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 1988 and the Government of Wales Act 2006; this was transferred to The Supreme Court from the Judicial Committee of the Privy Council.

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:

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[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 para. 1.16.
[5] See **Devolution** at para 1.18.

- 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[6].

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 As a general rule, permission to appeal is not required from an interlocutor of the Inner House of the Court of Session on the whole merits of the cause[6]. The appeal must be filed within three months of the date of the interlocutor appealed from; and the notice of appeal must be signed by two Scottish counsel who must also certify that the appeal is reasonable.

1.9 As a general rule, permission to appeal is not required from an interlocutory judgment of the Court of Session where there is a difference of opinion among the judges or where the interlocutory judgment is one sustaining a dilatory defence and dismissing the action[6]. The appeal must be filed within three months of the date of the interlocutor appealed from; and the notice of appeal must be signed by two Scottish counsel who must also certify that the appeal is reasonable.

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 either by the Court of Session or, if refused by the Court of Session, by The Supreme Court. When permission to appeal is granted where para.1.10 or this paragraph applies, it is not necessary for two Scottish counsel to certify that the appeal is reasonable.

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[6] See Glossary.

Appeals from 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 in England and Wales or in Northern Ireland. Under sections 12 to 16 of the Administration of Justice Act 1969, appeals in civil matters may exceptionally be permitted to be made direct to The Supreme Court from
(i) the High Court in England and Wales
(ii) a Divisional Court in England and Wales and
(iii) the High Court of Northern Ireland.
These appeals are generally called *leapfrog appeals*.

1.12.1 A certificate of the High Court must first be obtained and then the permission of The Supreme Court must be applied for and given before the appeal may proceed. No application may be made to The Supreme Court without the certificate of the High Court.

1.12.2 A leapfrog appeal is only permitted if
(i) the judge in the High Court certifies (immediately after judgment or on an application within 14 days) that the "relevant conditions" are satisfied, that a sufficient case has been made out to justify an application for permission to appeal to The Supreme Court, and that all parties consent;
(ii) The Supreme Court (on an application made within one month) gives permission for the appeal, and
(iii) it is not a case of contempt of court or one in which an appeal to the Court of Appeal (or the Court of Appeal of Northern Ireland) (a) would not have lain even with permission or (b) would not have had permission granted for it.

1.12.3 The "relevant conditions" (which are set out in section 12(3) of the Administration of Justice Act 1969) are that a point of general public importance is involved and that it either:

"(a) relates wholly or mainly to the construction of an enactment or of a statutory instrument, and has been fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings, or
(b) is one in respect of which the judge is bound by a decision of the Court of Appeal or of The Supreme Court in previous proceedings, and was fully considered in the judgments given by the Court of Appeal or The Supreme Court (as the case may be) in those previous proceedings."

(In the case of leapfrog appeals from Northern Ireland the references in this paragraph to the Court of Appeal must be read as references to the Court of Appeal of Northern Ireland.)

Judicial review: civil matters

1.13 An application for permission to apply 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 the 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.

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 the 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 by 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 sections 1 and 2, with some qualifications, to appeals relating to contempt of court (civil or criminal). Sections 36 to 38 of the Criminal Appeal Act 1968 contain ancillary provisions about bail, detention and attendance at appeal hearings.

1.17.2 Any appeal under these provisions requires the 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 an 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 to the Judicature (Northern Ireland) Act 1978.

Courts-Martial

1.17.5 Similar provisions apply to appeals from the Courts-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 referred by the relevant law officer or Ministers.