



Home Office

Foreign National Offender (FNO) conditional cautions (policy)

Version 1.0

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About this guidance

This guidance tells caseworkers about foreign national offender conditional cautions.

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 Migrant Criminality Policy 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 the Guidance Rules and Forms team.

Publication

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

- version **1.0**
- published for Home Office staff on **18 September 2026**

Changes from last version of this guidance

New guidance.

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Introduction

This section tells you about the background to conditional cautions and foreign national offender conditional cautions.

Background

Conditional cautions

Conditional cautions can be used by the police and the Crown Prosecution Service (CPS) as an alternative to the prosecution of offenders in England and Wales. The power to issue a conditional caution is set out [section 22 of the Criminal Justice Act 2003](#).

Conditional cautions provide an opportunity:

- to offer a proportionate response to low level offending
- for offenders to make swift reparation to victims and communities
- for offenders to be diverted at an early opportunity into rehabilitative service
- thereby reducing the likelihood of re-offending
- to punish an offender by means of a financial penalty

There are 5 requirements which must be met for a person to be given a conditional caution:

- there is evidence the offender has committed an offence
- there is sufficient evidence to charge the offender with the offence and for a conditional caution to be given
- the offender admits the offence
- the effect of the conditional caution is explained to the offender and that prosecution may result if there is a failure to comply with any condition attached to the caution
- the offender signs a document which sets out:
 - details of the offence
 - an admission that they committed the offence
 - their consent to being given a conditional caution
 - the conditions attached to the caution

Only an authorised person may give a conditional caution. [Section 22\(4\) of the Criminal Justice Act 2003](#) defines an authorised person as:

- a constable
- an investigating officer
- a person authorised by a relevant prosecutor for the purposes of issuing a caution

Indictable-only offences must be referred to the CPS decision maker to determine whether a foreign national offender conditional caution is appropriate.

If the offender complies with the conditions, the prosecution is not commenced. If the offender does not comply with the conditions imposed and there is no reasonable excuse, criminal proceedings may be commenced.

A conditional caution can only be issued to a person who is aged 18 or over.

Duty to consult victims

[Section 23ZA\(1\) of the Criminal Justice Act 2003](#) provides that, before deciding what conditions to attach to a conditional caution, a relevant prosecutor or the authorised person must make reasonable efforts to obtain the views of the victim (if any) of the offence.

Foreign national offender conditional cautions

[Section 134 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) amended the Criminal Justice Act 2003 to provide that a foreign national offender may be given a conditional caution to secure their removal from the UK and ensure they do not return within a specified period of time. There is no expectation that a foreign national offender will be able to return to the UK at the end of the specified period.

Additional conditions may be attached to a foreign national offender conditional caution which:

- facilitate their rehabilitation
- ensure that they make reparation for the offence
- punish the offender
- require the offender to pay a financial penalty
- require the offender to attend a specified place at specified times

However, any additional conditions must not undermine the principal aim of the foreign national offender conditional caution which is to secure the removal of the foreign national offender and ensure they do not return to the UK.

Where the foreign national offender meets the criteria and accepts a conditional caution, they will be expected to leave the UK and cannot return for a specified period, in line with the terms of their caution. If the foreign national offender is subject to a deportation order they cannot return to the UK for as long as the deportation order remains in force.

Location for issuing a foreign national offender conditional caution

Foreign national offender conditional cautions may be administered at a port or immigration removal centre or similar place if not administered at a police station. When dealing with non-English speakers, the administrator of the foreign national offender conditional caution must ensure that the effect of the caution and the administration of the caution must be done in a PACE compliant manner and explained in a language that the individual can understand.

Persons wishing to withdraw from the foreign national offender conditional caution

A person may withdraw or otherwise change their mind once they have accepted a foreign national offender conditional caution. However, doing so will render them liable for prosecution for the original offence. An application by the foreign national for leave to remain on the basis of protection or human rights grounds while subject to a foreign national offender conditional caution represents a breach of the terms of the caution and renders the foreign national liable to prosecution for the original offence. The body receiving the protection or human rights claim should refer the case to the relevant prosecutorial authority for the purpose of reinstating the prosecution.

The Voluntary Return Service and the Facilitated Return Scheme

Being made subject to a foreign national conditional caution does not preclude a foreign national from seeking an assisted return through the VRS or the FRS. These schemes exist to assist those being removed to resettle.

Further guidance can be found at:

- Voluntary and assisted departures
- Facilitated Return Scheme

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Criteria for issuing a foreign national offender conditional caution

This section tells you about the criteria for issuing a foreign national offender conditional caution.

In addition to the [5 requirements which must be met for a conditional caution to be issued](#), a foreign national offender conditional caution may be issued where all of the following are met:

- the person is a '[relevant foreign offender](#)'
- there are no [barriers to deportation](#)
- the [sentence likely to be imposed](#) by the court for the offence concerned would be less than 2 years' imprisonment

A person's immigration history, as well as their offending history, may also be a relevant factor in considering whether a foreign national offender conditional caution is appropriate. Their immigration history will indicate whether the foreign national offender is likely to comply with a conditional caution.

Information about an offender's nationality and whether there are any barriers to removal or deportation may be sought from Immigration Enforcement, specifically the National Command and Control Unit (see: Partnership working) in the case of the police and SVEC Witness Statements in the case of the Crown Prosecution Service.

When a foreign national offender conditional caution must not be issued

A foreign national offender must not be offered a conditional caution:

- if there are reasonable grounds to suspect the offence is connected to human trafficking (regardless of whether the offender is the victim or perpetrator)
- where the CPS have confirmed the person is to give evidence in criminal proceedings that cannot be done via live link from overseas
- where the person has indefinite leave to enter or remain in the UK

Relevant foreign offender

[Section 22\(3G\) of the Criminal Justice Act 2003](#), as amended by section 188 of the Crime and Policing Act 2026, defines 'relevant foreign offender' as an offender who:

- has limited leave to enter or remain in the UK (within the meaning of the [Immigration Act 1971](#))
- is liable to removal under:
 - schedule 2 of the Immigration Act 1971
 - section 10 of the Immigration and Asylum Act 1999

- has a deportation order (DO) in force against them under section 5 of the Immigration Act 1971

The police should approach the National Command and Control Unit (see: Partnership working) to confirm an individual's immigration status. Enquiries from the Crown Prosecution Service about such status should be directed to SVEC Witness Statements.

Barriers to deportation

A barrier to deportation will exist where:

- there is an outstanding asylum or human rights claim or related appeal and the person does not withdraw that claim or appeal
- there are medical conditions impacting on the foreign national offender's fitness to travel
- the foreign national offender claims their family circumstances in the UK preclude them from accepting a caution
- a valid travel document cannot be obtained within the [time period](#) for the foreign national offender to leave the UK
- there are reasonable grounds to suspect the offence is connected to human trafficking

A foreign national offender conditional caution must not be issued if any of the above barriers to deportation exist. The police should approach the National Command and Control Unit (see: Partnership working) to see if there are any barriers to deportation. Enquiries from the Crown Prosecution Service should be directed to SVEC Witness Statements.

Sentence likely to be imposed

A foreign national offender conditional caution can only be given where the relevant foreign offender would be likely to get a maximum prison sentence of 2 years or less if convicted for the offence.

Sentencing in individual cases is a matter for the courts. When deciding what sentence to impose, courts must consider the circumstances of the case, including the culpability of the offender, the harm they caused or intended to cause, and any aggravating and mitigating factors. The courts also have a statutory duty to follow any relevant sentencing guidelines, developed by the independent Sentencing Council for England and Wales.

Differences in sentencing outcomes will be the result of a number of factors including whether the offender has previous convictions and whether an early guilty plea was entered, as well as the particular aggravating and mitigating factors present in each case.

The relevant prosecutorial authority will decide whether a foreign national offender's offending would be likely to receive a 2 year or less prison sentence.

Making an assessment of whether an offence is likely to result in a prison sentence of 2 years or less will necessarily have a degree of subjectivity. It is not expected that, in order to administer a foreign national offender conditional caution, evidence is assessed and weighted to take account of certain factors as would a judge in a trial. What is required is a professional opinion that generally, any given offender would likely receive a 2 year or less prison sentence for the offence committed. The rationale for determining whether the offence would receive a prison sentence of more than 2-years should be recorded in case of later judicial challenge of the decision not to give a foreign national offender conditional caution.

The Ministry of Justice release data on average custodial sentence length imposed by all courts, by type of offence, in England and Wales, see: [Criminal Justice System statistics quarterly](#) (note that the data is broken down into months rather than years).

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Conditions to impose

In all cases, a foreign national offender conditional caution will include conditions:

- to leave the UK within a specified time period
- preventing their return to the UK for a minimum period

Time period to leave the UK

A foreign national offender conditional caution requires the foreign national offender to leave the UK within a specified period. This is normally within 16 weeks of accepting the condition. In exceptional circumstances this must be no longer than 24 weeks. The relevant prosecutorial authority and Immigration Enforcement should liaise over the length of time for the foreign national offender to leave the UK. The time period starts from the date on which the foreign national conditional caution was given.

If a valid travel document is needed to secure the removal of a foreign national offender this must be obtained within the given time period.

Time period to return to the UK

A foreign national offender given a foreign national offender conditional caution is prevented from returning to the UK for at least 5 years. Exceptionally the Crown Prosecution Service (CPS) can extend the exclusion period from 5 to 10 years.

If the person is the subject of a deportation order they will not be able to return to the UK unless the deportation order is revoked. In such cases a minimum time period before the person can return to the UK must not be imposed. A foreign national offender who is the subject of a deportation order and who returns to the UK while that order is still in force is in breach of that order under [section 24 of the Immigration Act 1971](#) and may face prosecution.

A foreign national offender subject to a foreign national offender conditional caution who returns to the UK within 5 years of that caution being agreed to is in breach of that caution and will be prosecuted for the original offence.

[Paragraph SUI 12.1.\(d\) of Part Suitability to the Immigration Rules](#) sets out the mandatory refusal period (also known as re-entry bans) which apply to foreign national offender conditional cautions.

The FNO should be told that if they return to the UK before the end of the relevant time period, they will face prosecution for the original offence. Where the immigration authorities become aware that an FNO has returned to the UK before the end of their relevant time period, they should refer that case to the original prosecutorial authority to resume prosecution for the original offence.

Additional conditions

The following conditions may also be imposed on a foreign national offender once they have agreed to a conditional caution and their case is being progressed to removal:

- regularly report to an immigration office, reporting centre, police station or other similar place
- obtain or assist authorities in obtaining a valid national travel document
- comply with any lawful instruction given by the Secretary of State or an immigration officer
- surrender their passport or other identity document to the Home Office, and to give their address

Other conditions may also be applied provided they can be completed within the time period for leaving the UK.

Variations to conditions

A change to the conditions attached to a foreign national offender conditional caution can only be approved by an authorised person.

A request to change conditions must be submitted to the police single point of contact (SPOC) who will decide if any changes are to be made. Any change of condition must be agreed by the foreign national offender, who must agree to comply with the new conditions.

The Foreign National Offender's immigration record should be updated by Foreign National Offenders Returns Command to show that they accepted a foreign national offender condition caution and left the UK accordingly. It should record the date on which they left the UK and the earliest date 5 years hence when they can apply to return here.

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Cancelling leave

Where a foreign national offender with limited leave is given a foreign national offender conditional caution, [Section 3\(3\)\(a\) of the Immigration Act 1971](#) gives the power to cancel an individual's limited leave to enter or remain, whether the leave was granted under the rules or outside them. This is because section 3(3)(a) gives the power to vary leave and cancelling leave is a variation of leave. Where a Foreign National Offender has accepted a foreign national offender conditional caution (i.e. has admitted their offence) the case should be referred to Immigration Enforcement for the cancellation of their leave. Foreign National Offenders Returns Command will cancel the leave in accordance with the guidance on cancelling leave.

The foreign national offender's leave should be cancelled as soon as possible after they agree to accept a foreign national offender conditional caution and to leave the UK.

The [Immigration \(Leave to Enter and Remain\) Order 2000](#) gives the power to cancel non-lapsing indefinite or limited leave, or cancel limited leave, when an individual is outside the UK. The relevant provisions in the order are article 13(6) and (7). Where a person subject to a foreign national offender conditional caution has left the UK, any leave they have should be cancelled.

Further guidance on cancelling leave is at Cancellation and curtailment of permission

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Non-compliance with a foreign national offender conditional caution

Immigration Enforcement (that part of Foreign National Offenders Returns Command which deals with FNOs in the community) are responsible for monitoring compliance with conditions imposed on a foreign national offender conditional caution including whether the foreign national offender leaves the UK within the required time period. The case managing team will check to see that the foreign offender has left the UK within the 16 weeks departure period. If the offender has not left the UK, then the team will inform the police of this and the police will recommence prosecution for the original offence.

The police and the CPS are responsible for deciding if a breach has occurred and whether to reinstate prosecution.

Under section 24A of the 2003 Act, a foreign national suspected of failing to comply with the conditions of a foreign national offender conditional caution may be arrested without a warrant. [Section 24 of the Criminal Justice Act 2003](#) permits the document signed by the foreign national to be admissible in proceedings taken against the foreign national in relation to the initial offence.

Monitoring compliance with conditions

Monitoring reporting restrictions is carried out through the reporting centres or Immigration Compliance and Engagement teams where reporting is to a police station.

Monitoring conditions relating to barriers, removal and documentation is carried out by Home Office immigration officials. Immigration Enforcement is responsible for arranging removal and making sure it can take place within the time period set out as part of the conditional caution.

Barriers to removal

If the foreign national offender raises any issues that may prevent removal within the time period specified in the foreign national offender conditional caution, this may be a breach of the caution. The relevant consideration here is whether the barrier can be cleared within that timescale and the person removed within 16 weeks despite the last-minute barrier. Only if the barrier cannot be cleared within the time period specified for removal should prosecution for the original offence resume.

If the Foreign National Offender fails to leave the UK or raises issues that result in barriers to their departure or otherwise seeks to circumvent their leaving the UK, then they are in breach of the foreign national offender conditional caution and will be prosecuted for the original offence. Immigration Enforcement should notify the relevant prosecutorial authority that the FNO has not complied with the terms of the agreed caution.

There may be genuine circumstances whereby removal is not possible during the prescribed time scale, but where the foreign national is not seeking to evade or delay their removal. The police or CPS will, in these circumstances, decide whether this represents non-compliance with the terms of the conditional caution and whether to prosecute the foreign national for the original offence or whether removal will be achievable in a reasonable timeframe in which case the caution may be maintained. The police will liaise with Immigration Enforcement as to whether the timeframe for removal is reasonable.

Failing to leave the UK within the time period

Where a foreign national offender given a foreign national offender conditional caution does not leave the UK within the time period specified on the caution, the foreign national offender will be in breach of the foreign national offender conditional caution and will be prosecuted for the original offence. The case managing team will monitor for their departure from the UK and if they fail to leave then the team will notify the police of this and the police will recommence prosecution for the original offence.

Returning to the UK

If the foreign national returns before the exclusion period ends, they will be liable to be prosecuted for the original offence (unless the Statutory Time Limit for the offence has expired – if a non-expired Statutory Time Limit exists (for example, common assault which must be charged within 6 months of the date of the offence) then it will not be appropriate to issue a foreign national offender conditional caution).

If Immigration Enforcement become aware that the Foreign National Offender has returned to the UK and failed to comply with the terms of the foreign national offender conditional caution, then Immigration Enforcement will notify the police of this. The Home Office will highlight any non-compliance of the foreign national offender conditional caution with the police officer in charge / relevant police force. The case records will be updated by the relevant caseworking team. If the police decide the foreign national offender did not have a reasonable excuse for any non-compliance with their conditions, they will arrange to arrest the foreign national offender for failing to comply with the terms of the foreign national offender conditional caution without reasonable excuse.

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When those given a foreign national offender conditional caution may apply to return to the UK

A person who is subject to a foreign national offender conditional caution and has been removed may not return to the UK for at least 5 years in line with the terms of their caution. If they are subject to a deportation order, they will not be allowed to return until the deportation order is revoked.

If, having complied with removal, the foreign national offender returns to the UK before the period of time specified in the condition attached to their foreign national offender conditional caution has expired, they can still be prosecuted for the original offence provided that any statutory time limits have not expired. Following the identification by Immigration Enforcement or Border Force Officer of a returning foreign national offender, the relevant police SPOC should be notified.

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 foreign national offender to be arrested if appropriate
- to transport them to a local police station
- to contact the case owner or criminal investigation team to inform them that the Foreign National Offender has returned in breach of the conditional caution and that they are being prosecuted for the original offence

Returning foreign national offenders identified in Scotland or Northern Ireland

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

- ask the local police to arrest them for failing to comply with the terms of the foreign national offender conditional caution without reasonable excuse
- make arrangements for them to be brought to a police station in England or Wales

Information about an offender's nationality and immigration status will need to be established by the police by the National Command and Control Unit (SVEC Witness Statements in the case of the Crown Prosecution Service) who will check the offender's details against Home Office records.

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