

2007 No. 283

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 5) (Immigration, Asylum and Nationality Act 2006) 2007**

Made - - - - *11th April 2007*

Coming into force - - *2nd May 2007*

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 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. 5) (Immigration Asylum and Nationality Act 2006) 2007 and shall come into force on 2nd May 2007.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994(b) shall be amended in accordance with the following sub-paragraphs.

(2) For Part XI of Chapter 41 (applications under section 103A of the Nationality, Immigration and Asylum Act 2002)(c) there shall be substituted the following:—

“PART XI

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(d);

“the Act of 2004” means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(e);

“the Tribunal” means the Asylum and Immigration Tribunal;

(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3) by the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45, and by section 14(1) of the Vulnerable Witnesses (Scotland) Act 2004.

(b) S.I. 1994/1443, last amended by S.S.I. 2007/282.

(c) Part XI was inserted by S.S.I. 2003/223 and substituted by S.S.I. 2005/198.

(d) 2002 c.41.

(e) 2004 c.19.

“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),
 - 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^(a) 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) any other documents material to the application which were before the Tribunal; and
- (f) 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.

^(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.

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

41.52A. A reference under section 103C(1) of the Act of 2002 shall be made by report to the Inner House under rule 34.1.

Service of order

41.52B.—(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.

Continuing application or appeal otherwise treated as abandoned

41.52C.—(1) This rule applies to—

- (a) an application under section 103A(1) of the Act of 2002;
- (b) an application under sections 103B or 103E of the Act of 2002 for leave to appeal;
- (c) an appeal under sections 103B or 103E of the Act of 2002; or
- (d) a reference under section 103C of the Act of 2002.

(2) Where an application or appeal mentioned in paragraph (1) would be treated as abandoned under section 104(4A) of the Act of 2002(a) but—

- (a) meets the conditions set out in section 104(4B) or (4C) of the Act of 2002, and
 - (b) the applicant or appellant, as the case may be, wishes to pursue his application or appeal,
- the applicant or appellant, as the case may be, must lodge a notice in Form 41.52C.

(3) A notice in Form 41.52C must be lodged—

- (a) where section 104(4B) of the Act of 2002 applies, within 28 days of the date on which the applicant or appellant, as the case may be, received notice of the grant of leave to enter or remain in the United Kingdom for a period exceeding 12 months; or
- (b) where section 104(4C) of the Act of 2002 applies, within 28 days of the date on which the applicant or appellant, as the case may be, received notice of the grant of leave to enter or remain in the United Kingdom.

(4) Where the applicant or appellant, as the case may be, does not comply with the time limit specified in paragraph (3) the application or appeal will be treated as abandoned in accordance with section 104(4) of the Act of 2002(b).

(5) The applicant or appellant, as the case may be, must serve a copy of the Form 41.52C on the respondent.

(6) Where the applicant or appellant, as the case may be, has lodged a notice under paragraph (2) the Deputy Principal Clerk of Session shall—

- (a) notify the applicant or appellant, as the case may be, of the date on which the Form was received, and
- (b) send a copy of the notification to the respondent.”.

(3) In the appendix, for Forms 41.48 and 41.52(c) there shall be inserted the forms set out in the Schedule to this Act.

A C HAMILTON
Lord President
I.P.D.

Edinburgh
11th April 2007

(a) Section 104(4A), (4B) and (4C) was inserted by section 9 of the Immigration, Asylum and Nationality Act 2006 c.13.
(b) Section 104(4) was amended by section 9 of the Immigration, Asylum and Nationality Act 2006.
(c) Forms 41.48 and 41.52 were inserted by S.S.I. 2005/198.

SCHEDULE

Paragraph 2(3)

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 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 on 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).

**Form of notice of intention to pursue application or appeal under the Nationality,
Immigration and Asylum Act 2002**

NOTICE

BY [A.B.] (*address*)

APPLICANT [*or* APPELLANT]

TAKE NOTICE

Date: (date of posting or other method of delivery)

Court Reference Number:

Surname of Applicant/Appellant:

Other names of Applicant/Appellant:

Date of Birth:

Home Office Reference Number:

Date granted leave to enter or remain in UK:

Duration of leave to enter: (*attach copy*)

Date of receipt of decision to grant leave to enter or remain:

I, (*name and address of applicant or appellant*) have a pending appeal or application under the Nationality, Immigration and Asylum Act 2002 in which part of the grounds for appeal to the Court of Session is–

- that I am currently in the United Kingdom and have appealed on the ground that my removal would be in breach of the United Kingdom's obligations under the Refugee Convention and that I have now been granted leave to enter or remain for a period exceeding 12 months and I wish to pursue my existing appeal in so far as it is brought on the ground specified in section 84(1)(g) of the Nationality, Immigration and Asylum Act 2002 which relates to the Refugee Convention ground; or
- that I am currently in the United Kingdom and have appealed on race discrimination grounds and that I have now been granted leave to enter or remain and I wish to pursue my existing appeal in so far as it is brought on the ground specified in section 84(1)(b) of the Nationality, Immigration and Asylum Act 2002 which relates to section 19b of the Race Relations Act 1976.*

**delete as appropriate*

(*Signature of Applicant or Appellant*)

**This form is to be sent to the Deputy Principal Clerk of Session, 2 Parliament Square,
Edinburgh, EH1 1RQ**

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 Immigration, Asylum and Nationality Act 2006 (c.13) (“the Act of 2006”).

It substitutes Part XI of Chapter 41 (applications under section 103A of the Nationality, Immigration and Asylum Act 2002) with a new Part XI (Nationality, Immigration and Asylum Act 2002). The new Part repeats the existing rules with a slight amendment to rule 41.48 (applications for reconsideration) by deleting paragraph (3)(e) (certificate of intimation). It also includes a new rule 41.52C on notification to the court to continue an appeal or application that would otherwise be deemed abandoned. Forms 41.48 (petition for reconsideration) and 41.52 (citation) are re-inserted and a new Form 41.52C of notification to the court is inserted.

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