SCOTTISH STATUTORY INSTRUMENTS

2005 No. 198

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment No. 6) (Asylum and Immigration (Treatment of Claimants, etc.) Act 2004) 2005

Made	*24th March 2005*
Coming into force	*4th April 2005*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 5 of the Court of Session Act 1988(**a**) and section 103A(4)(a) of the Nationality, Immigration and Asylum Act 2002(**b**) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 6) (Asylum and Immigration (Treatment of Claimants, etc.) Act 2004) 2005 and shall come into force on 4th April 2005.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session

2.—(1) Subject to sub-paragraphs (2), (3), and (4) the Rules of the Court of Session 1994(**c**) shall be amended in accordance with sub-paragraphs (5), (6) and (7).

(2) Subject to sub-paragraph (3), nothing in this Act of Sederunt shall affect proceedings in which—

(a) an application under section 101(2) of the Nationality, Immigration and Asylum Act 2002 (application for review of a decision of the Immigration Appeal Tribunal on an application for permission to appeal from the decision of an adjudicator) is made on or continues on or after 4 April 2005; or

(b) the time limit for lodging an application under section 101(2) of the Nationality, Immigration and Asylum Act 2002 has commenced but not expired before 4 April 2005 and proceedings under said section 101(2) are commenced after 4 April 2005 but before the expiry of the time limit.

(**a**) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3) and by the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45.

(**b**) 2002 c.41; section 103A of the Act of 2002 was inserted by section 26(6) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19).

(**c**) S.I. 1994/1443, last amended by S.S.I. 2005/193.

(3) For the purposes of the proceedings referred to in sub-paragraph (2), the references to the Tribunal in the following rules shall be construed as references to the Asylum and Immigration Tribunal:–

rule 41.49(1) (service of petition),

rule 41.51(1)(c) (service of order),

rule 41.52 (reservation of expenses).

(4) Where—

(a) an application to the Immigration Appeal Tribunal for permission to appeal against the decision of an adjudicator, which is to be treated as an application under section 103A(1) of the Nationality, Immigration and Asylum Act 2002,(**a**); or

(b) an application under section 103A of the Nationality, Immigration and Asylum Act 2002 for an order requiring the Asylum and Immigration Tribunal to reconsider an adjudicator's decision,

is made on or after 4 April 2005, the references in the following rules to the Tribunal or the Tribunal's decision shall be construed as references to an adjudicator or the adjudicator's decision, as the case may be:–

rule 41.48(3)(b) (grounds of appeal),

rule 41.48(3)(c) (decision on appeal),

rule 41.48(3)(f) (material documents),

rule 41.48(4)(a) (error of law),

rule 41.48(5)(b) where first appears (service of determination),

rule 41.51 (reconsideration of decision to grant appeal).

(5) For rule 41.20(2)(c) (lodging of appeal in court) there shall be substituted the following:–

"(c) section 103E of the Nationality, Immigration and Asylum Act 2002 (appeal from the Asylum and Immigration Tribunal).".

(6) For Part XI of Chapter 41 (applications under section 101(2) of the Nationality, Immigration and Asylum Act 2002)(**b**) there shall be substituted the following:–

"*PART XI*

APPLICATIONS UNDER SECTION 103A OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

Interpretation of this Part

41.46. In this Part—

"the Act of 2002" means the Nationality, Immigration and Asylum Act 2002;

"the Act of 2004" means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(**c**);

"the Tribunal" means the Asylum and Immigration Tribunal;

"filter provision" means paragraph 30 of Schedule 2 to the Act of 2004.

Disapplication of certain rules to this Part

41.47. The following rules shall not apply to a petition to which this Part applies:–

rule 14.4 (form of petition),

(**a**) Sections 103A to 103E of the Act of 2002 were inserted by section 26(6) of the Asylum and Immigration (treatment of Claimants, etc.) Act 2004 (c.19).
(**b**) Part XI was inserted by S.S.I. 2003/223 and amended by S.S.I. 2004/331.
(**c**) 2004 c.19.

rule 14.5 (first order in petitions),

rule 14.6 (period of notice for lodging answers),

rule 14.7 (intimation and service of petitions),

rule 14.8 (procedure where answers lodged),

rule 14.9 (unopposed petitions).

Applications for orders requiring reconsideration

41.48.—(1) The following shall be made to the Outer House:–

(a) an application under section 103A(1) of the Act of 2002 for an order requiring the Tribunal to reconsider a decision on an appeal;

(b) a notification under paragraph 30(5)(a) of Schedule 2 to the Act of 2004 that the applicant wishes the court to consider his application under section 103A(1) of the Act of 2002.

(2) The application or notification shall be by petition in Form 41.48.

(3) There shall be lodged with the petition—

(a) the asylum and immigration decision to which the application relates, and any document giving reasons for the decision;

(b) the grounds of appeal to the Tribunal;

(c) the Tribunal's decision;

(d) a copy of any case report upon which the applicant wishes to rely;

(e) a certificate of intimation under rule 41.49 in Form 16.17;

(f) any other documents material to the application which were before the Tribunal; and

(g) where applicable, a copy of any decision under paragraph 30(4) of Schedule 2 to the Act of 2004 (decision of a member of the Tribunal during the period the filter provision has effect).

(4) The petition shall set out—

(a) the grounds upon which it is contended that the Tribunal made an error of law;

(b) reasons in support of those grounds,

and may set out comments on the reasons given in any decision under paragraph 30(4) of Schedule 2 to the Act of 2004.

(5) Where the applicant—

(a) was the respondent to the appeal; and

(b) was required to serve the Tribunal's determination, or any decision of a member of the Tribunal during the period the filter provision has effect, on the appellant,

the petition shall contain a statement of the date on which, and the means by which, the determination or any such decision was served.

(6) An application to which paragraph 30(2) of Schedule 2 to the Act of 2004 applies may be signed by a solicitor.

Exclusion of days

41.49.—(1) In applying section 103A(3)(a) or section 103A(3)(c) of the Act of 2002 (time limits) any day which is not a business day shall be disregarded.

(2) In this rule "business day" means any day other than a Saturday, Sunday, or public holiday as directed by the Lord President of the Court of Session.

Extension of time limit for application

41.50.—An application under section 103A(4) of the Act of 2002 for permission to make an application under section 103A(1) of that Act (applications for orders requiring reconsideration) outside the period specified in section 103A(3) of that Act (time limits) shall be made in the petition and supported by an affidavit.

Other written submissions

41.51. Where a petition is for reconsideration of a decision of the Tribunal to grant an appeal the court may order that written submissions may be lodged by the other party within a time limit to be fixed by the court.

Service of petition etc.

41.52.—(1) Where an order has been made under rule 41.51 (order for other written submissions) the petitioner shall serve on the other party copies of—

(a) the petition;

(b) the interlocutor made under rule 41.51; and

(c) each of the documents lodged in support of the petition, except for documents that come from or have already been served on the other party,

with a citation in Form 41.52 attached to the petition.

(2) The petitioner shall lodge in process a certificate of service as required by these Rules at least 7 days before the expiry of the time limit fixed by the court under rule 41.51.

Reference to Inner House

41.53. A reference under section 103C(1) of the Act of 2002 shall be made by report to the Inner House under rule 34.1(**a**).

Service of order

41.54.—(1) After consideration of a petition under rule 41.48 (applications for orders requiring reconsideration) the Deputy Principal Clerk of Session shall send copies of the order of the court to—

(a) the applicant and other party to the appeal, except where paragraph (2) applies; and

(b) the Tribunal.

(2) Where the application relates, in whole or in part, to a claim for asylum, the Deputy Principal Clerk of Session shall send a copy of the order of the court to the Secretary of State, who shall serve the order on the applicant and the other party.

(3) Where the Secretary of State has served an order in accordance with paragraph (2), he shall notify the court of the date and method of service.

(4) The Secretary of State shall provide the notification required by paragraph (3) within 28 days after the date on which the Deputy Principal Clerk of Session sends him a copy of the order of the court.

(5) If, 28 days after the date on which the Deputy Principal Clerk of Session sends a copy of the order of the court to the Secretary of State in accordance with paragraph (2), the Secretary of State has not provided the notification required by paragraph (3), the Deputy Principal Clerk may, on receipt of a request, serve the order on the applicant and the other party.

(**a**) Rule 34.1 was inserted by S.I. 1984/472 and amended by S.I. 1986/1937.

Expenses

41.55. The court may reserve the expenses of the application to be determined by the Tribunal.".

(7) In the appendix, for Form 41.47(**b**), there shall be set out the forms in the Schedule to this Act of Sederunt.

Cullen of Whitekirk
Lord President
I.P.D.

Edinburgh
24th March 2005

(**b**) Form 41.47 was inserted by S.S.I. 2003/223.

SCHEDULE

Paragraph 2(7)

FORM 41.48

Rule 41.48

Form of petition in application under section 103A(1) of the Nationality, Immigration and Asylum Act 2002 for an order requiring the Asylum and Immigration Tribunal to reconsider a decision

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

PETITION

of

[A.B.] (*designation and address*)

for

reconsideration of a decision by the Asylum and Immigration Tribunal

HUMBLY SHEWETH:–

1. That the petitioner is (*state designation, title and interest of petitioner*).

2. That on (*date*) the Asylum and Immigration Tribunal decided that (*specify decision to be reconsidered*).

3. That it is declared the Asylum and Immigration Tribunal that made the said decision on (*specify date on which decision was made*) consisted of less than three legally qualified members.

4. That the petitioner seeks an order requiring the Asylum and Immigration Tribunal to reconsider its decision.

   (*State briefly the facts in support of the grounds for reconsideration in numbered paragraphs*).

5. (*State briefly in numbered paragraphs the legal argument(s) with reference to enactments or judicial authority on which it is intended to rely*).

MAY IT THEREFORE please your Lordships to order the Asylum and Immigration Tribunal to reconsider its decision and (*insert any additional orders sought*).

According to Justice etc.

(*Signed by counsel or other person having a right of audience*)

FORM 41.52

Rule 41.52

Form of citation in petition under section 103A of the Nationality, Immigration and Asylum Act 2002

CITATION

Date: (*date of posting or other method of service*)

To: (*name and address of person on whom petition served*)

IN HER MAJESTY'S NAME AND AUTHORITY, and in the name and authority of Lord (*name*), I, (*name of agent*), solicitor [*or* person having a right to conduct the litigation], for (*name of petitioner*) [*or* (*name of messenger-at-arms*), messenger-at-arms], serve the attached petition and interlocutor of the court on you.

The interlocutor requires you to lodge written submissions to the petition.

If you intend to lodge written submissions to the petition you must lodge them at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within (*specify number of days*) days after the date of service on you of the petition. The date of service is the date stated at the top of this citation unless service has been by post in which case the date of service is the day after that date.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS CITATION, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

(*Signed*)

Messenger-at-arms

[Solicitor [*or* Agent] for petitioner]

(*Address*).

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994 (S.I. 1994/1443) ("the Rules") to make provision consequent upon amendments to the Nationality, Immigration and Asylum Act 2002 (c.41) ("the Act of 2002") by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) ("the Act of 2004"). Paragraphs (2), (3), and (4) set out the transitional provisions, which are linked to the commencement of the relevant provisions of the Act of 2004 (see S.I. 2005/565.

Paragraph 2(5) amends rule 41.20 on appeals to refer to an appeal under the Act of 2002.

Paragraph (6) substitutes for Part XI of Chapter 41 of the Rules (applications under section 101(2) of the Nationality, Immigration and Asylum At 2002)) a new Part XI (applications under section 103A of the Nationality, Immigration and Asylum Act 2002) that makes provision for applications for an order requiring the Asylum and Immigration Tribunal to reconsider its decision in an appeal under the Act of 2004.

Paragraph (7) inserts a new form of petition and citation into the appendix to the Rules.

£3.00

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Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
150 03/05 19593

ISBN 0-11-069532-1

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