EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 2003 (CONDITIONAL CAUTIONS: FINANCIAL PENALTIES) ORDER 2013

2013 No. 615

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order sets out the descriptions of offences, for which a financial penalty condition may be attached, under section 23A(1) of the Criminal Justice Act 2003 (the 2003 Act), to a conditional caution given under section 22(1) of the 2003 Act. The Order also sets out for those offences the maximum amount of the penalty that may be specified in a financial penalty condition by an authorised person or a relevant prosecutor. The Order revokes the Criminal Justice Act 2003 (Conditional Cautions: Financial Penalties) Order 2009 (S.I. 2009/2773).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Conditional cautions are cautions to which specified conditions are attached, and are provided for by in Part 3 of the Criminal Justice Act 2003. Section 17 of the Police and Justice Act 2006 amended section 22 of the 2003 Act to allow for conditions with the object of punishing the offender.

4.2 Section 17 of the Police and Justice Act 2006 also inserted section 23A into the Criminal Justice Act 2003 providing for a financial penalty conditions to be attached to a conditional caution and stating that a financial penalty condition may not be attached to a conditional caution given for an offence unless that offence is prescribed, or of a description prescribed in an Order.

4.3 Section 23(A)(3) of the 2003 Act requires that the amount of any financial penalty condition must not exceed one quarter of the amount of the maximum fine for which a person is liable on summary conviction of the offence, or £250, whichever is the lower.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 Jeremy Wright MP has made the following statement regarding Human Rights:

In my view the provisions of the Criminal Justice Act 2003 (Conditional Cautions: Financial Penalties) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 Punitive financial penalty conditions were introduced to enable conditional cautions to be used in cases where there are no appropriate rehabilitative or reparative conditions or where these alone do not provide a proportionate response to the offending, for example, where an offender drives off from a petrol station without paying for £40 of petrol in his car. While a reparative condition could be used to pay £40 compensation for the petrol in this instance there would be no sanction for the theft itself. Administering a financial penalty condition in addition to the reparative condition would enable a degree of punishment to be included in the conditional caution.

8. Consultation outcome

8.1 The consultation paper "Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders' " was published on 7th December 2010 until 4th March 2011. This invited comments on whether punitive conditional cautions should continue to be available as part of a conditional caution. The consultation paper was distributed to a wide range of criminal justice practitioners and key stakeholders. It was also made available on the Ministry of Justice website http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/consultations/consultation-040311.htm.

8.2 Many stakeholders responded that they did not support the use of punitive conditional cautions. The Government believes however that there is a place for a punitive financial penalty conditions within the conditional caution scheme as set out at paragraph 7.1 above.

9. Guidance

9.1 In addition to the Criminal Justice Act 2003 (Conditional Cautions: Financial Penalties) Order 2013 guidance on conditional cautions is contained within the Code of Practice on Adult Conditional Cautions and guidance 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 makes clear that conditions, taken as a whole, must be appropriate, proportionate and achievable and provides

for reparative and rehabilitative conditions to be given priority over financial penalty conditions where appropriate.

9.2 The Director of Public Prosecutions guidance provides for a mitigated penalty to be offered in some cases where a decision maker (an authorised person – usually the police) or a relevant prosecutor is satisfied that there is substantial mitigation or the offender is in receipt of state benefit as his main or only source of income. The guidance sets out the maximum amount of this mitigated penalty. The Director of Public Prosecutions guidance will be revised to support the new Criminal Justice Act (Conditional Cautions: Financial Penalties) Order 2013.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is limited. Her Majesty's Courts and Tribunal Service are responsible for monitoring receipt of the payment and therefore compliance with the condition. However, if the fine is not paid it will not be registered as a fine at court; rather the offender may be prosecuted for the original offence. Police Forces may have to refer more cases to prosecutors in circumstances of non-compliance. These costs are dependent on police use of conditional cautions but it is expected that they would be absorbed within existing allocations. Her Majesty's Courts and Tribunal Service, the National Offender Management Service, the Legal Service Commission and the Crown Prosecution Service may incur costs of a prosecution associated with non-compliance although, currently, the majority of conditional cautions are complied with.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sector is foreseen and impact on the public sector is limited as set out in 10.2 above. An Impact Assessment was prepared for the consultation on the Government's Green Paper: 'Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders' (published on 7th December 2010) http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/consultations/consultation-040311.htm

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Financial Penalty Order aims to make clear when a financial penalty can be offered for an offence and what the maximum amount of the penalty can be,

There will not be a formal review of the Order, however this will be monitored internally.

13. Contact

Michelle English at the Ministry of Justice Tel: 0203 334 5610 or email: Michelle.English@justice.gsi.gov.uk can answer any queries regarding the instrument.