



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART IV

#### REVIEWS OF SENTENCING

#### 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—
    - (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.

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**Changes to legislation:** Criminal Justice Act 1988, Section 35 is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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(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.

[<sup>F3</sup>(9A) Any reference in subsection (4) to the Secretary of State must be construed as a reference to the Department of Justice in Northern Ireland.]

(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 [<sup>F4</sup>such order shall be subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954)].”.

(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.
- F3** S. 35(9A) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 30(2)** (with arts. 28-31)
- F4** Words in s. 35(10) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 14 para. 30(3)** (with arts. 28-31)

#### 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.).

**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. 36(2)(b)(v) and word inserted by [2019 c. 17 s. 13\(3\)\(b\)](#)
- s. 36(3A)(3B) substituted for s. 36(3A) by [2008 c. 4 s. 46\(2\)](#)
- s. 41(4A) inserted by [2004 c. 28 Sch. 10 para. 28](#)
- s. 139AZA(1)(a)(iii) and word inserted by [2019 c. 17 s. 13\(4\)\(b\)](#)