

Simple Cautions for Foreign National Offenders Pilot Policy Statement

Background

1. From 6 December 2010 the Ministry of Justice and UK Border Agency (UKBA), working with the police service and the Crown Prosecution Service (CPS), will be operating pilot schemes to divert from prosecution foreign national offenders who commit specified offences relating to their immigration status and agree to be administratively removed from the UK.
2. While many foreign nationals who have no legal basis of stay in the UK and commit these offences are immediately administratively removed¹ from the country by UKBA without entry into the criminal justice system, a number are prosecuted for these offences and typically receive custodial sentences of six to 12 months. Those who receive a custodial sentence will ordinarily be administratively removed from the UK following the completion of their sentence. These pilot schemes will test the use of simple cautions as an alternative to prosecution for such offenders where the individual agrees to be removed from the UK and otherwise meets the criteria for simple cautioning. Those who commit these offences and are suitable immediately to be administratively removed from the UK rather than prosecuted or cautioned will continue to be dealt with in this way during these pilots.
3. **This policy statement should be read in conjunction with [Home Office Circular 016 / 2008](#) on the simple cautioning of adult offenders, to which it is a supplement. Police and prosecutors should have regard to the principles in that circular when considering whether a simple caution is appropriate in individual cases.**

Aims

4. The aims of this policy are to:
 - (i) Reduce the burden on the criminal justice system and UKBA from dealing with foreign national offenders who commit specified offences and are liable to be removed from the UK;
 - (ii) Preserve, as far as possible, the opportunity to prosecute offenders for these specified offences should they not comply with efforts to remove them from the UK; and
 - (iii) Ensure that the offence and the action taken by the police and prosecutors forms part of the individual's criminal record, thereby allowing this information to be available to law enforcement agencies should the individual attempt to return to the UK.

Eligibility for the pilot

5. This policy only applies to those who meet all the following criteria:
 - (i) Offenders who are detained within the pilot areas listed at annex A;
 - (ii) Offenders aged 18 years or over;

¹ 'Administrative removal' refers to the removal from the UK of a foreign national who has no form of leave, under the powers contained in Schedule 2 to the Immigration Act 1971 and s.10 Immigration and Asylum Act 1999.

- (iii) Offenders found to have committed an offence listed in annex B and who have not previously received a caution or conviction for such an offence, or been previously administratively removed from the UK on suspicion of committing such an offence;
 - (iv) Offenders with no legal basis of stay in the UK and who can be detained under paragraph 16 of Schedule 2 to the Immigration Act 1971;
 - (v) Offenders for whom there is a realistic prospect of removal from the UK within a reasonable time period; and
 - (vi) Offenders who admit to committing an offence listed in annex B **and** agree to be removed from the UK under the provisions of schedule 2 to the Immigration Act 1971 or section 10 of the Immigration and Asylum Act 1999.
6. This policy **does not** apply to offenders who there are reasonable grounds to believe are involved in human trafficking, either as a victim or perpetrator.

Simple cautioning process

Detection and initial UKBA investigation

7. When a foreign national is suspected of having committed a criminal offence, UKBA may detain him under Schedule 2 Immigration Act 1971 powers and consider whether to pursue a criminal investigation or administratively to remove the offender immediately from the UK. This decision will be made in accordance with the UKBA case adoption policies and will include considerations such as how serious the offence is and how quickly the offender can be removed from the UK.
8. If it is not appropriate administratively to remove the offender from the UK immediately, UKBA will pursue a criminal investigation and gather supporting evidence. If appropriate the offender will then be arrested and detained under Police and Criminal Evidence Act 1984 (PACE) powers.
9. When referring a case to the police, UKBA will make an initial recommendation whether the foreign national meets the eligibility criteria in paragraph 5 and should be considered for a simple caution under the pilot process. If an individual has not admitted the offence at this stage, this alone should not prevent him or her being initially considered for the pilot process as an admission could still be provided during police interview.

Police investigation

10. Once the case is referred to the police, the offender may be interviewed under the provisions of PACE in the normal way. Police officers must ensure that the individual is informed of his or her right to receive both criminal and immigration legal advice, and arrangements made for this advice to be provided where it is requested.
11. If the offender provides a clear and reliable admission of the offence, he or she should be asked to confirm his or her agreement to being administratively removed from the UK by UKBA. Where confirmation of this agreement is forthcoming, the case must be referred to the CPS and the police must endorse the MG3 form recommending that the case is suitable to be disposed of by a simple caution.

12. If the offender does not provide a clear and reliable admission of the offence, or indicates that he or she does not agree to be removed from the UK, the police will consider whether to charge the offender or to refer the case to the CPS for a charging decision, in line with established practice on charging.

CPS decision and notification to the police

13. The CPS will review the case received from the police in line with the principles set out in the Code for Crown Prosecutors. Prosecutors must be satisfied that the Full Code Test is met and that there is evidence of the offender's guilt, including a clear and reliable admission of the offence, in any case in which they authorise or direct a simple caution to be offered. The CPS will also have regard to Home Office Circular 16/2008 on the simple cautioning of adult offenders.
14. Certain offences in Annex B are indictable-only offences. The Home Office Circular 016/2008 states that simple cautions should only be given in respect of serious offences in exceptional circumstances. For the purposes of this pilot scheme, a foreign national offender who commits an offence specified in annex B will properly fall within these exceptional circumstances, subject to the decision by the CPS in individual cases to authorise the offer of a simple caution.
15. If the CPS decides that the offence is suitable for disposal by way of a simple caution, written notice of the decision should be given to the police on the MG3 form. If the decision is to prosecute the offender, the police should be notified and the offender charged in the usual way.
16. When notified that the offence is suitable for disposal by way of a simple caution, the police should tell the offender that they and the CPS take the view that a simple caution will be appropriate if the offender complies with attempts to remove him or her from the UK and the removal can be effected. The offender should also be told that, if he or she complies with efforts to remove him or her from the UK, a caution may be offered – and, if accepted, administered – on or close to the date of removal. The implications of accepting a simple caution should be explained to the offender at this time, as set out in Home Office Circular 016/2008. However, the offender should also be informed that if he or she does not comply with the removal process or removal cannot be effected, he or she may be prosecuted for the original offence.
17. If the offender agrees to comply with the removal process, he or she should be released from PACE detention and, if appropriate, detained by UKBA under immigration powers in order to effect removal from the UK. The simple caution should not be administered at this stage.

Non-compliance or inability to effect removal from the UK

18. If the offender does not comply with attempts to remove him or her from the UK before the simple caution is administered, UKBA should record details of the non-compliance. Should the extent of the offender's non-compliance mean that it is unlikely his or her removal from the UK could be effected within a reasonable period, the matter should be referred back to the CPS to consider whether to prosecute for the original offence.
19. Examples of non-compliance could include offenders refusing to assist UKBA in obtaining necessary documentation to effect their removal, withdrawing their consent to removal or making a claim to remain in the UK on asylum or human

rights grounds. Where offenders cannot comply with the requirement to leave the UK because the conditions in their country of origin change, or for other reasons beyond their control (for example, documentation cannot be obtained despite the offender's full compliance with the process), the case should also be referred back to the CPS for a decision on whether to prosecute for the original offence.

20. The CPS will make the decision to prosecute based on the circumstances of the individual case and the Code for Crown Prosecutors. If the CPS decides that a prosecution should be brought, the offender will be charged according to normal procedure.

Removal from the UK and administering the simple caution

21. Once arrangements are complete for the offender's departure from the UK, the police should confirm whether the offender consents to the simple caution. The caution should be administered by an appropriate police officer as close to the time of the offender's departure as is reasonably practicable, in order to reduce the risk of the offender withdrawing compliance with departure arrangements. However, the offender should not be pressed to make an instant decision. Paragraphs 24 to 26 and paragraph 44 of the Home Office Circular 016/2008 must be complied with. In particular, the following must be ensured:

- that the offender is aware of the full implications of accepting a simple caution when he or she accepts it;
- that the offender has given informed consent before accepting the simple caution; and
- that the offender has had access to sufficient independent legal advice.

Pilot sites

The process described above will only operate in the following areas until further notice:

- Heathrow Airport in the London Borough of Hillingdon from 6 December 2010;
- Stansted Airport in Essex from 6 December 2010; and
- East Midlands (Derbyshire Constabulary, Nottinghamshire Police, Lincolnshire Police, Leicestershire Constabulary and Northamptonshire Police) from 17th January 2011

Offences for which simple cautions could be made available:

Until 21st January 2011

- **Section 2 of the Fraud Act 2006 (when committed as a document fraud offence):**
Where a person dishonestly makes a false representation and intends, by making the representation, to make a gain for himself or another or to cause loss to another.
- **Section 25(1) (a), (b) or (c) of the Identity Cards Act 2006:**
Where a person with intent has in his/her possession or under his/her control:
(a) an identity document that is false and he/she knows or believes to be false;
(b) an identity document that was improperly obtained and that he/she knows or believes to have been improperly obtained; or
(c) an identity document that relates to someone else.
- **Section 25(5)(a), (b) or (c) of the Identity Cards Act 2006:**
Where a person has in his/her possession or under his/her control without reasonable control:
(a) an identity document that is false;
(b) an identity document that was improperly obtained; or
(c) an identity document that relates to someone else.
- **Section 3 of the Forgery and Counterfeiting Act 1981:**
Where a person uses an instrument which he/she knows or believes to be false, with the intention of inducing another to accept it as genuine.
- **Section 24 (1)(b)(i) Immigration Act 1971:**
Remaining beyond time limited by leave.
- **Section 24A (1) Immigration Act 1971:**
Where a person who is not a British Citizen by deception:
(a) obtains or seeks to obtain leave to enter or remain in the United Kingdom;
or
(b) secures or seeks to secure the avoidance, postponement or revocation of enforcement action against him/her.
- **Section 2 of the Asylum and Immigration Act 2004:**
Not having a travel document at a Leave or Asylum interview.

From 21st January 2011 when the Identity Documents Act 2010 comes into force

- **Section 2 of the Fraud Act 2006: (when committed as a document fraud offence)**
Where a person dishonestly makes a false representation and intends, by making the representation, to make a gain for himself or another or to cause loss to another.

- **Section 4 (1) (a), (b) or (c) of the Identity Documents Act 2010**
 Where a person has, with an improper intention to have in his possession or under his control:

 - (a) an identity document that is false and that he knows or believes to be false,
 - (b) an identity document that was improperly obtained and that he knows or believes to have been improperly obtained, or
 - (c) an identity document that relates to someone else.

- **Section 6 (1) (a), (b) or (c) of the Identity Documents Act 2010**
 Where a person without reasonable excuse has in his possession or under his control:

 - (a) an identity document that is false,
 - (b) an identity document that was improperly obtained,
 - (c) an identity document that relates to someone else,

- **Section 3 of the Forgery and Counterfeiting Act 1981:**
 Where a person uses an instrument which he/she knows or believes to be false, with the intention of inducing another to accept it as genuine.

- **Section 24 (1)(b)(i) Immigration Act 1971:**
 Remaining beyond time limited by leave.

- **Section 24A (1) Immigration Act 1971:**
 Where a person who is not a British Citizen by deception:

 - (a) obtains or seeks to obtain leave to enter or remain in the United Kingdom; or
 - (b) secures or seeks to secure the avoidance, postponement or revocation of enforcement action against him/her.

- **Section 2 of the Asylum and Immigration Act 2004:**
 Not having a travel document at a Leave or Asylum interview.