A guide to bringing a case to The Supreme Court

1.1 This page sets out some information to help you decide whether The Supreme Court can help you. The Supreme Court is an *appeal* court[1]. This means that it only deals with appeals from

In England and Wales

The Court of Appeal, Civil Division
The Court of Appeal, Criminal Division
(in some limited cases[2]) the High Court

In Scotland

The Court of Session

In Northern Ireland

The Court of Appeal in Northern Ireland

(in some limited cases[3]) the High Court

1.2 Unless one of these Courts has made an order affecting you, you will **NOT** be able to take your case to The Supreme Court. **And** not all orders made by these Courts can be appealed to The Supreme Court[4].

What is The Supreme Court?

1.3 The Supreme Court of the United Kingdom was established by Part 3 of the Constitutional Reform Act 2005 and came into being on 1 October 2009. It replaces the House of Lords in its judicial capacity and has assumed the jurisdiction of the House of Lords under the Appellate Jurisdiction Acts 1876 and 1888. The Supreme Court also has jurisdiction in relation to devolution matters[5] under the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006; this was transferred to The Supreme Court from the Judicial Committee of the Privy Council.

[1] There is an exception to this: see **Devolution** at para 1.18
[2] See paragraph 1.12
[3] See paragraph 1.12
[4] See paragraph 1.16.
[5] see **Devolution** at para 1.18

Do I have a right of appeal?

1.4 The right of appeal to the Supreme Court is regulated by statute and is subject to several statutory restrictions. The relevant statutes for civil appeals are:

the Administration of Justice (Appeals) Act 1934
the Administration of Justice Act 1960
the Administration of Justice Act 1969
the Judicature (Northern Ireland) Act 1978
the Court of Session Act 1988
the Access to Justice Act 1999.

The Human Rights Act 1998 applies to The Supreme Court in its judicial capacity. But that Act does not confer any **general** right of appeal to The Supreme Court, or any right of appeal over and above any right of appeal which was provided for in Acts passed before the coming into force of the Human Rights Act 1998.

Appeals from the Court of Appeal in England & Wales and the Court of Appeal in Northern Ireland

1.5 An appeal to The Supreme Court from any order or judgment of the Court of Appeal in England and Wales or in Northern Ireland may only be brought with the permission of the Court of Appeal or of The Supreme Court.

1.6 An application for permission to appeal must be made first to the Court of Appeal. If that Court refuses permission, an application may be made to The Supreme Court. An application is made by filing an application for permission to appeal.

Appeals from the Court of Session in Scotland

1.7 An appeal lies to the Court from any order or judgment of a court in Scotland if an appeal lay from that court to the House of Lords at or immediately before 1 October 2009.

1.8 Formerly permission to appeal was not required from an interlocutor of the Inner House of the Court of Session on the whole merits of the cause. The appeal was to be filed within 42 days of the date of the interlocutor appealed from; and the notice of appeal had to be signed by two Scottish counsel who had to certify that the appeal was reasonable.

1.9[6] Where judgment is pronounced after 22 September 2015 on a decision of the Inner House of the Court of Session which is

(a) a decision constituting final judgment in any proceedings,
(b) a decision in an exchequer cause,
(c) a decision, on an application under section 29 of the Court of Session Act 1988, to grant or refuse a new trial in any proceedings,
(d) any other decision in any proceedings if—
(i) there is a difference of opinion among the judges making the decision, or

[6] September 2015

(ii) the decision is one sustaining a preliminary defence and dismissing the proceedings.

an appeal may be made to the Supreme Court

(a) with the permission of the Inner House, or

(b) if the Inner House has refused permission, with the permission of the Supreme Court.

- "final judgment", in relation to any proceedings, means a decision which, by itself or taken along with prior decisions in the proceedings, disposes of the subject matter of the proceedings on its merits, even though judgment may not have been pronounced on every question raised or expenses found due may not have been modified, taxed or decerned for,
- "preliminary defence", in relation to any proceedings, means a defence that does not relate to the merits of the proceedings.

In the case of any other decision of the Inner House, an appeal may be made to the Supreme Court only with the permission of the Inner House.

No appeal may be taken to the Supreme Court against any decision of a Lord Ordinary.

An application to the Inner House for permission to take an appeal must be made—

(a) within the period of 28 days beginning with the date of the decision against which the appeal is to be taken, or

(b) within such longer period as the Inner House considers equitable having regard to all the circumstances.

An application to the Supreme Court for permission to appeal must be made—

(a) within the period of 28 days beginning with the date on which the Inner House refuses permission for the appeal, or

(b) within such longer period as the Supreme Court considers equitable having regard to all the circumstances.

The Inner House or the Supreme Court may grant permission for an appeal only if the Inner House or, as the case may be, the Supreme Court considers that the appeal raises an arguable point of law of general public importance which ought to be considered by the Supreme Court at that time.

1.10 Permission to appeal is required for an appeal to The Supreme Court against any interlocutory judgment of the Court of Session that does not fall within para. 1.9, and only the Inner House of the Court of Session may grant permission to appeal. A refusal by the Court of Session to grant permission to appeal is final and no appeal may then be made to The Supreme Court.

1.11 Permission to appeal from the Court of Session is also required for an appeal to The Supreme Court under the provisions of certain Acts of Parliament, and permission may be granted by the Court of Session or, if refused by the Court of Session, by The Supreme Court. When permission to appeal is granted it is not necessary for two Scottish counsel to certify that the appeal is reasonable.

Appeals from Tribunals and from[7] the High Court in England & Wales and the High Court in Northern Ireland: leapfrog appeals

1.12 In certain cases, and subject to certain conditions, an appeal lies direct to The Supreme Court from the High Court or a Divisional Court in England and Wales or from the High Court in Northern Ireland under sections 12 to 16 of the Administration of Justice Act 1969. Similar provision is made for appeals from decision of certain tribunals.[8]
These appeals are normally called **leapfrog appeals.**

1.12.1 A certificate must be first obtained and then the permission of The Supreme Court must be applied for and given before the appeal may proceed.

1.12.2[9] An application for a certificate may be made by any of the parties and the application should be made immediately after the judge gives judgment in the proceedings or, if no such application is made, within 14 days from the date on which judgment was given.

1.12.3 A certificate will be granted only if the relevant statutory conditions are fulfilled[10].

1.12.4 The relevant conditions are set out in section 12(3) and (3A) of the Administration of Justice Act 1969, section 14A (4) and (5) of the Tribunals, Courts and Enforcement Act 2007, section 37A(4) and (5) of the Employment Tribunals Act 1996 and section 7B(4) and (5) of the Special Immigration Commission Act 1997.

1.12.5 No appeal lies against the grant or refusal of a certificate, but if a certificate is refused the applicant may appeal the decision in the normal way, once the time for applying for a certificate has expired.

Judicial review: civil matters

1.13 An application for permission to appeal for judicial review is made to the Administrative Court (which is part of the Queen's Bench Division of the High Court). If the judge in the Administrative Court refuses the application without a hearing, an application can be made for his decision to be reconsidered at a hearing. Where permission to apply for judicial review has been refused by the Administrative Court after consideration on paper and after reconsideration at an oral hearing, the applicant may apply to appeal against refusal of permission. An application must be filed in the Court of Appeal within 7 days. For an appeal to be successful, the applicant needs to be granted both i) permission to appeal against the Administrative Court's determination; **and** ii) permission to apply for judicial review.

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[7] September 2015
[8] September 2015
[9] 1.12.2 – 1.12.5 September 2015
[10] Section 12 – 16 of the Administration of Justice Act 1969 (as amended by the Criminal Justice and Courts Act 2015) provide circumstances in which decisions of the High Court or the Division Court may be "leapfrogged" to the Supreme Court. Sections 14A – 14C of the Tribunals Act 1996 (inserted by the Criminal Justice and Courts Act 2015) provide circumstances in which decisions of certain tribunals which have High Court equivalent jurisdiction may be "leapfrogged" to the Supreme Court and sections 7B – 7D of the Special Immigration Appeals Commission Act 1997 (inserted by the Criminal Justice and Courts Act 2015) provide circumstances in which SIAC decisions may be "leapfrogged" to the Supreme Court.

1.14 If the Court of Appeal refuses to grant permission to appeal against the decision of the Administrative Court to refuse permission to apply for judicial review, there is no further right of appeal to The Supreme Court. The Supreme Court has no jurisdiction to issue such an appeal. But if the Court of Appeal (a) grants permission to appeal against the Administrative Court's refusal of permission to apply for judicial review, but then (b) itself refuses permission to apply for judicial review, The Supreme Court does have jurisdiction.

Civil contempt of court cases

1.15 In cases involving civil contempt of court, an appeal may be brought under section 13 of the Administration of Justice Act 1960. Permission to appeal is required and an application for permission must first be made to the court which heard the original case. If that application is refused, an application for permission may then be made to The Supreme Court. Where the decision of the court below is a decision on appeal under the same section of the same Act, permission to appeal to The Supreme Court is only granted if the court below certifies that a point of law of general public importance is involved in that decision and if it appears to that court or to The Supreme Court that the point is one that ought to be considered by The Supreme Court. Where the court below refuses to grant the certificate required, an application for permission may not then be made to The Supreme Court.

What are restrictions on a right of appeal

1.16 Permission to appeal to The Supreme Court is subject to a number of statutory restrictions.

- The most important general restriction on rights of appeal is section 54(4) of the Access to Justice Act 1999. This provision means that The Supreme Court may NOT entertain any appeal against an order of the Court of Appeal refusing permission to bring an appeal to the Court of Appeal from a lower court. In other words, where the Court of Appeal refuses to give permission for a party to appeal to the Court of Appeal, then that decision cannot be challenged in The Supreme Court.

1.16.1 Other restrictions relate to

- applications brought by a person in respect of whom the High Court has made an order under section 42 of The Supreme Court Act 1981 (restriction of Vexatious legal proceedings);
- applications brought from a decision of the Court of Appeal on an appeal from a county court in probate proceedings;
- applications brought from a decision of the Court of Appeal on an appeal from a decision of the High Court on a question of law under Part III of the Representation of the People Act 1983 (legal proceedings);
- applications for permission to appeal against the refusal of the Court of Appeal under CPR 52.17 (the '*Taylor v Lawrence*' jurisdiction) to reopen an appeal or application for permission to appeal.

1.16.2 Where one of these restrictions applies, the Registrar will inform the applicant in writing that The Supreme Court has no jurisdiction. The European Court of Human Rights accepts this

letter as setting out the jurisdiction of The Supreme Court in the litigation, for the purpose of determining whether the applicant has satisfied the requirement, laid down by Article 35 of the European Convention on Human Rights, that all domestic remedies must be exhausted before an appeal can be made to the Strasbourg Court.

Criminal Appeals

1.17 Appeals to The Supreme Court in criminal proceedings in England and Wales or Northern Ireland are subject to special restrictions limiting such appeals to exceptional cases of general public importance. There is no appeal in criminal proceedings from the High Court of Justiciary or any other court in Scotland, but issues relating to criminal proceedings in Scotland may come before The Supreme Court as devolution issues under the Scotland Act 1998. See paragraph 1.18.

England and Wales (except Courts-martial)

1.17.1 Appeals to The Supreme Court in criminal proceedings in England and Wales are regulated by sections 33 and 34 of the Criminal Appeal Act 1968 and sections 1 and 2 of the Administration of Justice Act 1960. All such appeals may be made at the instance of the accused or the prosecutor. Section 13 of the Administration of Justice Act 1960 extends the scope of section 1 and 2, with some qualifications, to appeals relating to contempt of court (civil or criminal). Sections 26 to 38 of the Criminal Appeals Act 1968 contain ancillary provisions about bail, detention and attendance at appeal hearings.

1.17.2 Any appeal under these provisions requires permission of the court below or The Supreme Court, which may be granted (except for a first appeal in a contempt of court matter) only if (i) the court below certifies that a point of general public importance is involved and (ii) it appears to the court below or to The Supreme Court that the point is one which ought to be considered by The Supreme Court.

1.17.3 Section 36 of the Criminal Justice Act 1972 permits the Court of Appeal to refer a point of law to The Supreme Court where (after acquittal) the Attorney-General has referred the point of law to the Court of Appeal.

Northern Ireland

1.17.4 Similar provisions apply to appeals in criminal proceedings in Northern Ireland: see sections 31 and 32 of the Criminal Appeal (Northern Ireland Act 1980 and section 41 of and schedule 1 of the Judicature (Northern Ireland) Act 1978.

Courts-Martial

1.17.5 Similar provisions apply to appeals from the Court Martial Appeal Court: see sections 39 and 40 of the Courts-Martial (Appeals) Act 1968.

Devolution Issues

1.18 Devolution issues raise issues of constitutional importance as to the exercise of a function by a member of the Scottish Executive, a Minister in Northern Ireland or a Northern Ireland department or by the Welsh Ministers or as to the legislative competence of the Scottish Parliament under the Scotland Act 1998, the Northern Ireland Assembly under the Northern Ireland Act 1998, and the Welsh Assembly under the Government of Wales Act 2006. Under these Acts, The Supreme court has both appellate jurisdiction and special statutory powers to consider referred questions, including questions by the relevant law officer or Ministers.

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