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|  | 102 Petty FranceLondonSW1H 9AJ**E-Mail:** jcs@hmcts.gsi.gov.uk  |

News Sheet

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**CIRCULATED DIRECTLY TO ALL MEMBERS OF THE JUSTICES’ CLERKS’ SOCIETY**

Dear Colleague,

**TIME LIMITS FOR INSTITUTING PROCEEDINGS COMMENCED BY WRITTEN CHARGE (REQUISITIONS AND SINGLE JUSTICE PROCEDURE NOTICES)**

It has been brought to the Society’s attention that many police forces are commencing proceedings very close to the six month time limit and on occasion serving the written charge and single justice procedure notice on the defendant (and the court) more than six months after the date of the alleged offence. This has raised questions about whether the prosecution have instituted proceedings within the statutory time limit. It has further been argued that deferral of posting of the SJP notice falls foul of s.29(2) Criminal Justice Act 2003 since it was not 'issued at the same time’; the question then arises as to the consequences of that.

Yours sincerely

Justices’ Clerks’ Society

**Introduction: written charge procedure**

Both Single Justice Procedure (SJP) notices and requisitions are initiated by a prosecutor issuing a “written charge”[[1]](#footnote-1). Where a prosecutor issues a written charge, it must at the same time issue a requisition, or a SJP notice[[2]](#footnote-2). The key difference from the information and summons procedure is that a summons is issued by the *court* on the application of the prosecutor, while requisitions and SJP notices are issued by the *prosecutor* with the court having no role in their issue. This distinction means that the consequences of service on the court are also different. With a summons, service on the court initiates the process[[3]](#footnote-3). However with a requisition or SJP notice, service on the court only follows issue and does not initiate the process[[4]](#footnote-4).

This paper aims to answer certain questions that have arisen over the written charge procedure, specifically:

* At what point is the written charge issued for the purposes of time limits for prosecution?
* Is issue of the charge only complete when it has been notified to the court?
* What are the consequences if a prosecutor sends a SJP notice to the defendant (or court) at a later date from that on which they issued the written charge

**At what point is the written charge issued for the purposes of time limits for prosecution?**

The Society’s view is that a written charge is issued when the prosecutor determines to issue it and time runs from that point. It does not run from the date when the charge and SJP notice are served on the court (or defendant).

Section 127(1) of the Magistrates’ Courts Act 1980 (MCA) provides, in relation to summary only offences, that:

… a magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose.

In general, references in any Act passed before the 2003 Act to informations include a reference to a written charge[[5]](#footnote-5), save where the context otherwise requires. A degree of interpretation is required to apply the reference to s. 127 to written charges since, as is expressly stated in S. 29, the process is not commenced by “laying” the charge before the court, but by the action of the prosecutor in issuing the charge. Bearing that in mind, in the Society’s view, it is plain that the relevant date for the purposes of s. 127 must be the date that the prosecutor issues the charge, rather than the date of a process (laying) which is, in relation to charges, non-existent.

This view is supported by s. 15 of the Prosecution of Offences Act 1985, which defines “instituted” for the purposes of Part 1 of that Act as being

(ba) … when the written charge and requisition are issued;

(bb) … when the written charge and single justice procedure notice are issued;

The Society is aware that it has been argued before some courts that the relevant date is the date that the SJP notice is served on the defendant. However that is plainly incorrect – “issue” and “serve” are clean different things, and the requirement to serve the notice is expressly a separate process in s. 29.

Particularly if service occurs much later than the date on which the prosecution assert the charge was issued, there are likely to be factual challenges alleging that the charge is out of time. In our view it will be for the prosecution to prove that the written charge was issued in time. The prosecution is likely to refer to the date on which the written charge and SJP notice were printed.

This means that while service on the court does not effect issue, it will be useful evidence of the date a written charge was issued. In *Atkinson v DPP[[6]](#footnote-6)*, which concerned the laying of an information via the court computer, the Administrative Court held that in relation to informations laid by computer, the relevant date was the date on which the information was ‘validated’ by the court computer and unable to be altered. While not binding in relation to written charges, the case is persuasive. The ability to prove a point at which the written charge is fixed and is incapable of alteration may be important evidence should the court be required to determine the point of issue.

**Is issue of the charge only complete when it has been notified to the court?**

It follows from the above that the written charge is issued when the prosecutor issues it under s. 29(1). “Issue” is not defined in the Act, and thus bears its dictionary meaning of “To send forth, give out[[7]](#footnote-7)”. Service on the court is a separate process under s. 29(3) and the Criminal Procedure Rules observe the same distinction.

Receipt by the court, therefore, as noted above, is relevant only as evidence of the date of issue.

**What are the consequences if a prosecutor sends a SJP notice to the defendant (or court) at a later date from that on which they issued the written charge?**

The view of the Society is that delay in service of the written charge and SJP notice has no impact on the formal validity of the process, although it may open the way to allegations that the date of issue was falsified, or to an abuse of process argument.

It follows from the above discussion, that issue of the written charge, issue of the SJP notice, and the posting (service) of the two are all different things. However s. 29(2) states that the prosecutor must issue the SJP notice “at the same time” as issuing the written charge. The Criminal Procedure Rules repeats this.

It has therefore been argued that the posting of a SJP notice many weeks after issue of the written charge would invalidate the process, requiring dismissal. In the view of the Society this again confuses the question of “issue” and “serve”: service is a procedure subsequent to issue.

In reality, the decision of a prosecutor to issue a written charge will almost invariably be accompanied by a decision to proceed by way of SJP notice, and thus the issue of both documents will be virtually simultaneous. Thereafter there will be a delay, whether long or short, in posting or emailing the charge and SJP notice, but that has no impact on the validity of the process of issuing them.

There may however be two adverse consequences for the prosecutor. Firstly, a long delay between the date of issue, as asserted by the prosecutor, and the date of service, may cast doubt on the truth of that assertion, particularly if the date of service was outside the six month period prescribed in s. 127.

Yours sincerely

The Justices’ Clerks’ Society

1. Criminal Justice Act 2003 s. 29(1) [↑](#footnote-ref-1)
2. Ibid s. 29(2) [↑](#footnote-ref-2)
3. *R v Manchester Stipendiary Magistrate, Ex p Hill* 1982 RTR 449 [↑](#footnote-ref-3)
4. Criminal Justice Act 2003 s. 29(3) and (3A) [↑](#footnote-ref-4)
5. Ibid s. 30(5) [↑](#footnote-ref-5)
6. [2004] 3 All ER 971, [2005] 1 WLR 96, 168 JP 472 [↑](#footnote-ref-6)
7. OED 2017 [↑](#footnote-ref-7)