



An Garda Síochána

Policy Document

Adult Cautioning Scheme

Effective Date	14 th December 2020
Version No.	1.0
Approved by	Garda Executive
Introduced by	HQ Directive 16/2020
Policy Owner	Executive Director, Legal

Purpose

The Adult Cautioning Scheme (hereafter referred to as the Scheme) approved by the Director of Public Prosecutions became operational on the 1st February, 2006 and is only applicable to offences committed on or after that date. The Scheme 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.

Scope

This Policy and all associated documentation apply to members of An Garda Síochána and civilian 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.

Policy Statement

The Scheme is primarily utilised to deal with minor offences committed by first time offenders. Only offences which are attached in the Appendix A and B of both this Policy and its associated Procedure document are offences for which an Adult Caution may be administered.

The Scheme can be used as alternative to bringing a prosecution. It primarily applies to Public Order, minor theft, Criminal Damage and Misuse of Drugs Act offences. To be deemed suitable for an Adult Caution a person must be willing to accept responsibility for the offence in question. The views of any victim will also be sought.

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. The final decision on whether a caution may be administered under the terms of this scheme rests with the District Officer or relevant Superintendent.

On the 14th of December 2020 the following offences are 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.

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.

Compliance

Compliance with this Policy and accompanying associated document(s) is mandatory for all members of An Garda Síochána and Garda staff.

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) (if relevant/appropriate)

- **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

Appendices

Appendix A: Provides a list of offences currently available for disposal under the Adult Cautioning Scheme.

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.

Legal & Human Rights Screening

This Policy 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 & Commitments

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.

Policy & Procedure Review

This Policy and associated documents will be reviewed 12 months from its date of effect and every three years thereafter.

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.

General Data Protection Regulations / Directive 2016/680/EU - Police and Criminal Justice Authorities Directive (if relevant/appropriate)

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.

Appendix A

Adult Cautioning 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*
- Section 21: Failure to comply with Garda directions controlling access to certain events*
- 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*

Casual Trading Act, 1995

- Section 3: Casual trading without a licence or contrary to the terms of the licence*

*Denotes offences introduced on the 14th December 2020.



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**.