



# Criminal Justice and Courts Act 2015

## 2015 CHAPTER 2

### PART 3

#### COURTS AND TRIBUNALS

##### *Appeals in civil proceedings*

#### **62 Appeals from the Court of Protection**

- (1) Section 53 of the Mental Capacity Act 2005 (rights of appeal from the Court of Protection) is amended as follows.
- (2) For subsection (2) substitute—
  - “(2) Court of Protection Rules may provide that, where a decision of the court is made by a specified description of person, an appeal from the decision lies to a specified description of judge of the court and not to the Court of Appeal.”
- (3) Omit subsection (3).
- (4) In subsection (4)(d), omit “higher”.

#### **63 Appeals from the High Court to the Supreme Court**

- (1) Part 2 of the Administration of Justice Act 1969 (appeal from High Court to Supreme Court) is amended as follows.
- (2) In section 12 (grant of a certificate by the trial judge enabling an appeal to the Supreme Court), in subsection (1)—
  - (a) in paragraph (a), after “those proceedings” insert “ or that the conditions in subsection (3A) (“the alternative conditions”) are satisfied in relation to those proceedings ”, and
  - (b) omit paragraph (c) (requirement that all parties consent to the grant of the certificate) and the “and” before it.

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Courts Act 2015, Cross Heading: Appeals in civil proceedings. (See end of Document for details)*

(3) After subsection (3) insert—

“(3A) The alternative conditions, in relation to a decision of the judge in any proceedings, are that a point of law of general public importance is involved in the decision and that—

- (a) the proceedings entail a decision relating to a matter of national importance or consideration of such a matter,
- (b) the result of the proceedings is so significant (whether considered on its own or together with other proceedings or likely proceedings) that, in the opinion of the judge, a hearing by the Supreme Court is justified, or
- (c) the judge is satisfied that the benefits of earlier consideration by the Supreme Court outweigh the benefits of consideration by the Court of Appeal.”

(4) In section 16 (application of Part 2 to Northern Ireland), after subsection (1) insert—

“(1A) In the application of this Part of this Act to Northern Ireland, section 12 has effect as if—

- (a) in subsection (1)(a) there were omitted “or that the conditions in subsection (3A) (“the alternative conditions”) are satisfied in relation to those proceedings”;
- (b) after subsection (1)(b) there were inserted “, and
  - (c) that all the parties to the proceedings consent to the grant of a certificate under this section,”;
- (c) subsection (3A) were omitted.”

#### Commencement Information

**II** S. 63 in force at 13.4.2015 by S.I. 2015/778, art. 3, Sch. 1 para. 52 (with Sch. 2 para. 2)

PROSPECTIVE

## 64 Appeals from the Upper Tribunal to the Supreme Court

In the Tribunals, Courts and Enforcement Act 2007, after section 14 insert—

### “14A Appeal to Supreme Court: grant of certificate by Upper Tribunal

- (1) If the Upper Tribunal is satisfied that—
  - (a) the conditions in subsection (4) or (5) are fulfilled in relation to the Upper Tribunal's decision in any proceedings, and
  - (b) as regards that decision, a sufficient case for an appeal to the Supreme Court has been made out to justify an application under section 14B, the Upper Tribunal may grant a certificate to that effect.
- (2) The Upper Tribunal may grant a certificate under this section only on an application made by a party to the proceedings.

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- (3) The Upper Tribunal may grant a certificate under this section only if the relevant appellate court as regards the proceedings is—
  - (a) the Court of Appeal in England and Wales, or
  - (b) the Court of Appeal in Northern Ireland.
- (4) The conditions in this subsection are that a point of law of general public importance is involved in the decision of the Upper Tribunal and that point of law is—
  - (a) a point of law that—
    - (i) relates wholly or mainly to the construction of an enactment or statutory instrument, and
    - (ii) has been fully argued in the proceedings and fully considered in the judgment of the Upper Tribunal in the proceedings, or
  - (b) a point of law—
    - (i) in respect of which the Upper Tribunal is bound by a decision of the relevant appellate court or the Supreme Court in previous proceedings, and
    - (ii) that was fully considered in the judgments given by the relevant appellate court or, as the case may be, the Supreme Court in those previous proceedings.
- (5) The conditions in this subsection are that a point of law of general public importance is involved in the decision of the Upper Tribunal and that—
  - (a) the proceedings entail a decision relating to a matter of national importance or consideration of such a matter,
  - (b) the result of the proceedings is so significant (whether considered on its own or together with other proceedings or likely proceedings) that, in the opinion of the Upper Tribunal, a hearing by the Supreme Court is justified, or
  - (c) the Upper Tribunal is satisfied that the benefits of earlier consideration by the Supreme Court outweigh the benefits of consideration by the Court of Appeal.
- (6) Before the Upper Tribunal decides an application made to it under this section, the Upper Tribunal must specify the court that would be the relevant appellate court if the application were an application for permission (or leave) under section 13.
- (7) In this section except subsection (6) and in sections 14B and 14C, “the relevant appellate court”, as respects an application, means the court specified as respects that application by the Upper Tribunal under subsection (6).
- (8) No appeal lies against the grant or refusal of a certificate under subsection (1).

#### **14B Appeal to Supreme Court: permission to appeal**

- (1) If the Upper Tribunal grants a certificate under section 14A in relation to any proceedings, a party to those proceedings may apply to the Supreme Court for permission to appeal directly to the Supreme Court.
- (2) An application under subsection (1) must be made—
  - (a) within one month from the date on which that certificate is granted, or

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- (b) within such time as the Supreme Court may allow in a particular case.
- (3) If on such an application it appears to the Supreme Court to be expedient to do so, the Supreme Court may grant permission for such an appeal.
- (4) If permission is granted under this section—
  - (a) no appeal from the decision to which the certificate relates lies to the relevant appellate court, but
  - (b) an appeal lies from that decision to the Supreme Court.
- (5) An application under subsection (1) is to be determined without a hearing.
- (6) Subject to subsection (4), no appeal lies to the relevant appellate court from a decision of the Upper Tribunal in respect of which a certificate is granted under section 14A until—
  - (a) the time within which an application can be made under subsection (1) has expired, and
  - (b) where such an application is made, that application has been determined in accordance with this section.

#### **14C Appeal to Supreme Court: exclusions**

- (1) No certificate may be granted under section 14A in respect of a decision of the Upper Tribunal in any proceedings where, by virtue of any enactment (other than sections 14A and 14B), no appeal would lie from that decision of the Upper Tribunal to the relevant appellate court, with or without the permission (or leave) of the Upper Tribunal or the relevant appellate court.
- (2) No certificate may be granted under section 14A in respect of a decision of the Upper Tribunal in any proceedings where, by virtue of any enactment, no appeal would lie from a decision of the relevant appellate court on that decision of the Upper Tribunal to the Supreme Court, with or without the permission (or leave) of the relevant appellate court or the Supreme Court.
- (3) Where no appeal would lie to the relevant appellate court from the decision of the Upper Tribunal except with the permission (or leave) of the Upper Tribunal or the relevant appellate court, no certificate may be granted under section 14A in respect of a decision of the Upper Tribunal unless it appears to the Upper Tribunal that it would be a proper case for giving permission (or leave) to appeal to the relevant appellate court.
- (4) No certificate may be granted under section 14A in respect of a decision or order of the Upper Tribunal made by it in the exercise of its jurisdiction to punish for contempt.”

PROSPECTIVE

#### **65 Appeals from the Employment Appeal Tribunal to the Supreme Court**

In the Employment Tribunals Act 1996, after section 37 insert—

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### **“37A Appeals to Supreme Court: grant of certificate by Appeal Tribunal**

- (1) If the Appeal Tribunal is satisfied that—
  - (a) the conditions in subsection (4) or (5) are fulfilled in relation to the Appeal Tribunal's decision or order in any proceedings, and
  - (b) as regards that decision or order, a sufficient case for an appeal to the Supreme Court has been made out to justify an application under section 37B,the Appeal Tribunal may grant a certificate to that effect.
- (2) The Appeal Tribunal may grant a certificate under this section only on an application made by a party to the proceedings.
- (3) The Appeal Tribunal may not grant a certificate under this section in the case of proceedings in Scotland.
- (4) The conditions in this subsection are that a point of law of general public importance is involved in the decision or order of the Appeal Tribunal and that point of law is—
  - (a) a point of law that—
    - (i) relates wholly or mainly to the construction of an enactment or statutory instrument, and
    - (ii) has been fully argued in the proceedings and fully considered in the judgment of the Appeal Tribunal in the proceedings, or
  - (b) a point of law—
    - (i) in respect of which the Appeal Tribunal is bound by a decision of the Court of Appeal or the Supreme Court in previous proceedings, and
    - (ii) that was fully considered in the judgments given by the Court of Appeal or, as the case may be, the Supreme Court in those previous proceedings.
- (5) The conditions in this subsection are that a point of law of general public importance is involved in the decision or order of the Appeal Tribunal and that—
  - (a) the proceedings entail a decision relating to a matter of national importance or consideration of such a matter,
  - (b) the result of the proceedings is so significant (whether considered on its own or together with other proceedings or likely proceedings) that, in the opinion of the Appeal Tribunal, a hearing by the Supreme Court is justified, or
  - (c) the Appeal Tribunal is satisfied that the benefits of earlier consideration by the Supreme Court outweigh the benefits of consideration by the Court of Appeal.
- (6) No appeal lies against the grant or refusal of a certificate under subsection (1).

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### **37B Appeals to Supreme Court: permission to appeal**

- (1) If the Appeal Tribunal grants a certificate under section 37A in relation to any proceedings, a party to those proceedings may apply to the Supreme Court for permission to appeal directly to the Supreme Court.
- (2) An application under subsection (1) must be made—
  - (a) within one month from the date on which the certificate is granted, or
  - (b) within such time as the Supreme Court may allow in a particular case.
- (3) If on such an application it appears to the Supreme Court to be expedient to do so, the Supreme Court may grant permission for such an appeal.
- (4) If permission is granted under this section—
  - (a) no appeal from the decision or order to which the certificate relates lies to the Court of Appeal, but
  - (b) an appeal lies from that decision or order to the Supreme Court.
- (5) An application under subsection (1) is to be determined without a hearing.
- (6) Subject to subsection (4), no appeal lies to the Court of Appeal from a decision or order of the Appeal Tribunal in respect of which a certificate is granted under section 37A until—
  - (a) the time within which an application can be made under subsection (1) has expired, and
  - (b) where such an application is made, that application has been determined in accordance with this section.

### **37C Appeals to Supreme Court: exclusions**

- (1) No certificate may be granted under section 37A in respect of a decision or order of the Appeal Tribunal in any proceedings where, by virtue of any enactment (other than sections 37A and 37B), no appeal would lie from that decision or order of the Appeal Tribunal to the Court of Appeal, with or without the leave or permission of the Appeal Tribunal or the Court of Appeal.
- (2) No certificate may be granted under section 37A in respect of a decision or order of the Appeal Tribunal in any proceedings where, by virtue of any enactment, no appeal would lie from a decision of the Court of Appeal on that decision or order of the Appeal Tribunal to the Supreme Court, with or without the leave or permission of the Court of Appeal or the Supreme Court.
- (3) Where no appeal would lie to the Court of Appeal from the decision or order of the Appeal Tribunal except with the leave or permission of the Appeal Tribunal or the Court of Appeal, no certificate may be granted under section 37A in respect of a decision or order of the Appeal Tribunal unless it appears to the Appeal Tribunal that it would be a proper case for granting leave or permission to appeal to the Court of Appeal.
- (4) No certificate may be granted under section 37A where the decision or order of the Appeal Tribunal is made in the exercise of its jurisdiction to punish for contempt.”

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VALID FROM 28/06/2018

## **66 Appeals from the Special Immigration Appeals Commission to the Supreme Court**

- (1) The Special Immigration Appeals Commission Act 1997 is amended as follows.
- (2) Before section 8 insert—

### **“7B Appeals to Supreme Court: grant of certificate by Commission**

- (1) If the Special Immigration Appeals Commission is satisfied that—
  - (a) the conditions in subsection (4) or (5) are fulfilled in relation to a final determination to which section 7(1) or (1A) applies, and
  - (b) in respect of that final determination, a sufficient case for an appeal to the Supreme Court has been made out to justify an application under section 7C,the Commission may grant a certificate to that effect.
- (2) The Commission may grant a certificate under this section only on an application made by a party to the appeal or review to which the final determination relates.
- (3) The Commission may not grant a certificate under this section if the final determination is made by the Commission in Scotland.
- (4) The conditions in this subsection are that a point of law of general public importance is involved in the final determination and that point of law is—
  - (a) a point of law that—
    - (i) relates wholly or mainly to the construction of an enactment or statutory instrument, and
    - (ii) has been fully argued in the proceedings on the appeal or review to which the final determination relates and fully considered in the judgment of the Commission, or
  - (b) a point of law—
    - (i) in respect of which the Commission is bound by a decision of the appropriate appeal court or the Supreme Court in previous proceedings, and
    - (ii) that was fully considered in the judgments given by the appropriate appeal court or, as the case may be, the Supreme Court in those previous proceedings.
- (5) The conditions in this subsection are that a point of law of general public importance is involved in the final determination and that—
  - (a) the proceedings entail a decision relating to a matter of national importance or consideration of such a matter,
  - (b) the result of the proceedings is so significant (whether considered on its own or together with other proceedings or likely proceedings) that, in the opinion of the Commission, a hearing by the Supreme Court is justified, or

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(c) the Commission is satisfied that the benefits of earlier consideration by the Supreme Court outweigh the benefits of consideration by the Court of Appeal.

(6) No appeal lies against the grant or refusal of a certificate under subsection (1).

#### **7C Appeals to Supreme Court: permission to appeal**

(1) If the Special Immigration Appeals Commission grants a certificate under section 7B in relation to a final determination, a party to the appeal or review to which the final determination relates may apply to the Supreme Court for permission to appeal directly to the Supreme Court.

(2) An application under subsection (1) must be made—

- (a) within one month from the date on which that certificate is granted, or
- (b) within such time as the Supreme Court may allow in a particular case.

(3) If on such an application it appears to the Supreme Court to be expedient to do so, the Supreme Court may grant permission for such an appeal.

(4) If permission is granted under this section—

- (a) no appeal from the final determination to which the certificate relates lies to the appropriate appeal court, but
- (b) an appeal lies from that determination to the Supreme Court.

(5) An application under subsection (1) is to be determined without a hearing.

(6) Subject to subsection (4), no appeal lies to the appropriate appeal court from a final determination of the Commission in respect of which a certificate is granted under section 7B until—

- (a) the time within which an application can be made under subsection (1) has expired, and
- (b) where such an application is made, that application has been determined in accordance with this section.

#### **7D Appeals to Supreme Court: exclusions**

(1) No certificate may be granted under section 7B in respect of a final determination of the Special Immigration Appeals Commission where, by virtue of any enactment (other than sections 7B and 7C), no appeal would lie from that decision of the Commission to the appropriate appeal court, with or without the leave or permission of the Commission or the appropriate appeal court.

(2) No certificate may be granted under section 7B in respect of a final determination of the Commission where, by virtue of any enactment, no appeal would lie from a decision of the appropriate appeal court on that determination of the Commission to the Supreme Court, with or without the permission or leave of the appropriate appeal court or the Supreme Court.



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- (3) Where no appeal would lie to the appropriate appeal court from a final determination of the Commission except with the leave or permission of the Commission or the appropriate appeal court, no certificate may be granted under section 7B in respect of a final determination unless it appears to the Commission that it would be a proper case for granting leave to appeal to the appropriate appeal court.
- (4) No certificate may be granted under section 7B in respect of a decision or order of the Commission made by it in the exercise of its jurisdiction to punish for contempt.”
- (3) In section 1(4) (challenges to decisions of the Commission), after “section 7” insert “ and sections 7B to 7D ”.
- (4) In section 7(3) (appeals from the Commission: definition of “the appropriate appeal court”), after “In this section” insert “ and sections 7B to 7D ”.
- (5) In section 8 (procedure on applications for leave to appeal)—
- (a) in subsection (1), at the end insert “ or for the grant of a certificate under section 7B ”, and
  - (b) in subsection (2), omit “for leave to appeal”.
- (6) In the heading of section 8, after “leave to appeal” insert “ etc ”.

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