

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Criminal Justice

Cautions

Section 17: Restrictions on use of cautions

203. Currently, a simple caution provides a means for a constable to deal with a person aged 18 or over who has admitted committing a criminal offence in England and Wales and agrees to be given a caution. It does not involve any court or tribunal process or the imposition of any condition or sanction. The current provisions for adult simple cautions are set out in non-statutory guidance issued by the Secretary of State for Justice.
204. *Section 17* places restrictions on the circumstances in which cautions may be used. The restrictions are greater the more serious the offence. *Subsection (1)* provides that the section applies where the person is aged 18 or over, has committed an offence in England and Wales and admits to committing the offence.
205. *Subsection (2)* provides that a constable may not give a caution for an offence triable only on indictment unless there are exceptional circumstances and the Director of Public Prosecutions consents.
206. *Subsection (3)* provides that a constable may not give a caution for an offence that is triable either way and which is specified in an order (“specified either way offence”) made by the Secretary of State (subject to the negative procedure) unless there are exceptional circumstances.
207. *Subsection (4)* provides that a constable may not give a caution for a summary or a non specified either-way offence (those offences not already restricted by *subsections (2) and (3)*) if the person has, in the two years before the commission of the current offence, received a caution (including a youth caution and youth conditional caution under the Crime and Disorder Act 1998 as well as an adult conditional caution) or conviction for a similar offence unless there are exceptional circumstances. The Secretary of State has the power to amend by order (subject to the affirmative procedure), the period of two years between the current offence and previous similar offence (*subsection (7)*).
208. Whether there are exceptional circumstances and whether a previous offence is similar to the current offence are not to be determined by a police officer below a rank specified by the Secretary of State by order (*subsection (5)*). A determination must be made in accordance with guidance issued by the Secretary of State (*subsection (6)*).
209. *Subsection (10)* provides that the restrictions on giving a caution under this section apply to an offence irrespective of whether it was committed before or after this section comes into force.

Section 18: Restrictions on use of cautions: supplementary

210. **Section 18** sets out the different parliamentary procedures for the orders that the Secretary of State may make under section 17 and provides that an order must be made by statutory instrument.
211. **Subsection (5)** contains an amendment to section 37B(7) of the Police and Criminal Evidence Act 1984. That section is about the decision of the Director of Public Prosecutions as to whether a person should be charged or cautioned. Under section 38B(7), if the DPP decides that a person should be cautioned, but it proves not to be possible to give a caution, the person must be charged. The amendment contained in subsection (5) makes clear that section 17 is to be taken into account in determining whether a caution is possible or not.

Section 19: Alternatives to prosecution: rehabilitation of offenders in Scotland

212. **Section 19** amends the Rehabilitation of Offenders Act 1974 in order to address a legal competence problem that was identified by the Scottish Government in relation to the exercise of enabling powers in Schedule 3 to the 1974 Act. The amendment allows the Scottish Ministers to make an order under paragraph 6 of Schedule 3 and section 7(4) (as applied by paragraph 8 of Schedule 3) of the 1974 Act setting out exclusions, modifications and exceptions to the general rules in the 1974 Act concerning spent alternatives to prosecution in relation to reserved matters. Scottish Ministers already have the power to do this in relation to convictions (the powers to do so having been transferred to Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003).