



BRITISH INDIAN OCEAN TERRITORY

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

**THE CRIMINAL JUSTICE
(CONDITIONAL CAUTIONS)
ORDINANCE 2019
(CODE OF PRACTICE) ORDER 2019**

CHAPTER C.13

Revised Edition

Showing the law as at 1 September 2020

Published by Authority

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

**THE CRIMINAL JUSTICE
(CONDITIONAL CAUTIONS)
ORDINANCE 2019
(CODE OF PRACTICE) ORDER 2019**

CHAPTER C.13

Revised Edition

Showing the law as at 1 September 2020

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:

The Criminal Justice (Conditional Cautions) Ordinance 2019 (Code of Practice) Order 2019 – SI No.4 of 2019

© British Indian Ocean Territory Administration

All rights reserved. No part of this publication may be reproduced in any form or by any means (including photocopying or copying in electronic format) without the written permission of the Commissioner of the British Indian Ocean Territory, or otherwise as permitted under the terms of a licence from the British Indian Ocean Territory Administration.

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

**THE CRIMINAL JUSTICE
(CONDITIONAL CAUTIONS) ORDINANCE 2019
(CODE OF PRACTICE) ORDER 2019**

CHAPTER C.13

RRBIOT c.C.13.

In exercise of the powers conferred on him by section 12(1) of the Criminal Justice (Conditional Cautions) Ordinance 2019 (Code of Practice) Order 2019 the Commissioner hereby issues “The Code of Practice for Conditional Cautions”, as set out in the Schedule.

SCHEDULE

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

**CODE OF PRACTICE
FOR CONDITIONAL CAUTIONS**

The Criminal Justice (Conditional Cautions) Ordinance 2019, Section 12

This Code applies after 00.00 on 3 February 2020.

Contents

	Page	Para
Section 1: Introduction		
1. Definitions	3	1.1
2. Aim and purpose of conditional cautions	3	1.2
3. Relevant legislation	4	1.7
Section 2: Decision making		
4. The five requirements	4	2.1
5. Grounds for giving a conditional caution	5	2.2
6. Additional considerations	6	2.7
7. Conditions	8	2.14
8. Selection of appropriate, proportionate and achievable conditions	9	2.21
9. Time limits for completing conditions	11	2.30
10. General considerations	11	2.33
11. Conditions with a financial element	12	2.36
12. Considering the views of others	13	2.45
Section 3: Process to follow		
13. Administration of a conditional caution	15	3.1
14. Monitoring and compliance	18	3.12
15. Prosecution following failure to comply	21	3.29
16. Recording and citing conditional cautions	21	3.31

Section 1: Introduction

1. Definitions

1.1 In this Code of Practice:

- “authorised person” has the meaning given in section 3(10) of the CJ(CC)O;
- “CJ(CC)O” means the Criminal Justice (Conditional Cautions) Ordinance 2019;
- “Code for Crown Prosecutors” means the Code for Crown Prosecutors issued under section 10 of the Prosecution of Offences Act 1985, as it may apply from time to time, with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary;
- “decision maker” means either the authorised person or the PLA who is required to make a decision;
- “foreign offender conditions” mean conditions, the objects of which are set out in section 3(8) of the CJ(CC)O, namely:
 - to bring about the departure of the relevant foreign offender from the Territory; and
 - to ensure that the relevant foreign offender does not return to the Territory for a period of time;
- “PLA” means the Principal Legal Adviser;
- “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” has the meaning given in section 2 of the CJ(CC)O. In practice it means an offender who is unlawfully in the Territory who may be the subject of a removal order issued in accordance with section 12(1) of the British Indian Ocean Territory (Immigration) Order 2004;

2. Aim and purpose of conditional cautions

1.2 A conditional caution allows an authorised person (the Chief of Police or a person authorised by the PLA) or the PLA to decide to give a caution with one or more conditions attached. When an offender is given a conditional caution for an offence, criminal proceedings for that offence are halted while the offender is given an opportunity to comply

with the conditions. Where the conditions are complied with, the prosecution is not normally commenced. However, where there is no reasonable excuse for non-compliance, criminal proceedings may be commenced for the original offence and the conditional caution will cease to have effect. A conditional caution can be given for one or more offences.

1.3 A conditional caution can be given only to offenders aged 18 or over.

1.4 Conditional cautions provide an opportunity:

- to offer a proportionate response to low level offending;
- for offenders to make swift reparation to victims and the community;
- for offenders to be diverted from the court system at an early opportunity; and
- to punish an offender by means of a financial penalty.

1.5 In addition, foreign offender conditions can be given, whether on their own or in addition to the above conditions.

1.6 The CJ(CC)O permits the authorised person or the PLA to decide whether to give a conditional caution to an offender. An authorised person may give a conditional caution for any offence listed in column A of Schedule 1 of the CJ(CC)O, but where an offence in column B is being considered, the prior approval of the PLA is required before a conditional caution including such an offence can be given.

3. Relevant legislation

1.7 Conditional cautions were introduced by the CJ(CC)O, which came into force on 3 February 2020. The Code of Practice governs the use of conditional cautions.

1.8 This Code of Practice was prepared by the Commissioner under section 12 of the CJ(CC)O and came into force on 3 February 2020.

1.9 *Not used.*

Section 2: Decision making

4. The five requirements

2.1 Section 4 of the CJ(CC)O sets out five requirements that must all be met before a conditional caution may be given. These are:

- (1) the authorised person must have evidence that the offender has committed an offence;
- (2) the authorised person or the PLA must determine that there is sufficient evidence to charge the offender with the offence. The authorised person or PLA must also determine that a conditional caution should be given to the offender in respect of the offence;
- (3) the offender must admit to the authorised person that he has committed the offence;
- (4) the authorised person must explain the effect of the conditional caution and warn the offender that failure to comply with any of the conditions may result in prosecution for the offence; and
- (5) the offender must sign a document containing: details of the offence, an admission that the offender committed the offence, consent to be given a conditional caution and details of the conditions attached to the conditional caution.

5. Grounds for giving a conditional caution

- 2.2 In deciding that there is sufficient evidence to charge the offender with the offence the decision maker should apply the Full Code Test set out in the Code for Crown Prosecutors.

The Full Code Test – evidential stage

- 2.3 The decision maker must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction in respect of each offence.

Admissions

- 2.4 In determining whether there is sufficient evidence to provide a realistic prospect of conviction in respect of each offence, the decision maker should take into account all available evidence including any admission made by the offender. A decision maker must not offer a conditional caution in order to secure an admission that could then provide sufficient evidence to meet the evidential stage of the Full Code Test.

The Full Code Test - public interest stage

- 2.5 Where there is sufficient evidence to provide a realistic prospect of conviction the decision maker must go on to consider whether it is in the public interest to offer a conditional caution in respect of the offence.
- 2.6 In most cases, and subject to paragraph 2.9, a conditional caution should not be given where a court, if the offender were convicted,

would be likely to impose a significant financial sentence or a period of imprisonment for the offence.

6. Additional considerations

2.7 In addition to considering the public interest test in deciding whether to give a conditional caution the decision maker will take into account:

- the seriousness of the offence;
- the circumstances of the case;
- any views expressed by the victim;
- any wider neighbourhood or community considerations or concerns;
- the background, circumstances and previous offending history of the offender;
- the willingness of the offender to comply with possible conditions;
- the likely effect of the conditional caution;
- the likely outcome if the case proceeded to court;
- other relevant guidance issued by the PLA; and
- for foreign offender conditions whether the relevant foreign offender can be removed from the Territory.

2.8 Where a number of offences are related¹ and an out-of-court disposal is considered suitable for all of them, the decision maker may decide to group the offences and deal with them using one conditional caution. Before making this decision the decision maker should consider whether the number of offences increase the gravity of the offending behaviour to a level where the public interest requires prosecution.

Relevant foreign offenders

2.9 Foreign offender conditions² may be suitable for more serious offences which attract a custodial sentence. There is an additional consideration in these cases because the public interest may be better served where

¹ They could arise out of the same incident or alternatively they may be similar offences related to the same underlying problem (for example, an ongoing dispute between two persons).

² See section 3(7) to (9) of the CJ(CC)O.

the offender departs from the Territory and agrees to not return for a period of time, rather than be prosecuted in the courts.

Deciding whether to give a conditional caution after an offender has been charged

- 2.10 Where an offender is charged with an offence, the PLA, on reviewing the case, may decide that a conditional caution would be more appropriate. If so, the PLA should direct the authorised person to give a conditional caution to the offender. The prosecution will be halted pending the decision of the offender about whether to accept a conditional caution. The decision to give the conditional caution must be made in accordance with this Code of Practice. The PLA may make such a direction even where he or she does not ordinarily make such a decision for a particular offence.

The offender

- 2.11 Previous convictions, binding over orders and other out of court disposals in relation to earlier offences do not preclude giving a conditional caution to an offender in relation to the current offence. A conditional caution may be appropriate where:
- there has been a sufficient lapse of time following a previous caution or conviction for the same or similar type of offence to suggest that it had a sufficient deterrent effect;
 - the current offence is low level;
 - the current offence is not similar or the same as any previous offence;
 - giving a conditional caution is likely to be the best outcome for the victim and the offender;
 - the offender has previously complied with another form of out-of-court disposal.
- 2.12 A conditional caution is unlikely to be appropriate where the offence forms part of a pattern of offending. The decision maker may consider that a different form of resolution, such as a prosecution, would be a more appropriate alternative for dealing with the offence.
- 2.13 A second conditional caution should not generally be given for the same or similar offence unless there are exceptional circumstances indicating that it may be appropriate; for example, where the previous conditional caution was more than two years earlier. Generally, it will not be appropriate to give a second conditional caution where the offender failed to comply with the conditions of the previous conditional caution.

7. Conditions

Type of conditions

- 2.14 The conditions that can be attached to a conditional caution must have one or more of the following objectives:
- Rehabilitation – conditions which help to modify the behaviour of the offender, serve to reduce the likelihood of re-offending or help to reintegrate the offender into the community;
 - Reparation – conditions which serve to repair the damage done either directly or indirectly by the offender;
 - Punishment – financial penalty conditions which punish the offender for their unlawful conduct.

Rehabilitative conditions

- 2.15 Rehabilitative conditions may include attendance at a beach clean-up where an offender has been involved in littering, or attendance at presentations held by the Environment Officer where an offender has failed to provide catch returns.

Reparative conditions

- 2.16 Reparative conditions may include apologising, repairing or otherwise making good any damage caused, provided this is acceptable to the victim. Specific financial compensation may be paid, for example, to a victim. Where the offending has resulted in damage to community property, reparation may take the form of:
- repairing the damage caused;
 - reparative activity within the community more generally; or
 - a payment to an appropriate community fund.

Punitive conditions

- 2.17 At present only one punitive condition is available: the payment of a financial penalty. See paragraph 2.37.

Foreign offender conditions

2.18 Foreign offender conditions³ may be given to bring about the departure of the offender from the Territory and ensure that the offender does not return for a period of time. The conditions may require the offender to:

- regularly report to the police station or other similar place;
- obtain or assist authorities in obtaining a valid national travel document; or
- comply with any lawful instruction given by the Principal Immigration Officer or an immigration officer.⁴

2.19 Foreign offender conditions can be given on their own or in addition to one or more conditions that are rehabilitative, reparative or punitive.

2.20 Foreign offender conditions cannot be given where:

- there are reasonable grounds for believing that that the offence is connected to human trafficking, where the offender is either a victim or perpetrator; or;
- the offender has made an asylum or human rights claim to remain in the Territory and that claim is outstanding. This is particularly relevant where the offender is suspected of committing document or identity fraud in order to claim asylum or to raise a human rights claim. This does not, however, prevent foreign offender conditions from being offered where the asylum or human rights claim has been refused (and any appeal against that refusal has been finally determined), where the relevant foreign offender voluntarily withdraws the claim, or where the relevant foreign offender's grant of asylum has been revoked or not renewed. In such cases consideration can be given to whether foreign offender conditions can be offered. This may be particularly relevant where the offender has been charged with the offence and a conditional caution is considered post charge as set out at paragraph 2.10.

8. Selection of appropriate, proportionate and achievable conditions

2.21 Conditions attached to a conditional caution must always be:

- Appropriate;
- Proportionate; and

³ See section 3(7) to (9) of the CJ(CC)O.

⁴ This includes any instruction which may lawfully be given from time to time by the Principal Immigration Officer, an immigration officer or any person acting on behalf of the Commissioner in order to effect a person's removal from the Territory.

- Achievable.

2.22 When deciding on the conditions that should be attached to a conditional caution the decision maker may draw on the views of others. This may include the Administrator of the Territory.

Appropriateness

2.23 The decision maker should seek to apply a problem solving approach aimed at changing an offender's behaviour and, if possible, providing redress to the victim of the offence. For most offenders these two aims will be regarded as the priority.

2.24 For relevant foreign offenders, foreign offender conditions should be considered first before any other conditions.

2.25 The financial penalty condition should only be used where there are no appropriate reparative or rehabilitative conditions or where those conditions do not provide a proportionate response to the offending behaviour.

2.26 In considering the appropriate conditions to achieve one or more of the objectives set out in paragraph 2.14 (and 2.18), a decision maker should also consider whether any of the following are applicable to the case:

- opportunities to provide reparation or compensation to any victim or relevant neighbourhood or community;
- use of conditions to reflect and secure the interests of the victim and neighbourhood or community (for example, by requiring the offender to stay away from a specific area);
- use of restorative and reparative processes to have a positive impact on the community or individuals affected by the offending behaviour;
- opportunities to provide reparative unpaid work that benefits the community;
- use of a financial penalty condition to punish the offender and deter future offending (see paragraph 2.37).

Proportionality

2.27 When determining the conditions to be attached to a conditional caution, the decision maker should consider the totality of the conditions and seek to achieve proportionality to the offending

behaviour.⁵ The objectives sought ought to be achieved by the attachment of the minimum number of conditions.

Achievability

- 2.28 Offenders must be able to complete the conditions satisfactorily and within a reasonable time period. The decision maker should take into account the offender's circumstances, physical and mental capacity, and ensure that any financial conditions are commensurate with the means of the offender.
- 2.29 Conditions should avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he or she normally works or participates in any organised recreational activities.

9. Time limits for completing conditions

- 2.30 In deciding on the time period within which conditions must be completed, a decision maker must take into account any time limits⁶ affecting the commencement of proceedings for the original offence and must ensure that the option of prosecuting the original offence in the event of non-compliance remains available.
- 2.31 All rehabilitative, reparative and punitive conditions must be capable of being completed within 16 weeks where it is a summary only offence. Exceptionally a period of longer than 16 weeks may be suitable for an offence which could be tried on information at the Supreme Court, depending on the facts of the particular case, but must not exceed 20 weeks. Such longer period must still be appropriate, proportionate and achievable. Periods of time in this paragraph start from the date the conditional caution was given.
- 2.32 In relation to foreign offender conditions, conditions to bring about the departure of the relevant foreign offender should be completed as soon as reasonably practicable and in most cases within 4 weeks. Exceptionally, a longer period may be set where the administrative process in certain destination countries is likely to take longer than 4 weeks. This type of condition will not be appropriate where it will take longer than 8 weeks to complete. Periods of time in this paragraph start from the date the conditional caution was given.

10. General considerations

- 2.33 Conditions which impose restrictions on an offender may only be used where they contribute towards one or more of the aims of rehabilitation, reparation, punishment or the aims of a foreign offender condition.

⁵ Where a number of offences have been grouped together, the decision maker should consider all the offences when determining whether the conditions attached are proportionate.

⁶ For example, see section 39 of the Criminal Procedure Code 2019.

Such conditions could be used to prevent the offender from contacting individuals, visiting certain locations or participating in particular activities.

- 2.34 Conditions may include reference to the future behaviour of an offender, such as an agreement not to commit further offences for a specified period.
- 2.35 An offender with sufficient means may be expected to pay the reasonable costs associated with a condition attached to a conditional caution in order to render the conditions effective, and a requirement to do so might be an additional condition. This is subject to the offender having the means to pay and must be appropriate, proportionate and achievable. Where a condition cannot be given to an offender because they cannot afford to pay the reasonable costs, every effort should be made to identify an alternative condition provided that it is appropriate, proportionate and achievable.

11. Conditions with a financial element

- 2.36 Conditional cautions with a financial element include:
- a compensation payment as part of a reparative condition (for example a payment to a victim or to a community fund);
 - a financial penalty as part of a punitive condition;
 - costs associated with reparative, rehabilitative, punitive or foreign offender conditions.
- 2.37 Financial Penalty Conditions⁷ may be attached to any conditional caution given in accordance with the provisions contained within the CJ(CC)O.
- 2.38 The maximum amount of any financial penalty condition in relation to each offence or description of offence is specified in section 7(2) of the CJ(CC)O. The decision maker should determine the level of a financial penalty, taking into account the means of the offender and the circumstances of the case, including the seriousness of the offence.
- 2.39 Where a conditional caution may be given, there are no restrictions in the CJ(CC)O preventing the inclusion of a compensation payment as part of a reparative condition and no restrictions on the amount of that compensation.
- 2.40 Conditions with a financial element will not be subject to enforcement procedures by the court. Failure to make payment in relation to any condition with a financial element without reasonable excuse will

⁷ The provisions of a financial penalty condition are set out in section 7 of the CJ(CC)O.

amount to non-compliance with the condition of the caution and may lead to prosecution for the original offence.

- 2.41 Any financial penalty conditions must specify to whom the offender must make payment.
- 2.42 When considering any conditions with a financial element that may be attached to a conditional caution, particularly where the offender is of limited financial means, the decision maker should always prioritise compensation for the victim ahead of any costs associated with other conditions and any financial penalty condition.
- 2.43 A conditional caution may contain more than one financial element. For example it may contain a requirement to pay compensation to a victim as part of a reparative condition together with a financial penalty condition. However the total amount of the financial element must be within the means of the offender and must be capable of being paid within a reasonable period of time.
- 2.44 In addition, the extent of any financial loss suffered by the victim may mean that the full amount of any compensation payable as part of a reparative condition is beyond the means of the offender. This does not preclude the use of a conditional caution in such circumstances where it is appropriate because the decision maker can suggest an amount that is less than full compensation. Before giving a conditional caution in such circumstances the decision maker should consider whether a court order for compensation (which can be paid over a longer period of time) would be a more suitable response taking into account all the circumstances of the case.

12. Considering the views of others

- 2.45 The decision maker will have in mind, where appropriate, the views of others, for example, victims, the Administrator of the Territory, and, in relation to foreign offender conditions, the Principal Immigration Officer.

Restorative Justice

- 2.46 Restorative Justice processes and initiatives may be used to help inform decisions as to the conditions to be attached to a conditional caution. However only a decision maker can decide to give a conditional caution. Before any conditions that are proposed as a result of these processes or initiatives are attached to a conditional caution, the decision maker must ensure that they are appropriate, proportionate and achievable in accordance with this Code of Practice and any relevant guidance issued by the PLA. In particular the decision maker should ensure that the offender has admitted the offence and agrees to accept the conditions attached to the conditional caution.

Involvement of the victim

- 2.47 The views of the victim should be obtained wherever possible. These should be taken into account in deciding whether a conditional caution is appropriate and in determining suitable conditions. The victim's consent must be obtained in any case where direct reparation or restorative justice processes are being considered or where the victim is directly involved in some way. If the victim does not consent to such conditions, the decision maker may still consider giving a conditional caution with other conditions attached that do not directly involve the victim.
- 2.48 The views of the victim will be important but cannot be conclusive. The decision as to whether to give a conditional caution and the conditions to be attached lies with the decision maker who will take into account the views of the victim wherever possible. In some circumstances the decision maker may consider that proportionality with the level of the offence requires the inclusion of conditions that may be more or less onerous than those the victim wants. Care must be taken not to raise the expectations of the victim whilst seeking their views.
- 2.49 Where the conditions attached to a conditional caution have a direct impact on the victim,⁸ the victim should be informed of the conditions given to the offender and the intended outcome. The victim should be informed of any changes to the expected outcome, for example, if the offender has failed to comply with the conditional caution and will not be completing the conditions.
- 2.50 Victims who are not directly affected by the conditions⁹ should also be informed of the outcome of the case where possible, including whether the conditional caution was completed or whether the offender was prosecuted for the original offence as a result of non-compliance.

Foreign offender conditions

- 2.51 The decision maker must consult with the Principal Immigration Officer before deciding whether to give a foreign offender condition to an offender. In particular the decision maker should obtain confirmation about the offender's immigration status and the likelihood of removal from the Territory within a reasonable period.

⁸ For example, where compensation is to be paid, or work that benefits the victim is undertaken.

⁹ For example, where the offender has been given a rehabilitative condition, and no compensation is necessary.

Section 3: Process to follow

13. Administration of a conditional caution

- 3.1 The conditional caution may be administered in the police station, court building, or any other suitable location consistent with achieving the appropriate impact on the offender. Conditional cautions with foreign offender conditions may also be administered at a dock or similar place.
- 3.2 It will not generally be appropriate to administer a conditional caution in public (for example, in the street) or in the offender's home. However, in exceptional circumstances such as a vulnerable offender the conditional caution may be administered in the offender's home or similar place, providing the correct procedure for administering the conditional caution is adhered to.

Admissions of guilt

- 3.3 The offender must admit the offence. The CJ(CC)O does not require an admission to be made by the offender before the decision maker determines whether a conditional caution is appropriate. However, the offender must make an admission at the time the conditional caution is given that he has committed the offence (or all the offences) for which the conditional caution is being given. This is true for all cases, irrespective of whether a previous admission has been made by the offender.
- 3.4 A conditional caution cannot be given to an offender who does not make a clear and unambiguous admission to committing the offence when the conditional caution is administered. This is particularly important where there is any doubt at all about the mental state or capacity of the offender. The authorised person should be particularly careful about accepting an admission in these circumstances.

Explaining the effect of the conditional caution

- 3.5 Before administering a conditional caution the authorised person shall ensure that the offender has the opportunity to receive independent legal advice in relation to the criminal offence.
- 3.6 In addition the authorised person must:
- inform the offender of the evidence against them and the decision made by the decision maker;
 - explain the requirements of a conditional caution including exactly what each condition requires the offender to do;
 - explain the requirement for and consequences of making an admission to the offence, including the fact that the admission

may be used in evidence should the case result in prosecution (see paragraph 3.11);

- make it clear to the offender that an admission should never be made merely to receive a conditional caution;
- explain the implications of accepting the conditional caution, including any circumstances in which it may be disclosed;
- explain, that the conditional caution will form part of the offender's criminal record and may need to be disclosed in certain circumstances including to an employer or prospective employer;
- explain that the offender may decide at any stage to withdraw from the conditional caution whether it is before, during or after it has been administered (see paragraph 3.19);
- warn the offender that any failure to comply with the conditions will be investigated. The offender will be given an opportunity to explain the reasons for non-compliance with the conditions. The decision maker will consider the report and the circumstances of the case including the extent of any compliance to date, and may decide that the offender should be prosecuted for the original offence;
- inform the offender that the victim(s) may be informed of the conditions agreed (unless there is good reason for this not happening) and may be provided with the details of the offender for any civil proceedings;
- confirm that the offender accepts the conditions and agrees to accept the conditional caution.

3.7 At the point of administering the conditional caution the authorised person should ensure that the offender understands the following:

- the offender has the right to legal advice at any time during the process;
- the effects of accepting a conditional caution, in particular that although it is not a criminal conviction, the conditional caution will form part of an offender's criminal record and may be disclosed in certain circumstances;
- the means by which compliance with each of the conditions will be verified (including any responsibilities of the offender for demonstrating compliance);

- that if the offender does decide to withdraw from the conditional caution the offender should inform the authorised person as soon as possible. The decision maker may then decide that the offender should be charged with the original offence and prosecuted;
- the process for contacting the police, or other specified person or department monitoring compliance, should any problems arise in complying with the conditions or if the offender decides to withdraw from the conditional caution process;
- the consequences of failing to complete the conditional caution (in particular that the offender may be liable for arrest and prosecution for the original offence).

3.8 When complying with the paragraphs 3.6 and 3.7 the authorised person must have regard to the provisions of PACE Code C concerning mentally disordered or mentally vulnerable offenders and the use of an appropriate adult.

3.9 In relation to a foreign offender condition, or when dealing with non-English speakers, the authorised person must ensure that the provisions of paragraphs 3.6 and 3.7 are explained in a language that the offender can understand.

Recording the caution

3.10 Section 4(5) of the CJ(CC)O requires that the offender sign a document recording the conditional caution. The form for recording the conditional caution must:

- be substantially in the form set out in Schedule 2 of the CJ(CC)O;
- contain the details of the offence for which the caution is administered;
- clearly set out all the conditions to be complied with;
- set out the arrangements for monitoring compliance;
- specify the effect of the conditional caution and the consequences of any failure to comply with the conditions, including the possibility of future prosecution for the offence;
- record the offender's clear admission to the offence, consent to being given the conditional caution and agreement to abide by the conditions; and

- provide details of the person or department that the offender should contact in the case of non-compliance, or if they are unable or unwilling to comply with the conditions or wish to withdraw from the conditional caution.
- 3.11 In accordance with section 9(2) of the CJ(CC)O, the offender should be warned that this document is admissible in criminal proceedings following failure by the offender to comply with the conditions.

14. Monitoring and compliance

Monitoring of conditions

- 3.12 When determining the conditions to be attached to a conditional caution, the decision maker should consider the mechanism by which compliance with the conditions will be monitored and demonstrated.
- 3.13 The monitoring process must be made clear to both the offender and any person tasked with assessing compliance. Where reasonable and appropriate, the onus for providing confirmation of compliance may be placed specifically upon the offender. The Senior Customs and Immigration Officer is responsible for monitoring compliance with foreign offender conditions and for reporting non-compliance to the authorised person. For all types of conditions the authorised person will have overall responsibility for monitoring compliance with conditions.
- 3.14 A robust process for demonstrating compliance must be in place. This may include agreements with:
- persons involved in delivering the conditions (such as the Environment Officer);
 - Police Officers;
 - the Senior Customs and Immigration Officer in relation to foreign offender conditions;
 - the Clerk to the Magistrate’s Court (for collection of monies).

Compliance with conditions

- 3.15 The decision maker will determine whether there has been non-compliance with the conditions and what action should be taken.
- 3.16 Compliance with the condition(s) attached to the conditional caution within the agreed timescale will normally preclude the possibility of prosecution for the original offence (see paragraph 1.2). Failure to comply with a condition is not an offence in itself, but may result in the offender being prosecuted for the original offence. Alternatively it may

be appropriate to vary the conditions or, in some cases, take no further action.

Establishing non-compliance

- 3.17 Where it appears to the authorised person or other person monitoring compliance that an offender is failing to comply with one or more conditions, they should seek to give the offender the opportunity to explain and demonstrate compliance or to establish whether any reasonable excuse exists for non-compliance. If another person is monitoring compliance a report of the non-compliance together with the offender's response must be given to the authorised person.
- 3.18 Where there is no response from the offender, or where the decision maker concludes that there is no reasonable excuse for the failure, or that the non-compliance is likely to continue, a prosecution for the original offence should usually follow.

Withdrawal from conditions

- 3.19 An offender may withdraw from one or more of the conditions attached to a conditional caution after it has been administered. Where this occurs, the decision maker should consider whether to treat this behaviour as non-compliance and whether the offender should be prosecuted with the original offence.
- 3.20 Where the offender wishes to withdraw from one or more of the conditions the offender should inform the decision maker or agency responsible for monitoring compliance. The decision maker should then consider whether the offender should be prosecuted for the original offence in the same manner as when the offender fails to comply with the conditions.

3.21 *Not used.*

Actions that may be taken following non-compliance or withdrawal

3.22 Where the decision maker is satisfied that there is a reasonable excuse for the offender's failure to meet the conditions, or there has been substantial part compliance,¹⁰ the decision maker will have to decide whether:

- the conditional caution should be regarded as completed;
- the conditional caution should be regarded as incomplete but that the public interest requires no further action;

¹⁰ For example, where the offender has substantially repaid a sum of money from a victim, but part of the amount remains outstanding.

- a new time limit should be set for completing the original conditions; or
- the original conditions should be revised.

Variation of conditions

- 3.23 The conditions attached to the caution may be varied or changed by the PLA or authorised person if the offender agrees to this.¹¹ Where the offender refuses to accept varied conditions because the offender considers them to be unreasonable, the decision maker may decide to allow the conditional caution to continue so that the offender can comply with the original conditions. If the refusal is not thought to be reasonable, proceedings may be instituted for the offence or no further action may be taken. It will not usually be appropriate to revise conditions more than once.
- 3.24 Any changes to the conditions must be recorded and explained to the offender by the authorised person. A document clearly setting out the conditions as they stand from that point forward should be produced and must be signed by an authorised person and by the offender to indicate acceptance of the new conditions. This document must be substantially in the form set out in Schedule 3 of the CJ(CC)O. Any non-compliance with the new or revised conditions should be dealt with according to the same process as applies for non-compliance with the original conditions.

Multiple offences

- 3.25 Where the conditional caution has been given for multiple offences, the decision maker must also determine whether the offender should be prosecuted for one or all of the offences. This is particularly relevant in cases of partial compliance, where the offender may have completed one of the conditions that related to a specific offence and so prosecution for that offence may not be appropriate whilst prosecution for those offences in relation to which the offender has not complied with the caution would still be appropriate.

Arrest and detention of offenders

- 3.26 Under section 10(1) of the CJ(CC)O an offender can be arrested where a Police Officer has reasonable grounds for believing that an offender has failed without reasonable excuse to comply with any conditions attached to a conditional caution. As a matter of practice the power of arrest should only be exercised where considered necessary. Once arrested, detention may be authorised where it is necessary to investigate whether the offender has failed, without reasonable excuse,

¹¹ It should be noted that the prior approval of the PLA may be required, pursuant to section 8(2) of the CJ(CC)O.

to comply with any of the conditions attached to the conditional caution.¹²

3.27 Offenders should only be detained for as long as is necessary to explore the reasons for any non-compliance and/or to undertake any charging procedures. This should be done as soon as practicable after arrest or arrival at the police station. Where it is clear that this cannot be achieved in a short period of time, the offender should be released without charge in accordance with section 10(2)(b) of the CJ(CC)O whilst the decision maker decides whether the original offence should be charged.

3.28 *Not used.*

15. Prosecution following failure to comply

3.29 Where the decision maker has determined that an offender has failed to comply with a conditional caution and is to be prosecuted, proceedings should be commenced as soon as possible. The authorised person must ensure that the offender is notified and that any police records are amended accordingly. Once proceedings are instituted, the conditional caution ceases to have effect. However, the fact that a conditional caution was given and not complied with will remain on an offender's record.

3.30 Where a prosecution for the original offence follows a failure to complete conditions attached to a conditional caution, the prosecutor should ensure that the court is made aware of this fact and provide details of the conditions that were attached to the caution and the extent of any partial compliance. This information may be used by the court when considering the case.¹³ In particular, section 9(2) of the CJ(CC)O provides that the document recording the conditional caution (referred in paragraph 3.10 of this Code of Practice) and any document recording a variation of the conditions (referred to in paragraph 3.24 of this Code of Practice) are admissible in such proceedings.

16. Recording and citing conditional cautions

3.31 In regard to conditional cautions given by the police, records must be kept in accordance with any guidance issued by the Chief of Police.

3.32 Conditional cautions and any variations to them can be cited in any subsequent criminal proceedings.

¹² See section 10(3) and (5) of the CJ(CC)O.

¹³ The court will be dealing with the original offence. Non-compliance with a conditional caution is not an offence in itself.

