



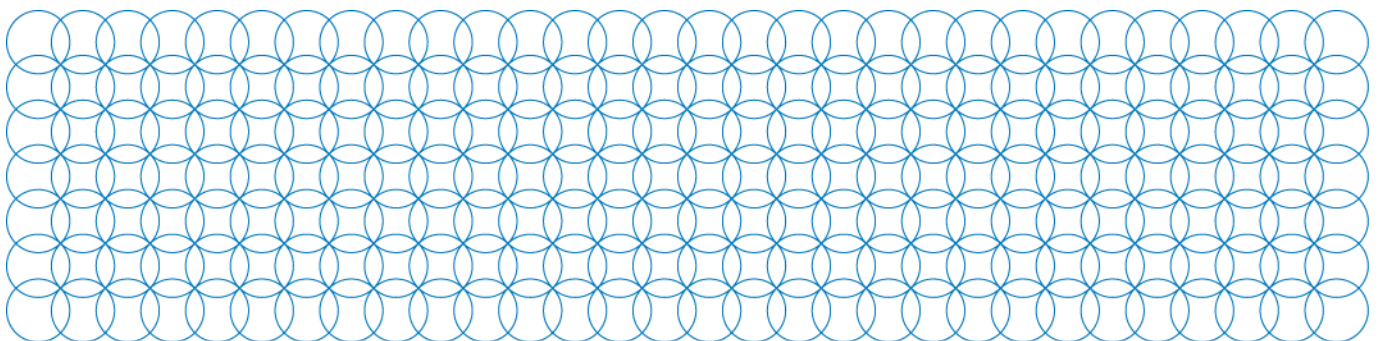
Ministry of  
**JUSTICE**

# **Draft Code Of Practice for Youth Conditional Cautions**

Consultation Paper CP19/2012.

This consultation begins on 4<sup>th</sup> October 2012

This consultation ends on 1<sup>st</sup> November 2012





Ministry of  
**JUSTICE**

## About this consultation

- To:** This consultation is aimed at criminal justice practitioners in England and Wales, particularly those in the Police Service and the Crown Prosecution Service, Youth Offending Teams, magistrates, defence practitioners, victims and offenders.
- Duration:** From 04/10/12 – 01/11/12
- Enquiries (including requests for the paper in an alternative format) to:** Youth Conditional Cautions  
Ministry of Justice  
8<sup>th</sup> Floor postal point 8.18  
102 Petty France  
London SW1H 9AJ
- Email: [conditionalcautions.team@justice.gsi.gov.uk](mailto:conditionalcautions.team@justice.gsi.gov.uk)
- How to respond:** Please send your response by 1<sup>st</sup> November 2012 to:  
Youth Conditional Cautions  
Ministry of Justice  
8<sup>th</sup> Floor postal point 8.18  
102 Petty France  
London SW1H 9AJ
- Email: [conditionalcautions.team@justice.gsi.gov.uk](mailto:conditionalcautions.team@justice.gsi.gov.uk)
- Response paper:** A response to this consultation exercise is due to be published in the autumn at [www.justice.gov.uk](http://www.justice.gov.uk)

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## Introduction

1. This consultation document asks you to comment on the new Code of Practice for Youth Conditional Cautions which has been drafted to:
  - a. support the changes to the conditional cautions set out in Section 66 of the Crime and Disorder Act 1998 following amendments made by the Legal Aid Sentencing and Punishment of Offender Act 2012; and
  - b. clarify certain elements in the current Code of Practice.

## Executive summary

2. This paper sets out for consultation a draft Code of Practice for youth conditional cautions for authorised persons (such as the police) and relevant prosecutors (such as the Crown Prosecution Service (CPS) ) on the use of youth conditional cautions as an alternative to prosecuting a young offender.
3. Conditional cautioning is a statutory out-of-court disposal introduced by Part 3 of the Criminal Justice Act 2003 as amended by the Police and Justice Act 2006. The legislation provides for conditional cautions to be administered for adult offenders. The Criminal Justice and Immigration Act 2008, Section 48, extended the use of conditional cautions to young people aged 10-17 by amending the Crime and Disorder Act 1998 (“the 1998 Act”). This makes provision for Youth Conditional Cautions as a means of dealing with young offenders in certain circumstances, as an alternative to prosecution.
4. At present the legislation for youth conditional cautions is only implemented for 16 and 17 year olds in five areas. Namely Merseyside, Hampshire, Norfolk, Humberside and Cambridgeshire.
5. Section 66G of the 1998 Act requires that a Code of Practice is issued in relation to Youth Conditional Cautions governing their use and sets out provisions on the contents of the Code of Practice. This may include factors such as the circumstances in which conditional cautions may be given, the procedure to be followed in connection with the giving of such cautions and the conditions which may be attached to such cautions. Section 66G also requires a draft Code to be published to enable any representations to be made on the Code. The Code of Practice governs the use of conditional cautions and gives effect to requirements in the 1998 Act that must be met to administer the caution and set appropriate, proportionate and achievable conditions
6. Representations are invited from criminal justice practitioners, particularly those in the Police Service, Youth Offending Teams and the Crown Prosecution Service. The views of the judiciary and magistrates are also welcomed. We are also keen to have responses from organisations supporting victims of crime as well as from those representing offenders and defence practitioners. We also want to invite members of the public to respond with their views on the Code. We also welcome contributions that help us to consider the impacts that the guidance might have on offenders according to their age, ethnicity, disability, gender, sexual orientation, religion, or any other protected characteristics identified in the Equality Act 2010.

7. A consultation is also taking place concurrently on the Code of Practice on Adult Conditional Cautions.
8. The existing Code of Practice came in to force in January 2010. The draft new Code of Practice reflects the changes to Section 66 of the 1998 Act made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the 2012 Act'). It also sets out in clearer language certain element of the existing Code of Practice. The draft Code of Practice for youth conditional cautions is at Annex A to this paper.
9. The policy behind the Code of Practice for Conditional Cautions has previously been consulted on in the Government's Green Paper: 'Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders' (published on 7<sup>th</sup> December 2010 together with the supporting Impact Assessment and Equality Impact Assessment). The changes to the 1998 Act have also been subject to Parliamentary scrutiny as part of the passage through Parliament of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
10. The 1998 Act defines a Youth Conditional Caution (YCC) as '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'. If an offender fails without reasonable excuse to comply with the conditions attached to a Conditional Caution criminal proceedings may be instituted against the person for the offence in question.
11. A Youth Conditional Caution can only be offered if the young person has not been previously convicted of an offence and each of the five statutory requirements are met. These requirements are:
  1. The authorised person must have evidence that the young person has committed an offence<sup>1</sup>.
  2. The authorised person or prosecutor must determine that there is sufficient evidence to charge the young person with the offence. The authorised person or prosecutor must also determine that a Youth Conditional Caution should be given to the young person in respect of the offence.
  3. The young person must admit to the authorised person that he has committed the offence.

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<sup>1</sup> The authorised person must have sufficient evidence available that is capable of meeting the Full Code Test (see footnote 7) at the time the case is referred to the prosecutor.



4. The authorised person must explain the effect of the Youth Conditional Caution and warn the young person that failure to comply with any of the conditions may result in prosecution for the original offence. Where the young person is aged 16 years or under, the explanation and warning must be given in the presence of an appropriate adult.<sup>2</sup>
  5. The young person must sign a document containing details of the offence, the admission to the authorised person, consent to be given a Youth Conditional Caution and details of the conditions attached and the implications of accepting a Youth Conditional Caution.
12. Section 66G sets out the provisions that may be covered within the Code for example the circumstances in which a Youth Conditional Caution may be given, the conditions which may be attached to such cautions and the time for which they may have effect and the monitoring of compliance with conditions attached to cautions.
13. References to “Youth Cautions” in the Code refer to Section 135 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which introduces these disposals to replace reprimands and warnings. Youth Cautions are intended to be introduced simultaneously with this Code coming into effect.
14. In addition to the Code, guidance is issued by the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984. The guidance is for police and crown prosecutors on the operational approach to be taken in deciding whether to offer a conditional caution with appropriate conditions. This guidance identifies any aspects which may render a case unsuitable for a youth conditional caution for example circumstances which may make charging the offender the appropriate response. The guidance will be revised to support the new Code of Practice.

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<sup>2</sup> The PACE Codes of Practice require that an appropriate adult should also be present where, because of the mental state or capacity, the youth (including 17 year olds) may not fully understand the nature and requirements of or the significance of accepting a Youth Conditional Caution.

15. The legislative changes to the 1998 Act and revision to the Code of Practice are part of wider work to create a clearer national framework for dealing with offending out of court which we are developing with partners across the criminal justice system including the police and ACPO, YJB, CPS and the Magistrate's Association. This framework will outline principles and standards within which the police and CPS will take operational decisions using their own professional judgement and ensure that these disposals are used appropriately and effectively. In addition the aim is to simplify current guidance.

## The new Code of Practice

16. The new draft Code of Practice reflects amendments made to youth conditional cautions. Provisions in the 2012 Act amend the Youth Conditional Caution scheme in the following ways:
- By removing the requirement for an authorised person (usually a police officer) to obtain the consent of the relevant prosecutor (usually the Crown Prosecution Service) to give a conditional caution and set and vary conditions in all cases.
  - By removing the proscription that a Youth Conditional Caution cannot be administered if a young person has ever been previously convicted.
  - By requiring that the authorised person refers the case to the Youth Offending Team once they have issued a Youth Conditional Caution. This is already stipulated in the existing Code but has been placed in primary legislation to explicitly satisfy the criteria for a Parenting Order so that the local authority may apply for a Parenting Order where a young person has received a YCC.
17. The other requirements for a youth conditional caution remain unchanged, including that the offender admits that they committed the offence and that they consent to being given a conditional caution.
18. Alongside this the Code clarifies several elements of the process to ensure that youth conditional cautions are used appropriately. These arise from the related work to develop a clearer national framework for dealing with offending out of court and simplifying and strengthening guidance. For example they make clearer the application of the Full Code test in deciding whether to offer a youth conditional caution, the approach to dealing with vulnerable offenders and dealing with offenders with a previous criminal history.
19. The Code also reflects the introduction of Youth Cautions in the 2012 Act to replace reprimands and warnings. These provisions have not been implemented at the time of consultation but are intended to be commenced simultaneously with changes to Youth Conditional Cautions and the introduction of the revised Code of Practice.

20. The main changes are:

### **POWER OF POLICE TO AUTHORISE CONDITIONAL CAUTIONS**

21. The 1998 Act originally required that all decisions to give a conditional caution were made by a relevant prosecutor (usually the Crown Prosecution Service). The amendments made in the 2012 Act enable the authorised person (usually a police officer) to make the decision to offer a Youth Conditional Caution without referring the matter to the relevant prosecutor (usually the Crown Prosecution Service) in every case to decide that there is sufficient evidence to charge the offender with the offence, and that a conditional caution should be given. The amendments enable those decisions to be taken by the authorised person without reference to the relevant prosecutor and also enable the authorised person to vary conditions in the conditional caution without reference to the relevant prosecutor.

### **YOUTH CONDITIONAL CAUTIONS FOLLOWING A CONVICTION**

22. The existing scheme does not allow the administration of a Youth Conditional Caution if a young person has ever previously been convicted of an offence. There are similar restrictions to reprimands and warnings under the Final Warning Scheme. Simple Cautions and adult conditional cautions have never had this restriction. Amendments in the 2012 Act remove these restrictions from Youth Conditional Cautions and they do not apply to the Youth Caution which replaces the Final Warning Scheme. This means that youth out-of-court disposals can be used in response to any offence if otherwise appropriate and proportionate rather than being used in a set order or become unavailable if a young person has previous convictions.

### **Clarifying provisions in the existing Code of Practice**

23. The draft Code of Practice also clarifies certain provisions in the existing Code of Practice to better ensure that youth conditional cautions are used appropriately. These include:

- Making it clearer how the evidential and public interest stages of the Full Code Test apply to the decision about whether to give a youth conditional caution.
- Clearer details of the consequences and implications of accepting a youth conditional caution which should be explained to an offender;
- Explaining the effect and implication of a youth conditional caution to mentally vulnerable offenders;

- Making it clearer that offenders may choose to withdraw from a youth conditional caution after it has been administered although this may result in a prosecution for the original offence;
- Clearer guidance on when a youth conditional caution can be considered for offenders with a previous offending history.

## Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

**Q1: Are you satisfied that the draft Code of Practice for youth conditional cautions (Annex A) fully support the amendments made by the Legal Aid, Sentencing and Punishment of Offender Act 2012 to Section 66 of the Crime and Disorder Act 1998?. These amendments are explained at paragraph 19 and 20 of this consultation.**

**Q2: Are you satisfied that the draft Code of Practice for youth conditional cautions adequately clarifies certain provisions in the existing Code of Practice? These provisions are explained at paragraph 23 of this consultation.**

**Q3: If not, what changes do you think should be made?**

The Equality Act 2010 identifies the nine protected characteristics of race, gender, disability - including offenders with learning difficulties - gender identity, pregnancy and maternity, marriage and civil partnership, religion or belief, sexual orientation and age. We are interested to know if any of the protected characteristics are affected by the way in which the Code is drafted.

**Q4. What do you consider the equality issues arising from the way the Code has been drafted to be, and why? Please list any sources of evidence to support your response.**

**Thank you for participating in this consultation exercise.**

## About you

Please use this section to tell us about yourself

|   |   |
|---|---|
| <b>Full name</b>  |   |
| <b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.) |   |
| <b>Date</b>   |   |
| <b>Company name/organisation</b> (if applicable):   |   |
| <b>Address</b>  |   |
|   |   |
| <b>Postcode</b>   |   |
| If you would like us to acknowledge receipt of your response, please tick this box                                      | <input type="checkbox"/><br>(please tick box) |
| Address to which the acknowledgement should be sent, if different from above  |   |
|   |   |
|   |   |

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

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## **Contact details/How to respond**

Please send your response by 1<sup>st</sup> November 2012 to:

**Youth Conditional Cautions Code of Practice  
Ministry of Justice  
8.18 8<sup>th</sup> floor  
102 Petty France  
London SW1H 9AJ**

**Email: [conditionalcautions.team@justice.gsi.gov.uk](mailto:conditionalcautions.team@justice.gsi.gov.uk)**

### **Extra copies**

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

### **Publication of response**

A paper summarising the responses to this consultation will be published in the autumn. The response paper will be available on-line at [www.justice.gov.uk/index.htm](http://www.justice.gov.uk/index.htm).

### **Representative groups**

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

### **Confidentiality**

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.



The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

## **Consultation Co-ordinator contact details**

**Responses to the consultation must go to the named contact under the How to Respond section.**

However, if you have any complaints or comments about the consultation **process** you should contact Sheila Morson on 020 3334 4498, or email her at [consultation@justice.gsi.gov.uk](mailto:consultation@justice.gsi.gov.uk).

Alternatively, you may wish to write to the address below:

**Ministry of Justice  
Consultation Co-ordinator  
Better Regulation Unit  
Analytical Services  
7th Floor, 7:02  
102 Petty France  
London SW1H 9AJ**



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