

## STATUTORY INSTRUMENTS

# 1981 No. 1675

## The Magistrates' Courts (Northern Ireland) Order 1981

### PART X

#### WITNESSES AND EVIDENCE

*[<sup>F1</sup>Witnesses: proceedings other than criminal proceedings]*

**F1** [Art. 118-118E](#) and cross-headings substituted (1.1.2012) for art. 118 and preceding cross-heading by Justice Act (Northern Ireland) 2011 c. 24 (NI), **ss. 100(1), 111(3)** (with s. 106(4), Sch. 6 para. 8); S.R. 2011/370, **art. 3(f)**

#### **Summons to witness in proceedings (other than criminal proceedings) or warrant for arrest**

**[<sup>F2</sup>118.—**(1) Where in any proceedings other than criminal proceedings a magistrates' court is satisfied that any person is able to give material evidence or produce any document or thing before the court, the court may issue a summons directed to that person requiring him to attend before the court at the time and place appointed in the summons to give evidence or to produce the document or thing.

(2) Where a person fails to attend before a magistrates' court in answer to a summons under paragraph (1), if—

- (a) the court is satisfied by evidence on oath that he is likely to be able to give material evidence or produce any document or thing likely to be material evidence in the proceedings; and
- (b) it is proved on oath or by affidavit or in such other manner as may be prescribed that the summons was duly served on that person or that he is evading service and that he is able to give material evidence; and
- (c) no just excuse has been shown for the failure to attend,

the court may issue a warrant to arrest that person and bring him before the court to testify and to produce such documents or things as may be required.

(3) Where a person is arrested on a warrant issued under this Article he shall be brought, as soon as practicable, before a magistrates' court which may, if desirable, discharge that person on his entering a recognizance to appear before that or any other magistrates' court at the time and place specified in the recognizance and, if necessary, to appear at every time and place to which during the proceedings the hearing may be adjourned.]

**F2** [Art. 118-118E](#) and cross-headings substituted (1.1.2012) for art. 118 and preceding cross-heading by Justice Act (Northern Ireland) 2011 c. 24 (NI), **ss. 100(1), 111(3)** (with s. 106(4), Sch. 6 para. 8); S.R. 2011/370, **art. 3(f)**

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#### Modifications etc. (not altering text)

- C1** Art. 118(1) applied by 1972 c. 18, s. 38(4) (as amended) (22.4.2014) by [Crime and Courts Act 2013](#) (c. 22), s. 61(3), [Sch. 11 para. 54](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- C2** Art. 118(1) applied (with modifications) by 1972 c. 18, s. 14(3) (as amended) (22.4.2014) by [Crime and Courts Act 2013](#) (c. 22), s. 61(3), [Sch. 11 para. 37\(1\)](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- C3** Art. 118(3) applied by 1972 c. 18, s. 38(4) (as amended) (22.4.2014) by [Crime and Courts Act 2013](#) (c. 22), s. 61(3), [Sch. 11 para. 54](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- C4** Art. 118(3)(4) applied (with modifications) by 1972 c. 18, s. 14(3) (as amended) (22.4.2014) by [Crime and Courts Act 2013](#) (c. 22), s. 61(3), [Sch. 11 para. 37\(1\)](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

#### *F<sup>3</sup> Witnesses: criminal proceedings*

- F3** Art. 118-118E and cross-headings substituted (1.1.2012) for art. 118 and preceding cross-heading by Justice Act (Northern Ireland) 2011 c. 24 (NI), [ss. 100\(1\), 111\(3\)](#) (with s. 106(4), [Sch. 6 para. 8](#)); S.R. 2011/370, [art. 3\(f\)](#)

#### Issue of witness summons on application to magistrates' court

- 118A.**—(1) This Article applies where a magistrates' court is satisfied that—
- (a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, for the purpose of any criminal proceedings before the court, and
  - (b) it is in the interests of justice to issue a summons under this Article to secure the attendance of that person to give evidence or to produce the document or thing.
- (2) In such a case the magistrates' court shall, subject to the following provisions of this Article, issue a summons (a witness summons) directed to the person concerned and requiring him to—
- (a) attend before the magistrates' court at the time and place stated in the summons, and
  - (b) give the evidence or produce the document or thing.
- (3) A witness summons may only be issued under this Article on an application; and the magistrates' court may refuse to issue the summons if any requirement relating to the application is not fulfilled.
- (4) An application must be made as soon as is reasonably practicable.
  - (5) An application must be made in accordance with magistrates' courts rules.
  - (6) Magistrates' courts rules—
    - (a) may, in such cases as the rules may specify, require an application to be made by a party to the case;
    - (b) may, in such cases as the rules may specify, require the service of notice of an application on the person to whom the witness summons is proposed to be directed;
    - (c) may, in such cases as the rules may specify, require an application to be supported by an affidavit containing such matters as the rules may stipulate;

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- (d) may, in such cases as the rules may specify, make provision for enabling the person to whom the witness summons is proposed to be directed to be present or represented at the hearing of the application for the witness summons.
- (7) Provision contained in magistrates' courts rules by virtue of paragraph (6)(c) may in particular require an affidavit to—
  - (a) set out any charge on which the proceedings concerned are based;
  - (b) specify any stipulated evidence, document or thing in such a way as to enable the directed person to identify it;
  - (c) specify grounds for believing that the directed person is likely to be able to give any stipulated evidence or produce any stipulated document or thing;
  - (d) specify grounds for believing that any stipulated evidence is likely to be material evidence;
  - (e) specify grounds for believing that any stipulated document or thing is likely to be material evidence.
- (8) In paragraph (7)—
  - (a) references to any stipulated evidence, document or thing are to any evidence, document or thing whose giving or production is proposed to be required by the witness summons;
  - (b) references to the directed person are to the person to whom the witness summons is proposed to be directed.

#### **Power to require advance production**

**118B.**—(1) A witness summons which is issued under Article 118A and which requires a person to produce a document or thing as mentioned in Article 118A(2) may also require him to produce the document or thing—

- (a) at a place stated in the summons, and
- (b) at a time which is so stated and precedes that stated under Article 118A(2),

for inspection by the person applying for the summons.

(2) If—

- (a) a document or thing is produced in pursuance of a requirement imposed by a witness summons under paragraph (1),
- (b) the person applying for the summons concludes that a requirement imposed by the summons under Article 118A(2) is no longer needed, and
- (c) he accordingly applies to the magistrates' court for a direction that the summons shall be of no further effect,

the court may direct accordingly.

(3) An application under paragraph (2) must be made in accordance with magistrates' courts rules.

(4) Magistrates' courts rules may, in such cases as the rules may specify, require the effect of a direction under paragraph (2) to be notified to the person to whom the summons is directed.

#### **Application to make summons ineffective**

**118C.**—(1) If a witness summons issued under Article 118A is directed to a person who—

- (a) applies to the magistrates' court,
- (b) satisfies the court that he was not served with notice of the application to issue the summons and that he was neither present nor represented at the hearing of the application, and

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- (c) satisfies the court that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence, the court may direct that the summons shall be of no effect.
- (2) For the purposes of paragraph (1) it is immaterial—
- (a) whether or not magistrates' courts rules require the person to be served with notice of the application to issue the summons;
  - (b) whether or not magistrates' courts rules enable the person to be present or represented at the hearing of the application.
- (3) In paragraph (1)(b) “served” means—
- (a) served in accordance with magistrates' courts rules, in a case where such rules require the person to be served with notice of the application to issue the summons;
  - (b) served in such way as appears reasonable to the magistrates' court, in any other case.
- (4) The magistrates' court may refuse to make a direction under this Article if any requirement relating to the application under this Article is not fulfilled.
- (5) An application under this Article must be made in accordance with magistrates' courts rules.
- (6) Magistrates' courts rules may, in such cases as the rules may specify, require the service of notice of an application under this Article on the person on whose application the witness summons was issued.
- (7) Magistrates' courts rules may, in such cases as the rules may specify, require that where—
- (a) a person applying under this Article can produce a particular document or thing, but
  - (b) he seeks to satisfy the court that the document or thing is not likely to be material evidence, he must arrange for the document or thing to be available at the hearing of the application.
- (8) Where a direction is made under this Article that a witness summons shall be of no effect, the person on whose application the summons was issued may be ordered to pay the whole or any part of the costs of the application under this Article.

#### **Issue of witness summons of court's own motion**

- 118D.**—(1) For the purpose of any criminal proceedings before it, a magistrates' court may of its own motion issue a summons (a witness summons) directed to a person and requiring him to—
- (a) attend before the court at the time and place stated in the summons; and
  - (b) give evidence or produce any document or thing specified in the summons.
- (2) If a witness summons issued under this Article is directed to a person who—
- (a) applies to the magistrates' court, and
  - (b) satisfies the court that he cannot give any evidence likely to be material evidence or, as the case may be, produce any document or thing likely to be material evidence, the court may direct that the summons shall be of no effect.
- (3) The magistrates' court may refuse to make a direction under paragraph (2) if any requirement relating to the application under that paragraph is not fulfilled.
- (4) An application under paragraph (2) must be made in accordance with magistrates' courts rules.
- (5) Magistrates' courts rules may, in such cases as the rules may specify, require that where—
- (a) a person applying under paragraph (2) can produce a particular document or thing, but
  - (b) he seeks to satisfy the court that the document or thing is not likely to be material evidence, he must arrange for the document or thing to be available at the hearing of the application.

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### Further process to secure attendance of witnesses

**118E.**—(1) If a magistrates' court is satisfied by evidence on oath that—

- (a) a witness in respect of whom a witness summons is in force is unlikely to comply with the summons; and
- (b) the witness is likely to be able to give evidence likely to be material evidence or produce any document or thing likely to be material evidence in the proceedings,

the magistrates' court may issue a warrant to arrest the witness and bring him before the court.

(2) Where a witness who is required to attend before a magistrates' court by virtue of a witness summons fails to attend in compliance with the summons, the magistrates' court may—

- (a) in any case, cause to be served on him a notice requiring him to attend the court forthwith or at such time as may be specified in the notice;
- (b) if the court is satisfied that there are reasonable grounds for believing that he has failed to attend without just excuse, or if he has failed to comply with a notice under subparagraph (a), issue a warrant to arrest him and bring him before the court.

(3) A witness brought before a magistrates' court in pursuance of a warrant under this Article may be remanded by that court in custody or on bail (with or without sureties) until such time as the court may appoint for receiving his evidence.

(4) Where a witness attends a magistrates' court in pursuance of a notice under this Article, the court may direct that the notice shall have effect as if it required him to attend at any later time appointed by the court for receiving his evidence.

### Penalty for witness failing to appear or obey direction of court excluding him

**119.**—(1) Any person who—

- (a) was duly served with a summons under Article 118 [F4, 118A or 118D] and who fails, without reasonable excuse, to appear at the time and place appointed by the summons; or  
[ disobeys a requirement made by a magistrates' court under Article 118B(1); or]

F5(aa)

- (b) fails to comply with the provisions of paragraph (2) or with any direction given under it;

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding[F6 level 4 on the standard scale.

(2) Where in any proceeding before a magistrates' court it appears to the court desirable in the interests of justice so to do, the court may direct that any witness in that proceeding be excluded from the court during the proceeding until he is required for the purpose of giving evidence in that proceeding; and where such direction is given, the witness shall attend on the court and give his evidence when so required.]

**F4** Words in art. 119(1)(a) inserted (1.1.2012) by [Justice Act \(Northern Ireland\) 2011 \(c. 24\), ss. 100\(2\)\(a\), 111\(3\)](#) (with s. 106(4), Sch. 6 para. 8); S.R. 2011/370, [art. 3\(f\)](#)

**F5** [Art. 119\(1\)\(aa\)](#) inserted (1.1.2012) by [Justice Act \(Northern Ireland\) 2011 \(c. 24\), ss. 100\(2\)\(b\), 111\(3\)](#) (with s. 106(4), Sch. 6 para. 8); S.R. 2011/370, [art. 3\(f\)](#)

**F6** 1994 NI 15

#### Modifications etc. (not altering text)

**C5** [Art. 119](#) applied by 1972 c. 18, s. 38(4) (as amended) (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 11 para. 54](#); S.I. 2014/954, [art. 2\(e\)](#) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

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- C6** Art. 119 applied (with modifications) by 1972 c. 18, s. 14(3) (as amended) (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 11 para. 37\(1\)](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

### Refusal of witness to testify

**120.**—(1) If any person attending or brought before a magistrates' court refuses without just excuse to be sworn or give evidence, or to produce any document or thing, the court may commit him to custody until the expiration of such period not exceeding one month as may be specified in the warrant or until he sooner gives evidence or produces the document or thing or impose on him a fine not exceeding<sup>F7</sup> £2,500, or both.

(2) Nothing in this Article shall prevent the court from disposing of a case in any manner in which it has power to do so.

[  
<sup>F8</sup>(3) An order under paragraph (1) for the payment of a fine may be enforced as though the fine were a sum adjudged to be paid by a conviction.]]

- F7** 1994 NI 15  
**F8** 1996 NI 24

### Modifications etc. (not altering text)

- C7** Art. 120 applied (with modifications) by 1972 c. 18, s. 14(3) (as amended) (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 11 para. 37\(1\)](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- C8** Art. 120 applied by 1972 c. 18, s. 38(4) (as amended) (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 11 para. 54](#); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

## Evidence

### Evidence on oath

**121.** Subject to this Part and to the provisions of any enactment or rule of law authorising the reception of unsworn evidence, evidence given before a magistrates' court shall be given on oath.

### Statement of wages to be evidence

**122.** A statement in writing that wages of any amount have been paid to a person during any period, purporting to be signed by or on behalf of his employer, shall, without further proof, be evidence of the facts alleged in the statement—

- (a) for the purpose of ascertaining the means of such person where a magistrates' court is determining the amount of a sum adjudged to be paid by a conviction or order of a magistrates' court;
- (b) on any application made by or against such person for the making of an order for the periodical payment of money such as is specified in Article 98(11) or for the variation, revocation, discharge, suspension or revival of such an order or in any proceedings under that Article for its enforcement.

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### **Proof of non-payment of sum adjudged**

**123.** In any summary proceedings to enforce the payment of a sum of money ordered to be paid by one person to another, then—

- (a) if the sum was payable under the order to the clerk of petty sessions or collecting officer, the production of a certificate purporting to be signed by the clerk or collecting officer that the sum has not been paid to him; and
- (b) in any other case, the production of a statutory declaration to a like effect purporting to be made by the person to whom the sum is payable under the order or, where the person to whom the sum is payable is a public or local authority or board, any authorised officer of the authority or board;

shall be evidence of the facts stated in the certificate or, as the case may be, the declaration, unless the court requires such clerk, officer or other person to be called as a witness.

### **Onus of proving exceptions in proceedings upon complaint**

**124.**—(1) When the defendant to a complaint relies for his defence on any exception, exemption, proviso, excuse or qualification, the burden of proving such exception, exemption, proviso, excuse or qualification shall be on him.

(2) This Article shall have effect whether the exception, exemption, proviso, excuse or qualification relied on—

- (a) accompanies or does not accompany the description of the offence or matter of complaint in the enactment creating the offence or on which the complaint is founded; or
- (b) is or is not expressly specified or negated in the complaint.

### **Proof of previous convictions**

**125.** Where a person is convicted of an offence by a court of summary jurisdiction<sup>F9</sup> . . . , and it is proved to the satisfaction of the court, on oath or by affidavit or in the prescribed manner, that not less than seven days previously a notice was served on the accused in the prescribed form and manner specifying any alleged previous conviction of the accused of an offence proposed to be brought to the notice of the court in the event of his conviction of the offence charged, and the accused is not present in person before the court, the court may take account of any such previous conviction so specified as if the accused had appeared and admitted it.

**F9** 1989 NI 12

### **Proof by affidavit of service of summons, handwriting, etc.**

**126.**—(1) Without prejudice to any other mode of proof, service on a person of any summons, notice, process or document required or authorised to be served in any proceedings before a magistrates' court and the handwriting or seal of any resident magistrate or<sup>F10</sup> lay magistrate], clerk of petty sessions or other officer or person on any warrant, summons, notice, process recognizance or other document, may be proved by affidavit<sup>F11</sup> or by such other document as may be prescribed].

(2) Any affidavit purporting to be made and attested in the prescribed form shall be received in evidence and shall be deemed to be duly made and attested until the contrary is shown.

[  
<sup>F11</sup>(3) Magistrates' courts rules may provide that any document purporting to be given as a document prescribed under paragraph (1) shall be received in evidence and shall be deemed to be duly given unless the contrary is shown.

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(4) Without prejudice to Article 10 of the Perjury (Northern Ireland) Order 1979, if, in a document purporting to be given as a document prescribed under paragraph (1), a person—

- (a) makes a statement that he knows to be false in a material particular, or
- (b) recklessly makes any statement that is false in a material particular,

he shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 3 on the standard scale, or both.]]

**F10** [2002 c. 26](#)

**F11** [1989 NI 12](#)



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**Changes and effects yet to be applied to :**

- Instrument am (prosp) by [S.I. 1994/2795 \(N.I.\) arts.3\(4\)25](#)
- Instrument am (prosp) by [S.I. 1994/2795 \(N.I.\) art.3\(5\)Sch.1](#)
- Instrument am (prosp) by [S.I. 1994/2795 \(N.I.\) art.5\(2\)](#)
- Instrument mod (prosp) by [1994 c. 33 s. 91\(3\)](#)
- Instrument revoked by [1998 c. 41 s.74\(1\)\(3\)Sch.12 para.5Sch.14 Pt.I](#)

**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- Act amended by [1996 c. 25 s.79Sch.4 para 30](#)
- Act amended by [1996 c. 25 s.79Sch.4 para 30](#)
- Order applied (with modifications) by [S.I. 2018/1125 reg. 8](#) (This amendment not applied to [legislation.gov.uk](#). [S.I. 2018/1125](#), reg. 8 omitted (31.12.2020) by virtue of Private International Law (Implementation of Agreements) Act 2020 (c. 24), s. 4(3), Sch. 5 para. 4(4))
- Order power to modify conferred by [2015 c. 9 \(N.I.\) s. 24\(5\)\(a\)](#) (see [s 24\(6\)](#))

**Whole provisions yet to be inserted into this Order (including any effects on those provisions):**

- [Sch.6 Pt.I paras.1819](#) revoked by [1995 c. 21 s. 314\(1\)Sch.12](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch.6 Pt.I para.5](#) revoked by [S.I. 1995/756 art.15Sch.](#)
- [Sch. 6 para. 128-130](#) repealed by [2011 c. 15 \(N.I.\) Sch. 3 Pt. 2](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 para. 125](#) repealed by [2011 c. 16 \(N.I.\) Sch. 5](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 Pt. 3 para. 170](#) repealed by [S.I. 2007/916 \(N.I.\) Sch. 8 Pt. 1](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 para. 144](#) repealed by [2006 c. 48 Sch. 15 Pt. 4](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 para. 21](#) repealed by [2013 c. 22 Sch. 11 para. 210](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [Sch. 6 para. 25](#) repealed by [2013 c. 22 Sch. 11 para. 210](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov](#))
- [art. 29A](#) excluded by [1975 c. 59, s. 4\(3\)](#) (as substituted) by [2015 c. 9 \(N.I.\) s. 7\(6\)](#)
- [art. 29A](#) inserted by [2015 c. 9 \(N.I.\) s. 7\(2\)](#)
- [art. 34\(1A\)-\(1E\)](#) inserted by [2015 c. 9 \(N.I.\) s. 8\(2\)](#)
- [art. 140\(2ZA\)](#) inserted by [2016 c. 18 \(N.I.\) Sch. 10 para. 16](#)