



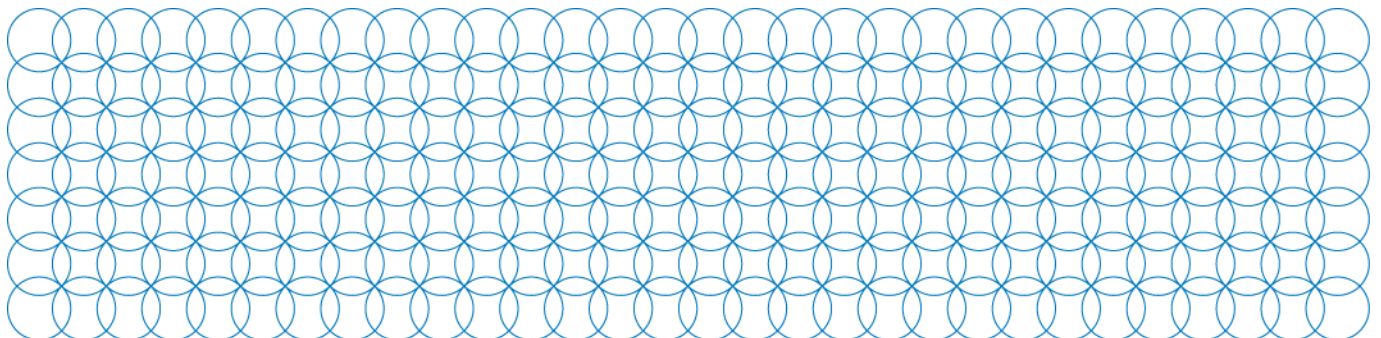
Ministry of
JUSTICE

Draft Code of Practice for Adult Conditional Cautions

Consultation Paper **CP18/2012**

This consultation begins on 4th October 2012

This consultation ends on 1st November 2012



About this consultation

- To:** This consultation is aimed at criminal justice practitioners in England and Wales, particularly those in the Police Service and the Crown Prosecution Service, magistrates, defence practitioners, victims and offenders.
- Duration:** From 04/10/12 – 01/11/12
- Enquiries (including requests for the paper in an alternative format) to:** Conditional Cautions
Ministry of Justice
8th Floor postal point 8.18
102 Petty France
London SW1H 9AJ
- Email: conditionalcautions.team@justice.gsi.gov.uk
- How to respond:** Please send your response by 1st November 2012 to:
By post:
Conditional Cautions
Ministry of Justice
8th Floor postal point 8.18
102 Petty France
London SW1H 9AJ
- By Email:
conditionalcautions.team@justice.gsi.gov.uk
- Online: Responses to the consultation can be submitted directly through the Ministry of Justice website at www.justice.gov.uk
- Response paper:** A response to this consultation exercise is due to be published in the spring at www.justice.gov.uk

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Introduction

1. This consultation document asks you to comment on the new adult Code of Practice for Conditional Cautions which has been drafted to:
 - a. support the changes to the conditional cautions set out in Part 3 of the Criminal Justice Act 2003 following amendments made by the Legal Aid Sentencing and Punishment of Offender Act 2012; and
 - b. clarify certain elements in the current Code of Practice.

Executive summary

2. This paper sets out for consultation a draft Adult Code of Practice for Conditional Cautions for authorised persons (such as the police) and relevant prosecutors (such as the Crown Prosecution Service (CPS)) on the use of conditional cautions as an alternative to prosecuting an adult offender.
3. Part 3 of the Criminal Justice Act 2003 ('the 2003 Act') makes provision for conditional cautions as a means of dealing with adult offenders in certain circumstances, as an alternative to prosecution. Section 25 of the 2003 Act requires the Secretary of State to prepare a Code of Practice in relation to conditional cautions. The Secretary of State must also publish the draft and consider any representations made about the draft.
4. Representations are invited from criminal justice practitioners, particularly those in the Police Service and the Crown Prosecution Service. The views of the judiciary and magistrates are also welcomed. We are also keen to have responses from organisations supporting victims of crime as well as from those representing offenders and defence practitioners. We also want to invite members of the public to respond with their views on the Code.
5. A consultation is also taking place concurrently on the Code of Practice on Youth Conditional Cautions.
6. The existing Code of Practice came in to force in January 2010. The draft new Code of Practice reflects the changes to Part 3 of the 2003 Act by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the 2012 Act'). It also sets out in clearer language certain elements of the existing Code of Practice. The draft Code of Practice for Conditional Cautions is at Annex A to this paper.
7. The policy behind the Code of Practice for Conditional Cautions has previously been consulted on in the Government's Green Paper: 'Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders' (published on 7th December 2010 together with the supporting Impact Assessment and Equality Impact Assessment).
8. The changes to the 2003 Act have also been subject to Parliamentary scrutiny as part of the passage through Parliament of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

9. The 2003 Act defines a conditional caution as “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.” If an offender fails without reasonable excuse to comply with the conditions attached to a conditional caution criminal proceedings may be instituted against the person for the offence in question.
10. Currently section 23 of the 2003 Act sets out five requirements that must be met before a conditional caution can be given:
 1. The first requirement is that the authorised person has evidence that the offender has committed an offence.
 2. The second requirement is that an authorised person 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 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.
11. Section 25 of the 2003 Act sets out the provisions that may be covered within the Code for example, the circumstances in which a conditional caution may be given, the conditions which may be attached to such cautions and the time for which they may have effect and the monitoring of compliance with conditions attached to cautions.
12. In addition to the Code, guidance is issued by the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984. The guidance is for police and crown prosecutors on the operational approach to be taken in deciding whether to offer a conditional caution with appropriate conditions. This guidance identifies any aspects which may render a case unsuitable for a conditional caution for example circumstances which may make charging the offender the appropriate response. The guidance will be revised to support the new Code of Practice.

13. The legislative changes to the 2003 Act and revision to the Code of Practice are part of wider work to create a clearer national framework for dealing with offending out of court which we are developing with partners across the criminal justice system including the police and ACPO, the CPS and the Magistrates' Association. This framework will outline principles and standards within which the police and CPS will take operational decisions using their own professional judgement and ensure that these disposals are used appropriately and effectively. In addition the aim is to simplify current guidance.

The new Code of Practice

14. The new draft Code of Practice reflects two key amendments made to adult conditional cautions in Part 3 of the 2003 Act by the 2012 Act. Firstly, the amendments remove the requirement for an authorised person (usually a police officer) to refer the matter to the relevant prosecutor (usually the CPS) to decide whether to give a conditional caution. Secondly the amendments introduce new conditions with the objects of bringing about the departure from the United Kingdom of a relevant foreign offender and ensuring that they do not return for a period of time. These are referred to in the Code as the foreign offender conditions.
15. The other requirements for a conditional caution remain unchanged, including that the offender admits that they committed the offence and that they consent to being given a conditional caution.
16. Alongside this the Code clarifies several elements of the process to ensure that conditional cautions are used appropriately. These arise from the related work to develop a clearer national framework for dealing with offending out of court and simplifying and strengthening guidance. For example they make clearer the application of the Full Code test in deciding whether to offer a conditional caution, the approach to dealing with mentally vulnerable offenders and dealing with offenders with a previous criminal history.
17. The main changes are:

Power of the authorised person to give a conditional caution

18. The 2003 Act originally required that all decisions to give a conditional caution were made by a relevant prosecutor (usually the CPS). The amendments made by the 2012 Act enable the authorised person (usually a police officer) to make the decision to offer a conditional caution without referring the matter to the relevant prosecutor to decide that there is sufficient evidence to charge the offender with the offence, and that a conditional caution should be given. The amendments to the 2003 Act also enable the authorised person to vary conditions in the conditional caution without reference to the relevant prosecutor.

Foreign offender conditions

19. The 2003 Act allowed for conditions to be attached to a caution with the object of rehabilitation, reparation and punishment - a financial penalty piloted in five areas. The amendments to the 2003 Act provide for new types of conditions that can be attached to a conditional caution given to a foreign offender who does not have leave to enter or stay in the UK. The objects of these conditions are to bring about the departure of the foreign offender from the UK and ensure that they do not return to the UK for a period of time. These conditions may be attached to a conditional caution, whether or not it is in addition to a condition with one or more of the existing objects, for example paying compensation to a victim.
20. New provisions in the 2003 Act define the category of foreign offenders who could be offered such conditions as those offenders whose immigration status makes them liable for removal from the UK. This means that a person who has no leave to enter or stay in the UK and in respect of whom there is a power to enforce their departure from the UK. As with all conditional cautions, the foreign offender must admit the offence and agree to accept the conditional caution and if the foreign offender does not comply with these conditions he or she may be prosecuted for the original offence.

Clarifying provisions in the existing Code of Practice

21. The draft Code of Practice also clarifies certain provisions in the existing Code of Practice to better ensure that the conditional cautions are used appropriately. These include:
- Making it clearer how the evidential and public interest stages of the Full Code Test apply to the decision about whether to give a conditional caution.
 - Clearer details of the consequences and implications of accepting a conditional caution which should be explained to an offender;
 - Greater awareness in dealing with mentally vulnerable offenders;
 - Making it clearer that offenders may choose to withdraw from a conditional caution after it has been administered although this may result in a prosecution for the original offence;
 - Clearer guidance on when a conditional caution can be considered for offenders with a previous offending history.

Questions for the consultation

We would welcome responses to the following questions set out in this consultation paper.

Q1: Are you satisfied that the draft Code of Practice for Adult Conditional Cautions (Annex A) fully support the amendments made by the Legal Aid, Sentencing and Punishment of Offender Act 2012 to Part 3 of the Criminal Justice Act 2003? These amendments are explained at paragraph 19 and 20 of this consultation.

Q2: Are you satisfied that the draft Code of Practice for Adult Conditional Cautions adequately clarifies certain provisions in the existing Code of Practice? These provisions are explained at paragraph 22 of this consultation.

Q3: If not, what changes do you think should be made?

The Equality Act 2010 identifies the nine protected characteristics of race, gender, disability - including offenders with learning difficulties - gender identity, pregnancy and maternity, marriage and civil partnership, religion or belief, sexual orientation and age. We are interested to know if any of the protected characteristics are affected by the way in which the Code is drafted.

Q4. What do you consider the equality issues arising from the way the Code has been drafted to be, and why? Please list any sources of evidence to support your response.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 1st November 2012 to:

By Post:

Conditional Cautions Code of Practice
Ministry of Justice
8.18 8th floor
102 Petty France
London SW1H 9AJ

By Email: conditionalcautions.team@justice.gsi.gov.uk

Online: Responses to the consultation can be submitted directly through the Ministry of Justice website at www.justice.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from **conditionalcautions.team@justice.gsi.gov.uk** and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Publication of response

A paper summarising the responses to this consultation will be published in the spring. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation Co-ordinator contact details

Responses to the consultation must go to the named contact under the How to Respond section.

However, if you have any complaints or comments about the consultation **process** you should contact Sheila Morson on 020 3334 4498, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Ministry of Justice
Consultation Co-ordinator
Better Regulation Unit
Analytical Services
7th Floor, 7:02
102 Petty France
London SW1H 9AJ**

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