

Status: Point in time view as at 16/11/2009.

Changes to legislation: Criminal Justice and Immigration Act 2008, SCHEDULE 9 is up to date with all changes known to be in force on or before 06 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 9

Section 48

ALTERNATIVES TO PROSECUTION FOR PERSONS UNDER 18

- 1 The Crime and Disorder Act 1998 (c. 37) has effect subject to the following amendments.

Commencement Information

II Sch. 9 para. 1 in force at 1.2.2009 by S.I. 2009/140, art. 2(e)(i)

- 2 (1) Section 65 (reprimands and warnings) is amended as follows.
- (2) In subsection (1)—
- (a) for paragraph (b) substitute—
“(b) the constable considers that there is sufficient evidence to charge the offender with the offence;”,
 - (b) in paragraph (d), after “an offence” insert “ or given a youth conditional caution in respect of an offence ”, and
 - (c) for paragraph (e) substitute
“(e) the constable does not consider that the offender should be prosecuted or given a youth conditional caution.”
- (3) In subsection (3)(b) after “to be brought” insert “ or a youth conditional caution to be given ”.
- (4) In subsection (6), in paragraph (a)(i) after “to be brought” insert “ or a youth conditional caution to be given ”.
- (5) In subsection (7) for “In this section” substitute “ In this Chapter ”.
- (6) For subsection (8) (cautions not to be given to children or young persons) substitute—
“(8) No caution, other than a youth conditional caution, shall be given to a child or young person.”

Commencement Information

I2 Sch. 9 para. 2 in force at 16.11.2009 for specified purposes by S.I. 2009/2780, art. 2(1)(c)(2)

- 3 After section 66 insert—

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“Young offenders: youth conditional cautions

66A Youth conditional cautions

- (1) An authorised person may give a youth conditional caution to a child or young person (“the offender”) if—
 - (a) the offender has not previously been convicted of an offence, and
 - (b) each of the five requirements in section 66B is satisfied.
- (2) In this Chapter, “youth conditional caution” means 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.
- (3) The conditions which may be attached to such a caution are those which have one or more of the following objects—
 - (a) facilitating the rehabilitation of the offender;
 - (b) ensuring that the offender makes reparation for the offence;
 - (c) punishing the offender.
- (4) The conditions that may be attached to a youth conditional caution include—
 - (a) (subject to section 66C) a condition that the offender pay a financial penalty;
 - (b) a condition that the offender attend at a specified place at specified times.

“Specified” means specified by a relevant prosecutor.
- (5) Conditions attached by virtue of subsection (4)(b) may not require the offender to attend for more than 20 hours in total, not including any attendance required by conditions attached for the purpose of facilitating the offender's rehabilitation.
- (6) The Secretary of State may by order amend subsection (5) by substituting a different figure.
- (7) In this section, “authorised person” means—
 - (a) a constable,
 - (b) an investigating officer, or
 - (c) a person authorised by a relevant prosecutor for the purposes of this section.

66B The five requirements

- (1) The first requirement is that the authorised person has evidence that the offender has committed an offence.
- (2) The second requirement is that a relevant prosecutor decides—
 - (a) that there is sufficient evidence to charge the offender with the offence, and
 - (b) that a youth conditional caution should be given to the offender in respect of the offence.

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- (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 youth conditional caution to the offender and warns him that failure to comply with any of the conditions attached to the caution may result in his being prosecuted for the offence.
- (5) If the offender is aged 16 or under, the explanation and warning mentioned in subsection (4) must be given in the presence of an appropriate adult.
- (6) 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 youth conditional caution, and
 - (d) the conditions attached to the caution.

66C Financial penalties

- (1) A condition that the offender pay a financial penalty (a “financial penalty condition”) may not be attached to a youth conditional caution given in respect of an offence unless the offence is one that is prescribed, or of a description prescribed, in an order made by the Secretary of State.
- (2) An order under subsection (1) must prescribe, in respect of each offence or description of offence in the order, the maximum amount of the penalty that may be specified under subsection (5)(a).
- (3) The amount that may be prescribed in respect of any offence must not exceed £100.
- (4) The Secretary of State may by order amend subsection (3) by substituting a different figure.
- (5) Where a financial penalty condition is attached to a youth conditional caution, a relevant prosecutor must also specify—
 - (a) the amount of the penalty, and
 - (b) the person to whom the financial penalty is to be paid and how it may be paid.
- (6) To comply with the condition, the offender must pay the penalty in accordance with the provision specified under subsection (5)(b).
- (7) Where a financial penalty is (in accordance with the provision specified under subsection (5)(b)) paid to a person other than a designated officer for a local justice area, the person to whom it is paid must give the payment to such an officer.

66D Variation of conditions

A relevant prosecutor may, with the consent of the offender, vary the conditions attached to a youth conditional caution by—

- (a) modifying or omitting any of the conditions;
- (b) adding a condition.

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66E Failure to comply with conditions

- (1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the youth conditional caution, criminal proceedings may be instituted against the person for the offence in question.
- (2) The document mentioned in section 66B(6) is to be admissible in such proceedings.
- (3) Where such proceedings are instituted, the youth conditional caution is to cease to have effect.
- (4) Section 24A(1) of the Criminal Justice Act 2003 (“the 2003 Act”) applies in relation to the conditions attached to a youth conditional caution as it applies in relation to the conditions attached to a conditional caution (within the meaning of Part 3 of that Act).
- (5) Sections 24A(2) to (9) and 24B of the 2003 Act apply in relation to a person who is arrested under section 24A(1) of that Act by virtue of subsection (4) above as they apply in relation to a person who is arrested under that section for failing to comply with any of the conditions attached to a conditional caution (within the meaning of Part 3 of that Act).

66F Restriction on sentencing powers where youth conditional caution given

Where a person who has been given a youth conditional caution is convicted of an offence committed within two years of the giving of the caution, the court by or before which the person is so convicted—

- (a) may not make an order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge) in respect of the offence unless it is of the opinion that there are exceptional circumstances relating to the offence or the offender which justify its doing so; and
- (b) where it does make such an order, must state in open court that it is of that opinion and why it is.

66G Code of practice on youth conditional cautions

- (1) The Secretary of State must prepare a code of practice in relation to youth conditional cautions.
- (2) The code may, in particular, make provision as to—
 - (a) the circumstances in which youth conditional cautions may be given,
 - (b) the procedure to be followed in connection with the giving of such cautions,
 - (c) the conditions which may be attached to such cautions and the time for which they may have effect,
 - (d) the category of constable or investigating officer by whom such cautions may be given,
 - (e) the persons who may be authorised by a relevant prosecutor for the purposes of section 66A,

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- (f) the form which such cautions are to take and the manner in which they are to be given and recorded,
 - (g) the places where such cautions may be given,
 - (h) the provision which may be made by a relevant prosecutor under section 66C(5)(b),
 - (i) the monitoring of compliance with conditions attached to such cautions,
 - (j) the exercise of the power of arrest conferred by section 24A(1) of the Criminal Justice Act 2003 (c. 44) as it applies by virtue of section 66E(4),
 - (k) who is to decide how a person should be dealt with under section 24A(2) of that Act as it applies by virtue of section 66E(5).
- (3) After preparing a draft of the code the Secretary of State—
- (a) must publish the draft,
 - (b) must consider any representations made to him about the draft, and
 - (c) may amend the draft accordingly,
- but he may not publish or amend the draft without the consent of the Attorney General.
- (4) After the Secretary of State has proceeded under subsection (3) he must lay the code before each House of Parliament.
- (5) When he has done so he may bring the code into force by order.
- (6) The Secretary of State may from time to time revise a code of practice brought into force under this section.
- (7) Subsections (3) to (6) are to apply (with appropriate modifications) to a revised code as they apply to an original code.

Interpretation of Chapter 1

66H Interpretation

In this Chapter—

- (a) “appropriate adult” has the meaning given by section 65(7);
- (b) “authorised person” has the meaning given by section 66A(7);
- (c) “investigating officer” means an officer of Revenue and Customs, appointed in accordance with section 2(1) of the Commissioners for Revenue and Customs Act 2005, or a person designated as an investigating officer under section 38 of the Police Reform Act 2002 (c. 30);
- (d) “the offender” has the meaning given by section 66A(1);
- (e) “relevant prosecutor” means—
 - (i) the Attorney General,
 - (ii) the Director of the Serious Fraud Office,
 - (iii) the Director of Revenue and Customs Prosecutions,
 - (iv) the Director of Public Prosecutions,
 - (v) the Secretary of State, or

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- (vi) a person who is specified in an order made by the Secretary State as being a relevant prosecutor for the purposes of this Chapter;
- (f) “youth conditional caution” has the meaning given by section 66A(2).”

Commencement Information

- I3** Sch. 9 para. 3 in force at 1.2.2009 for specified purposes by S.I. 2009/140, art. 2(e)(ii)
- I4** Sch. 9 para. 3 in force at 1.4.2009 for specified purposes by S.I. 2009/860, art. 2(1)(h)
- I5** Sch. 9 para. 3 in force at 16.11.2009 for specified purposes by S.I. 2009/2780, art. 2(1)(c)(2)

- 4 (1) Section 114 (orders and regulations) is amended as follows.
 - (2) In subsection (2) (which specifies orders that are subject to annulment in pursuance of a resolution of either House of Parliament), for “or 10(6)” substitute “ 10(6), 66C(1) or 66H(e)(vi) ”.
 - (3) After subsection (2) insert—
 - “(2A) Subsection (2) also applies to a statutory instrument containing—
 - (a) an order under section 66C(4) unless the order makes provision of the kind mentioned in subsection (3A)(a) below, or
 - (b) an order under section 66G(5) other than the first such order.”
 - (4) In subsection (3) (which specifies orders that may not be made unless a draft has been approved by a resolution of each House of Parliament) after “41(6)” insert “ , 66A(6) ”.
 - (5) After subsection (3) insert—
 - “(3A) Subsection (3) also applies to—
 - (a) an order under section 66C(4) which makes provision increasing the figure in section 66C(3) by more than is necessary to reflect changes in the value of money, and
 - (b) the first order under section 66G(5).”

Commencement Information

- I6** Sch. 9 para. 4 in force at 1.2.2009 by S.I. 2009/140, art. 2(e)(iii)

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