

## PART 7

## STARTING A PROSECUTION IN A MAGISTRATES' COURT

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**When this Part applies**

**7.1.**—(1) This Part applies in a magistrates' court where—

- (a) a prosecutor wants the court to issue a summons or warrant under section 1 of the Magistrates' Courts Act 1980(a);
- (b) a prosecutor with the power to do so issues—
  - (i) a written charge and requisition, or
  - (ii) a written charge and single justice procedure notice under section 29 of the Criminal Justice Act 2003(b);
- (c) a person who is in custody is charged with an offence.

(2) In this Part, 'authorised prosecutor' means a prosecutor authorised under section 29 of the Criminal Justice Act 2003 to issue a written charge and requisition or single justice procedure notice.

*[Note. Under section 1 of the Magistrates' Courts Act 1980, on receiving a formal statement (described in that section as an 'information') alleging that someone has committed an offence, the court may issue—*

- (a) a summons requiring that person to attend court; or
- (b) a warrant for that person's arrest, if—
  - (i) the alleged offence must or may be tried in the Crown Court,
  - (ii) the alleged offence is punishable with imprisonment, or
  - (iii) the person's address cannot be established sufficiently clearly to serve a summons or requisition.

*The powers of the court to which this Part applies may be exercised by a single justice of the peace.*

*Under section 29 of the Criminal Justice Act 2003, a prosecutor authorised under that section may issue a written charge alleging that someone has committed an offence, and either—*

- (a) a requisition requiring that person to attend court; or

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(a) 1980 c. 43; section 1 was amended by section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991 (c. 53), sections 43 and 109 of, and Schedule 10 to, the Courts Act 2003 (c. 39), section 31 of, and paragraph 12 of Schedule 7 to, the Criminal Justice Act 2003 (c. 44) and section 153 of the Police Reform and Social Responsibility Act 2011. It is further amended by paragraphs 7 and 8 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(b) 2003 c. 44; section 29 has been brought into force for certain purposes only (see S.I. 2007/1999, 2008/1424, 2009/2879, 2010/3005, 2011/2188, 2012/825 and 2014/633). It was amended by section 50 of, and paragraph 130 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11), section 59 of, and paragraph 196 of Schedule 4 to, the Serious Organised Crime and Police Act 2005 (c. 15), section 15 of, and paragraph 187 of Schedule 8 to, the Crime and Courts Act 2013 (c. 22), S.I. 2014/834 and section 46 of the Criminal Justice and Courts Act 2015 (c. 2).

- (b) a notice that the single justice procedure under section 16A of the Magistrates' Courts Act 1980(a) and rule 24.9 of these Rules applies.

Section 30 of the 2003 Act(b) contains other provisions about written charges, requisitions and single justice procedure notices.

A person detained under a power of arrest may be charged if the custody officer decides that there is sufficient evidence to do so. See sections 37 and 38 of the Police and Criminal Evidence Act 1984(c).]

### Information and written charge

- 7.2.**—(1) A prosecutor who wants the court to issue a summons must—
- (a) serve an information in writing on the court officer; or
  - (b) unless other legislation prohibits this, present an information orally to the court, with a written record of the allegation that it contains.
- (2) A prosecutor who wants the court to issue a warrant must—
- (a) serve on the court officer—
    - (i) an information in writing, or
    - (ii) a copy of a written charge that has been issued; or
  - (b) present to the court either of those documents.
- (3) An authorised prosecutor who issues a written charge must notify the court officer immediately.
- (4) A single document may contain—
- (a) more than one information; or
  - (b) more than one written charge.
- (5) Where an offence can be tried only in a magistrates' court, then unless other legislation otherwise provides—
- (a) a prosecutor must serve an information 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.
- (6) Where an offence can be tried in the Crown Court then—
- (a) a prosecutor must serve an information 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.

*[Note. In some legislation, including the Magistrates' Courts Act 1980, serving an information on the court officer or presenting it to the court is described as 'laying' that information.]*

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- (a) 1980 c. 43; section 16A was inserted by section 48 of the Criminal Justice and Courts Act 2015 (c. 2).
- (b) 2003 c. 44; section 30 has been brought into force for certain purposes only (see S.I. 2007/1999, 2008/1424, 2009/2879, 2010/3005, 2011/2188, 2012/825 and 2014/633). It was amended by article 3 of, and paragraphs 45 and 46 of the Schedule to, S.I. 2004/2035 and section 47 of the Criminal Justice and Courts Act 2015 (c. 2).
- (c) 1984 c. 60; section 37 was amended by section 108(7) of, and Schedule 15 to, the Children Act 1989 (c. 41), sections 72 and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 29(4) and 168(3) of, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 28 of, and paragraphs 1 and 2 of Schedule 2 to, the Criminal Justice Act 2003 (c. 44), section 23(1) of, and paragraphs 1 and 2 of Schedule 1 to, the Drugs Act 2005 (c. 17) and sections 11 and 52 of, and paragraph 9 of Schedule 14 to, the Police and Justice Act 2006 (c. 48). Section 38 was amended by section 108(5) of, and paragraph 53 of Schedule 13 to, the Children Act 1989 (c. 41), section 59 of the Criminal Justice Act 1991 (c. 53), sections 24, 28 and 168(2) of, and paragraph 54 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 57 of the Criminal Justice and Court Services Act 2000 (c. 43), section 5 of, and paragraph 44 of Schedule 32 and paragraph 5 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), section 23 of, and paragraphs 1 and 3 of Schedule 1 to, the Drugs Act 2005 (c. 17) and paragraph 34 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

*The time limits for serving or presenting an information and for issuing a written charge are prescribed by section 127 of the Magistrates' Courts Act 1980(a) and section 30(5) of the Criminal Justice Act 2003(b).*

*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 information; 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 information 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.*

*The Practice Direction sets out forms of information for use in connection with this rule.]*

### **Allegation of offence in information or charge**

**7.3.**—(1) An allegation of an offence in an information or charge must contain—

- (a) a statement of the offence that—
  - (i) describes the offence in ordinary language, and
  - (ii) identifies any legislation that creates it; and
- (b) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant.

(2) More than one incident of the commission of the offence may be included in the allegation if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission.

### **Summons, warrant and requisition**

**7.4.**—(1) The court may issue or withdraw a summons or warrant—

- (a) without giving the parties an opportunity to make representations; and
- (b) without a hearing, or at a hearing in public or in private.

(2) A summons, warrant or requisition may be issued in respect of more than one offence.

(3) A summons or requisition must—

- (a) contain notice of when and where the defendant is required to attend the court;
- (b) specify each offence in respect of which it is issued;
- (c) in the case of a summons, identify—
  - (i) the court that issued it, unless that is otherwise recorded by the court officer, and
  - (ii) the court office for the court that issued it; and
- (d) in the case of a requisition, identify the person under whose authority it is issued.

(4) A summons may be contained in the same document as an information.

(5) A requisition may be contained in the same document as a written charge.

(6) Where the court issues a summons—

- (a) the prosecutor must—

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(a) 1980 c. 43.

(b) 2003 c. 44.

- (i) serve it on the defendant, and
    - (ii) notify the court officer; or
  - (b) the court officer must—
    - (i) serve it on the defendant, and
    - (ii) notify the prosecutor.
- (7) Where an authorised prosecutor issues a requisition that prosecutor must—
- (a) serve on the defendant—
    - (i) the requisition, and
    - (ii) the written charge; and
  - (b) serve a copy of each on the court officer.
- (8) Unless it would be inconsistent with other legislation, a replacement summons or requisition may be issued without a fresh information or written charge where the one replaced—
- (a) was served by leaving or posting it under rule 4.7 (documents that must be served only by handing them over, leaving or posting them); but
  - (b) is shown not to have been received by the addressee.
- (9) A summons or requisition issued to a defendant under 18 may require that defendant's parent or guardian to attend the court with the defendant, or a separate summons or requisition may be issued for that purpose.

*[Note. Part 13 contains other rules about warrants.]*

*Section 47 of the Magistrates' Courts Act 1980(a) and section 30(5) of the Criminal Justice Act 2003 make special provision about time limits under other legislation for the issue and service of a summons or requisition, where service by post is not successful.*

*Section 34A of the Children and Young Persons Act 1933(b) allows, and in some cases requires, the court to summon the parent or guardian of a defendant under 18.]*

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(a) 1980 c. 43; section 47 was amended by section 109(1) of, and paragraph 207 of Schedule 8 to, the Courts Act 2003 (c. 39).

(b) 1933 c. 12; section 34A was inserted by section 56 of the Criminal Justice Act 1991 (c. 53) and amended by section 107 of, and paragraph 1 of Schedule 5 to, the Local Government Act 2000 (c. 22).