



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

[^{F1}74 Assistance by defendant: review of sentence

- (1) This section applies if [^{F2}in Northern Ireland]—
- (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.

Changes to legislation: *Serious Organised Crime and Police Act 2005, Section 74 is up to date with all changes known to be in force on or before 20 March 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) View outstanding changes*

- (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.
- ^{F3}(9)
- (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;
 - (b) to a specified prosecutor must be construed in accordance with section 71.
- (12) In relation to any proceedings under this section,
 - [^{F4}(a) ^{F5}
 - (b) the Department of Justice in Northern Ireland may, in relation to proceedings in Northern Ireland, make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980 (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.
- ^{F6}(14)
- (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.]

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Textual Amendments

- F1** Ss. 73-75 repealed (E.W.) (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Schs. 28, 29** (with ss. 413(4)(5), 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F2** Words in s. 74(1) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 255** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F3** S. 74(9) repealed (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 28** (with ss. 413(4)(5), 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F4** Words in s. 74(12) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 15 para. 19(2)** (with arts. 28-31)
- F5** S. 74(12)(a) repealed (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 28** (with ss. 413(4)(5), 416(7), Sch. 27); S.I. 2020/1236, reg. 2
- F6** S. 74(14) repealed (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 28** (with ss. 413(4)(5), 416(7), Sch. 27); S.I. 2020/1236, reg. 2

Commencement Information

- I1** S. 74 in force at 1.4.2006 by S.I. 2006/378, **art. 5(1)** (with art. 5(2))

Changes to legislation:

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Commencement Orders yet to be applied to the Serious Organised Crime and Police Act 2005

Commencement Orders bringing provisions within this Act into force:

- [S.I. 2006/2182 art. 3](#) amendment to earlier commencing SI 2006/1871