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## STATUTORY INSTRUMENTS

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# 1981 No. 1675

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

### PART XII

#### APPEAL AND CASE STATED

*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 <sup>F1</sup>... 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.

**F1** Words in art. 148(1) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 86\(28\), Sch. 9 Pt. 1](#) (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

#### **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 <sup>F2</sup>... conditioned—

- (a) to prosecute the appeal or case without delay; and

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(b) to abide by the judgment of the county court or of the Court of Appeal, as the case may be; and

(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.

**F2** Words in art. 149(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 86(29), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

### 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 [<sup>F3</sup>civil servant in the Department of Justice] as [<sup>F4</sup>that Department] 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 [<sup>F3</sup>civil servant in the Department of Justice] as [<sup>F5</sup>that Department] may designate and such person shall forthwith give notice to the other party to the appeal.

**F3** Words in art. 150 substituted (12.4.2010) by Northern Ireland Court Service (Abolition and Transfer of Functions) Order (Northern Ireland) 2010 (S.R. 2010/133), art. 4, Sch. para. 15(4) (with arts. 5-7)

**F4** Words in art. 150(1) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), Sch. 18 para. 138 (with arts. 28-31); S.I. 2010/977, art. 1(2)

**F5** Words in art. 150(2) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), Sch. 18 para. 138 (with arts. 28-31); S.I. 2010/977, art. 1(2)

### 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);

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a court of summary jurisdiction<sup>F6</sup>..., 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 [<sup>F7</sup>Consolidated Fund of Northern Ireland] 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).

**F6** Words in art. 151(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 86(30), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F7** Words in art. 151(2) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 137** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

### **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.

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(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.

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