

# **SERIOUS ORGANISED CRIME AND POLICE ACT 2005**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### **Part 2: Investigations, prosecutions, proceedings and proceeds of crime**

#### *Chapter 2: Offenders assisting investigations and prosecutions*

171. This chapter creates a statutory framework to clarify and strengthen the current common law provisions that provide for immunity and sentence reductions for defendants who co-operate in the investigation and prosecution of their criminal colleagues.

#### *Section 71: Assistance by offender: immunity from prosecution*

172. This section provides for a designated prosecutor from the Crown Prosecution Service, the Revenue and Customs Prosecutions Office, the Serious Fraud Office or the Northern Ireland Director of Public Prosecutions office to grant a person a conditional immunity from prosecution. The immunity notice itself must be written and specify the offences for which the person will be immune from prosecution in England and Wales or Northern Ireland. The notice will normally include conditions, breach of which would lead to the immunity being revoked.

#### *Section 72: Assistance by offender: undertakings as to use of evidence*

173. This section provides for a designated prosecutor (as specified in *subsection (4)* of section 71) to grant a person a conditional undertaking that any information that individual provides will not be used in any criminal proceedings, or proceedings under Part 5 of the Proceeds of Crime Act 2002, against that person in England and Wales or Northern Ireland. The notice containing the undertaking must be in writing and specify the circumstances in which the information provided will not be used against that person. The notice will normally include conditions, breach of which would lead to the undertaking being revoked.

#### *Section 73: Assistance by defendant: reduction in sentence*

174. This section provides that the Crown Court, when sentencing defendants who plead guilty in proceedings before that court and who have entered into a written agreement to provide assistance in any investigation or prosecution, can take account of the nature and extent of that assistance. *Subsection (3)* requires the court in passing a lower sentence to set out what the sentence would otherwise have been, unless (*subsection (4)*) it is in the public interest not to do so (in which case the court must provide a written notice of what the sentence would have been to the prosecutor and the defendant). *Subsection (5)* provides that this section applies to offences for which there is a minimum sentence and also to sentences fixed by law in determining the

minimum period of imprisonment that a person must serve. The intention is that court can in exceptional circumstances exercise its power under *subsection (2)* to reduce a person's sentence or minimum period of imprisonment, as the case maybe, to reflect the assistance provided or offered. *Subsection (6)* provides that the court's decision (or not) to take into account the assistance provided or offered by a person does not affect any other power it may have when determining that person's sentence or minimum term for imprisonment. *Subsection (7)* disapplies the specified provisions, which would otherwise require the court to explain the reasons for passing its sentence on a person, where the court has decided (under *subsection (4)*) that it is not in the public interest to make such an explanation.

***Section 74: Assistance by defendant: review of sentence***

175. This section provides that where a person is still serving a sentence imposed by the Crown Court and one of the conditions in *subsection (2)* applies, a specified prosecutor may refer the person's sentence back to the court for review (where possible to the original sentencing judge), where he considers it is in the interests of justice to do so. The *subsection (2)* conditions are that the defendant received a reduced sentence on the basis of an agreement to assist, but then knowingly failed to give that assistance; or the defendant gives or agrees to give assistance after they have been sentenced. *Subsection (5)* gives the court a power to substitute a greater sentence where it considers the person has failed to assist (not exceeding the sentence it could have passed but for the agreement). However, where a person has provided assistance or offered to assist, *subsection (6)* gives the court a power to take that into account and to reduce the individual's sentence accordingly. *Subsections (8)* and *(9)* provide that normal avenues of appeal against sentence apply. *Subsection (13)* ensures that where a person was convicted of an offence for which the sentence was fixed by law, they must have pleaded guilty if their sentence is to be referred back to court for a review under this section.

***Section 75: Proceedings under section 74: exclusion of public***

176. This section provides that a court in dealing with a defendant under section 74 can exclude people from the court or impose reporting restrictions, but only to the extent that it is necessary to protect the safety of any person and it is in the interests of justice. The court cannot exclude court staff, parties to the proceedings (or their legal representatives) or others directly concerned with the proceedings.