



Court of Session Act 1988

1988 CHAPTER 36

PART V

APPEAL AND REVIEW

Appeals to ^[F1]Supreme Court

[F1 40] Appeals to the Supreme Court

- (1) An appeal may be taken to the Supreme Court against a decision of the Inner House mentioned in subsection (2), but only—
 - (a) with the permission of the Inner House, or
 - (b) if the Inner House has refused permission, with the permission of the Supreme Court.
- (2) The decisions are—
 - (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, 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
 - (ii) the decision is one sustaining a preliminary defence and dismissing the proceedings.
- (3) An appeal may be taken to the Supreme Court against any other decision of the Inner House in any proceedings, but only with the permission of the Inner House.
- (4) In an appeal against a decision mentioned in subsection (2)(c), the Supreme Court has the same powers as the Inner House had in relation to the application under section 29, including, in particular, the powers under sections 29(3) and 30(3).
- (5) No appeal may be taken to the Supreme Court against any decision of a Lord Ordinary.

Changes to legislation: *Court of Session Act 1988, Section 40 is up to date with all changes known to be in force on or before 22 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (6) But subsection (5) does not affect the operation of subsections (1) and (3) in relation to a decision of the Inner House in a review of a decision of a Lord Ordinary.
- (7) In an appeal to the Supreme Court under this section against a decision of the Inner House in any proceedings, all prior decisions in the proceedings (whether made at first instance or at any stage of appeal) are open to review by the Supreme Court.
- (8) This section is subject to—
- (a) sections 27(5) and 32(5),
 - (b) any provision of any other enactment that restricts or excludes an appeal from the Court of Session to the Supreme Court.
- (9) This section does not affect any right of appeal from the Court of Session to the Supreme Court that arises apart from this section.
- (10) In this section—
- “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.]

Textual Amendments

F1 Ss. 40, 40A substituted (22.9.2015) for s. 40 by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), **ss. 117, 138(2)**; [S.S.I. 2015/247](#), **art. 2, Sch.** (with [art. 5\(2\)\(3\)](#))

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 27(1A) added by [2024 asp 1 s. 7\(13\)](#)