



Sentencing Act 2020

2020 CHAPTER 17

SECOND GROUP OF PARTS Provisions applying to sentencing courts generally

PART 3 **E+W**

PROCEDURE

CHAPTER 2 **E+W+S**

DEROGATORY ASSERTION ORDERS

38 Derogatory assertion order and restriction on reporting of assertions **E+W+S**

- (1) While a derogatory assertion order or interim derogatory assertion order has effect in relation to an assertion, 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 Chapter—

“derogatory assertion order” means an order made under subsection (3) of section 39 in relation to an assertion to which that section applies;

“interim derogatory assertion order” means an order made under subsection (4) of section 39 in relation to an assertion to which that section applies.

Commencement Information

II S. 38 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

39 Order in respect of certain assertions **E+W**

- (1) This section applies to an assertion that forms part of a speech in mitigation made by or on behalf of an offender before—

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- (a) a court determining what sentence should be passed on the offender in respect of an offence, or
 - (b) a magistrates' court determining whether the offender should be committed to the Crown Court for sentence.
- (2) This section also applies to an assertion that forms part of a submission relating to a sentence which is made by or on behalf of the offender 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) The court may make a derogatory assertion order in relation to an assertion to which this section applies where there are substantial grounds for believing—
 - (a) that the assertion is derogatory to a person's character (for instance, because it suggests that the person's 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.
- (4) Where it appears to the court that there is a real possibility that a derogatory assertion order will be made in relation to an assertion, the court may make an interim derogatory assertion order in relation to it (see subsection (8)).
- (5) No derogatory assertion order or interim derogatory assertion order may be made in relation to an assertion which it appears to the court was previously made—
 - (a) at the trial at which the offender was convicted of the offence, or
 - (b) during any other proceedings relating to the offence.
- (6) Section 38(1) has effect where a court makes a derogatory assertion order or an interim derogatory assertion order.
- (7) A derogatory assertion order—
 - (a) may be made after the court has made the relevant determination, but only if it is made as soon as is reasonably practicable after the determination has been made;
 - (b) subject to subsection (10), ceases to have effect at the end of the period of 12 months beginning with the day on which it is made;
 - (c) may be made whether or not an interim derogatory assertion order has been made with regard to the case concerned.
- (8) An interim derogatory assertion order—
 - (a) may be made at any time before the court makes the relevant determination, and
 - (b) subject to subsection (10), ceases to have effect when the court makes the relevant determination.
- (9) For the purposes of subsections (7) and (8) “relevant determination” means the determination of—
 - (a) the sentence (where this section applies by virtue of subsection (1)(a));
 - (b) whether the offender should be committed to the Crown Court for sentence (where this section applies by virtue of subsection (1)(b));
 - (c) what the sentence should be (where this section applies by virtue of subsection (2)(a));
 - (d) whether to grant leave to appeal (where this section applies by virtue of subsection (2)(b)).

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- (10) A derogatory assertion order or interim derogatory assertion order may be revoked at any time by the court which made it.

Commencement Information

I2 S. 39 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

40 Reporting of assertions: offences **E+W+S**

- (1) If an assertion is published or included in a relevant programme in contravention of section 38, 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) in England and Wales, a fine;
 - (b) in Scotland, 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 the person—
- (a) was not aware, and neither suspected nor had reason to suspect, that a derogatory assertion order or interim derogatory assertion order had effect at that time, or
 - (b) 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,
- that person 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.

Commencement Information

I3 S. 40 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

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41 Reporting of assertions: supplementary **E+W+S**

(1) In sections 38 and 40—

“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.

(2) For the purposes of sections 38 and 40 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 the person, contains enough to make it likely that members of the public will identify that person as the person about whom it is made, and

(b) reproduces the actual wording of the matter asserted or contains its substance.

(3) Nothing in section 38 or 39 affects any prohibition or restriction imposed by virtue of any other enactment on a publication or on matter included in a programme.

Commencement Information

I4 S. 41 in force at 1.12.2020 by [S.I. 2020/1236](#), reg. 2

Changes to legislation:

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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. 34A and cross-heading inserted by [2020 c. 17 Sch. 22 para. 1](#)
- s. 80(3)(f) inserted by [2021 c. 17 s. 54\(2\)](#)
- s. 179(4A) inserted by [2020 c. 17 Sch. 22 para. 11\(1\)](#)
- s. 179A inserted by [2020 c. 17 Sch. 22 para. 12\(2\)](#)
- s. 179A(1)(b)(i)(ii) substituted for words by [2020 c. 17 Sch. 22 para. 16\(2\)](#)
- s. 180(5) inserted by [2020 c. 17 Sch. 22 para. 11\(2\)](#)
- s. 186(8A) inserted by [2020 c. 17 Sch. 22 para. 11\(3\)](#)
- s. 202(1A)(1B) inserted by [2020 c. 17 Sch. 22 para. 13\(b\)](#)
- s. 202(1A)(b)(i)(ii) substituted for words by [2020 c. 17 Sch. 22 para. 17\(2\)](#)
- s. 204A inserted by [2020 c. 17 Sch. 22 para. 14\(2\)](#)
- s. 204A(3)(c)(i)(ii) substituted for words by [2020 c. 17 Sch. 22 para. 18\(2\)](#)
- s. 215(1A)(1B) inserted by [2022 c. 32 s. 149\(2\)\(a\)](#)
- s. 215(2A) inserted by [2022 c. 32 s. 149\(2\)\(c\)](#)
- s. 226(2)(ba) and word substituted for s. 226(2)(c)(d) by [2020 c. 17 Sch. 22 para. 43](#)
- s. 230(3A) and words inserted by [2020 c. 17 Sch. 22 para. 2](#)
- s. 234(1)(aa) inserted by [2020 c. 17 Sch. 22 para. 27\(1\)\(b\)](#)
- s. 234(1)(aa) omitted by [2020 c. 17 Sch. 22 para. 28\(1\)](#)
- s. 235(3A) inserted by [2020 c. 17 Sch. 22 para. 27\(2\)](#)
- s. 236(2A) inserted by [2020 c. 17 Sch. 22 para. 29\(3\)](#)
- s. 236(2A)(b) word substituted by [2020 c. 17 Sch. 22 para. 47\(b\)](#)
- s. 301(1A)(1B) inserted by [2022 c. 32 s. 149\(3\)\(a\)](#)
- s. 301(2A) inserted by [2022 c. 32 s. 149\(3\)\(c\)](#)
- s. 323(2A)-(2C) inserted by [2020 c. 17 Sch. 22 para. 85\(3\)](#)
- s. 343(4) inserted by [2022 c. 32 s. 178\(2\)](#)
- s. 348A348B inserted by [2022 c. 32 s. 178\(4\)](#)
- s. 350(6C)(6D) inserted by [2022 c. 32 s. 178\(5\)](#)
- s. 387A inserted by [2021 c. 17 s. 54\(3\)](#)
- s. 397A inserted by [2020 c. 17 Sch. 22 para. 15](#)
- s. 397A(4)(a)(ia) inserted by [2020 c. 17 Sch. 22 para. 19\(2\)\(b\)](#)
- s. 397A(4)(a)(i) words omitted by [2020 c. 17 Sch. 22 para. 19\(2\)\(a\)](#)
- s. 397A(5) words inserted by [2020 c. 17 Sch. 22 para. 19\(3\)](#)
- s. 397A(6)(7) inserted by [2020 c. 17 Sch. 22 para. 19\(4\)](#)
- s. 418(2A) inserted by [2021 c. 11 Sch. 13 para. 43\(5\)](#)
- Sch. 1 para. 13A inserted by [2020 c. 17 Sch. 22 para. 4\(a\)](#)
- Sch. 10 para. 10(5)(d) inserted by [2020 c. 17 Sch. 22 para. 21\(2\)\(a\)](#)
- Sch. 10 para. 10(9A) inserted by [2020 c. 17 Sch. 22 para. 21\(2\)\(c\)](#)
- Sch. 10 para. 11(2)(d) inserted by [2020 c. 17 Sch. 22 para. 21\(3\)\(a\)](#)
- Sch. 10 para. 11(6A) inserted by [2020 c. 17 Sch. 22 para. 21\(3\)\(c\)](#)
- Sch. 10 para. 10(9A) omitted by [2020 c. 17 Sch. 22 para. 74\(1\)\(b\)](#)
- Sch. 10 para. 11(6A) omitted by [2020 c. 17 Sch. 22 para. 75\(1\)\(b\)](#)
- Sch. 10 para. 10(5)(d) words substituted by [2020 c. 17 Sch. 22 para. 25\(a\)](#)
- Sch. 10 para. 10(5)(d) words substituted by [2020 c. 17 Sch. 22 para. 74\(1\)\(a\)](#)
- Sch. 10 para. 11(2)(d) words substituted by [2020 c. 17 Sch. 22 para. 26\(a\)](#)
- Sch. 10 para. 11(2)(d) words substituted by [2020 c. 17 Sch. 22 para. 75\(1\)\(a\)](#)
- Sch. 17A para. 24A inserted by [2020 c. 17, Sch. 22 para. 79A \(as inserted\) by 2021 c. 11 Sch. 13 para. 11\(20\)\(m\)](#)
- Sch. 18 para. 26A and cross-heading inserted by [2020 c. 17 Sch. 22 para. 80](#)
- Sch. 19 para. 22A and cross-heading inserted by [2020 c. 17 Sch. 22 para. 84](#)

- Sch. 26 para. 13A inserted by 2021 c. 11 Sch. 13 para. 43(7)(a)
- Sch. 26 para. 15(a)(iii) inserted by 2021 c. 11 Sch. 13 para. 43(7)(c)
- Sch. 26 para. 19(a)(ia) inserted by 2021 c. 11 Sch. 13 para. 43(7)(e)(i)
- Sch. 26 para. 20(c) inserted by 2021 c. 11 Sch. 13 para. 43(7)(f)
- Sch. 26 para. 20A inserted by 2021 c. 11 Sch. 13 para. 43(7)(g)
- Sch. 26 para. 24A inserted by 2021 c. 11 Sch. 13 para. 43(7)(i)
- Sch. 26 para. 20A(za) inserted by 2022 c. 32 s. 129(3)(d)
- Sch. 27 para. 16(2)(a)(b) substituted for words by 2021 c. 11 Sch. 13 para. 43(8)