

Ordinance 09 of 2019

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**CRIMINAL PROCEDURE (AMENDMENT)
ORDINANCE 2019**

An Ordinance to amend the Criminal Procedure Ordinance 2016 to make provision about conditional cautions.

J. Illingworth

16 July 2019

ADMINISTRATOR

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Short title

1. This Ordinance may be cited as the Criminal Procedure (Amendment) Ordinance 2019.

Commencement

2. This Ordinance comes into force on 16 July 2019.

Amendment of the Criminal Procedure Ordinance 2016

3. The Criminal Procedure Ordinance 2016(a) is amended as follows.

Amendment of section 3

4. In section 3 (interpretation) at the appropriate place in alphabetical order insert—
““conditional caution” has the meaning given in section 47A;”.

Amendment of section 21

5. In section 21 (arrest without warrant: police officers), at the end of subsection (1) insert—
“(h) a person who in the officer’s presence breaches a condition attached to a conditional caution.”

Amendment of section 24

6. In section 24 (arrest warrants: issue), after subsection (1)(c) insert—
“(ca) there are reasonable grounds for believing that the person has breached a condition attached to a conditional caution;”.

New Part 3A

7. After section 47 (police powers under other enactments, etc not limited) insert—

“PART 3A Conditional cautions

Conditional caution

47A.—(1) A person (“the offender”) may be given a conditional caution if each of the five requirements in section 47B is satisfied.

(2) In this Part “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 must have one or more of the following objects—

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

(4) The conditions which may be attached to a conditional caution include a condition that the offender attend at a specified place at specified times for no more than 20 hours in total.

(5) A conditional caution given to the offender who is a prohibited immigrant aged 18 or over may have conditions that have one or more of the following objects—

- (a) bringing about the departure of the offender from the Areas;
- (b) ensuring that the offender does not return to the Areas for a period of time.

(a) Ordinance 09/2016.

(6) If the offender who is a prohibited immigrant is given a conditional caution with a condition attached to it with an object of ensuring that the offender does not return to the Areas for a period of time, the expiry of that period does not of itself give rise to any right on the part of the offender to return to the Areas.

(7) In this section “prohibited immigrant” has the meaning given in section 5(1) of the Control (Entry, Settlement and Commercial Enterprises) Ordinance 1960(a).

The five requirements

47B.—(1) The first requirement is that the police officer has evidence that the offender has committed an offence.

(2) The second requirement is that the Attorney General and Legal Adviser or a Crown Counsel 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 committing the offence to the police officer.

(4) The fourth requirement is that the police officer—

- (a) explains the effect of the conditional caution to the offender, and
- (b) warns the offender that failure to comply with any of the conditions attached to the caution may result in prosecution for the offence.

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

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

(6) Where the offender is under 18, the explanation and warning mentioned in subsection (4) must be given in the presence of an appropriate adult.

(7) In this section “appropriate adult” in relation to a person (P) under 18 means—

- (a) a parent or guardian of P,
- (b) if P is in the care of a local authority or a voluntary organisation, a representative of that authority or organisation,
- (c) a social worker, or
- (d) if no person falling within paragraph (a), (b) or (c) is available, any responsible person aged 18 or over who is not a police officer, or a person employed for, or engaged on, police related matters.

Duty to consult victim

47C.—(1) Before deciding what conditions to attach to a conditional caution, the Attorney General and Legal Adviser or a Crown Counsel must make reasonable efforts to obtain the views of the victim (if any) of the offence, and in particular the victim's views as to whether the offender should carry out any of the actions suggested by the Attorney General and Legal Adviser or a Crown Counsel as reparation for the offence.

(2) If the victim expresses the view that the offender should carry out a particular action suggested under subsection (1), the Attorney General and Legal Adviser or a Crown Counsel must attach that as a condition unless it seems to the Attorney General and Legal Adviser or a Crown Counsel that it would be inappropriate to do so.

(a) Ordinance 5/1960. Section 5 was amended by Ordinances 4/2001, 13/2009 and 31/2010.

(3) Where—

- (a) there is more than one victim and they express different views, or
- (b) for any other reason subsection (2) does not apply,

the Attorney General and Legal Adviser or a Crown Counsel must nevertheless take account of any views expressed by the victim (or victims) in deciding what conditions to attach to the conditional caution.

(4) In this section “victim” means the particular person who appears to the Attorney General and Legal Adviser or a Crown Counsel to have been affected by the offence.

Financial penalties

47D.—(1) A financial penalty that the offender pays as a condition (a “financial penalty condition”) must not exceed—

- (a) one quarter of the amount of the maximum fine for which a person is liable on conviction of the offence, or
- (b) the following amount—
 - (i) €50 where the offence is a misdemeanour,
 - (ii) €100 where the offence is a felony and the offender is under 18, or
 - (iii) €150 where the offence is a felony and the offender is aged 18 or over,

whichever is the lower.

(2) Where a financial penalty condition is attached to a conditional caution, the condition must specify—

- (a) the amount of the penalty, and
- (b) how it may be paid.

(3) To comply with the condition, the offender must pay the penalty to a police station or to the court in the way specified under subsection (2)(b).

Failure to comply with conditions

47E.—(1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, criminal proceedings may be commenced against the person for the offence in question.

(2) The document mentioned in section 47B(5) is admissible as evidence in such proceedings.

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

Code of practice: contents and procedure

47F.—(1) The Administrator must issue a code of practice in relation to conditional cautions.

(2) The code may 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 police officers who are to give a conditional caution,
- (e) the form which such cautions are to take and the manner in which they are to be given and recorded,
- (f) the places where such cautions may be given,

- (g) the manner in which a financial penalty may be paid,
 - (h) the monitoring of compliance with conditions attached to such cautions, and
 - (i) the exercise of the power of arrest in relation to breaching the conditions of such cautions.
- (3) The Administrator may from time to time—
- (a) revise the whole or any part of a code of practice, and
 - (b) issue the revised code of practice.
- (4) A code of practice (including a revised code of practice) does not come into force until—
- (a) it is published, and
 - (b) the Administrator brings it into force by order made as a public instrument.
- (5) The Administrator must obtain the consent of the Attorney General and Legal Adviser before publishing or revising the code of practice.
- (6) A code of practice is admissible in evidence in criminal or civil proceedings; and if a provision of a code of practice appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings, it must be taken into account in determining the question.

Code of Practice: effect

47G.—(1) A conditional caution may not be given unless a code of practice under section 47F is in force.

(2) Any person exercising functions under this Part must have regard to the code of practice.”

Amendment of section 52

8.—(1) Section 52 (limitation period for certain offences) is amended as follows.

(2) In subsection (2) for “Subject to subsection (3)” substitute “Subject to subsections (3) and (4)”.

(3) At the end insert—

“(4) Where a conditional caution has been given under section 47A for an offence to which this section applies, the limitation period specified in subsection (2) commences the day after the day on which the period for compliance with conditions of the caution ends.”

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Criminal Procedure (Amendment) Ordinance 2019 (“the Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The Ordinance amends the Criminal Procedure Ordinance 2016 (“the principal Ordinance”). The new Part 3A *Conditional Cautions* is added. It sets out matters in relation to when conditional cautions may be given and the conditions that may be attached.

3. The new sections 47A and 47B set out the requirements that must be met before a conditional caution may be given to an offender. Section 47B(5) requires that the offender sign a document recording the conditional caution and admitting the commission of the offence.

4. Section 47C of the principal Ordinance imposes on the Attorney General and Legal Adviser or a Crown Counsel a duty to seek the views of the victim of the offence as to whether the offender should carry out any of the actions suggested as reparation for the offence.

5. Section 47D of the principal Ordinance deals with a financial penalty condition. It prescribes the maximum amounts that may be imposed as part of a financial penalty condition.

6. Section 47E of the principal Ordinance sets out the consequences of failure to comply with conditions of a conditional caution. Section 47E(2) makes the document signed by the offender under section 47B(5) admissible in criminal proceedings which may be instituted following failure to comply with conditions.

7. Sections 47F and 47G of the principal Ordinance make provisions for the issue and application of a code of practice in relation to conditional cautions.

8. Section 8 of the Ordinance amends section 52 of the principal Ordinance. The effect of this amendment is to preserve the option of instituting criminal proceedings for certain offences where offenders failed to comply with conditions of a conditional caution.

