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STATUTORY INSTRUMENTS

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**2020 No. 759**

**The Criminal Procedure Rules 2020**

**PART 7**

**STARTING A PROSECUTION IN A MAGISTRATES' COURT**

**Application for summons, etc.**

- 7.2.**—(1) A prosecutor who wants the court to issue a summons must—
- (a) serve on the court officer a written application; or
  - (b) unless other legislation prohibits this, present an application orally to the court, with a written statement of the allegation or allegations made by the prosecutor.
- (2) A prosecutor who wants the court to issue a warrant must—
- (a) serve on the court officer—
    - (i) a written application, or
    - (ii) a copy of a written charge that has been issued; or
  - (b) present to the court either of those documents.
- (3) An application for the issue of a summons or warrant must—
- (a) set out the allegation or allegations made by the applicant in terms that comply with rule 7.3(1) (Allegation of offence in application or charge); and
  - (b) demonstrate—
    - (i) that the application is made in time, if legislation imposes a time limit, and
    - (ii) that the applicant has the necessary consent, if legislation requires it.
- (4) As well as complying with paragraph (3), an application for the issue of a warrant must—
- (a) demonstrate that the offence or offences alleged can be tried in the Crown Court;
  - (b) demonstrate that the offence or offences alleged can be punished with imprisonment; or
  - (c) concisely outline the applicant's grounds for asserting that the defendant's address is not sufficiently established for a summons to be served.
- (5) Paragraph (6) applies unless the prosecutor is—
- (a) a public authority within the meaning of section 17 of the Prosecution of Offences Act 1985<sup>(1)</sup>; or
  - (b) a person acting—
    - (i) on behalf of such an authority, or
    - (ii) in that person's capacity as an official appointed by such an authority.

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<sup>(1)</sup> 1985 c. 23; section 17 was amended by section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4) and paragraphs 1 and 4 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

- (6) Where this paragraph applies, as well as complying with paragraph (3), and with paragraph (4) if applicable, an application for the issue of a summons or warrant must—
- (a) concisely outline the grounds for asserting that the defendant has committed the alleged offence or offences;
  - (b) disclose—
    - (i) details of any previous such application by the same applicant in respect of any allegation now made, and
    - (ii) details of any current or previous proceedings brought by another prosecutor in respect of any allegation now made; and
  - (c) include a statement that to the best of the applicant’s knowledge, information and belief—
    - (i) the allegations contained in the application are substantially true,
    - (ii) the evidence on which the applicant relies will be available at the trial,
    - (iii) the details given by the applicant under paragraph (6)(b) are true, and
    - (iv) the application discloses all the information that is material to what the court must decide.
- (7) Where the statement required by paragraph (6)(c) is made orally—
- (a) the statement must be on oath or affirmation, unless the court otherwise directs; and
  - (b) the court must arrange for a record of the making of the statement.
- (8) An authorised prosecutor who issues a written charge must notify the court officer immediately.
- (9) A single document may contain—
- (a) more than one application; or
  - (b) more than one written charge.
- (10) Where an offence can be tried only in a magistrates’ court, then unless other legislation otherwise provides—
- (a) a prosecutor must serve an application for the issue of a summons or warrant on the court officer or present it to the court; or
  - (b) an authorised prosecutor must issue a written charge,
- not more than 6 months after the offence alleged.
- (11) Where an offence can be tried in the Crown Court then—
- (a) a prosecutor must serve an application for the issue of a summons or warrant on the court officer or present it to the court; or
  - (b) an authorised prosecutor must issue a written charge,
- within any time limit that applies to that offence.
- (12) The court may determine an application to issue or withdraw a summons or warrant—
- (a) without a hearing, as a general rule, or at a hearing (which must be in private unless the court otherwise directs);
  - (b) in the absence of—
    - (i) the prosecutor,
    - (ii) the defendant; and
  - (c) with or without representations by the defendant.

(13) If the court so directs, a party to an application to issue or withdraw a summons or warrant may attend a hearing by live link <sup>F1</sup>....

[<sup>F2</sup>(14) The court may decline to issue a summons or warrant if, for example—

- (a) a court has previously determined an application by the same prosecutor which alleged the same or substantially the same offence against the same defendant on the same or substantially the same asserted facts;
- (b) the prosecutor fails to disclose all the information that is material to what the court must decide;
- (c) the prosecutor has—
  - (i) reached a binding agreement with the defendant not to prosecute, or
  - (ii) made representations that no prosecution would be brought, on which the defendant has acted to the defendant's detriment;
- (d) the prosecutor asserts facts incapable of proof in a criminal court as a matter of law;
- (e) the prosecution would constitute an assertion that the decision of another court or authority was wrong where that decision has been, or could have been, or could be, questioned in other proceedings or by other lawful means; or
- (f) the prosecutor's dominant motive would render the prosecution an abuse of the process of the court.]

*[Note. In some legislation, including the Magistrates' Courts Act 1980, an application for the issue of a summons or warrant is described as an 'information' and serving an application on the court officer or presenting it to the court is described as 'laying' that information.*

*[<sup>F3</sup>Where an offence can be tried only in a magistrates' court the general time limit for serving or presenting an application for a summons or warrant, and for issuing a written charge, is prescribed by section 127 of the Magistrates' Courts Act 1980 and section 30(5) of the Criminal Justice Act 2003. However, the legislation that creates the offence may prescribe a different time limit, which may be calculated by reference to the date of the offence or by reference to another event specified by that legislation. If the application contains insufficient information to show that it is in time the court may refuse to issue a summons or warrant.]*

*In section 17 of the Prosecution of Offences Act 1985 'public authority' means (a) a police force as defined by that Act, (b) the Crown Prosecution Service or any other government department, (c) a local authority or other authority or body constituted for purposes of the public service or of local government, or carrying on under national ownership any industry or undertaking or part of an industry or undertaking, or (d) any other authority or body whose members are appointed by Her Majesty or by any Minister of the Crown or government department or whose revenues consist wholly or mainly of money provided by Parliament.*

*Part 46 (Representatives) contains rules allowing a member, officer or employee of a prosecutor, on the prosecutor's behalf, to—*

- (a) *serve on the court officer or present to the court an application for the issue of a summons or warrant; or*
- (b) *issue a written charge and requisition.*

*See Part 3 for the court's general powers of case management, including power to consider applications and give directions for (among other things) the amendment of an allegation or charge and for separate trials.*

*See also Part 32 (Breach, revocation and amendment of community and other orders). Rule 32.2(2) (Application by responsible officer) applies rules 7.2 to 7.4 to the procedure with which that rule deals.*

F4 ... ]

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**Textual Amendments**

- F1** Words in rule 7.2(13) omitted (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(d), **8(a)(i)**
- F2** [Rule 7.2\(14\)](#) inserted (3.10.2022) by [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2, **8(a)(ii)**
- F3** Words in rule 7.2 Note substituted (3.4.2023) by [The Criminal Procedure \(Amendment\) Rules 2023 \(S.I. 2023/44\)](#), rules 1, **6**
- F4** Words in rule 7.2 Note omitted (2.10.2023) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/786\)](#), rule 1, **Sch. para. 1**
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**Commencement Information**

- I1** Rule 7.2 in force at 5.10.2020, see Preamble

**Changes to legislation:**

There are currently no known outstanding effects for the The Criminal Procedure Rules 2020, Section 7.2.