

*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

This Part provides for two new diversionary disposals - penalty notices and conditional cautions - aimed at dealing effectively with minor offences outside the court room. They may be offered to offenders as an alternative to prosecution in suitable cases but offenders retain the right to ask to have their case heard at court instead.

Penalty notices are for first-time or non-habitual offenders committing a prescribed offence. Paying the notice within 28 days discharges their liability for that offence. They are issued by the police without a direction from the Public Prosecution Service (PPS). There are 7 eligible offences which are listed in Schedule 4 (below). Offences attract either £40 or £80 penalties. Where recipients take no action within 28 days of the issue of the penalty, its value is uplifted by 50%, registered as a court fine and enforced through existing court fine default arrangements.

The PPS is currently able to direct the issue of an unconditional caution (by police or Departmental officials) as a disposal in suitable cases. The conditional caution provisions will enable 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. This disposal is to be used for individuals who might willingly avail of the opportunity to begin addressing any issues underpinning their offending behaviour in order to minimise their risk of re-offending. Rehabilitative conditions will include for example attendance at relevant programmes whilst reparative conditions may include an oral or written apology to a victim or other reparative activity to make good the harm caused.

Chapter 1 - Penalty Notices

This Chapter creates a power for police to dispose of certain prescribed offences, without a direction from the PPS, aimed at giving a first-time or non-habitual offender a notice offering the opportunity to discharge his liability for that offence by paying a penalty notice within 28 days (“the suspended enforcement period”).

Section 59: Penalty offences and penalties

This section brings in Schedule 4 which lists the offences which can attract a penalty notice and the amount payable in relation to that offence. Offences which attract a £40 penalty are indecent behaviour (urination) in any street, road, highway or other public place, or in any place to which the public have access; and being drunk in any road or other public place. Offences with an £80 penalty are theft (guidance will state this is for first-time shoplifting only); criminal damage (i.e. destroying, damaging or intending to do so to any property belonging to or being reckless as to whether any such property would be destroyed or damaged); disorderly behaviour in any public place; behaviour likely to cause a breach of the peace in a public place; and assaulting, resisting, obstructing or impeding a constable in the execution of his duty.

The penalty payable in respect of a penalty offence may not exceed one quarter of the maximum fine for which a person is liable on summary conviction of the offence. Penalty notices are also subject to the offender levy provisions in this Act.

The Department may amend Schedule 4 by an affirmative resolution order of the Assembly.

Section 60: Penalty notices

This section defines a “penalty notice” as a notice offering the opportunity to discharge any liability to be convicted of the offence to which the notice relates by paying a fixed penalty. Penalty notices are issued by the police to a person over the age of 18.

Section 61: Form of penalty notice

This section dictates that a penalty notice must state the alleged offence; specifics about the alleged offence so as to provide reasonable information about it; specify the period before prosecution will be brought about (suspended enforcement period); the amount of the penalty, to whom and where the penalty must be paid; and inform the alleged offender of the right to request a trial.

Section 62: Effect of penalty notice

This section states that if the alleged offender requests to be tried for the alleged offence then proceedings may be brought against them. The request to be tried must be made in the manner specified in the notice within the suspended enforcement period. If the suspended enforcement period elapses and the person has neither requested to be tried nor paid the amount then the sum of the notice is increased by 50% and the penalty may be registered as a court fine.

Section 63: General restrictions on prosecution

This section sets out the restrictions on prosecution. No proceedings can be brought within the suspended enforcement period, which is 28 days from the

date on which the notice was given, unless the individual requests to be tried. If the penalty is paid before the end of the suspended enforcement period no proceedings may be brought for the offence.

Section 64: Guidance

This section allows the Department of Justice to issue guidance about issuing penalty notices; about the exercise of the discretion given to police officers; and with a view to encouraging good practice in connection with the operation of the provisions of Chapter 1.

Section 65: Payment of penalty

This section sets out the procedure for payment of a penalty. The payment must be made to, or at an office of, the fixed penalty clerk specified in the penalty notice. Where payment is made by post, this is to be done by addressing, pre-paying and posting a letter to the fixed penalty clerk containing the penalty notice and the amount of the penalty. Sums paid by way of a penalty for an offence shall be treated as if they were fines imposed on summary conviction of that offence. The fixed penalty clerk is the clerk of petty sessions or such other persons as the Department of Justice may by order direct.

Section 66: Registration certificates

This section comes into effect if a person either does not pay their penalty notice or requests to be tried within the suspended enforcement period. In this instance the Chief Constable, or a person authorised by him, may issue a certificate stating that the sum can be registered as a fine. This certificate must be issued to the fixed penalty clerk.

Section 67: Registration of penalty

This section states that the fixed penalty clerk must upon receiving a certificate under section 66 register a sum in default for enforcement as a court fine. Once registered as a fine the individual who received the penalty notice is given a notice of registration specifying the amount and date for payment alongside information with respect to the offence. It will be treated as a court fine and therefore attract the normal payment and enforcement methods such as payment by instalments; extra time to pay; or any of the sanctions available for fine default.

The Department can make regulations with respect to the enforcement of payment of sums registered under this section as it considers appropriate.

Section 68: Challenge to notice

This section applies where a person who has received a notice of registration of a sum under section 67 for enforcement as a fine, makes a declaration within 21 days (or outside that period at the discretion of the court) that they were not the person to whom the relevant penalty notice was given, or that they gave

notice requesting to be tried. If the person is not the individual to whom the penalty notice was issued the registration as a fine and any other proceedings made will be void. If the person requested to be tried within the specified period then the registration of the fine is void and the case shall be treated as if the person requested to be tried as stated.

Section 69: Setting aside of sum enforceable under section 67

This section allows a court of summary jurisdiction to void the penalty notice, the registration as a fine; and any proceedings related to the alleged offence if it considers it is in the interests of justice to do so. It also allows the court to set aside the registration as a fine and to treat the case as if the person concerned had given notice requesting to be tried in respect of the offence.

Section 70: Interpretation of this Chapter

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

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.

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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.