



Police, Public Order and Criminal Justice (Scotland) Act 2006

2006 asp 10

PART 3

CRIMINAL JUSTICE

Offenders assisting investigations and prosecutions

91 Assistance by offender: reduction in sentence

- (1) This section applies if a person (the “offender”)—
 - (a) is, following a plea of guilty, convicted on indictment of an offence; and
 - (b) has, pursuant to a written agreement made with a prosecutor (an “assistance agreement”), assisted or offered to assist the prosecutor of that or any other offence in relation to its investigation or prosecution.
- (2) In determining what sentence to pass on the offender, the court must take into account the extent and nature of the assistance given or offered by the offender.
- (3) If the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state in open court—
 - (a) that it has, for that reason, passed that lesser sentence; and
 - (b) what the greater sentence would have been.
- (4) If the court passes a sentence which is not less than it would have passed but for the assistance given or offered, it must state in open court its reasons for doing so.
- (5) Subsection (3) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has, for the reason referred to in that subsection, been discounted; but in such a case the court must give written notice of the matters specified in paragraphs (a) and (b) of that subsection to the prosecutor and the offender.
- (6) Subsection (4) does not apply if the court thinks that it would not be in the public interest to disclose that the case was one in which the court had a duty under subsection (2); but in such a case the court must give written notice of its reasons for not passing a discounted sentence to the prosecutor and the offender.

Status: Point in time view as at 01/03/2007.

Changes to legislation: *Police, Public Order and Criminal Justice (Scotland) Act 2006, Cross Heading: Offenders assisting investigations and prosecutions is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) Nothing in any enactment which—
- (a) requires that a minimum sentence is passed in respect of any offence or an offence of any description or because of the circumstances of any offender (whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances); or
 - (b) in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which determines or has the effect of determining the minimum period of imprisonment which the offender must serve (whether or not the enactment also permits the court to fix a lesser period in particular circumstances),
- prevents, or restricts, the court, in fulfilment of its duty under subsection (2), from passing on the offender the sentence it considers appropriate.
- (8) Subsection (2) does not prevent the court, in determining what sentence to pass on the offender, from also taking into account any other matter which, by virtue of any other enactment or rule of law it may take into account for the purpose of determining—
- (a) the sentence;
 - (b) in the case of a life sentence for murder or for any other offence for which that sentence is the sentence fixed by law, the punishment part (construed in accordance with section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9)); and
 - (c) in the case of any other sentence which is fixed by law, any minimum period of imprisonment which an offender must serve.
- (9) In this section—
- (a) the reference, in subsection (1), to a written agreement includes a reference to an agreement made by, or partly by, electronic communication (within the meaning given by section 15(1) of the Electronic Communications Act 2000 (c. 7)) the contents of which are kept or recorded so that they can be conveniently consulted later by the sender and the recipient;
 - (b) the reference, in subsection (5), to written notice includes a reference to a notice given by such a communication;
 - (c) a reference to a sentence—
 - (i) includes, in the case of a sentence of a kind referred to in paragraph (b) or (c) of subsection (8), a reference to the punishment part (construed as mentioned in that subsection) or, as the case may be, the minimum period an offender is required to serve (and a reference to a lesser sentence is to be construed accordingly);
 - (ii) includes a reference to a community disposal and a fine;
 - (iii) does not include an order for committal in default of payment of any sum of money or for contempt of court;
 - (d) the reference, in subsection (7)(b), to imprisonment includes a reference to detention imposed under section 205(2), and detention in a young offenders institution imposed under section 205(3), 205A(2)(b) or 207 of the 1995 Act;
 - (e) the reference, in subsection (8)(c), to imprisonment includes a reference to detention in a young offenders institution imposed under section 207 of the 1995 Act.

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92 Assistance by offender: review of sentence

- (1) This section applies where—
 - (a) a court has passed sentence on a person convicted on indictment of an offence (the “offender”); and
 - (b) the offender falls within subsection (2).
- (2) An offender falls within this subsection if the offender—
 - (a) receives a discounted sentence in consequence of having offered, in pursuance of an assistance agreement, to give assistance to the prosecutor of any offence in relation to its investigation or prosecution but knowingly fails to any extent to give assistance in accordance with the agreement;
 - (b) receives a discounted sentence in consequence of having offered, in pursuance of an assistance agreement, to give assistance to the prosecutor of an offence in relation to its investigation or prosecution and, having given such assistance in accordance with the agreement, in pursuance of another assistance agreement, gives or offers to give further assistance; or
 - (c) receives a sentence which is not discounted in consequence of the considerations referred to in paragraphs (a) and (b) but, in pursuance of an assistance agreement, subsequently gives or offers to give assistance to the prosecutor of an offence in relation to its investigation or prosecution.
- (3) An offender who was sentenced for an offence for which the sentence is fixed by law and did not plead guilty to the offence does not, however, fall within subsection (2).
- (4) Any prosecutor may, at any time, for the purposes of this section, refer a case in which sentence has been passed back to the court which passed it or, where sentence has been passed on appeal, back to the court of first instance, if—
 - (a) the offender is still serving the sentence; and
 - (b) the prosecutor thinks that it is in the interests of justice to do so.
- (5) For the purposes of subsection (4)(a), an offender sentenced to a term of imprisonment who is released (whether on licence or unconditionally) under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) before the date on which the offender would (but for the release) have served the sentence in full is to be treated as still serving the sentence until that date.
- (6) A case so referred is, if possible, to be considered by the judge who passed the sentence or, where sentence has been passed on appeal, the judge who presided at first instance.
- (7) In the case of an offender falling within subsection (2)(a), the court may, on such a referral, substitute for the sentence passed on the offender such greater sentence (not exceeding that which it would have passed but for the assistance agreement) as it thinks appropriate.
- (8) A court of first instance shall, for the purposes of subsection (7), regard the sentence which the appeal court would have passed but for the agreement as the sentence which it would have passed but for the agreement.
- (9) In the case of an offender falling within subsection (2)(b) or (c), the court may, on such a referral and taking into account the extent and nature of the assistance given or offered, substitute for the sentence passed on the offender such lesser sentence as it thinks appropriate.

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- (10) Any part of the sentence to which a referral relates and which the offender has already served is to be taken into account in determining when a greater sentence imposed under subsection (7) or a lesser one imposed under subsection (9) has been served.
- (11) The offender (with the leave of a judge of the High Court of Justiciary) or a prosecutor may appeal to that court against a decision of a court under subsection (7) or (9).
- (12) Where, under subsection (9) or on an appeal under subsection (11), the court substitutes a lesser sentence for the sentence which has been passed, it must state in open court that it has done so in consequence of the further assistance or, as the case may be, the assistance given or offered.
- (13) Subsection (12) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted; but in such a case the court must give written notice (construed as in section 91) of the fact that the sentence has been discounted for the reason referred to in subsection (12) to the prosecutor and the offender in respect of whom the referral was made.
- (14) Subsections (7) to (9) of section 91 apply for the purposes of this section as they apply for the purposes of that section, the references in those subsections to subsection (2) of that section being construed as references to subsection (9) of this section.
- (15) In the application of this section in relation to a sentence consisting of a fine—
 - (a) an offender is to be taken as still serving the sentence if the fine has not been paid in full; and
 - (b) references to part of a sentence having been served are to be read as references to the fine having been partly paid.

93 Proceedings under section 92: exclusion of public

- (1) This section applies to—
 - (a) proceedings relating to a referral made under section 92(4); and
 - (b) any other proceedings arising in consequence of those proceedings.
- (2) The court in which those proceedings will be or are taking place may make such order as it thinks appropriate—
 - (a) to exclude from the proceedings any person—
 - (i) who does not fall within subsection (4); or
 - (ii) who does not, in the opinion of the court, have a sufficiently direct interest in the proceedings to justify that person's presence during them;
 - (b) to prohibit the publication of any matter relating to the proceedings (including the fact that the referral has been made).
- (3) Such an order is to be made only to the extent that the court thinks—
 - (a) that it is necessary to protect the safety of any person; and
 - (b) that it is in the interests of justice.
- (4) The following persons fall within this subsection—
 - (a) the judge;
 - (b) an officer of the court;
 - (c) the prosecutor;

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- (d) the other party to the proceedings;
 - (e) counsel or a solicitor for the other party.
- (5) This section does not affect any other power which the court has by virtue of any rule of law or other enactment—
- (a) to exclude any person from proceedings; or
 - (b) to prohibit or restrict the publication of any matter to which the proceedings relate;
- or any rule of law or enactment consisting of such an exclusion, prohibition or restriction.

94 Section 92: further provision

- (1) The Scottish Ministers may, by order, provide further as to the procedure to be followed under section 92 or otherwise so as to give full effect to that section.
- (2) An order under subsection (1) may, in particular—
- (a) apply, with modifications, provisions of Part VIII of the 1995 Act (appeals from solemn proceedings);
 - (b) modify that Part of that Act.
- (3) The Scottish Ministers may, by order, make provision as to how—
- (a) any period in custody served under a sentence for which another sentence is substituted under section 92(7), (9) or (11);
 - (b) any period during which a person was on release on licence or unconditionally under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) in respect of such a sentence before the date on which the person would (but for the release) have served the sentence in full,
- is to be taken into account, for the purposes of the later sentence, in the calculation of periods of time under Part 1 of that Act.
- (4) An order under subsection (3) may, in particular, modify that Act.

95 Sentencing: consideration of undisclosed information

- (1) This section applies where a person (the “offender”)—
- (a) has been convicted and is to be sentenced for an offence; and
 - (b) has, otherwise than in pursuance of an assistance agreement, assisted in relation to the investigation or prosecution of any other offence.
- (2) Where this section applies, the court may, in passing sentence and if it considers it to be in the interests of justice to do so, take into account any information which is in a report in writing by a relevant officer about that assistance and which is, with the agreement of the offender, made available—
- (a) only to the offender and the court; or
 - (b) only to the offender, the offender's counsel or solicitor and the court,
- by the prosecutor.
- (3) Where, under subsection (2) a court takes information about assistance into account, it must not disclose the information, the existence of the report containing it or whether the sentence it passes is less than the sentence it would have passed but for the assistance given.

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- (4) Subsection (3) does not prevent disclosure by the court or the clerk of court to the High Court or the Clerk of Justiciary in connection with proceedings to which section 96 applies.
- (5) In subsection (2), a “relevant officer is a constable or any other officer of an organisation having functions which are conferred by or under an enactment or rule of law and which consist of or include the investigation of offences.
- (6) The reference in subsection (2) to a report in writing includes a reference to a report made by means of an electronic communication (within the meaning given by section 15(1) of the Electronic Communications Act 2000 (c. 7)) the contents of which are kept or recorded so that they can be conveniently consulted later by the maker of the report and those to whom it was made available.

96 Appeals etc.: undisclosed information

- (1) This section applies to any proceedings in the High Court in relation to—
 - (a) an appeal under section 106(1), 108, 108A or 175(2) to (4) of the 1995 Act;
 - (b) an appeal by way of bill of suspension or advocacion;
 - (c) a reference by the Lord Advocate under section 123 of that Act;
 - (d) a reference by the Scottish Criminal Cases Review Commission under section 194B of that Act; or
 - (e) a petition to the nobile officium.
- (2) In subsection (1) the reference to proceedings in the High Court includes consideration by a judge of the High Court whether to grant leave to appeal under section 107, 180 or 187 of the 1995 Act.
- (3) If, under subsection (2) of section 95, the lower court in passing sentence on the offender took into account information contained in a report mentioned in that subsection, the High Court and the Clerk of Justiciary—
 - (a) must not disclose the information or the existence of the report to any person other than the prosecutor, the offender and, with the offender's agreement, the offender's counsel or solicitor; and
 - (b) must not disclose to any person whether the sentence passed by the lower court is less than it would have passed but for the assistance given by the offender.
- (4) If, in a case not falling within subsection (3), the High Court or the Clerk of Justiciary becomes aware of information contained in a report mentioned in subsection (2) of section 95 or that a court in passing sentence has, under that subsection, taken that information into account, the High Court or the Clerk of Justiciary must not disclose to any person the information, the existence of the report or whether the sentence passed by the lower court on the person to whom the report relates is less than the sentence it would have passed but for the assistance given by that person.
- (5) Sections 107(10), 113(2), 179(8), 180(10), 186(4)(b), 187(9) and 298(2) of the 1995 Act do not apply in a case falling within subsection (3) or (4) to the extent that they require a disclosure which, if made by the High Court or the Clerk of Justiciary, would contravene the subsection in question.
- (6) Subsection (5) does not, however, operate so as to prevent any disclosure to the Crown Agent or the Scottish Criminal Cases Review Commission; but subsection (3) or, as the case may be, subsection (4) applies to the Crown Agent and the Commission in

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relation to any such disclosure as it applies to the High Court and the Clerk of Justiciary in relation to a case falling within that subsection (but not so as to prevent disclosure by the Crown Agent or the Commission to the High Court).

- (7) Subsections (2) to (5) of section 93 apply to proceedings referred to in subsection (1) of this section as they apply to proceedings referred to in subsection (1) of that section.
- (8) The Scottish Ministers may, by order, make further provision for the purpose of giving full effect to the preceding provisions of this section, including provision modifying the 1995 Act.

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