

1985 No. 500 (S. 48)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 2) (Judicial Review) 1985

Made - - - -
Coming into Operation

22nd March 1985
30th April 1985

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 16 of the Administration of Justice (Scotland) Act 1933 (a), and of all other powers enabling them in that behalf, hereby enact and declare—

Citation, application and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 2) (Judicial Review) 1985 and shall come into operation on 30th April 1985.

(2) This Act of Sederunt does not affect any proceedings commenced before that date.

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

Procedure for Judicial Review

2. In the Rules of Court (b), after rule 260A (Procedure in petitions under Guardianship Act 1973), insert the following Section—

“SECTION 14

APPLICATION FOR JUDICIAL REVIEW

260B (1) *Application.* An application to the supervisory jurisdiction of the Court which immediately before the coming into operation of this rule would have been made by way of summons or petition, shall be made by way of an application for judicial review in accordance with the provisions of this rule.

(2) In paragraph (1), “petition” includes a summary petition under section 91 of the Court of Session Act 1868 (order for restoration of property or specific performance) (c).

(3) Paragraph (1) does not apply to an application to the Court made, or which could be made, by way of appeal or review under and by virtue of any enactment, including an application under—

(a) paragraph 15 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (validity of compulsory purchase order) (d);

(a) 1933 c.41.
(d) 1947 c.42.

(b) S.I. 1965/321.

(c) 1868 c.100.

- (b) sections 232 (validity of structure plans) and 233 (validity of other orders, decisions and directions) of the Town and Country Planning (Scotland) Act 1972 (a);
 - (c) paragraph 2 of Schedule 2 to the Roads (Scotland) Act 1984 (validity of orders)(b).
- (4) *Powers of Court.* The Court, in exercising its supervisory jurisdiction in respect of an application for judicial review, may—
- (a) grant or refuse the application or any part of it, with or without conditions;
 - (b) make such order in relation to the decision in question as it thinks fit, whether or not such order was sought in the application, being an order that could be made if sought in any action or petition, including an order for reduction, declarator, suspension, interdict, implement, restitution, payment (whether of damages or otherwise), and any *interim* order;
 - (c) subject to the provisions of this rule, make such order in relation to procedure as it thinks appropriate in the circumstances.
- (5) *Form of application.* An application for judicial review shall be made by way of petition in the form set out in Form 39A in the Appendix or as nearly as may be in that form having regard to the circumstances, and signed by the applicant's counsel or solicitor.
- (6) *Application to nominated judge.* An application for judicial review shall be heard by a judge nominated by the Lord President for the purposes of this rule, or by any other single judge, including the vacation judge.

Procedure on application

- (7) *General.* Subject to the provisions of this rule, the ordinary rules relating to petitions to the Outer House shall apply to a petition under this rule.
- (8) *Documents.* The applicant shall, on lodging the petition, also lodge all relevant documents in his possession and under his control and an inventory of those documents.
- (9) If the applicant finds in the petition on any documents not in his possession or under his control, he shall append to the petition a schedule specifying the documents and the person or persons respectively in whose possession or under whose control they are.
- (10) *Affidavits.* If the decision, act or omission in question and the basis on which it is complained of is not apparent from the documents lodged with the petition, an affidavit shall be lodged stating the terms of the decision, act or omission and the basis on which it is complained of.
- (11) *First order.* On being lodged, the petition and documents shall be brought immediately by the Deputy Principal Clerk, or a person authorised by him, before a judge for—
- (a) an order specifying—
 - (i) a period for intimation and service;
 - (ii) such advertisement as he thinks fit;

- (iii) such persons, if any, upon whom service is to be made in addition to the persons specified in the schedule for service;
- (iv) such documents, if any, as he thinks should be served on any such persons together with the petition and copy interlocutor;
- (v) a date for a hearing (“the first hearing”), being a date not earlier than 7 days after the expiry of the period specified for intimation and service;

(b) any *interim* order,

and the judge may grant such an order although the petition has not appeared in the motion roll.

(12) The applicant shall immediately give effect to the requirements of the first order in respect of intimation, advertisement and service and shall intimate the date of the first hearing to those persons upon whom he requires to make service and lodge the relative certificates of execution of advertisement and service in process before the first hearing.

(13) A person to whom intimation of the first hearing has been made under paragraph (12) and who intends to appear—

- (a) shall intimate his intention to do so to the applicant’s solicitor and to the Keeper of the Rolls, not later than 48 hours before the date of the hearing;
- (b) may lodge answers and any relative documents.

(14) Any person not specified in the first order as a person upon whom service requires to be made may enrol a motion for leave to enter the process; and if the motion is granted the provisions of this rule shall apply with any necessary modifications to that person as they apply to a person so specified.

(15) *First hearing.* The judge at the first hearing shall satisfy himself that the applicant has duly complied with the requirements of the first order, and may adjourn or continue the first hearing to another date on such terms and conditions (if any) as he may order, and may make such further order as he thinks fit, including an order for service upon a person not specified in the first order.

(16) Subject to paragraph (15), the judge shall hear the parties to the application for judicial review, and thereafter—

- (a) he may determine the application, or
- (b) if he does not determine the application, shall make such *interim* order or such order for further procedure as he thinks fit, and in particular he may—
 - (i) order answers to be lodged within such time as he may specify in the order;
 - (ii) order further specification in the petition or answers in relation to such matters as he may specify in the order;
 - (iii) order any facts founded on by a party at the hearing to be supported by evidence on affidavit to be lodged within such time as he may specify in the order;
 - (iv) order any party who appears to lodge such documents relative to the application within such period as he may specify in the order;
 - (v) appoint a reporter to report to him on such matters of fact as he may specify in the order;

- (vi) order a hearing on such issues as he may specify in the order (“the second hearing”).

(17) *Second hearing.* If the judge orders a second hearing under paragraph 16, the Keeper of the Rolls shall, in consultation with the judge and the parties or their solicitors, fix a date for the second hearing as soon as reasonably practicable.

(18) Subject to the terms of any order for further procedure made under paragraph (16), at least 7 days before the date of the second hearing, the parties shall lodge all documents and affidavits to be founded on by them at the second hearing, together with a copy thereof for the use of the judge.

(19) At any time before the date of the second hearing, the judge may cause the application for judicial review to be put out for hearing on the By Order Roll for the purpose of obtaining such information from the parties as he may consider necessary for the proper disposal of the application at the hearing, and at any such By Order Roll hearing may make such order for that purpose as he considers necessary and appropriate having regard to all the circumstances, including an order that a commissioner appointed by him recovers such documents or takes such evidence of such witnesses as he may specify.

(20) At the second hearing, the judge may—

- (a) adjourn the hearing;
- (b) continue the hearing for such further procedure as he may order;
- (c) determine the application.

(21) *Reclaiming.* No reclaiming motion may be made against an order made under this rule (other than an order under paragraph 16(a) or 20(c)) except with leave of the judge.

(22) Leave of the judge must be applied for by way of motion not later than 7 days after the date on which the order in question was made.”.

3. In the Rules of Court, in the Appendix, after Form 39, insert the following Form—

“ FORM 39A rule 260B(5)

Form of Petition in application for Judicial Review

UNTO THE RIGHT HONOURABLE
THE LORDS OF COUNCIL AND SESSION

PETITION

of

[AB] (*address*)

for

Judicial review of (*state briefly matter sought to be reviewed*) by [CD]

HUMBLY SHEWETH

1. That the petitioner is (*state designation, title and interest of petitioner*). The respondent is (*state designation and relation of respondent to matter to be reviewed*). [The following persons may have an interest].

2. That on (*date*) the respondent (*specify act, decision or omission to be reviewed*).

3. That the petitioner seeks (*state remedies sought (final and interim) including damages or restitution*). The petitioner craves the court to pronounce such further order, decrees or orders as may seem to the court to be just and reasonable in all the circumstances of the case.

4. That the petitioner challenges the decision [*or act or omission*] of the respondent on the following ground(s).

5. (*State shortly (in numbered paragraphs) facts in support of the ground(s) of challenge*).

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

PLEA(S)-IN-LAW

(*Specify pleas-in-law relating to each ground of challenge and remedy sought*)

According to Justice &c.
(*signed by Counsel or solicitor*)

SCHEDULE FOR SERVICE

Respondent(s) upon whom service is sought in common form
Respondent(s) upon whom service is sought edictally
Interested parties upon whom service is sought in common form
Interested parties upon whom service is sought edictally

SCHEDULE OF DOCUMENTS

(*Specify documents founded on (rule 260B(9)))*)

Emslie,
Lord President,
I.P.D.

Edinburgh.
22nd March 1985.

EXPLANATORY NOTE

(*This Note is not part of the Act of Sederunt.*)

This Act of Sederunt amends the Rules of Court of Session to make new provision for applications to the supervisory jurisdiction of the Court by way of petitions to the Outer House for judicial review.

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