

**CROWN PROSECUTION SERVICE
HAMPSHIRE and ISLE of WIGHT**

**IMMUNITY FROM PROSECUTION
RESTRICTED USE UNDERTAKING
SENTENCE REVIEWS**

**SECTIONS 71 to 75 - SERIOUS ORGANISED CRIME
and POLICE ACT 2005**

INFORMATION FOR PROSECUTING COUNSEL

INTRODUCTION

- 1 Sections 71 to 75 of SOCPA establish a statutory framework for regulating agreements made with offenders who offer to assist, or have assisted, with the investigation or prosecution of offences committed by others.
- 2 An agreement may be not to prosecute the person (an immunity notice); or not to use certain evidence against the person (a restricted use undertaking); or an agreement to provide assistance in anticipation of a reduction in sentence (a witness assistance agreement).
- 3 The provisions came into effect on 1 April 2006.

LEVELS OF DECISION MAKING

- 4 Immunity notices and restricted use undertakings may be given only by the Director in person or a number of other senior CPS Heads of Units in Headquarters. If approached by the defence for an immunity notice or restricted use undertaking, counsel should refer the issue to a District Crown Prosecutor, or in their absence, to the Head of the Special Casework Unit, Head of the Business Development Unit or the Chief Crown Prosecutor.
- 5 Witness assistance agreements may be entered into by the Chief Crown Prosecutor or a Level E lawyer nominated by the CCP. All level E lawyers in the Area have been nominated. Counsel should refer any request from the defence for a witness assistance agreement to a District Crown Prosecutor, or in their absence, to the Head of the Special Casework Unit, Head of the Business Development Unit or the Chief Crown Prosecutor.

IMMUNITY NOTICE

- 6 Immunity notices may be given in relation only to offences that have already been committed. Prospective immunity for future offending cannot be given. The grant of an immunity notice will be rare and is likely to be conditional upon the person

providing full information and giving truthful evidence in any proceedings arising from the information that is provided.

RESTRICTED USE UNDERTAKING

- 7 A restricted use undertaking is an undertaking not to use information provided by the witness to prosecute him¹. Again, it is likely to be conditional upon the person providing full information and giving truthful evidence in any proceedings arising from the information that is provided.

AGREEMENT WITH A COOPERATING DEFENDANT

- 8 A witness assistance agreement with a cooperating defendant may be entered into where a defendant wishes to admit his involvement in criminality and assist in the investigation and prosecution of offences committed by others. This will include giving truthful evidence in any proceedings arising from the information that is provided.
- 9 On the basis of the agreement, the defendant may receive a discounted sentence². The judge must announce **in open court**³ the sentence that the defendant would have received in the absence of the agreement.
- 10 The agreement will provide that the defendant may be brought back to court and the sentence returned to the level before discount if the defendant fails, even in part, to fulfil his part of the agreement.
- 11 A defendant may also have his sentence reviewed if he offers to provide assistance after his sentence has been passed and where he provides more assistance than was included in the agreement.

TEXTS

- 12 The current arrangements for confidential texts to be provided to sentencing judges, to reflect assistance already provided to the police, will continue but in relation only to information provided about criminality other than the offence for which the defendant is to be sentenced.
- 13 Where the defendant wishes to give information about others' involvement in the offences for which he is to be sentenced, a witness assistance agreement would be more appropriate.

HAMPSHIRE CASEWORK COMMITTEE
April 2006

¹ He may be prosecuted on other evidence, however.

² This is available only in the Crown Court, but a defendant may be committed for sentence for this purpose.

³ The public may be excluded from the court and press restrictions may be imposed.