

REVISED CODE OF PRACTICE FOR CONDITIONAL CAUTIONS - ADULTS

**Criminal Justice Act 2003
(as amended by the Commissioners for Revenue and
Customs Act 2005, the Police and Justice Act 2006 and
the Criminal Justice and Immigration Act 2008)**

REVISED CODE OF PRACTICE FOR CONDITIONAL CAUTIONS – ADULTS

**Laid before Parliament pursuant to section 25 of the
Criminal Justice Act 2003**

1 INTRODUCTION

- 1.1 This Code of Practice is issued by the Secretary of State for Justice under section 25 Criminal Justice Act 2003 (“the Act”) and is published with the consent of the Attorney General. It has been approved by Parliament and brought into force by statutory instrument (SI 2009/XXXX). It extends to England and Wales. The Code governs the use of Conditional Cautions under Part 3 of the Criminal Justice Act 2003. This second edition replaces any earlier versions.
- 1.2 Conditional cautioning is a statutory form of out-of-court disposals for adult offenders introduced by Part 3 of the Criminal Justice Act 2003 as amended by the Commissioners for Revenue and Customs Act 2005, the Police and Justice Act 2006 and the Criminal Justice and Immigration Act 2008.
- 1.3 The disposal allows a relevant prosecutor¹ (such as the Crown Prosecution Service (CPS)) to offer a caution with condition(s) attached for certain offences. The decision to administer a Conditional Caution has the effect of suspending any criminal proceedings while the offender is given an opportunity to comply with the agreed conditions. Where the conditions are complied with, the prosecution is not normally commenced². However, where there is no reasonable excuse for non-compliance, the Conditional Caution can be cancelled and criminal proceedings commenced for the original offence.
- 1.4 Such a caution may only be administered by an authorised person (such as a police officer)³.

2 OBJECTIVE OF CONDITIONAL CAUTIONING

- 2.1 Conditional Cautioning provides an opportunity to achieve an early positive response to low-level offending behaviour for those persons willing to admit their offending and to comply with certain conditions.

¹ Throughout the Code any reference to a prosecutor should be read as meaning a relevant prosecutor under the Act.

² The caution *may* not preclude a subsequent prosecution if it was not appropriately administered and it *will* not preclude a civil action by an aggrieved party (see *Hayter v L* [1998] 1 WLR 854; *Jones v Whalley* [2006] UKHL 41, paragraphs 36 and 44).

³ Although the examples used in the Code relate mainly to the CPS and the police, the Code applies equally to Conditional Cautions given by any authorised persons on the authority of other relevant prosecutors.

3 GUIDANCE TO PROSECUTORS

- 3.1 Before exercising any powers under Part 3 of the Act a prosecutor will publish guidance to its prosecutors on the approach to be taken in deciding whether to offer a Conditional Caution for an offence.
- 3.2 This guidance will identify any aspects which render a case unsuitable for a Conditional Caution and where an alternative disposal should be preferred, such as prosecution. For example, certain offences may be excluded from the scheme, or specific circumstances surrounding the case may make charging the offender the most appropriate response.
- 3.3 The Director of Public Prosecutions will issue Guidance under section 37A of the Police and Criminal Evidence Act 1984 which will prescribe the offences and circumstances in which a Conditional Caution is permitted. Any other prosecutor will also publish similar Guidance.

4 THE REQUIREMENTS IN THE ACT

- 4.1 The Act imposes five requirements before a Conditional Caution can be given. Each of these requirements must be met in every case and should be followed in the order set out below:
- The authorised person must have evidence that the offender has committed an offence⁴.
 - The prosecutor must determine that there is sufficient evidence to charge the offender with the offence. The prosecutor must also determine that a Conditional Caution should be given to the offender in respect of the offence.
 - The offender must admit to the authorised person that he has committed the offence.
 - The authorised person must explain the effect of the Conditional Caution and warn the offender that failure to comply with any of the conditions may result in prosecution for the original offence.
 - The offender must sign a document containing details of the offence, the admission to the authorised person, consent to be given a Conditional Caution and details of the conditions attached.
- 4.2 The Act does not require an admission to be made by the offender before the prosecutor determines whether a Conditional Caution is appropriate.

⁴ The authorised person must have sufficient evidence available that is capable of meeting the Full Code Test (see footnote 5 overleaf) at the time the case is referred to the prosecutor.

However, the prosecutor must be satisfied that there is sufficient available evidence to meet the evidential requirements of the Full Code Test⁵. Notwithstanding this, the offender must make an admission to the offence at the time the Conditional Caution is given.

- 4.3 In determining whether the Full Code Test is met, the prosecutor should take into account all available evidence including any admission made by the offender. A prosecutor may not authorise the offer of a Conditional Caution in order to secure an admission that could then provide sufficient evidence to meet the Full Code Test.

5 DECIDING WHETHER A CONDITIONAL CAUTION SHOULD BE GIVEN

- 5.1 The decision to offer a Conditional Caution and the condition(s) to be attached may only be made by a prosecutor; it is not a decision for an authorised person.
- 5.2 The Conditional Caution is only available for offenders aged 18 or over at the time the Conditional Caution is offered.
- 5.3 The prosecutor must decide whether the public interest is satisfied by the offender being offered a Conditional Caution in respect of the offence. In making this decision prosecutors will take into account:
- guidance issued to prosecutors (see section 3);
 - the seriousness of the offence;
 - the circumstances of the case;
 - any views expressed by the victim;
 - any wider neighbourhood or community considerations or concerns;
 - the background, circumstances and previous offending history of the offender;
 - the willingness of the offender to comply with possible conditions;
 - the likely effect of the Conditional Caution; and
 - the likely outcome if the case proceeded to court.

⁵ The evidential requirements under the Full Code Test for police and CPS prosecutors require that the prosecutor must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction'. This is set out in the Code for Crown Prosecutors. Prosecutors not covered by the Code for Crown Prosecutors issued by the Director of Public Prosecutions should use an equivalent test.

- 5.4 Where a number of offences are related⁶ and an out-of-court disposal is considered suitable for all of them, the prosecutor may decide to group the offences and deal with them using one Conditional Caution. Before making this decision the prosecutor should consider whether the number of offences increase the gravity of the offending behaviour to a level where the public interest requires prosecution.
- 5.5 Where an offender denies the offence or raises a defence, an offer of a Conditional Caution cannot be made.

6 TYPES OF CONDITIONS

- 6.1 The conditions that can be attached to a Conditional Caution must have one or more of the following objectives:
- Rehabilitation – conditions which help to modify the behaviour of the offender, serve to reduce the likelihood of re-offending or help to reintegrate the offender into society;
 - Reparation – conditions which serve to repair the damage done either directly or indirectly by the offender;
 - Punishment – conditions which punish or penalise the offender for their unlawful conduct.
- 6.2 Rehabilitative conditions may include attendance at drug or alcohol misuse programmes, or interventions tackling other addictions or personal problems, such as gambling or debt management courses.
- 6.3 Reparative conditions may include apologising, repairing or otherwise making good any damage caused, provided this is acceptable to the victim. Specific financial compensation may be paid. Where the offending has resulted in damage to community property, reparation may take the form of unpaid work to repair that damage or of a payment to an appropriate local charitable or community fund.
- 6.4 At present only one punitive condition is available: the payment of a financial penalty.
- 6.5 Conditions which impose restrictions on an offender may only be used where they contribute towards the aims of rehabilitation, reparation or punishment. Such conditions could be used to prevent the offender from contacting individuals, visiting certain locations or participating in particular activities.

⁶ They could arise out of the same incident or alternatively they may be similar offences related to the same underlying problem (for example, acquisitive crime to fund a drug habit).

- 6.6 Conditions may include reference to the future behaviour of an offender, such as an agreement not to commit further offences for a specified period.
- 6.7 An offender with sufficient means may be expected to pay the reasonable costs associated with rehabilitative or reparative conditions, in order to render the conditions effective, and a requirement to do so might be an additional condition. This is subject to the offender having means to pay and must be appropriate, proportionate and achievable.
- 6.8 Conditions should avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends school or any other educational establishment or attends other specialist services.

7 SELECTION OF APPROPRIATE CONDITIONS

- 7.1 Conditions attached to a Conditional Caution must always be:
- Appropriate;
 - Proportionate;
 - Achievable.
- 7.2 Prosecutors should seek to apply a problem solving approach aimed at changing an offender's behaviour and/or providing redress to the victim of the offence. These two aims will be regarded as the priority. Punitive conditions should only be used where there are no appropriate reparative or rehabilitative conditions (or where those conditions do not provide a proportionate response to the offending behaviour).
- 7.3 When determining the conditions to be attached to a Conditional Caution, the prosecutor should consider the totality of the conditions and seek to achieve proportionality to the offending behaviour⁷. The objectives sought ought to be achieved by the attachment of the minimum number of conditions.
- 7.4 Offenders must be able to complete the conditions satisfactorily and within a reasonable time period. Prosecutors should take into account the offender's circumstances, physical and mental capacity, and ensure that any financial conditions are commensurate with the means of the offender.

⁷ Where a number of offences have been grouped together, the prosecutor should consider all the offences when determining whether the conditions attached are proportionate.

- 7.5 In deciding on the time period within which conditions must be completed, prosecutors must take into account any time limits affecting the commencement of proceedings for the original offence and must ensure that the option of prosecuting the original offence in the event of non-compliance remains available. In the case of summary only offences conditions must be capable of being completed within 16 weeks of the date of the original offence wherever possible. 16 weeks will also be an appropriate maximum time period for the completion of conditions relating to an either way offence in the vast majority of cases.
- 7.6 In considering the appropriate conditions to achieve one or more of the objectives set out in section 6, a prosecutor should also consider whether any of the following are applicable to the case:
- Opportunities to provide reparation or compensation to any victim or relevant neighbourhood or community;
 - Use of conditions to reflect and secure the interests of the victim and neighbourhood or community (for example, by requiring the offender to stay away from a specific area);
 - Use of restorative and reparative processes to have a positive impact on the community or individuals affected by the offending behaviour;
 - Opportunities to provide reparative unpaid work that benefits the community;
 - Use of a financial penalty condition to punish the offender and deter future offending (see section 8).
- 7.7 Restorative Justice processes may be used to help determine the conditions to be attached to a Conditional Caution. However, before any conditions that arise from the Restorative Justice process are attached to a Conditional Caution, the prosecutor must ensure that they are appropriate in accordance with this Code and any relevant guidance issued to prosecutors. In particular prosecutors should ensure that such conditions are proportionate to the offending and meet the public interest requirements of the case. Where Restorative Justice processes are to be used to help determine the conditions to be attached to a Conditional Caution, the offender can be bailed, under s.37(7)(a) of the Police and Criminal Evidence Act 1984, for a sufficient period of time to allow this to take place.
- 7.8 Participation in a Restorative Justice process may also be a condition of the caution itself. In such cases, positive participation in the process is all that is legally required of the offender by the condition, and any actions arising out of the Restorative Justice process will form a voluntary agreement between the offender and the victim.

- 7.9 Restorative Justice processes may only be used where both parties (the victim and the offender) consent to take part. Best Practice Guidance for Restorative Justice Practitioners sets out the skills and knowledge required by practitioners and the standards that participants should expect⁸.

8 CONDITIONS WITH A FINANCIAL ELEMENT

- 8.1 Conditions with a financial element include compensation payments (with the objective of reparation), financial penalties (with the objective of punishing the offender), and costs associated with reparative or rehabilitative conditions (see paragraph 6.7). Financial Penalty Conditions⁹ can only be used in those cases in which they are permitted by virtue of an Order issued under s.23A(2) of the Act (“the Order”).
- 8.2 The maximum amount of any financial penalty condition in relation to each offence or description of the offence will be specified in the Order. Prosecutors should determine the level of a financial penalty, taking into account the means of the offender and the circumstances of the case, including the seriousness of the offence.
- 8.3 Conditions with a financial element will not be the subject of enforcement procedures by the court. Failure to make payment in relation to any condition with a financial element without reasonable excuse will amount to non-compliance with the condition of the caution and may lead to prosecution for the original offence.
- 8.4 Any financial penalty conditions must specify to whom the offender must make payment.
- 8.5 When considering any conditions with a financial element that may be attached to a Conditional Caution, particularly where the offender is of limited financial means, prosecutors should always prioritise compensation for the victim ahead of any costs associated with other conditions and any financial penalty condition.
- 8.6 The extent of any financial loss suffered by the victim may mean that the full amount of any compensation sought is beyond the means of the offender. This does not preclude the use of a Conditional Caution where it is appropriate and meets the justice of the case as the total amount of

⁸ Best Practice Guidance for Restorative Justice Practitioners can be found on the Home Office website at www.homeoffice.gov.uk/documents/rj_bestpractice.pdf.

⁹ The use of financial penalty conditions is limited by statute. There are no statutory restrictions on the offences for which compensation can be given nor any maxima regarding the amount of compensation; however, operational guidance should be produced by prosecutors concerning the use of such conditions.

compensation to be paid may be reduced. Before offering a Conditional Caution in such circumstances, prosecutors should consider whether a court order for compensation (which can be paid over a longer period of time) would be a more suitable response taking into account all the circumstances of the case.

- 8.7 Where multiple conditions involving financial payment are attached to a Conditional Caution, the total required to be paid must be commensurate with the individual's means and be capable of being paid within a reasonable period of time.

9 INVOLVEMENT OF VICTIMS

- 9.1 The views of the victim should be obtained wherever possible. These should be taken into account in deciding whether a Conditional Caution is appropriate and in determining suitable conditions. The victim's consent must be obtained in any case where direct reparation or restorative justice processes are being considered.
- 9.2 The views of the victim will be important but cannot be conclusive. The decision as to whether to offer a Conditional Caution and the conditions to be attached lies with the prosecutor, who will take into account the views of the victim. In some circumstances the prosecutor may consider that proportionality with the level of the offence requires the inclusion of conditions that may be more or less onerous than those the victim wants. Care must be taken not to raise the expectations of the victim whilst seeking their views.
- 9.3 Where the conditions attached to a caution have a direct impact on the victim¹⁰, the victim should be informed of the conditions given to the offender and the intended outcome. The victim should be informed of any changes to the expected outcome, for example, if the offender has failed to comply with the Conditional Caution and will not be completing the conditions.
- 9.4 Victims who are not directly affected by the conditions¹¹ should also be informed of the outcome of the case where possible, including whether the Conditional Caution was completed or whether the offender was prosecuted for the original offence as a result of non-compliance.

¹⁰ For example, where compensation is to be paid, or work that benefits the victim is undertaken.

¹¹ For example, where the offender has been given a rehabilitative condition, and no compensation is necessary.

10 IDENTIFICATION AND SUITABILITY OF CASES

- 10.1 Police and other investigators are responsible for identifying cases in which a Conditional Caution is permissible and may be the appropriate outcome. Such cases should be referred to a prosecutor in accordance with national guidance (such as guidance issued by the Director of Public Prosecutions). Cases should be referred as early as possible to ensure that they are dealt with quickly.
- 10.2 In respect of the police, Guidance on Charging and Conditional Cautioning, issued by the Director of Public Prosecutions (the “Director’s Guidance”), will specify those offences and circumstances where Conditional Cautions are permitted. It is the responsibility of the Custody Officer at the time of deciding whether the Full Code test is passed (in accordance with the Director’s Guidance) to identify any such case and refer the case to a prosecutor.
- 10.3 Where an offender is charged with an offence but it appears upon review that a Conditional Caution may be appropriate a prosecutor may decide that a Conditional Caution should be offered. The prosecutor should direct an authorised person to make the offer of a Conditional Caution to the offender. In such cases the prosecution will be adjourned pending the decision by the offender whether to accept the offer of a Conditional Caution.
- 10.4 When referring cases to prosecutors, police and other investigators may make recommendations regarding any conditions that may be appropriate. Recommendations should be made in accordance with operational guidance (such as the Director’s Guidance).

11 MAKING THE OFFER OF A CONDITIONAL CAUTION

- 11.1 In a case in which a prosecutor considers that there is sufficient evidence to charge and that the case may be suitable to be dealt with by means of a Conditional Caution, the prosecutor may direct the authorised person to make the offer of a Conditional Caution to the offender.
- 11.2 The offender must always admit to the authorised person at the time he is given the Conditional Caution that he has committed the offence in question. This is true for all cases, irrespective of whether a previous admission has been made by the offender.
- 11.3 Before making the offer of a Conditional Caution the authorised person shall:

- Ensure that the offender has the opportunity to receive free and independent legal advice;
- Inform the offender of the evidence against them and the decision made by the prosecutor;
- Explain the Conditional Caution and the implications of accepting this, including any circumstance in which it may be disclosed;
- Explain the requirement for and consequences of making an admission to the offence, including the fact that the admission may be used in evidence should the case result in prosecution¹²;
- Make it clear to the offender that an admission should never be made merely to receive a Conditional Caution;
- Explain that the offender may decide at any stage to withdraw from the Conditional Caution. Make it clear that if the offender does decide to withdraw he should inform the authorised person as soon as possible. Tell the offender that withdrawal will be reported to the prosecutor, who may then decide that the offender should be charged with the original offence and prosecuted at court.
- Warn the offender that any failure to comply with the conditions will be investigated and reported to the prosecutor. The prosecutor will consider the report and the circumstances of the case including the extent of any compliance to date, and may decide that the offender should be prosecuted for the original offence.

12 ADMINISTRATION OF THE CONDITIONAL CAUTION

- 12.1 Once a prosecutor has determined that a Conditional Caution is appropriate in a case, an authorised person will administer the caution.
- 12.2 The Conditional Caution may be administered in a police station, court building, the offices of any prosecutor or any other suitable location consistent with achieving the appropriate impact on the offender.
- 12.3 The form for recording the Conditional Caution must:
- Contain the details of the offence for which the caution is administered;
 - Clearly set out all the conditions to be complied with;
 - Set out the arrangements for monitoring compliance;

¹² Where a prior admission has been made by the offender, the offender should already be aware of this.

- Specify the effect of the Conditional Caution and the consequences of any failure to comply with the conditions, including the possibility of future prosecution for the offence;
- Record the offender's clear admission to the offence, consent to being given the Conditional Caution and agreement to and undertaking to abide by the conditions; and
- Provide details of the person or department that the offender should contact in the case of non-compliance, or if they are unable or unwilling to comply with the conditions.

12.4 The authorised person should ensure that the offender understands the following:

- the offender has the right to legal advice at any time during the process;
- the effects of accepting a Conditional Caution, in particular that although it is not a criminal conviction, the Conditional Caution will form part of an offender's criminal record and may be disclosed in certain circumstances;
- the means by which compliance with each of the conditions will be verified (including any responsibilities of the offender for demonstrating compliance);
- the victim(s) may be informed of the conditions agreed (unless there is good reason for this not happening);
- the victim may be provided with the details of the offender for any civil proceedings;
- the process for contacting the police (or other agency monitoring compliance) should any problems arise in complying with the conditions or if the offender decides to withdraw from the Conditional Caution process;
- the consequences of failing to complete the Conditional Caution (in particular that the offender may be liable for arrest and prosecution for the original offence);
- any requirement to notify the police (or other agency monitoring compliance) immediately upon change of address.

13 MONITORING AND COMPLIANCE

13.1 Compliance with the condition(s) attached to the Conditional Caution within the agreed timescale will normally preclude the possibility of prosecution for the original offence (see paragraph 1.3). Failure to comply with a condition is not an offence in itself, but may result in the offender being prosecuted for the original offence.

- 13.2 When determining the conditions to be attached to a Conditional Caution, a prosecutor should consider the mechanism by which compliance with the conditions will be demonstrated.
- 13.3 A robust process for demonstrating compliance must be in place. This may include agreements with:
- organisations involved in delivering the conditions (such as drugs referral agencies);
 - police officers and other police staff;
 - probation and national offender management services;
 - Her Majesty's Courts Service (for collection of monies).
- 13.4 The monitoring process must be made clear to both the offender and any organisation responsible for providing such information. Where reasonable and appropriate, the onus for providing confirmation of compliance may be placed specifically upon the offender. However, the authorised person will have overall responsibility for monitoring compliance with conditions.
- 13.5 Where it appears to the authorised person an offender is failing to comply with one or more conditions, the authorised person should seek to give the offender the opportunity to clarify the situation and demonstrate compliance or to establish whether any reasonable excuse exists for non-compliance. Where there is no response from the offender, or where the prosecutor concludes that there is no reasonable excuse for the failure, or that the non-compliance is likely to continue, a prosecution for the original offence should usually follow.
- 13.6 Whether any excuse given is reasonable or not is a matter for the prosecutor to determine on all the available evidence. The decision of the prosecutor and the reasons for it should be recorded.
- 13.7 Where the prosecutor is satisfied that there is a reasonable excuse for the offender's failure to meet the conditions, or there has been substantial part compliance, the prosecutor will have to decide whether:
- the Conditional Caution should be regarded as completed¹³;
 - the Conditional Caution should be regarded as incomplete but that the public interest requires no further action;
 - a new time limit should be set for completing the original conditions; or
 - the original conditions should be revised.

¹³ For example, where the offender has substantially engaged with a drug rehabilitation condition but missed one appointment or struggled to provide payment for the scheme.

- 13.8 Any changes to the conditions must be recorded and explained to the offender. Any unreasonable refusal by the offender to agree to revised conditions should usually result in prosecution for the original offence. It will not usually be appropriate to revise conditions more than once.
- 13.9 A document clearly setting out the conditions as they stand from that point forward should be produced and must be signed by an authorised person and by the offender to indicate acceptance of the new conditions. Such a document must comply with the requirements set out in paragraph 12.3 of this Code.
- 13.10 Where the Conditional Caution has been given for multiple offences, the prosecutor must also determine which of the original offences requires prosecution. This is particularly relevant in cases of partial compliance, where the offender may have completed one of the conditions that related to a specific offence.
- 13.11 Where a prosecutor determines that a prosecution for the original offence is to go ahead, the authorised person will ensure that the offender is notified and that any local and national police records are amended accordingly. Once proceedings are instituted, the Conditional Caution ceases to have effect; however, the fact that a Conditional Caution was given and not complied with will remain on an offender's record.

14 ARREST AND DETENTION OF OFFENDERS

- 14.1 A specific power allowing a police officer to arrest and detain offenders is provided by s.24A (1) of the 2003 Act. The power arises when a constable has *reasonable* grounds for believing that an offender has failed without reasonable excuse to comply with any conditions attached to a caution. While the necessity criteria in s.24(4) and (5) of PACE do not apply to arrests under s.24A of the 2003 Act, as a matter of practice the same approach should be adopted and the power of arrest should be only be exercised where considered necessary. Once arrested, detention may be authorised where it is necessary to investigate reasons for any non-compliance or to seek a charging decision from a prosecutor and formally charge an offender.
- 14.2 Offenders should only be detained for as long as is necessary to explore the reasons for any breach and/or to undertake any charging procedures. This should be done as soon as practicable after arrest or arrival at the police station. Where it is clear that this cannot be achieved in a short period of time, the offender should be released on bail under s.24A (2) (b)

of the Act whilst the authorised person enquires into the non-compliance and the prosecutor decides whether the original offence should be charged.

- 14.3 Once the authorised person has concluded any enquiry into the non-compliance the case will be referred to a prosecutor for decision. Where it appears likely that referral may not be concluded within a short period of time, the offender will be released on an appropriately short period of bail.

15 PROSECUTION FOLLOWING FAILURE TO COMPLY

- 15.1 Where a prosecutor has determined that an offender has failed to comply with a Conditional Caution and is to be prosecuted, proceedings should be commenced as soon as possible. This may be done in one of three ways:
- a charge may be brought at a police station;
 - a summons may be issued; or
 - the written charge and requisition¹⁴ process may be used when brought into force.
- 15.2 Where a prosecution for the original offence follows a failure to complete conditions attached to a caution, the prosecutor should ensure that the court is made aware of this fact and provide details of the conditions that were attached to the caution and the extent of any partial compliance. This information may be used by the court when considering the case¹⁵.

16. RECORDING AND CITING CONDITIONAL CAUTIONS

- 16.1 In regard to Conditional Cautions given by the police, records must be kept in accordance with relevant directions issued by or on behalf of the Secretary of State. Other prosecutors and/or authorised persons should issue similar directions to ensure that records are kept in accordance with any relevant legal responsibilities.
- 16.2 Conditional cautions can be cited in any subsequent court proceedings¹⁶ subject to any relevant legislation regarding the rehabilitation of offenders.

¹⁴ This is commonly referred to as the “charge by post” procedure and was introduced in s.29 of the Criminal Justice Act 2003.

¹⁵ The court will be dealing with the original offence. Non-compliance with a Conditional Caution is not an offence in itself.

¹⁶ This includes civil proceedings.

CRIMINAL JUSTICE ACT 2003

(as amended by the Commissioners for Revenue and Customs Act 2005, Police and Justice Act 2006 and Criminal Justice and Immigration Act 2008)

Part 3

CONDITIONAL CAUTIONS

SECTIONS 22 TO 27

(as in force on the coming into force of this Revised Code)

22 Conditional cautions

- (1) An authorised person may give a conditional caution to a person aged 18 or over ("the offender") if each of the five requirements in section 23 is satisfied.
- (2) In this Part "conditional caution" means a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply.
- (3) The conditions which may be attached to such a caution are those which have one or more of the following objects--
 - (a) facilitating the rehabilitation of the offender;
 - (b) ensuring that the offender makes reparation for the offence;
 - (c) punishing the offender.
- (3A) The conditions which may be attached to a conditional caution include--
 - (a) (subject to section 23A) a condition that the offender pay a financial penalty.
- (4) In this Part "authorised person" means--
 - (a) a constable,
 - (b) an investigating officer, or
 - (c) a person authorised by a relevant prosecutor for the purposes of this section.

23 The five requirements

- (1) The first requirement is that the authorised person has evidence that the offender has committed an offence.
- (2) The second requirement is that a relevant prosecutor decides--
 - (a) that there is sufficient evidence to charge the offender with the offence, and
 - (b) that a conditional caution should be given to the offender in respect of the offence.
- (3) The third requirement is that the offender admits to the authorised person that he committed the offence.
- (4) The fourth requirement is that the authorised person explains the effect of the conditional caution to the offender and warns him that failure to comply with any of the conditions attached to the caution may result in his being prosecuted for the offence.
- (5) The fifth requirement is that the offender signs a document which contains--
 - (a) details of the offence,

- (b) an admission by him that he committed the offence,
- (c) his consent to being given the conditional caution, and
- (d) the conditions attached to the caution.

23A Financial penalties

- (1) A condition that the offender pay a financial penalty (a "financial penalty condition") may not be attached to a conditional caution given in respect of an offence unless the offence is one that is prescribed, or of a description prescribed, in an order made by the Secretary of State.
- (2) An order under subsection (1) must prescribe, in respect of each offence or description of offence in the order, the maximum amount of the penalty that may be specified under subsection (5)(a).
- (3) The amount that may be prescribed in respect of any offence must not exceed--
 - (a) one quarter of the amount of the maximum fine for which a person is liable on summary conviction of the offence, or
 - (b) £250,whichever is the lower.
- (4) The Secretary of State may by order amend subsection (3) by--
 - (a) substituting a different fraction in paragraph (a);
 - (b) substituting a different figure in paragraph (b).
- (5) Where a financial penalty condition is attached to a conditional caution, a relevant prosecutor must also specify--
 - (a) the amount of the penalty,
 - (b) the person to whom the financial penalty is to be paid and how it may be paid.
- (6) To comply with the condition, the offender must pay the penalty in accordance with the provision specified under subsection (5)(b).
- (6A) Where a financial penalty is (in accordance with the provision specified under subsection (5)(b)) paid to a person other than a designated officer for a local justice area, the person to whom it is paid must give the payment to such an officer.

23B Variation of conditions

A relevant prosecutor may, with the consent of the offender, vary the conditions attached to a conditional caution by--

- (a) modifying or omitting any of the conditions;
- (b) adding a condition.

24 Failure to comply with conditions

- (1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, criminal proceedings may be instituted against the person for the offence in question.
- (2) The document mentioned in section 23(5) is to be admissible in such proceedings.
- (3) Where such proceedings are instituted, the conditional caution is to cease to have effect.

24A Arrest for failure to comply

- (1) If a constable has reasonable grounds for believing that the offender has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, he may arrest him without warrant.
- (2) A person arrested under this section must be--
- (a) charged with the offence in question,
 - (b) released without charge and on bail to enable a decision to be made as to whether he should be charged with the offence, or
 - (c) released without charge and without bail (with or without any variation in the conditions attached to the caution).
- (3) Subsection (2) also applies in the case of--
- (a) a person who, having been released on bail under subsection (2)(b), returns to a police station to answer bail or is otherwise in police detention at a police station;
 - (b) a person who, having been released on bail under section 30A of the 1984 Act (bail elsewhere than at police station) as applied by section 24B below, attends at a police station to answer bail or is otherwise in police detention at a police station;
 - (c) a person who is arrested under section 30D or 46A of the 1984 Act (power of arrest for failure to answer to police bail) as applied by section 24B below.
- (4) Where a person is released under subsection (2)(b), the custody officer must inform him that he is being released to enable a decision to be made as to whether he should be charged with the offence in question.
- (5) A person arrested under this section, or any other person in whose case subsection (2) applies, may be kept in police detention--
- (a) to enable him to be dealt with in accordance with that subsection, or
 - (b) where applicable, to enable the power under section 37D(1) of the 1984 Act (power of custody officer to appoint a different or additional time for answering to police bail), as applied by section 24B below, to be exercised.
- If the person is not in a fit state to enable him to be so dealt with, or to enable that power to be exercised, he may be kept in police detention until he is.
- (6) The power under subsection (5)(a) includes power to keep the person in police detention if it is necessary to do so for the purpose of investigating whether he has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution.
- (7) Subsection (2) must be complied with as soon as practicable after the person arrested arrives at the police station or, in the case of a person arrested at the police station, as soon as practicable after the arrest.
- (8) Subsection (2) does not require a person who--
- (a) falls within subsection (3)(a) or (b), and
 - (b) is in police detention in relation to a matter other than the conditional caution,
- to be released if he is liable to be kept in detention in relation to that other matter.
- (9) In this Part--
- "the 1984 Act" means the Police and Criminal Evidence Act 1984;
 - "police detention" has the same meaning as in the 1984 Act (see section 118(2) of that Act).

24B Application of PACE provisions

(1) In the case of a person arrested under section 24A, the provisions of the 1984 Act specified in subsection (2) apply, with the modifications specified in subsection (3) and with such further modifications as are necessary, as they apply in the case of a person arrested for an offence.

(2) The provisions are--

- (a) section 30 (arrest elsewhere than at police station);
- (b) sections 30A to 30D (bail elsewhere than at police station);
- (c) section 31 (arrest for further offence);
- (d) section 34(1) to (5) (limitations on police detention);
- (e) section 36 (custody officers at police stations);
- (f) section 37(4) to (6) (record of grounds for detention);
- (g) section 38 (duties of custody officer after charge);
- (h) section 39 (responsibilities in relation to persons detained);
- (i) section 55A (x-rays and ultrasound scans).

(3) The modifications are--

(a) in section 30CA(5)(a), for the reference to being involved in the investigation of the offence mentioned in that provision substitute a reference to being involved--

- (i) in the investigation of the offence in respect of which the person was given the conditional caution, or
- (ii) in investigating whether the person has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution;

(b) in section 36(5) and (7), for the references to being involved in the investigation of an offence for which the person is in police detention substitute references to being involved--

- (i) in the investigation of the offence in respect of which the person was given the conditional caution, or
- (ii) in investigating whether the person has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution;

(c) in section 38(1)(a)(iii) and (iv), for "arrested for" substitute "charged with";

(d) in section 39(2) and (3), for the references to an offence substitute references to a failure to comply with conditions attached to the conditional caution.

(4) Section 40 of the 1984 Act (review of police detention) applies to a person in police detention by virtue of section 24A above as it applies to a person in police detention in connection with the investigation of an offence, but with the following modifications--

- (a) omit subsections (8) and (8A);
- (b) in subsection (9), for the reference to section 37(9) or 37D(5) substitute a reference to the second sentence of section 24A(5) above.

(5) The following provisions of the 1984 Act apply to a person released on bail under section 24A(2)(b) above as they apply to a person released on bail under section 37 of that Act--

- (a) section 37D(1) to (3) (power of custody officer to appoint a different or additional time for answering to police bail);
- (b) section 46A (power of arrest for failure to answer to police bail);
- (c) section 47 (bail after arrest).

(6) Section 54 of the 1984 Act (searches of detained persons) applies in the case of a person who falls within subsection (3) of section 24A above and is detained in a police station under that section as it applies in the case of a person who falls within section 34(7) of that Act and is detained at a police station under section 37.

(7) Section 54A of the 1984 Act (searches and examination to ascertain identity) applies with the following modifications in the case of a person who is detained in a police station under section 24A above--

(a) in subsections (1)(a) and (12), after "as a person involved in the commission of an offence" insert "or as having failed to comply with any of the conditions attached to his conditional caution";

(b) in subsection (9)(a), after "the investigation of an offence" insert ", the investigation of whether the person in question has failed to comply with any of the conditions attached to his conditional caution".

25 Code of practice

(1) The Secretary of State must prepare a code of practice in relation to conditional cautions.

(2) The code may, in particular, include provision as to--

(a) the circumstances in which conditional cautions may be given,

(b) the procedure to be followed in connection with the giving of such cautions,

(c) the conditions which may be attached to such cautions and the time for which they may have effect,

(d) the category of constable or investigating officer by whom such cautions may be given,

(e) the persons who may be authorised by a relevant prosecutor for the purposes of section 22,

(f) the form which such cautions are to take and the manner in which they are to be given and recorded,

(g) the places where such cautions may be given,

(ga) the provision which may be made by a relevant prosecutor under section 23A(5)(b),

(h) the monitoring of compliance with conditions attached to such cautions,

(i) the exercise of the power of arrest conferred by section 24A(1), and

(j) who is to decide how a person should be dealt with under section 24A(2).

(3) After preparing a draft of the code the Secretary of State--

(a) must publish the draft,

(b) must consider any representations made to him about the draft, and

(c) may amend the draft accordingly,

but he may not publish or amend the draft without the consent of the Attorney General.

(4) After the Secretary of State has proceeded under subsection (3) he must lay the code before each House of Parliament.

(5) When he has done so he may bring the code into force by order.

(6) The Secretary of State may from time to time revise a code of practice brought into force under this section.

(7) Subsections (3) to (6) are to apply (with appropriate modifications) to a revised code as they apply to an original code.

26 Assistance of National Probation Service

(1) Section 1 of the Criminal Justice and Court Services Act 2000 (c 43) (purposes of Chapter 1) is amended as follows.

(2) After subsection (1) there is inserted--

"(1A) This Chapter also has effect for the purposes of providing for--

- (a) authorised persons to be given assistance in determining whether conditional cautions should be given and which conditions to attach to conditional cautions, and
- (b) the supervision and rehabilitation of persons to whom conditional cautions are given."

(3) After subsection (3) there is inserted--

"(4) In this section "authorised person" and "conditional caution" have the same meaning as in Part 3 of the **Criminal Justice Act 2003**."

27 Interpretation of Part 3

In this Part--

"authorised person" has the meaning given by section 22(4),

"conditional caution" has the meaning given by section 22(2),

"investigating officer" means an officer of Revenue and Customs, appointed in accordance with section 2(1) of the Commissioners for Revenue and Customs Act 2005, or a person designated as an investigating officer under section 38 of the Police Reform Act 2002 (c 30),

"the offender" has the meaning given by section 22(1),

"relevant prosecutor" means--

- (a) the Attorney General,
- (b) the Director of the Serious Fraud Office,
- (ba) the Director of Revenue and Customs Prosecutions,
- (c) the Director of Public Prosecutions,
- (d) a Secretary of State,
- (e)
- (f), or
- (g) a person who is specified in an order made by the Secretary of State as being a relevant prosecutor for the purposes of this Part.

