

*These notes refer to the Justice Act (Northern Ireland)
2011 (c.24) which received Royal Assent on 4 May 2011*

Justice Act (Northern Ireland) 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Alternatives to Prosecution

Chapter 2 - Conditional cautions

This Chapter enables prosecutors to attach rehabilitative and reparative conditions to a caution with which the offender must comply or face reconsideration of prosecution for the original offence.

Section 71: Conditional cautions

This section introduces conditional cautions which are cautions given in respect of an offence which have conditions attached to it that the offender must comply with. A conditional caution can be given if the five requirements set out in section 72 are satisfied. The conditions will have the objective of facilitating the rehabilitation of the offender and/or ensuring the offender makes reparation for the offence. For this Chapter an “authorised person” is a police officer or a person authorised by the Director of Public Prosecutions for Northern Ireland.

Section 72: The five requirements

This section sets out the requirements that must be met for a conditional caution to be issued. The first requirement is that the authorised person has evidence that the offender committed an offence other than an offence triable only on indictment. The second is that a Public Prosecutor decides there is sufficient evidence to charge the offender with the offence and that a conditional caution should be given to the offender. The third is that the offender admits to the authorised person that they committed the offence. The fourth is that the authorised person explains the effect of a conditional caution and that failure to comply may result in the offender being prosecuted for the offence. Finally the offender must sign a document detailing the offence; admitting the offence; consenting to be given a conditional caution; and outlining the conditions attached to the caution.

Section 73: Variation of conditions

This section allows a Public Prosecutor, with the consent of the offender, to vary the conditions attached to a caution by modifying or omitting any of the conditions or adding a condition.

Section 74: Failure to comply with conditions

This section details that if an offender fails without reasonable excuse to comply with the conditions then criminal proceedings may be instituted against the offender for the offence in question in which case the conditional caution will cease to have effect

Section 75: Arrest for failure to comply

This section states that a constable can arrest an offender without a warrant if he/she has reasonable grounds for believing that the offender has failed without reasonable excuse to comply with any of the conditions attached to the caution. It also makes provision for dealing with such circumstances. The arrested person must (i) be charged, (ii) released without charge on bail to enable a decision to be made as to whether he should be charged or (iii) released without charge or bail and with or without any variations to the conditions of his caution as appropriate. Conditional cautions are issued to an offender by PPS with a clear indication that a failure to comply may result in prosecution for the original offence. This power enables the facilitation of such a prosecution in the event of default of conditions by an offender.

Section 76: Application of PACE provisions

This section ensures that the relevant provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) apply in relation to a person arrested.

Section 77: Code of practice

This section requires the Department of Justice to prepare a code of practice in relation to conditional cautions. The code may include provisions as to the circumstances, procedures and places for giving a conditional caution; what conditions can be attached to a caution and time they can have effect for; the people who can give a caution; the form the caution takes and the manner in which they are to be given and recorded; the monitoring of compliance with conditions; the use of arrest powers for non-compliance; and who makes decisions about the release of persons arrested.

The code must be published in draft and the Department of Justice may amend the code accordingly. The draft code cannot be amended or published without the consent of the Attorney General for Northern Ireland. Once the draft is agreed it must be laid before, and approved by a resolution of, the Assembly. The code can then be brought in by order. The Department may from time to time revise the code.

Section 78: Powers of Probation Board

This section gives to the Probation Board for Northern Ireland power to make provision to assist Public Prosecutors in determining whether a conditional caution should be given and which conditions to attach. The Probation Board can also make provision for the supervision and rehabilitation of persons to whom a conditional caution is given.

Section 79: Interpretation of this Chapter

This section defines some of the terms used in this Chapter.