



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

2006 asp 10

## PART 3

### CRIMINAL JUSTICE

#### *Offenders assisting investigations and prosecutions*

#### **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).

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*Changes to legislation: Police, Public Order and Criminal Justice (Scotland) Act 2006, Section 92 is up to date with all changes known to be in force on or before 16 December 2023. 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) View outstanding changes*

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- (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.
- (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

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- (b) references to part of a sentence having been served are to be read as references to the fine having been partly paid.

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 92(5) words substituted by [2007 asp 17 sch. 4 para. 5\(3\)](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 47A inserted by [2023 c. 41 s. 45\(3\)](#)