



Serious Organised Crime and Police Act 2005

2005 CHAPTER 15

PART 2

INVESTIGATIONS, PROSECUTIONS, PROCEEDINGS AND PROCEEDS OF CRIME

CHAPTER 2

OFFENDERS ASSISTING INVESTIGATIONS AND PROSECUTIONS

71 Assistance by offender: immunity from prosecution

- (1) If a specified prosecutor thinks that for the purposes of the investigation or prosecution of any offence it is appropriate to offer any person immunity from prosecution he may give the person a written notice under this subsection (an “immunity notice”).
- (2) If a person is given an immunity notice, no proceedings for an offence of a description specified in the notice may be brought against that person in England and Wales or Northern Ireland except in circumstances specified in the notice.
- (3) An immunity notice ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the notice.
- (4) Each of the following is a specified prosecutor—
 - (a) the Director of Public Prosecutions;
 - (b) the Director of Revenue and Customs Prosecutions;
 - (c) the Director of the Serious Fraud Office;
 - (d) the Director of Public Prosecutions for Northern Ireland;
 - (e) a prosecutor designated for the purposes of this section by a prosecutor mentioned in paragraphs (a) to (d).

- (5) The Director of Public Prosecutions or a person designated by him under subsection (4)(e) may not give an immunity notice in relation to proceedings in Northern Ireland.
- (6) The Director of Public Prosecutions for Northern Ireland or a person designated by him under subsection (4)(e) may not give an immunity notice in relation to proceedings in England and Wales.
- (7) An immunity notice must not be given in relation to an offence under section 188 of the Enterprise Act 2002 (c. 40) (cartel offences).

72 Assistance by offender: undertakings as to use of evidence

- (1) If a specified prosecutor thinks that for the purposes of the investigation or prosecution of any offence it is appropriate to offer any person an undertaking that information of any description will not be used against the person in any proceedings to which this section applies he may give the person a written notice under this subsection (a “restricted use undertaking”).
- (2) This section applies to—
 - (a) criminal proceedings;
 - (b) proceedings under Part 5 of the Proceeds of Crime Act 2002 (c. 29).
- (3) If a person is given a restricted use undertaking the information described in the undertaking must not be used against that person in any proceedings to which this section applies brought in England and Wales or Northern Ireland except in the circumstances specified in the undertaking.
- (4) A restricted use undertaking ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the undertaking.
- (5) The Director of Public Prosecutions for Northern Ireland or a person designated by him under section 71(4)(e) may not give a restricted use undertaking in relation to proceedings in England and Wales.
- (6) The Director of Public Prosecutions or a person designated by him under section 71(4)(e) may not give a restricted use undertaking in relation to proceedings in Northern Ireland.
- (7) Specified prosecutor must be construed in accordance with section 71(4).

73 Assistance by defendant: reduction in sentence

- (1) This section applies if a defendant—
 - (a) following a plea of guilty is either convicted of an offence in proceedings in the Crown Court or is committed to the Crown Court for sentence, and
 - (b) has, pursuant to a written agreement made with a specified prosecutor, assisted or offered to assist the investigator or prosecutor in relation to that or any other offence.
- (2) In determining what sentence to pass on the defendant the court may take into account the extent and nature of the assistance given or offered.

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- (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 passed a lesser sentence than it would otherwise have passed, and
 - (b) what the greater sentence would have been.
- (4) Subsection (3) 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 of the matters specified in paragraphs (a) and (b) of subsection (3) to both the prosecutor and the defendant.
- (5) 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 by reference to 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),affects the power of a court to act under subsection (2).
- (6) If, in determining what sentence to pass on the defendant, the court takes into account the extent and nature of the assistance given or offered as mentioned in subsection (2), that does not prevent the court from also taking account of any other matter which it is entitled by virtue of any other enactment to take account of for the purposes of determining—
 - (a) the sentence, or
 - (b) in the case of a sentence which is fixed by law, any minimum period of imprisonment which an offender must serve.
- (7) If subsection (3) above does not apply by virtue of subsection (4) above, sections 174(1)(a) and 270 of the Criminal Justice Act 2003 (c. 44) (requirement to explain reasons for sentence or other order) do not apply to the extent that the explanation will disclose that a sentence has been discounted in pursuance of this section.
- (8) In this section—
 - (a) a reference to a sentence includes, in the case of a sentence which is fixed by law, a reference to the minimum period an offender is required to serve, and a reference to a lesser sentence must be construed accordingly;
 - (b) a reference to imprisonment includes a reference to any other custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) or Article 2 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160).
- (9) An agreement with a specified prosecutor may provide for assistance to be given to that prosecutor or to any other prosecutor.
- (10) References to a specified prosecutor must be construed in accordance with section 71.

74 Assistance by defendant: review of sentence

- (1) This section applies if—

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- (a) the Crown Court has passed a sentence on a person in respect of an offence, and
 - (b) the person falls within subsection (2).
- (2) A person falls within this subsection if—
- (a) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence but he knowingly fails to any extent to give assistance in accordance with the agreement;
 - (b) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence and, having given the assistance in accordance with the agreement, in pursuance of another written agreement gives or offers to give further assistance;
 - (c) he receives a sentence which is not discounted but in pursuance of a written agreement he subsequently gives or offers to give assistance to the prosecutor or investigator of an offence.
- (3) A specified prosecutor may at any time refer the case back to the court by which the sentence was passed if—
- (a) the person is still serving his sentence, and
 - (b) the specified prosecutor thinks it is in the interests of justice to do so.
- (4) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.
- (5) If the court is satisfied that a person who falls within subsection (2)(a) knowingly failed to give the assistance it may substitute for the sentence to which the referral relates such greater sentence (not exceeding that which it would have passed but for the agreement to give assistance) as it thinks appropriate.
- (6) In a case of a person who falls within subsection (2)(b) or (c) the court may—
- (a) take into account the extent and nature of the assistance given or offered;
 - (b) substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate.
- (7) Any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a greater or lesser sentence imposed by subsection (5) or (6) has been served.
- (8) A person in respect of whom a reference is made under this section and the specified prosecutor may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the Crown Court.
- (9) Section 33(3) of the Criminal Appeal Act 1968 (c. 19) (limitation on appeal from the criminal division of the Court of Appeal) does not prevent an appeal to the Supreme Court under this section.
- (10) A discounted sentence is a sentence passed in pursuance of section 73 or subsection (6) above.
- (11) References—
- (a) to a written agreement are to an agreement made in writing with a specified prosecutor;

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- (b) to a specified prosecutor must be construed in accordance with section 71.
- (12) In relation to any proceedings under this section, the Secretary of State may make an order containing provision corresponding to any provision in—
 - (a) the Criminal Appeal Act 1968 (subject to any specified modifications), or
 - (b) the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (subject to any specified modifications).
- (13) A person does not fall within subsection (2) if—
 - (a) he was convicted of an offence for which the sentence is fixed by law, and
 - (b) he did not plead guilty to the offence for which he was sentenced.
- (14) Section 174(1)(a) or 270 of the Criminal Justice Act 2003 (c. 44) (as the case may be) applies to a sentence substituted under subsection (5) above unless the court thinks that it is not in the public interest to disclose that the person falls within subsection (2) (a) above.
- (15) Subsections (3) to (9) of section 73 apply for the purposes of this section as they apply for the purposes of that section and any reference in those subsections to subsection (2) of that section must be construed as a reference to subsection (6) of this section.

75 Proceedings under section 74: exclusion of public

- (1) This section applies to—
 - (a) any proceedings relating to a reference made under section 74(3), and
 - (b) any other proceedings arising in consequence of such proceedings.
- (2) The court in which the proceedings will be or are being heard may make such order as it thinks appropriate—
 - (a) to exclude from the proceedings any person who does not fall within subsection (4);
 - (b) to give such directions as it thinks appropriate prohibiting the publication of any matter relating to the proceedings (including the fact that the reference has been made).
- (3) An order under subsection (2) may be made only to the extent that the court thinks—
 - (a) that it is necessary to do so 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) a member or officer of the court;
 - (b) a party to the proceedings;
 - (c) counsel or a solicitor for a party to the proceedings;
 - (d) a person otherwise directly concerned with the proceedings.
- (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 restrict the publication of any matter relating to proceedings.