



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART IV

#### REVIEWS OF SENTENCING

##### Modifications etc. (not altering text)

- C1** Pt. IV (ss. 35-36) applied (E.W.)(1.3.1994) by [S.I. 1994/119](#), [art.2](#) (which Order was revoked (16.5.2006) by [S.I. 2006/1116](#), [art. 3](#), [Sch. 2](#))
- C2** Pt. IV (ss. 35-36) applied (E.W.) (8.2.1995) by [S. I. 1995/10](#), [art.2](#) (which Order was revoked (16.5.2006) by [S.I. 2006/1116](#), [art. 3](#), [Sch. 2](#))
- Pt. IV (ss. 34-36) applied (8.4.1996) by [S.R. 1996/40](#), [art. 2](#)
- Pt. IV (ss. 34-36) applied (21.8.2000) by [S.I. 2000/1924](#), [art. 2](#) (which Order was revoked (16.5.2006) by [S.I. 2006/1116](#), [art. 3](#), [Sch. 2](#))
- C3** Pt IV (ss. 35-36) applied (E.W.) (13.10.2003) by [The Criminal Justice Act 1988 \(Reviews of Sentencing\) Order 2003 \(S.I. 2003/2267\)](#), [art. 2](#) (which Order was revoked (16.5.2006) by [S.I. 2006/1116](#), [art. 3](#), [Sch. 2](#))
- Pt IV (ss. 35-36) applied (16.5.2006) by [The Criminal Justice Act 1988 \(Reviews of Sentencing\) Order 2006 \(S.I. 2006/1116\)](#), [art. 2](#), [Sch. 1](#) (as amended (29.1.2018) by [The Criminal Justice Act 1988 \(Reviews of Sentencing\) \(Amendment No. 2\) Order 2017 \(S.I. 2017/1328\)](#), [arts. 1\(1\), 2](#))

### 35 Scope of Part IV.

- (1) A case to which this Part of this Act applies may be referred to the Court of Appeal under section 36 below.
- (2) Subject to Rules of Court, the jurisdiction of the Court of Appeal under section 36 below shall be exercised by the criminal division of the Court, and references to the Court of Appeal in this Part of this Act shall be construed as references to that division.
- (3) This Part of this Act applies to any case <sup>F1</sup>—
  - (a) of a description specified in an order under this section; or
  - (b) in which sentence is passed on a person—

*Status: Point in time view as at 04/04/2005.*

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- (i) for an offence triable only on indictment; or  
(ii) for an offence of a description specified in an order under this section]
- (4) The Secretary of State may by order made by statutory instrument provide that this Part of this Act shall apply to any case [<sup>F2</sup>of a description specified in the order or to any case]in which sentence is passed on a person for an offence triable either way of a description specified in the order.
- (5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this Part of this Act “sentence” has the same meaning as in the <sup>M1</sup>Criminal Appeal Act 1968, except that it does not include an interim hospital order under Part III of the <sup>M2</sup>Mental Health Act 1983, and “sentencing” shall be construed accordingly.
- (7) In its application to Northern Ireland, this section shall have effect subject to the modifications set out in subsections (8) to (11).
- (8) Subsection (2) shall be omitted.
- (9) In this section—  
“offence triable only on indictment” means an offence punishable only on conviction on indictment;  
“offence triable either way” means an offence punishable on conviction on indictment or on summary conviction.
- (10) For subsection (5) there shall be substituted—  
“(5) An order under subsection (4) above shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (and not a statutory instrument), and any such statutory rule shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument, and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.”.
- (11) The references in subsection (6) to the <sup>M3</sup>Criminal Appeal Act 1968 and Part III of the <sup>M4</sup>Mental Health Act 1983 shall be respectively construed as references to Part I of the <sup>M5</sup>Criminal Appeal (Northern Ireland) Act 1980 and Part III of the <sup>M6</sup>Mental Health (Northern Ireland) Order 1986.

#### Textual Amendments

- F1** S. 35(3)(a)(b)(i)(ii) substituted (9.1.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 34(a)**; S.I. 1994/3192, **art. 2**, Sch.
- F2** Words in s. 35(4) inserted (9.1.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 34(b)**; S.I. 1994/3192, **art. 2**, Sch.

#### Marginal Citations

- M1** 1968 c. 19.  
**M2** 1983 c. 20.  
**M3** 1968 c. 19.  
**M4** 1983 c. 20.  
**M5** 1980 c. 47.  
**M6** S.I. 1986/4 (N.I.).

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## 36 Reviews of sentencing.

- (1) If it appears to the Attorney General—
  - (a) that the sentencing of a person in a proceeding in the Crown Court has been unduly lenient; and
  - (b) that the case is one to which this Part of this Act applies,  
he may, with the leave of the Court of Appeal, refer the case to them for them to review the sentencing of that person; and on such a reference the Court of Appeal may—
    - (i) quash any sentence passed on him in the proceeding; and
    - (ii) in place of it pass such sentence as they think appropriate for the case and as the court below had power to pass when dealing with him.
- (2) Without prejudice to the generality of subsection (1) above, the condition specified in paragraph (a) of that subsection may be satisfied if it appears to the Attorney General that the judge
  - [<sup>F3</sup>(a) erred in law as to his powers of sentencing; or
  - (b) failed to impose a sentence required by—
    - (i) section 51A(2) of the Firearms Act 1968;
    - (ii) section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000; or
    - (iii) any of sections 225 to 228 of the Criminal Justice Act 2003.]
- (3) For the purposes of this Part of this Act any two or more sentences are to be treated as passed in the same proceeding if they would be so treated for the purposes of section [<sup>F4</sup>11] of the Criminal Appeal Act 1968.
- [<sup>F5</sup>(3A) Where a reference under this section relates to an order under subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Court of Appeal shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.]
- (4) No judge shall sit as a member of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to, a reference under this section of a sentence passed by himself.
- (5) Where the Court of Appeal have concluded their review of a case referred to them under this section the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceeding to the House of Lords for their opinion, and the House shall consider the point and give their opinion on it accordingly, and either remit the case to the Court of Appeal to be dealt with or deal with it themselves; and section 35(1) of the Criminal Appeal Act 1968 (composition of House for appeals) shall apply also in relation to any proceedings of the House under this section.
- (6) A reference under subsection (5) above shall be made only with the leave of the Court of Appeal or the House of Lords; and leave shall not be granted unless it is certified by the Court of Appeal that the point of law is of general public importance and it appears to the Court of Appeal or the House of Lords (as the case may be) that the point is one which ought to be considered by that House.
- (7) For the purpose of dealing with a case under this section the House of Lords may exercise any powers of the Court of Appeal.

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- (8) The supplementary provisions contained in Schedule 3 to this Act shall have effect.
- (9) In the application of this section to Northern Ireland—
- (a) any reference to the Attorney General shall be construed as a reference to the Attorney General for Northern Ireland;
  - (b) the references to sections [F611 and 35(1)] of the M7Criminal Appeal Act 1968 shall be construed as references to sections 10(2) and 33(1) of the M8Criminal Appeal (Northern Ireland) Act 1980, respectively.

#### Textual Amendments

- F3** S. 36(2)(a)(b) substituted (4.4.2005) for words in s. 36(2) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 304, 336, [Sch. 32 Pt. 1 para. 46](#); S.I. 2005/950, [art. 2\(1\)](#), Sch. 1 para. 23, 42(21) (subject to [art. 2\(2\)](#), Sch. 2 (as amended by S.I. 2005/2122, [art. 2](#)))
- F4** Words in s. 36(3) substituted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 331, 336, [Sch. 36 Pt. 6 para. 96\(a\)](#); S.I. 2005/950, [art. 2\(1\)](#), Sch. 1 para. 43(c) (subject to [art. 2\(2\)](#), Sch. 2 (as amended by S.I. 2005/2122, [art. 2](#)))
- F5** S. 36(3A) inserted (18.12.2003) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 272(1), 336(1)(12)
- F6** Words in s. 36(9)(b) substituted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 331, 336, [Sch. 36 Pt. 6 para. 96\(b\)](#); S.I. 2005/950, [art. 2\(1\)](#), Sch. 1 para. 43(c) (subject to [art. 2\(2\)](#), Sch. 2 (as amended by S.I. 2005/2122, [art. 2](#)))

#### Modifications etc. (not altering text)

- C4** S. 36 applied (18.12.2003) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 276, 336(1)(12), [Sch. 22 para. 15](#)
- C5** S. 36 applied (12.7.2007) by [The Criminal Justice Act 2003 \(Reviews of Sentencing\) \(Consequential and Supplementary Provisions\) Order 2007 \(S.I. 2007/1762\)](#), [art. 2](#)

#### Marginal Citations

- M7** 1968 c. 19.
- M8** 1980 c. 47.

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