Section D5 Starting a Prosecution and Preliminary Proceedings in Magistrates' Courts

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INTRODUCTION

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D5.1

This section describes the preliminary proceedings in the magistrates' court which precede either the summary trial of an accused or being sent to the Crown Court for trial.

PROCEDURE FOR STARTING A PROSECUTION AND SECURING PRESENCE OF ACCUSED

Introduction

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D5.2

The first appearance of an accused before a magistrates' court may be secured in a number of different ways:

(a) The accused may be arrested and, after the police have sought advice from the CPS, charged by the police (the details of the offence(s) will appear on a charge sheet).

(b) The accused may be arrested and then granted police bail while the CPS decide whether there is sufficient evidence to justify a charge; the CPS may then start a prosecution by using the 'written charge and requisition' procedure established by the CJA 2003, s. 29 (where available).

(c) The accused may be arrested and then be granted police bail, subject to a requirement of returning to the police station on a specified date; during the intervening period the CPS decide whether there is sufficient evidence to justify a charge and, if so, when the accused returns to the police station, the police will charge the accused with the offence(s) specified by the CPS.

(d) The accused may be served with a written charge and requisition (under the CJA 2003, s. 29) without first having been arrested.

(e) An application may be made to a magistrates' court for the issue of a summons (or an arrest warrant) requiring the accused to attend before it (this process is sometimes referred to as 'laying an information'). A prosecutor who is not a 'relevant prosecutor' for these purposes (see D5.4) cannot use the written charge and requisition process but must instead apply for the issue of a summons by the magistrates' court.

Much of the relevant legislation (such as the MCA 1980) refers to trial of an 'information' by a magistrates' court. For these purposes, an 'information' is the application to the magistrates' court for a summons requiring the accused to attend the court to answer the allegation of having committed an offence. Moreover, the CJA 2003, s. 30(5), provides that references to an 'information' are to be construed as including a 'written charge', and references to a 'summons' are to be construed as including a 'requisition'.

D5.3

The powers and procedures for arresting an accused without warrant, questioning at a police station and then charging are dealt with in detail in D1, which also deals with the circumstances in which the police may refuse to bail a person who has been charged and the period within which that person must be brought before a magistrates' court. This section considers the other means of securing the presence of the accused before the court.

Written Charge and Requisition Procedure

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D5.4

The CJA 2003, s. 29, applies only to prosecutions brought by a 'relevant prosecutor'. By virtue of s. 29(5), s. 29 applies to prosecutions brought by the following (or by someone authorised to institute criminal proceedings on their behalf):

(a) a police force;

(b) the Director of the SFO;

(c) the DPP (and therefore the CPS);

(d) the Director General of the NCA;

(e) the A-G (not yet in force);

(f) a person specified by the Secretary of State in an order under the CJA 2003, s. 29(5)(h).

Those so designated as 'relevant prosecutors' include the Secretary of State for Work and Pensions, the Secretary of State for Health in England and Wales, the Secretary of State for Business, Energy and Industrial Strategy, the Driver and Vehicle Standards Agency, Transport for London, the Environment Agency, specified local authorities (including county and district councils, and London borough councils), the Natural Resources Body for Wales, railway operators (for the purpose of prosecuting a railway offence), certain tramway operators and the TV licensing authority.

Under s. 29(1), a prosecutor to whom these provisions apply may institute criminal proceedings against a person by issuing a 'written charge', which charges the person with an offence. Under s. 29(2), where the prosecutor issues a written charge, a 'requisition' must be issued at the same time; this requires the accused to appear before a magistrates' court to answer the written charge. The written charge and requisition must be served on the accused and a copy of both must be served on the court named in the requisition (s. 29(3)).

This method of commencing criminal proceedings is available only where the prosecutor is a 'relevant prosecutor' (i.e. a prosecuting body specified under the legislation).

D5.5

Where a 'relevant prosecutor' issues a written charge, the relevant magistrates' court must be notified immediately. However, notification of the requirement to attend court is communicated to the accused by the prosecutor through service of the 'requisition' which accompanies the written charge (not by the magistrates' court, as is the case where a summons is issued).

Section 30(4) makes it clear that the written charge and requisition procedure does not affect the ability of a 'relevant prosecutor' to apply for the issue of an arrest warrant under the MCA 1980, s. 1 (see D5.8).

As the magistrates' court is not involved in the issuing of the written charge and requisition, there will be no possibility of the magistrates preventing a prosecution from being brought in this way. However, it is submitted that

the decision to issue a written charge and requisition could be amenable to judicial review, and an application for the case to be dismissed as an abuse of process would also be available in appropriate cases.

In *Brown v DPP* [2019] EWHC 798 (Admin), [2019] 2 Cr App R 6 (48), the Divisional Court rejected the submission that the issuing of a written charge arises only when the written charge is posted to the accused. Irwin LJ (at [19]) noted that the 'issuing' of the written charge and its service are discrete steps. The Court also rejected the submission that the information contained in the written charge must be in the public domain, in the sense of being placed before a court or being served, before issue can be held to be complete. It follows that the written charge can be regarded as issued 'when the document comprising the written charge is completed, with all relevant details and in the form needed for service' (at [20]). Provided this is, in the case of a summary offence (to which the six-month time-limit in the MCA 1980, s. 127, applies), done within six months of the offence in question, the written charge will have been issued in time. His lordship went on to observe (at [22]) that, if there is 'an inordinate or unwarranted or unjustified but significant delay before such a written charge is served', that may amount to abuse of process. It would therefore 'be wise for prosecutors, as a matter of practice, to ensure in every case that both the issue and service ... are completed before six months from the relevant offences, so as to put paid to any suggestion of such unwarranted delay'.

In *DPP v McFarlane* [2019] EWHC 1895 (Admin), [2020] 1 Cr App R 4 (112), the Divisional Court reiterated (at [28]) that criminal proceedings are 'instituted' by the issue of a written charge pursuant to the CJA 2003, s. 29, regardless of whether a requisition (or a single justice procedure notice, see D5.6) is issued and regardless of whether the charge and requisition (or single justice procedure notice) are served on the accused. It was also held that the s. 29 procedure is available where the prosecution sought to add one or more new charges to existing proceedings for which the attendance of the accused has already been secured. This includes a requirement to issue a requisition, even if it serves no practical purposes (per Males LJ, at [18]). The effect of this part of the decision is now enshrined in CrimPR 7.3(3) (see Supplement, R7.3), which provides that a prosecutor who alleges an offence against an accused who is due to attend, or attends, court in response to another allegation, must set out the additional allegation in terms that comply with r. 7.3(1) (see D5.14) and, as soon as practicable, either serve the additional allegation on the court officer and the defendant, or present the additional allegation orally to the court, with a written statement of that allegation. In *McFarlane* it was held that failure to issue a requisition and/or failure to serve the documents is a procedural defect that does not render the institution of proceedings a nullity (at [24]). To the extent that such failure causes prejudice to an accused, 'the court's jurisdiction to stay proceedings as an abuse of process provides a sufficient remedy'. In the case under consideration, where D was already before the Court, there was no question of any prejudice at all. It is likely that the same principles would apply even though the requirement to serve a written charge and requisition in such a case is now contained in the CrimPR.

In *Young v DPP* [2020] EWHC 976 (Admin), the issue again arose whether proceedings for a summary offence had been commenced within the required six months. The Administrative Court confirmed that, whether or not the magistrates purport to act under the MCA 1980, s. 8A (pre-trial rulings), whether proceedings have been commenced in time is a matter that is appropriate to be dealt with by a preliminary ruling. The Court reiterated (at [35]) that:

> … the only document the issue of which within six months of the offence is relevant to the question of jurisdiction is the written charge. If the written charge was issued within that six-month period, ... it is irrelevant to that question of jurisdiction when the SJPN was issued or whether it was issued and served at the same time as the written charge.

Single Justice Procedure Notice

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D5.6

The CJA 2003, s. 29, as amended by the CJCA 2015, s. 46, provides that, where a 'relevant prosecutor' issues a written charge, either a 'requisition' or a 'single justice procedure notice' must be issued at the same time. A single justice procedure notice requires the recipient to serve on the magistrates' court specified in the notice a written notification stating whether the recipient desires to plead guilty or not guilty and, if the intended plea is guilty, whether the case should be dealt with in accordance with the single justice procedure set out in the MCA 1980, s. 16A (CJA 2003, s. 29(2B)). This procedure is limited to cases where the accused has attained the age of 18, is charged with a summary offence that does not carry imprisonment, intends to plead guilty and does not object to the matter being dealt with by a single justice without a hearing (and therefore without requiring the accused to attend court).

Applying for the Issue of a Summons

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D5.7

The Application ('Information') The written charge and requisition procedure is not available in the case of private prosecutions (i.e. prosecutions where the prosecutor is not a 'relevant prosecutor', as defined by the CJA 2003, s. 29(5)); these must be commenced by making an application to the magistrates' court for the issue of a summons. Historically, this has been known as 'laying information', though this phrase does not appear in CrimPR Part 7. The CJA 2003, s. 30(4)(b), provides that nothing in s. 29 affects the power of a person who is not a relevant prosecutor to serve an information for the purpose of obtaining the issue of a summons, or a warrant, under the MCA 1980, s. 1.

Under CrimPR 7.2(1) (see Supplement, R7.2) a prosecutor who wants the court to issue a summons must either serve a written application on the court, or present an application orally to the court (but with a written record of the allegation(s) made by the prosecutor). By virtue of CrimPR 7.2(3), the application must (a) set out the allegation(s) made by the applicant (in accordance with r. 7.3), and (b) if there is a time-limit for prosecution of the offence(s), demonstrate that the application is made in time. In *Food Standards Agency v Bakers of Nailsea Ltd* [2020] EWHC 3632 (Admin), the Divisional Court said (*obiter,* at [34(iv)]) that, to satisfy the latter requirement, 'there must at least be a reference to the applicable time limit, otherwise it is not “demonstrated” that the application is made in time'; this suggests that the time-limit must be specifically referred to, and that there must be a statement that the present proceedings are issued in compliance with that time-limit. Rather surprisingly, the Court rejected the argument that it was not sufficient that it was merely apparent from the application (setting out the date of the alleged offence and the date of the application) that it is in time (at [34(v)]).

Unless the prosecution is being brought by or on behalf of a 'public authority' (as defined by the Prosecution of Offences Act 1985, s. 17(6), which governs recovery of prosecution costs, and includes the police, the CPS, government departments, and local authorities), the application must also set out concisely the grounds for asserting that the accused has committed the alleged offence(s), and must disclose details of any previous such application by the same applicant in respect of any allegation now made, and of any current or previous proceedings brought by another prosecutor in respect of any of the allegations now made. The application must also include a statement that, to the best of the applicant's knowledge, information and belief, the allegations contained in the application are substantially true, the evidence on which the applicant relies will be available at the trial, and that the application discloses all the information that is material to what the court must decide (CrimPR 7.2(6)). Where the latter statement is made orally, it must (unless the court directs otherwise) be made on oath or affirmation (r. 7.2(7)).

D5.8

CrimPR 7.2 refers to 'a prosecutor' applying for the issue of a summons. It is questionable whether an application for a summons may be served on behalf of an unincorporated association. It seems to follow from *Rubin v DPP* [1990] 2 QB 80 that an application for a summons should be served by a named, actual person and must disclose the identity of that person. However, in *Ealing Justices, ex parte Dixon* [1990] 2 QB 91, Woolf LJ said that he had reservations as to the reasoning which had underpinned the conclusion reached in *Rubin,* that a prosecution must

be by an individual rather than a corporate person. Nonetheless, his lordship said (at p. 101) that he would 'regard it as preferable' for an individual to be named, albeit that the individual is acting on behalf of a body corporate.

In *Norwich Justices, ex parte Texas Homecare* [1991] Crim LR 555, the applications had been signed by the senior environmental health officer, who had no authority to do so under the relevant legislation. The applications were later amended to substitute the signature of the person who did have the necessary authority, but the amendment took place after the six-month deadline for commencing the prosecution had elapsed. The Divisional Court quashed the convictions, holding that where the person applying for a summons has no authority to do so, the application is a nullity, and this was not curable by amendment.

D5.9

Service of the Application Service of written applications is governed by CrimPR Part 4 (see Supplement, R4.1 ***et seq.*)**. Rule 4.2(2) states that, where electronic service of a document is permitted by r. 4.6, 'the general rule is that the person serving it must use that method'. Otherwise, under r. 4.3(1)(e), a document maybe served on the court 'by handing it to a court officer with authority to accept it at the relevant court office'; under r. 4.4, a document may be served by leaving the document at or sending it by first class post to the relevant court office, or via the Document Exchange (r. 4.5). Rule 4.11 states that, where a document is handed over, it is served that day; where it is sent by post or via the DX, the second business day after the day on which it was posted or left at the DX; where it is sent by email, it is served the same day if sent no later than 2.30 p.m. (otherwise, it is served the following day). In *Begum v Luton Borough Council* [2018] EWHC 1044 (Admin), [2018] 1 WLR 3792, an application for several summonses was left with a court security guard. The guard did not have authority to accept documents. The Divisional Court held that the recipient must have authority to receive the document on behalf of the court. It followed that the application was to be regarded as having been left at the court office (and so, under r. 4.11(2)(a), deemed to have been served the following business day), not served on a court officer (and deemed to have been served the same day). It should be noted that the CrimPR do not specify who has authority to receive documents: that is a matter for HM Courts and Tribunals Service.

The Summons

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D5.10

The MCA 1980, s. 1(1), provides that:

(1) On an information being laid before a justice of the peace that a person has, or is suspected of having, committed an offence, the justice may issue—

(a) a summons directed to that person requiring him to appear before a magistrates' court to answer the information, or

(b) a warrant to arrest that person and bring him before a magistrates' court.

A justices' clerk (or an assistant clerk who has been specifically authorised by the justices' clerk for that purpose) may issue a summons but not a warrant (Justices' Clerks Rules 2005 (SI 2005 No. 545), sch. 1, paras. 1 and 2).

D5.11

Decision to Issue a Summons The decision whether to issue a summons 'is a judicial function which must, therefore, be performed judicially' (per Lord Roskill in *Manchester Stipendiary Magistrate, exparte Hill* [1983] 1 AC 328 at pp. 342F—343D). The exercise of this function was considered by the Divisional Court in *R (Kay) v Leeds Magistrates' Court* [2018] EWHC 1233 (Admin), [2018] 4 WLR 91. The Court referred (at [21]—[22]) to a line of authority starting with *West London Metropolitan Stipendiary Magistrate, ex parte Klahn* [1979] WLR 933 (per Lord Widgery CJ, at pp. 935F—936E), and summarised the relevant principles thus:

(1) The magistrate must ascertain whether the allegation is an offence known to the law, and if so whether the essential ingredients of the offence are prima facie present; that the offence alleged is not time-barred; that the court has jurisdiction; and whether the informant has the necessary authority to prosecute.

(2) If so, generally the magistrate ought to issue the summons, unless there are compelling reasons not to do so — most obviously that the application is vexatious (which may involve the presence of an improper ulterior purpose and/or long delay); or is an abuse of process; or is otherwise improper.

(3) Hence the magistrate should consider the whole of the relevant circumstances to enable him to satisfy himself that it is a proper case to issue the summons and, even if there is evidence of the offence, should consider whether the application is vexatious, an abuse of process, or otherwise improper.

(4) Whether the applicant has previously approached the police may be a relevant circumstance.

(5) There is no obligation on the magistrate to make enquiries, but he may do so if he thinks it necessary.

(6) A proposed defendant has no right to be heard, but the magistrate has a discretion to: (a) require the proposed defendant to be notified of the application; (b) hear the proposed defendant if he thinks it necessary for the purpose of making a decision.

The Court went on to discuss what was described as the 'duty of candour' when making such applications. Reference was made (at [24]) to *Grays Justices, ex parte Low* [1988] 3 All ER 834, where Nolan J said (at p. 837J)

that 'the withholding of material information is in itself a critical factor in determining whether a summons should be set aside as an abuse of the process of the court'. The Court then pointed out (at [25]) that this duty has been described in a number of ways, including as a duty of 'full and frank disclosure'; a duty 'not to mislead the judge in any material way'; a duty to disclose 'any material which is potentially adverse to the application'. At [26], the Court quoted the words of Hughes LJ in *Re Stanford International Bank Ltd* [2010] EWCA Civ 137, [2011] Ch 33 (at [191]):

> In effect a prosecutor seeking an *ex parte* order must put on his defence hat and ask himself what, if he were representing the defendant or a third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge.

If a summons is issued in a case where it should not have been, it is open to the defendant to apply to the magistrates' court to stay the proceedings as an abuse of process (see D3.66 ***et seq.)***

In *R (Johnson) v Westminster Magistrates' Court* [2019] EWHC 1709 (Admin), [2019] 2 Cr App R 30 (344), the Court reiterated (at [7]) that, when determining whether to issue a summons, a magistrate 'must ascertain whether the allegation is of an offence known to law, and if so whether the essential ingredients of the offence are prima facie present'. Where it is argued that the magistrate erred in law by reaching a decision that no magistrate, properly directing him or herself as to the ingredients of the offence, could reasonably have reached, this is a public law challenge that is therefore amenable to judicial review (see [17]—[19]).

D5.12

In *R (Charlson) v Guildford Magistrates' Court* [2006] EWHC 2318 (Admin), [2006] 1 WLR 3494, the Divisional Court considered the approach to be adopted by magistrates if they are considering whether to issue a summons for a private prosecution where the CPS had already brought and discontinued a prosecution arising out of the same events. Silber J said (at [19]) that, where justices are considering whether to accede to an application to issue a summons for a private prosecution where the CPS have already brought a prosecution which is still proceeding, they should, in the absence of special circumstances, be slow to issue a summons at the behest of a private prosecutor.

D5.13

Delay in Issue of Summons The MCA 1980, s. 1, does not require that the issue of a summons must follow immediately upon the consideration of the application by the court (*Fairford Justices, ex parte Brewster* [1976] QB 600). It is open to the prosecutor to serve the application on the court and then suggest that a summons should not be issued immediately (e.g., because the accused is out of the country and service could not be effected for a considerable time). However, if the delay between the making of the application and the issue of the summons is so great as to be unreasonable and to cause prejudice, then the High Court has a discretion to intervene by way of judicial review (see D29.25 ***et seq***.) and quash the summons (*Ex parte Brewster* atp. 604F—H). Moreover, an application for a summons should be served on the court with the intention of having the consequent summons served as soon as reasonably possible. Therefore, if the prosecutor has not in fact decided whether to proceed at the time of applying for the summons but is concerned merely that any possible prosecution should not be out of time, this conduct could amount to an abuse of the process of the court and the magistrates therefore had the power to stay the proceedings if the prosecutor then decided to proceed (*Brentford Justices, ex parte Wong* [1981] QB 445).

Content of the Written Charge or Application for a Summons

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D5.14

CrimPR 7.3(1) (see Supplement, R7.3) provides that an application for a summons (or for an arrest warrant) or a written charge must contain:

(a) a statement of the offence which describes the offence 'in ordinary language' and (if the offence is created by statute) identifies the legislation that creates it; and

(b) sufficient particulars of the conduct constituting the commission of the offence to make clear what the prosecutor alleges against the defendant (including the value of any damage or theft alleged where that value is known and where it affects the exercise of the court's powers, as will be the case with criminal damage where the value involved does not exceed £5,000, and shoplifting where the value involved does not exceed £200: see D6.20 and D6.27 respectively).

Where a number of incidents, taken together, amount to a course of conduct (having regard to the time, place or purpose of commission), those incidents may be included in the allegation (r. 7.3(2)). Moreover, a single document may contain more than one charge (r. 7.2(9)).

Under r. 7.4(3) (see Supplement, R7.4), a requisition or summons must contain a notice setting out when and where the accused must attend the court, and must specify each offence in respect of which it has been issued. Additionally, a summons must identify the issuing court, and a requisition must identify the person under whose authority it is issued.

Beyond the general statement in r. 7.3 that the offence that is alleged should be described in ordinary language and give sufficient particulars of the conduct alleged, there is little guidance on how it should be drafted. However, reference to a particular statutory provision may cure an apparent defect by making plain what might otherwise be ambiguous (*Karpinski v City of Westminster* [1993] Crim LR 606, followed in *DPP v Short* [2001] EWHC Admin 885).

D5.15

Insufficient Particulars If insufficient particulars of the offence are given, an application for further particulars may be made at any time after the charge has been preferred (*Aylesbury Justices, ex parte Wisbey* [1965] 1 All ER 602 at p. 345). In *Nash v Birmingham Crown Court* [2005] EWHC 338 (Admin), it was held that if documents that are served fail to give sufficient information to the accused as to the nature of the charge that is alleged, that does not of itself render the proceedings a nullity or any resulting conviction unsafe, provided that the requisite information is given to the accused in good time (so as to be able to answer the allegations that are being made). The accused is entitled to that information and its provision is capable of curing the defect in the summons or written charge (per Stanley Burnton J at [26]). In such a case it may well be appropriate for the prosecution to apply to amend the wording of the charge (under the MCA 1980, s. 123), with the defence being granted an adjournment if they may have been misled by the original error. In *R (Mohamed) v London Borough of Waltham Forest* [2020] EWHC 1083 (Admin), [2020] 1 WLR 2929, the Divisional Court reiterated (at [24]) that 'if insufficient information has been provided by a prosecutor to a magistrate to justify the issue of a summons, but a summons has in fact been issued, the subsequent criminal proceedings do not become a nullity'. This is because 'the subsequent provision of

sufficient information may remedy the earlier deficiency of information so that the criminal proceedings are fair'. The Court added that 'if sufficient information could never be provided to the magistrate, the Court may quash the decision to issue a summons based on the insufficient information'.

Service of the Summons or Requisition

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D5.16

A summons or requisition may be served on an individual by handing it to the individual (CrimPR 4.3(1)(a)) or by leaving it at, or sending it by first class post to, an address where it is reasonably believed that the individual will receive it (r. 4.4(1) and (2)(a)).

Service of a summons or requisition on a corporation may be effected by handing it to a person holding a senior position in that corporation (r. 4.3(1)(b)) or by leaving it at, or sending it by first class post to, its principal office in England and Wales or, if there is no readily identifiable principal office, any place in England and Wales where it carries on its activities or business (r. 4.4(1) and (2)(b)).

Issue of Warrant for Arrest

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D5.17

The MCA 1980, s. 1(1)(b), provides that whenever a justice has power to issue a summons, it is possible alternatively to issue a warrant for the arrest of the person named in the application, provided that:

(a) the application is in writing (s. 1(3); CrimPR 7.2(2)); and

(b) where the person in respect of whom the warrant is to be issued has attained the age of 18, the offence to which the warrant relates is an indictable offence or is punishable with imprisonment or else the person's address is not sufficiently established for a summons, or a written charge and requisition, to be served on that person (s. 1(4); CrimPR 7.2(4)).

It is submitted that a magistrate should not issue a warrant if a summons or requisition, as the case may be, would appear to be an effective means of securing the accused's attendance before the court. Moreover, given that a police officer may arrest (without warrant) a person for any offence provided that the officer has reasonable grounds for believing that the arrest is necessary (for example) to allow the prompt and effective investigation of the offence or to prevent any prosecution for the offence from being hindered by the disappearance of the suspect (see the PACE 1984, s. 24, and D1.14), an application for an arrest warrant will generally be unnecessary, as the suspect can be arrested without one. It follows that the use of a warrant for arrest issued under s. 1 of the 1980 Act is the least common means of commencing proceedings.

Whenever magistrates issue an arrest warrant they have a discretion to 'back it for bail', i.e. they may direct that, having been arrested, the person arrested shall thereafter be bailed by the police to attend court on a named day (see s. 117 of the 1980 Act). The backing for bail may be unconditional or conditional on the accused providing sureties.

Under the MCA 1980, s. 1(4A), where a person who is not a relevant prosecutor authorised to issue requisitions applies for a summons in respect of a qualifying offence (i.e. an offence listed in s. 1(4C)) committed outside the UK, an arrest warrant can be issued only with the consent of the DPP.

D5.18

The MCA 1980, s. 1(6), specifically provides that, if the offence alleged is indictable (this term includes either-way offences), a warrant for arrest may be issued under s. 1 notwithstanding that a summons (or written charge and requisition) has already been issued. If the offence is summary and the process initially takes the form of a summons or a requisition, it would seem that there is no power to issue a warrant under s. 1, although circumstances may subsequently arise which justify a warrant under other provisions of the Act.

Effect of Defect in Process on Jurisdiction of Court

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D5.19

The jurisdiction of a magistrates' court to determine mode of trial for an either-way offence, to try such an offence summarily or to send it to the Crown Court to be tried on indictment is dependent, *inter alia,* on the accused appearing or being brought before the court (MCA 1980, ss. 2(3) to (4) and 18). However, there is no express requirement in those provisions that the accused's presence shall have been obtained by lawful means. Therefore, if the accused in fact appears before the court (e.g., in answer to a summons or requisition) or is brought before the court following arrest, the magistrates will have jurisdiction to deal with the case even if the process by which the attendance of the accused was secured was faulty, provided, of course, that any other preconditions of jurisdiction are satisfied (*Hughes* (1879) 4 QBD 614, approved by the House of Lords in *Manchester Stipendiary Magistrate, ex parte Hill* [1983] 1 AC 328 at pp. 344-5).

DISCLOSURE OF INITIAL DETAILS OF PROSECUTION CASE

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D5.20

CrimPR Part 8 (see Supplement, R8.1 ***et seq***.) applies in every case (r. 8.1(1)). Rule 8.2(1)(a) requires the prosecutor, as soon as practicable (and, in any event, no later than the beginning of the day of the first hearing), to provide to the court 'initial details' of the prosecution case. These initial details of the prosecution case do not have to be supplied automatically to the accused; rather, r. 8.2(2) provides that, if the accused requests the initial details, the prosecutor must serve them as soon as practicable (and, in any event, no later than the beginning of the day of the first hearing); if the accused does not request those details, the prosecutor must make them available to the accused at, or before, the beginning of the day of the first hearing (r. 8.2(3)).

What constitutes 'initial details' of the prosecution case is defined by r. 8.3. Where, immediately before the first hearing in the magistrates' court, the accused was in police custody for the offence charged, initial details comprise a 'summary of the circumstances of the offence', and the accused's criminal record (if any). If the accused is not in custody, initial details comprise: a summary of the circumstances of the offence; any account given by the accused in interview (set out either in the summary or in a separate document); any written witness statements (including exhibits) that the prosecutor has available at that stage and which the prosecutor considers to be material to plea, or to whether the case should be tried in a magistrates' court or the Crown Court, or to sentence; the accused's criminal record (if any); and any available statement of the effect of the offence on victims or their family (or on others).

It is submitted that the reference to a magistrates' court in Part 8 should be taken to include youth courts, and so these provisions apply equally to cases in the youth court where the accused is under the age of 18.

CrimPD I, para. 3A.4, states that the information supplied pursuant to CrimPR 8.3 must be sufficient to allow the accused and the court, at the first hearing, to take an informed view on plea and (where applicable) venue for trial. Paragraph 3A.12 makes the point that, if the accused is on bail and the prosecutor does not anticipate a guilty plea at the first hearing in a magistrates' court, the initial details of the prosecution case that are provided for that first hearing must be sufficient to assist the court to identify the real issues and to give appropriate directions for an effective trial (regardless of whether the trial is to be heard in the magistrates' court or the Crown Court). Moreover, by virtue of para. 3A.13, as well as the material required by CrimPR Part 8, the information required by the Preparation for Effective Trial form must be available to be submitted at the first hearing, and the parties must complete that form.

Failure to Comply

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D5.21

Part 8 contains no specific sanction if the prosecution fail to supply the required initial details. However, it is submitted that it would be open to the magistrates' court to make a direction (under CrimPR 3.5: see Supplement, R3.5) requiring the prosecution to comply. It should be noted that r. 3.5(6)(a) provides that, if a party fails to comply with direction given by the court, the court may (for example) adjourn the hearing (see D5.22). Failure on the part of the prosecution to comply with Part 8 is likely to result in an adjournment (and possibly a costs sanction under r. 3.5(6)(b)).

Moreover, CrimPR 8.4 applies where the prosecutor wants to introduce information contained in a document listed in r. 8.3 but has not served that document on the accused or made that information available. In such cases, the prosecutor will not be permitted to 'introduce that information unless the court first allows the defendant sufficient time to consider it'.

However, it would appear that the court cannot dismiss the charge(s) brought by the prosecution because of non-compliance with a request for initial details of the prosecution case (*King v Kucharz* (1989) 153 JP 336). In *R (AP, MD and JS)* [2001] EWHC Admin 215, the Divisional Court held that, even taking into account the coming into force of the HRA 1998, the court does not have jurisdiction to dismiss proceedings for abuse of process simply on the basis of the failure to supply the information now required by Part 8.

ADJOURNMENTS AND REMANDS ON BAIL AND IN CUSTODY

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Power to Adjourn

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D5.22

At any stage before the case is sent to the Crown Court for trial or before (or during) a summary trial, a magistrates' court may adjourn the proceedings (see the MCA 1980, ss. 10 and 18, and D5.29).

D5.23

A substantial body of case law on the approach to be taken to applications for adjournments (the effect of which was summarised in *Picton* [2006] EWHC 1108 (Admin)) had developed over the years. However, CrimPD VI, para. 24C.6 (see Supplement, CPD.24C), stipulates that the Practice Direction now codifies the relevant principles, that the Practice Direction supersedes those judgments, and that it is to the Practice Direction that magistrates' courts must refer in the first instance.

Paragraphs 24C.5 to 24C.26 address applications to adjourn on the day of the trial. Paragraph 24C.7 emphasises that the 'starting point is that the trial should proceed', and refers to *DPP v Petrie* [2015] EWHC 48 (Admin), where Gross LJ observed (at [19]) that, 'efficiency, expedition, the discouraging of delay and the avoidance of unnecessary hearings are adjuncts of dealing with cases justly and it may be said, in the summary jurisdiction, summarily. Adjournments ... run contrary to these important objectives.' His lordship went on to say (at [20]):

> Although there are of course instances where the interests of justice require the grant of an adjournment, this should be a course of last rather than first resort — and after other alternatives have been considered ... It is essential that parties to proceedings in the magistrates' court should proceed on the basis of a need to get matters right first time; any suggestion of a culture readily permitting an opportunity to correct failures of preparation should be firmly dispelled.

Paragraph 24C.8 adds that a magistrates' court 'may keep in mind that, if appropriate, the court's decision may be re-opened' (under the MCA 1980, s 142, which empowers a magistrates' court to set aside a conviction; see D22.73), and that 'avenues of appeal by way of rehearing or of review are open to the parties' (see D29 on appeals from magistrates' courts).

Paragraph 24C.9 identifies a number of principles that are relevant to applications to adjourn trials:

(a) the court's duty to deal justly with the case, which includes doing justice between the parties;

(b) the court 'must have regard to the need for expedition. Delay is generally inimical to the interests of justice and brings the criminal justice system into disrepute. Proceedings in a magistrates' court should be simple and speedy';

(c) applications for adjournments 'should be rigorously scrutinised and the court must have a clear reason for adjourning. To do this, the court must review the history of the case' (this may of course be taken to militate against repeated adjournments);

(d) where the prosecutor asks for an adjournment, the court must consider not only the interest of the accused in getting the matter dealt with without delay, 'but also the public interest in ensuring that criminal charges are adjudicated upon thoroughly, with the guilty convicted as well as the innocent acquitted'; with a more serious charge, 'the public interest that there be a trial will carry greater weight';

(e) where the accused asks for an adjournment, the court 'must consider whether he or she will be able to present the defence fully without an adjournment and, if not, the extent to which his or her ability to do so is compromised';

(f) the court must consider the consequences of an adjournment and its impact on the ability of witnesses and of the accused accurately to recall events;

(g) the 'impact of adjournment on other cases', since relisting one case 'almost inevitably delays or displaces the hearing of others', and so the 'length of the hearing and the extent of delay in other cases will need to be considered'.

The Practice Direction goes on to address the relevance of fault. Paragraph 24C.10 observes that a potential consequence of the starting point, that the trial should proceed without an adjournment, may be that the prosecutor is unable to prove the prosecution case, or that the accused is unable to explore an issue. However, that 'may be a just consequence of inadequate preparation. Even in the absence of fault on the part of either party it may not be in the interests of justice to adjourn, notwithstanding that an imperfect trial may be the result.' Paragraph 24C.11 makes the point that, if the adjournment is needed because of fault on the part of the applicant, that 'weighs against' granting the adjournment (depending on the 'gravity of the fault'). Paragraph 24C.12 says that a fault will be regarded as serious 'if the relevant act or omission has been repeated, especially where it has caused a previous adjournment, or where there is no reasonable explanation for that act or omission', adding that the 'more serious the default, the less willing the court will be to adjourn'. Another issue that may be relevant where a party has been at fault is whether the other party, if aware of the fault, drew 'attention to that fault promptly and explicitly'; if not, the court 'may look less favourably on any application by that other party for an adjournment, especially if that application might reasonably have been made before the trial date' (para. 24C.13).

Paragraph 24C.14 notes that the length of the adjournment that is sought is a relevant consideration: the 'shorter the necessary adjournment, the less objectionable it will be' (subject to the 'ability of the court to accommodate it without undue impact on other cases'). In any event, courts must 'make every effort to make the adjournment as short as possible, for example by using time vacated by another trial or by conducting the hearing at another court house'. Indeed, in some cases 'it may be possible to achieve a just outcome by a short adjournment to later on the same day'.

If the reason for the application to adjourn is that the applicant 'seeks more time in which to raise or explore an issue', an important consideration is whether that party has 'reasonable grounds' for the late identification of that issue; in the absence of such grounds, failure to ensure early identification of issues 'will constitute a fault' for these purposes (para. 24C.15).

The Practice Direction also addresses failure to serve evidence in time as a basis for seeking an adjournment. Paragraph 24C.21 notes that it should 'rarely be the case that an application to adjourn based on a failure to serve evidence is made on the day of trial. The court is entitled to expect that evidence will have been served in good time and in accordance with the directions of the court.' Paragraph 24C.22 requires the court to 'conduct a rigorous inquiry into the nature of the evidence', and to consider 'whether any of what is sought has been served, and if so when; the volume and the significance of what is sought; and the time likely to be needed for its consideration'. In particular, the court 'must satisfy itself that any material still sought is relevant and that the party seeking it has a right to it'. In some circumstances, 'a failure to serve evidence can be addressed by refusing to admit it instead of by adjourning the trial to allow it to be served'.

Paragraph 24C.24 goes on to state that, where the accused seeks an adjournment on the basis of a prosecution failure to disclose material that ought to have been disclosed under the CPIA 1996 (see D9.13 ***et seq***.), the court 'should consider whether the matter can be resolved by the giving of disclosure immediately'; if not, the court should apply the principles that are applicable where a party is at fault. Paragraph 24C.26 notes that, if the accused has served a defence statement (see D9.30 ***et seq***.) and asks for further disclosure, the court may hear an application under the CPIA 1996, s. 8 (see D9.27 ***et seq)***, immediately, 'provided that there is sufficient time available for the application itself and then for the defence to consider any material disclosed in consequence of it'.

Applications for adjournments where the accused fails to attend are considered at D22.17 ***et seq***., and applications where a witness fails to appear are considered at D22.27.

D5.24

Repeated Applications Where an adjournment has been refused, the court can change its mind only if there is a good reason. A further application should therefore be made only if there has been a material change of circumstances. In *R (Watson) v Dartford Magistrates' Court* [2005] EWHC 905 (Admin), for example, the prosecution had (before the date fixed for trial) sought an adjournment due to the non-availability of two witnesses. The magistrates refused the application. On the date fixed for trial, the prosecution made a further application for an adjournment. This time, the application was successful. The Divisional Court held that the magistrates were wrong to allow the adjournment, since there had not been a change in circumstances since the first request to adjourn the trial. Similarly, in *R (F) v Knowsley Youth Court* [2006] EWHC 695 (Admin), an application for an adjournment was heard by a bench of lay justices on the morning of the day of the trial. The application was refused. In the afternoon, at the beginning of the trial (before a district judge), the prosecution made another application for an adjournment. The district judge, who was made aware that a similar application had been made to a different bench that morning, allowed the application. The defendants sought judicial review of the district judge's decision. It was held that the district judge should have refused the application. In the absence of a change of circumstances, he was not entitled to revisit the decision to refuse an adjournment.

Applications to Vacate Trial

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D5.25

CrimPD VI, para. 24C.30 (see Supplement, CPD.24C), requires that applications to vacate trials should be made 'promptly and in writing, in advance of the date of trial'. Such applications will usually be dealt with 'outside the courtroom', and will be considered in accordance with the principles applicable to adjournments (see D5.23).

Paragraph 24C.31 emphasises that the parties must provide 'full and accurate information to the court to enable it to assess where the interests of justice lie'. An application to vacate should include:

(a) the reason for the application;

(b) a chronology of the case, 'recording the dates of compliance with any directions and of communication between the parties';

(c) an 'assessment of the interests of justice', including an indication of 'the likely effect should the court conclude that the trial should proceed on the date fixed';

(d) any restrictions on the future availability of witnesses;

(e) any likely changes to the number of witnesses or the way in which the evidence will be presented, and any impact on the trial time estimate.

Paragraph 24C.32 stipulates that, on receipt of an application to vacate, each other party should serve their response on the court and on the applicant within two business days (unless the court otherwise directs). Any request for the matter to be determined at a hearing (rather than on the papers) should be served with the application (or response, as the case may be), together with the reasons for that request.

Reasons

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D5.26

Reasons for granting, or refusing, an adjournment should be given, but they do not have to be elaborate, so long as the basis for the decision is clear (*Essen v DPP* [2005] EWHC 1077 (Admin), at [29])).

Challenging Decisions on Adjournments

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D5.27

It is possible to challenge the grant or refusal of an adjournment by way of judicial review (see D29.25 ***et seq.***). However, the Divisional Court will be 'particularly slow' to interfere with a decision to refuse an adjournment, given the discretionary nature of that decision (per Clarke J in *R (CPS) v Uxbridge Magistrates* [2007] EWHC 205 (Admin), at [5]).

In *DPP v Petrie* [2015] EWHC 48 (Admin), Gross LJ said (at [21]) that the grant or refusal of an adjournment 'is a paradigm example of a discretionary case management decision where an appeal ought only to succeed on well-recognised but limited grounds (for example, error of principle, error of law or where the decision can properly be characterised as plainly wrong)'. An example of such a case is *Pari-Jones v CPS* [2018] EWHC 3482 (Admin), where the magistrates' court had refused an adjournment despite the fact that neither D nor her solicitor could attend court because of bad weather. Andrews J, remitting the case for retrial, said (at [12]) that it was 'self-evident that if the magistrates had taken into account all the relevant considerations and if they had balanced [D's] right to a fair trial with the lack of fault caused by the weather conditions, the fact that she had already attended court previously, and all the other relevant considerations, they could not have refused this adjournment'. A similar approach was taken in *R (Parashar) v Sunderland Magistrates' Court* [2019] EWHC 514 (Admin), [2019] 2 Cr App R 3(18), where it was held that 'the decision to fix a date for a trial at which the prosecution expert could attend and the defence expert (whose report had been served in good time) could not was clearly wrong' (per Bean LJ, at [46]). His lordship noted that if the trial had proceeded on that basis, D's ability to present his defence 'would have been seriously compromised and the trial would inevitably have been unfair'. Simler J concurred, saying (at [49]):

> To insist on a trial date on which the prosecution expert was available but the defence expert was not was wrong and would have led to an unfair trial. There is a high public interest in summary trials taking place quickly and on the day set for trial, and in adjournments not being granted absent compelling reasons. But it is also necessary as a matter of fairness and in the interests of justice, where a defence request to vacate a trial date is made, to consider whether, if it is not granted, the defendant will be able fully to present his defence, and if he will not be able to do so, the degree to which the defence will be compromised.

D5.28

Offering No Evidence where Adjournment Refused If the prosecution seek an adjournment but the magistrates refuse to adjourn and the prosecutor offers no evidence, with the effect that the charge is dismissed, the magistrates cannot subsequently hear the case. In *R (O) v Stratford Youth Court* [2004] EWHC 1553 (Admin), key prosecution witnesses failed to attend. The justices refused an adjournment; the prosecution thereupon offered no evidence and the justices dismissed the charge. The prosecutor then discovered that the complainant had by then arrived at court and made a request that the court be reconvened. The magistrates agreed to do so; they overturned their refusal to adjourn and rescinded their dismissal of the charge. It was held by the Divisional Court that, where the prosecution have offered no evidence and the court has dismissed the charge, it is not open to the justices to reopen the case. In such a case, the justices are *functus officio*, and any further hearing against the accused in relation to that matter will inevitably give rise to a successful plea of autrefois acquit on the accused's behalf (per Rose LJ at [8]).

D5.29

Statutory Provisions on Power to Adjourn The power to adjourn is contained in the MCA 1980, ss. 10(1) and 18(4).
Magistrates' Courts Act 1980, ss. 10 and 18

10.— (1) A magistrates' court may at any time, whether before or after beginning to try an information, adjourn the trial, and may do so, notwithstanding anything in this Act, when composed of a single justice.

(2) The court may when adjourning either fix the time and place at which the trial is to be resumed, or, unless it remands the accused, leave the time and place to be determined later by the court.

…

(4) On adjourning the trial of an information the court may remand the accused and, where the accused has attained the age of 18 years, shall do so if the offence is triable either way and—

(a) on the occasion on which the accused first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or

(b) the accused has been remanded at any time in the course of proceedings on the information;

and, where the court remands the accused, the time fixed for the resumption of the trial shall be that at which he is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for section 128(3A) below.

18.— (1) Sections 19to 23 below shall have effect where a person who has attained the age of18 years appears or is brought before a magistrates' court on an information charging him with an offence triable either way and—

(a) he indicates under section 17A above that (if the offence were to proceed to trial) he would plead not guilty, or

(b) his representative indicates under section 17B above that (if the offence were to proceed to trial) he would plead not guilty.

…

(4) A magistrates' court proceeding under sections 19 to 23 below may adjourn the proceedings at any time, and on doing so on any occasion when the accused is present may remand the accused, and shall remand him if—

(a) on the occasion on which he first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or

(b) he has been remanded at any time in the course of proceedings on the information; and where the court remands the accused, the time fixed for the resumption of the proceedings shall be that at which he is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for section 128(3A) below.

D5.30

Remanding the Accused on Adjournments The MCA 1980, s. 128(1), provides that, whenever a magistrates' court has power to remand a person, it may either remand in custody or remand on bail, in accordance with the BA 1976. Accordingly, the references in ss. 10 and 18 to 'remanding' an accused mean either a remand in custody (i.e. committing the accused to custody to be brought before the court at the end of the period of remand or at such earlier time as the court may require), or a remand on bail in accordance with the provisions of the BA 1976 (i.e. directing the accused to appear before the court at the end of the period of the remand or, if bail is made continuous, directing that the accused appear at every time to which the proceedings maybe adjourned) (MCA 1980, s. 128(1) and (4)).

Section 18 governs adjournments until allocation (mode of trial) has been determined. Section 10 applies to appearances for summary offences up until conviction, and to appearances for either-way offences from after mode of trial has been determined in favour of summary trial to conviction. Sections 10(4) and 18(4) provide (in almost identical terms) that, on adjourning proceedings for an either-way offence, the court must remand the accused (on bail or in custody) unless the accused: (a) first appeared in answer to a summons or requisition (as opposed to being brought before the court in custody or appearing in answer to police bail); and (b) has not been remanded at an earlier hearing.

It follows that the magistrates may, at their discretion, adjourn without remanding the accused: (a) at all appearances for summary offences up to conviction; and (b) at appearances for either-way offences up to either a determination for trial on indictment or summary conviction, provided the accused initially appeared in answer to a summons or requisition and has not subsequently been remanded. In *R (Iqbal) v Canterbury Crown Court* [2020] EWHC 452 (Admin), [2020] 2 Cr App R 1 (1), Carr J (at [48]), having noted that the Court had been informed that defence solicitors currently advise their clients that, if they are released under investigation and then receive a postal requisition, they would not be remanded in custody if they comply (and have in the past complied) with their attendance requirements, unless there is a material change in circumstances, said that if this was indeed a practice, 'there is no proper or principled basis for it. The full history and background will be taken into account by a court ... but there can never be any guarantee of bail once a defendant is charged.' Nonetheless, it is submitted that, where a defendant appears in court in response to a written charge and requisition, the question of bail arises only if the magistrates' court chooses to remand the defendant rather than simply adjourning the case; in such a case, the question of remanding the accused is likely to arise only if there appears to be a good reason for considering a remand in custody.

Where a case is simply adjourned, there is no need to fix the date for the next hearing at the time of adjourning, whereas if there is a remand the adjournment date must be fixed forthwith and is the date to which the accused is remanded. An accused who is not remanded and who then fails to appear on the date to which the case is adjourned commits no offence, but it may be possible either for an arrest warrant to be issued or for the proceedings to be conducted in the absence of the accused. An accused who has been remanded on bail and who then fails without reasonable cause to surrender to custody commits an offence under the BA 1976.

Period of Remand in Custody

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D5.31

The maximum period for which a magistrates' court may remand an accused in custody is 'eight clear days' (MCA 1980, s. 128(6)). This is subject to the following exceptions:

(a) following summary conviction, there may be a remand in custody of up to three weeks (four weeks if the remand is not in custody) for inquiries, such as a pre-sentence report, to be made into the most suitable method of dealing with the accused (MCA 1980, s. 10(3));

(b) following the court being satisfied that the accused 'did the act or made the omission charged', there may be a remand in custody of up to three weeks (four weeks if on bail) for a medical examination and reports if the court considers that an inquiry should be made into the physical or mental condition of the accused before deciding how to proceed (PCC(S)A 2000, s. 11(1) and (2));

(c) where mode of trial is determined in favour of summary trial but the court is not constituted so as to proceed immediately to trial (e.g., because it consists of a single lay justice), there may be a remand in custody to a date on which the court will be properly constituted even if the remand is for a period exceeding eight clear days (MCA 1980, s. 128(6)(c));

(d) where s. 128A of the MCA 1980 applies, a second or subsequent remand in custody may be for up to 28 clear days; and

(e) an accused who is already being detained under a custodial sentence may be remanded in custody for up to 28 clear days or the anticipated release date, whichever is the shorter (MCA 1980, s. 131).

D5.32

Further Remands A person who is brought before the court after an earlier remand may be remanded again (MCA 1980, s. 128(3)). Thus, there maybe several remand hearings before the case is sent to the Crown Court or the commencement of summary trial. The only limitation on the number of remands is the general discretion of magistrates to refuse an adjournment if it would be against the interests of justice (e.g., because they consider that the party requesting the adjournment should have been ready to proceed on the present occasion). By s. 130, a court remanding an accused in custody may order that, for subsequent remands, the accused be brought up before a different magistrates' court nearer to the prison where the accused is to be confined while on remand. That alternate court then enjoys the same powers in relation to remand that the original court would otherwise have.

The MCA 1980, s. 128, is without prejudice to the provisions of s. 129. Under s. 129(1),in the absence of the accused the magistrates may remand the accused to a convenient date, and any restrictions on the period of the remand which would otherwise be imposed by s. 128(6) do not apply. Section 129(1) applies whether the remand is in custody or on bail, but is restricted to cases where non-attendance on the day originally fixed is due to 'illness or accident'. In *Hillman v Governor of Bronzefield Prison* (24 May 2013 unreported), it was held that the failure to produce D in court because of an error in the administrative process is capable of amounting to an 'accident' within the meaning of s. 129(1), thus enabling the magistrates to remand D in custody in her absence. Moreover, by virtue of s. 129(3), where an accused has been remanded on bail, the court may grant bail in the absence of the accused simply by appointing a later time for appearance. Section 129(3) applies only to remands on bail but places no

restrictions on the reasons for which the court may choose to exercise its powers under the subsection. Thus, bail may be granted under s. 129(3) where it becomes apparent during the remand period that the court will not have time to deal with the case on the day originally fixed, or where the accused fails to attend but some acceptable reason is advanced for the non-appearance (not necessarily sickness or accident). Where bail is granted in such a case, the court may also 'enlarge' the recognizances of any sureties (i.e. they will be under an obligation to secure the accused's attendance on the new hearing date).

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Remands in Custody in the Absence of Accused

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D5.33

To avoid the necessity for an accused to be brought before the court in custody when it is apparent that no effective progress in the case will be possible at the hearing to which the accused would otherwise be brought, a remand in custody may take place in the absence of the accused under the MCA 1980, s. 128(3A) to (3E). A remand in absence may take place only if the accused:

(a) has consented (at an earlier hearing) to not being present at future remands (s. 128(3A)(a));

(b) has a legal representative acting in the case, although the representative need not be present in court (s. 128(3B));

(c) has not been remanded in absence on more than two consecutive occasions prior to the present application for remand in absence (s. 128(3A)(b)); and

(d) has not withdrawn consent (s. 128(3A)(d)).

D5.34

To facilitate the giving of consent to remands in absence, it is provided in s. 128(1A) to (1C) that, where magistrates are proposing to remand in custody an accused who is present in court (s. 128(1A)(b)), they shall, assuming the accused is legally represented in court (s. 128(1A)(d)), explain the possibility of further remands being in absence and ask whether the accused consents to that procedure being adopted. It is a precondition of the accused being asked for consent to remands in absence that the legal representative is present in court (s. 128(1B)), whereas (assuming consent has been given) the remands in absence themselves can, and normally do, take place without the attendance of a lawyer, provided the accused still has a lawyer acting in the case. The restriction on the number of consecutive remands in absence to a maximum of three means that the accused cannot be remanded for more than approximately a month without being brought before the court. The accused could, on attending after three remands in absence, agree to the next three remands being in absence. If a case is listed for a formal remand in absence, but it appears to the magistrates that the conditions for such a remand are not in fact satisfied (e.g., because the accused has withdrawn consent or no longer has a legal representative), they must remand the accused for the shortest period possible that will enable the accused to be brought before them (s. 128(3C) to (3D)). It should be noted that, although remands in absence are pure formalities, the rule that remands in custody shall not exceed eight clear days must still be complied with, in the sense that the accused's case must be listed within each eight-day period so that the magistrates can formally remand to the next appropriate date.

Remands in absence are limited to cases where the court is adjourning under ss. 5, 10(1) or 18(4) of the 1980 Act (i.e. adjournments prior to or during summary trial or sending the case for Crown Court trial). If the adjournment is under s. 10(3) or the PCC(S)A 2000, s. 11 (see D5.30), the period of a custodial remand may extend to three weeks but there is no power to remand in absence.

Remands in Custody for up to 28 Days

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D5.35

Under s. 128A of the MCA 1980, a magistrates' court may remand an accused in custody for a period exceeding eight clear days if (by virtue of s. 128A(2)):

(a) the accused has previously been remanded in custody for the same offence;

(b) the accused is now before the court; and

(c) the court (after allowing the parties to make representations) has fixed a date on which it expects that it will be possible for the next stage in the proceedings, other than a hearing relating to a further remand in custody or on bail, to take place.

This final requirement is that the next hearing should be an effective hearing. In the case of either-way offences, the next effective hearing after the accused becomes eligible for an extended remand will be the hearing to determine plea and allocation. The maximum period of a remand under s. 128A is 28 clear days or to the date of the next effective hearing, whichever is the shorter (s. 128A(2)(i) and (ii)). Section 128A does not apply on the occasion of a first remand in custody (s. 128A(2)(a)), although the accused may at that stage be invited to consent to the next three remands being in absence (see D5.32). The making of a remand under s. 128A does not affect the right of the accused to apply for bail during the period of that remand (s. 128A(3)). The preservation of the right to make a bail application even though there has been a 28-day remand in custody entitles the defence to put before the magistrates immediately any relevant change in circumstances that arises during the period of the remand.

Remand on Bail

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D5 Starting a Prosecution and Preliminary Proceedings in Magistrates' Courts > ADJOURNMENTS AND REMANDS ON BAIL AND IN CUSTODY

D5.36

Under the MCA 1980, s. 128(6)(a), the accused may be remanded for a period greater than eight clear days if the remand is on bail and both the accused and the prosecution agree to a longer period of remand.

End of Document

Statutory Provisions on Duration of Remands

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D5 Starting a Prosecution and Preliminary Proceedings in Magistrates' Courts > ADJOURNMENTS AND REMANDS ON BAIL AND IN CUSTODY

D5.37
Magistrates' Courts Act 1980, ss. 128 to 131

128.— (1) Where a magistrates' court has power to remand any person, then, subject to section 4 of the Bail Act 1976 and to any other enactment modifying that power, the court may—

(a) remand him in custody, that is to say, commit him to custody to be brought before the court, subject to subsection (3A) below, at the end of the period of remand or at such earlier time as the court may require; or

(b) where it is trying an offence alleged to have been committed by that person or has convicted him of an offence, remand him on bail in accordance with the Bail Act 1976, that is to say, by directing him to appear as provided in subsection (4) below; or

[(c) relates to bail in non-criminal proceedings.]

(1A) Where—

(a) on adjourning a case under section 10(1), 17C, 18(4) or 24C above the court proposes to remand or further remand a person in custody; and

(b) he is before the court; and

(c) [repealed]; and

(d) he is legally represented in that court,

it shall be the duty of the court—

(i) to explain the effect of subsections (3A) and (3B) below to him in ordinary language; and

(ii) to inform him in ordinary language that, notwithstanding the procedure for a remand without his being brought before a court, he would be brought before a court for the hearing and determination of at least every fourth application for his remand, and of every application for his remand heard at a time when it appeared to the court that he had no solicitor acting for him in the case.

(IB) For the purposes of subsection (1A) above a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court.

(IC) After explaining to an accused as provided by subsection (1A) above the court shall ask him whether he consents to hearing and determination of such applications in his absence.

(2) Where the court fixes the amount of a recognizance under subsection (1) above or section 8(3) of the Bail Act 1976 with a view to its being taken subsequently the court shall in the meantime commit the person so remanded to custody in accordance with paragraph (a) of the said subsection (1).

(3) Where a person is brought before the court after remand, the court may further remand him.

(3A) Subject to subsection (3B) below, where a person has been remanded in custody and the remand was not a remand under section 128A below for a period exceeding eight clear days, the court may further remand him (otherwise than in the exercise of the power conferred by that section) on an adjournment under section 10(1), 17C, 18(4) or 24C above without his being brought before it if it is satisfied—

(a) that he gave his consent, either in response to a question under subsection (1C) above or otherwise, to the hearing and determination in his absence of any application for his remand on an adjournment of the case under any of those provisions; and

(b) that he has not by virtue of this subsection been remanded without being brought before the court on more than two such applications immediately preceding the application which the court is hearing; and

(c) [repealed]; and

(d) that he has not withdrawn his consent ...

(3B) The court may not exercise the power conferred by subsection (3A) above if it appears to the court, on an application for a further remand being made to it, that the person to whom the application relates has no solicitor acting for him in the case (whether present in court or not).

(3C) Where—

(a) a person has been remanded in custody on an adjournment of a case under section 10(1), 17C, 18(4) or 24C above; and

(b) an application is subsequently made for his further remand on such an adjournment; and

(c) he is not brought before the court which hears and determines the application; and

(d) that court is not satisfied as mentioned in subsection (3A) above, the court shall adjourn the case and remand him in custody for the period for which it stands adjourned.

(3D) An adjournment under subsection (3C) above shall be for the shortest period that appears to the court to make it possible for the accused to be brought before it.

(3E) Where—

(a) on an adjournment of a case under section 10(1), 17C, 18(4) or 24C above a person has been remanded in custody without being brought before the court; and

(b) it subsequently appears—

(i) to the court which remanded him in custody; or

(ii) to an alternate magistrates' court to which he is remanded under section 130 below,

that he ought not to have been remanded in custody in his absence, the court shall require him to be brought before it at the earliest time that appears to the court to be possible.

(4) Where a person is remanded on bail under subsection (1) above the court may . direct him to appear .—

(a) before that court at the end of the period of remand; or

(b) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned;

and, where it remands him on bail conditionally on his providing a surety when it is proceeding with a view to transfer for trial, may direct that the recognisance of the surety be conditioned to secure that the person so bailed appears—

(c) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned and also before the Crown Court in the event of the person so bailed being committed for trial there.

(5) Where a person is directed to appear or a recognisance is conditioned for a person's appearance in accordance with paragraph (b) or (c) of subsection (4) above, the fixing at any time of the time for him next to appear shall be deemed to be a remand; but nothing in this subsection or subsection (4) above shall deprive the court of power at any subsequent hearing to remand him afresh.

(6) Subject to the provisions of sections 128A and 129 below, a magistrates' court shall not remand a person for a period exceeding eight clear days, except that—

(a) if the court remands him on bail, it may remand him for a longer period if he and the other party consent;

(b) where the court adjourns a trial under section 10(3) or section 11 of the Powers of Criminal Courts (Sentencing) Act 2000, the court may remand him for the period of the adjournment;

(c) where a person is charged with an offence triable either way, then, if it falls to the court to try the case summarily but the court is not at the time so constituted, and sitting in such a place, as will enable it to proceed with the trial, the court may remand him until the next occasion on which it will be practicable for the court to be so constituted, and to sit in such a place, as aforesaid, notwithstanding that the remand is for a period exceeding eight clear days.

[(7) and (8) concern committing an accused to police detention for a period not exceeding three clear days where there is a need to question him about other offences — see D1.42.]

128A.— (1) [Power of Secretary of State to implement this section in specified areas or for specified proceedings.]

(2) A magistrates' court may remand the accused in custody for a period exceeding eight clear days if—

(a) it has previously remanded him in custody for the same offence; and

(b) he is before the court,

but only if, after affording the parties an opportunity to make representations, it has set a date on which it expects that it will be possible for the next stage in the proceedings, other than a hearing relating to a further remand in custody or on bail, to take place, and only—

(i) for a period ending not later than that date; or

(ii) for a period of 28 clear days, whichever is the less.

(3) Nothing in this section affects the right of the accused to apply for bail during the period of remand.

[(4) Making of statutory instruments under the section.]

129.— (1) If a magistrates' court is satisfied that any person who has been remanded is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period for which he was remanded, the court may, in his absence, remand him for a further time; and section 128(6) above shall not apply.

(2) Notwithstanding anything in section 128(1) above, the power of a court under subsection (1) above to remand a person on bail for a further time—

(a) where he was granted bail in criminal proceedings, includes power to enlarge the recognisance of any surety for him to a later time;

[(b) concerns bail in non-criminal proceedings.]

(3) Where a person remanded on bail is bound to appear before a magistrates' court at any time and the court has no power to remand him under subsection (1) above, the court may in his absence—

(a) where he was granted bail in criminal proceedings, appoint a later time as the time at which he is to appear and enlarge the recognisances of any sureties for him to that time;

[(b) concerns bail in non-criminal proceedings];

and the appointment of the time ... shall be deemed to be a further remand.

[(4) concerns enlargement of a surety's recognisance upon sending for trial.]

130.— (1) A magistrates' court adjourning a case under section 10(1), 17C, 18(4) or 24C above, and remanding the accused in custody, may, if he has attained the age of 17, order that he be brought up for any subsequent remands before an alternate magistrates' court nearer to the prison where he is to be confined while on remand.

[(2) to (5) and sch. 5 contain detailed provisions governing remands to alternate magistrates' courts.]

131.— (1) When a magistrates' court remands an accused person in custody and he is already detained under a custodial sentence, the period for which he is remanded may be up to 28 clear days.

(2) But the court shall inquire as to the expected date of his release from that detention; and if it appears that it will be before 28 clear days have expired, he shall not be remanded in custody for more than eight clear days or (if longer) a period ending with that date.

PRE-TRIAL HEARINGS BY TELEVISION LINK

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D5 Starting a Prosecution and Preliminary Proceedings in Magistrates' Courts

D5.38

The CDA 1998, ss. 57A, 57B, 57D and 57E, enable the court to direct that an accused who is in custody may appear at preliminary hearings, and at sentencing hearings, via a 'live link' from prison or from a police station. Under s. 57A(2), the accused is to be treated as present in court when attending via a live link (defined, by s. 57A(3), so as to require that that the accused be able to see and hear, and to be seen and heard by, the court during the hearing). CrimPR 3.2(4) (see Supplement, R3.2) strongly encourages the use of live links; moreover, CrimPD I, para. 3N.1 (see Supplement, CPD.3N), says that where it is 'lawful and in the interests of justice to do so, courts should exercise their statutory and other powers to conduct hearings by live link or telephone'. Paragraph 3N.4 emphasises that all participants must be able to hear and, in the case of a live link, see each other clearly, and notes that, if a hearing is open to the public, use of media such as Skype or Facetime, which are not generally considered secure from interception, may not be objectionable (as the information is in the public domain anyway). Paragraph 3N.8 states that, in principle, nothing prohibits the conduct of a pre-trial hearing by live link or telephone with each participant, including the member(s) of the court, in a different location (sometimes described as a 'virtual hearing'), so long as the hearing can be witnessed by the public (e.g. by public attendance at a venue from which the participants can all be seen and heard (if by live link), or heard (if by telephone)).

The Coronavirus Act 2020, s. 54 and sch. 24, have made temporary modifications to the CDA 1998, ss. 57A to 57B and sch. 3A, to give the court power to direct 'live link' attendance at 'preliminary hearings'.

Preliminary Hearings where Accused in Custody

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D5 Starting a Prosecution and Preliminary Proceedings in Magistrates' Courts > PRE-TRIAL HEARINGS BY TELEVISION LINK

D5.39

Under the CDA 1998, s. 57B, the Crown Court or a magistrates' court (for these purposes, this includes a single justice: s. 57B(7)) may direct that an accused who is likely to be held in custody during a preliminary hearing is to attend that hearing byway of live link (a 'live link direction'). Under s. 57B(4), if there is a hearing in relation to the making (or rescinding) of such a direction, the court may require or permit attendance via a live link. It follows that the accused does not have to be physically present in court for a live link direction to be given (and so the court may give such a direction in writing or immediately before the start of a hearing with the accused present via a live link). Under s. 57B(5), the court is required to give the parties the opportunity to make representations before giving (or rescinding) a live link direction. If a magistrates' court decides not to give a live link direction where it has power to do so, it must state its reasons in open court and record the reasons in the court register (s. 57B(6)).

Preliminary Hearings where Accused at Police Station

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D5 Starting a Prosecution and Preliminary Proceedings in Magistrates' Courts > PRE-TRIAL HEARINGS BY TELEVISION LINK

D5.40

The CDA 1998, s. 57C, empowers a magistrates' court (but not the Crown Court) to direct the accused to attend a preliminary hearing via a live link from a police station. By virtue of s. 57C(3) and (4), this provision applies both to an accused who is detained at the police station in connection with the offence in question, and to an accused who has been bailed to return to the police station for a live link appearance in connection with the offence, known as 'live link bail' (PACE 1984, s. 47(3), allows the police to grant bail subject to a duty to appear at a police station for the purpose of a live link hearing). The CDA 1998, s. 57C(10), makes it clear that an accused answering to 'live link bail' is to be treated as having surrendered to the custody of the court as from the time when it makes a live link direction in respect of that accused. Under s. 57C(6A), alive link direction maybe given only if the court is satisfied that it is not contrary to the interests of justice to do so. However, the consent of the accused is not required.

Proceeding to Sentence

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D5 Starting a Prosecution and Preliminary Proceedings in Magistrates' Courts > PRE-TRIAL HEARINGS BY TELEVISION LINK

D5.41

Under the CDA 1998, s. 57D, where an accused attends a preliminary hearing over a live link (pursuant to s. 57B or 57C) and pleads guilty to the offence (or, if it is an either-way offence, indicates a guilty plea and so is deemed to have pleaded guilty under the 'plea before venue' procedure), and the court proposes to proceed immediately to sentencing, the accused may continue to attend through the live link provided the court is satisfied that it is not contrary to the interests of justice for this to take place (s. 57D(2)). Section 57D(3) provides that, where a preliminary hearing over a live link continues as a sentencing hearing, the offender can give oral evidence over the live link only if the court is satisfied that it is not contrary to the interests of justice.

OPTIONS WHEN THE ACCUSED FAILS TO APPEAR

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D5 Starting a Prosecution and Preliminary Proceedings in Magistrates' Courts

D5.42

If an accused who has been bailed to appear at a magistrates' court fails to do so, the court may (assuming the provisions of the MCA 1980, s. 12 (pleading guilty by post) or 16A (trial by single justice on the papers in certain cases where the accused pleads guilty), are not applicable):

(a) issue an arrest warrant under the BA 1976, s. 7; or

(b) extend bail in accordance with the MCA 1980, s. 129(3); or

(c) proceed in the absence of the accused under the MCA 1980, s. 11(1) (see D5.43).

Trial in Absence of the Accused

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D5 Starting a Prosecution and Preliminary Proceedings in Magistrates' Courts > OPTIONS WHEN THE ACCUSED FAILS TO APPEAR

D5.43

If the accused fails to appear for the trial in the magistrates' court, the case may (if the accused is under 18) or must (if the accused has attained the age of 18 and it does not appear to the court to be contrary to the interests of justice to do so) proceed in the accused's absence (MCA 1980, s. 11(1); see also CrimPR 24.12(3): see Supplement, R24.12). However, where the prosecution commenced by issue of a summons or requisition, it must be proved to the satisfaction of the court that either the summons (or requisition, as the case may be) was served a reasonable time before the hearing or the accused appeared on a previous occasion to answer the charge (MCA 1980, s. 11(2)). Summary trial in the absence of the accused is considered in more detail at D22.14.

Bench Warrants

Blackstone's Criminal Practice 2022 > PART D PROCEDURE > Section D5 Starting a Prosecution and Preliminary Proceedings in Magistrates' Courts > OPTIONS WHEN THE ACCUSED FAILS TO APPEAR

D5.44

Should the court decide to adjourn the trial rather than proceeding in the absence of the accused, it may issue an arrest warrant under the MCA 1980, s. 13(1), provided that the offence to which the warrant relates is punishable with imprisonment, or the court, having convicted the accused, is proposing to impose a disqualification (s. 13(3) and (3A)). Where proceedings were initiated by the issue of a summons (or requisition), it must be proved to the satisfaction of the court that the summons (or requisition) was served on the accused a reasonable time before the trial (or adjourned trial, as the case may be), unless the current adjournment is a second or subsequent adjournment and the accused was present in court on the occasion of the last adjournment and was informed of the time for the adjourned hearing on that occasion (s. 13(2), (2A) and (2B)).

Although warrants under s. 13 are not expressly limited to prosecutions commenced by way of summons or requisition, reliance on that section in cases where the accused has been bailed to appear is unnecessary because non-attendance in answer to bail may be dealt with by issue of a warrant under the BA 1976, s. 7. If a prosecution for an indictable offence is commenced by way of summons (or by written charge and requisition) and the accused does not appear, a warrant cannot be issued under s. 13 of the 1980 Act unless and until it is determined to try the case summarily (as the power conferred by s. 13 is to issue a warrant when the *trial* is adjourned), but the prosecutor is entitled to apply for the issue of an arrest warrant under the MCA 1980, s. 1 (see s. 1(6), which provides that, where the offence charged is indictable, a warrant may be issued under s. 1 notwithstanding the previous issue of a summons or written charge and requisition).

D5.45

If a warrant for arrest is issued the court may, at its discretion, 'back it for bail' (MCA 1980, s. 117); this means that the court directs that, once arrested, the person may thereafter be bailed by the police to attend court on a specified date. This may be appropriate where, for example, there is some suggestion that the accused has a good reason for non-attendance but there is no (or insufficient) evidence to support this suggestion (making it inappropriate simply to extend bail under the MCA 1980, s. 129(3)). The execution of such warrants is sometimes seen as a waste of police resources, and so magistrates' courts have been encouraged to use warning letters instead (see D7.99).

Full discussion of the options open to the court where an accused who is on bail fails to attend court may be found in D7.