



# **2014 AGM Training Presentation**

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# Some preliminaries:

- Piloting of Supervision of Juvenile Justice Centre Orders by the YJA
- Judicial College Article on Confirmation Bias
- The scope of today's presentation

# Section 10 & Schedule 4 Justice (NI) Act 2002

- **Issuing summonses and warrants**
- **Administering oaths**
- **Signing affidavits for use in a magistrates'  
court or county court**

# Administering Oaths

- Query about Commissioners for Oaths
- How does this sit with power of lay magistrates to take oaths/affidavits statutory declarations?
- lay magistrate *having authority or jurisdiction in the place where the oath is administered.*

[s.26 interpretation Act (NI) 1954]

# Summonses

Purpose:

Scrutinising the initiation of the criminal prosecution and holding it to account to ensure proper process is observed and placing limits on prosecutorial bodies to avoid arbitrariness

- Not a rubber stamp exercise
- You have judicial discretion and must exercise it
- But not unfettered or unlimited

# Summonses

## Matters to be addressed:

- I. whether the allegation is of an offence known to the law;**
- II. that the offence alleged is not 'out of time';**
- III. that the court has jurisdiction;**
- IV. whether the complainant has the necessary authority to prosecute.**

The vast majority of Summonses are uncontroversial and straightforward

# Summonses

ii. offence alleged is not 'out of time'

Article 19(1) of the Magistrates' Courts  
(Northern Ireland) Order 1981

limit of **6 months** for laying the complaint –

**SUMMARY ONLY OFFENCES**

**How do you check?**

**Ready reference guide...**

# Summonses

## iii. the court has jurisdiction

Your County Court division – familiarity with local government boundaries important.

Note special provisions for:

- offences committed on boundaries or on journeys;
- offences begun in one jurisdiction and completed in another;
- Voyage/journey



# Summonses

Do you have jurisdiction?

- Only in the county court division for which you are appointed.
- Eligibility for appointment in another division does not entitle you to sign summonses for that division

# Summonses

Form 1 Complaint/Summons – whether same LM  
still needs to do both

Article 20(1) 1981 Order provides:

“Upon a complaint being made to a lay magistrate  
.... that a person has etc... the lay magistrate may  
issue a summons directed to that person etc... .”

*DPP v. Long, Long & Johnston* [2008] NICA 15 -

**UNNECESSARY FOR SAME LM WHO  
TOOK COMPLAINT TO SIGN SUMMONS**

# Summonses

Re-issue/issue of a fresh summons

If abortive, *e.g.* not served or issued on false name given by the offender, the same LM can issue a fresh summons without further consideration

*Re Farrell* [2005] NIQB 6

*DPP v. McGowan* [2006] NICA

# Warrants to Search & Enter

- No process of granting leave to hear – you're obliged to hear unless there is some reason to recuse yourself
- legislative provisions not to be read widely but narrowly – look for express wording in the legislation
- Oath required in all cases and should be done in your presence – Article 17 PACE (NI) Order 1989 – other safeguards.

# Warrants to Search & Enter

## EVIDENTIAL BASIS

Low grade/high grade intelligence is there a view as to how many pieces or how much supporting evidence there should be to accompany the lower grade?

You need to be satisfied that there are:

**reasonable grounds/cause for believing/suspecting....**

# Warrants to Search & Enter

## ARTICLE 8 ECHR

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

# Warrants to Search & Enter

Is the interference with Article 8 justified?

- I. Is it lawful under a clear and accessible statute or principle of common law?
- II. Is it intended to pursue a legitimate aim, typically the rights and freedoms of others or the detection and punishment of criminal activities?
- III. Is it necessary in a democratic society and *proportionate*?
- IV. Is it discriminatory?

# Warrants to Search & Enter

## PROPORTIONALITY

Whether or not interference is proportionate will be informed by the following questions:

- a) Can the objective be met by less onerous means?
- b) Does the measure have an excessive or disproportionate effect on the interests of affected persons?



# Warrants to Search & Enter

## **‘PREMISES’**

Article 25 PACE (NI) Order 1989:

‘premises’ includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or movable structure

# Warrants to Search & Enter

## Most frequent types of warrant sought:

- Art. 10 PACE (NI) Order 1989 (indictable offence)
- s. 37 & Sch. 5 Terrorism Act 2000 (terrorist investigation)
- Art. 52 Firearms (NI) Order 2004
- s. 23(3) Misuse of Drugs 1971
- s. 25 Theft (NI) Act 1969

# Warrants to Search & Enter

Some points to note:

- Specific premises/all premises warrant
- Multiple searches warrant
- Note fall back position in Sch. 5 Terrorism Act 2000
- A search warrant does not become an arrest warrant if following the search an arrest is made

# Warrants to Search & Enter

## Search Warrant Checklist - *Aide memoire*

- The threat of legal challenge to validity of warrant is a live one. Think of 'The Judge over your shoulder' ...
- Careful notes are a protection as evidence that you have given the matter sufficiently anxious scrutiny and have gone through a systematic consideration of the relevant issues.

# Arrest Warrants

- Again – no process of granting leave to hear – you're obliged to hear unless there is some reason to recuse yourself
- legislative provisions not to be read widely but narrowly – look for express wording in the legislation
- Oath apparently not required in every case but recommended as good practice.

# Arrest Warrants

## ARTICLE 5 ECHR

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

# Arrest Warrants

- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

# Arrest Warrants

Is the interference with Article 5 justified?

- I. Is it lawful under a clear and accessible statute or principle of common law?
- II. Is it intended to pursue a legitimate aim, typically the rights and freedoms of others or the detection and punishment of criminal activities?
- III. Is it necessary in a democratic society and *proportionate*?
- IV. Is it discriminatory?



# Arrest Warrants

## PROPORTIONALITY

Whether or not interference is proportionate will be informed by the following questions:

- a) Can the objective be met by less onerous means?
- b) Does the measure have an excessive or disproportionate effect on the interests of affected persons?

# **Arrest Warrants**

Consideration of some specific legislative provisions giving lay magistrates power to issue an arrest warrant....

Generally

# **Signatory Duties Protocol**

# **LM Signatory Duties**

**Q&As**