



Police, Crime, Sentencing and Courts Act 2022

2022 CHAPTER 32

PART 6

CAUTIONS

Diversionary cautions

99 Giving a diversionary caution

- (1) An authorised person may give a diversionary caution to a person aged 18 or over (“the offender”) in respect of an offence if the following requirements are met.
- (2) The requirements are that—
 - (a) an authorised person or a prosecution authority decides—
 - (i) that there is sufficient evidence to charge the offender with the offence, and
 - (ii) that a diversionary caution should be given to the offender in respect of the offence;
 - (b) the offender admits having committed the offence;
 - (c) the offender consents to being given the caution;
 - (d) an authorised person—
 - (i) explains the effect of the caution to the offender, and
 - (ii) in particular, warns the offender that failure to comply with any of the conditions attached to the caution may result in prosecution for the offence;
 - (e) the offender signs a document which contains—
 - (i) details of the offence,
 - (ii) the offender’s admission to having committed the offence,
 - (iii) the offender’s consent to being given the caution, and

- (iv) the conditions attached to the caution.
- (3) But if the offence is an indictable-only offence, the authorised person may not give a diversionary caution to the offender except—
 - (a) in exceptional circumstances relating to the person or the offence, and
 - (b) with the consent of the Director of Public Prosecutions.
- (4) A diversionary caution may not be given in respect of an offence committed before the coming into force of this section.
- (5) The power to give a diversionary caution under subsection (1) is also subject to regulations under section 117 (restrictions on multiple use of cautions).

100 Deciding on the conditions

- (1) The conditions attached to a diversionary caution are to be decided upon by—
 - (a) an authorised person, or
 - (b) in a case where a prosecution authority has taken the decision that the caution should be given, the prosecution authority.
- (2) The conditions which may be attached to a diversionary caution are those authorised by—
 - (a) section 101 (rehabilitation and reparation conditions),
 - (b) section 102 (financial penalty conditions), and
 - (c) section 103 (conditions relating to certain foreign offenders).
- (3) When deciding what conditions to attach to a diversionary caution the authorised person or prosecution authority must—
 - (a) make reasonable efforts, or ensure that reasonable efforts are or have been made, to obtain the views of any victim or victims of the offence, and
 - (b) take those views into account.
- (4) The views referred to in subsection (3) include in particular views as to whether the offender should carry out any of the actions listed in the community remedy document.
- (5) Where it is the view of the victim or all the victims that the offender should carry out a particular action listed in the community remedy document, the authorised person or prosecution authority must attach that as a condition unless it seems to the authorised person or prosecution authority—
 - (a) the action is not one that can be attached as a condition to a diversionary caution, or
 - (b) it would be inappropriate to do so.

101 Rehabilitation and reparation conditions

- (1) Conditions with one or both of the objects in subsection (2) may be attached to a diversionary caution.
- (2) The objects are—
 - (a) facilitating the rehabilitation of the offender;
 - (b) ensuring that the offender makes reparation for the offence.

- (3) The conditions which may be attached to a diversionary caution for the objects referred to in subsection (2) include—
- (a) restrictive conditions,
 - (b) unpaid work conditions, and
 - (c) attendance conditions.
- (4) A restrictive condition is a condition requiring the offender—
- (a) not to meet or communicate with specified individuals;
 - (b) not to be in, or go to, specified addresses, places or areas in the United Kingdom;
 - (c) not to carry out or participate in specified activities;
 - (d) not to engage in specified conduct (which may include conduct constituting a criminal offence).
- (5) An unpaid work condition is a condition requiring the offender to carry out unpaid work of a specified description for a specified number of hours, which may not exceed 20.
- (6) An attendance condition is a condition requiring the offender to attend a specified place—
- (a) for a specified purpose, and
 - (b) for a specified number of hours, which may not exceed 20 where the condition only has the object referred to in subsection (2)(b).
- (7) Where an attendance condition requires the offender to attend somewhere for the purpose of participating in any education or training, or receiving any other service, the attendance condition may also require the offender to pay for the reasonable cost of the provision of the education, training or service to the offender.
- (8) Regulations may amend subsection (5) or (6)(b) (or both) so as to substitute a different number of hours.
- (9) A condition authorised by this section may—
- (a) contain further details as to how it must be complied with (including the times at or between which something must or must not be done);
 - (b) provide for those details to be supplied, after the giving of the caution, by a specified person or a person of a specified description.
- (10) A condition authorised by this section may not require a person to remain at their own or anyone else’s residence for any period of time.
- (11) In this section “specified” means specified in the caution.

102 Financial penalty conditions

- (1) A condition requiring the offender to pay a financial penalty may be attached to a diversionary caution with the object of punishing the offender.
- (2) The condition must specify—
- (a) the amount of the financial penalty,
 - (b) the person to whom the financial penalty must be paid,
 - (c) how it must or may be paid, and

- (d) the date on or before which it must be paid.
- (3) The amount specified under subsection (2)(a) must not exceed an amount prescribed in regulations.
- (4) Where the person specified under subsection (2)(b) is not the designated officer for a magistrates' court, once the penalty is paid to that person they must give it to such an officer.
- (5) The date specified under subsection (2)(d) must be the last day of the period of 28 days beginning with the day on which the caution is given.

103 Foreign offenders' conditions

- (1) Where a diversionary caution is given to a relevant foreign offender, a condition with one or both of the objects in subsection (2) may be attached to it.
- (2) 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.
- (3) If a diversionary caution has a condition with the object referred to in subsection (2)(b), the expiry of the period does not of itself give rise to any right on the part of the offender to return to the United Kingdom.
- (4) 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 Schedule 2 to the Immigration Act 1971 or 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.

104 Variation of conditions

An authorised person or prosecution authority may, with the consent of the offender, vary the conditions attached to a diversionary caution by—

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

105 Effect of diversionary caution

- (1) Where a diversionary caution is given, criminal proceedings may be instituted against the offender for the offence in respect of which the caution was given if, but only if, the offender fails without reasonable excuse to comply with any of the conditions attached to the caution.
- (2) The document mentioned in section 99(2)(e) is admissible in such proceedings.
- (3) Where such proceedings are instituted, the diversionary caution ceases to have effect.

106 Arrest for failure to comply

- (1) If a constable has reasonable grounds for believing that the offender has failed without reasonable excuse to comply with any of the conditions attached to a diversionary caution, the constable may arrest the offender without warrant.
- (2) A person arrested under this section must be—
 - (a) charged with the offence in question, or
 - (b) released without charge.
- (3) A person released without charge under subsection (2)(b) must be—
 - (a) released on bail if—
 - (i) the release is to enable a decision to be made as to whether the offender should be charged with the offence, and
 - (ii) the pre-conditions for bail are satisfied, or
 - (b) in any other case, released without bail (with or without any variation in the conditions attached to the caution).
- (4) Subsection (2) also applies in the case of—
 - (a) a person who, having been released on bail under subsection (3)(a), returns to a police station to answer bail or is otherwise in police detention at a police station;
 - (b) a person who, having been released on bail under section 30A of the 1984 Act (bail elsewhere than at police station) as applied by section 107 below, attends at a police station to answer bail or is otherwise in police detention at a police station;
 - (c) a person who is arrested under section 30D or 46A of the 1984 Act (power of arrest for failure to answer to police bail) as applied by section 107 below.
- (5) Where a person is released on bail under subsection (3)(a), the custody officer must inform the person that the release is to enable a decision to be made as to whether the person should be charged with the offence in question.
- (6) A person arrested under this section, or any other person in whose case subsection (2) applies, may be kept in police detention—
 - (a) to enable the person to be dealt with in accordance with that subsection, or
 - (b) where applicable, to enable the power under section 47(4A) of the 1984 Act (power of custody officer to appoint a different or additional time for answering to police bail), as applied by section 107 below, to be exercised.

If the person is not in a fit state to be dealt with in that way, or to enable that power to be exercised, they may be kept in police detention until they are.
- (7) The power under subsection (6)(a) includes power to keep the person in police detention if it is necessary to do so for the purpose of investigating whether the person has failed, without reasonable excuse, to comply with any of the conditions attached to the diversionary caution.
- (8) Subsections (2) and (3) must be complied with as soon as practicable after the person arrested arrives at the police station or, in the case of a person arrested at the police station, as soon as practicable after the arrest.
- (9) Subsection (2) does not require a person who—
 - (a) falls within subsection (4)(a) or (b), and

(b) is in police detention in relation to a matter other than the diversionary caution, to be released if the person is liable to be kept in detention in relation to that other matter.

- (10) In subsection (3)(a)(ii), the reference to the pre-conditions for bail is to be read in accordance with section 50A of the 1984 Act.

107 Application of Police and Criminal Evidence Act 1984

- (1) In the case of a person arrested under section 106, the provisions of the 1984 Act specified in subsection (2) apply, with the modifications specified in subsection (3) and with such further modifications as are necessary, as they apply in the case of a person arrested for an offence.

- (2) The provisions are—

- (a) section 30 (arrest elsewhere than at police station);
- (b) sections 30A to 30D (bail elsewhere than at police station);
- (c) section 31 (arrest for further offence);
- (d) section 34(1) to (5E) (limitations on police detention);
- (e) section 36 (custody officers at police stations);
- (f) section 37(4) to (6C) (record of grounds for detention);
- (g) section 38 (duties of custody officer after charge);
- (h) section 39 (responsibilities in relation to persons detained);
- (i) section 55A (x-rays and ultrasound scans).

- (3) The modifications are—

- (a) in section 30CA, omit subsections (4A) to (4D);
- (b) in section 30CA, in subsection (5), in paragraph (a) of the definition of “relevant officer”, for the reference to being involved in the investigation of the relevant offence substitute a reference to being involved—
 - (i) in the investigation of the offence in respect of which the person was given the diversionary caution, or
 - (ii) in investigating whether the person has failed, without reasonable excuse, to comply with any of the conditions attached to the diversionary caution;
- (c) in section 36(5) and (7), for the references to being involved in the investigation of an offence for which the person is in police detention substitute references to being involved—
 - (i) in the investigation of the offence in respect of which the person was given the diversionary caution, or
 - (ii) in investigating whether the person has failed, without reasonable excuse, to comply with any of the conditions attached to the diversionary caution;
- (d) in section 38(1)(a)(iii) and (iv), for “arrested for” substitute “charged with”;
- (e) in section 39(2) and (3), for the references to an offence substitute references to a failure to comply with conditions attached to the diversionary caution.

- (4) Section 40 of the 1984 Act (review of police detention) applies to a person in police detention by virtue of section 106 above as it applies to a person in police detention in connection with the investigation of an offence, but with the following modifications—

- (a) omit subsections (8) and (8A);
 - (b) in subsection (9), for the reference to section 37(9) or 37D(5) substitute a reference to the second sentence of section 106(6) above.
- (5) The following provisions of the 1984 Act apply to a person released on bail under section 106(3)(a) above as they apply to a person released on bail under section 37 of that Act—
- (a) section 46A (power of arrest for failure to answer to police bail);
 - (b) section 47 (bail after arrest), except subsections (4D) and (4E).
- (6) Section 54 of the 1984 Act (searches of detained persons) applies in the case of a person who falls within section 106(4) above and is detained in a police station under that section as it applies in the case of a person who falls within section 34(7) of that Act and is detained at a police station under section 37.
- (7) Section 54A of the 1984 Act (searches and examination to ascertain identity) applies with the following modifications in the case of a person who is detained in a police station under section 106 above—
- (a) in subsections (1)(a) and (12), after “as a person involved in the commission of an offence” insert “or as having failed to comply with any of the conditions attached to the person’s diversionary caution”;
 - (b) in subsection (9)(a), after “the investigation of an offence” insert “, the investigation of whether the person in question has failed to comply with any of the conditions attached to the person’s diversionary caution”.