

---

STATUTORY INSTRUMENTS

---

**1981 No. 1675**

**The Magistrates' Courts (Northern Ireland) Order 1981**

**PART XII**

**APPEAL AND CASE STATED**

*Appeals to county court*

**Appeals against conviction or sentence, etc.**

**140.**—(1) Subject to this Article, a person convicted by a magistrates' court may appeal to a county court,—

- (a) whether or not he pleaded guilty, against his sentence;
- (b) if he did not plead guilty, against the conviction.

[<sup>F1</sup>(1A) Article 6 of the Criminal Justice (Northern Ireland) Order 1996 (under which a conviction of an offence for which an order for conditional or absolute discharge is made is deemed not to be a conviction except for certain purposes) shall not prevent an appeal under this Article, whether against conviction or otherwise.]

(2) In paragraph (1) “sentence” includes any order<sup>[F2]</sup> passed on the person for the offence, whether on conviction or in subsequent proceedings,] not being—

*Sub#para. (a) rep. by 1996 NI 24*

- (b) an order for the payment of costs; or
- (c) any other order subject to a restriction referred to in paragraph 9(1)(b) of Schedule 5.

[<sup>F2</sup>(2A) A person may appeal to a county court against—

- (a) a fine imposed under paragraph (a), or an order made under paragraph (b) or (c), of paragraph 3(1) of Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996 (N.I. 24);
- (b) the dismissal of an application under Part 3 or 4 of that Schedule;
- (c) a fine imposed, or an order made, under Article 41(2) or<sup>F3</sup> of the Criminal Justice (Children) (Northern Ireland) Order 1998 (N.I. 9);
- (d) an order made under Article<sup>F3</sup> or 54(3)(a) of that Order;
- (e) an order made under paragraph 3 of Schedule 1A to that Order; or
- (f) the dismissal of an application under paragraph 5 of that Schedule (otherwise than to the Crown Court) to make an order under sub-paragraph (1) of that paragraph.]

*Para. (3) rep. by 1996 NI 24*

(4) A person ordered under<sup>[F1]</sup> Article 7(1) of the Criminal Justice (Northern Ireland) Order 1996] to give good security for the good behaviour of an offender may appeal to the county court.

**Status:** Point in time view as at 01/01/2006.

**Changes to legislation:** The Magistrates' Courts (Northern Ireland) Order 1981, PART XII is up to date with all changes known to be in force on or before 21 June 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)

- F1** 1996 NI 24  
**F2** 2002 c. 26  
**F3** prosp. insertion by 2002 c. 26 - see SR 2003 No.488 (C.37)

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

- C1** Art. 140(1)(b) extended (15.12.2011) by [Terrorism Prevention and Investigation Measures Act 2011](#) (c. 23), ss. 15(3), 31(2), **Sch. 3 para. 4(5)(d)** (with Sch. 8)

**Appeals from orders as to recognizances**

**141.**—(1) A person ordered by a magistrates' court to enter into a recognizance to keep the peace or to be of good behaviour or to keep the peace and be of good behaviour may appeal to the county court and the order appealed against shall not be suspended pending the determination of the appeal but shall, pending such determination, have full force and effect.

(2) A party bound by a recognizance which is estreated by a court of summary jurisdiction may appeal to the county court.

**Appeals against imprisonment or fine for misbehaviour in court or against an order under Article 112(6)**

**142.**—(1) A person committed to prison or upon whom a fine is imposed under Article 160 may appeal to the county court.

(2) Nothing in this Part shall affect section 44 of the Judicature (Northern Ireland) Act 1978 in so far as it confers a right of appeal to the Court of Appeal from an order under Article 112(6).

**Appeals in other cases**

**143.**—(1) Subject to paragraph (2) and to Articles 29 and 31(1) of the Domestic Proceedings (Northern Ireland) Order 1980, an appeal shall lie to the county court from any order of a magistrates' court in proceedings to which this Article applies, by any party to the proceedings.

(2) No appeal shall lie from an order under Article 98(4) or (5).

(3) This Article applies to the following proceedings—

- (a) debt proceedings;
- (b) ejectment proceedings;
- (c) proceedings commenced by notice of application or appeal (whether under Part VII or otherwise);
- (d) proceedings upon a complaint to which Part VIII applies.

[<sup>F4</sup>(4) Paragraph (1) is also subject to paragraph 8(2) of Schedule 16 to the Civil Partnership Act 2004 and Article 31(1) of the Domestic Proceedings (Northern Ireland) Order 1980 as applied by paragraph 46 of that Schedule.]

- F4** 2004 c. 33

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

- C2** Art. 143 applied (11.7.2011) by [Welfare of Animals Act \(Northern Ireland\) 2011](#) (c. 16), ss. 17(14), 59 (with ss. 1(2), 52(1), 53, 54); S.R. 2011/245, art. 2, Sch. 1
- C3** Art. 143 applied (11.7.2011) by [Welfare of Animals Act \(Northern Ireland\) 2011](#) (c. 16), ss. 20(1), 59 (with ss. 1(2), 52(1), 53, 54); S.R. 2011/245, art. 2, Sch. 1

**C4** Art. 143 applied (11.7.2011) by [Welfare of Animals Act \(Northern Ireland\) 2011 \(c. 16\), ss. 20\(6\), 59](#) (with ss. 1(2), 52(1), 53, 54); S.R. 2011/245, [art. 2](#), Sch. 1

### Procedure on appeal

**144.**—(1) Where an appeal is made to the county court under this Part, the appellant shall, in addition to complying with the provisions of this Part as to recognizances, within fourteen days commencing on the day on which the decision of the magistrates' court was made, give to the other party notice in writing of his appeal and shall within the said period lodge a copy of such notice so given with the clerk of petty sessions.

(2) For the purposes of paragraph (1) the day on which the decision of the magistrates' court is given shall, where the court has adjourned the hearing of a complaint after conviction or under Article 51, be the day on which the court sentences or otherwise deals with the offender.

[<sup>F5</sup>(2A) The period within which notice of appeal must be given and lodged under paragraph (1) may be extended, either before or after it expires, by the county court having jurisdiction in the county court division in which the magistrates' court sat, on an application made in accordance with county court rules.]

(3) An appeal from the decision of a magistrates' court shall, without prejudice to any power to adjourn proceedings in the county court and subject to paragraph (4), be heard at the sitting of the county court having jurisdiction in the county court division in which the magistrates' court sat which commences next after the expiration of seven days from the day on which the copy of the notice is lodged with the clerk of petty sessions under paragraph (1).

(4) Where the appellant remains in custody pending the hearing of his appeal, the appeal may be heard at the sitting of the county court which commences next after the day on which the copy of the notice is lodged with the clerk of petty sessions under paragraph (1).

(5) Without prejudice to Article 14, magistrates' courts rules may provide for the transmission of documents to and from the county court.

**F5** SR 1994/472

### Powers exercisable by county court on appeal

**145.**—(1) On an appeal made to it under this Part the county court may exercise all or any of the powers specified in Article 28 of the County Courts (Northern Ireland) Order 1980 and where an appellant who has not given due notice of abandonment in accordance with Article 150 does not appear to prosecute his appeal the county court may without rehearing any evidence affirm the order appealed from or may otherwise deal with the appeal in the absence of the appellant and in either case may, subject to county court rules, order the payment of costs by the appellant.

(2) This Article shall not apply to costs in criminal appeals.

### [<sup>F6</sup>Immunity of county court judges hearing appeals under this Part.

**145A.** Articles 5, 6[<sup>F7</sup>,6A] and 10 shall apply in relation to a county court judge sitting in connection with an appeal under this Part as they apply in relation to a resident magistrate.]

**F6** 1990 c. 41  
**F7** 1999 c. 22

*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: The Magistrates' Courts (Northern Ireland) Order 1981, PART XII is up to date with all changes known to be in force on or before 21 June 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)*

### Case stated

#### Cases stated by magistrates' courts

**146.**—(1) Any party of a summary proceeding dissatisfied with any decision of the court upon any point of law involved in the determination of the proceeding or of any issue as to its jurisdiction may apply to the court to state a case setting forth the relevant facts and the grounds of such determination for the opinion of the Court of Appeal.

(2) An application under paragraph (1) shall be made in writing by delivering it to the clerk of petty sessions within fourteen days commencing with the day on which the decision of the magistrates' court was given and a copy shall be served on the other party within the same period.

(3) For the purpose of paragraph (2) the day on which the decision of the magistrates' court is given shall, where the hearing of the charge has been adjourned after conviction or under Article 51, be the day on which the court sentences or otherwise deals with the offender.

(4) If the magistrates' court is of opinion that an application under this Article is frivolous, but not otherwise, it may, subject to paragraph (5), refuse to state a case, and, if the applicant so requires, shall give him a certificate stating that the application has been refused.

(5) The court shall not refuse to state a case if the application is made by or under the direction of the Attorney General.

(6) Subject to the preceding provisions of this Article the magistrates' court, upon application made under paragraph (1), shall state a case within three months from the date of the application.

(7) Where the magistrates' court refuses or fails to state a case under paragraph (6), the applicant may apply to a Judge of the Court of Appeal for an order directing the magistrates' court to state a case within the time limited by the order and where the Judge of the Court of Appeal makes such order the magistrates' court shall state the case upon the applicant entering into any recognizance required by Article 149.

(8) Where an application for a case to be stated under this Article has been granted any other right of the applicant to appeal against the decision shall cease.

(9) Within fourteen days from the date on which the clerk of petty sessions dispatches the case stated to the applicant (such date to be stamped by the clerk of petty sessions on the front of the case stated), the applicant shall transmit the case stated to the Court of Appeal and serve on the other party a copy of the case stated with the date of transmission endorsed on it.

(10) Where two or more parties to the same proceedings apply under this Article to the court to state a case, the court shall, subject to paragraph (4), state a single case only.

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

- C5** Art. 146 applied (11.7.2011) by Welfare of Animals Act (Northern Ireland) 2011 (c. 16), ss. 17(14), 59 (with ss. 1(2), 52(1), 53, 54); S.R. 2011/245, art. 2, Sch. 1
- C6** Art. 146 applied (11.7.2011) by Welfare of Animals Act (Northern Ireland) 2011 (c. 16), ss. 20(1), 59 (with ss. 1(2), 52(1), 53, 54); S.R. 2011/245, art. 2, Sch. 1
- C7** Art. 146 applied (11.7.2011) by Welfare of Animals Act (Northern Ireland) 2011 (c. 16), ss. 20(6), 59 (with ss. 1(2), 52(1), 53, 54); S.R. 2011/245, art. 2, Sch. 1

#### Powers of Court of Appeal

**147.**—(1) Without prejudice to the generality of section 22 of the Interpretation Act (Northern Ireland) 1954, where a case is stated under Article 146 for the opinion of the Court of Appeal, that

Court may exercise all the powers, authority and jurisdiction of the magistrates' court stating the case and, in addition may—

- (a) affirm, reverse or vary the decision of the magistrates' court;
- (b) remit the case stated, with such declarations or directions as the Court of Appeal may think proper, for hearing and determination by the magistrates' court or for re-statement or amendment or for a supplemental case to be stated thereon; or
- (c) make such order as to costs and expenses as the Court of Appeal may think proper;

and the magistrates' court shall have regard to all such declarations and obey all such directions, if any, as may be given by the Court of Appeal pursuant to sub-paragraph (b).

(2) Except as provided by section 41 of the Judicature (Northern Ireland) Act 1978, the decision of the Court of Appeal upon a case stated under this Part shall be final.

*Supplemental provisions as to appeal to the county court by way of case stated.*

#### **Bail on appeal to county court or by way of case stated**

**148.**—(1) Where a person has given notice of appeal to the county court against the order of a magistrates' court or has applied to a magistrates' court to state a case for the opinion of the Court of Appeal, then, if he is in custody, the magistrates' court or any justice of the peace having jurisdiction in the petty sessions district for which the court acted may order him to be released on his entering into a recognizance conditioned—

- (a) if he has given notice of appeal, for his appearance at the hearing of the appeal;
- (b) if he has applied for the statement of a case, for his due appearance before the magistrates' court after the judgment of the Court of Appeal has been given, if and when he is so directed by the Court of Appeal;
- (c) and in either case for the due prosecution of the appeal in the same terms as the recognizance required by Article 149(1).

(2) Where the appellant in custody is unable to obtain his release because a magistrates' court has refused to release him from custody under paragraph (1) or fixed the amount of the recognizance to be entered by the appellant or of the recognizance of a surety under Article 136 or the amount of any security to be given under Article 137 in lieu of sureties at an excessive sum, the appellant may apply to the High Court to release him from custody, or to reduce the amount of the recognizance or security as the case may be.

(3) Any application under paragraph (2) shall be made in like manner as an application for bail by a person who has been returned for trial in custody in respect of an indictable offence and on any such application the Court may order the release of an appellant on such conditions, and fix the amount of the recognizance or other security as such sum, as the Court thinks fit.

#### **Recognizance to prosecute appeal and fees on case stated**

**149.**—(1) Subject to paragraph (3), an appellant shall within three days commencing on the day on which a copy of the notice of appeal is lodged with the clerk of petty sessions or the application for a case stated is made enter into a recognizance in such amount as may be fixed by the court from whose decision the appeal is brought or by any justice of the peace having jurisdiction in the petty sessions district for which that court acted conditioned—

- (a) to prosecute the appeal or case without delay; and
- (b) to abide by the judgment of the county court or of the Court of Appeal, as the case may be; and

*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: The Magistrates' Courts (Northern Ireland) Order 1981, PART XII is up to date with all changes known to be in force on or before 21 June 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)*

(c) to pay such costs as the court may award.

(2) The clerk of petty sessions shall not be required to deliver a case stated to the appellant until the appellant has, where necessary, complied with paragraph (1) and has paid to him such fees payable for the case and for the recognizance as may be prescribed and if the appellant fails or neglects to pay the fees within fourteen days after being notified that the case stated is ready for delivery he shall be deemed to have abandoned his appeal.

(3) Paragraph (1) shall not apply to an appellant who—

- (a) pending the hearing of the appeal or case stated remains in custody; or
- (b) has been released from custody upon his entering into a recognizance under Article 148; or
- (c) is a public or local authority or an officer of a public or local authority acting as such or is a constable acting as such; or
- (d) is appealing to the county court against an order made in debt proceedings; or
- (e) is a plaintiff appealing to the county court in ejectment proceedings.

#### **Abandonment of appeal to county court or by way of case stated**

**150.**—(1) An appellant may at any time, not less than seven days before the date fixing for the hearing, abandon an appeal to the county court by giving notice in writing to such member of the Northern Ireland Court Service as the Lord Chancellor may designate and such person shall forthwith give notice to the other party to the appeal.

(2) Where an appeal is by way of case stated the applicant for the case may at any time before the date on which he is required to transmit the case to the Court of Appeal abandon the appeal by giving notice in writing to such member of the Northern Ireland Court Service as the Lord Chancellor may designate and such person shall forthwith give notice to the other party to the appeal.

#### **Estreat of recognizances and making of orders as to costs in connection with appeals**

**151.**—(1) Where it appears that an appellant has failed to comply with the conditions of a recognizance entered into under Article 148 or Article 149, because—

- (a) a notice of abandonment has been duly served under Article 150; or
- (b) the appeal has not been duly prosecuted; or
- (c) being the applicant for a case stated, he has failed to take delivery of it or to transmit it as required by Article 146 (9);

a court of summary jurisdiction acting for the same petty sessions district as the magistrates' court from whose decision the appeal was made or by whom the case was stated, may, after such a notice as is referred to in Article 138 (3), has been served in accordance with that paragraph upon the party or parties bound by the recognizance, order the recognizance to be estreated.

(2) In addition, the court of summary jurisdiction may, on the application of the other party to the appeal, order to be paid to him out of the amount forfeited on the estreat of the recognizance such sum as appears to the court to be just and reasonable in respect of expenses properly incurred by such other party in connection with the appeal and the balance of the sum so forfeited, if any, shall be paid into the Consolidated Fund of the United Kingdom so, however, that where the appeal is abandoned pursuant to notice duly served under Article 150 the said balance shall be repaid to the party or parties from whom it was forfeited.

(3) Where an appeal has been abandoned by a public or local authority or by an officer of a public or local authority acting as such or by a constable acting as such by notice of abandonment under Article 150 or where such an appeal has not been duly prosecuted, a court of summary jurisdiction such as is referred to in paragraph (1) may upon complaint order it or him to pay such costs as appear

to the court to be just and reasonable in respect of expenses properly incurred by any other party in connection with the appeal.

(4) The provisions of this Article are in addition to and not in derogation of any provision made by rules of court for the enforcement of the recognizances referred to in paragraph (1).

### **Enforcement of orders made, affirmed or varied on appeal or of original order where appeal abandoned**

**152.** Without prejudice to Article 147, or, in the case of an appeal to the county court, to Article 28 of the County Courts (Northern Ireland) Order 1980, after an appeal has been decided by the Court of Appeal or county court or, where an appeal has been abandoned (including where an applicant for a case stated has failed to take delivery of it or to transmit it to the Court of Appeal), an order, decree or warrant to enforce the order made on appeal, affirming, reversing or varying the original order, or (as the case may be) to enforce the original order, may be issued by any resident magistrate<sup>F8</sup>. . . and, in the case of an appeal to the county court, by the chief clerk.

**F8** 2002 c. 26

### **Computation of sentence on appeal**

**153.—**(1) Where a person who has been sentenced to imprisonment by a magistrates' court appeals to the county court or, by way of case stated under this Part or under Article 61 of the County Courts (Northern Ireland) Order 1980 to the Court of Appeal—

- (a) the time during which the appellant, pending the determination of his appeal, is not detained in custody shall not count as part of any term of imprisonment under his sentence;
- (b) the time during which the appellant is in custody pending the determination of his appeal shall, subject to any direction which the county court or, as the case may be, the Court of Appeal may give to the contrary, be reckoned as part of any sentence to which he is for the time being subject.

(2) When the county court or the Court of Appeal gives a direction under paragraph (1) (b), it shall state its reasons for giving it.

(3) The term of any sentence passed by the county court or the Court of Appeal in exercise of its powers under this Part or under any other statutory provision shall, unless the county court or, as the case may be, the Court of Appeal otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.

**Status:**

Point in time view as at 01/01/2006.

**Changes to legislation:**

The Magistrates' Courts (Northern Ireland) Order 1981, PART XII is up to date with all changes known to be in force on or before 21 June 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.