
STATUTORY INSTRUMENTS

2012 No. 1726

The Criminal Procedure Rules 2012

PART 28

WITNESS SUMMONSES, WARRANTS AND ORDERS

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[Note. A magistrates' court may require the attendance of a witness to give evidence or to produce in evidence a document or thing by a summons, or in some circumstances a warrant for the witness' arrest, under section 97 of the Magistrates' Courts Act 1980(1). The Crown Court may do so under sections 2, 2D, 3 and 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965(2). Either court may order the production in evidence of a copy of an entry in a banker's book without the attendance of an officer of the bank, under sections 6 and 7 of the Bankers' Books Evidence Act 1879(3).

See Part 3 for the court's general powers to consider an application and to give directions.]

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- (1) 1980 c. 43; section 97 was amended by sections 13 and 14 of, and paragraph 7 of Schedule 2 to, the Contempt of Court Act 1981 (c. 47), section 31 of, and paragraph 2 of Schedule 4 to, the Criminal Justice (International Co-operation) Act 1990 (c. 5), sections 17 and 65 of, and paragraph 6 of Schedule 3 and Part 1 of Schedule 4 to, the Criminal Justice Act 1991 (c. 53), section 51 of the Criminal Procedure and Investigations Act 1996 (c. 25) and section 169 of the Serious Organised Crime and Police Act 2005 (c. 15).
- (2) 1965 c. 69; section 2 was substituted, together with sections 2 A to 2E, by section 66 of the Criminal Procedure and Investigations Act 1996 (c. 25) and amended by section 119 of, and paragraph 8 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 109 of, and paragraph 126 of Schedule 8 to, the Courts Act 2003 (c. 39) and section 169 of the Serious Organised Crime and Police Act 2005 (c. 15). It is further amended by paragraph 42 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) in relation to certain local justice areas (see S.I. 2012/1320) and otherwise with effect from a date to be appointed.
- (3) 1879 c. 11; section 6 has been amended; none is relevant to these rules.

When this Part applies

- 28.1.**—(1) This Part applies in magistrates' courts and in the Crown Court where—
- (a) a party wants the court to issue a witness summons, warrant or order under—
 - (i) section 97 of the Magistrates' Courts Act 1980,
 - (ii) section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965, or
 - (iii) section 7 of the Bankers' Books Evidence Act 1879;
 - (b) the court considers the issue of such a summons, warrant or order on its own initiative as if a party had applied; or
 - (c) one of those listed in rule 28.7 wants the court to withdraw such a summons, warrant or order.
- (2) A reference to a 'witness' in this Part is a reference to a person to whom such a summons, warrant or order is directed.

[Note. See section 2D of the Criminal Procedure (Attendance of Witnesses) Act 1965 for the Crown Court's power to issue a witness summons on the court's own initiative.]

Issue etc. of summons, warrant or order with or without a hearing

- 28.2.**—(1) The court may issue or withdraw a witness summons, warrant or order with or without a hearing.
- (2) A hearing under this Part must be in private unless the court otherwise directs.

[Note. If rule 28.5 applies, a person served with an application for a witness summons will have an opportunity to make representations about whether there should be a hearing of that application before the witness summons is issued.]

Application for summons, warrant or order: general rules

- 28.3.**—(1) A party who wants the court to issue a witness summons, warrant or order must apply as soon as practicable after becoming aware of the grounds for doing so.
- (2) The party applying must—
- (a) identify the proposed witness;
 - (b) explain—
 - (i) what evidence the proposed witness can give or produce,
 - (ii) why it is likely to be material evidence, and
 - (iii) why it would be in the interests of justice to issue a summons, order or warrant as appropriate.
- (3) The application may be made orally unless—
- (a) rule 28.5 applies; or
 - (b) the court otherwise directs.

[Note. The court may issue a warrant for a witness' arrest if that witness fails to obey a witness summons directed to him: see section 97(3) of the Magistrates' Courts Act 1980 and section 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965. Before a magistrates' court may issue a warrant under section 97(3) of the 1980 Act, the witness must first be paid or offered a reasonable amount for costs and expenses.]

Written application: form and service

28.4.—(1) An application in writing under rule 28.3 must be in the form set out in the Practice Direction, containing the same declaration of truth as a witness statement.

(2) The party applying must serve the application—

- (a) in every case, on the court officer and as directed by the court; and
- (b) as required by rule 28.5, if that rule applies.

[Note. Declarations of truth in witness statements are required by section 9 of the Criminal Justice Act 1967(4) and section 5B of the Magistrates' Courts Act 1980(5). Section 89 of the 1967 Act(6) makes it an offence to make a written statement under section 9 of that Act which the person making it knows to be false or does not believe to be true.]

Application for summons to produce a document, etc.: special rules

28.5.—(1) This rule applies to an application under rule 28.3 for a witness summons requiring the proposed witness—

- (a) to produce in evidence a document or thing; or
- (b) to give evidence about information apparently held in confidence,

that relates to another person.

(2) The application must be in writing in the form required by rule 28.4.

(3) The party applying must serve the application—

- (a) on the proposed witness, unless the court otherwise directs; and
- (b) on one or more of the following, if the court so directs—
 - (i) a person to whom the proposed evidence relates,
 - (ii) another party.

(4) The court must not issue a witness summons where this rule applies unless—

- (a) everyone served with the application has had at least 14 days in which to make representations, including representations about whether there should be a hearing of the application before the summons is issued; and
- (b) the court is satisfied that it has been able to take adequate account of the duties and rights, including rights of confidentiality, of the proposed witness and of any person to whom the proposed evidence relates.

(5) This rule does not apply to an application for an order to produce in evidence a copy of an entry in a banker's book.

(4) 1967 c. 80; section 9 was amended by section 56 of, and paragraph 49 of Schedule 8 to, the Courts Act 1971 (c. 23), section 69 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 168 of, and paragraph 6 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33) and regulation 9 of, and paragraph 4 of Schedule 5 to, S.I. 2001/1090. It is further amended by section 72 of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54) and section 65 of, and paragraph 1 of Schedule 4 to, the Courts Act 2003 (c. 39), with effect from a date to be appointed, and by paragraph 43 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) in relation to certain local justice areas (see S.I. 2012/1320) and otherwise with effect from a date to be appointed.

(5) 1980 c. 43; section 5B was inserted by section 47 of, and paragraph 3 of Schedule 1 to, the Criminal Procedure and Investigations Act 1996 (c. 25), and is amended by section 72(3) of, and paragraph 55 of Schedule 5 to, the Children and Young Persons Act 1969 (c. 54), with effect from a date to be appointed. It is repealed by paragraph 51 of Schedule 3, and Part 4 of Schedule 37, to the Criminal Justice Act 2003 (c. 44) in relation to certain local justice areas (see S.I. 2012/1320) and otherwise with effect from a date to be appointed.

(6) 1967 c. 80; section 89 was amended by section 154 of, and Schedule 9 to, the Magistrates' Courts Act 1980 (c. 43).

[Note. Under section 2A of the Criminal Procedure (Attendance of Witnesses) Act 1965(7), a witness summons to produce a document or thing issued by the Crown Court may require the witness to produce it for inspection by the applicant before producing it in evidence.]

Application for summons to produce a document, etc.: court's assessment of relevance and confidentiality

28.6.—(1) This rule applies where a person served with an application for a witness summons requiring the proposed witness to produce in evidence a document or thing objects to its production on the ground that—

- (a) it is not likely to be material evidence; or
- (b) even if it is likely to be material evidence, the duties or rights, including rights of confidentiality, of the proposed witness or of any person to whom the document or thing relates, outweigh the reasons for issuing a summons.

(2) The court may require the proposed witness to make the document or thing available for the objection to be assessed.

(3) The court may invite—

- (a) the proposed witness or any representative of the proposed witness; or
- (b) a person to whom the document or thing relates or any representative of such a person, to help the court assess the objection.

Application to withdraw a summons, warrant or order

28.7.—(1) The court may withdraw a witness summons, warrant or order if one of the following applies for it to be withdrawn—

- (a) the party who applied for it, on the ground that it no longer is needed;
- (b) the witness, on the grounds that—
 - (i) he was not aware of any application for it, and
 - (ii) he cannot give or produce evidence likely to be material evidence, or
 - (iii) even if he can, his duties or rights, including rights of confidentiality, or those of any person to whom the evidence relates, outweigh the reasons for the issue of the summons, warrant or order; or

(c) any person to whom the proposed evidence relates, on the grounds that—

- (i) he was not aware of any application for it, and
- (ii) that evidence is not likely to be material evidence, or
- (iii) even if it is, his duties or rights, including rights of confidentiality, or those of the witness, outweigh the reasons for the issue of the summons, warrant or order.

(2) A person applying under the rule must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, explaining why he wants the summons, warrant or order to be withdrawn; and
- (b) serve the application on the court officer and as appropriate on—
 - (i) the witness,
 - (ii) the party who applied for the summons, warrant or order, and

(7) 1965 c. 69; section 2A was substituted, together with sections 2, 2 B, 2D and 2E, for existing section 2 by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25).

(iii) any other person who he knows was served with the application for the summons, warrant or order.

(3) Rule 28.6 applies to an application under this rule that concerns a document or thing to be produced in evidence.

[Note. See sections 2B, 2C and 2E of the Criminal Procedure (Attendance of Witnesses) Act 1965(8) for the Crown Court's powers to withdraw a witness summons, including the power to order costs.]

Court's power to vary requirements under this Part

28.8.—(1) The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part; and
- (b) where a rule or direction requires an application under this Part to be in writing, allow that application to be made orally instead.

(2) Someone who wants the court to allow an application to be made orally under paragraph (1) (b) of this rule must—

- (a) give as much notice as the urgency of his application permits to those on whom he would otherwise have served an application in writing; and
- (b) in doing so explain the reasons for the application and for wanting the court to consider it orally.

(8) 1965 c. 69; sections 2B, 2C and 2E were substituted with section 2 and 2A, for the existing section 2 by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25) and amended by section 109 of, and paragraph 126 of Schedule 8 to, the Courts Act 2003 (c. 39).