



# Judicature (Northern Ireland) Act 1978

## 1978 CHAPTER 23

### PART III

#### THE COURT OF APPEAL AND THE HOUSE OF LORDS

#### **34 General jurisdiction of Court of Appeal.**

- (1) The Court of Appeal shall be a superior court of record.
- (2) There shall, subject to the provisions of this Act, be exercisable by the Court of Appeal—
  - (a) all such jurisdiction as was heretofore capable of being exercised by the Court of Appeal in Northern Ireland;
  - (b) all such jurisdiction as was heretofore capable of being exercised by the Court of Criminal Appeal;
  - (c) such other jurisdiction as is conferred by this Act or as may from time to time be conferred on the Court of Appeal by any subsequent statutory provision.
- (3) The Court of Criminal Appeal shall cease to exist and in accordance with the foregoing provisions of this section—
  - (a) any reference in any statutory provision in force before the commencement of this section to the Court of Criminal Appeal, except where it occurs in a reference to a judge or a registrar of the Court of Criminal Appeal, shall be construed as a reference to the Court of Appeal;
  - (b) any reference in any such statutory provision to a judge of the Court of Criminal Appeal shall be construed as a reference to a judge of the Court of Appeal or of the High Court;
  - (c) any reference in any such statutory provision to the registrar of the Court of Criminal Appeal shall be construed as a reference to the Master (Queen's Bench and Appeals).
- (4) The generality of this section is not limited by any other provision of this Act.

*Status: Point in time view as at 31/01/1997.*

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### **35 a Appeals to Court of Appeal from High Court.**

- (1) Subject as otherwise provided in this or any other statutory provision, the Court of Appeal shall have jurisdiction to hear and determine in accordance with rules of court appeals from any judgment or order of the High Court or a judge thereof.
- (2) No appeal to the Court of Appeal shall lie—
- (a) except as provided by the following provisions of this Part from any judgment of the High Court in any criminal cause or matter;
  - (b) from an order allowing an extension of time for appealing from a judgment or order;
  - (c) from an order of a judge giving unconditional leave to defend an action;
  - (d) from an order or judgment of the High Court or any judge thereof where it is provided by or by virtue of any statutory provision that that order or judgment or the decision or determination upon which it is made or given is to be final;
  - (e) from a decree absolute for the dissolution or nullity of marriage by a party aggrieved thereby who, having had time and the opportunity to appeal from the decree nisi on which the decree absolute was founded, has not appealed from that decree nisi;
  - (f) without the leave of the court or judge making the order, from an order of the High Court or a judge thereof made with the consent of the parties or as to costs only;
  - <sup>F1</sup>(fa) except as provided by Part I of the Arbitration Act 1996, from any decision of the High Court under that Part;]
  - (g) without the leave of the judge or of the Court of Appeal, from any interlocutory order or judgment made or given by a judge of the High Court, except in the following cases namely:—
    - (i) where the liberty of the subject or the <sup>F2</sup>residence of, or contact with,] minors is concerned;
    - (ii) where an injunction or the appointment of a receiver is granted or refused;
    - (iii) in the case of a decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the <sup>F3</sup>Companies (Northern Ireland) Order 1986] in respect of misfeasance or otherwise;
    - (iv) in the case of a decree nisi in a matrimonial cause or a judgment or order in an admiralty action determining liability;
    - <sup>F4</sup>(v) .....
    - (vi) in such other cases as may be prescribed being cases appearing to the Rules Committee to be of the nature of final decisions;
  - (h) from the decision of the High Court on any question of law, whether on appeal or otherwise, under <sup>F5</sup>sections 120 to 156 of the <sup>M1</sup>Representation of the People Act 1983];
  - (i) from a decision granting or refusing a certificate under section 12 of the <sup>M2</sup>Administration of Justice Act 1969.
  - <sup>F6</sup>(j) without the leave of the High Court or of the Court of Appeal, from a decision of the High Court under the Insolvency (Northern Ireland) Order 1989]
- (3) An order refusing unconditional leave to defend an action shall not be deemed to be an interlocutory order within the meaning of this section.

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- (4) Subject to subsection (3), any doubt which may arise as to what orders or judgments are final and what are interlocutory shall be determined by the Court of Appeal.
- (5) Notwithstanding any provision of this section or of any other statutory provision, where any decision of a court in Northern Ireland involves the decision of any question as to the validity of any provision made by or under an Act of the Parliament of Northern Ireland or a Measure of the Northern Ireland Assembly and the decision is not otherwise subject to any appeal to the Court of Appeal or the House of Lords an appeal shall lie to the Court of Appeal by virtue of this subsection.
- (6) Where under any statutory provision passed or made before the commencement of this Act an appeal, either by way of case stated or upon a point of law only, lies from any lower deciding authority to the High Court or to a judge of the Supreme Court and the decision of any such court or judge is expressed to be final, such appeal shall lie instead to the Court of Appeal, and the decision of that court shall be final.

#### Textual Amendments

- F1** S. 35(2)(fa) added (31.1.1997) by 1996 c. 23, s. 107(1), **Sch. 3, para. 34(2)**, (with 81(2)); S.I. 1996/3146, **art.3**, (with art. 4, Sch. 2)
- F2** S. 35(2)(g)(i) amended (4.11.1996) by S.I. 1995/755 (N.I. 2), art. 185(1), **Sch. 9, para. 92**; S.R. 1996/297, **art. 2(2)**
- F3** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F4** S. 35(2)(g)(v) repealed (31.1.1997) by 1996 c. 23, s. 107(2), **Sch.4** (with s. 81(2)); S.I. 1996/3146, **art.3, Sch. 1**, (with art. 4, Sch. 2)
- F5** Words substituted by Representation of the People Act 1983 (c. 2, SIF 42), s. 205, **Sch. 8 para. 24**
- F6** S. 35(2)(j) inserted (N.I.) (1. 10. 1991) by S.I. 1989/2405, art. 381, **Sch. 9 Pt. II para. 29**; S.R. 1991/411, **art. 2**.

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

- C1** S. 35(2)(h) extended with modifications by S.I. 1986/2250, **regs. 2, 3, 5(3)**
- C2** S. 35(2)(h) applied (with modifications) (4.5.1996) by S.I. 1996/1220, **art. 3(4)**
- C3** S. 35(2)(h) applied (with modifications) by Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599), **art. 3(4)** (as substituted (10.2.2007) by S.I. 2009/256, arts. 1(2), **3(1)**)

#### Marginal Citations

- M1** 1983 c. 2
- M2** 1969 c. 58.

## 36 Composition of Court of Appeal.

- (1) Subject to the provisions of this and the next following section [<sup>F7</sup>every appeal to the Court of Appeal, other than an appeal under the Criminal Appeal Act,] and every matter preliminary or incidental to such appeal . . . <sup>F8</sup> shall be heard before three judges of that court and shall, where necessary, be determined according to the opinion of the majority.
- (2) Where the Lord Chief Justice so directs, any such appeal, . . . <sup>F9</sup> or matter may be heard before two judges.
- (3) Where in accordance with subsection (2) an appeal, . . . <sup>F9</sup> or matter is heard before two judges and those judges differ in opinion—

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- (a) it shall, in the case of a criminal cause or matter, be re-heard and determined by three judges;
  - (b) it may, in any other case, be so re-heard and determined on the application of any party thereto.
- (4) No judge of the Court of Appeal shall sit as a judge on the hearing of, or shall determine any application in proceedings incidental or preliminary to—
- (a) .....<sup>F10</sup>
  - (b) an appeal from a judgment or order of that judge when sitting in the High Court or of a court of the High Court of which he was a member;
  - (c) .....<sup>F10</sup>
- (5) .....<sup>F10</sup>

**Textual Amendments**

**F7** Words substituted by [Criminal Appeal \(Northern Ireland\) Act 1980 \(c. 47, SIF 38\), s. 51\(1\), Sch. 4 para. 15](#)

**F8** Words repealed by [Criminal Appeal \(Northern Ireland\) Act 1980 \(c. 47, SIF 38\), s. 51\(2\), Sch. 5](#)

**F9** Word repealed by [Criminal Appeal \(Northern Ireland\) Act 1980 \(c. 47, SIF 38\), s. 51\(2\), Sch. 5](#)

**F10** Ss. 36(4)(a)(c)(5), 37(1), 39, 40 repealed by [Criminal Appeal \(Northern Ireland\) Act 1980 \(c. 47, SIF 38\), s. 51\(2\), Sch. 5](#)

**37 Powers of a single judge in Court of Appeal.**

- (1) .....<sup>F11</sup>
- (2) In any cause or matter pending before the Court of Appeal, other than an appeal under the Criminal Appeal Act, any direction incidental thereto not involving the decision of the appeal may be given by a single judge of that court, and a single judge of that court may at any time during vacation make an order granting leave to appeal to the Court of Appeal or any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit.
- (3) .....<sup>F12</sup>

**Textual Amendments**

**F11** Ss. 36(4)(a)(c)(5), 37(1), 39, 40 repealed by [Criminal Appeal \(Northern Ireland\) Act 1980 \(c. 47, SIF 38\), s. 51\(2\), Sch. 5](#)

**F12** Words repealed by [Criminal Appeal \(Northern Ireland\) Act 1980 \(c. 47, SIF 38\), s. 51\(2\), Sch. 5](#)

**38 Powers of court for purposes of appeals.**

- (1) For all the purposes of and incidental to the hearing or determination of any appeal, other than an appeal under the Criminal Appeal Act, against any decision or determination of a court, tribunal, authority or person (in this section referred to as “the original court”) and the amendment or enforcement of any judgment or order made thereon, the Court of Appeal shall, in addition to all other powers exercisable by it, have all the jurisdiction of the original court and may—
  - (a) confirm, reverse or vary the decision or determination of the original court;

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- (b) remit the appeal or any matter arising thereon to the original court with such declarations or directions as the Court of Appeal may think proper;
  - (c) in the case of an appeal from a decision or determination of the High Court, order a retrial or make any such order as could be made in pursuance of an application for a new trial;
  - (d) adjourn the hearing from time to time;
  - (e) draw any inference of fact which might have been drawn or give any judgment or make any order which might have been given or made by the original court and make such further or other order as the case may require;
  - (f) where the appeal is by case stated, amend the case stated or remit it, with such declarations or directions as the court may think proper, for hearing and determination by the original court or for re-statement or amendment or for a supplemental case to be stated thereon;
  - (g) make such order as to costs and expenses incurred in the appeal and in the proceedings in the original court as the Court of Appeal thinks fit;
  - (h) in special circumstances order that such security shall be given for the costs of an appeal as may be just;
  - (i) make such other order as may be necessary for the due determination of the appeal.
- (2) The powers of the Court of Appeal in respect of an appeal to which subsection (1) applies—
- (a) shall not be restricted by reason of any interlocutory order from which there has been no appeal; and
  - (b) may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the original court or by any particular party to the proceedings in that court or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice;
- and the Court of Appeal may make any order, on such terms as the court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.
- (3) It shall be the duty of the original court to have regard to all such declarations and to obey all such directions, if any, as may be given by the Court of Appeal pursuant to subsection (1).
- (4) Judgments and orders made by the Court of Appeal shall have the like effect and may be enforced in like manner as judgments and orders made by the original court.

**39, 40.** ..... F13

**Textual Amendments**

**F13** Ss. 36(4)(a)(c)(5), 37(1), 39, 40 repealed by [Criminal Appeal \(Northern Ireland\) Act 1980 \(c. 47, SIF 38\)](#), s. 51(2), [Sch. 5](#)

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#### **41 Appeals to House of Lords in other criminal matters.**

- (1) Subject to the provisions of this section, an appeal shall lie to the House of Lords, at the instance of the defendant or the prosecutor,—
  - (a) from any decision of the High Court in a criminal cause or matter;
  - (b) from any decision of the Court of Appeal in a criminal cause or matter upon a case stated by a county court or a magistrates' court.
- (2) No appeal shall lie under this section except with the leave of the court below or of the House of Lords; and, subject to section 45(3), such leave shall not be granted unless it is certified by the court below that a point of law of general public importance is involved in the decision and it appears to that court or to the House of Lords, as the case may be, that the point is one which ought to be considered by that House.
- (3) Section 5 of the <sup>M3</sup>Appellate Jurisdiction Act 1876 (which regulates the composition of the House of Lords for the hearing and determination of appeals) shall apply to the hearing and determination of an appeal or application for leave to appeal under this section as it applies to the hearing and determination of an appeal under that Act; and any order of that House which provides for the hearing of such applications by a committee constituted in accordance with the said section 5 may direct that the decision of that committee shall be taken on behalf of the House.
- (4) For the purpose of disposing of an appeal under this section the House of Lords may exercise any powers of the court below or may remit the case to that court.
- (5) Schedule 1 shall have effect in relation to appeals under this section.
- (6) In this section, sections 44 and 45 and Schedule 1—
  - (a) any reference to the defendant shall be construed—
    - (i) in relation to proceedings for an offence, and in relation to an application for an order of mandamus, prohibition or certiorari in connection with such proceedings, as a reference to the person who was or would have been the defendant in those proceedings;
    - (ii) in relation to any proceedings or order for or in respect of contempt of court, as a reference to the person against whom the proceedings were brought or the order was made;
    - (iii) in relation to a criminal application for habeas corpus, as a reference to the person by or in respect of whom that application was made,
 and any reference to the prosecutor shall be construed accordingly;
  - (b) “application for habeas corpus” means an application for a writ of habeas corpus ad subjiciendum and references to a criminal application or civil application shall be construed accordingly as the application does or does not constitute a criminal cause or matter;
  - (c) “leave to appeal” means leave to appeal to the House of Lords under this section;
  - (d) an appeal under this section shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of and an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.

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#### Marginal Citations

M3 1876 c. 59.

## 42 Appeals to House of Lords in civil cases.

- (1) Subject to the provisions of this section and to any restriction imposed by any statutory provision which has effect by virtue of subsection (6), an appeal shall lie to the House of Lords from any order or judgment of the Court of Appeal in any civil cause or matter.
- (2) No appeal shall lie under this section except with the leave of the Court of Appeal or the House of Lords.
- (3) Sections 4 and 5 of the <sup>M4</sup>Appellate Jurisdiction Act 1876 (which respectively provide for the bringing of appeals under that Act by way of petition and regulate the composition of the House for the hearing and determination of such appeals) shall apply to an appeal under this section and to the hearing and determination thereof as they apply respectively to an appeal under that Act and to the hearing and determination thereof.
- (4) The House of Lords may by order provide for the hearing and determination by a Committee of that House of petitions for leave to appeal under this section from the Court of Appeal, and the said section 5 shall apply to the hearing and determination of any such petition by a Committee of that House as, by virtue of the last foregoing subsection, it applies to the hearing and determination of an appeal under this section.
- (5) Section 11 of the said Act of 1876 (which relates to the manner in which, and conditions on which, appeals lie to the House of Lords under that Act) shall have effect as if the references therein to that Act included references to this section.
- (6) No appeal from an order or judgment of the Court of Appeal shall, unless it involves a decision of any question as to the validity of any provision made by or under an Act of the Parliament of Northern Ireland or a Measure of the Northern Ireland Assembly, lie under this section in a case where by any statutory provision, including a provision of this Act, it is expressly provided (whatever form of words is used) that that order or judgment is to be final.

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

C4 S. 42 applied (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 711(4), 1034(1) (with transitional provisions and savings in Sch. 2)

#### Marginal Citations

M4 1876 c. 59.

## 43 Appeals to House of Lords from High Court.

Nothing in this Part of this Act affects the operation of Part II of the <sup>M5</sup>Administration of Justice Act 1969 (which provides that an appeal from the High Court shall in certain circumstances lie direct to the House of Lords).

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#### Marginal Citations

M5 1969 c. 58.

#### 44 Appeal in cases of contempt of court.

- (1) Subject to the provisions of this section, an appeal shall lie under this section from any order or decision of a court in Northern Ireland in the exercise of jurisdiction to punish for contempt of court (including criminal contempt); and in relation to any such order or decision the provisions of this section shall have effect in substitution for any other statutory provision, relating to appeals in civil or criminal proceedings.
- (2) An appeal under this section shall lie in any case at the instance of the defendant and, in the case of an application for committal or attachment, at the instance of the applicant; and the appeal shall lie—
  - (a) from an order or decision of any inferior court (including a county court) or of a single judge of the High Court, or of any court having the powers of the High Court or a judge of that court, to the Court of Appeal;
  - (b) from an order or decision of the Court of Appeal (including an order or a decision of that court on an appeal under this section) and from an order or decision of the High Court, other than an order or decision of a single judge thereof, or of the Courts-Martial Appeal Court, to the House of Lords.
- (3) The court to which an appeal is brought under this section may reverse or vary the order or decision of the court below, and make such other order as may be just; and, without prejudice to the inherent powers of any court referred to in subsection (2), provision may be made by rules of court for authorising the release on bail of an appellant under this section.
- (4) Subsections (2) to (4) of section 41 and paragraph 1 of Schedule 1 shall apply to an appeal to the House of Lords under this section, as they apply to an appeal to that House under the said section 41 except that so much of the said subsection (2) as restricts the grant of leave to appeal shall apply only where the decision of the court below is a decision on appeal to that court under this section.
- (5) In this section “court” includes any tribunal or person having power to punish for contempt; and references in this section to an order or decision of a court in the exercise of jurisdiction to punish for contempt include references—
  - (a) to an order or decision of the High Court or a county court under any statutory provision enabling that court to deal with an offence as if it were contempt of court;
  - (b) to an order or decision of a county court under [<sup>F14</sup>Article 54 or 55 of the County Courts (Northern Ireland) Order 1980 or under Article 34 or 51 of that Order so far as those Articles] confer jurisdiction in respect of contempt of court;
  - (c) to an order or decision of a magistrates’ court under [<sup>F15</sup>Article 112 of the Magistrates’ Courts (Northern Ireland) Order 1981];
 but do not include references to orders under any provision of, [<sup>F16</sup>the County Courts (Northern Ireland) Order 1980] or the [<sup>F17</sup>Magistrates’ Courts (Northern Ireland) Order 1981], except those referred to in paragraphs (b) and (c).



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- (6) This section does not apply to a conviction or sentence in respect of which an appeal lies under [F18Part I] of the Criminal Appeal Act or to a decision of the Court of Appeal under that Part of that Act; and for the purposes of that Act and of this subsection an order for the punishment of any person for contempt of court in proceedings in which he has a right of appeal against his sentence shall be treated as a sentence in those proceedings.

#### Textual Amendments

- F14** Words substituted by S.I. 1980/397 (N.I. 3), art. 68(2), **Sch. 1 Pt. II**
- F15** Words substituted by S.I. 1981/1675 (N.I. 26), art. 170(2), **Sch. 6 para. 51(a)**
- F16** Words substituted by S.I. 1980/397 (N.I. 3), **Sch. 1 Pt. II**
- F17** Words substituted by S.I. 1981/1675 (N.I. 26), art. 170(2), **Sch. 6 para. 51(b)**
- F18** Words substituted by Criminal Appeal (Northern Ireland) Act 1980 (c. 47, SIF 38), s. 51(1), **Sch. 4 para. 16**

#### 45 Appeal in habeas corpus proceedings.

- (1) Subject to the provisions of this section, an appeal shall lie, in any proceedings upon application for habeas corpus, whether civil or criminal, against an order for the release of the person restrained as well as against the refusal of such an order.
- (2) No appeal shall lie by virtue of this section from an order made by a single judge on a criminal application for habeas corpus.
- (3) In relation to a decision of the High Court on a criminal application for habeas corpus, section 41 shall have effect as if so much of subsection (2) of that section as restricts the grant of leave to appeal were omitted.
- (4) Except as provided by paragraph 4 of Schedule 1 in the case of an appeal against an order of the High Court on a criminal application, an appeal brought by virtue of this section shall not affect the right of the person restrained to be discharged in pursuance of the order under appeal and (unless an order under sub-paragraph (1) of that paragraph is in force at the determination of the appeal) to remain at large regardless of the decision on appeal.

**Status:**

Point in time view as at 31/01/1997.

**Changes to legislation:**

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