



BRITISH INDIAN OCEAN TERRITORY

**REVISED ORDINANCES OF THE
BRITISH INDIAN OCEAN TERRITORY**

**THE CRIMINAL JUSTICE
(CONDITIONAL CAUTIONS)
ORDINANCE 2019**

CHAPTER C.7

Revised Edition

Showing the law as at 1 September 2020

Published by Authority

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This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains a consolidation of the following laws:

The Criminal Justice (Conditional Cautions) Ordinance 2019 – Ordinance No.4 of 2019

As amended by:

Ordinance No.7 of 2020

The following revised regulations have been issued in pursuance of this Ordinance:

The Criminal Justice (Conditional Cautions) Ordinance 2019 (Code of Practice) Order 2019
RRBIOT c.C.13.

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TERRITORY**

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CHAPTER C.7

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**THE CRIMINAL JUSTICE
(CONDITIONAL CAUTIONS) ORDINANCE 2019**

CHAPTER C.7

An Ordinance to make provision for the issuance and variation of conditional cautions, to enable the preparation and bringing into force of an accompanying code of practice and to provide for connected matters.

Citation.

1. This Ordinance may be cited as the Criminal Justice (Conditional Cautions) Ordinance 2019, ROBIOT c.C.7.

Definitions.

2. In this Ordinance, unless the context otherwise requires –

authorised person has the meaning given by section 3(10);

the Commissioner means the Commissioner for the Territory and includes any person for the time being lawfully performing the functions of the office of Commissioner;

conditional caution has the meaning given by section 3(2);

the offender has the meaning given by section 3(1);

PACE Ordinance means the Police and Criminal Evidence Ordinance 2019;

police detention has the same meaning as in the PACE Ordinance (see section 118(2) of that Ordinance);

Principal Legal Adviser means the person for the time being appointed by the Commissioner to hold, or to act in, the office of the Principal Legal Adviser to the Government of the Territory;

relevant foreign offender means an offender directions for whose removal from the Territory have been, or may be, given under section 12(1) of the British Indian Ocean Territory (Immigration) Order 2004;

Territory means the British Indian Ocean Territory as defined in the British Indian Ocean Territory (Constitution) Order 2004;

Conditional cautions.

3. (1) Subject to section 5, an authorised person may give a conditional caution to a person aged 18 or over (**the offender**), for an offence or combination of offences set out in Schedule 1, if each of the five requirements in section 4 is satisfied.

(2) In this Ordinance **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 any conditional caution are those which 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) subject to section 7, a condition that the offender pay a financial penalty;
- (b) a condition that the offender attend at a specified place at specified times, to carry out specified activities.

(5) Conditions attached by virtue of subsection (4)(b) may not require the offender to attend for more than 20 hours in total.

(6) The Commissioner may by order amend subsection (5) by substituting a different figure.

(7) A conditional caution given to a relevant foreign offender may have conditions attached to it that have one or more of the objects mentioned in subsection (8) (whether or not in addition to conditions with one or more of the objects mentioned in subsection (3)).

(8) The objects are –

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

(9) If a relevant foreign offender is given a conditional caution with a condition attached to it with the object of ensuring that the offender does not

return to the Territory 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 Territory.

(10) In this Ordinance **authorised person** means –

- (a) the Chief of Police, or
- (b) a person authorised by the Principal Legal Adviser for the purposes of this Ordinance.

The five requirements.

4. (1) The first requirement is that the authorised person has evidence that the offender has committed an offence.

(2) The second requirement is that the Principal Legal Adviser or the authorised person 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 he committed the offence.

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

(5) The fifth requirement is that the offender signs a document, substantially in the form set out in Schedule 2, which contains –

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

Approval from Principal Legal Adviser.

5. (1) Subject to subsections (2) and (3), an authorised person may give a conditional caution to an offender in relation to any offence, or combination of offences, set out in columns A and B of Schedule 1.

(2) Where an authorised person intends to give a conditional caution to an offender in relation to an offence set out in column B of Schedule 1, or a combination of any offences contained in both columns A and B of Schedule 1, the authorised person may only give that conditional caution with prior approval from the Principal Legal Adviser.

(3) Where an authorised person gives a conditional caution to an offender in relation to an offence, or combination of offences, set out in column A of Schedule 1 only, the authorised person shall provide the Principal Legal Adviser with information relating to that conditional caution as soon as reasonably practicable after that conditional caution has been given.

(4) For the purposes of subsection (3), “information relating to that conditional caution” shall include –

- (a) a brief summary of the offending that has been committed;
- (b) a brief summary of the circumstances relating to the offender;
- (c) copies of any relevant statements, and
- (d) a copy of the conditional caution.

Duty to consult victims.

6. (1) Before deciding what conditions to attach to a conditional caution, the Principal Legal Adviser or the authorised person must make reasonable efforts to obtain the views of the victim (if any) of the offence.

(2) If the victim expresses the view that the offender should carry out a particular action, the Principal Legal Adviser or authorised person must attach that as a condition unless it seems to the Principal Legal Adviser or authorised person that it would be inappropriate to do so.

(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 Principal Legal Adviser or authorised person 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 seems to the Principal Legal Adviser or authorised person to have been affected, or principally affected, by the offence.

Financial penalties.

7. (1) A condition that the offender pay a financial penalty (**a financial penalty condition**) may be attached to any conditional caution given in accordance with the provisions contained within this Ordinance.

(2) The amount that may be prescribed in respect of any offence must not exceed –

(a) for an offence specified in column A of Schedule 1, the amount that would be applicable if the offender had been issued with a fixed penalty notice,

(b) for an offence specified in column B of Schedule 1, one quarter of the amount of the maximum fine for which a person would be liable on summary conviction for that offence, or

(c) £500,

whichever is the lower.

(3) The Commissioner may by order amend subsection (2) by –

(a) substituting a different fraction in paragraph (b);

(b) substituting a different figure in paragraph (c).

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

(a) the amount of the penalty,

(b) the person to whom the financial penalty is to be paid and how it may be paid.

(5) To comply with the condition, the offender must pay the penalty in accordance with the provision specified under subsection (4)(b).

Variation of conditions.

8. (1) Subject to the provisions contained within this section, the Principal Legal Adviser or an authorised person 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.

(2) Where an authorised person intends to vary the conditions attached to a conditional caution which was given in relation to an offence set out in column B of Schedule 1, or a combination of any offences contained in both column A and B of Schedule 1, the authorised person may only vary those conditions with prior approval from the Principal Legal Adviser.

(3) Any variance of the conditions attached to a conditional caution shall be recorded within a document substantially in the form set out in Schedule 3.

(4) Where an authorised person varies a conditional caution which was given in relation to an offence, or combination of offences, set out in column A of Schedule 1 only, the authorised person shall provide the Principal Legal Adviser with information relating to that variation as soon as reasonably practicable after that conditional caution has been varied.

(5) For the purposes of subsection (4), “information relating to that variation” shall include –

(a) a brief summary of the reasons for varying the conditional caution, and

(b) a copy of the conditional caution as varied.

Failure to comply with conditions.

9. (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 person for the offence in question.

(2) The document mentioned in section 4(5) and any document produced pursuant to section 8(3) are to be admissible in such proceedings.

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

Arrest for failure to comply.

10. (1) If a Police Officer 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, he may arrest him without warrant.

(2) A person arrested under this section must be –

(a) charged with the offence in question, or

(b) released without charge.

(3) A person arrested under this section, or any other person in whose case subsection (2) applies, may be kept in police detention to enable him to be dealt with in accordance with that subsection.

(4) If the person is not in a fit state to enable him to be so dealt with in accordance with subsection (3), he may be kept in police detention until he is.

(5) The power under subsection (3) includes power to keep the person in police detention if it is necessary to do so for the purpose of investigating whether he has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution.

(6) 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.

(7) Subsection (2) does not require a person who is in police detention in relation to a matter other than the conditional caution, to be released if he is liable to be kept in detention in relation to that other matter.

Application of PACE provisions.

11. (1) In the case of a person arrested under section 10, the provisions of the PACE Ordinance 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) section 30 (arrest elsewhere than at police station);
- (b) section 31 (arrest for further offence);
- (c) section 34(1) to (4) (limitations on police detention);
- (d) section 36 (custody officers at police stations);
- (e) section 37(4) to (6) (record of grounds for detention);
- (f) section 38 (duties of custody officer after charge);
- (g) section 39 (responsibilities in relation to persons detained);
- (h) section 55A (x-rays and ultrasound scans).

(3) The modifications are –

(a) in section 36(5), 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 section 38(1)(a)(iii) and (iv), for “arrested for” substitute “charged with”;

(c) in section 39(3), for the references to an offence substitute references to a failure to comply with conditions attached to the conditional caution.

(4) Section 40 of the PACE Ordinance (review of police detention) applies to a person in police detention by virtue of section 10 above as it applies to a person in police detention in connection with the investigation of an offence, but with the following modifications –

(a) omit subsections (8) and (8A);

(b) in subsection (9), for the reference to section 37(9) substitute a reference to section 10(4) above.

(5) Section 54A of the PACE Ordinance (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 10 above –

(a) in subsections (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 subsection (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.

12. (1) The Commissioner may 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 Police Officer by whom such cautions may be given,
- (e) the persons who may be authorised by the Principal Legal Adviser for the purposes of section 3(10),
- (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 provision which may be made in a condition under section 7(4)(b),
- (i) the monitoring of compliance with conditions attached to such cautions.
- (j) the exercise of the power of arrest conferred by section 10(1), and
- (k) who is to decide how a person should be dealt with under section 10(2).

(3) The Commissioner may bring the code into force by order.

SCHEDULES

SCHEDULE 1

Sections 3, 5 and 7

Offences capable of being dealt with by way of Conditional Caution	
Column A	Column B
<p>1. All those offences specified in Schedule 5 of the Criminal Procedure Code 2019.</p> <p>2. All those offences specified in Schedule 2 of the Visitors and Visiting Vessels Ordinance 2018.</p>	<p>1. The following provisions of the Penal Code 1981:</p> <p>Sections 145 (sexual activity in a public place), 159 (common nuisance), 176 (lighting fires, etc., except those offences which appear in Schedule 5 of the Criminal Procedure Code 2019), 219 (common assault), 241 (theft), 246 (taking a motor vehicle or other conveyance without authority), 250 (obtaining property by deception), 251 (obtaining pecuniary advantage by deception), 252 (obtaining services by deception), 253 (evasion of liability by deception), 264 (handling stolen goods) and 266 (destroying or damaging property, except where property has been destroyed or damaged by fire).</p> <p>2. Offences contained in regulations issued pursuant to the Protection and Preservation of Wild Life Ordinance 1970.</p> <p>3. Offences contrary to section 5 of the Diego Garcia Conservation (Restricted Area) Ordinance 1994.</p> <p>4. Offences contrary to section 5 of the British Indian Ocean Territory Waters (Regulation of Activities) Ordinance 1997.</p> <p>5. The following provisions of the Fisheries (Conservation and Management) Ordinance 2007:</p> <p>Sections 6 (possession of prohibited fishing gear) and 7 (fishing without a licence).</p> <p>6. Offences contrary to section 7 of the Imports and Exports Control Ordinance 2009.</p>

SCHEDULE 2

Section 4(5)

<p>CONDITIONAL CAUTION</p>  <p>British Indian Ocean Territory</p> <p>Criminal Justice (Conditional Cautions) Ordinance 2019</p>		<p>Ref No.</p>
<p>Name of offender</p> <p>Date of birth</p> <p>Address</p>	<p>Offence(s) subject of this conditional caution: (including brief summary of offending behaviour)</p>	
<p>Conditions to be complied with:</p>	<p>Arrangements for monitoring compliance: (including person or department to contact if the offender is unable or unwilling to comply with the conditions or wishes to withdraw from the conditional caution)</p>	
<p>Please read the declaration below and make sure you understand it.</p> <ol style="list-style-type: none"> 1. I admit that I committed the offence(s) listed and summarised above. 2. I consent to being given this conditional caution and agree to abide by the conditions. 3. I understand that if I fail to comply with any of the conditions I may be prosecuted for the offence(s) listed above and this form may be used in evidence. 4. I understand that if I am unable or unwilling to comply with the conditions or wish to withdraw from the conditional caution I must contact the person or department specified above. 5. I understand that a record of this conditional caution will be kept by the police in Diego Garcia and if I am charged with another offence and I go to court, the court may be told about this conditional caution. <p>I have read/have had read to me the contents of this form and understand that my signature confirms that I understand the consequences of this conditional caution being administered to me.</p> <p>Signed:</p> <p>Dated:</p> <p>If applicable: I, (<i>name of translator</i>), translated the contents of this form to (<i>name of offender</i>), from English to (<i>language</i>), a language (<i>name of offender</i>) understands, before he/she signed above.</p> <p style="text-align: right;">(<i>Signature</i>)</p>		
<p>I, (<i>name of authorised person</i>) have decided that (<i>name of offender</i>) may be dealt with the for the offence(s) listed above by way of a conditional caution. If any offence listed above appears in column B of Schedule 1, the prior approval to give a conditional caution to (<i>name of offender</i>) for such an offence has been obtained from the Principal Legal Adviser.</p> <p>Signed:</p> <p>Dated:</p>		

SCHEDULE 3

Section 8(3)

<p>CONDITIONAL CAUTION (VARIATION)</p>  <p>British Indian Ocean Territory Criminal Justice (Conditional Cautions) Ordinance 2019</p>		<p>Ref No.</p>
<p>Name of offender</p> <p>Date of birth</p> <p>Address</p>	<p>Offence(s) subject of this conditional caution: (including brief summary of offending behaviour)</p>	
<p>New (varied) conditions to be complied with:</p> <p>Existing conditions that are to continue:</p>	<p>Arrangements for monitoring compliance: (including person or department to contact if the offender is unable or unwilling to comply with the conditions or wishes to withdraw from the conditional caution)</p>	
<p>Please read the declaration below and make sure you understand it.</p> <ol style="list-style-type: none"> 1. On (<i>date</i>) I was given a conditional caution. 2. I consent to the conditions of my conditional caution being varied in the way described above. 3. I understand that if I fail to comply with any of the varied conditions, or any of the existing conditions, I may be prosecuted for the offence(s) listed above and this form may be used in evidence. 4. I understand that if I am unable or unwilling to comply with the varied or existing conditions or wish to withdraw from the conditional caution I must contact the person or department specified above. 5. I understand that a record of this conditional caution (as varied) will be kept by the police in Diego Garcia and if I am charged with another offence and I go to court, the court may be told about this conditional caution (as varied). <p>I have read/have had read to me the contents of this form and understand that my signature confirms that I understand the consequences of this conditional caution being administered to me.</p> <p>Signed: Dated:</p> <p>If applicable: I, (<i>name of translator</i>), translated the contents of this document to (<i>name of offender</i>), from English to (<i>language</i>), a language (<i>name of offender</i>) understands, before he/she signed above.</p> <p style="text-align: right;">(<i>Signature</i>)</p>		
<p>I, (<i>name of authorised person</i>) have decided that the conditions originally attached to this conditional caution may be varied, as shown above. If any offence listed above appears in column B of Schedule 1, the prior approval to vary these conditions has been obtained from the Principal Legal Adviser.</p> <p>Signed: Dated:</p>		

