

## 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;
- (d) the prosecutor alleges an offence against a defendant who is due to attend, or attends, the court in response to another allegation.

(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—*

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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).

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

### 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(d); or

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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).
  - (d) 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).

- (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.
- (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;
  - (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 or telephone.

*[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.]*

*The time limits for serving or presenting an application 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).*

*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.*

*The Practice Direction sets out a form of application for use in connection with rule 7.2(6).]*

### **Allegation of offence**

**7.3.**—(1) An allegation of an offence in an application for the issue of a summons or warrant or in a 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.

(3) Where rule 7.1(1)(d) applies (additional allegation in existing prosecution), the prosecutor must—

- (a) set out the additional allegation in terms that comply with paragraph (1);*
- (b) as soon as practicable—
  - (i) serve the additional allegation on the court officer and the defendant, or**

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(a) 1980 c. 43.

(b) 2003 c. 44; section 30(5) was amended by section 47 of the Criminal Justice and Courts Act 2015 (c.2).

- (ii) present the additional allegation orally to the court, with a written statement of that allegation;
- (c) demonstrate that the allegation is made in time, if legislation imposes a time limit; and
- (d) demonstrate that the prosecutor has the necessary consent, if legislation requires it.

*[Note. In some circumstances the court may allow the prosecutor to amend an allegation of an offence, including to allege a different offence. In those circumstances the allegation may be amended after any time limit for prosecuting the different offence has expired if the amendment is based on substantially the same facts as the allegation first made. See Part 3 for the court's general powers of case management, including power to consider an application and give directions for (among other things) the amendment of an allegation.]*

**Summons, warrant and requisition**

- 7.4.**—(1) A summons, warrant or requisition may be issued in respect of more than one offence.
- (2) 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.
- (3) A summons may be contained in the same document as an application for the issue of that summons.
- (4) A requisition may be contained in the same document as a written charge.
- (5) Where the court issues a summons—
- (a) the prosecutor must—
    - (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.
- (6) 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.
- (7) Unless it would be inconsistent with other legislation, a replacement summons or requisition may be issued without a fresh application or written charge where the one replaced—
- (a) was served under rule 4.4 (Service by leaving or posting a document); but
  - (b) is shown not to have been received by the addressee.
- (8) 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).