Home Office

Criminal investigations: Foreign National Offender conditional cautions

Version 8.0

 Published for Home Office staff on 25 April 2016

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About this guidance

This guidance tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams about conditional cautions that can be offered to adult foreign offenders by the police and prosecutors in some circumstances.

It tells you:

- what legislation introduced adult conditional cautions
- what foreign offender conditions are
- the process you must follow
- what to do if an offender does not comply

Police officers working on Criminal and Financial Investigation teams will continue to deal with conditional caution cases as they would do normally.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the CFI Modernising Guidance Project team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email these to Guidance – making changes.

Clearance

Below is information on when this version of the guidance was cleared:

- version 8.0
- published for Home Office staff on 25 April 2016

Official – sensitive: start of section

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Official – sensitive: end of section

Changes from last version of this guidance

- transferred to new template
- minor housekeeping changes

Related content

Contents

Safeguard and promote child welfare

What is a conditional caution?

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams what a conditional caution is.

An adult conditional caution is an out of court disposal (way of dealing with an offender without going to court) that can be used instead of prosecution in cases of certain types of offending. It can only be used in England and Wales.

A conditional caution allows criminal proceedings to be halted while the offender is given time to comply with the terms of the conditional caution. If they fail to comply, the criminal proceedings can be reinstated for the original offence. For more information, see: Section 22 Conditional caution (Criminal Justice Act 2003).

Section 134 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 amended the Criminal Justice Act 2003. It allows for foreign offender conditions to be attached to a conditional caution. For more information, see Section 134 Conditional cautions: removal etc of certain foreign offenders.

All 'indictable only' offences (ones which must be tried in crown court) must be referred to the Crown Prosecution Service (CPS).

For more information, see:

- Director's guidance on conditional cautioning
- Code of Practice for Adult Conditional Cautions

Who can give a conditional caution

You cannot administer (give) a conditional caution with foreign offender conditions because criminal and financial investigation officers are not authorised to do this. You can advise the police lead or the CPS whether it might be an appropriate disposal. Only the police lead or the CPS can make the final decision on:

- whether a foreign offender conditional caution will be given
- what the conditions will be

Other conditions an authorised person can give are not covered in this guidance because they are not something you can give advice on.

Foreign offender conditions

Foreign offender conditions aim to:

- get the offender to leave the UK within a specified time period
- prevent them from returning to the UK for a specified time period

Conditions to achieve these aims must be included in every conditional caution with foreign offender conditions.

A foreign offender conditional caution can be appropriate even if the offender does not possess a valid travel document at the time the authorised person gives the caution. You can suggest conditions to help to overcome this.

For examples of conditions and more information on the time periods, see advising police if a conditional caution is appropriate.

Related content
Contents

Related external links

Advising police if a conditional caution is appropriate

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams about advising police on the suitability of a conditional caution, and what conditions they can recommend.

For criminal and financial investigation cases, your initial referral will be to the custody sergeant. They are an 'authorised person' and can therefore decide whether it is appropriate to authorise and administer (give) a conditional caution. The administration (giving) of a foreign offender conditional caution requires that:

- there is enough evidence to charge the offender with the offence if the offender were to be prosecuted
- the offender is likely to receive a custodial sentence of no more than 2 years upon conviction - if they are likely, if prosecuted, to receive a custodial sentence of more than 2 years upon conviction, a conditional caution is unlikely to be suitable
- you follow the Code of Practice on Adult Conditional Cautions and the Director of Public Prosecutions guidance on Adult Conditional Cautions

For more information, see:

- Director's guidance on conditional cautioning
- Code of Practice for Adult Conditional Cautions

Adult conditional caution requirements

The offender must:

- be over the age of 18
- admit the offence
- accept the conditional caution
- agree to comply with the conditions of the caution

You must make sure there is enough evidence to charge the offender, and give the conditional caution to the offender.

Foreign offender requirements

Section 22 (3G) of the Criminal Justice Act 2003, tells you a 'relevant foreign offender' is an offender:

- for who removal directions either have or may be given under:
  - schedule 2 of the Immigration Act 1971
  - section 10 of the Immigration and Asylum Act 1999
- who has a deportation order (DO) in force against them under section 5 of the Immigration Act 1971

This means the police can only give a conditional caution with foreign offender conditions when:

- the offender has been served with form RED0001 - removal decision, IS151A(EEA) for EEA nationals (from 6 April 2015 RED0001 replaced IS151A)
- the offender is the subject of a DO, including those who have returned to the UK in breach of a DO - this is the only time an authorised person can consider a conditional caution for a European Economic Area (EEA) national
- there are no barriers to removal

Service of the RED0001 is the trigger for considering a conditional caution as it confirms the person is liable to removal and meets the definition of relevant foreign offender. Any person served with an IS151A before 6 April still meets this definition.

For more information and the wording in the acts, see:

- Section 22(3D) Section 22 (3G) Criminal Justice Act amended
- Schedule 2 of the Immigration Act 1971
- Section 10 Immigration and Asylum Act 1999 removal of certain persons unlawfully in the United Kingdom

Foreign offender conditions you can recommend

The following conditions must be applied in every case. The offender must:

- leave the UK within the specified period
- not return to the UK, normally for 5 years

In addition to the above conditions, you must consider which (if any) of the following conditions are also appropriate and advise the police accordingly. Each case must be assessed on an individual basis. The available further conditions are that the offender:

- reports to a named reporting centre or named police station, the completed IS96 must be attached to the caution
- must surrender their passport or other identity document to the Home Office, and they must give their address
- assists authorities in obtaining a valid national travel document
- must comply with any lawful instruction given by the Secretary of State or an immigration officer, to bring about their removal from the UK

Exceptionally the Crown Prosecution Service (CPS) can extend the exclusion period from 5 years to 10 years.

If the condition not to return exceeds 5 years and the offender returns within that period following the 5 year re-entry ban, they will:

- not necessarily be prevented from re-entering the country at the border
- be liable to be prosecuted for the original offence

You must also tell the custody sergeant about the offender's immigration history. This is important as it will help them to decide if the offender is likely to comply with a conditional caution and whether to issue one or not.

You may also think of other conditions that could assist removal or which would be appropriate for your case. Whatever conditions you recommend must be:

- appropriate
- proportionate
- achievable

If you decide not to advise to use a conditional caution or the custody sergeant disagrees with your advice, you must refer the case to the CPS for charging advice.

Who cannot be given a conditional caution

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams when it is not appropriate to advise or recommend using a conditional caution to the police lead.

The authorised person cannot give a conditional caution to a foreign offender if they do not meet all of the adult conditional caution and foreign offender criteria.

The offender will not be removable if:

- they have an outstanding asylum or human rights claim or related appeal - in these cases they may also not be guilty of a criminal offence
- there are outstanding barriers to removal, for example:
  - known medical conditions
  - family circumstances in the UK
  - they have a legal right to be in the UK, such as a valid visa

The offender may not be removable if you have reasonable grounds to suspect the offence is connected to human trafficking in any way, either as a:

- victim
- perpetrator (trafficker)

If you identify a situation like this, your supervisor or the police will be able to give you advice about what to do.

For more information, see: identifying victims of trafficking.

Conditional cautions: other things to consider

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams about some other things to consider when dealing with a potential conditional caution.

Debriefing the offender

You may decide the offender needs a formal debrief if, for example, you believe they have further information about more serious and organised crime.

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Multiple offenders

You may come across cases where there are several offenders who may:

- be foreign nationals
- qualify to receive a conditional caution

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If you come across this situation, you must ask for advice from the Crown Prosecution Service and your supervising officer.

Conditional cautions process

This section tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams the process for advising police about conditional cautions.

The investigation and referral process you must follow is the same as for any other prosecution case you investigate. When you identify a suspect, you must:

- arrest the suspected offender
- book them into custody, where the police will advise them of their rights under the Police and Criminal Evidence Act (PACE) 1984 and PACE code of practice C
- confirm their immigration status and whether they are removable
- interview them under caution about the offence as you would normally do, unless the custody sergeant tells you to do something else
- advise the custody sergeant if you think a conditional caution is appropriate - if it is not, refer the case to the Crown Prosecution Service for charging advice
- update your supervising officer

For more information on a detainee's rights in the police station and interviewing under caution, see: pace code C.

Immigration status checks

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams about making checks to help them decide if it is appropriate to advise a conditional caution to the police.

You can confirm immigration status and removability by contacting the command and control unit (CCU) or using local procedures to request a status check from the immigration compliance and engagement (ICE) team. You must provide:

- the person's:
  - name, including any alias or other name they are known by
  - date of birth
  - nationality
- details of the offence they have been arrested for
- the time the 24 hour detention period was authorised (also called the 'relevant time')
- confirmation their fingerprints have been checked against Home Office databases and the results of the search
- their claimed immigration status and, if known, how they entered the UK
- the reason why they are in the UK
- details of any previous contact with the Home Office
- details of any known family or contacts in the UK
- details of whether a travel document is available or can be easily obtained

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What you do next depends on the outcome of these enquiries.

Immigration status	Action to take
The suspect is either: • in the UK legally or not subject to immigration control • a relevant foreign offender but does not meet the removal criteria, for example, if there are barriers to removal	A conditional caution with foreign offender conditions is not appropriate and you must refer the case to the Crown Prosecution Service (CPS) for charging advice.
The suspect is a relevant offender.	You must advise the custody sergeant to consider a conditional caution.
If: • you are unable to determine immigration status or removability	You must take further action. The CCU and ICE team can: • issue the immigration papers

Immigration status	Action to take
• records show they are likely to be removable but they have not been served with a RED0001 (IS151A(EEA) for EEA nationals) • they are in fact removable but a RED0001 (IS151A(EEA) for EEA nationals) has not been served	immediately • refer the offender to the local ICE team for a status interview For more information on the service of immigration papers, see: • Serving illegal entry papers • Administrative powers

Things to be aware of when determining status

Sometimes the local ICE team or the CCU will be unable to deal with your request within the 24 hour time limit. This starts from the time the offender arrived at the police station.

As an immigration officer you are qualified to conduct status interviews and serve immigration papers if a chief immigration officer authorises it. You may need to consider it in out of hours cases. You can also discuss with the custody sergeant whether police bail would be appropriate pending an assessment of removability.

It is important to keep any interview and decision to serve immigration papers separate from any part of your criminal investigation. A colleague from your team who is not directly involved in the criminal investigation can assist you with a status interview, if authorised by your supervising officer. You must record any decisions you or your supervisor make in your notebook and the record of investigation.

For more information on who can be given a conditional caution, see: Advising police if a conditional caution is appropriate.

Removability

Once the ICE team or CCU has determined removability, they will send you a confirmation using the conditional caution notification form. This must be signed by a chief immigration officer. The wording will be either:

- I have considered all of the information available to me and can confirm that the above named:
  - is a ‘relevant foreign offender’ as defined by section 22(3G) of the Criminal Justice Act 2003 and may be removed from the UK within a period of 16 weeks or 24 weeks (delete as appropriate)
- I have considered all of the information available to me and can confirm that the above named:
  - is not a ‘relevant foreign offender’ as defined by section 22(3G) of the Criminal Justice Act 2003

You must also use this wording and form when you:

- refer the case to the police custody sergeant

- update your record of investigation

To help you assess if an offender will be removable within 16 weeks, you can check the country returns operations and strategy (CROS) guidance which tells you about obtaining travel documents.

Considering detention or temporary release

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams about detention and temporary release in conditional caution cases.

You must consider whether you are going to recommend the offender's detention or temporary release. You need to do this before the conditional caution is given because:

- once an offender has been given a conditional caution they will be released from police custody
- your recommendation about release or detention may affect what conditions the police custody sergeant decides to attach to the caution

You must refer all recommendations for release or detention to the local immigration compliance and engagement (ICE) team. They will:

- decide if detention or release is appropriate
- arrange for the relevant detention or release paperwork to be served on the offender

You must:

- tell the ICE team a conditional caution is being considered
- keep close contact with them to make sure all:
  - decisions are made
  - paperwork is served before the 24 hour time period runs out
- discuss your options with your supervising officer if there are any issues because it is out of hours, and check before you go out whether the ICE team has an on-call number you can use out of hours

Detention

If you recommend detention, you must make sure the detention criteria in chapter 55 of the enforcement instructions and guidance is met. For more information, see: Chapter 55 detention and temporary release.

You must tell the:

- police custody sergeant as soon as detention is authorised so the offender is not released
- offender when you are giving them information about their immigration case

Temporary release

If you recommend temporary release, the offender is suitable for weekly reporting because:

- you expect them to leave the UK within 16 weeks
- they have agreed to assist with the documentation process

You must:

- follow standard local procedures for setting up the first reporting event, which must take place within the first 48 hours
- notify the reporting centre or ICE team of the first reporting date

You must make sure the offender is in possession of and understands their temporary release form, IS96, before they leave the police station. Any reporting restrictions must be the same as the reporting restrictions given on the conditional caution, unless you can justify otherwise.

For more information, see: Reporting-standards of operational practice.

Recording information about conditional cautions

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams which databases they must update when they are dealing with a conditional caution.

Case file

You must keep on the case file, a copy of the:

- conditional caution notification form
- MG14 police conditional caution form

Criminal investigation digital record exchange (CIDRE)

You must complete the crime database CIDRE in the same way as for any other prosecution case. This will include:

- recording full details of the case and the suspect
- fully completing the 'suspect page' to include details of the suspect and the arrest
- checking the 'conditional caution' box in the suspect status field, when you have requested confirmation of removability
- completing the caution fields within CIDRE to include:
  - the dates between which the conditions are to be fulfilled
  - the full details of conditions set
  - details of checks in place to confirm compliance with the conditions
- maintaining the record of investigation
- entering actions for yourself or others where required

You must also note on the record of investigation if you advised the police that using a conditional caution would be appropriate. For the wording you must use, see: Immigration status checks.

It is important you keep the record of investigation up to date and record:

- all actions you take
- any decisions you make
- confirmation if the offender leaves the UK

Updating the Case Information Database (CID)

If the offender does not already have an entry on CID, the person initially issuing the immigration offender papers (RED0001 or IS151A(EEA) for EEA nationals) must create one - this is likely to be the:

- local immigration compliance and engagement (ICE) team
- command and control unit (CCU)

If there are exceptional circumstances and the ICE team or CCU are unavailable, you can create the CID case yourself. This is most likely in out of hours cases and you must speak to your supervisor if it happens.

After the conditional caution has been given you must:

- update the special condition section on CID to show:
  - a ‘conditional caution’ has been issued, with the lodged date, which is the date the conditional caution was given
  - your name and contact number in the additional information section so case owners, reporting centres and the police can contact you
- note any existing CID record with details of the conditional caution
- record details of:
  - any actions you have taken to monitor compliance
  - instances of actual non compliance
  - decisions following non compliance, for example whether they are being treated as an absconder or if the immigration reporting restrictions are changed
- on the date the offender leaves the UK:
  - close the conditional caution special condition
  - create a new special condition for a ‘re-entry ban 5 years’

The Home Office case owner will usually update CID once the offender has been removed. You must check this has been done. If it has not, you must contact them to arrange it.

Police national computer (PNC)

PNC is updated automatically when the issue of a conditional caution is recorded on police systems in custody suites. If this does not happen for any reason you can:

- update PNC yourself if you are an authorised user
- make a request for it to be updated

For details on how to do this, see: Police National Computer (PNC).

If the offender fails to comply with the terms of the conditional caution you must consider if PNC needs to be updated to show them as wanted, for example if they abscond.

This may also be an appropriate action for Home Office case owners or reporting centre officers, depending on what conditions the offender has failed to meet.

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Monitoring compliance

This section tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams about monitoring a person who has been given a conditional caution.

The Home Office is responsible for monitoring all foreign offender conditions. The police and the Crown Prosecution Service (CPS) are responsible for deciding if a breach has actually occurred. For more information on non compliance, see: If an offender fails to comply with a conditional caution.

Monitoring reporting restrictions is carried out through the reporting centres or immigration compliance and engagement (ICE) teams where reporting is to a police station.

Monitoring other conditions to do with barriers, removal and documentation are carried out by Home Office case owners. It is they who will be arranging removal and making sure it can take place within the time period on the conditional caution.

It is your responsibility, as the criminal and financial investigation case officer, to monitor compliance overall. You must do this by maintaining close contact with the Home Office case owner and reporting centre or ICE team.

Home Office case owners and reporting centre officers will tell you as soon as any non compliance happens. It is essential they know how to contact you if the offender fails to comply in any way. For more information on this, see: updating CID.

You can also enter regular diary actions on CIDRE to remind you to check compliance at various stages.

If an offender fails to comply with a conditional caution

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams what to do if an offender fails to comply with a conditional caution.

If the offender fails to comply with any of their conditions, you will normally be told by the Home Office case owner or reporting centre officers, but you may identify it yourself when you are doing a compliance check. They will send you a conditional caution notification form that tells you:

- which conditions they think have been breached
- how they have been breached

Once you have found out the offender may be failing to comply with the terms of the caution, the Code of Practice states you 'should' give them the opportunity to explain why they have not complied. If there are any issues with this, you must contact the police single point of contact (SPOC) for advice.

How you give them this opportunity is up to you, but may involve:

- speaking to them when they are next due to report
- inviting them for interview
- arranging a visit to their address

You must then contact the police SPOC for your area, and explain:

- why you believe the offender may have breached their conditions
- any explanation they have given for their non compliance, or whether no response has been given for the non compliance
- if you consider it might be reasonable to vary their conditions, for example, by extending the removal period

If the police SPOC decides the offender had a reasonable excuse, they can allow the conditional caution to run and tell the offender they must comply in future. They may also decide to vary the conditions, for example extend the period to remove the offender. The offender must agree with the varied conditions or they may be prosecuted for the original offence.

If the police SPOC decides the offender did not have a reasonable excuse, they will:

- arrange for the police to arrest the offender for failing to comply with the terms of the foreign offender conditional caution without reasonable excuse, because criminal and financial investigation officers (as immigration officers) do not have this power of arrest
- tell you what steps, if any, you must take, to refer the case to the Crown Prosecution Service (CPS) for charging advice on the original offence

If the offender raises any other issues that may prevent removal within the time period specified on the conditional caution, this may also be a breach. Even though it may mean removal is not possible within that time period, there may be genuine circumstances that prompted it, in which case prosecution may not be appropriate. To establish this, you can still follow the procedures in this section for non compliance, to allow the police or CPS to make the decision on whether to prosecute.

If the offender has absconded, you will not be able to pursue a prosecution until they come to light again. If an offender does abscond, Home Office case owners and reporting centre officers must follow their normal procedures for dealing with this situation. You must also tell the police SPOC the offender has absconded so the police can carry out their procedures.

If an offender who has absconded comes to light, you must reconsider whether detention or temporary release is appropriate at that stage. For more information, see: considering detention or temporary release. You must also follow the procedures above for non compliance and contact the police SPOC to consider prosecution.

If a prosecution goes ahead you must update the Home Office case owner as soon as possible. A prosecution will affect what action they will need to take.

For more information, see:

- Director's guidance on conditional cautioning
- Annex B Police single points of contact for conditional cautions

Withdrawal from or variations to a foreign offender conditional caution

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams what to do if an offender wants to withdraw from, or you want to vary, the conditions of a foreign offender conditional caution.

Offenders wishing to withdraw from the conditional caution

If an offender indicates they wish to withdraw from:

- the conditional caution
- one or more of the conditions

you must treat this as non compliance and follow the process in: if an offender fails to comply with a conditional caution.

Variations to conditions

Occasionally you or the police might wish to change the conditions. You cannot authorise any changes to conditions. This can only be done by the police or prosecutors.

Conditions can only be changed if the offender agrees to it and agrees to comply with the new conditions.

If you want to change the conditions you must contact the police single point of contact (SPOC) to discuss your request. The police SPOC will then decide if any changes are to be made.

If any changes are made, you must:

- record the details in your record of investigation on CIDRE and update CID
- take a copy of the new MG14 for your file
- check the police national computer (PNC) has been updated with the new conditions (see: recording information about conditional cautions)
- give a copy of the MG14 to the Home Office case owner or immigration compliance and engagement (ICE) team dealing with the offender's immigration case

If the offender fails to comply with the new conditions, you must follow the procedures for non compliance. For more information, see: If an offender does not comply with a conditional caution.

For a police SPOC list, see: Annex B Police single points of contact for conditional cautions.

Re-entry ban and returning offenders

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams about the re-entry ban given to offenders who receive a conditional caution, and what to do if they return to the UK before the ban expires.

Re-entry ban

Any offender who is removed subject to a conditional caution is liable to a ban on re-entry for at least 5 years in line with the Immigration Rules. For more details on re-entry bans, see:

- Paragraph 320(7B (vii)) of the Immigration Rules
- Advising police if a conditional caution is appropriate

This tells you more about prosecuting for the original offence and when the re-entry period can be extended by the Crown prosecution Service (CPS) to 10 years.

Offenders who return to the UK

If, having complied with removal, the offender returns to the UK before the entry ban has expired, they can still be prosecuted for the original offence. The person who first identifies a returning offender must contact the police single point of contact (SPOC) for their area.

The police SPOC will either:

- decide if any non compliance has occurred and what action needs to be taken
- arrange for the person who has the case file to contact the CPS in cases where the CPS authorised the conditional caution rather than the police

The police SPOC will arrange:

- for the offender to be arrested if appropriate
- to transport them to a local police station
- contact with the case owner or criminal investigation team to tell them if they need to do anything

If the police SPOC decides the offender needs to be referred to the CPS for charging advice, they will either:

- arrange for the police to do this
- ask you to do it - if they do, the old case file will still be available to you as it must be kept for 7 years

For more information, see:

- Director’s guidance on conditional cautioning
- Annex B Police single points of contact for conditional cautions

Returning offenders identified in Scotland or Northern Ireland

If the police SPOC is contacted by an officer in Northern Ireland or Scotland about a returning offender and they decide they need to be arrested, they will:

- ask the local police to arrest them for failing to comply with the terms of the conditional caution without reasonable excuse
- make arrangements for them to be brought to a police station in England or Wales, but if the case was originally dealt with by a criminal investigation team, they may ask you to arrange the transport instead

If this happens, you must make sure the offender can be transported by Home Office officers, for example they have been placed into Home Office detention.

The offender's immigration status will need to be established in the normal way. For more information, see:

- if an offender fails to comply with a conditional caution
- immigration status checks