

# JUDICIAL REVIEW AND STATUTORY REVIEW

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## I JUDICIAL REVIEW

### 54.1 Scope and interpretation

- (1) This Section of this Part contains rules about judicial review.
- (2) In this Section –
- (a) a ‘claim for judicial review’ means a claim to review the lawfulness of –
    - (i) an enactment; or
    - (ii) a decision, action or failure to act in relation to the exercise of a public function.
  - (b) revoked
  - (c) revoked
  - (d) revoked
  - (e) ‘the judicial review procedure’ means the Part 8 procedure as modified by this Section;
  - (f) ‘interested party’ means any person (other than the claimant and defendant) who is directly affected by the claim; and
  - (g) ‘court’ means the High Court, unless otherwise stated.

(Rule 8.1(6)(b) provides that a rule or practice direction may, in relation to a specified type of proceedings, disapply or modify any of the rules set out in Part 8 as they apply to those proceedings)

### 54.2 When this Section must be used

The judicial review procedure must be used in a claim for judicial review where the claimant is seeking –

- (a) a mandatory order;
- (b) a prohibiting order;
- (c) a quashing order; or
- (d) an injunction under section 30 of the Supreme Court Act 1981<sup>1</sup> (restraining a person from acting in any office in which he is not entitled to act).

### 54.3 When this Section may be used

- (1) The judicial review procedure may be used in a claim for judicial review where the claimant is seeking –
- (a) a declaration; or
  - (b) an injunction<sup>(GL)</sup>.

(Section 31(2) of the Supreme Court Act 1981 sets out the circumstances in which the court may grant a declaration or injunction in a claim for judicial review)

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<sup>1</sup> 1981 c.54.

(Where the claimant is seeking a declaration or injunction in addition to one of the remedies listed in rule 54.2, the judicial review procedure must be used)

- (2) A claim for judicial review may include a claim for damages, restitution or the recovery of a sum due but may not seek such a remedy alone.

(Section 31(4) of the Supreme Court Act sets out the circumstances in which the court may award damages, restitution or the recovery of a sum due on a claim for judicial review)

#### **54.4 Permission required**

The court's permission to proceed is required in a claim for judicial review whether started under this Section or transferred to the Administrative Court.

#### **54.5 Time limit for filing claim form**

- (1) The claim form must be filed –
  - (a) promptly; and
  - (b) in any event not later than 3 months after the grounds to make the claim first arose.
- (2) The time limit in this rule may not be extended by agreement between the parties.
- (3) This rule does not apply when any other enactment specifies a shorter time limit for making the claim for judicial review.

#### **54.6 Claim form**

- (1) In addition to the matters set out in rule 8.2 (contents of the claim form) the claimant must also state –
  - (a) the name and address of any person he considers to be an interested party;
  - (b) that he is requesting permission to proceed with a claim for judicial review; and
  - (c) any remedy (including any interim remedy) he is claiming.

(Part 25 sets out how to apply for an interim remedy)

- (2) The claim form must be accompanied by the documents required by the relevant practice direction.

#### **54.7 Service of claim form**

The claim form must be served on –

- (a) the defendant; and
- (b) unless the court otherwise directs, any person the claimant considers to be an interested party, within 7 days after the date of issue.

#### **54.8 Acknowledgment of service**

- (1) Any person served with the claim form who wishes to take part in the judicial review must file an acknowledgment of service in the relevant practice form in accordance with the following provisions of this rule.
- (2) Any acknowledgment of service must be –
  - (a) filed not more than 21 days after service of the claim form; and
  - (b) served on –

- (i) the claimant; and
  - (ii) subject to any direction under rule 54.7(b), any other person named in the claim form, as soon as practicable and, in any event, not later than 7 days after it is filed.
- (3) The time limits under this rule may not be extended by agreement between the parties.
- (4) The acknowledgment of service –
  - (a) must –
    - (i) where the person filing it intends to contest the claim, set out a summary of his grounds for doing so; and
    - (ii) state the name and address of any person the person filing it considers to be an interested party; and
  - (b) may include or be accompanied by an application for directions.
- (5) Rule 10.3(2) does not apply.

#### **54.9 Failure to file acknowledgment of service**

- (1) Where a person served with the claim form has failed to file an acknowledgment of service in accordance with rule 54.8, he –
  - (a) may not take part in a hearing to decide whether permission should be given unless the court allows him to do so; but
  - (b) provided he complies with rule 54.14 or any other direction of the court regarding the filing and service of –
    - (i) detailed grounds for contesting the claim or supporting it on additional grounds; and
    - (ii) any written evidence,may take part in the hearing of the judicial review.
- (2) Where that person takes part in the hearing of the judicial review, the court may take his failure to file an acknowledgment of service into account when deciding what order to make about costs.
- (3) Rule 8.4 does not apply.

#### **54.10 Permission given**

- (1) Where permission to proceed is given the court may also give directions.
- (2) Directions under paragraph (1) may include a stay<sup>(GL)</sup> of proceedings to which the claim relates.

(Rule 3.7 provides a sanction for the non-payment of the fee payable when permission to proceed has been given)

#### **54.11 Service of order giving or refusing permission**

The court will serve –

- (a) the order giving or refusing permission; and
- (b) any directions,
  - on –
    - (i) the claimant;
    - (ii) the defendant; and
    - (iii) any other person who filed an acknowledgment of service.

#### **54.12 Permission decision without a hearing**

- (1) This rule applies where the court, without a hearing –
  - (a) refuses permission to proceed; or
  - (b) gives permission to proceed –
    - (i) subject to conditions; or
    - (ii) on certain grounds only.
- (2) The court will serve its reasons for making the decision when it serves the order giving or refusing permission in accordance with rule 54.11.
- (3) The claimant may not appeal but may request the decision to be reconsidered at a hearing.
- (4) A request under paragraph (3) must be filed within 7 days after service of the reasons under paragraph (2).
- (5) The claimant, defendant and any other person who has filed an acknowledgment of service will be given at least 2 days' notice of the hearing date.

#### **54.13 Defendant etc. may not apply to set aside<sup>(GL)</sup>**

Neither the defendant nor any other person served with the claim form may apply to set aside<sup>(GL)</sup> an order giving permission to proceed.

#### **54.14 Response**

- (1) A defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve –
  - (a) detailed grounds for contesting the claim or supporting it on additional grounds; and
  - (b) any written evidence,  
within 35 days after service of the order giving permission.
- (2) The following rules do not apply –
  - (a) rule 8.5 (3) and 8.5 (4) (defendant to file and serve written evidence at the same time as acknowledgment of service); and
  - (b) rule 8.5 (5) and 8.5(6) (claimant to file and serve any reply within 14 days).

#### **54.15 Where claimant seeks to rely on additional grounds**

The court's permission is required if a claimant seeks to rely on grounds other than those for which he has been given permission to proceed.

#### **54.16 Evidence**

- (1) Rule 8.6 (1) does not apply.
- (2) No written evidence may be relied on unless –
  - (a) it has been served in accordance with any –
    - (i) rule under this Section; or
    - (ii) direction of the court; or
  - (b) the court gives permission.

#### **54.17 Court's powers to hear any person**

- (1) Any person may apply for permission –
  - (a) to file evidence; or
  - (b) make representations at the hearing of the judicial review.
- (2) An application under paragraph (1) should be made promptly.

#### **54.18 Judicial review may be decided without a hearing**

The court may decide the claim for judicial review without a hearing where all the parties agree.

#### **54.19 Court's powers in respect of quashing orders**

- (1) This rule applies where the court makes a quashing order in respect of the decision to which the claim relates.
- (2) The court may –
  - (a) remit the matter to the decision-maker; and
  - (b) direct it to reconsider the matter and reach a decision in accordance with the judgment of the court.
- (3) Where the court considers that there is no purpose to be served in remitting the matter to the decision-maker it may, subject to any statutory provision, take the decision itself.

(Where a statutory power is given to a tribunal, person or other body it may be the case that the court cannot take the decision itself)

#### **54.20 Transfer**

The court may

- (a) order a claim to continue as if it had not been started under this Section; and
- (b) where it does so, give directions about the future management of the claim.

(Part 30 (transfer) applies to transfers to and from the Administrative Court)

## **II STATUTORY REVIEW UNDER THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002**

#### **54.21 Scope and interpretation**

- (1) This Section of this Part contains rules about applications to the High Court under section 101(2) of the Nationality, Immigration and Asylum Act 2002<sup>1</sup> for a review of a decision of the Immigration Appeal Tribunal on an application for permission to appeal from an adjudicator.
- (2) In this Section –
  - (a) 'the Act' means the Nationality, Immigration and Asylum Act 2002;
  - (b) 'adjudicator' means an adjudicator appointed for the purposes of Part 5 of the Act;
  - (c) 'applicant' means a person applying to the High Court under section 101(2) of the Act;

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<sup>1</sup> 2002 c.41.

- (d) 'other party' means the other party to the proceedings before the Tribunal; and
- (e) 'Tribunal' means the Immigration Appeal Tribunal.

#### **54.22 Application for review**

- (1) An application under section 101(2) of the Act must be made to the Administrative Court.
- (2) The application must be made by filing an application notice.
- (3) The applicant must file with the application notice –
  - (a) the immigration or asylum decision to which the proceedings relate, and any document giving reasons for that 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; and
  - (f) any other documents material to the application which were before the adjudicator.
- (4) The applicant must also file with the application notice written submissions setting 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.

#### **54.23 Time limit for application**

- (1) The application notice must be filed 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.
- (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 application notice and supported by written evidence verified by a statement of truth.

#### **54.24 Service of application**

- (1) The applicant must serve on the Asylum and Immigration Tribunal copies of the application notice and written submissions.
- (2) Where an application is for review of a decision by the Tribunal to grant permission to appeal, the applicant must serve on the other party copies of –
  - (a) the application notice;
  - (b) the written submissions; and
  - (c) all the documents filed in support of the application, 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 as soon as practicable after they are filed.

#### **54.25 Determining the application**

- (1) The application will be determined by a single judge without a hearing, and by reference only to the written submissions and the documents filed with them.

- (2) If the applicant 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 –
  - (a) affirm the Tribunal’s decision to refuse permission to appeal;
  - (b) reverse the Tribunal’s decision to grant permission to appeal; or
  - (c) order the Asylum and Immigration Tribunal to reconsider the adjudicator’s decision on the appeal.
- (4) Where the Tribunal refused permission to appeal, the court will order the Asylum and Immigration Tribunal to reconsider the adjudicator’s decision on the appeal only if it is satisfied that –
  - (a) the Tribunal may have made an error of law; and
  - (b) there is a real possibility that the Asylum and Immigration Tribunal would make a different decision from the adjudicator on reconsidering the appeal (which may include making a different direction under section 87 of the 2002 Act).
- (5) Where the Tribunal granted permission to appeal, the court will reverse the Tribunal’s decision only if it is satisfied that there is no real possibility that the Asylum and Immigration Tribunal, on reconsidering the adjudicator’s decision on the appeal, would make a different decision from the adjudicator.
- (6) The court’s decision shall be final and there shall be no appeal from that decision or renewal of the application.

#### **54.26 Service of order**

- (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 Asylum and Immigration Tribunal..
- (2) Where –
  - (a) the application relates, in whole or in part, to a claim for asylum;
  - (b) the Tribunal refused permission to appeal; and
  - (c) the court affirms the Tribunal’s decision,
 the court will send a copy of its order to the Secretary of State, who must serve the order on the applicant.
- (3) Where the Secretary of State has served an order in accordance with paragraph (2), he must notify the court on what date and by what method the order was served.
- (4) If the court issues a certificate under section 101(3)(d) of the Act, it will send a copy of the certificate together with the order to –
  - (a) the persons to whom it sends the order under paragraphs (1) and (2); and
  - (b) if the applicant is in receipt of public funding, the Legal Services Commission.

#### **54.27 Costs**

The court may reserve the costs of the application to be determined by the Asylum and Immigration Tribunal.



### III APPLICATIONS FOR STATUTORY REVIEW UNDER SECTION 103A OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

#### 54.28 Scope and interpretation

- (1) This Section of this Part contains rules about applications to the High Court under section 103A of the Nationality, Immigration and Asylum Act 2002<sup>1</sup> for an order requiring the Asylum and Immigration Tribunal to reconsider its decision on an appeal.
- (2) In this Section –
  - (a) ‘the 2002 Act’ means the Nationality, Immigration and Asylum Act 2002;
  - (b) ‘the 2004 Act’ means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004<sup>2</sup>;
  - (c) ‘appellant’ means the appellant in the proceedings before the Tribunal;
  - (d) ‘applicant’ means a person applying to the High Court under section 103A;
  - (e) ‘asylum claim’ has the meaning given in section 113(1) of the 2002 Act;
  - (f) ‘filter provision’ means paragraph 30 of Schedule 2 to the 2004 Act;
  - (g) ‘order for reconsideration’ means an order under section 103A(1) requiring the Tribunal to reconsider its decision on an appeal;
  - (h) ‘section 103A’ means section 103A of the 2002 Act;
  - (i) ‘Tribunal’ means the Asylum and Immigration Tribunal.
- (3) Any reference in this Section to a period of time specified in –
  - (a) section 103A(3) for making an application for an order under section 103A(1); or
  - (b) paragraph 30(5)(b) of Schedule 2 to the 2004 Act for giving notice under that paragraph,includes a reference to that period as varied by any order under section 26(8) of the 2004 Act.
- (4) Rule 2.8 applies to the calculation of the periods of time specified in –
  - (a) section 103A(3); and
  - (b) paragraph 30(5)(b) of Schedule 2 to the 2004 Act.
- (5) Save as provided otherwise, the provisions of this Section apply to an application under section 103A regardless of whether the filter provision has effect in relation to that application.

#### 54.29 Application for review

- (1) Subject to paragraph (4), an application for an order for reconsideration must be made by filing an application notice –
  - (a) during a period in which the filter provision has effect, with the Tribunal at the address specified in the relevant practice direction; and
  - (b) at any other time, at the Administrative Court Office.
- (2) The applicant must file with the application notice –
  - (a) the notice of the immigration, asylum or nationality decision to which the appeal related;
  - (b) any other document which was served on the appellant giving reasons for that decision;
  - (c) the grounds of appeal to the Tribunal;
  - (d) the Tribunal’s determination on the appeal; and
  - (e) any other documents material to the application which were before the Tribunal.

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<sup>1</sup> 2002 c.41

<sup>2</sup> 2004 c.19

- (3) The applicant must also file with the application notice written submissions setting out –
  - (a) the grounds upon which it is contended that the Tribunal made an error of law which may have affected its decision; and
  - (b) reasons in support of those grounds.
- (4) Where the applicant –
  - (a) was the respondent to the appeal; and
  - (b) was required to serve the Tribunal's determination on the appellant,

the application notice must contain a statement of the date on which, and the means by which, the determination was served.
- (5) Where the applicant is in detention under the Immigration Acts, the application may be made either –
  - (a) in accordance with paragraphs (1) to (3); or
  - (b) by serving the documents specified in paragraphs (1) to (3) on the person having custody of him.
- (6) Where an application is made in accordance with paragraph (5)(b), the person on whom the application notice is served must –
  - (a) endorse on the notice the date that it is served on him;
  - (b) give the applicant an acknowledgment in writing of receipt of the notice; and
  - (c) forward the notice and documents within 2 days
    - (i) during a period in which the filter provision has effect, to the Tribunal; and
    - (ii) at any other time, to the Administrative Court Office.

#### **54.30 Application to extend time limit**

An application to extend the time limit for making an application under section 103A(1) must –

- (a) be made in the application notice;
- (b) set out the grounds on which it is contended that the application notice could not reasonably practicably have been filed within the time limit; and
- (c) be supported by written evidence verified by a statement of truth.

#### **54.31 Procedure while filter provision has effect**

- (1) This rule applies during any period in which the filter provision has effect.
- (2) Where the applicant receives notice from the Tribunal that it –
  - (a) does not propose to make an order for reconsideration; or
  - (b) does not propose to grant permission for the application to be made outside the relevant time limit,

and the applicant wishes the court to consider the application, the applicant must file a notice in writing at the Administrative Court Office in accordance with paragraph 30(5)(b) of Schedule 2 to the 2004 Act.

- (3) Where the applicant –
  - (a) was the respondent to the appeal; and
  - (b) was required to serve the notice from the Tribunal mentioned in paragraph (2) on the appellant,

the notice filed in accordance with paragraph 30(5)(b) of Schedule 2 to the 2004 Act must contain a statement of the date on which, and the means by which, the notice from the Tribunal was served.

- (4) A notice which is filed outside the period specified in paragraph 30(5)(b) must –
  - (a) set out the grounds on which it is contended that the notice could not reasonably practicably have been filed within that period; and
  - (b) be supported by written evidence verified by a statement of truth.
- (5) If the applicant wishes to respond to the reasons given by the Tribunal for its decision that it –
  - (a) does not propose to make an order for reconsideration; or
  - (b) does not propose to grant permission for the application to be made outside the relevant time limit,

the notice filed in accordance with paragraph 30(5)(b) of Schedule 2 to the 2004 Act must be accompanied by written submissions setting out the grounds upon which the applicant disputes any of the reasons given by the Tribunal and giving reasons in support of those grounds.

#### **54.32 Procedure in fast track cases while filter provision does not have effect**

- (1) This rule applies only during a period in which the filter provision does not have effect.
- (2) Where a fast track order applies to an application under section 103A –
  - (a) the court will serve copies of the application notice and written submissions on the other party to the appeal; and
  - (b) the other party to the appeal may file submissions in response to the application not later than 2 days after being served with the application.
- (3) In this Rule, a ‘fast track order’ means an order made under section 26(8) of the 2004 Act which replaces a period of time specified in section 103A(3) of the 2002 Act with a period shorter than 5 days.

#### **54.33 Determination of the application by the Administrative Court**

- (1) This rule, and rules 54.34 and 54.35, apply to applications under section 103A which are determined by the Administrative Court.
- (2) The application will be considered by a single judge without a hearing.
- (3) Unless it orders otherwise, the court will not receive evidence which was not submitted to the Tribunal.
- (4) Subject to paragraph (5), where the court determines an application for an order for reconsideration, it may –
  - (a) dismiss the application;
  - (b) make an order requiring the Tribunal to reconsider its decision on the appeal under section 103A(1) of the 2002 Act; or
  - (c) refer the appeal to the Court of Appeal under section 103C of the 2002 Act.
- (5) The court will only make an order requiring the Tribunal to reconsider its decision on an appeal if it thinks that –
  - (a) the Tribunal may have made an error of law; and
  - (b) there is a real possibility that the Tribunal would make a different decision on reconsidering the appeal (which may include making a different direction under section 87 of the 2002 Act).

- (6) Where the Court of Appeal has restored the application to the court under section 103C(2)(g) of the 2002 Act, the court may not refer the appeal to the Court of Appeal.
- (7) The court's decision shall be final and there shall be no appeal from that decision or renewal of the application.

#### **54.34 Service of order**

- (1) The court will send copies of its order to –
  - (a) the applicant and the 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 an asylum claim, the court will send a copy of its order to the Secretary of State.
- (3) Where the court sends an order to the Secretary of State under paragraph (2), the Secretary of State must –
  - (a) serve the order on the appellant; and
  - (b) immediately after serving the order, notify the court on what date and by what method the order was served.
- (4) The Secretary of State must provide the notification required by paragraph (3)(b) no later than 28 days after the date on which the court sends him a copy of its order.
- (5) If, 28 days after the date on which the court sends a copy of its order to the Secretary of State in accordance with paragraph (2), the Secretary of State has not provided the notification required by paragraph (3)(b), the court may serve the order on the appellant.
- (6) If the court makes an order under section 103D(1) of the 2002 Act, it will send copies of that order to –
  - (a) the appellant's legal representative; and
  - (b) the Legal Services Commission.
- (7) Where paragraph (2) applies, the court will not serve copies of an order under section 103D(1) of the 2002 Act until either –
  - (a) the Secretary of State has provided the notification required by paragraph (3)(b); or
  - (b) 28 days after the date on which the court sent a copy of its order to the Secretary of State,whichever is the earlier.

#### **54.35 Costs**

The court shall make no order as to the costs of an application under this Section except, where appropriate, an order under section 103D(1) of the 2002 Act.