



2011 CHAPTER 24

PART 6 N.I.

ALTERNATIVES TO PROSECUTION

PROSPECTIVE

CHAPTER 2 N.I.

CONDITIONAL CAUTIONS

Conditional cautions N.I.

71.—(1) An authorised person may give a conditional caution to a person aged 18 or over (“the offender”) if each of the five requirements in section 72 is satisfied.

(2) In this Chapter “conditional caution” means a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply.

(3) The conditions which may be attached to such a caution are those which have either or both of the following objects—

- (a) facilitating the rehabilitation of the offender,
- (b) ensuring that the offender makes reparation for the offence.

(4) In this Chapter “authorised person” means—

- (a) a police officer, or
- (b) a person authorised by the Director of Public Prosecutions for Northern Ireland for the purposes of this section.

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The five requirements **N.I.**

72.—(1) The first requirement is that the authorised person has evidence that the offender has committed an offence, other than an offence triable only on indictment.

(2) The second requirement is that a Public Prosecutor decides—

- (a) that there is sufficient evidence to charge the offender with the offence, and
- (b) that a conditional caution should be given to the offender in respect of the offence.

(3) The third requirement is that the offender admits to the authorised person that the offender committed the offence.

(4) The fourth requirement is that the authorised person explains the effect of the conditional caution to the offender and warns the offender that failure to comply with any of the conditions attached to the caution may result in the offender's being prosecuted for the offence.

(5) The fifth requirement is that the offender signs a document which contains—

- (a) details of the offence,
- (b) an admission by the offender that the offender committed the offence,
- (c) the consent of the offender to being given the conditional caution, and
- (d) the conditions attached to the caution.

Variation of conditions **N.I.**

73 A Public Prosecutor may, with the consent of the offender, vary the conditions attached to a conditional caution by—

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

Failure to comply with conditions **N.I.**

74.—(1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, criminal proceedings may be instituted against the offender for the offence in question.

(2) The document mentioned in section 72(5) is to be admissible in such proceedings.

(3) Where such proceedings are instituted, the conditional caution is to cease to have effect.

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Arrest for failure to comply **N.I.**

75.—(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 the conditional 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,
- (b) released without charge and on bail to enable a decision to be made as to whether the person should be charged with the offence, or
- (c) released without charge and without bail (with or without any variation in the conditions attached to the caution).

(3) Subsection (2) also applies in the case of—

- (a) a person who, having been released on bail under subsection (2)(b), 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 Article 32A of PACE (bail elsewhere than at police station) as applied by section 76, 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 Article 32D or 47A of PACE (power of arrest for failure to answer to police bail) as applied by section 76.

(4) Where the offender is released under subsection (2)(b), the custody officer must inform the offender that the offender is being released to enable a decision to be made as to whether the offender should be charged with the offence in question.

(5) A person arrested under this section, or any other person in whose case subsection (2) applies, may be kept in police detention to enable that person to be dealt with in accordance with that subsection. If the person is not in a fit state to enable that person to be so dealt with, or to enable that power to be exercised, that person may be kept in police detention until that person is.

(6) The power under subsection (5) 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 conditional caution.

(7) Subsection (2) 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.

(8) Subsection (2) does not require a person who—

- (a) falls within subsection (3)(a) or (b), and

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(b) is in police detention in relation to a matter other than the conditional caution,

to be released if the person is liable to be kept in detention in relation to that other matter.

(9) In this Chapter—

“PACE” means the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12);

“police detention” has the same meaning as in PACE (see Article 2(3) of PACE).

Application of PACE provisions **N.I.**

76.—(1) In the case of a person arrested under section 75, the provisions of PACE 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) Article 32 (arrest elsewhere than at police station);
- (b) Articles 32A to 32D (bail elsewhere than at police station);
- (c) Article 33 (arrest for further offence);
- (d) Article 35(1) to (6) (limitations on police detention);
- (e) Article 37 (custody officers at police stations);
- (f) Article 38(4) to (6) (record of grounds for detention);
- (g) Article 39 (duties of custody officer after charge);
- (h) Article 40 (responsibilities in relation to persons detained);
- (i) Article 56A (x-rays and ultrasound scans).

(3) The modifications are—

- (a) in Article 37(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 conditional caution, or
 - (ii) in investigating whether the person has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution;
- (b) in Article 39(1)(a)(ia), for “arrested for” substitute “charged with”;
- (c) in Article 40(2) and (3), for the references to an offence substitute references to a failure to comply with conditions attached to the conditional caution.

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(4) Article 41 of PACE (review of police detention) applies to a person in police detention by virtue of section 75 as it applies to a person in police detention in connection with the investigation of an offence, but with the following modifications—

- (a) omit paragraphs (8) and (8A);
- (b) in paragraph (9), for the reference to Article 38(9) substitute a reference to the second sentence of section 75(5).

(5) The following provisions of PACE apply to a person released on bail under section 75(2)(b) as they apply to a person released on bail under Article 38 of PACE—

- (a) Article 47A (power of arrest for failure to answer to police bail);
- (b) Article 48 (bail after arrest).

(6) Article 55 of PACE (searches of detained persons) applies in the case of a person who falls within subsection (3) of section 75 and is detained in a police station under that section as it applies in the case of a person who falls within Article 35(8) of PACE and is detained at a police station under Article 38.

(7) Article 55A of PACE (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 75—

- (a) in paragraphs (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 his conditional caution ”;
- (b) in paragraph (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 his conditional caution ”.

Code of practice **N.I.**

77.—(1) The Department must prepare a code of practice in relation to conditional cautions.

(2) The code may, in particular, include provision as to—

- (a) the circumstances in which conditional cautions may be given,
- (b) the procedure to be followed in connection with the giving of such cautions,
- (c) the conditions which may be attached to such cautions and the time for which they may have effect,
- (d) the category of authorised person by whom such cautions may be given,
- (e) the persons who may be authorised by the Director of Public Prosecutions for Northern Ireland for the purposes of section 71,

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- (f) the form which such cautions are to take and the manner in which they are to be given and recorded,
 - (g) the places where such cautions may be given,
 - (h) the monitoring of compliance with conditions attached to such cautions,
 - (i) the exercise of the power of arrest conferred by section 75(1), and
 - (j) who is to decide how a person should be dealt with under section 75(2).
- (3) After preparing a draft of the code the Department—
- (a) must publish the draft,
 - (b) must consider any representations made to it about the draft, and
 - (c) may amend the draft accordingly,

but the Department may not publish or amend the draft without the consent of the Attorney General for Northern Ireland.

(4) After the Department has proceeded under subsection (3), it must lay the code before the Assembly.

(5) When the Department has done so it may bring the code into operation by order.

(6) No order may be made under subsection (5) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(7) The Department may from time to time revise a code of practice brought into operation under this section.

(8) Subsections (3) to (7) are to apply (with appropriate modifications) to a revised code as they apply to an original code.

Powers of Probation Board **N.I.**

78 The powers of the Probation Board for Northern Ireland include power to make provision for—

- (a) Public Prosecutors to be given assistance in determining whether conditional cautions should be given and which conditions to attach to conditional cautions;
- (b) the supervision and rehabilitation of persons to whom conditional cautions are given.

Interpretation of this Chapter **N.I.**

79 In this Chapter—

- “authorised person” has the meaning given by section 71(4),
- “conditional caution” has the meaning given by section 71(2),
- “the offender” has the meaning given by section 71(1),

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“PACE” and “police detention” have the meanings given by section 75(9),
“Public Prosecutor” has the meaning given by section 29(5) of the Justice
(Northern Ireland) Act 2002 (c. 26).

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