

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 3: Sentencing and punishment of offenders

Chapter 7: Out of court disposals

Penalty notices

Section 132 and Schedule 23: Penalty notices for disorderly behaviour

710. Penalty notices for disorder (“PNDs”) were introduced by Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001 (“the 2001 Act”). They may be issued where a police officer has reason to believe that a person has committed a “penalty offence”, that is one of the offences listed in section 1 of the 2001 Act (which include drunk and disorderly behaviour, possession of cannabis, petty retail theft and causing criminal damage). Recipients of a PND have 21 days either to ask to be tried for the alleged offence or to pay in full the fixed penalty so as to discharge their liability to be convicted for the penalty offence. Failure to do either of these things may result in the registration of a fine against the individual equal to one and a half times the penalty amount.
711. *Section 132* gives effect to Schedule 23, which confers a new power on Chief Officers of Police to set up within their area a scheme which will allow police officers, where appropriate, to issue penalty notices with an education option. This gives recipients the opportunity to discharge their liability to be convicted of the penalty offence by paying for and completing an educational course related to the offence for which the notice was given. An educational course might, for example, seek to make individuals aware of the social and health implications of their conduct and would be designed to reduce the likelihood of further offending.
712. The Schedule also:
- ensures that a PND may not be given to a person under the age of 18;
 - removes the requirement that a police officer issuing a PND to an individual other than at a police station must be in uniform; and
 - removes the requirement that police officers in a police station may not give a PND unless they are “authorised constables”.
713. *Paragraph 3* of the Schedule amends section 2 of the 2001 Act so as to allow a constable to offer an education option to a person given a PND where an educational course scheme which relates to the offence committed has been established by the Chief Officer of the police force concerned. Recipients of a penalty notice with an education option will have the opportunity to discharge their liability to be convicted of the penalty offence by paying for and completing the course. For example, a person suspected of

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committing the offence of being drunk and disorderly might be offered a penalty notice with an option of paying for and completing an alcohol awareness course instead of paying the penalty amount or asking to be tried.

714. *Paragraph 3* also:

- amends section 2 of the 2001 Act so as to prevent PNDs from being given to persons aged under 18;
- repeals section 2(6) to (9) of the 2001 Act which makes provision for the Secretary of State by order (subject to the affirmative Parliamentary procedure) to allow PNDs to be given to persons under the age of 18 but over the age of 10, and to provide for the parents of a person aged under 16 who is given a PND to be informed of the notice and to be liable to pay the penalty; and
- confers a power on the Secretary of State to make regulations (subject to the negative Parliamentary procedure) about the revocation of PNDs.

715. *Paragraph 3* further amends section 2 of the 2001 Act so as to remove the requirement that:

- a police officer issuing a PND at a location other than a police station must be in uniform;
- a police officer issuing a PND in a police station must be an “authorised constable”.

716. *Paragraph 4* inserts a new section 2A into the “2001 Act”. This confers power on the Chief Officer of a police force to establish an educational course scheme in relation to one or more kinds of penalty offence committed in the Chief Officer’s area. It stipulates the necessary arrangements a scheme must include; requires that an educational course must aim to reduce the likelihood of the recipient of the penalty notice re-offending; and makes provision about who may provide an education course. It is for the Chief Officer to set the course fee (which must be paid by the person who attends the course). The Chief Officer may arrange for courses to be provided by his or her force, another force, or by a private provider.

717. New section 2A also:

- allows the Chief Constable of the British Transport Police Force to establish an educational course scheme in relation to penalty offences committed on a railway and other places where that force has jurisdiction; and
- confers power on the Secretary of State by regulations (subject to the negative Parliamentary procedure) to specify the minimum and maximum level of an educational course fee, and allow for the sharing, between the police and those involved in running educational courses, of personal information about an individual who has selected the education option.

718. *Paragraph 5* amends section 3 of the “2001 Act” (which concerns the amount of the penalty and the form of the penalty notice) in particular:

- to repeal the provision allowing the Secretary of State to specify by order a different level of penalty for persons of different ages (currently £80 for persons aged 18 or over or £50 in the case of person aged under 18 – see [S.I. 2002/1837](#));
- to confer a new power on the Secretary of State by regulations (subject to the negative Parliamentary procedure) to require a penalty notice with an education option to include, or be accompanied by, additional information to that which is provided in a PND without that option.

719. *Paragraph 6* inserts new subsections (6) to (10) into section 4 of the 2001 Act (which concerns the effect of a penalty notice with an education option).

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720. New subsections (6) to (8) allow for a sum equal to one and a half times the amount of the penalty to be registered as a fine for enforcement against a recipient of a PND with an education option where the recipient:
- fails within a period of 21 days beginning with the date on which the notice was given either to ask to attend an educational course, or to pay the penalty, or ask to be tried for the offence to which the notice relates; or
 - asks within that 21 period to attend a course, but then fails to pay the course fee or pays the fee but fails to attend or complete the course in accordance with regulations made under subsection (9).
721. New subsections (9) and (10) confer a number of new powers on the Secretary of State to make regulations (subject to the negative Parliamentary procedure) in order to make provision:
- as to when an offender will be treated as having attended or not attended a course;
 - allowing for extensions of time for attendance on a course (for instance where the offender is unwell) and as to who should determine requests for an extension;
 - as to the consequences of the offender failing to attend;
 - allowing for the delegation of certain determinations (for instance as to whether extensions of time for completing a course should be granted).
722. *Paragraph 7* amends section 5 of the 2001 Act so as to prevent a criminal prosecution for a penalty offence being brought against a person given a penalty notice with an education option who:
- asks during the 21 day suspended enforcement period to attend an educational course, unless that person subsequently fails to pay the fee for the course or fails to attend and complete the course; or
 - having asked to attend, then pays the fee and completes the course in accordance with regulations made under section 4(9).
723. *Paragraph 8* allows the Secretary of State to issue guidance about educational course schemes under section 6 of the 2001 Act.
724. Section 10 of the 2001 Act concerns enforcement of fines registered against a person given a penalty notice who then fails to pay the penalty amount. Subsection (5) allows a magistrates' court to set aside a fine in the interests of justice. *Paragraph 10* of the Schedule inserts a new subsection (7) into section 10. It confers a new power on the Secretary of State to make regulations (subject to the negative Parliamentary procedure) specifying the directions or orders the court may or must give if it sets aside a fine relating to a penalty notice with an education option.
725. *Paragraph 11* inserts a new section 10A into the 2001 Act. This sets out the Parliamentary procedures relating to any power of the Secretary of State to make orders or regulations under Chapter 1 of Part 1 of the 2001 Act, provides for them to be made by statutory instrument, and confers supplementary powers. New section 10A replaces existing provisions currently found in sections 1(4) and (5), 2(8) and (9) and 3(5) and (6), which are repealed.
726. *Paragraphs 13 and 14* make amendments consequential upon the repeal of the requirement that constables must be uniform when giving penalty notices, in particular to the Police Reform Act 2002 (which allows for community support officers, accredited persons and accredited inspectors to issue fixed penalty notices).
727. *Paragraph 15* repeals section 87 of the Anti-social Behaviour Act 2003, which amended section 2 of the 2001 Act so that PNDs could be issued to persons aged under 18 years.

Cautions

Section 133: Conditional cautions: involvement of prosecutors

728. **Section 133** amends sections 22 to 25 of the 1991 Act. The section enables the authorised person (usually a police officer) to make a decision to offer a conditional caution by removing the requirement that, before the authorised person can offer a conditional caution to an offender, they must refer the matter to the relevant prosecutor (usually the Crown Prosecution Service) to decide that there is sufficient evidence to charge the offender with the offence, and that a conditional caution should be given. The section enables those decisions to be taken by the authorised person without reference to the relevant prosecutor.
729. **Section 133** also enables the authorised person to vary conditions in the conditional caution without reference to the relevant prosecutor. The other requirements for a conditional caution remain unchanged, including that the offender admits that they committed the offence and that they consent to being given a conditional caution.
730. The intention is that the Code of Practice issued under section 25 of the 1991 Act or guidance will specify those matters that should still be referred to the relevant prosecutor for a decision about whether a conditional caution should be given or to vary conditions.

Section 134: Conditional cautions: removal etc of certain foreign offenders

731. **Section 134** amends section 22 of the 1991 Act so as to make available new types of conditions that can be attached to a conditional caution given to an offender who is a foreign national and who does not have leave to enter or remain in the United Kingdom. The object of these conditions is to bring about the departure of the foreign offender from the UK and ensure that they do not return to the UK for a period. These conditions may be attached to a conditional caution, whether or not it is in addition to a condition with one or more of the existing objectives in section 22(3) of the 1991 Act (namely facilitating the rehabilitation of the offender; ensuring that the offender makes reparation for the offence; or punishing the offender).
732. This section also defines the category of foreign offenders who could be offered such conditions as those offenders whose immigration status makes them liable for removal from the UK. This means a person who has no leave to enter or remain in the UK and in respect of whom there is a power to enforce their departure from the UK. As with all conditional cautions, the offender must admit the offence and agree to accept the conditional caution.
733. If the foreign offender does not comply with these conditions he or she may be prosecuted for the original offence.

Youth cautions

Section 135 and Schedule 24: Youth cautions

734. Section 65 and 66 of the Crime and Disorder Act 1998 (“the 1998 Act”) created a system of reprimands and warnings known as the Final Warning Scheme. These are out of court disposals for young offenders for use where prosecution is not in the public interest.
735. **Subsection (1)** of section 135 repeals sections 65 and 66 of the 1998 Act abolishing the Final Warning Scheme.
736. **Subsection (2)** inserts new section 66ZA, which creates a new ‘youth caution’, and new section 66ZB, which sets out the effect of the new youth caution.
737. New section 66ZA does the following:

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738. *New subsection (1)* sets out the circumstances in which a constable may give a young person a youth caution. They are broadly the same as those in which a warning or reprimand can currently be given. However, unlike reprimands and warnings which cannot be offered if a young person has previously been convicted of an offence or given a youth conditional caution, the new youth caution contains no such restriction. This mirrors changes made to youth conditional cautions (see section 137).
739. *New subsection (1)(a)* provides that to issue a youth caution the constable must decide that there is sufficient evidence to charge the young person with an offence. The effect of the test is the same as for issuing a reprimand or warning but the wording has been amended for consistency with the requirement for conditional cautions and youth conditional cautions.
740. *New subsections (2) to (7)* replicate relevant provision from section 65 of the 1998 Act on reprimands and warnings. This includes provision:
- requiring appropriate adults to be present when persons under 17 are given a youth caution,
 - requiring the effect of receiving a youth caution to be explained to the person given the caution,
 - for the publication of guidance by the Secretary of State, and
 - preventing cautions, other than youth cautions and youth conditional cautions, from being given to children and young people.
741. New section 66ZB does the following:
742. *New subsection (1)* provides that if a young person receives a youth caution then the police must refer them to the appropriate youth offending team as soon as is practicable. The purpose of this is to ensure that the youth offending team has complete records of the young person's involvement with the police and so that they can be considered for assessment, upon receiving a first or subsequent youth caution. Under section 66 of the 1998 Act this was only required for warnings, not reprimands.
743. *New subsections (2) and (3)* provide the power for the youth offending team to assess a young person and put in place a rehabilitation programme, where a young person receives a youth caution and they consider this appropriate. It also places a duty on the youth offending team to assess a young person if they receive a second or subsequent referral under subsection (1). Following this assessment, the youth offending team should put in place a rehabilitation programme to prevent further offending unless this is deemed inappropriate. This subsection broadly mirrors the threshold for assessment and intervention that existed for reprimands and warnings.
744. *New subsection (4)* replicates section 66(3) of the 1998 Act by making provision for the Secretary of State to publish guidance setting out what should be included in any rehabilitation programme and the steps that will need to be taken if the offender fails to participate in these programmes.
745. *New subsections (5) and (6)* provide that, save for in exceptional circumstances, a court may not conditionally discharge an offender if they have been given a youth caution in the two years preceding the commission of the offence for which they are being sentenced (unless that youth caution was the offender's first and only caution). Where the court is of the opinion that exceptional circumstances are present it must state in open court why it is of that opinion.
746. *New subsection (7)* replicates section 66(5) of the 1998 Act by making provision that where a young person has received a youth caution and has failed to participate in a rehabilitation programme provided as part of that caution, this may be cited in court in any subsequent criminal proceedings involving that person in the same way that a prior conviction would be.

747. *Subsection (5)* of section 135 provides that any reprimand or warning given to a person prior to the commencement of this section will subsequently be considered a youth caution for the purposes of the Act. For example a reprimand would be considered a first youth caution for the purposes of determining whether there was a duty on the youth offending team to assess a young person under section 66ZB(2), if they were subsequently to be given a youth caution following the commencement of the Act.
748. *Subsections (6) and (7)* of section 135 ensure that a referral and rehabilitation programme provided under section 66 of the 1998 Act before the commencement of this section is to be treated as equivalent to a rehabilitation programme provided under section 66ZB of that Act.

Schedule 24: Youth cautions: consequential amendments

749. *Schedule 24* is given effect by section 135(3) and makes various amendments and appeals which are consequential on the repeal of reprimands and warnings under the 1998 Act and the introduction of youth cautions by section 136.

Youth cautions

Section 136: Youth conditional cautions: previous convictions

750. *Section 136* omits paragraph (a) from section 66A(1) of the 1998 Act. That paragraph prevents a youth conditional caution from being given to a young person who has previously been convicted of an offence. This will allow a youth conditional caution to be given to a young person when they have admitted to committing an offence for which such a disposal is appropriate, even if they have been convicted of other more serious offences in the past.

Section 137: Youth conditional cautions: references to youth offending teams

751. *Section 137* inserts a new subsection (6A) into section 66A of the 1998 Act, the effect of which is to require an authorised person who gives a young person a youth conditional caution to refer that young person to the youth offending team as soon as is practicable. The purpose of this is to ensure that the youth offending team has complete records of the young person's involvement with the police and so that they can be considered for assessment to identify rehabilitative programmes. The referral under this provision will also enable the youth offending team to apply for a "parenting order" if voluntary parenting support is not engaged with (parenting orders are created by section 25 of the Anti-Social Behaviour Act 2003).

Section 138: Youth conditional cautions: involvement of prosecutors

752. *Section 138* amends sections 66A, 66B, 66C, 66D and 66G of the Crime and Disorder Act 1998.
753. *Subsection (2)* amends section 66A(4). It removes the requirement that the conditions attached to a youth conditional caution be specified by a relevant prosecutor. A condition that a youth attend at a specified place at specified times may still be attached to a youth conditional caution but the place and times must be specified in that condition by whoever offers the caution.
754. *Subsection (3)* amends section 66B(2). It would allow the decisions as to whether there is sufficient evidence to charge the offender and whether a youth conditional caution should be given to be made by an authorised person. At the moment these decisions have to be taken by a relevant prosecutor (usually the Crown Prosecution Service). The decision taken here is not a charging decision. It is an assessment of the evidence for the purposes of deciding whether to caution only.

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755. *Subsection (4)* amends section 66C(5). It removes the requirement that a relevant prosecutor must, if payment of a financial penalty is a condition, specify the amount of the penalty, to whom it must be paid and how it may be paid. Instead, these details must be specified in the condition by whoever offers the caution.
756. *Subsection (5)* amends section 66D. It allows conditions to be varied by any relevant prosecutor or authorised person. At the moment they can only be varied by the relevant prosecutor. An authorised person will be able to vary the conditions, even where they were initially decided by a relevant prosecutor.
757. *Subsection (6)* amends section 66G, which relates to the code of practice that is issued by the Secretary of State. The amendment is consequential upon the amendment made by subsection (4).
758. The intention is that the Code of Practice introduced under section 66G Act or guidance will specify those matters that should be referred to the relevant prosecutor for a decision about whether a conditional caution should be given or to vary conditions.