



An Garda Síochána

Policy Document

Adult Cautioning Scheme

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Introduction

An Adult Cautioning Scheme (hereafter referred to as the Scheme) approved by the Director of Public Prosecutions became operational on the 1st February, 2006. The Scheme applies to offences committed on or after the commencement date of the 1st of February 2006, or, in respect of further offences deemed suitable after the commencement date for inclusion in this Scheme, the date of such inclusion.

The Scheme only applies to persons aged 18 years and upwards. It is an alternative to the prosecution of certain persons against whom there is evidence of the commission of a scheduled criminal offence where the prosecution of such offence is not required in the public interest.

The offences to which the Scheme applies are contained in the Schedule of Offences for the Adult Cautioning Scheme (hereafter referred to as the Schedule) at Appendix A.

Nothing in the Scheme shall interfere with the discretion of a member of An Garda Síochána to prosecute a person for an offence scheduled under the Scheme if the member believes that the application of the Scheme would not be appropriate, having regard to the circumstances of the offence or the antecedents of the person.

On the 14th of December 2020 the following offences were included in the Adult Cautioning Scheme: -

1. Section 21 of the Criminal Justice (Public Order) Act 1994.
2. Section 13 of the Criminal Justice (Public Order) Act 1994.
3. Section 3 of the Misuse of Drugs Act 1977/84 in relation to cannabis or cannabis resin only.
4. Section 3 of the Casual Trading Act 1995.

Scope

This document and all associated documentation apply to all members of An Garda Síochána and Garda staff. It also applies to Police Officers from the Police Service of Northern Ireland (PSNI) seconded to An Garda Síochána in accordance with Section 53, Garda Síochána Act 2005.

Factors to be Considered in Deciding on a Caution

The Scheme provides for the administering of a formal caution by a Superintendent, or Inspector acting on their behalf, for certain 'Scheduled Offences', as an alternative to prosecution in the District Court.

The following matters need to be specifically addressed by the investigating member, in consultation with their Superintendent or Inspector acting in that capacity, in deciding to submit an Adult Caution referral:

- (i) The decision to caution.
- (ii) The public interest.
- (iii) The views of the victim.

(i) The Decision to Caution.

In order to safeguard the interests of society and of the offender and to ensure a consistency of approach by An Garda Síochána, the following conditions must be met before a caution can be administered:

- There must be prima facie evidence of the offender's guilt.
- The offender must admit the offence.
- The offender must understand the significance of a caution.
- The offender must give an informed consent to being cautioned.

It is important that the Scheme be applied in a uniform way. Therefore, the investigating member should consider the application of the Scheme in relation to the case of every adult suspected of committing a scheduled offence. If the investigating member has any doubt about the suitability of the person then the matter should be submitted to the Superintendent or Inspector acting in that capacity in the ordinary way.

An Adult Caution cannot be offered to an offender in circumstances where there would be a bar to prosecution, for example, where the evidence of guilt would be inadmissible in court or where the relevant time period for the commencement of a prosecution has expired.

The Superintendent or Inspector acting in that capacity shall decide whether a caution, rather than a prosecution, would be the appropriate response to the commission of an offence included in the Schedule to this policy.

(ii) The Public Interest

The decision to administer a caution instead of to prosecute is a serious decision to take and before it is taken it must be clear that;

- (a) the offence is of a kind appropriate for consideration of a caution, and
- (b) the offender is deemed to be a person suitable for consideration.

(a) The Offence

It is the circumstances in which the scheduled offence is committed as much as the ingredients of the scheduled offence itself that will be of importance. If the public interest does not require a prosecution in those circumstances, cautioning may then be appropriate.

(b) The Offender

Consideration must always be given as to whether or not a caution of the person in question is in the public interest. Certain persons, for example, those without previous convictions, may be dealt with effectively and deterred from acting in a criminal manner in the future through cautioning rather than prosecution. However, the fact that the person has a criminal record or been dealt with in the past under the Juvenile Diversion Programme should not of itself mean that a caution is inappropriate. The principal purpose of the Scheme is to divert from prosecution, adults who are unlikely to re-offend. Thus, if the accused had a recent conviction or more than one conviction this would point to the person being unsuitable for adult caution but the circumstances of each case should be looked at to see if cautioning is appropriate. The consent of the DPP should be sought in such cases.

The offender will be informed that they are entitled to seek legal advice before agreeing or refusing a caution under the Scheme. Where the offender wishes to seek legal advice it must be obtained promptly and within the statutory time limits if applicable.

(iii) Views of the Victim

Before the offence and the offender are considered for the application of a caution, the views of any victims should be sought. The effect on the victim of the offence in question and any reason advanced by them as to why a caution should not be applied must be carefully considered before a decision is taken on whether to prosecute or to caution. However, a caution may be appropriate even if the victim is opposed to it.

Under no circumstances should members of An Garda Síochána become involved in negotiating or awarding reparation or compensation.

Delivering the Caution

A Superintendent or an Inspector acting on their behalf shall administer the caution. A caution shall, other than in an exceptional situation, take place in a Garda station. It must involve an undertaking in writing by the offender that they agree to accept a caution and will not object to the fact of its existence being recorded and made known to a court in the event of a subsequent conviction for a criminal offence or in civil proceedings.

The nature of a caution is such that it should be applied only once to an offender but it may, in the most exceptional circumstances, be appropriate to apply it to a person who has been previously cautioned. Such exceptional circumstances may occur:

- Where the subsequent offence is minor in nature; or
- Where there has been a substantial lapse of time since the first caution so as to suggest that it may have been of real benefit.

The consent of the DPP should be sought in all such cases.

Disclosing the Existence of a Caution in Future Proceedings

The fact that a caution has been previously administered will be cited in Court in the event of any subsequent criminal convictions. In presenting antecedents, particular care should be taken to distinguish between a caution and a conviction.

Adult Cautioning Review Procedure

Where an offender has not been considered for an Adult Caution in relation to an offence covered by the Scheme the offender may request that they are considered by the Superintendent or the Inspector acting on their behalf.

Legal and Human Rights Screening

This document has been Legal and Human Rights screened in terms of the respective obligations placed on An Garda Síochána for the subject area concerned.

Ethical Standards And Commitments

The operation of the Adult Cautioning Scheme engages Article 38.1 (right to a fair trial), Article 40.3 (in relation to fair procedures and privacy rights) of the Constitution and Article 3 (right to be free from torture and from inhumane and degrading treatment), Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life, home and correspondence) of the European Convention on Human Rights. Members carrying out their functions shall at all times respect a person's personal rights and his / her dignity as a human being and shall not subject any person to ill-treatment of any kind.

Every person working in An Garda Síochána must observe and adhere to the standards and commitments set out in the [Code of Ethics](#) for An Garda Síochána and uphold and promote this Code throughout the organisation.

Decision Making

Any person making a decision should have cognisance of the Garda Decision Making Model which aims to provide for a decision making process that will enable decision makers to determine, explain and justify the reasons for their decisions or actions. Decision making must comply with the fundamental principles of legality, necessity, proportionality and accountability and be applied in a non-discriminatory manner.

Compliance

Compliance with this Policy is mandatory for all members of An Garda Síochána and Garda staff.

Review Date

This document will be reviewed 12 months from its date of effect and every three years thereafter or as appropriate.

Disclaimer

This document is not intended to, nor does it represent legal advice to be relied upon in respect of the subject matter contained herein. This document should not be used as a substitute for professional legal advice.

Appendices

Appendix A provides a Schedule of Offences currently available for disposal under the Adult Cautioning Scheme.



Appendix A

Adult Caution Scheme – Schedule of Offences

Criminal Justice (Public Order) Act, 1994

Section 4: Intoxication in a public place

Section 5: Disorderly Conduct in a public place

Section 6: Threatening, abusive or insulting behaviour in a public place

Section 8: Failure to comply with direction of a member of An Garda Síochána

Section 9: Wilful Obstruction

Section 11: Entering building etc. with intent to commit an offence

Section 13: Trespass in a manner likely to cause fear, included as an offence from the 14th December 2020*

Section 21: Failure to comply with Garda directions controlling access to certain events, included as an offence from the 14th December 2020*

Section 22: Surrender and seizure of intoxicating liquor

Criminal Justice (Theft and Fraud Offences) Act, 2001

Section 4: Theft (where the value of the property concerned is less than €1,000)

Intoxicating Liquor Act, 2003

Section 6: Offences by a drunken person

Section 8: Disorderly conduct

Non-Fatal Offences Against the Person Act, 1997

Section 2: Assault (Assaults on a member of An Garda Síochána shall be forwarded to the Director of Public Prosecutions)

Criminal Damage Act, 1991

Section 2: Damaging Property (where the value of the property damaged is less than €1,000)

Section 3: Threat to damage property

Criminal Justice (Theft and Fraud Offences) Act, 2001

Section 8: Making off without payment (where the value of the payment is less than €1,000)

Section 17: Handling stolen property (where the value of the property concerned is less than €1,000)

Section 18: Possession of stolen property (where the value of the property concerned is less than €1,000)

Dublin Police Act, 1842

Section 14(12): Nuisances in Public thoroughfares (applies to Dublin Metropolitan (Court) District Only)

Intoxicating Liquor Act, 1927

Section 17: Persons on licensed premises during prohibited hours

Licensing Act, 1872

Section 12: Public Drunkenness

Summary Jurisdiction (Ireland) Amendment Act, 1871

Section 8: Offensive or riotous conduct in a theatre or other place of public amusement (applies to Dublin Metropolitan (Court) District only)

Misuse of Drugs Act 1977

Section 3: Possession of cannabis or cannabis resin a controlled substance. Commonly referred to as 'simple possession' or possession for personal use, included as an offence from the 14th December 2020*

Casual Trading Act, 1995

Section 3: Casual trading without a licence or contrary to the terms of the licence included as an offence from the 14th December 2020*

*Denotes offences introduced on the 14th December 2020.

Additional Garda Policy Requirements

Appendix B provides instructions in relation to considering/offering/delivering an Adult Cautioning for offences contrary to Section 3 Misuse of Drugs Acts 1977/1984.

Appendix C Related Requirements.

Appendix B

Section 3 Misuse of Drugs Act, 1977 – ‘Simple Possession’

The schedule of offences for which an Adult Caution can be applied will include offences of ‘simple possession’ in relation to Cannabis or Cannabis Resin contrary to Section 3 of the Misuse of Drugs Act, 1977, as amended.

- The decision, which must be made utilising the Garda Decision Making Model, on whether or not to deliver a caution for an offence of ‘simple possession’ must be based on the following considerations.
- Due cognisance must be paid to that criteria, i.e., that the following conditions must be met before a caution can be administered:
 - There must be prima facie evidence of the offender’s guilt,
 - The offender must admit the offence,
 - The offender must understand the significance of a caution and,
 - The offender must give an informed consent to being cautioned.

The investigating member must consider the type, quantity and value of the drug and whether in all the circumstances the offence disclosed amounts to simple possession.

When completing the Adult Caution Referral Form the investigating member must, at part B. (Particulars of Arrest), record the offence for which the caution is being delivered and the substance possessed by the offender, e.g. Section 3 Misuse of Drugs Act, 1977, to wit Cannabis or Cannabis Resin.

The prima facie evidence of the offender’s guilt must be recorded by the investigating member at part D. of the Adult Caution Referral Form (Circumstances of the Offence). Prima Facie Evidence may be established by the following means:

- a. An admission by the offender and
- b. The investigating member’s investigative experience in the recognition of the physical appearance, texture, smell, of controlled substances.

A caution can be delivered for the possession of a specific ‘controlled drug’ namely Cannabis and Cannabis Resin ONLY. The relevant Superintendent (or Inspector acting in that capacity) considering the caution must be cognisant of the instructions provided above regarding the public interest.

Any controlled drugs seized must be dealt with in accordance with existing policies for dealing with property of evidential value. The investigating member must ensure that the substance is retained for a period of three (3) months, in accordance with PEMs procedures, from the date the caution is delivered. This will allow for any possible review procedures.

Any substances seized must be destroyed in accordance with procedures set out at **Chapter 42 of the Garda Síochána Code**, **H.Q. Directive 91/2005** and **HQ Directive 60/2019**.

Appendix C

Related Requirements

Human Rights Considerations

The vindication of Human Rights is a key policing objective, and is the very basis of policing. Garda Personnel play a vital role in ensuring that citizens may enjoy their rights to live free from violence, abuse and crime. Garda Personnel also help preserve an environment in which people can live free from fear and enjoy other rights and freedoms.

Accordingly, the operation of the Adult Cautioning Scheme engages Article 38.1 (right to a fair trial), Article 40.3 (in relation to fair procedures and privacy rights) of the Constitution and Article 3 (right to be free from torture and from inhumane and degrading treatment), Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life, home and correspondence) of the European Convention on Human Rights. Members carrying out their functions shall at all times respect a person's personal rights and his/her dignity as a human being and shall not subject any person to ill-treatment of any kind.

Consideration of all Human Rights in compliance with the organisations Human Rights Framework is crucial while carrying out of responsibilities and tasks relating to the Adult Cautioning Scheme including the investigation, submission of criminal investigation files and the consideration of utilising the Scheme and other related documentation.

Related Documents

- Adult Cautioning Scheme Procedure Document
- [Code of Ethics for the Garda Síochána](#)
- HQ Directive 45/2020 – Classification of Incidents and Recording Detections of Crime within PULSE
- HQ Directive 60/2019 - Property and Exhibits Management System Part 2 (PEMS 2)
- HQ Directive 37/2019 - Garda Decision Making Model (GDMM)
- HQ Directive 19/2019 - Human Rights Framework
- HQ Directive 25/2018 – Classification of Incidents and Recording Detections of Crime within PULSE
- HQ Directive 58/2015 - Prohibition on individual members of An Garda Síochána negotiating settlements between a victim and an alleged offender
- HQ Directive 24/2012 – Instituting and Conducting the Prosecution of an Offence Section 8 Garda Síochána Act 2005 - General Direction No. 3
- HQ Directive 139/03 - Crime Counting Rules

Cancelations and Replacement of Existing Policy and associated document(s)

- **HQ Directive 146/2009** - Adult Cautioning Scheme and Additional Offences
- **HQ Directive 46/2006** - Adult Cautioning Scheme
- **HQ Directive 09/2006** - Adult Cautioning Scheme
- **HQ Directive 06/2006** - Adult Cautioning Scheme

General Data Protection Regulations / Directive 2016/680/EU - Police and Criminal Justice Authorities Directive

Personal data shall only be processed for the purposes specified in this policy, and within a clearly defined lawful basis under the (EU) General Data Protection Regulation (GDPR) ((EU) 2016/679) and the Data Protection Acts 1988/2018. All necessary measures will be put in place to ensure personal data is kept safe and secure. Only authorised personnel shall have access to personal data. Only relevant personal data will be processed, and will not be retained for longer than is necessary.