

EXPLANATORY MEMORANDUM TO
THE CRIMINAL JUSTICE AND COURTS ACT 2015 (SIMPLE CAUTIONS)
(SPECIFICATION OF EITHER-WAY OFFENCES) ORDER 2015

2015 No. 790

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 This instrument specifies the individual either-way offences (that is, offences which are triable in either Crown *or* Magistrates' court) for which a caution should not be issued by police, unless a senior officer (specified by the Criminal Justice and Courts Act 2015 (Simple Cautions) (Specification of Police Ranks) Order 2015) of at least the rank of Inspector has determined that there are exceptional circumstances that justify the caution being issued.

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

3.1 None.

4. Legislative Context

4.1 This instrument is being made under sections 17(3) and 18(1) of the Criminal Justice and Courts Act 2015 ("the 2015 Act"). Section 17 of the 2015 Act places restrictions around the use of cautions. Issuing of cautions in cases where the offence is one of those specified by this instrument may only be made in exceptional circumstances relating to the person or the offence and at the discretion of a police officer of at the least the rank of Inspector.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 There have, historically, been notable cases of cautions being issued for serious (such as violent and sexual) and repeat offences, against the original intentions of this disposal mechanism and to the detriment of their credibility.

7.2 As a result, there had been an impetus to prevent cautions being issued for these types of offences and so the Simple Cautions Review was commissioned, which launched in May 2013 and principally recommended that:

- Cautions should be removed for indictable-only offences (unless in exceptional circumstances and with a senior police officer's approval).
- Cautions should be restricted for serious either-way offences that would ordinarily attract a custodial sentence if the offender were found guilty at trial.
- Cautions should be restricted for use in the case of repeat offenders.

7.3 As a result of these recommendations section 17 of the 2015 Act sets out that cautions are issuable only in exceptional circumstances for indictable-only and "specified" either-way offences. If the offence is a summary offence or an either-way offence that hasn't been specified an exceptional circumstances requirement is only necessary if in the two years before the commission of the offence the person has been convicted or cautioned for a similar offence. It also grants a power, exercisable by statutory instrument, to decide which either-way offences are specified (principally at present those serious violent and sexual offences that would ordinarily attract a custodial sentence were the offender convicted). Further, the power is granted to specify the level of police officer able to authorise issuance of a caution. This will be by deciding that the threshold for exceptionality and/or similarity of previous offences has been met in accordance with guidance issued by the Secretary of State.

8. Consultation outcome

8.1 This Order builds on work undertaken for, and since, the 2013 Simple Cautions Review, for which all criminal justice system stakeholders were involved. Further, we have engaged separately with the police regarding this Order.

9. Guidance

9.1 The Ministry of Justice has updated the guidance which is issued to police forces, outlining the changes made to the process of issuing cautions as a result of this legislation, and their obligations under it. Any decisions regarding the exceptional nature of an offence and/or similarity to a previous offence for the purposes of issuing a caution must follow the stipulations of this guidance. This will be published alongside the statutory instruments.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is negligible. The original impact assessment for the overall Act estimated that there would be a cost to the public purse of around £10m per annum as a result of these changes. However, since the material changes of the legislation are largely already in effect, there has been no reported increase in custodial sentences as a result of the changes. It is therefore unlikely to have a significant impact overall.

10.3 An updated Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The outcome will be subject to an internal review after 12 months.

13. Contact

Richard Hutchinson at the Ministry of Justice Tel: 07972 318 285 or email: richard.hutchinson@justice.gsi.gov.uk can answer any queries regarding the instrument.