

PART 41

REFERENCE TO THE COURT OF APPEAL OF POINT OF LAW OR UNDULY
LENIENT SENTENCING**Contents of this Part**

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When this Part applies

41.1. This Part applies where the Attorney General wants to—

- (a) refer a point of law to the Court of Appeal under section 36 of the Criminal Justice Act 1972(a); or
- (b) refer a sentencing case to the Court of Appeal under section 36 of the Criminal Justice Act 1988(b).

[Note. Under section 36 of the Criminal Justice Act 1972, where a defendant is acquitted in the Crown Court the Attorney General may refer to the Court of Appeal a point of law in the case.]

Under section 36 of the Criminal Justice Act 1988, if the Attorney General thinks the sentencing of a defendant in the Crown Court is unduly lenient he may refer the case to the Court of Appeal: but only if the sentence is one to which Part IV of the 1988 Act applies, and only if the Court of Appeal gives permission. See also section 35 of the 1988 Act(c) and the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006(d).

The rules in Part 36 (Appeal to the Court of Appeal: general rules) also apply where this Part applies.]

Service of notice of reference and application for permission

41.2.—(1) The Attorney General must serve any notice of reference and any application for permission to refer a sentencing case on—

- (a) the Registrar; and
- (b) the defendant.

(a) 1972 c. 71; section 36 was amended by section 31 of, and paragraph 8 of Schedule 1 to, the Prosecution of Offences Act 1985 (c. 23) and section 40 of, and paragraph 23 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

(b) 1988 c. 33; section 36 was amended by section 272 of, and paragraphs 45 and 46 of Schedule 32 and paragraph 96 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44), sections 49 and 65 of, and paragraph 3 of Schedule 1 and Schedule 5 to, the Violent Crime Reduction Act 2006 (c. 38), section 40 of, and paragraph 48 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), sections 46, 148 and 149 of, and paragraphs 22 and 23 of Schedule 26 and Part 3 of Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 2 of Schedule 19 and paragraphs 4 and 5 of Schedule 26 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). It is further amended by section 46 of the Criminal Justice and Immigration Act 2008 (c. 4) and section 28 of, and paragraph 2 of Schedule 5 to, the Criminal Justice and Courts Act 2015 (c. 2) with effect from dates to be appointed.

(c) 1988 c. 33; section 35(3) was amended by section 168 of, and paragraph 34 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33).

(d) S.I. 2006/1116.

- (2) Where the Attorney General refers a point of law—
- (a) the Attorney must give the Registrar details of—
 - (i) the defendant affected,
 - (ii) the date and place of the relevant Crown Court decision, and
 - (iii) the relevant verdict and sentencing; and
 - (b) the Attorney must give the defendant notice that—
 - (i) the outcome of the reference will not make any difference to the outcome of the trial, and
 - (ii) the defendant may serve a respondent’s notice.
- (3) Where the Attorney General applies for permission to refer a sentencing case, the Attorney must give the defendant notice that—
- (a) the outcome of the reference may make a difference to that sentencing, and in particular may result in a more severe sentence; and
 - (b) the defendant may serve a respondent’s notice.
- (4) The Attorney General must serve an application for permission to refer a sentencing case on the Registrar not more than 28 days after the last of the sentences in that case.

[Note. The time limit for serving an application for permission to refer a sentencing case is prescribed by paragraph 1 of Schedule 3 to the Criminal Justice Act 1988(a). It may be neither extended nor shortened.]

Form of notice of reference and application for permission

- 41.3.**—(1) A notice of reference and an application for permission to refer a sentencing case must give the year and number of that reference or that case.
- (2) A notice of reference of a point of law must—
- (a) specify the point of law in issue and indicate the opinion that the Attorney General invites the court to give;
 - (b) identify each ground for that invitation, numbering them consecutively (if there is more than one) and concisely outlining each argument in support;
 - (c) exclude any reference to the defendant’s name and any other reference that may identify the defendant;
 - (d) summarise the relevant facts; and
 - (e) identify any relevant authorities.
- (3) An application for permission to refer a sentencing case must—
- (a) give details of—
 - (i) the defendant affected,
 - (ii) the date and place of the relevant Crown Court decision, and
 - (iii) the relevant verdict and sentencing;
 - (b) explain why that sentencing appears to the Attorney General unduly lenient, concisely outlining each argument in support; and
 - (c) include the application for permission to refer the case to the court.
- (4) A notice of reference of a sentencing case must—
- (a) include the same details and explanation as the application for permission to refer the case;
 - (b) summarise the relevant facts; and

(a) 1988 c. 33.

(c) identify any relevant authorities.

(5) Where the court gives the Attorney General permission to refer a sentencing case, it may treat the application for permission as the notice of reference.

Respondent's notice

41.4.—(1) A defendant on whom the Attorney General serves a notice of reference or an application for permission to refer a sentencing case may serve a respondent's notice, and must do so if—

- (a) the defendant wants to make representations to the court; or
- (b) the court so directs.

(2) Such a defendant must serve the respondent's notice on—

- (a) the Attorney General; and
- (b) the Registrar.

(3) Such a defendant must serve the respondent's notice—

- (a) where the Attorney General refers a point of law, not more than 28 days after—
 - (i) the Attorney serves the reference, or
 - (ii) a direction to do so;
- (b) where the Attorney General applies for permission to refer a sentencing case, not more than 14 days after—
 - (i) the Attorney serves the application, or
 - (ii) a direction to do so.

(4) Where the Attorney General refers a point of law, the respondent's notice must—

- (a) give the date on which the respondent was served with the notice of reference;
- (b) identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the Attorney General's ground or reason to which each relates;
- (c) summarise any relevant facts not already summarised in the reference;
- (d) identify any relevant authorities; and
- (e) include or attach any application for the following, with reasons—
 - (i) an extension of time within which to serve the respondent's notice,
 - (ii) permission to attend a hearing that the respondent does not have a right to attend,
 - (iii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody.

(5) Where the Attorney General applies for permission to refer a sentencing case, the respondent's notice must—

- (a) give the date on which the respondent was served with the application;
- (b) say if the respondent wants to make representations at the hearing of the application or reference; and
- (c) include or attach any application for the following, with reasons—
 - (i) an extension of time within which to serve the respondent's notice,
 - (ii) permission to attend a hearing that the respondent does not have a right to attend,
 - (iii) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody.

Variation or withdrawal of notice of reference or application for permission

41.5.—(1) This rule applies where the Attorney General wants to vary or withdraw—

- (a) a notice of reference; or
 - (b) an application for permission to refer a sentencing case.
- (2) The Attorney General—
- (a) may vary or withdraw the notice or application without the court’s permission by serving notice on—
 - (i) the Registrar, and
 - (ii) the defendantbefore any hearing of the reference or application; but
 - (b) at any such hearing, may only vary or withdraw that notice or application with the court’s permission.

Right to attend hearing

41.6.—(1) A respondent who is in custody has a right to attend a hearing in public unless it is a hearing preliminary or incidental to a reference, including the hearing of an application for permission to refer a sentencing case.

(2) The court or the Registrar may direct that such a respondent is to attend a hearing by live link.

[Note. See rule 36.6 (Hearings) and paragraphs 6 and 7 of Schedule 3 to the Criminal Justice Act 1988. Under paragraph 8 of that Schedule, the Court of Appeal may sentence in the absence of a defendant whose sentencing is referred.]

Anonymity of defendant on reference of point of law

41.7. Where the Attorney General refers a point of law, the court must not allow anyone to identify the defendant during the proceedings unless the defendant gives permission.