

# **POLICE AND JUSTICE ACT 2006**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### **Part 2: Powers of police etc**

#### *Section 17: Conditional cautions: types of cautions*

177. *Section 17* amends Part 3 of the Criminal Justice Act 2003, which provides for conditional cautions. These are cautions to which specified conditions are attached. A conditional caution may only be given if a prosecutor considers that there is sufficient evidence to prosecute the offender and if the offender admits the offence and agrees to a conditional caution being imposed. A conditional caution is an alternative to prosecution for low-level offending, but if the offender breaches the conditions he is liable to be prosecuted for the original offence.
178. The purpose of section 17 is to widen the scope of the conditions that can be attached to a conditional caution. Currently, section 22(3) of the 2003 Act provides that the conditions which can be attached to a conditional caution must have the object of facilitating the rehabilitation of the offender or ensuring the offender makes reparation for the offence. *Subsection (2)* substitutes an expanded section 22(3) that provides that, in addition, a conditional caution may contain conditions which have the object of punishing the offender.
179. *Subsection (3)* inserts new subsections (3A), (3B) and (3C) in section 22 of the 2003 Act. New subsection (3A) provides that the conditions that may be included in a conditional caution may include the imposition of a financial penalty and/or a requirement for attendance at a specified place at a specified time (which might include completion of a specified activity). The provision for a financial condition is subject to new section 23A.
180. New subsection (3B) provides that where a condition involves an attendance requirement, the maximum number of hours is restricted to no more than 20 hours in total. This 20 hour limit does not apply to an attendance requirement imposed for the purpose of facilitating the offender's rehabilitation. This is to permit rehabilitative conditions involving, for example, drug or alcohol treatment programmes that may take longer than 20 hours in total. By virtue of new subsection (3C) this figure of 20 hours may be amended by order (subject to the affirmative resolution procedure).
181. *Subsection (4)* inserts a new section 23A into the 2003 Act. This new section makes provision in relation to a condition that the offender pay a financial penalty, called a "financial penalty condition". Subsection (1) of new section 23A specifies that a financial penalty condition may not be attached to a conditional caution given in respect of an offence unless the offence in question is one prescribed, or of a description prescribed, in an order made by the Secretary of State. Section 23A(2) requires that an order under section 23A(1) must also specify the maximum amount of the financial penalty that may be specified for each offence or description of offence. Subsection

*These notes refer to the Police and Justice Act 2006  
(c.48) which received Royal Assent on 8 November 2006*

(3) of new section 23A provides that the maximum financial penalty prescribed for an offence must not exceed 25% of the maximum fine available for the offence in question on summary conviction in a Magistrates' Court (in the case of a level 5 fine (£5000) this would amount to £1250) or £250, whichever is the lower. Subsection (4) of the new section 23A provides that these limits may be amended by order (subject to the affirmative resolution procedure save where the £250 limit is being updated only to account for inflation in which case the negative procedure applies). Subsections (5), (6), (7), (8) and (9) of the new section 23A also specify the method of payment of any financial penalty condition imposed. The financial penalty condition is intended to be a requirement to pay money that is imposed for the purposes of punishing an offender. It does not alter the existing position in which an offender can be required to pay compensation to victims for the purpose of making reparation for the offence, or to pay a sum of money to a charity by way of indirect reparation to the community.