5(2)(3)(4)(f)

Evidence in criminal cases

102 Written statements before examining justices.

- (1) In committal proceedings a written statement by any person shall, if the conditions mentioned in subsection (2) below are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.
- (2) The said conditions are—
 - (a) the statement purports to be signed by the person who made it;
 - (b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;
 - (c) before the statement is tendered in evidence, a copy of the statement is given, by or on behalf of the party proposing to tender it, to each of the other parties to the proceedings; and
 - (d) none of the other parties, before the statement is tendered in evidence at the committal proceedings, objects to the statement being so tendered under this section.
- (3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section, that is to say—
 - (a) if the statement is made by a person under 21 years old, it shall give his age;
 - (b) if it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and
 - (c) if it refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2)(c) above shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect that document or a copy thereof.
- (4) Notwithstanding that a written statement made by any person may be admissible in committal proceedings by virtue of this section, the court before which the proceedings

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are held may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.

- (5) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court commits the accused for trial by virtue of section 6(2) above or the court otherwise directs, be read aloud at the hearing, and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.
- (6) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.
- (7) Subsection (3) of section 13 of the ^{M1}Criminal Justice Act 1925 (reading of deposition as evidence at the trial) shall apply to any written statement tendered in evidence in committal proceedings under this section as it applies to a deposition taken in such proceedings, but in its application to any such statement that subsection shall have effect as if paragraph (b) thereof were omitted.
- (8) In section 2(2) of the ^{M2}Administration of Justice (Miscellaneous Provisions) Act 1933 (procedure for preferring bills of indictment) the reference in proviso (i) to facts disclosed in any deposition taken before a justice in the presence of the accused shall be construed as including a reference to facts disclosed in any such written statement as aforesaid [^{F7}and section 40 of the Criminal Justice Act 1988 (power to join in indictment count for common assault etc.) shall be given a corresponding construction].
- (9) Section 28 above shall not apply to any such statement as aforesaid.
- (10) A person whose written statement is tendered in evidence in committal proceedings under this section shall be treated for the purposes of section 1 of the ^{M3}Criminal Procedure (Attendance of Witnesses) Act 1965 (witness orders) as a witness who has been examined by the court.

Textual Amendments

F7 Words added by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 123(6), 170(1), [Sch. 15 para. 68](#)

Marginal Citations

M1 1925 c. 86.

M2 1933 c. 36.

M3 1965 c. 69.

[^{F8}103 Evidence of persons under 14 in committal proceedings for assault, sexual offences etc.

- (1) In any proceedings before a magistrates' court inquiring into an offence to which this section applies as examining justices—
 - (a) a child shall not be called as a witness for the prosecution; but
 - (b) any statement made by or taken from a child shall be admissible in evidence of any matter of which his oral testimony would be admissible,
 except in a case where the application of this subsection is excluded under subsection (3) below.

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- (2) This section applies—
- (a) to an offence which involves an assault, or injury or a threat of injury to, a person;
 - (b) to an offence under section 1 of the ^{M4}Children and Young Persons Act 1933 (cruelty to persons under 16);
 - (c) to an offence under the ^{M5}Sexual Offences Act 1956, the ^{M6}Indecency with Children Act 1960, the ^{M7}Sexual Offences Act 1967, section 54 of the ^{M8}Criminal Law Act 1977 or the ^{M9}Protection of Children Act 1978; and
 - (d) to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a), (b) or (c) above.
- (3) The application of subsection (1) above is excluded—
- (a) where at or before the time when the statement is tendered in evidence the defence objects to its admission; or
 - (b) where the prosecution requires the attendance of the child for the purpose of establishing the identity of any person; or
 - (c) where the court is satisfied that it has not been possible to obtain from the child a statement that may be given in evidence under this section; or
 - (d) where the inquiry into the offence takes place after the court has discontinued to try it summarily and the child has given evidence in the summary trial.
- (4) Section 28 above shall not apply to any statement admitted in pursuance of subsection (1) above.
- (5) In this section “child” means a person under the age of 14.]

Textual Amendments

F8 S. 103 substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 33, 123(6), [Sch. 8 para. 16](#)

Marginal Citations

M4 [1933 c. 12 \(20\)](#).
M5 [1956 c. 69 \(39:5\)](#).
M6 [1960 c. 33 \(39:5\)](#).
M7 [1967 c. 60 \(39:5\)](#).
M8 [1977 c. 45 \(39:5\)](#).
M9 [1978 c. 37 \(39:5\)](#).

104 Proof of previous convictions.

Where a person is convicted of a summary offence by a magistrates' court, other than a juvenile court, and—

- (a) it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that not less than 7 days previously a notice was served on the accused in the prescribed form and manner specifying any alleged previous conviction of the accused of a summary offence proposed to be brought to the notice of the court in the event of his conviction of the offence charged; and
- (b) the accused is not present in person before the court,

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the court may take account of any such previous conviction so specified as if the accused had appeared and admitted it.

105 Deposition of person dangerously ill.

- (1) Where a person appears to a justice of the peace to be able and willing to give material information relating to an indictable offence or to any person accused of an indictable offence, and—
 - (a) the justice is satisfied, on a representation made by a duly qualified medical practitioner, that the person able and willing to make the statement is dangerously ill and unlikely to recover; and
 - (b) it is not practicable for examining justices to take the evidence of the sick person in accordance with the provisions of this Act and the rules,
 the justice may take in writing the deposition of the sick person on oath.
- (2) A deposition taken under this section may be given in evidence before examining justices inquiring into an information against the offender or in respect of the offence to which the deposition relates, but subject to the same conditions as apply, under section 6 of the ^{M10}Criminal Law Amendment Act 1867, to its being given in evidence upon the trial of the offender or offence.

Marginal Citations

M10 1867 c. 35.

Offences

106 False written statements tendered in evidence.

- (1) If any person in a written statement tendered in evidence in criminal proceedings by virtue of section 102 above wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.
- (2) The ^{M11}Perjury Act 1911 shall have effect as if this section were contained in that Act.

Marginal Citations

M11 1911 c. 6.

107 False statements in declaration proving service, etc.

If, in any solemn declaration, certificate or other writing made or given for the purpose of its being used in pursuance of the rules as evidence of the service of any document or the handwriting or seal of any person, a person makes a statement that he knows to be false in a material particular, or recklessly makes any statement that is false in a material particular, he shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding [^{F9}level 3 on the standard scale] or both.

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Textual Amendments

F9 Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**

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