



# Judicature (Northern Ireland) Act 1978

## 1978 CHAPTER 23

### PART III

#### [<sup>F1</sup>THE COURT OF APPEAL AND THE SUPREME COURT]

#### **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;
  - (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.

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*Changes to legislation: Judicature (Northern Ireland) Act 1978, Section 38 is up to date with all changes known to be in force on or before 18 May 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) View outstanding changes*

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- (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.

**Changes to legislation:**

Judicature (Northern Ireland) Act 1978, Section 38 is up to date with all changes known to be in force on or before 18 May 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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 14(1)(1A) substituted for s. 14(1) by [2002 c. 26 Sch. 12 para. 13](#) (This amendment not applied to legislation.gov.uk. Sch. 5 repealed (3.4.2006) without ever being in force by 2005 c. 4, Sch. 5 para. 125, Sch. 18 Pt. 3; S.I. 2006/1014, art. 2, Sch. 1 paras. 12(f), 30(c))
- s. 106(3A) inserted by [2011 c. 24 \(N.I.\) s. 89\(1\)](#)