



Home Office

# Criminal investigation guidance for witness summons

This guidance is based on the Criminal Procedure Rules 2020 and the Criminal Procedure (Amendment No.2) Rules 2022.

**Version 6.0**

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# About this guidance

This guidance tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about what a witness summons is and how they can apply for one.

It tells you:

- what a witness summons is
- things to consider when you are deciding whether to apply for a witness summons
- the legislation covering witness summonses
- how to apply for a witness summons and serve the relevant papers
- when an objection can be made to an application
- about withdrawing a witness summons
- how the process is different in Scotland

The Home Office has a duty to safeguard vulnerable people and promote the welfare of children for more information see: Vulnerable adults and children.

Criminal Investigators in Immigration Enforcement must be aware of their obligations under the UK General Data Protection Regulation (UK GDPR) and Part 3 of the Data Protection Act 2018 see: Data protection.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the CFI Operational Capability and Compliance team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **6.0**
- published for Home Office staff on **18 November 2022**

## Changes from last version of this guidance

- updates to legislation
- updated links
- minor housekeeping changes

**Related content**  
[Contents](#)

# What is a witness summons?

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about what a 'witness summons' is.

A witness summons is a legal document, issued by the court, which makes it a legal requirement for a witness to attend court to:

- give evidence
- produce a document or other item in court as evidence

Sometimes you may come across a witness who is reluctant to attend court to give evidence or produce documents in court. For more information, see: [Consider applying for a witness summons](#).

A witness summons may help to overcome problems because it gives the witness a legal instruction they must follow.

If the witness fails to attend court, or once at court, they refuse to give evidence or produce required documents they can be either:

- arrested for contempt of court
- imprisoned
- fined

For more information on witness summons see:

- [Criminal Procedure Rules 2020](#)
- [Criminal Procedure \(Amendment No.2\) Rules 2022](#)

For information on the process in Scotland, see [Witness citations in Scotland](#).

## **Related content**

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# Considering applying for a witness summons

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about what to consider when deciding whether to apply for a witness summons.

There are many reasons why you may decide it is appropriate to apply for a witness summons. For example:

- it is in the interests of justice for their evidence to be heard or produced
- witnesses may not want to give evidence in court and are not likely to attend voluntarily for many reasons
- the witness may have difficulty getting time off work and a witness summons makes this possible as it is a legal requirement an employer cannot ignore
- the witness may not wish to give evidence because the information they have is confidential, but a witness summons allows them to give the evidence as it is a legal requirement

In all cases if you think a witness summons might be required you must discuss this with your supervising officer, and either the:

- Crown Prosecution Service (CPS) in England and Wales
- Public Prosecution Service in Northern Ireland (PPSNI)

this is because there may be either:

- alternatives you have not identified, for example, you may be able to get the same evidence from elsewhere or from another witness
- issues regarding the safety of your witness or how they will give evidence in court

For more information, see:

- [Criminal Procedure Rules 2020](#)
- [Criminal Procedure \(Amendment No.2\) Rules 2022](#)
- [CPS Guidance for Victims and Witnesses - Care and Treatment](#)

For information on the process in Scotland, see [COPFS Guidance for Witnesses](#).

## Related content

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# Legislation allowing you to apply for a witness summons

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the legislation covering witness summonses.

[Part 17 of the Criminal Procedure Rules 2020](#) allows you to make an application, in England and Wales, to a magistrates' court or a Crown court if you want the court to issue a witness summons under:

- [section 97 of the Magistrates' Courts Act 1980](#)
- [section 2 of the Criminal Procedure \(Attendance of Witnesses\) Act 1965](#)
- [section 7 of the Bankers' Books Evidence Act 1879](#)

In Northern Ireland the power comes from:

- [section 118 of the Magistrates' Courts \(Northern Ireland\) Order 1981 for applications to a lay magistrate](#)
- [section 66 of the Criminal Procedure and Investigations Act 1996, for applications to a Crown Court](#)

The guidance below gives you a brief description of what these sections contain. To read the sections in full, see related links.

## Section 97 Magistrates' Courts Act 1980: applications to magistrates' courts

This allows a justice of the peace (JP) to issue a summons to any person in England or Wales, requiring them to:

- attend court at a specified time and date
- give evidence or produce a document or some other item

The JP must be satisfied:

- the person is expected to be able to give evidence or produce a document or item that is likely to be material evidence (evidence of the offence), at either the:
  - summary trial (the trial of a less serious offence) or an information (the information given to support that trial)
  - hearing of a complaint by a magistrates' court
- it is in the interest of justice to issue a summons to make sure the person attends the court to:
  - give evidence
  - produce the document or other item as evidence

The magistrate can also issue an arrest warrant if it is probable the witness will not attend if only a summons is issued for a summary trial. They cannot issue an arrest warrant for a complaint.

## **Section 2 Criminal Procedure (Attendance of Witnesses) Act 1965: applications to Crown courts**

This allows a Crown court to issue a witness summons to a person which requires them to:

- attend the Crown court at a specified time and date
- give evidence or produce a required document or other item

The Crown court must be satisfied the witness:

- is expected to be able to give evidence or produce a document or item that is likely to be material evidence (of the offence), for using in any criminal proceedings before the Crown court
- would not appear as a witness or produce the document or item voluntarily

## **Section 118 Magistrates' Courts (Northern Ireland) Order 1981**

This was updated under [Section 100 of the Justice Act \(Northern Ireland\) 2011](#). The provisions are the same as for [Section 97 of the Magistrates' Courts Act 1980](#).

## **Section 66 Criminal procedure and Investigations Act 1996**

The provisions in Northern Ireland are the same as for [Section 2 Criminal Procedure \(Attendance of Witnesses\) Act 1965](#).

## **Section 7 Bankers' Books Evidence Act 1879**

Allows a court or judge to order any party to (person involved in) a criminal proceeding to be allowed to inspect or take copies of any entries in a banker's book, for any purpose of the proceedings.

The order:

- can be made without requiring the bank or any other party to attend court
- must be served on the bank 3 days before they must comply with the order (unless the court directs differently)

For information on the process in Scotland, see [Witness citations in Scotland](#).

### **Related content**

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# How to apply for a witness summons

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about what information they must provide when applying for a witness summons.

## When to apply

You must apply for a summons as soon as you become aware there are grounds (reasons) to make an application.

## How to apply

You can make an oral application unless a written application is required (see below).

The court can issue a summons with or without an actual hearing taking place. If a hearing does take place it is held in private unless the court decides otherwise.

To find out more about the application process contact your local magistrates' or Crown court for information.

When you make your application, you must:

- identify the proposed witness
- explain:
  - what evidence they can give or produce
  - why it is likely to be material evidence (evidence of the offence)
  - why it is in the interests of justice to issue a summons

## Written applications

### Rule 17.1

#### [Rule 17.1 of The Criminal Procedure Rules 2020](#)

This Part applies in magistrates' courts and in the Crown Court where a party wants the court to issue a witness summons, warrant or order under:

- section 97 of the Magistrates' Courts Act 1980(1),
- paragraph 4 of Schedule 3 to the Crime and Disorder Act 1998(2),
- section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965(3), or
- section 7 of the Bankers' Books Evidence Act 1879(4);
- the court considers the issue of such a summons, warrant or order on its own initiative as if a party had applied; or
- one of those listed in rule 17.7 wants the court to withdraw such a summons, warrant or order

## Rule 17.2

### [Rule 17.2 of The Criminal Procedure Rules 2020](#)

The court may issue or withdraw a witness summons, warrant or order with or without a hearing. A hearing under this Part must be in private unless the court otherwise directs.

Note. If rule 17.5 applies (see below), a person served with an application for a witness summons will have an opportunity to make representations about whether there should be a hearing of that application before the witness summons is issued.

## Rule 17.3

### [Rule 17.3 of The Criminal Procedure Rules 2020](#)

#### **Application for summons, warrant or order: general rules**

A party who wants the court to issue a witness summons, warrant or order must apply as soon as practicable after becoming aware of the grounds for doing so. A party applying for a witness summons or order must:

- identify the proposed witness
- explain:
  - what evidence the proposed witness can give or produce,
  - why it is likely to be material evidence
  - why it would be in the interests of justice to issue a summons, order or warrant as appropriate

A party applying for an order to be allowed to inspect and copy an entry in bank records must:

- identify the entry
- explain the purpose for which the entry is required
- propose the terms of the order
- outline the period within which the order should take effect, if 3 days from the date of service of the order would not be appropriate.

The application may be made orally unless

- rule 17.5 (see below)
- the court otherwise directs.

The applicant must serve any order made on the witness to whom, or the bank to which, it is directed.

## Rule 17.4

### [Rule 17.4 of The Criminal Procedure Rules 2020](#)

#### **Written application: form and service**

An application in writing under rule 17.3 must be in the form set out in the Practice Direction, containing the same declaration of truth as a witness statement. The party applying must serve the application:

- in every case, on the court officer and as directed by the court;
- and as required by rule 17.5 (see below) if that rule applies.

## Rule 17.5

[Rule 17.5 of The Criminal Procedure Rules 2020](#) says you must make a written application if you require the witness to give evidence about another person, which includes either:

- producing a document or item as evidence
- giving evidence about information that appears to be held in confidence

If your application is for a witness to produce an entry in a banker's book you do not need to make a written application.

If you make a written application, in all cases you must:

- complete an application form [Application for witness summonses](#)
- comply with [Criminal Procedure Rules and Practice Directions 2020](#) - this tells you about court proceedings and expenses the witness is entitled to
- include a declaration of truth (as you would find on a witness statement), for more information, see:
  - [section 9 Criminal Justice Act 1967](#) (which also applies to Northern Ireland)
  - [section 5B Magistrates Court Act 1980](#)
  - witness statements
- serve the application on:
  - the court officer
  - as the court directs you

## If Rule 17.5 applies

You must serve the application on:

- the proposed witness (unless the court instructs you differently)
- any person the evidence relates to and/or another person (if the court instructs you to)

The court must not issue a witness summons unless both:

- everyone the application has been served on has had 14 days to make representations (arguments for or against the application) - this includes representations about whether a hearing of the application needs to be held before the summons is issued
- the court is satisfied it has been able to consider the duties, rights and confidentiality of either:
  - the proposed witness
  - anyone the proposed evidence relates to

In Northern Ireland you make your application by either:

- an affidavit (a written application made under oath)
- asking the court for permission to make an oral application

For more information see [Criminal Procedure Rules 2020](#) and [Criminal Procedure \(Amendment No.2\) Rules 2022](#).

For information on the process in Scotland, see [Witness citations in Scotland](#).

#### **Related content**

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# How to serve witness summons papers

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about how they must serve paperwork related to a witness summons.

You must only serve a witness summons by either:

- handing it in person to the individual
- addressing it to the individual to be served and leaving it at the appropriate address
- sending it by first class post, or equivalent method, to the individual at the appropriate address

The appropriate address for service or post is an address where you reasonably believe the individual will receive it.

For information on the process in Scotland, see [Witness citations in Scotland](#).

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# Objections to a witness summons

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the objections that can be made to a witness summons application they have made.

A person served with a witness summons application for a document or item to be produced can object on the grounds that:

- it is not likely to be material evidence (evidence of the offence)
- if it is likely to be material evidence, the duties and rights of the proposed witness or person the evidence relates to outweigh the reasons for issuing the summons, including confidentiality

The court can:

- require the proposed witness to produce the document or item so it can be assessed
- to assist in assessing the objection, invite either:
  - the proposed witness or their representative
  - a person the document or item relates to or their representative
  - anyone else you know who was served with the application for the summons

If you are not sure when it is appropriate you must ask your supervising officer for advice.

For information on the process in Scotland, see [Witness citations in Scotland](#).

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# How to withdraw a witness summons

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about withdrawing an application for a witness summons.

The court can withdraw a witness summons if:

- you confirm to the court you no longer need it
- the witness advises the court:
  - they were not aware of the application
  - they cannot give or produce evidence likely to be material evidence (evidence of the offence)
  - even if they can produce it, their duties and rights or those of a person the evidence relates to, outweigh the reasons for issuing the summons - this includes confidentiality
- any person the evidence relates to advises the court:
  - they were not aware of the application
  - the evidence is not likely to be material evidence
  - even if it is, their duties and rights or those of the witness, outweigh the reasons for issuing the summons

You must:

- apply in writing to withdraw a witness summons as soon as you become aware you have grounds to withdraw it:
  - for example, when the witness is no longer required to give evidence if the defendant (accused) has changed their plea
- explain the reasons why you want to withdraw it
- serve the application to withdraw the summons on the court officer in every case, and as appropriate on either:
  - the witness
  - the person who applied for the summons
  - anyone else you know who was served with the application for the summons

If you are not sure when it is appropriate you must ask your supervising officer for advice.

For information on the process in Scotland, see [Witness citations in Scotland](#).

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# Witness citations in Scotland

This page tells criminal investigators in immigration enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the different process they must use to make sure a witness attends court in Scotland.

## Witness citations

The equivalent of a 'witness summons' in Scotland is a 'witness citation'.

The Home Office is not involved in the 'witness citation' procedure. Instead the decision to 'cite' (call) a witness for trial is made by the Crown Office and Procurator Fiscal Service (COPFS).

The COPFS will:

- decide how each witness will be cited, and send the citation to the:
  - witness, by post
  - police, for them to serve on the witness

## Precognosing a witness

This means speaking to the witness directly in advance of the court date.

It is a separate process, and the procurator fiscal will decide whether to precognose the witness.

The procurator fiscal may ask you to help locate the potential witness and encourage them to attend for precognition.

## Your role as an investigator

You must tell the procurator fiscal about:

- any witness you think may not cooperate or attend court, and the reasons for this
- changes relating to the witness as soon as you are aware of them, for example, a change to either their:
  - address
  - immigration status

The procurator fiscal may require you to:

- contact the witnesses
- establish their availability for trial dates

This helps the COPFS decide:



- who to cite as a witness
- how to cite them
- whether to precognose them
- whether to apply for an apprehension warrant

## Apprehension warrants

Under [Sec 34 of part four of the Criminal Procedure \(Scotland\) Act 1995](#) the COPFS can apply for an apprehension warrant if either:

- the witness has failed to attend court
- there is reason to believe they are being deliberately obstructive and will not attend voluntarily

If you have information about this the procurator fiscal may ask you to give evidence, on oath before a sheriff, as part of the application process for a warrant.

These warrants allow an 'officer of law' to:

- enter property and search for the witness
- arrest them before bringing them before the court

Immigration officers in Scotland can act as 'officers of law' only in relation to immigration offences and nationality offences. The meaning of these offences is found within [section 307 \(1AB\) Criminal Procedure \(Scotland\) Act 1995](#).

For more information about the process in Scotland and advice for witnesses, see:

- [Lord Advocate's Guidelines for Citations of Witnesses](#)
- [Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018](#)

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