SCOTTISH STATUTORY INSTRUMENTS

2003 No. 223

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Applications under the Nationality, Immigration and Asylum Act 2002) 2003

Made - - - -	*27th March 2003*
Coming into force - -	*1st April 2003*

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(**1**) 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. 3) (Applications under the Nationality, Immigration and Asylum Act 2002) 2003 and shall come into force on 1st April 2003.

(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(**2**) shall be amended in accordance with the following sub-paragraphs.

(2) In Chapter 41 (appeals under statute), after Part X (appeals to the Lord Ordinary), there shall be inserted–

(**1**) 1988 c. 36; section 5 was amended by section 2(3) of the Civil Evidence (Scotland) Act 1988 (c. 32) and by paragraph 45 of Schedule 4 to the Children (Scotland) Act 1995 (c. 36).
(**2**) S.I. 1994/1443, to which there are amendments not relevant to this Act of Sederunt.

"PART XI

APPLICATIONS UNDER SECTION 101(2) OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

Application and interpretation of this Part

41.46.—(1) This Part applies to applications to the Court of Session under section 101(2) of the Nationality, Immigration and Asylum Act 2002(**3**) for a review of a decision of the Immigration Appeal Tribunal on an application for permission to appeal from an adjudicator.

(2) Parts I, II and III of this Chapter do not apply to an application to which this Part applies.

(3) In this Part–

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

"adjudicator" means an adjudicator appointed for the purposes of Part 5 of the Act of 2002;

"applicant" means a person applying to the Court of Session under section 101(2) of the Act of 2002;

"other party" means the other party to the proceedings before the Tribunal; and

"Tribunal" means the Immigration Appeal Tribunal.

Application for review

41.47.—(1) An application under section 101(2) of the Act of 2002 must be made to the Outer House of the Court of Session.

(2) The application shall be by petition in Form 41.47.

(3) The applicant must lodge with the petition–

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

(b) the grounds of appeal to the adjudicator;

(c) the adjudicator's determination;

(d) the grounds of appeal to the Tribunal together with any documents sent with them;

(e) the Tribunal's determination on the application for permission to appeal;

(f) any other documents material to the application which were before the adjudicator.

(4) The petition must set out–

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

(b) reasons in support of those grounds.

(5) In paragraph 3(a) of this rule, "decision" means an immigration decision within the meaning of section 82 of the Act of 2002, or a decision to reject an asylum claim to which section 83 of the Act of 2002 applies.

Time limit for application

41.48.—(1) The petition must be lodged not later than 14 days after the applicant is deemed to have received notice of the Tribunal's decision in accordance with rules made under section 106 of the Act of 2002.

(**3**) 2002 c. 41.

(2) The court may extend the time limit in paragraph (1) in exceptional circumstances.

(3) An application to extend the time limit must be made in the petition and supported by an affidavit.

Service of petition

41.49.—(1) The petitioner must serve on the Tribunal a copy of the petition.

(2) Where a petition is for review of a decision by the Tribunal to grant permission to appeal, the petitioner must serve on the other party copies of–

(a) the petition;

(b) all the documents lodged in support of the petition, except for documents which come from or have already been served on that party.

(3) Where documents are required to be served under paragraphs (1) and (2), they must be served forthwith.

Determining the petition

41.50.—(1) The petition will be determined by a single judge without a hearing, and by reference only to the petition and documents lodged with it.

(2) If the petitioner relies on evidence which was not submitted to the adjudicator or the Tribunal, the court will not consider that evidence unless it is satisfied that there were good reasons why it was not submitted to the adjudicator or the Tribunal.

(3) The court may affirm or reverse the Tribunal's decision.

(4) Where the Tribunal refused permission to appeal, the court will reverse the Tribunal's decision only if it is satisfied that–

(a) the Tribunal may have made an error of law; and

(b) either–

(i) the appeal would have a real prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard.

(5) Where the Tribunal granted permission to appeal, the court will reverse the Tribunal's decision only if it is satisfied that–

(a) the appeal would have no real prospect of success; and

(b) there is no other compelling reason why the appeal should be heard.

(6) If the court reverses the Tribunal's decision to refuse permission to appeal–

(a) the court's order will constitute a grant of permission to appeal to the Tribunal; and

(b) the court may limit the grant of permission to appeal to specific grounds.

(7) The court's decision shall be final and there shall be no appeal from that decision or renewal of the application.

Service of the order

41.51.—(1) The court will send copies of its order to–

(a) the applicant, except where paragraph (2) applies;

(b) the other party; and

(c) the Tribunal.

(2) Where–