



# Criminal Procedure and Investigations Act 1996

## 1996 CHAPTER 25

### PART VII

#### MISCELLANEOUS AND GENERAL

##### *Derogatory assertions*

#### **58 Orders in respect of certain assertions**

- (1) This section applies where a person has been convicted of an offence and a speech in mitigation is made by him or on his behalf before—
  - (a) a court determining what sentence should be passed on him in respect of the offence, or
  - (b) a magistrates' court determining whether he should be committed to the Crown Court for sentence.
- (2) This section also applies where a sentence has been passed on a person in respect of an offence and a submission relating to the sentence is made by him or on his behalf before—
  - (a) a court hearing an appeal against or reviewing the sentence, or
  - (b) a court determining whether to grant leave to appeal against the sentence.
- (3) Where it appears to the court that there is a real possibility that an order under subsection (8) will be made in relation to the assertion, the court may make an order under subsection (7) in relation to the assertion.
- (4) Where there are substantial grounds for believing—
  - (a) that an assertion forming part of the speech or submission is derogatory to a person's character (for instance, because it suggests that his conduct is or has been criminal, immoral or improper), and
  - (b) that the assertion is false or that the facts asserted are irrelevant to the sentence,

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the court may make an order under subsection (8) in relation to the assertion.

- (5) An order under subsection (7) or (8) must not be made in relation to an assertion if it appears to the court that the assertion was previously made—
- (a) at the trial at which the person was convicted of the offence, or
  - (b) during any other proceedings relating to the offence.
- (6) Section 59 has effect where a court makes an order under subsection (7) or (8).
- (7) An order under this subsection—
- (a) may be made at any time before the court has made a determination with regard to sentencing;
  - (b) may be revoked at any time by the court;
  - (c) subject to paragraph (b), shall cease to have effect when the court makes a determination with regard to sentencing.
- (8) An order under this subsection—
- (a) may be made after the court has made a determination with regard to sentencing, but only if it is made as soon as is reasonably practicable after the making of the determination;
  - (b) may be revoked at any time by the court;
  - (c) subject to paragraph (b), shall cease to have effect at the end of the period of 12 months beginning with the day on which it is made;
  - (d) may be made whether or not an order has been made under subsection (7) with regard to the case concerned.
- (9) For the purposes of subsections (7) and (8) the court makes a determination with regard to sentencing—
- (a) when it determines what sentence should be passed (where this section applies by virtue of subsection (1)(a));
  - (b) when it determines whether the person should be committed to the Crown Court for sentence (where this section applies by virtue of subsection (1)(b));
  - (c) when it determines what the sentence should be (where this section applies by virtue of subsection (2)(a));
  - (d) when it determines whether to grant leave to appeal (where this section applies by virtue of subsection (2)(b)).

## **59 Restriction on reporting of assertions**

- (1) Where a court makes an order under section 58(7) or (8) in relation to any assertion, at any time when the order has effect the assertion must not—
- (a) be published in Great Britain in a written publication available to the public, or
  - (b) be included in a relevant programme for reception in Great Britain.
- (2) In this section—
- “relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990;
- “written publication” includes a film, a soundtrack and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

- (3) For the purposes of this section an assertion is published or included in a programme if the material published or included—
- (a) names the person about whom the assertion is made or, without naming him, contains enough to make it likely that members of the public will identify him as the person about whom it is made, and
  - (b) reproduces the actual wording of the matter asserted or contains its substance.

## **60 Reporting of assertions: offences**

- (1) If an assertion is published or included in a relevant programme in contravention of section 59, each of the following persons is guilty of an offence—
- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
  - (b) in the case of publication in any other form, the person publishing the assertion;
  - (c) in the case of an assertion included in a relevant programme, any body corporate engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.
- (3) Where a person is charged with an offence under this section it is a defence to prove that at the time of the alleged offence—
- (a) he was not aware, and neither suspected nor had reason to suspect, that an order under section 58(7) or (8) had effect at that time, or
  - (b) he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the assertion in question.
- (4) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person purporting to act in any such capacity,
- he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) In relation to a body corporate whose affairs are managed by its members “director” in subsection (4) means a member of the body corporate.
- (6) Subsections (2) and (3) of section 59 apply for the purposes of this section as they apply for the purposes of that.

## **61 Reporting of assertions: commencement and supplementary**

- (1) Section 58 applies where the offence mentioned in subsection (1) or (2) of that section is committed on or after the appointed day.
- (2) The reference in subsection (1) to the appointed day is to such day as is appointed for the purposes of this section by the Secretary of State by order.

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- (3) Nothing in section 58 or 59 affects any prohibition or restriction imposed by virtue of any other enactment on a publication or on matter included in a programme.
- (4) Nothing in section 58 or 59 affects section 3 of the Law of Libel Amendment Act 1888 (privilege of newspaper reports of court proceedings).
- (5) Section 8 of the Law of Libel Amendment Act 1888 (order of judge required for prosecution for libel published in a newspaper) does not apply to a prosecution for an offence under section 60.
- (6) In section 159 of the Criminal Justice Act 1988 (appeal to Court of Appeal against orders restricting reports etc.) in subsection (1) the following paragraph shall be inserted after paragraph (a)—
  - “(aa) an order made by the Crown Court under section 58(7) or (8) of the Criminal Procedure and Investigations Act 1996 in a case where the Court has convicted a person on a trial on indictment;”.