

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

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

These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012

decision taken here is not a charging decision. It is an assessment of the evidence for the purposes of deciding whether to caution only.

- 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.