

Crown Office and Procurator Fiscal Service submission of 13 February 2024

PE2073/B: Ensure accurate information is used when issuing court summons

Although the Petition relates to the police and courts in Scotland, the Crown Office and Procurator Fiscal Service (COPFS) has been identified as having an interest and being able to respond to the above petition as it relates to operational issues around the obtaining and execution of warrants.

The stated context of the petition is that a paramedic was arrested on 6 November 2023 in relation to a court date fixed for 2018. The reason this date was allegedly missed was because “[t]he summons had been sent to a previous address and thus the paramedic had no knowledge of it.”

The Petition calls on “the Scottish Parliament to urge the Scottish Government to require the police and court services to check address information is up to date when issuing court summons and allow those being summoned the chance to receive a summons if their address has changed, rather than the current system of proceeding to issue a warrant for arrest.”

Existing processes

It may be helpful if I set out some background about when prosecutors could and would ask the court for a warrant in summary proceedings (of the type described in the background to the Petition). Our comments can only be in general terms: without further information we are unable to comment on the specific case or indeed to confirm that the warrant was one which sought by the prosecutor (as opposed to it being issued by the Court after a conviction).

The approach taken by prosecutors broadly falls into two categories: (i) where there is proof that the summary complaint (referred to in the Petition as a summons) has been served on an accused person, and (ii) where no such service has occurred or there is no proof of it.

Where there is proof that the complaint has been served on an accused person, the court may be asked, by the prosecutor, to grant a “non-appearance warrant” in terms of s150(3) of the Criminal Procedure (Scotland) Act 1995. If the court is not persuaded that a warrant to apprehend the accused is appropriate, the court may adjourn proceedings and further attempts will be made to intimate the date of the new diet to the accused.

If no attempt has been made to serve the complaint on the accused person, or that attempt has failed, prosecutors may apply to the court for an “initiating warrant” in terms of section 139(1) of the Criminal Procedure (Scotland) Act 1995. This would tend to happen when the case is approaching the statutory time limit for proceedings to commence and risks becoming “time barred”.

In keeping with internal guidance, prosecutors should not routinely seek initiating warrants on the basis of failed service for any statutory offence where imprisonment would not be competent, or in respect of a trivial matter where imprisonment would be unlikely. Prosecutors should only seek initiating warrants where it is in the public interest to do so, for example, because there is information the accused is avoiding citation and it is in the public interest for the accused to appear before court.

Seeking a warrant is not an automatic step and will be considered carefully by both the prosecutor making the application, and the court granting the warrant.

If a warrant is granted, it may, in some cases, be possible (depending on other factors such as time limits) for the accused to be invited to attend court on the warrant, rather than it be passed by the prosecutor to the police for execution.

Where information is provided that the accused is no longer at their address, and their whereabouts are unknown, there is a mechanism for the outstanding warrant to be reviewed by a prosecutor who will (taking into account the prospects of tracing the accused and the nature of the offence) consider if there is a public interest in pursuing the prosecution.

Proposal to provide second copy

It would not be appropriate to routinely require police or prosecutors to provide with a second copy of the complaint, for the following reasons:

An accused may be deliberately avoiding detection to avoid criminal proceedings and serving a fresh complaint on them would provide notice that the new address had been detected.

Similarly, if an accused deliberately ignored the service of the original documents, there is no guarantee that service of fresh documents would result in a different response.

Initiating warrants may be taken in summary proceedings when the case is approaching the statutory time limit for commencement of proceedings. If there was a requirement to provide a fresh complaint before a warrant could be sought or executed, this may result in cases becoming “time barred” whilst that was taking place.

I hope this is of assistance to the Committee Members.