EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 2003 (CONDITIONAL CAUTIONS: CODE OF PRACTICE) ORDER 2013

2013 No. [DRAFT]

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 brings into force the Code of Practice on Adult Conditional Cautions ("the Code").

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

3.1 None

4. Legislative Context

4.1 The Code is made under section 25(6) of the Criminal Justice Act 2003 ("the 2003 Act"). A conditional caution is a caution given in respect of an offence committed by the offender and to which specified conditions are attached. Such cautions are provided for by Part 3 of the 2003 Act. Sections 133 and 134 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act") made two key amendments to Part 3 of the 2003 Act that require amendments to the Code.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

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

7. Policy background

7.1 The 2012 Act made two key amendments to Part 3 of the 2003 Act. Firstly, section 133 of the 2012 Act amended Part 3 of the 2003 Act to remove the requirement for an authorised person (usually a police officer) to refer the matter

to the relevant prosecutor (usually the Crown Prosecution Service) to decide whether to give a conditional caution and to set and vary conditions.

7.2 Removing the requirement for the Crown Prosecution Service to authorise such decisions will streamline the current processes and remove the bureaucracy associated with this disposal. It will also bring police powers on authorising conditional cautions into line with their powers on charging and simple cautioning.

7.3 Secondly, section 134 of the 2012 Act amended section 22(3) of the 2003 Act to introduce new conditions with the objects of bringing about the departure from the UK of a relevant foreign offender and ensuring that they do not return for a period of time.

7.4 These new conditions enable the early removal of foreign offenders who have no right to be in the UK, admit to committing the offence and agree to accept the conditions. In such cases the public interest is better served by administering a conditional caution and promptly removing the offender from the UK, rather than prosecuting and potentially imprisoning the offender only to remove them from the country once their sentence is complete.

7.5 The Code has been revised to reflect these two key amendments and also to clarify certain elements of the previous Code of Practice.

8. Consultation outcome

8.1 The consultation paper "Draft Code of Practice for Adult Conditional Cautions "was published on 4th October 2012. In line with revised guidance on the length of the consultation period a four week consultation took place. It invited comments on the new adult Code of Practice for Conditional Cautions. 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 https://consult.justice.gov.uk/digital-communications/code-adult-conditional-cautions 37 responses were receiving including from Police Forces, Prosecutors, the United Kingdom Border Agency (UKBA) staff, Magistrates and, defence practitioners or their representative bodies.

8.2 Responses were generally positive commenting that the Code gives greater clarification and was a comprehensive reference for decision makers. In responding to what should change often this was a request for more explicit aspect of the process.

9. Guidance

9.1 In addition to the Code, guidance on Adult Conditional Cautions 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 conditional caution for example circumstances which may make charging the offender the appropriate response and provides further detail on operational processes. The guidance will be revised to support the new Code.

10. Impact

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

10.2 The impact on the public sector is limited. Police Forces may offer more conditional cautions, may spend more time monitoring offenders' compliance with conditions, and 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. The timing of UKBA's workload may also be affected as removal of foreign offenders can happen earlier in the criminal justice process.

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 which consulted on these proposals and in the Impact Assessment accompanying the 2012 Act http://www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act/laspo-background-information

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The changes in the Code of Practice aim to make guidance clearer, conditional cautions easier and less bureaucratic to use and allow earlier removal of foreign

offenders with no permission to be in the UK. There will not be a formal review of the Code, 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.