



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
- ^[F1](a) erred in law as to his powers of sentencing; or
 - (b) failed to impose a sentence required by—
 - ^[F2](zi) section 1A(5) of the Prevention of Crime Act 1953;]
 - (i) section 51A(2) of the Firearms Act 1968;
 - ^[F3](ia) section 139AA(7) of this Act;]
 - (ii) section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000; ^{F4} . . .
 - (iii) ^[F5]section^[F6]224A,] 225(2) or 226(2) of the Criminal Justice Act 2003.]
- ^[F7]or
- (iv) under section 29(4) or (6) of the Violent Crime Reduction Act 2006.]

Status: Point in time view as at 14/01/2015. This version of this provision has been superseded.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)

- (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 [F811] of the Criminal Appeal Act 1968.
- [F9(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 [F10the Supreme Court for its opinion] , and [F11the Supreme Court shall consider the point and give its opinion] on it accordingly, and either remit the case to the Court of Appeal to be dealt with or [F12itself deal with the case.]
- (6) A reference under subsection (5) above shall be made only with the leave of the Court of Appeal or [F13the Supreme Court] ; 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 [F13the Supreme Court] (as the case may be) that the point is one which ought to be considered by [F13the Supreme Court] .
- (7) For the purpose of dealing with a case under this section the [F14Supreme Court] 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 [F15Director of Public Prosecutions for Northern Ireland];
 - [F16(aa) the reference to section 51A(2) of the Firearms Act 1968 shall be construed as a reference to Article 70(2) of the Firearms (Northern Ireland) Order 2004;
 - (ab) the reference to section 29(4) or (6) of the Violent Crime Reduction Act 2006 shall be construed as a reference to paragraph 2(4) or (5) of Schedule 2 to that Act; F17 . . .]
 - [F18(ac) the reference to any of sections 225 to 229 of the Criminal Justice Act 2003 shall be construed as a reference to either of Articles 13 and 14 of the Criminal Justice (Northern Ireland) Order 2008.]
 - (b) the references to sections [F1911 and 35(1)] of the M1Criminal Appeal Act 1968 shall be construed as references to sections 10(2) and 33(1) of the M2Criminal Appeal (Northern Ireland) Act 1980, respectively.[F20 , [F21and]
 - (c) the reference in subsection (3A) to an order specified in subsection (3B) shall be construed as a reference to an order under Article 5(1) of the Life Sentences (Northern Ireland) Order 2001.[F22and
 - (d) subsection (2)(b) shall be read as if it included a reference to a sentence required by section 7(2) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.]

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Textual Amendments

- F1** 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))
- F2** S. 36(2)(b)(zi) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 26 para. 5(2)**; S.I. 2012/2770, art. 2(f)
- F3** S. 36(2)(b)(ia) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 26 para. 5(3)**; S.I. 2012/2770, art. 2(f)
- F4** Word in s. 36(2)(b)(ii) repealed (6.4.2007) by Violent Crime Reduction Act 2006 (c. 38), ss. 49, 65, 66(4)-(8), Sch. 1 para. 3(2), **Sch. 5**; S.I. 2007/858, **art. 2(g)(n)(iv)**
- F5** Words in s. 36(2)(b)(iii) substituted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 148, 153, **Sch. 26 para. 23**; S.I. 2008/1586, **art. 2**, Sch. 1 para. 48(i)
- F6** Figure in s. 36(2)(b)(iii) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 19 para. 2**; S.I. 2012/2906, art. 2(q)
- F7** S. 36(2)(b)(iv) and preceding word inserted (6.4.2007) by Violent Crime Reduction Act 2006 (c. 38), ss. 49, 66(4)-(8), **Sch. 1 para. 3(2)**; S.I. 2007/858, **art. 2(g)**
- F8** 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))
- F9** S. 36(3A) inserted (18.12.2003) by Criminal Justice Act 2003 (c. 44), **ss. 272(1)**, 336(1)(12)
- F10** Words in s. 36(5) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40, 148, **Sch. 9 para. 48(2)(a)(i)**; S.I. 2009/1604, **art. 2**
- F11** Words in s. 36(5) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40, 148, **Sch. 9 para. 48(2)(a)(ii)**; S.I. 2009/1604, **art. 2**
- F12** Words in s. 36(5) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40, 148, **Sch. 9 para. 48(2)(a)(iii)**; S.I. 2009/1604, **art. 2**
- F13** Words in s. 36(6) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40, 148, **Sch. 9 para. 48(2)(b)**; S.I. 2009/1604, **art. 2**
- F14** Words in s. 36(7) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40, 148, **Sch. 9 para. 48(2)(c)**; S.I. 2009/1604, **art. 2**
- F15** Words in s. 36(9)(a) substituted (with application in accordance with s. 41(1) of the amending Act) by Justice (Northern Ireland) Act 2002 (c. 26), **ss. 41(5)**, 87(1); S.R. 2010/113, art. 2, Sch. para. 12
- F16** S. 36(9)(aa)(ab) inserted (6.4.2007) by Violent Crime Reduction Act 2006 (c. 38), ss. 49, 66(4)-(8), **Sch. 1 para. 3(3)**; S.I. 2007/858, **art. 2(g)**
- F17** Word in s. 36(9)(ab) repealed (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 149, 153, **Sch. 28 Pt. 3**; S.I. 2008/1586, **art. 2**, Sch. 1 para. 50(3)(e)
- F18** S. 36(9)(ac) inserted (N.I.) (15.5.2008) by The Criminal Justice (Northern Ireland) Order S.I. 2008/1216 (N.I. 1), arts. 1, 102, **Sch. 5 para. 6**; S.R. 2008/217, **art. 2**, Sch.
- F19** 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))
- F20** S. 36(9)(c) and preceding word inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 46(3)**, 153; S.I. 2008/1586, **art. 2**, Sch. 1 para. 25
- F21** Word in s. 36(9)(b) omitted (N.I.) (14.1.2015) by virtue of Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), **ss. 7(6)**, 28(2)
- F22** S. 36(9)(d) and preceding word inserted (N.I.) (14.1.2015) by Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2), **ss. 7(6)**, 28(2)

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**

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C2 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

M1 1968 c. 19.

M2 1980 c. 47.

Status:

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