

PART 13

WARRANTS FOR ARREST, DETENTION OR IMPRISONMENT

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[Note. Part 30 contains rules about warrants to take goods to pay fines, etc.]

When this Part applies

13.1.—(1) This Part applies where the court can issue a warrant for arrest, detention or imprisonment.

(2) In this Part, ‘defendant’ means anyone against whom such a warrant is issued.

Terms of a warrant for arrest

13.2. A warrant for arrest must require each person to whom it is directed to arrest the defendant and—

- (a) bring the defendant to a court—
 - (i) specified in the warrant, or
 - (ii) required or allowed by law; or
- (b) release the defendant on bail (with conditions or without) to attend court at a date, time and place—
 - (i) specified in the warrant, or
 - (ii) to be notified by the court.

[Note. The principal provisions under which the court can issue a warrant for arrest are—

- (a) *section 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965(a);*
- (b) *section 7 of the Bail Act 1976(b);*
- (c) *sections 1 and 97 of the Magistrates’ Courts Act 1980(c); and*
- (d) *sections 79, 80 and 81(4), (5) of the Senior Courts Act 1981(d).*

(a) 1965 c. 69; section 4 was amended by section 56 of, and paragraph 45 of Schedule 8 to, the Courts Act 1971 (c. 23) and sections 65, 66, 67 and 80 of, and Schedule 5 to, the Criminal Procedure and Investigations Act 1996 (c. 25).

(b) 1976 c. 63; section 7(1A) and (1B) were inserted section 198 of the Extradition Act 2003 (c. 41).

(c) 1980 c. 43; section 1 was amended by sections 13 and 14 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. 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 I 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).

(d) 1981 c. 54; section 80 was amended by paragraph 54 of Schedule 3 to the Criminal Justice Act 2003 (c. 44).

See also section 27A of the Magistrates' Courts Act 1980(a) (power to transfer criminal proceedings) and section 78(2) of the Senior Courts Act 1981(b) (adjournment of Crown Court case to another place).]

Terms of a warrant for detention or imprisonment

13.3.—(1) A warrant for detention or imprisonment must—

- (a) require each person to whom it is directed to detain the defendant and—
 - (i) take the defendant to any place specified in the warrant or required or allowed by law, and
 - (ii) deliver the defendant to the custodian of that place; and
- (b) require that custodian to detain the defendant, as ordered by the court, until in accordance with the law—
 - (i) the defendant is delivered to the appropriate court or place, or
 - (ii) the defendant is released.

(2) Where a magistrates' court remands a defendant to police detention under section 128(7)(c) or section 136(d) of the Magistrates' Courts Act 1980, or to customs detention under section 152 of the Criminal Justice Act 1988(e), the warrant it issues must—

- (a) be directed, as appropriate, to—
 - (i) a constable, or
 - (ii) an officer of Her Majesty's Revenue and Customs; and
- (b) require that constable or officer to detain the defendant—
 - (i) for a period (not exceeding the maximum permissible) specified in the warrant, or
 - (ii) until in accordance with the law the defendant is delivered to the appropriate court or place.

(3) Where a magistrates' court sentences a defendant to imprisonment or detention and section 11(3) of the Magistrates' Courts Act 1980(f) applies (custodial sentence imposed in the defendant's absence), the warrant it issues must—

- (a) require each person to whom the warrant is directed—
 - (i) to arrest the defendant and bring him or her to a court specified in the warrant, and
 - (ii) unless the court then otherwise directs, after that to act as required by paragraph (1)(a) of this rule; and
- (b) require the custodian to whom the defendant is delivered in accordance with that paragraph to act as required by paragraph (1)(b) of this rule.

(a) 1980 c. 43; section 27A was inserted by section 46 of the Courts Act 2003 (c. 39).

(b) 1981 c. 54.

(c) 1980 c. 43; section 128(7) was amended by section 48 of the Police and Criminal Evidence Act 1984 (c. 60). It is modified by section 91(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(d) 1980 c. 43; section 136 was amended by section 77 of, and paragraph 58 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), section 68 of, and paragraph 6 of Schedule 8 to, the Criminal Justice Act 1991(c. 53), section 95(2) of the Access to Justice Act 1999 (c. 22) and section 165(1) of, and paragraph 78 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). It is further amended by sections 74 and 75 of, and paragraphs 58 and 68 of Schedule 7, and Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

(e) 1988 c. 33; section 152 was amended by paragraphs 1 and 17 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29) and section 8 of the Drugs Act 2005 (c. 17).

(f) 1980 c. 43; section 11(3) was amended by section 123 of, and paragraph 1 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33), section 168 of, and paragraph 39 of Schedule 10 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 119 of, and paragraph 39 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37), section 304 of, and paragraphs 25 and 26 of Schedule 32 to, the Criminal Justice Act 2003 (c. 44) and section 54 of the Criminal Justice and Immigration Act 2008 (c. 4).

[Note. Under section 128(7) of the Magistrates' Courts Act 1980, a magistrates' court can remand a defendant to police detention for not more than 3 clear days, if the defendant is an adult, or for not more than 24 hours if the defendant is under 18.

Under section 136 of the 1980 Act, a magistrates' court can order a defendant's detention in police custody until the following 8am for non-payment of a fine, etc.

Under section 152 of the Criminal Justice Act 1988, a magistrates' court can remand a defendant to customs detention for not more than 192 hours if the defendant is charged with a drug trafficking offence.]

Information to be included in a warrant

13.4.—(1) A warrant must identify—

- (a) each person to whom it is directed;
- (b) the defendant against whom it was issued;
- (c) the reason for its issue;
- (d) the court that issued it, unless that is otherwise recorded by the court officer; and
- (e) the court office for the court that issued it.

(2) A warrant for detention or imprisonment must contain a record of any decision by the court under—

- (a) section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(a) (remands of children otherwise than on bail), including in particular—
 - (i) whether the defendant must be detained in local authority accommodation or youth detention accommodation,
 - (ii) the local authority designated by the court,
 - (iii) any requirement imposed by the court on that authority,
 - (iv) any condition imposed by the court on the defendant, and
 - (v) the reason for any such requirement or condition;
- (b) section 80 of the Magistrates' Courts Act 1980(b) (application of money found on defaulter to satisfy sum adjudged); or
- (c) section 82(1) or (4) of the 1980 Act(c) (conditions for issue of a warrant).

(3) A warrant that contains an error is not invalid, as long as—

- (a) it was issued in respect of a lawful decision by the court; and
- (b) it contains enough information to identify that decision.

[Note. See sections 93(7) and 102(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Under section 91 of the Act, instead of granting bail to a defendant under 18 the court may—

- (a) *remand him or her to local authority accommodation and, after consulting with that authority, impose on the defendant a condition that the court could impose if granting bail; or*

(a) 2012 c. 10.

(b) 1980 c. 43; section 80 was amended by section 33(1) of, and paragraph 83 of Schedule 2 to, the Family Law Reform Act 1987 (c. 42) and section 62(3) of, and paragraphs 45 and 49 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(c) 1980 c. 43; section 82 was amended by section 77 of, and paragraph 52 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), sections 61 and 123 of, and paragraphs 1 and 2 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33), section 55 of and paragraph 10 of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraph 220 of Schedule 8 to the Courts Act 2003 (c. 39), section 62 of, and paragraphs 45 and 51 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) and section 179 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and section 54 of, and paragraphs 2 and 3 of Schedule 12 to, the Criminal Justice and Courts Act 2015 (c. 2). It is further amended by paragraphs 58 and 63 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) and Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

- (b) remand him or her to youth detention accommodation, if the defendant is at least 12 years old and the other conditions, about the offence and the defendant, prescribed by the Act are met.

Under section 80 of the Magistrates' Courts Act 1980, the court may decide that any money found on the defendant must not be applied towards payment of the sum for which a warrant is issued under section 76 of that Act (enforcement of sums adjudged to be paid).

See section 82(6) of the 1980 Act. Under section 82(1) and (4), the court may only issue a warrant for the defendant's imprisonment for non-payment of a sum due where it finds that the prescribed conditions are met.

Under section 123 of the 1980 Act(a), "no objection shall be allowed to any ... warrant to procure the presence of the defendant, for any defect in it in substance or in form ...".]

Execution of a warrant

13.5.—(1) A warrant may be executed—

- (a) by any person to whom it is directed; or
(b) if the warrant was issued by a magistrates' court, by anyone authorised to do so by section 125(b) (warrants), 125A(c) (civilian enforcement officers) or 125B(d) (execution by approved enforcement agency) of the Magistrates' Courts Act 1980.

(2) The person who executes a warrant must—

- (a) explain, in terms the defendant can understand, what the warrant requires, and why;
(b) show the defendant the warrant, if that person has it; and
(c) if the defendant asks—
(i) arrange for the defendant to see the warrant, if that person does not have it, and
(ii) show the defendant any written statement of that person's authority required by section 125A or 125B of the 1980 Act.

(3) The person who executes a warrant of arrest that requires the defendant to be released on bail must—

- (a) make a record of—
(i) the defendant's name,
(ii) the reason for the arrest,
(iii) the defendant's release on bail, and
(iv) when and where the warrant requires the defendant to attend court; and
(b) serve the record on—
(i) the defendant, and
(ii) the court officer.

(4) The person who executes a warrant of detention or imprisonment must—

- (a) take the defendant—

(a) 1980 c. 43.
(b) 1980 c. 43; section 125 was amended by section 33 of the Police and Criminal Evidence Act 1984 (c. 60), section 65(1) of the Criminal Justice Act 1988 (c. 33), sections 95(1), 97(4) and 106 of, and Part V of Schedule 15 and Table (8) to, the Access to Justice Act 1999 (c. 22), section 109(1) of, and paragraph 238 of Schedule 8 to, the Courts Act 2003 (c. 39) and sections 62(3), 86 and 146 of and paragraphs 45 and 57 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
(c) 1980 c. 43; section 125A was inserted by section 92 of the Access to Justice Act 1999 (c. 22) and amended by articles 46 and 52 of S.I. 2006/1737 and article 8 of, and paragraph 5 of the Schedule to, S.I. 2007/2128 and section 62 of, and paragraphs 45 and 58 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
(d) 1980 c. 43; section 125B was inserted by section 93(2) of the Access to Justice Act 1999 (c. 22) and amended by paragraph 239 of Schedule 8 to the Courts Act 2003 (c. 39) and section 62 of, and paragraphs 45, 59 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (i) to any place specified in the warrant, or
- (ii) if that is not immediately practicable, to any other place at which the defendant may be lawfully detained (and the warrant then has effect as if it specified that place);
- (b) obtain a receipt from the custodian; and
- (c) notify the court officer that the defendant has been taken to that place.

[Note. Under section 125 of the Magistrates' Courts Act 1980, a warrant issued by a magistrates' court may be executed by any person to whom it is directed or by any constable acting within that constable's police area.]

Certain warrants issued by a magistrates' court may be executed anywhere in England and Wales by a civilian enforcement officer, under section 125A of the 1980 Act; or by an approved enforcement agency, under section 125B of the Act. In either case, the person executing the warrant must, if the defendant asks, show a written statement indicating: that person's name; the authority or agency by which that person is employed, or in which that person is a director or partner; that that person is authorised to execute warrants; and, where section 125B applies, that the agency is registered as one approved by the Lord Chancellor.

See also section 125D of the 1980 Act(a), under which—

- (a) a warrant to which section 125A applies may be executed by any person entitled to execute it even though it is not in that person's possession at the time; and*
- (b) certain other warrants, including any warrant to arrest a person in connection with an offence, may be executed by a constable even though it is not in that constable's possession at the time.]*

Warrants that cease to have effect on payment

13.6.—(1) This rule applies to a warrant issued by a magistrates' court under any of the following provisions of the Magistrates' Courts Act 1980—

- (a) section 76(b) (enforcement of sums adjudged to be paid);
- (b) section 83(c) (process for securing attendance of offender);
- (c) section 86(d) (power of magistrates' court to fix day for appearance of offender at means inquiry, etc.);
- (d) section 136(e) (committal to custody overnight at police station for non-payment of sum adjudged by conviction).

(2) The warrant no longer has effect if—

- (a) the sum in respect of which the warrant was issued is paid to the person executing it;
- (b) that sum is offered to, but refused by, that person; or
- (c) that person is shown a receipt for that sum given by—

(a) 1980 c. 43; section 125D was inserted by section 96 of the Access to Justice Act 1999 (c. 22) and amended by sections 62 and 146 of, and paragraphs 45 and 61 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(b) 1980 c. 43; section 76 was amended by section 7 of the Maintenance Enforcement Act 1991 (c. 17); section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), and section 62(3) of, and paragraphs 45 and 46 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(c) 1980 c. 43; section 83 was amended by articles 46 and 47 of S.I. 2006/1737 and sections 97(2) and 106 of, and Part V (table 8) of Schedule 15 to, the Access to Justice Act 1999 (c. 22).

(d) 1980 c. 43; section 86 was amended by section 51(2) of the Criminal Justice Act 1982 (c. 48) and section 97(3) of the Access to Justice Act 1999 (c. 22).

(e) 1980 c. 43; section 82 was amended by section 77 of, and paragraph 52 of Schedule 14 to, the Criminal Justice Act 1982 (c. 48), sections 61 and 123 of, and paragraphs 1 and 2 of Schedule 8 to, the Criminal Justice Act 1988 (c. 33), section 55 of and paragraph 10 of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraph 220 of Schedule 8 to the Courts Act 2003 (c. 39), section 62 of, and paragraphs 45 and 51 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) and section 179 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) and section 54 of, and paragraphs 2 and 3 of Schedule 12 to, the Criminal Justice and Courts Act 2015 (c. 2). It is further amended by paragraphs 58 and 63 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) and Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), with effect from dates to be appointed.

- (i) the court officer, or
- (ii) the authority to which that sum is due.

[Note. See sections 79(a) and 125(1) of the Magistrates' Courts Act 1980.]

Warrant issued when the court office is closed

- 13.7.**—(1) This rule applies where the court issues a warrant when the court office is closed.
- (2) The applicant for the warrant must, not more than 72 hours later, serve on the court officer—
- (a) a copy of the warrant; and
 - (b) any written material that was submitted to the court.

(a) 1980 c. 43; section 79 was amended by paragraph 219 of Schedule 8 to the Courts Act 2003 (c. 39) and section 62 of, and paragraphs 45, 47 and 48 of Schedule 13 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).