



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.

References under this Chapter: further provision

389 References under sections 387 and 388: appeals

- (1) Where a reference is made under section 387 or 388—
 - (a) the person in respect of whom the reference is made, or
 - (b) the specified prosecutor,

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may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the decision of the Crown Court.

- (2) Section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from the criminal division of the Court of Appeal) does not prevent an appeal to the Supreme Court under this section.
- (3) In relation to any proceedings under this section, the Secretary of State may by regulations make provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).
- (4) Regulations under this section are subject to the negative resolution procedure.

390 Proceedings under section 387 or 388: exclusion of public

- (1) This section applies to—
 - (a) any proceedings relating to a reference made under section 387 or 388, 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 considers appropriate—
 - (a) to exclude from the proceedings any person who does not fall within subsection (4);
 - (b) to prohibit the publication of any matter relating to the proceedings (including the fact that the reference has been made).
- (3) The court may make an order under subsection (2) only if the court considers that the order is—
 - (a) necessary to protect the safety of any person, and
 - (b) 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.

391 Proceedings under section 387 or 388: use of live link

Section 57E of the Crime and Disorder Act 1998 (use of live link in sentencing hearings) applies to hearings relating to a reference under section 387 or 388 as it applies to sentencing hearings.

392 Interpretation of Chapter

- (1) This section applies for the purposes of this Chapter.
- (2) A discounted sentence is a sentence passed in pursuance of—

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- (a) section 74, or
- (b) section 388.

(3) References—

- (a) to a written agreement are to an agreement made in writing with a specified prosecutor;
- (b) to a specified prosecutor are to be read in accordance with section 71 of the Serious Organised Crime and Police Act 2005 (assistance by offender: immunity from prosecution).