

# CRIMINAL JUSTICE AND COURTS ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 3 – Courts and Tribunals

##### Appeals in civil proceedings

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

513. Section 53 of the Mental Capacity Act 2005 (“2005 Act”) sets out the routes of appeal for cases in the Court of Protection. The general position is that appeals from any level of judge of that Court must lie to the Court of Appeal (see section 53(1)). However, section 53(2) provides that rules of court may make provision for appeals from certain levels of judge in the Court of Protection to lie to another judge within that Court.
514. The Crime and Courts Act 2013 added to the categories of judge in section 46 of the 2005 Act who are eligible for nomination to sit in the Court of Protection, but did not expand section 53(2) of the 2005 Act to enable appeals from any of the new categories of judge to lie within the Court of Protection. The result of this is that appeals from decisions of these additional categories of judge lie automatically to the Court of Appeal. This is disproportionate and likely to create additional work for that Court when the new categories of judge are deployed.
515. *Section 62* enables rules of court to be made allowing appeals to be heard, where appropriate, within the Court of Protection rather than by the Court of Appeal. The rule-making power at section 53 of the 2005 Act is amended to permit appeals from decisions of any judge sitting in the Court of Protection, or of authorised officers, to lie to a specified description of judge in the Court of Protection. The power is exercisable in relation to further appeals from decisions on appeal by judges.

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

516. *Section 63* amends sections 12 and 16 of the Administration of Justice Act 1969 in order to widen the scope for appeals from the High Court to be made directly to the Supreme Court.
517. *Subsection (2)* amends subsection (1) of section 12 and provides for an appeal to the Supreme Court where the alternative conditions in subsection (3A) of section 12 (inserted by *subsection (3)* of this section) are satisfied. *Subsection (2)* also removes the requirement for all parties to the proceedings to consent to a leapfrog appeal.
518. *Subsection (3)* inserts a new subsection (3A) into section 12 which provides that a certificate for appeal straight to the Supreme Court may be granted where the appeal raises a point of law of general public importance and one of three conditions (set out in paragraphs (a) to (c) of the new subsection) is met. The effect of this is to expand the circumstances under which an appeal is allowed to leapfrog, to include cases which raise issues of national importance, cases where the result is of particular significance, and cases where the benefits of not delaying consideration by the Supreme Court outweigh

the benefits of consideration by the Court of Appeal. Appeals will still have to be on a point of law of general public importance.

519. Currently under the 1969 Act leapfrogging to the Supreme Court from the High Court in Northern Ireland is possible in the same circumstances as from the High Court in England and Wales. *Subsection (4)*, however, inserts a new subsection (1A) into section 16 of the Administration of Justice Act 1969. The effect of this new subsection is that section 12 of the Administration of Justice Act 1969 will continue to apply in relation to Northern Ireland as if the changes made by subsections (2) and (3) were not made.

***Section 64: Appeals from the Upper Tribunal to the Supreme Court***

***Section 65: Appeals from the Employment Appeal Tribunal to the Supreme Court***

***Section 66: Appeals from the Special Immigration Appeals Commission to the Supreme Court***

520. **Section 64** inserts new sections 14A to 14C into the Tribunals, Courts and Enforcement Act 2007 with the effect of allowing leapfrog appeals to the Supreme Court to be initiated in the Upper Tribunal under the same conditions as appeals from the High Court.
521. New section 14A establishes the conditions under which the Upper Tribunal may grant a certificate allowing an application for permission to appeal direct to the Supreme Court. It has the effect of replicating in the Upper Tribunal the conditions for the High Court granting a certificate as set out in the Administration of Justice Act 1969 (as amended by section 63). Subsections (1) to (5) stipulate that, following an application by one of the parties to the proceedings, the Upper Tribunal may grant a certificate if a sufficient case has been made out to justify appeal to the Supreme Court and the decision of the Upper Tribunal involves a point of law of general public importance which meets either the conditions set out in subsection (4)(a)(i) and (ii) or (b)(i) and (ii) or the conditions set out in subsection (5)(a) to (c). Subsection (6) requires the Upper Tribunal to specify which court would be the ‘relevant appellate court’ and subsection (3) establishes that the Upper Tribunal may only grant a certificate if the relevant appellate court is the Court of Appeal in England and Wales or the Court of Appeal in Northern Ireland. A certificate may not therefore be granted if the relevant appellate court is the Court of Session in Scotland.
522. New section 14B sets out the procedure under which, following a certificate being granted by the Upper Tribunal, a party may seek permission to appeal to the Supreme Court. It has the effect of replicating the provisions of section 13 of the Administration of Justice Act 1969 (which apply to the High Court) in relation to the Upper Tribunal. Subsection (2) lays down the time limits for such an application. Under subsection (4) if a certificate is granted then there is a right to appeal direct to the Supreme Court and no appeal may be made to the relevant appellate court. Subsection (6) re-connects the right to appeal to the relevant appellate court only if the time for applying to the Supreme Court for permission has expired and, if the permission application is made, the Supreme Court has refused that application.
523. New section 14C establishes certain exclusions from the granting of a certificate by the Upper Tribunal. It has the effect of replicating the provisions of section 15 of the Administration of Justice Act 1969 (which apply to the High Court) in relation to the Upper Tribunal. Under subsections (1) and (2) no certificate may be granted if there would have been no right of appeal at all to the relevant appellate court or from the relevant appellate court to the Supreme Court. Subsection (3) provides that no certificate can be granted where no right of appeal to the relevant appellate court would exist without first obtaining permission to appeal, unless the Upper Tribunal considers that the case merits such permission being granted. In common with the position which

*These notes refer to the Criminal Justice and Courts Act 2015  
(c.2) which received Royal Assent on 12 February 2015*

applies in the High Court, the leapfrog provisions do not apply to appeals from decisions relating to contempt of court.

524. [Sections 65](#) and [66](#) amend the Employment Tribunals Act 1996 and the Special Immigration Appeals Commission Act 1997 respectively. They follow the provisions applying to the Upper Tribunal in section 64 of the Act in relation to the Employment Appeals Tribunal and the Special Immigration Appeals Commission, with the effect of allowing leapfrog appeals to the Supreme Court to be initiated in these bodies.