

POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006 (ASP 10)

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Three: Criminal Justice

Offenders assisting investigations and prosecutions

Section 91 – Assistance by offender: reduction in sentence

194. This section provides that the court, when sentencing accused persons who plead guilty in proceedings on indictment before that court and who have entered into a written agreement with a prosecutor (an “assistance agreement”) to provide assistance in relation to any investigation or prosecution, must take account of the nature and extent of that assistance.
195. Subsection (3) requires the court, if it passes a lower sentence on account of the assistance, to state that it has done so and what the sentence would otherwise have been. Subsection (5) provides that the court does not have to make such a statement if it would not be in the public interest (in which case the court must provide a written notice to the prosecutor and the accused that it has passed a lower sentence on account of the assistance and stating what the sentence would otherwise have been).
196. Subsection (4) provides that if the court, taking into account assistance given or offered under an assistance agreement, does not pass a lower sentence it must state its reasons for doing so. Subsection (6) makes similar provision to subsection (5): the court does not have to state why it did not reduce the sentence if it would not be in the public interest (in which case the court must provide a written notice to the prosecutor and the accused stating its reasons for not passing a discounted sentence).
197. Subsection (7) clarifies that this section applies also to offences for which there is a minimum sentence and also where the sentence is fixed by law, in determining the minimum period of imprisonment that a person must serve. Subsection (8) provides that the court's decision to take into account the assistance provided or offered by a person does not affect any other power it may have to take any other matters into account when determining that person's sentence, punishment part or other minimum term of imprisonment. Subsection (9) clarifies the meaning of certain references and includes provision allowing the assistance agreement to be made using electronic communications.