



## BRIEFING PAPER

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# Review of unduly lenient sentences

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## Summary

The Attorney General has the power to refer sentences for certain offences which he believes to be unduly lenient to the Court of Appeal. The Attorney General's power to refer only applies to serious offences, being those that can only be dealt with by the Crown Court and some other offences specified in an order.

Anyone can ask the Attorney General to consider whether a sentence should be referred to the Court of Appeal as being unduly lenient, including a victim, a relative of a victim or a member of the public.

The Attorney General will consider whether the sentence is "unduly lenient". If the Attorney General considers that it might be, then he refers the sentence to the Court of Appeal for review. If the Court agrees that the sentence is unduly lenient then it may increase it.

There is a strict 28 day time limit within which the Attorney General is able to refer a sentence to the Court of Appeal.

This briefing applies to England and Wales.

# 1. The power to refer

In certain circumstances, where the Attorney General thinks a sentence imposed by a Crown Court appears to be unduly lenient, the Attorney General may refer the case to the Court of Appeal.<sup>1</sup>

The reasons for having such a power, and the main argument against, are set out in the textbook *Smith and Hogan's Criminal Law*. Under-sentencing, it says:

- blunts the deterrent effect of the criminal law;
- causes outrage to the victim;
- is demoralizing to the police;
- causes injustice to those who were appropriately sentenced;
- undermines public confidence in the administration of justice and the authority of the courts;
- may cause public danger; and
- hinders development of a rational sentencing policy by the Court of Appeal.

The main contrary argument is that the procedure offends against the principle of double jeopardy, by allowing the state two attempts to deal with the offender. *Smith and Hogan's Criminal Law* states that the Court of Appeal may make allowance for the offender having to face the prospect of being sentenced twice over and take this into account in the revised sentence.<sup>2</sup>

## 1.1 Offences to which the power applies

The Attorney General's power to refer cases to the Court of Appeal as appearing unduly lenient only applies in respect of sentences imposed by the Crown Court for certain serious offences. The power is only available for:

- offences that are triable on indictment (i.e. in the Crown Court); and
- some offences that are triable either way (i.e. in either the Crown Court or magistrates' court) that are specified in orders made by the Home Secretary under section 35 of the *Criminal Justice Act 1988*.<sup>3</sup>

Examples of the offences for which sentences can be referred include: murder, rape, robbery, some child sex crimes and child cruelty, some serious fraud, some serious drug crimes and crimes committed because of the victim's race or religion.<sup>4</sup> The scheme was extended to 19 terror related offences from 8 August 2017.<sup>5</sup>

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<sup>1</sup> [Sections 35 and 36 of the Criminal Justice Act 1988](#)

<sup>2</sup> *Smith and Hogan's Criminal Law*, 14<sup>th</sup> edition, 3.5.2.4

<sup>3</sup> *Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006/1116*, Schedule 1

<sup>4</sup> Gov.uk, [Ask for a Crown Court sentence to be reviewed](#)

<sup>5</sup> <https://www.gov.uk/government/news/terror-offences-extension-to-unduly-lenient-sentence-scheme-comes-into-effect>

## 1.2 What is meant by “unduly lenient”?

The Court of Appeal will act in relation to a sentence only where it is unduly lenient (not simply lenient). A sentence will be unduly lenient where it falls outside the range of sentences which the judge, applying his or her mind to all the relevant factors, could reasonably consider appropriate.<sup>6</sup>

## 2. The procedure

Anyone can ask the Attorney General to consider referring a sentence to the Court of Appeal. This would include the victim, a relative of a victim or a member of the public.

The relevant contact information for making a referral to the Attorney General can be found on the Gov.uk page: [Ask for a Crown Court sentence to be reviewed](#).

The Attorney General will consider whether the sentence is “unduly lenient”. If he or she considers that it might be, then he or she refers the sentence to the Court of Appeal for review.

Once the Attorney General has referred a sentence to the Court of Appeal, the court will review it and, if it agrees that the sentence is unduly lenient, it may then increase it. The Court of Appeal may alternatively decide that the sentence should stay the same.

The practitioner’s text *Blackstone’s Criminal Practice 2017* states that where the Court of Appeal increases a sentence under this procedure, its practice has often been to allow some discount on the sentence it would consider appropriate because of what is called the “double jeopardy” of an offender having to wait before knowing if his or her sentence is to be increased. The text notes that the effect of this principle will vary significantly according to the circumstances.<sup>7</sup>

## 3. Time limit

There is a strict 28 day time limit within which the Attorney General is able to refer a sentence to the Court of Appeal.<sup>8</sup> The time limit is absolute. There is no power to extend the time limit or to apply for leave to refer out-of-time. The period is calculated from the day following the sentence, so it will end on the same day of the week, four weeks later.<sup>9</sup>

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<sup>6</sup> *Attorney General’s Reference No 4 of 1989* 11 Cr. App. R. (S) 517 - Lord Lane CJ

<sup>7</sup> *Blackstone’s Criminal Practice 2017* D28.9

<sup>8</sup> *Criminal Justice Act 1988*, Schedule 3

<sup>9</sup> Crown Prosecution Service, [Legal Guidance: Unduly Lenient Sentences](#)

## 4. Use of the power

From May 2016 details of cases submitted to the Attorney General's Office are being updated on a weekly basis on the Attorney General's Office section of the Gov.uk website. This includes the sentences examined, the outcome and details of the cases. See: [Outcome of unduly lenient sentence referrals](#).

Previously the Attorney General's Office released annual statistics for unduly lenient sentence referrals. These can also be found on Gov.uk website. See:

- [Unduly lenient sentence statistics 2015](#).
- [Unduly lenient sentence statistics 2014](#)
- [Unduly lenient sentence statistics 2013](#)
- [Unduly lenient sentences 2012](#)

### An increase in the number of sentences considered

A parliamentary question (PQ) response from the Solicitor General, Robert Buckland, in November 2017 noted that the number of sentences considered by the Attorney General's Office has more than doubled since 2010, from 342 to 837 requests in 2016.<sup>10</sup>

The Attorney General, Jeremy Wright, said that the 837 referrals received by his office in 2016 was a 17% increase from the previous year.<sup>11</sup>

### Type of offences for which sentences are most often referred

The then Attorney General Dominic Grieve, stated in answer to a PQ in July 2014 that in the period from 1 July 2013 to 4 July 2014 the type of offences most often referred to his office were sexual offences, including rape, indecent assault and assault by penetration.<sup>12</sup>

### Proportion of offenders whose sentences are increased

In 2016 the Attorney General referred 190 cases to the Court of Appeal, and in 141 of these the Court of Appeal increased the sentence.<sup>13</sup>

In 2015 the Attorney General's Office considered 713 requests, of which 136 were referred to the Court of Appeal as potentially unduly lenient, with the Court agreeing to increase the original sentence for 102 offenders.<sup>14</sup>

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<sup>10</sup> [HC Deb 16 November 2017 c571](#)

<sup>11</sup> [PQ 6582](#), 5 September 2017

<sup>12</sup> [HC Deb 8 July 2014 c157](#)

<sup>13</sup> [PQ 111834](#), 15 November 2017

<sup>14</sup> [PQ 906822](#), 27 October 2016

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In 2014 the Law Officers considered 469 cases and referred 128 offenders to the Court of Appeal. Of these offenders, 86% had their sentences increased.<sup>15</sup>

An answer to a PQ in March 2014 provided information on the number of sentences referred and the number of sentences increased in the years 2010 to 2013:

	<b>Number of offenders whose sentences were referred to the Court of Appeal as potentially unduly lenient</b>	<b>Number of offenders whose sentences were increased (and proportion of total in brackets)</b>
2010	90	77 (85%)
2011	121	94 (77%)
2012	88	62 (70%)
2013	83	60 (72%)

There is one outstanding case from 2013.<sup>16</sup>

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<sup>15</sup> [PQ 901591, 15 October 2015](#)

<sup>16</sup> [HC Deb 10 March 2014 c126W](#)



## 5. Proposals to extend the power

The Conservative party manifesto for the 2015 general election contained a commitment to widen the scope of the power to refer so that sentences for other offences could also be referred to the Court of Appeal where the Attorney General believed them to be unduly lenient.<sup>17</sup>

The then Attorney General, Dominic Grieve, said in January 2014 that it is for Parliament to decide whether to expand the power so that sentences for other offences would also be referable:

It is for Parliament to decide whether it wishes to extend and make referable those sentences. If Parliament's will is that they should be, it is my job to consider that. It is worth bearing in mind that the principle enunciated originally was that only a small number of cases in specified and very serious offences would ever be referred. But there needs to be finality in sentencing and, of course, if many more cases are referred, that will place burdens both on the Court of Appeal in considering them and on my office in making the assessment of around 450 cases per annum.<sup>18</sup>

In a debate on the unduly lenient sentences scheme in June 2015, the Solicitor General, Robert Buckland, said that the Government would set out its plans as soon as possible. He said:

It is clear that at present there are inconsistencies and anomalies in the scheme, which the extension will seek to address. Both the Attorney General and I are very clear on that point, and we understand the concerns where offences- often serious offences – do not appear in the scheme, seemingly without a clear legal, or indeed logical, explanation.<sup>19</sup>

Giving [evidence to the Justice Committee](#) in September 2015, the Attorney General, Jeremy Wright, explained the difficulties he saw with the current provisions:

What I think is potentially problematic is that the scheme has grown up somewhat organically. At the moment, it covers all indictable only offences, but it does not cover all either-way offences. That leaves us with some strange anomalies, in my view.

He said that he was in favour of extending the scheme and was looking at the issue:

We need to think carefully about the logic of the scheme, and if there is a case to be made for extension, so that it is easier to understand and more accessible for the public, I think those suggestions bear careful consideration. There are inevitably, as there always are, costs, benefits and resource implications to any changes that we make, but I am very much in favour of looking at an extension of the scheme.

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<sup>17</sup> [Conservative Manifesto 2015](#)

<sup>18</sup> [HC Deb 7 January 2014 c165](#)

<sup>19</sup> [HC Deb 10 June 2015 c1308](#)



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Regarding the timing of any proposals he said:

It is very difficult for me to give you a date. The one thing that I am very sure of is that it is better to make sure that we have dotted all the i's, crossed all the t's and worked through all the consequences before we bring something forward, rather than bringing something forward and discovering later that some of the consequences to the criminal justice system have not been thought through properly.<sup>20</sup>

In October 2016 the Attorney General was asked in a PQ whether, given that the public are confused as to why some offences are covered and some are not, it would not be simpler to have a scheme that covered all offences. He responded:

There is no doubt that one of the advantages of the unduly lenient sentence scheme is that it is available to the public. It does not require the intervention of lawyers and it is, I hope, easy for the public to access. It should also be easy for the public to understand, and I am therefore in favour of drawing the line between cases within the scheme and those outside in a logical and easily understandable place. I would also say that it is important to bear it in mind that, even with an extended version of the scheme, we are talking about a very small minority of cases where judges err in this way.<sup>21</sup>

In February 2017, in reply to a Parliamentary Question about progress on plans to extend the scheme, the Solicitor General said:

We committed ourselves in our manifesto to extending the scope of the scheme. As a first step, my right hon. Friend the Home Secretary announced that we would extend it to sentences in the Crown Court for terrorism offences, and we are working with her to implement that.

(...)

Work is being done with the Ministry of Justice, and both the Attorney General and I are committed to ironing out the obvious inconsistencies in the system, which cause understandable frustration among victims and their families.<sup>22</sup>

The Conservative party manifesto for the 2017 general election repeated the intention to extend the scope of the scheme.<sup>23</sup>

In answer to a PQ in June 2017, the Solicitor General, Robert Buckland said that the scheme would be extended to apply to terrorism cases sentenced in the Crown Court:

The Government re-committed in our manifesto that we will extend the scope of the unduly lenient sentence scheme. We will shortly be extending the scheme so that it applies to terrorism offences sentenced in the Crown Court.<sup>24</sup>

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<sup>20</sup> Justice Committee, [Oral evidence: The Work of the Attorney General](#), HC 409, 15 September 2015

<sup>21</sup> [HC Deb 27 October 2016 c406](#)

<sup>22</sup> [HC Deb 2 February 2017 c1157](#)

<sup>23</sup> [Conservative Manifesto 2017](#)

<sup>24</sup> [PQ 900101](#), 29 June 2017

The scheme was extended to 19 terror related offences from 8 August 2017.<sup>25</sup> A press release from the Ministry of Justice stated that the offences include supporting extremist organisations, encouraging acts of terror and failing to disclose information about a terrorist attack.<sup>26</sup>

In September 2017 Jeremy Wright, said that the Attorney General's Office is considering, with the Lord Chancellor, how further to fulfil the Government's commitment to extending the scheme.<sup>27</sup>

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<sup>25</sup> Ministry of Justice, [Terror offences extension to Unduly Lenient Sentence scheme comes into effect](#), 8 August 2017

<sup>26</sup> Ministry of Justice, ['Soft sentence' correction scheme extended to terror offences](#), 15 July 2017

<sup>27</sup> [PQ 8852](#), 12 September 2017

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