



# 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.
- [<sup>F1</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.]
- (3) On the failure of any person to attend before a magistrates' court in answer to a summons under this section, if—

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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 [<sup>F2</sup>one month]as may be specified in the warrant or until he sooner gives evidence or produces the document or thing [<sup>F3</sup>or impose on him a fine not exceeding [<sup>F4</sup>£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

#### <sup>F5</sup>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.]

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**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)**

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