

Citizen Participation and Public Petitions Committee
Wednesday 17 April 2024
6th Meeting, 2024 (Session 6)

PE2073: Ensure accurate information is used when issuing court summons

Introduction

Petitioner Robert Macdonald

Petition summary Calling 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.

Webpage <https://petitions.parliament.scot/petitions/PE2073>

1. This is a new petition that was lodged on 18 December 2023.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition can collect signatures while it remains under consideration. At the time of writing, 7 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.
6. The Committee has received submissions from the Scottish Government, and the Crown Office and Procurator Fiscal Service, which are set out in **Annexe C** of this paper.

Action

7. The Committee is invited to consider what action it wishes to take on this petition.

Clerks to the Committee
April 2024

Annexe A: Summary of petition

PE2073: Ensure accurate information is used when issuing court summons

Petitioner

Robert Macdonald

Date Lodged

18 December 2023

Petition summary

Calling 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.

Previous action

I have emailed Sharon Dowey MSP, Martin Whitfield MSP, Brian Whittle MSP, Colin Smyth MSP and Emma Harper MSP.

Background information

On Saturday 4th November 2023, Police Scotland attempted to arrest a paramedic at home due to missing a court date. The summons had been sent to a previous address and thus the paramedic had no knowledge of it. On the evening of the 6th of November, the individual was arrested and spent the night in the cells. The summons was for a court date in 2018.

This happened over Guy Fawkes weekend. This situation did not help the public, potentially putting the public at risk of harm by reducing medical cover on a weekend whereby significant burns and trauma are highly likely.

Police Scotland got the address for the warrant without difficulty; thus, one could argue they could have as easily gotten the address and delivered the summons. This would have saved significant time for police, public money, cell space, and court time.

Annexe B: SPICe briefing on petition PE2073



The petition calls for 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. This would 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.

Background Information

Service of summons

A summons, also known as a citation or summary/copy complaint, is a document which tells an accused person when and where to attend court. It will also state what offence they have been accused of.

[Section 141 of the Criminal Procedure \(Scotland\) Act 1995](#) outlines how citations in summary criminal matters must be delivered. Summary matters are less serious offences and are dealt with by either a justice of the peace or sheriff court.

Subsection 1 of section 141 of this Act outlines how the accused in a summary prosecution can be cited to attend court. This can be done by delivering the citation to them personally or leaving it for them with a resident at their home or an employee at their place of business.

Subsection 3 outlines how the citation can also be delivered by post in a registered envelope, by recorded delivery or by ordinary post to the home or place of business of the accused. Where the citation is delivered in this way and not personally as in subsection 1, the Act states that:

“Where the accused fails to appear at a diet or sitting or adjourned diet or sitting to which he has been cited in the manner provided by this section, sections 143(7), 150(3) and 150A(1) of this Act shall not apply unless it is proved to the court that he received the citation or that its contents came to his knowledge.”

[Section 150\(3\) of the 1995 Act](#), as mentioned above, states, “the court may grant a warrant to apprehend the accused”.

Where Police Scotland are responsible for serving the summons they will follow the procedure set out in their [Service of Legal Documents Standard Operating Procedure](#) (SOP). Section 8 of this document covers the service of copy complaints

from a summary court. This includes making “sufficient enquiry” as is outlined in section 14 of this SOP.

Warrant procedure

A warrant is a document that is granted by the court and gives police officers the authority to arrest someone. An apprehension warrant can be issued for the arrest of someone who is accused of an offence and has failed to attend court with the purpose of bringing them before the court. The warrant will be sent by the Procurator Fiscal to Police Scotland for execution. [Section 135 of the Criminal Procedure Scotland \(Act\) 1995](#) allows someone to be detained in a police station until they can be brought before a court following the execution of an apprehension warrant.

Kirsty Deacon

Senior Researcher

19 January 2024

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C: Written submissions

Scottish Government submission of 18 January 2024

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The Citizen Participation and Public Petitions Committee has requested a response from the Scottish Government about the above petition.

The petition relates to an area in which Scottish Government has no policy position or role, and which is an operational matter for the Crown Office and Procurator Fiscal Service (COPFS) and Police Scotland.

We have been in touch with COPFS about the matter raised in the petition and they have confirmed they can provide a response to the Committee.

Criminal Justice Division

Crown Office and Procurator Fiscal Service submission of 13 February 2024

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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

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executed, this may result in cases becoming “time barred” whilst that was taking place.

I hope this is of assistance to the Committee Members.