



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART IV

#### REVIEWS OF SENTENCING

#### 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 erred in law as to his powers of sentencing [<sup>F1</sup>or failed to impose a sentence required by [<sup>F2</sup>section 109(2), 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000]].
- (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 10 of the Criminal Appeal Act 1968.

[<sup>F3</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.]

*Status: Point in time view as at 18/12/2003. This version of this provision has been superseded.*

*Changes to legislation: Criminal Justice Act 1988, Section 36 is up to date with all changes known to be in force on or before 18 March 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)*

- (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.
- (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 10 and 35(1) of the <sup>M1</sup>Criminal Appeal Act 1968 shall be construed as references to sections 10(2) and 33(1) of the <sup>M2</sup>Criminal Appeal (Northern Ireland) Act 1980, respectively.

#### Textual Amendments

- F1** Words in s. 36(2) inserted (1.10.1997 in relation to sentences required by s. 2(2) or 3(2) of the amending Act and 1.12.1999 so far as not already in force) by 1997 c. 43, s. 55, **Sch. 4 para. 13**; S.I. 1997/2200, **arts. 2(1)(2), 5**; S.I. 1999/3096, **art. 2(e)**.
- F2** Words in s. 36(2) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 102**
- F3** S. 36(3A) inserted (18.12.2003) by Criminal Justice Act 2003 (c. 44), **ss. 272(1), 336(1)(12)**

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

- C1** S. 36 applied (18.12.2003) by Criminal Justice Act 2003 (c. 44), ss. 276, 336(1)(12), **Sch. 22 para. 15**

#### Marginal Citations

- M1** 1968 c. 19.  
**M2** 1980 c. 47.

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