



Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012 CHAPTER 10

PART 3

SENTENCING AND PUNISHMENT OF OFFENDERS

CHAPTER 7

OUT OF COURT DISPOSALS

Penalty notices

132 Penalty notices for disorderly behaviour

Schedule 23 (penalty notices for disorderly behaviour) has effect.

Cautions

133 Conditional cautions: involvement of prosecutors

- (1) The Criminal Justice Act 2003 is amended as follows.
- (2) In section 22(3A) (conditions that may be attached to a conditional caution) for “by a relevant prosecutor” substitute “in the condition”.
- (3) In section 23(2) (relevant prosecutor must decide there is sufficient evidence to prosecute and that a conditional caution should be given) after “a relevant prosecutor” insert “or the authorised person”.

Status: This is the original version (as it was originally enacted).

- (4) In section 23A(5) (relevant prosecutor must specify amount of financial penalty and how it is to be paid etc) for “a relevant prosecutor must also” substitute “the condition must”.
- (5) In section 23B (variation of conditions by relevant prosecutor) after “A relevant prosecutor” insert “or an authorised person”.
- (6) In section 25 (code of practice) in subsection (2)(ga) (Secretary of State’s code of practice may include provision about what a relevant prosecutor may provide under section 23A(5)(b)) for “by a relevant prosecutor” substitute “in a condition”.

134 Conditional cautions: removal etc of certain foreign offenders

In section 22 of the Criminal Justice Act 2003 (conditional cautions)—

- (a) in subsection (3) (both as originally enacted and as substituted by section 17 of the Police and Justice Act 2006) (conditions attached to conditional cautions to have certain objects) for “such a caution” substitute “any conditional caution”, and
- (b) after subsection (3C) insert—

“(3D) A conditional caution given to a relevant foreign offender may have conditions attached to it that have one or more of the objects mentioned in subsection (3E) (whether or not in addition to conditions with one or more of the objects mentioned in subsection (3)).

(3E) The objects are—

- (a) bringing about the departure of the relevant foreign offender from the United Kingdom;
- (b) ensuring that the relevant foreign offender does not return to the United Kingdom for a period of time.

(3F) If a relevant foreign offender is given a conditional caution with a condition attached to it with the object of ensuring that the offender does not return to the United Kingdom for a period of time, the expiry of that period does not of itself give rise to any right on the part of the offender to return to the United Kingdom.

(3G) In this section “relevant foreign offender” means—

- (a) an offender directions for whose removal from the United Kingdom have been, or may be, given under—
 - (i) Schedule 2 to the Immigration Act 1971, or
 - (ii) section 10 of the Immigration and Asylum Act 1999,
 or
- (b) an offender against whom a deportation order under section 5 of the Immigration Act 1971 is in force.”

Youth cautions

135 Youth cautions

- (1) Omit sections 65 (reprimands and warning) and 66 (effect of reprimands and warnings) of the Crime and Disorder Act 1998.

Status: This is the original version (as it was originally enacted).

(2) Before section 66A of that Act insert—

“Young offenders: youth cautions

66ZA Youth cautions

- (1) A constable may give a child or young person (“Y”) a caution under this section (a “youth caution”) if—
 - (a) the constable decides that there is sufficient evidence to charge Y with an offence,
 - (b) Y admits to the constable that Y committed the offence, and
 - (c) the constable does not consider that Y should be prosecuted or given a youth conditional caution in respect of the offence.
- (2) A youth caution given to a person under the age of 17 must be given in the presence of an appropriate adult.
- (3) If a constable gives a youth caution to a person, the constable must explain the matters referred to in subsection (4) in ordinary language to—
 - (a) that person, and
 - (b) where that person is under the age of 17, the appropriate adult.
- (4) Those matters are—
 - (a) the effect of subsections (1) to (3) and (5) to (7) of section 66ZB, and
 - (b) any guidance issued under subsection (4) of that section.
- (5) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, guidance as to—
 - (a) the circumstances in which it is appropriate to give youth cautions,
 - (b) the places where youth cautions may be given,
 - (c) the category of constable by whom youth cautions may be given, and
 - (d) the form which youth cautions are to take and the manner in which they are to be given and recorded.
- (6) No caution other than a youth caution or a youth conditional caution may be given to a child or young person.
- (7) In this Chapter “appropriate adult”, in relation to a child or young person, means—
 - (a) a parent or guardian of the child or young person,
 - (b) if the child or young person is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,
 - (c) a social worker of a local authority, or
 - (d) if no person falling within paragraph (a), (b) or (c) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police.

Status: This is the original version (as it was originally enacted).

66ZB Effect of youth cautions

- (1) If a constable gives a youth caution to a person, the constable must as soon as practicable refer the person to a youth offending team.
- (2) Subject to subsection (3), on a referral of a person under subsection (1), the youth offending team—
 - (a) must assess the person, and
 - (b) unless they consider it inappropriate to do so, must arrange for the person to participate in a rehabilitation programme.
- (3) If the person has not previously been referred under subsection (1) and has not previously been given a youth conditional caution, the youth offending team—
 - (a) may assess the person, and
 - (b) may arrange for the person to participate in a rehabilitation programme.
- (4) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, guidance as to—
 - (a) what should be included in a rehabilitation programme arranged for a person under subsection (2) or (3),
 - (b) the manner in which any failure by a person to participate in a programme is to be recorded, and
 - (c) the persons to whom any such failure must be notified.
- (5) Subsection (6) applies if—
 - (a) a person who has received two or more youth cautions is convicted of an offence committed within two years beginning with the date of the last of those cautions, or
 - (b) a person who has received a youth conditional caution followed by a youth caution is convicted of an offence committed within two years beginning with the date of the youth caution.
- (6) The court by or before which the person is convicted—
 - (a) must 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 person that justify it doing so, and
 - (b) where it does so, must state in open court that it is of that opinion and its reasons for that opinion.
- (7) There may be cited in criminal proceedings—
 - (a) a youth caution given to a person, and
 - (b) a report on a failure by a person to participate in a rehabilitation programme arranged for the person under subsection (2) or (3),in the same circumstances as a conviction of the person may be cited.
- (8) In this section “rehabilitation programme” means a programme with the purpose of rehabilitating participants and preventing them from re-offending.”

Status: This is the original version (as it was originally enacted).

- (3) Schedule 24 (youth cautions: consequential amendments) has effect.
- (4) The amendments made by this section and that Schedule do not apply in relation to an offence committed before they come into force.
- (5) A reprimand or warning of a person under section 65 of the Crime and Disorder Act 1998, or any caution treated as such by virtue of paragraph 5 of Schedule 9 to that Act, is to be treated for the purposes of any enactment or instrument (whenever passed or made) as a youth caution given to that person under section 66ZA(1) of that Act.
- (6) A referral of a person to a youth offending team under section 66(1) of the Crime and Disorder Act 1998 is to be treated for the purposes of section 66ZB of that Act as a referral under that section.
- (7) A rehabilitation programme provided under section 66 of the Crime and Disorder Act 1998 is to be treated for the purposes of any enactment or instrument (whenever passed or made) as provided under section 66ZB of that Act.

136 Youth conditional cautions: previous convictions

In section 66A(1) of the Crime and Disorder Act 1998 (requirements to be met before youth conditional caution may be given) omit paragraph (a) and the “and” at the end of that paragraph (requirement of no previous convictions).

137 Youth conditional cautions: references to youth offending teams

In section 66A of the Crime and Disorder Act 1998 (youth conditional cautions) after subsection (6) insert—

“(6A) If an authorised person gives a youth conditional caution to an offender, the authorised person must as soon as practicable refer the offender to a youth offending team.”

138 Youth conditional cautions: involvement of prosecutors

- (1) The Crime and Disorder Act 1998 is amended as follows.
- (2) In section 66A(4) (conditions that may be attached to a youth conditional caution) for “by a relevant prosecutor” substitute “in the condition”.
- (3) In section 66B(2) (relevant prosecutor must decide that there is sufficient evidence to prosecute and that a conditional caution should be given) after “a relevant prosecutor” insert “or the authorised person”.
- (4) In section 66C(5) (relevant prosecutor must specify amount of financial penalty and how it must be paid etc) for “a relevant prosecutor must also” substitute “the condition must”.
- (5) In section 66D (variation of conditions by relevant prosecutor) after “A relevant prosecutor” insert “or an authorised person”.
- (6) In section 66G (code of practice) in subsection (2)(h) (Secretary of State’s code of practice may include provision about what a relevant prosecutor may provide under section 66C(5)(b)) for “by a relevant prosecutor” substitute “in a condition”.