



# Sentencing Act 2020

## 2020 CHAPTER 17

### FIFTH GROUP OF PARTS Sentencing: miscellaneous provision and interpretation

#### PART 12

##### MISCELLANEOUS PROVISION ABOUT SENTENCING

#### CHAPTER 4

##### ASSISTANCE FOR PROSECUTION ETC: REVIEW OF SENTENCE

###### *Reference back to court for review of sentence*

#### **387 Failure by offender to provide agreed assistance: review of sentence**

- (1) This section applies if—
  - (a) the Crown Court has passed a sentence on an offender in respect of an offence,
  - (b) the sentence (“the original sentence”) is a discounted sentence in consequence of the offender’s having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence, and
  - (c) the offender knowingly fails to any extent to give assistance in accordance with the agreement.
- (2) A specified prosecutor may at any time refer the case back to the Crown Court if—
  - (a) the offender is still serving the original sentence, and
  - (b) the specified prosecutor thinks it is in the interests of justice to do so.
- (3) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.
- (4) If the court is satisfied that the offender knowingly failed to give the assistance it may substitute for the original sentence a sentence that is—
  - (a) greater than the original sentence, but

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- (b) not greater than the sentence which it would have passed but for the agreement mentioned in subsection (1)(b) (“the original maximum”).
- (5) Subsections (6) to (9) apply where a sentence is substituted under subsection (4).
- (6) Where the substitute sentence is less than the original maximum, the court must state in open court—
- (a) that fact, and
  - (b) the original maximum.
- This is subject to subsection (8).
- (7) Section 52(2) or, as the case may be, 322(4) (requirement to explain reasons for sentence or other order) applies where a substitute sentence is imposed under subsection (4) unless—
- (a) the court considers that it is not in the public interest to disclose that the original sentence was a discounted sentence, or
  - (b) subsection (8) provides otherwise.
- (8) Where the substitute sentence is less than the original maximum and the court considers that it would not be in the public interest to disclose that fact—
- (a) subsection (6) does not apply;
  - (b) the court must give a written statement of the matters specified in subsection (6)(a) and (b) to—
    - (i) the prosecutor, and
    - (ii) the offender;
  - (c) section 52(2) or, as the case may be, 322(4) does not apply to the extent that the explanation would disclose that the substitute sentence is less than the original maximum.
- (9) Any part of the original sentence which the offender has already served must be taken into account in determining when the substitute sentence has been served.

### **388 Review of sentence following subsequent agreement for assistance by offender**

- (1) A case is eligible for review under this section if—
- (a) the Crown Court has passed a sentence on an offender in respect of an offence,
  - (b) the offender is still serving the sentence, and
  - (c) pursuant to a written agreement subsequently made with a specified prosecutor, the offender has assisted or offered to assist the investigator or prosecutor of any offence,
- but this is subject to subsection (2).
- (2) A case is not eligible for review under this section if—
- (a) the sentence was discounted and the offender has not given the assistance offered in accordance with the written agreement by virtue of which it was discounted, or
  - (b) the offence was one for which the sentence was fixed by law and the offender did not plead guilty to it.
- (3) A specified prosecutor may at any time refer a case back to the Crown Court if—
- (a) the case is eligible for review under this section, and

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- (b) the prosecutor considers that 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) 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.
- (6) Nothing in—
- (a) any of the provisions listed in section 399(b) or (c) (minimum sentences in certain circumstances), or
  - (b) section 321 (and Schedule 21) (determination of minimum term in relation to mandatory life sentence),
- affects the court’s power under subsection (5).
- (7) Subsections (8) to (11) apply where a sentence is substituted under subsection (5).
- (8) The court must state in open court—
- (a) the fact that the substitute sentence is a discounted sentence, and
  - (b) the original maximum.
- This is subject to subsection (10).
- (9) Section 52(2) or, as the case may be, 322(4) (requirement to explain reasons for sentence or other order) applies where a sentence is imposed under subsection (5).
- But this is subject to subsection (10).
- (10) Where the court considers that it would not be in the public interest to disclose that the substitute sentence is a discounted sentence —
- (a) subsection (7) does not apply;
  - (b) the court must give a written statement of the matters specified in subsection (8)(a) and (b) to—
    - (i) the prosecutor, and
    - (ii) the offender;
  - (c) section 52(2) or, as the case may be, 322(4) does not apply to the extent that the explanation would disclose that the substitute sentence is a discounted sentence.
- (11) Any part of the sentence to which the referral relates which the offender has already served must be taken into account in determining when the substitute sentence has been served.