

EXPLANATORY MEMORANDUM TO
THE CRIME AND DISORDER ACT 1998 (YOUTH CONDITIONAL CAUTIONS:
FINANCIAL PENALTIES) ORDER 2013

2013 No. 608

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order sets out the descriptions of offences, for which a financial penalty condition may be attached, under section 66C(1) of the Crime and Disorder Act 1998, to a youth conditional caution given under section 66A of that Act. The Order also sets out for those offences the maximum amount of the penalty that may be specified in a financial penalty condition by an authorised person or a relevant prosecutor. The Order provides for differing levels of penalty for offenders aged 10 or over but under 14 and those aged 14 or over but under 18 when the youth conditional caution is administered. The Order revokes the Crime and Disorder Act 1998 (Youth Conditional Cautions: Financial Penalties) Order 2009 (S.I. 2009/2781).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Youth conditional cautions are cautions to which specified conditions are attached, and are provided for by section 66A-66F of the Crime and Disorder Act 1998.

4.2 Section 66C of the Crime and Disorder Act 1998 provides for a financial penalty condition to be attached to a youth conditional caution and states that a financial penalty condition may not be attached to a conditional caution given for an offence unless that offence is prescribed, or of a description prescribed in an Order.

4.3 Section 66C(3) of the Crime and Disorder Act 1998 requires that the amount of any financial penalty condition must not exceed £100.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 Jeremy Wright MP has made the following statement regarding Human Rights:

In my view the provisions of the Crime and Disorder (Youth Conditional Cautions: Financial Penalties) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 Punitive financial penalty conditions enable youth conditional cautions to be used in cases where there are no appropriate rehabilitative or reparative conditions or where these alone do not provide a proportionate response to the offending. For instance where a reparative condition could be used to pay compensation but that would not be a proportionate sanction for the offence without a financial penalty.

8. Consultation outcome

8.1 The consultation paper “Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders’ ” was published on 7th December 2010 until 4th March 2011. This invited comments on whether punitive conditional cautions should continue to be available as part of a conditional caution. The consultation paper was distributed to a wide range of criminal justice practitioners and key stakeholders. It was also made available on the Ministry of Justice website <http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/consultations/consultation-040311.htm>.

8.2 Many stakeholders responded that they did not support the use of punitive conditional cautions. The Government believes however that there is a place for a punitive financial penalty conditions within the conditional caution scheme as set out at paragraph 7.1 above.

9. Guidance

9.1 In addition to the Crime and Disorder Act 1998 (Youth Conditional Cautions: Financial Penalties) Order 2013, guidance on youth conditional cautions is contained within the Code of Practice on Youth Conditional Cautions and guidance 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 will make clear that conditions, taken as a whole, must be appropriate, proportionate and achievable and provides for reparative and rehabilitative conditions to be given priority over financial penalty conditions where appropriate.

- 9.2 The Director of Public Prosecutions guidance provides for a mitigated penalty to be offered in some cases where a decision maker (an authorised person – usually the police) or a relevant prosecutor is satisfied that there is substantial mitigation or the offender is in receipt of state benefit as his main or only source of income. The guidance sets out the maximum amount of this mitigated penalty. The Director of Public Prosecutions guidance will be revised to support the new Criminal Justice Act (Conditional Cautions: Financial Penalties) Order 2013.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is limited. Her Majesty's Courts and Tribunal Service are responsible for monitoring receipt of the payment and therefore compliance with the condition. However, if the fine is not paid it will not be registered as a fine at court; rather the offender may be prosecuted for the original offence. Police Forces may have to refer more cases to prosecutors in circumstances of non-compliance. These costs are dependent on police use of conditional cautions but it is expected that they would be absorbed within existing allocations. Her Majesty's Courts and Tribunal Service, the National Offender Management Service, the Legal Service Commission and the Crown Prosecution Service may incur costs of a prosecution associated with non-compliance although, currently, the majority of conditional cautions are complied with.
- 10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sector is foreseen and impact on the public sector is limited as set out in 10.2 above. An Impact Assessment was prepared for the consultation on the Government's Green Paper: 'Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders' (published on 7th December 2010)
<http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/consultations/consultation-040311.htm>

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 The Financial Penalty Order aims to make clear when a financial penalty can be offered for an offence and what the maximum amount of the penalty can be. There will not be a formal review of the Order, however this will be monitored internally.

13. Contact

Philippa Goffe at the Ministry of Justice Tel: 0203 334 6657 or email:
Philippa.goffe@justice.gsi.gov.uk can answer any queries regarding the instrument.