

The Criminal Justice Act 2003 (Conditional Cautions: Code of Practice) Order 2004 No.1683

Explanatory Memorandum from the Home Office

Introduction

The above instrument is made in exercise of the powers conferred under section 25 of the Criminal Justice Act 2003 (“the Act”). It provides that the Code of Practice for Conditional Cautioning laid before Parliament at the same time as the Order shall come into operation.

European Convention on Human Rights

In the Secretary of State’s view the provisions of the draft Criminal Justice Act 2003 (Conditional Cautions: Code of Practice) Order 2004 and the associated Code of Practice are compatible with the Convention rights.

Policy Objective

The Code of Practice provides guidance to the Crown Prosecution Service and the police (and to other ‘relevant prosecutors’ and ‘authorised persons’) in relation to the giving of conditional cautions under Part 2 of the Act.

The Code –

- sets out as the basic criteria for a conditional caution that the suspect is 18 or over, that he admits the offence, and that there is enough evidence to charge;
- explains that it is the ‘relevant prosecutor’ (usually the CPS) who determines whether a conditional caution is appropriate;
- advises that a conditional caution will usually be appropriate where conditions that facilitate the rehabilitation of the offender or ensure that the offender makes reparation for the offence (or both) will provide a proportionate response to the offence bearing in mind the public interest;
- makes clear that only exceptionally should a person who has recently been cautioned for a similar offence be given a conditional caution;
- requires that a suspect should have made a clear and reliable admission under a cautioned interview before the prospect of a conditional caution is mentioned;
- explains that conditions must be proportionate, achievable and appropriate, and have reparation or rehabilitation as their objectives, and that a time should be set for completion;
- requires that it should be a standard condition not to re-offend within the period of the conditional caution;

- emphasises the importance of robust monitoring of offenders' compliance with conditions, requiring them as standard conditions to co-operate with monitoring arrangements, and to report any failure to complete conditions and the reasons for it;
- sets out the action to be taken in the event of non-compliance; the decision will rest with the prosecutor, but the usual outcome will be prosecution for the original offence;
- encourages contact with victims to ascertain their views; and
- includes guidance about the use of Restorative Justice processes, for those areas in which they are to be piloted.

Consultation

The Code of Practice has been amended in light of some of the responses received during a six-week public consultation exercise.

Financial effects

The police and Crown Prosecution Service will incur costs for training and staff time in operating conditional cautioning and monitoring compliance with conditions, although there will be countervailing savings (particularly for the courts) where a conditional caution obviates a prosecution. The financial effects will be evaluated in areas where conditional cautions are phased in.

Extent

The Code extends to England & Wales only.

Home Office
April 2004.