
STATUTORY INSTRUMENTS

2003 No. 1034

**The Special Immigration Appeals
Commission (Procedure) Rules 2003**

PART 2

APPEALS TO THE COMMISSION UNDER THE 1997 ACT

Scope of this Part

6. This Part applies to appeals to the Commission under section 2 or 2B of the 1997 Act⁽¹⁾.

Starting an appeal

7.—(1) An appeal to the Commission under the 1997 Act must be made by giving notice of appeal in accordance with these Rules.

(2) Subject to paragraph (3), notice of appeal must be given by filing it with the Commission.

(3) A person who is in detention under the Immigration Acts or the 2001 Act may give notice of appeal either—

- (a) in accordance with paragraph (2); or
- (b) by serving it on the person having custody of him.

(4) When a person files a notice of appeal in accordance with paragraph (2), he must at the same time serve a copy of the notice and any accompanying documents on the Secretary of State.

(5) Where notice of appeal is given in accordance with paragraph (3)(b)—

- (a) the person having custody of the appellant must endorse on the notice the date that it is served on him and forward it to the Commission; and
- (b) the Commission must serve a copy of the notice and any accompanying documents on the Secretary of State.

Time limit for appealing

8.—(1) Subject to the following paragraphs of this rule, a notice of appeal to the Commission under the 1997 Act must be given—

- (a) if the appellant is in detention under the Immigration Acts or the 2001 Act when he is served with notice of the decision against which he wishes to appeal, not later than 5 days after he is served with that notice;
- (b) otherwise—
 - (i) if the appellant is in the United Kingdom, not later than 10 days; or
 - (ii) if the appellant is outside the United Kingdom, not later than 28 days,

(1) 1997 c. 68. Section 2 is substituted by paragraph 20 of Schedule 7 to the 2002 Act, and section 2B is inserted by section 4(2) of the 2002 Act.

after the appellant is served with notice of the decision against which he wishes to appeal.

- (2) Where the appellant—
- (a) is in the United Kingdom when he is served with notice of the decision against which he wishes to appeal; and
 - (b) may not appeal against the decision while in the United Kingdom by reason of section 2(5) of the 1997 Act(2),

a notice of appeal against the decision must be given not later than 28 days after his departure from the United Kingdom.

- (3) Paragraph (4) applies where—
- (a) the appellant has given notice of appeal under Part 5 of the 2002 Act against a decision (“the previous appeal”); and
 - (b) the previous appeal has lapsed due to a certificate being issued under section 97 of the 2002 Act while the appeal was pending.

(4) Where this paragraph applies, a notice of appeal to the Commission against the decision which was the subject of the previous appeal must be given—

- (a) if the appellant is in detention under the Immigration Acts or the 2001 Act when he is served with notice that the previous appeal has lapsed, not later than 5 days after he is served with that notice;
- (b) otherwise—
 - (i) if the appellant is in the United Kingdom, not later than 10 days; or
 - (ii) if the appellant is outside the United Kingdom, not later than 28 days,
 after the appellant is served with notice that the previous appeal has lapsed.

(5) The Commission may extend the time limits in this rule if satisfied that by reason of special circumstances it would be unjust not to do so.

Contents of notice of appeal

9.—(1) The notice of appeal must set out the grounds for the appeal and give reasons in support of those grounds.

- (2) The notice of appeal must state the name and address of—
- (a) the appellant; and
 - (b) any representative of the appellant.
- (3) The notice of appeal must be signed by the appellant or his representative, and dated.
- (4) If the notice of appeal is signed by the appellant’s representative, the representative must certify in the notice of appeal that he has completed the notice of appeal in accordance with the appellant’s instructions.

(5) The appellant must attach to the notice of appeal a copy of the notice of decision against which he is appealing and any other document which was served on him containing reasons for that decision.

(2) 1997 c. 68. Section 2 is substituted by paragraph 20 of Schedule 7 to the 2002 Act.

Secretary of State's reply

10.—(1) If the Secretary of State intends to oppose an appeal, he must as soon as reasonably practicable file with the Commission a statement of the evidence upon which he relies in opposition to the appeal.

(2) Unless the Secretary of State objects to the statement being disclosed to the appellant or his representative, he must serve a copy of the statement of evidence on the appellant at the same time as filing it.

(3) Where the Secretary of State objects to a statement filed under paragraph (1) being disclosed to the appellant or his representative, rules 37 and 38 shall apply.

Variation of grounds of appeal

11.—(1) Subject to section 85(2) of the 2002 Act(3), the appellant may vary the grounds of appeal only with the leave of the Commission.

(2) The appellant must file any proposed variation of the grounds of appeal with the Commission and serve a copy on the Secretary of State.

Hearing of appeal

12. Every appeal must be determined at a hearing before the Commission, except where—

- (a) the appeal—
 - (i) is treated as abandoned pursuant to section 2(4) of the 1997 Act(4) or section 104(4) of the 2002 Act(5);
 - (ii) is treated as finally determined pursuant to section 104(5) of the 2002 Act(6); or
 - (iii) is withdrawn by the appellant;
- (b) the Secretary of State consents to the appeal being allowed; or
- (c) the appellant is outside the United Kingdom or it is impracticable to give him notice of a hearing and, in either case, he is unrepresented.

(3) 2002 c. 41. Section 85(2) applies in relation to an appeal to the Commission against an immigration decision by virtue of section 2(2)(f) of the 1997 Act as substituted by paragraph 20 of Schedule 7 to the 2002 Act.

(4) 1997 c. 68. Section 2 is substituted by paragraph 20 of Schedule 7 to the 2002 Act.

(5) 2002 c. 41. Section 104(4) applies in relation to an appeal to the Commission against an immigration decision by virtue of section 2(2)(j) of the 1997 Act as substituted by paragraph 20 of Schedule 7 to the 2002 Act.

(6) 2002 c. 41. Section 104(5) applies in relation to an appeal to the Commission against an immigration decision by virtue of section 2(2)(j) of the 1997 Act as substituted by paragraph 20 of Schedule 7 to the 2002 Act.