



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 [^{F1}any commission area ^{F2}. . .] 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, ^{F3}. . . at the summary trial of an information or hearing of a complaint by [^{F4}a magistrates' court for that commission area] 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.
- [^{F5}(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.]
- [^{F6}(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.]

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- (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 [^{F7}one month] as may be specified in the warrant or until he sooner gives evidence or produces the document or thing [^{F8}or impose on him a fine not exceeding [^{F9}£2,500] or both].
- [^{F10}(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** Words in s. 97(1) substituted (1.4.1996) by S.I. 1996/674, reg. 2, **Sch. Pt. I para. 2(4)(a)**
- F2** Words in s. 97(1) repealed (1.4.1996) by S.I. 1996/675, art. 2, **Sch. Pt. I para. 2(4)(a)**
- F3** Words in s. 97(1) repealed (4.7.1996, with effect as mentioned in Sch. 1 Pt. III para. 39 of the repealing Act) by 1996 c. 25, ss. 47, 80, Sch. 1 Pt. I para. 7(a), **Sch. 5 para. 2** Table10 (with s. 78(1)); S.I. 1997/683, **art. 1(2)**
- F4** Words in s. 97(1) substituted (4.7.1996, with effect as mentioned in Sch. 1 Pt. III para. 39 of the substituting Act) by 1996 c. 25, s. 47, **Sch. 1 para. 7(b)** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**
- F5** 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**.
- F6** 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)**
- F7** Words substituted by Contempt of Court Act 1981 (c. 49, SIF 39:3), s. 14(5), **Sch. 2 Pt. III para. 7**
- F8** Words added by Contempt of Court Act 1981 (c. 49, SIF 39:3), s. 14(5), **Sch. 2 Pt. III para. 7**
- F9** 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**.
- F10** 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**

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(1) extended by Licensing (Occasional Permissions) Act 1983 (c. 24, SIF 68A:1), s. 2(7)

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- S. 97(1) applied (with modifications) (1.4.1997) by S.I. 1997/704, **rule5(2)(3)(4)(e)**
- C5** S. 97(1)(3)(4) extended (1.1.1996) by 1995 c. 21, **ss. 268(3), 316(2)** (with s. 312(1))
- C6** S. 97(3) extended by **Licensing (Occasional Permissions) Act 1983 (c. 24, SIF 68A:1), s. 2(7)**
- C7** S. 97(4) extended by **Licensing (Occasional Permissions) Act 1983 (c. 24, SIF 68A:1), s. 2(7)**

[^{F11}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.
- (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,

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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.
- (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

- F11** 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.

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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
- [^{F12}(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

- F12** 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

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 of 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)

- C8** S. 101 applied (with modifications) (1.4.1997) by [S.I. 1997/704](#), [rule5\(2\)\(3\)\(4\)\(f\)](#)

Evidence in criminal cases

^{F13}102

Textual Amendments

- F13** S. 102 repealed (4.7.1996, with effect as mentioned in Sch. 1 Pt. III para. 39 of the repealing Act) by [1996 c. 25, ss. 47, 80, Sch. 1 Pt I para. 9](#), [Sch. 5](#) table10 (with s. 78(1)); [S.I. 1997/683](#), [art. 1\(2\)](#)

[^{F14}103 Evidence of persons under 14 in committal proceedings for assault, sexual offences etc.

[In any proceedings before a magistrates' court inquiring as examining justices into
^{F15}(1) an offence to which this section applies, a statement made in writing by or taken in writing from a child shall be admissible in evidence of any matter.]

- (2) This section applies—

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- (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 ^{M1}Children and Young Persons Act 1933 (cruelty to persons under 16);
- (c) to an offence under the ^{M2}Sexual Offences Act 1956, the ^{M3}Indecency with Children Act 1960, the ^{M4}Sexual Offences Act 1967, section 54 of the ^{M5}Criminal Law Act 1977 or the ^{M6}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.

^{F16}(3)

^{F16}(4)

[In this section “child” has the same meaning as in section 53 of the Criminal Justice ^{F17}(5) Act 1991.]]

Textual Amendments

- F14** S. 103 substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 33, 123(6), [Sch. 8 para. 16](#)
- F15** S. 103(1) substituted (4.7.1996, with effect as mentioned in Sch. 1 Pt. III para. 39 of the substituting Act) by [1996 c. 25, s. 47, Sch. 1 Pt. I para. 10\(2\)](#) (with s. 78(1)); [S.I. 1997/683, art. 1\(2\)](#)
- F16** S. 103(3)(4) repealed (4.7.1996, with effect as mentioned in Sch. 1 Pt. III para. 39 of the repealing Act) by [1996 c. 25, ss. 47, 80, Sch. 1 Pt. I para. 10\(3\), Sch. 5 table10](#) (with s. 78(1)); [S.I. 1997/683, art. 1\(2\)](#)
- F17** S. 103(5) substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), [s. 55\(1\)](#); [S.I. 1992/333, art. 2\(2\)](#), [Sch. 2](#)

Marginal Citations

- M1** [1933 c. 12 \(20\)](#).
- M2** [1956 c. 69](#)
- M3** [1960 c. 33 \(39:5\)](#).
- M4** [1967 c. 60 \(39:5\)](#).
- M5** [1977 c. 45 \(39:5\)](#).
- M6** [1978 c. 37](#)

104 Proof of previous convictions.

Where a person is convicted of a summary offence by a magistrates' court, other than a [^{F18}youth 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,

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

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Textual Amendments

F18 Words in s. 104 substituted (1.10.1992) by **Criminal Justice Act 1991 (c. 53, SIF 39:1)**, s. 100, **Sch. 11 para. 40(2)(n)**; S.I. 1992/333, art. 2(2), **Sch.2**

Modifications etc. (not altering text)

C9 S. 104 restricted (1.9.1998) by **1988 c. 53, s. 13(3A)(3B)** (as inserted (1.9.1998)) by **1998 c. 15, s. 2(1)**; S.I. 1998/1837, **art.2** (with transitional savings in **art. 3**)

F19 **105**

Textual Amendments

F19 S. 105 repealed (4.7.1996, with effect as mentioned in Sch. 1 Pt. III para. 39 of the repealing Act) by **1996 c. 25, ss. 47, 80, Sch. 1 Pt. I para. 11, Sch. 5 table10** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

Offences

106 False written statements tendered in evidence.

(1) If any person in a written statement [^{F20}admitted] in evidence in criminal proceedings by virtue of [^{F20}section 5B] 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 ^{M7}Perjury Act 1911 shall have effect as if this section were contained in that Act.

Textual Amendments

F20 Words in s. 106(1) substituted (4.7.1996 with effect as mentioned in Sch. 1 Pt. III para. 39 of the substituting Act) by **1996 c. 25, s. 47, Sch. 1 Pt. I para.12** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

Modifications etc. (not altering text)

C10 S. 106 extended (4.7.1996) by **1972 c. 71, s. 46(1A)** (as 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. II para. 22(3)** (with s. 78(1)); S.I. 1997/683, **art. 1(2)**

Marginal Citations

M7 **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

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term not exceeding 6 months or a fine not exceeding [^{F21}level 3 on the standard scale] or both.

Textual Amendments

F21 Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**

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