



# 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.

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**Changes to legislation:** *Police, Public Order and Criminal Justice (Scotland) Act 2006, Section 91 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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- (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.

**Changes to legislation:**

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

- s. 91(8)(b) words substituted by [2007 asp 17 sch. 4 para. 5\(2\)](#)

**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\(3\)](#)