

# COURTS REFORM (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### THE ACT

#### Part 5 – Civil Appeals

#### Appeals to the Court of Session

#### *Section 115 – Appeals: granting of leave or permission and assessment of grounds of appeal*

205. **Section 115** inserts a new section 31A into the Court of Session Act 1988 to give the Court of Session power to provide by act of sederunt for a single judge (a) to determine any applications to the Inner House of the Court of Session for leave or permission to appeal to the Inner House; and (b) to consider any appeal proceedings initially (and, where appropriate, after leave or permission has been granted).
206. **Section 115** relates to paragraphs 97 to 99 of Chapter 4 of the Scottish Civil Courts Review which also referred to the Inner House Business Review by Lord Penrose which recommended at paragraph 6.27 what the Scottish Civil Courts Review termed a “sift mechanism” whereby a single Inner House judge could consider grounds of appeal.
207. By way of background to the new provisions, it is relevant to note that section 2(4) of the Court of Session Act 1988 provides that, subject to section 5(ba), the quorum for a Division of the Inner House of the Court of Session shall be three judges. Section 5(ba) was inserted by the Judiciary and Courts (Scotland) Act 2008. Subsection 103(2)(p) of the Act gives the Court of Session power to make provision by act of sederunt as to the quorum for a Division of the Inner House considering solely procedural matters. That power is considered sufficient to provide for a single Inner House judge to deal with procedural matters including applications for leave or permission – see Rule 37A of the Rules of Court and as confirmed by the case of *MBR v Secretary of State for the Home Department*<sup>1</sup>. However, the power is not considered sufficient to enable Rules of Court to enable a single judge to consider the initial stages of the appeal proceedings and decide by reference to the grounds of appeal whether the appeal proceedings should be allowed to proceed and if so on what grounds.
208. Since a decision on whether to grant leave or permission and an assessment of the grounds of appeal both require some consideration of the merits and will ordinarily affect whether an appeal or part of it can proceed. The Act provides a power for both of the above matters to enable a consistent approach.
209. New section 31A(1), therefore, provides the Court of Session with a new power relating to applications for leave or permission. When the act of sederunt is made under this new power the existing provisions that deal with the leave or permission process in Chapter 37A (as considered by the Court in the MBR case cited above) will be removed. Subsection (1) does not set out the test to be applied by the Court in determining whether leave or permission should be granted. That will be determined by the common law and

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<sup>1</sup> 2013 SLT 1108; [www.scotcourts.gov.uk/opinions/2013CSIH66.html](http://www.scotcourts.gov.uk/opinions/2013CSIH66.html).

*These notes relate to the Courts Reform (Scotland) Act 2014  
(asp 18) which received Royal Assent on 10 November 2014*

any particular provisions in the relevant statutes that provide for leave or permission. The second appeals test has now been introduced for the majority of cases – see *Hoseini v Secretary of State for the Home Department 2005 SLT 550* as referred to by the Court in the MBR case.

210. New section 31A(2) provides the Court of Session with a separate power to make provision for the initial appeal proceedings to be dealt with by a single judge with reference to whether the grounds of appeal or any of them are arguable. The Court is also given discretion through this power to apply this procedure to cases where leave or permission has already been granted.
211. New section 31A(3) requires the act of sederunt to make provision about the procedure including for the parties to be heard and for review by a Division of the Inner House of the Court of Session.
212. New section 31A(4) provides for the single judge's decision to be final subject to the Inner House review process.
213. New section 31A(7) contains a definition of appeal proceedings. The new process is not capable of being applied to the procedure for permission to appeal to the Supreme Court that is separately provided for through section 117 of the Act.