
STATUTORY INSTRUMENTS

2005 No. 384

The Criminal Procedure Rules 2005

PART 70

REFERENCE TO THE COURT OF APPEAL OF UNDULY LENIENT SENTENCE

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Applications

70.1.—(1) Every application for a reference under section 36 of the Criminal Justice Act 1988(1) shall be in writing and shall—

- (a) specify—
 - (i) the name of the offender,
 - (ii) the date on which, and the offence of which, he was convicted,
 - (iii) the sentence passed on him in respect of that offence,
 - (iv) the date on which the sentence was passed (if later than the date under subparagraph (ii)), and
 - (v) the judge by whom, and the location of the Crown Court at which, the sentence was passed; and
- (b) state the reason why it appears to the Attorney General that the sentencing of the offender was unduly lenient.

(1) 1988 c. 33; section 36 was amended by the Crime (Sentences) Act 1997 (c. 43), section 55 and Schedule 4, paragraph 13, by the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), Schedule 9, paragraph 102, and by the Criminal Justice Act 2003 (c. 44), section 272(1), and is amended by the Criminal Justice Act 2003 (c. 44), Schedule 32, Part 1, paragraphs 45 and 46 and Schedule 36, Part 6, paragraphs 96(a) and (b) with effect from a date to be appointed.

(2) An application shall be entitled “Reference under section 36 of the Criminal Justice Act 1988” together with the year and number of the application and the name of the offender.

[Note. Formerly rule 3 of the Criminal Appeal (Reviews of Sentencing) Rules 1989(2).]

Notice of application

70.2. The sending of the application to the Registrar shall constitute the giving of notice of the application for the purpose of paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (notice to be given within 28 days of passing of sentence).

[Note. Formerly rule 4 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]

Registrar’s notice to offender

70.3.—(1) The Registrar shall, as soon as practicable after receiving the application, cause to be served on the offender a copy of it together with a notice which—

- (a) informs him that the result of any reference could be that the court would quash the sentence passed on him in the proceeding and in place of it pass such sentence as they thought appropriate for the case and as the court below had power to pass when dealing with him (including a greater punishment);
- (b) informs him of the effect of paragraph 6 (entitlement of offender to be present at hearing of reference, although he may be in custody), 7 (offender in custody requires leave of court to be present at hearing of application), 8 (power of court to pass sentence on offender who is not present) and 11 (entitlement of offender to reasonable costs out of central funds) of Schedule 3 to the Criminal Justice Act 1988;
- (c) invites him, within such period as the Registrar may specify (being not less than 14 days from the date of service on him of the notice), to serve notice on the Registrar if he wishes—
 - (i) to apply to the court for leave to be present under paragraph 7 of Schedule 3 to the 1988 Act, and
 - (ii) to present any argument to the court on the hearing of the application or, if leave is given, of the reference, and whether to present it in person or by counsel on his behalf;
- (d) draws to his attention the effect of rule 70.7 (supply of documentary and other exhibits); and
- (e) advises him to consult a solicitor as to his position as soon as possible.

(2) The court shall not hear argument by or on behalf of the Attorney General until the period specified by the Registrar has expired unless the offender agrees or has indicated that he does not wish to present any argument to the Court.

[Note. Formerly rule 5 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]

References

70.4.—(1) Every reference shall be in writing and shall—

- (a) contain the information required by rule 70.1(1)(a) to be specified in an application;
- (b) summarise the arguments intended to be put to the court; and
- (c) specify the authorities intended to be cited.

(2) The reference shall bear the same title as the application.

(3) Subject to paragraph (4), the reference shall be sent on behalf of the Attorney General to the Registrar, who shall, as soon as practicable after receiving it, cause to be served a copy of it on the offender.

(4) Where the court gives leave for a case to be referred to it and is satisfied that the document comprising the application also contains the material required by paragraph (1) to be contained in a reference, the court may order that the document be treated for the purpose of this Part as the reference; and in that case paragraph (3) shall not apply.

[Note. Formerly rule 6 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]

Withdrawal or amendment of application or reference

70.5. The Attorney General may withdraw or amend an application or reference at any time before the court have begun the hearing of the application or reference as the case may be, or, after that, and until the court have given their decision, may withdraw or amend the application or reference by leave of the court, and notice of such withdrawal or amendment shall be served on the Registrar and on the offender on behalf of the Attorney General.

[Note. Formerly rule 7 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]

Registrar's power to require information from court of trial

70.6. The Registrar may require the court of trial to furnish the Court with any assistance or information which they may require for the purpose of exercising their jurisdiction.

[Note. Formerly rule 8 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]

Supply of documentary and other exhibits

70.7.—(1) The Registrar shall, on request, supply to the offender copies or reproductions of documents or other things required for the application or reference and in such case may make charges in accordance with scales and rates fixed from time to time by the Treasury.

(2) The Registrar shall, on request, make arrangements for the offender to inspect any document or other thing required for the application or reference.

(3) This rule shall not apply to the supply of transcripts of any proceedings or part of proceedings.

[Note. Formerly rule 9 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]

Service of documents

70.8.—(1) For the purposes of this Part service of a document on the offender may be effected—

(a) in the case of a document to be served on a body corporate by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by post addressed to the secretary or clerk of the body at that office; and

(b) in the case of a document to be served on any other person—

(i) by delivering it to the person to whom it is directed,

(ii) by leaving it for him with some person at his last known or usual place of abode, or

(iii) by sending it by post addressed to him at his last known or usual place of abode.

(2) For the purpose of this Part service of a document on the Registrar may be effected—

(a) in the case of an offender who is in custody, by delivering it to the person having custody of him;

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- (b) by delivering it to the Registrar;
- (c) by addressing it to him and leaving it at his office in the Royal Courts of Justice, London WC2; or
- (d) by sending it by post addressed to him at the said office.

(3) A person having custody of an offender and to whom a document is delivered in pursuance of paragraph (2)(a) shall endorse on it the date of delivery and cause it to be forwarded to the Registrar.

[Note. Formerly rule 10 of the Criminal Appeal (Reviews of Sentencing) Rules 1989.]