

DRAFT STATUTORY INSTRUMENTS

2007 No. 0000

IMMIGRATION

**The Special Immigration Appeals Commission (Procedure)
(Amendment) Rules 2007**

Made - - - - - *2007*

Coming into force in accordance with rule 1

The Lord Chancellor makes these Rules in exercise of the powers conferred by sections 5 and 8 of the Special Immigration Appeals Commission Act 1997(a).

In accordance with sections 5(9) and 8(4) of that Act, a draft of these Rules has been laid before Parliament and approved by resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2007 and come into force on the 14th day after the day on which they are made.

(2) In these Rules, a reference to a rule by number alone means the rule so numbered in the Special Immigration Appeals Commission (Procedure) Rules 2003(b).

Amendments to the Special Immigration Appeals Commission (Procedure) Rules 2003

2. In rule 2(1)—

(a) omit the definition of “the 2001 Act”;

(b) after the definition of “the 2002 Act” insert—

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

“the 2006 Act” means the Immigration, Asylum and Nationality Act 2006(d);”;

(c) in the definition of “appellant” omit—

“and

(ii) in relation to reviews, the person certified;”;

(a) 1997 c.68. Section 5 of the 1997 Act applies to appeals under section 97A(3) of the Nationality, Immigration and Asylum Act 2002 (c.41) (which was inserted by section 7 of the Immigration, Asylum and Nationality Act 2006 (c.13)), by virtue of that sub-section.

(b) S.I. 2003/1034.

(c) 2004 c.19.

(d) 2006 c.13.

- (d) omit the definition of “certification”;
- (e) after the definition of “Commission” insert—
 - ““exculpatory material” means material which adversely affects the Secretary of State’s case or supports the appellant’s case;”;
- (f) for the definition of “Immigration Acts” substitute—
 - ““Immigration Acts” means the Acts referred to in section 64(2) of the 2006 Act;”;
- (g) in the definition of “proceedings” omit “, or review held by,”;
- (h) omit the definition of “review”.

3. In rule 3, omit sub-paragraph (b).

4. In rule 5(1)—

- (a) after sub-paragraph (a), insert—
 - “(aa) rule 9A (directions hearing);”;
- (b) in sub-paragraph (b), for “rules 11(1) and 17(1)” substitute “rule 11(1)”;
- (c) omit sub-paragraph (c).

5. In rule 6, after “the 1997 Act” insert “and section 97A(3) of the 2002 Act(a)”.

6. In rule 7—

- (a) in paragraph (1), after “the 1997 Act” insert “or section 97A(3) of the 2002 Act”;
- (b) in paragraph (3), omit “or the 2001 Act”.

7. In rule 8—

- (a) in paragraph (1), after “the 1997 Act” insert “or section 97A(3) of the 2002 Act”;
- (b) in each of paragraphs (1)(a) and (4)(a), omit “or the 2001 Act”.

8. After rule 9, insert—

“Directions hearing

9A.—(1) The Commission must, unless it orders otherwise, fix a directions hearing as soon as reasonably practicable after notice of appeal is filed under rule 7, at which the parties and their representatives, and any special advocate, may be present.

(2) At a directions hearing the Commission may give directions as to the order in which, and the time within which, the following documents are to be filed and served—

- (a) the statement and any material to be filed by the Secretary of State under rule 10(1);
- (b) any statement to be filed and served by the appellant under rule 10A(1);
- (c) any application to be made by the appellant or the special advocate under rule 10A(5);
- (d) any statement or material to be filed under rule 10A(2) or pursuant to a direction under rule 10A(7), or served under rule 10A(8), by the Secretary of State;
- (e) closed material, to be served by the Secretary of State on the special advocate under rule 10(4), 10A(8)(a) or 37(3);
- (f) any reply by the special advocate under rule 38(4)(a) to any objection by the Secretary of State to disclosure;
- (g) any response by the Secretary of State under rule 38(4)(b) to the special advocate’s reply;

(a) Section 97A(3) was inserted by section 7 of the Immigration, Asylum and Nationality Act 2006 (c.13).

- (h) any skeleton arguments on behalf of the parties and the special advocate.
- (3) The Commission may also give directions as to the date of—
 - (a) any hearing of an application for bail under Part 6 of these Rules;
 - (b) any hearing under rule 38;
 - (c) the hearing of the appeal under rule 12.”.

9. In rule 10—

- (a) for paragraph (1), substitute—

“(1) Where the Secretary of State intends to oppose an appeal, he must file with the Commission—

 - (a) a statement of the evidence on which he relies in opposition to the appeal; and
 - (b) any exculpatory material of which he is aware.”;
- (b) after paragraph (3), insert—

“(4) Where a special advocate is appointed, the Secretary of State must serve on him a copy of the statement and material filed under paragraph (1).”.

10. After rule 10, insert—

“Further material

10A.—(1) Where the appellant wishes to rely on evidence in support of his appeal, he must file with the Commission and serve on the Secretary of State and on any special advocate a statement of that evidence.

(2) Where the appellant serves a statement under paragraph (1), the Secretary of State must—

- (a) make a reasonable search for exculpatory material;
- (b) notify the appellant of the extent of that search, subject to paragraph (4);
- (c) file with the Commission any exculpatory material; and
- (d) if he wishes to rely on further evidence, file with the Commission a statement of that evidence.

(3) The factors relevant in deciding the reasonableness of a search include the following—

- (a) the number of documents involved;
- (b) the nature and complexity of the proceedings;
- (c) whether the documents are in the control of the Secretary of State;
- (d) the ease and expense of retrieval of any particular document;
- (e) the significance of any document which is likely to be located during the search.

(4) Where the Secretary of State considers that the disclosure of particular information in the notification under paragraph (2)(b) would be contrary to the public interest, he must—

- (a) omit that information from the notification to be served on the appellant; and
- (b) serve a copy of the notification, including that information, on the special advocate.

(5) Both the appellant and any special advocate may apply to the Commission for a direction requiring the Secretary of State to file further information about his case, or other information.

(6) An applicant under paragraph (5) must indicate why the information sought is necessary for the determination of the appeal.

(7) The Commission may make a direction on an application under paragraph (5) where it considers that the information sought—

- (a) is necessary for the determination of the appeal; and
- (b) may be provided without disproportionate cost, time or effort.

(8) The Secretary of State must serve a copy of any statement or material filed under paragraph (2) or of information filed pursuant to a direction under paragraph (7), at the same time as filing it, on—

- (a) any special advocate; and
- (b) the appellant, unless he objects to the disclosure of the statement, material or information to the appellant or his representative.

(9) Where the Secretary of State objects to any such disclosure, rules 37 and 38 apply.

(10) Any duty to file material or a statement of evidence continues until the appeal has been determined.

(11) Where material or a statement to which that duty extends comes to a party's attention before the appeal has been determined, he must immediately—

- (a) file it with the Commission; and
- (b) serve it on the other party and on any special advocate, except that paragraphs (8) and (9) apply to that material or statement as they apply to the material and statement referred to in those paragraphs.”.

11. After rule 11, insert—

“Withdrawal of appeal

11A.—(1) An appellant may withdraw an appeal—

- (a) orally, at a hearing; or
- (b) at any time, by filing written notice with the Commission.

(2) An appeal shall be treated as withdrawn if the Secretary of State notifies the Commission that the decision to which the appeal relates has been withdrawn.

(3) If an appeal is withdrawn or treated as withdrawn, the Commission must serve on the parties and on any special advocate a notice that the appeal has been recorded as having been withdrawn.

Striking out

11B. The Commission may strike out—

- (a) a notice of appeal or the Secretary of State's reply, if it appears to the Commission that it discloses no reasonable grounds for bringing or defending the appeal, as the case may be; or
- (b) a notice of appeal, if it appears to the Commission that it is an abuse of the Commission's process.”.

12. In rule 12(a)(i), for “section 104(4)” substitute “section 104(4) to (4C)”.

13. Omit rules 13 to 25.

14. In rule 26, omit “or review”.

15. For rule 27(2), substitute—

“(2) Subject to paragraph (2B), the appellant must file any application for permission to appeal with the Commission—

- (a) if he is in detention under the Immigration Acts when he is served with the Commission's determination, not later than 5 days after he is so served; and
- (b) otherwise, not later than 10 days after he is so served.

(2A) Subject to paragraph (2B), the Secretary of State must file any application for permission to appeal with the Commission—

- (a) where he makes an application under rule 48(3), no later than 10 days after—
 - (i) the day of the hearing of the application, or
 - (ii) where there is no hearing, the day on which he received notification of the decision on the application; or
- (b) where he does not make such an application, no later than 15 days after the day on which he received the determination containing the decision.

(2B) The Commission may accept an application filed after the expiry of the relevant period in paragraph (2) or (2A) if it is satisfied that, by reason of special circumstances, it would be unjust not to do so.”.

16. In rule 28, omit—

“or

- (b) section 24 of the 2001 Act”.

17. In rule 29, after paragraph (2)(f) insert—

“(fa)where the applicant is a person aged 18 or over, whether he will, if required, agree as a condition of bail to co-operate with electronic monitoring under section 36 of the 2004 Act;”.

18. In rule 30(1), after “hearing” insert “, unless a hearing has already been fixed under rule 9A(3)(a)”.

19. In rule 33(1)—

- (a) omit sub-paragraph (b);
- (b) for “sub-paragraphs (a) to (c)” substitute “sub-paragraph (a) or (c)”.

20. In rule 35, at the beginning of paragraph (b) insert “adducing evidence and”.

21. In rule 36(2), after “paragraph (3)” insert “or (6)(b)”.

22. In rule 37—

- (a) for paragraph (1), substitute—

“(1) In this rule, “closed material” means—

- (a) material upon which the Secretary of State wishes to rely in any proceedings before the Commission;
- (b) material which adversely affects his case or supports the appellant’s case, or
- (c) information which he is required to file pursuant to a direction under rule 10A(7),

but which he objects to disclosing to the appellant or his representative.”;

- (b) in paragraph (3), for “wishes to rely upon” substitute “is required by rule 10(2) or 10A(8) to serve on the appellant, or wishes to rely upon,”;

- (c) in paragraph (3)(a), after “material” insert “, if he has not already done so”;

- (d) after paragraph (4), insert—

“(4A) Where the Secretary of State serves on the special advocate any closed material which he has redacted on grounds other than those of legal professional privilege—

- (a) he must file the material with the Commission in an unredacted form, together with an explanation of the redactions; and
- (b) the Commission must give a direction to the Secretary of State as to what he may redact.”;

- (e) in paragraph (5), after “the Commission” insert “or the agreement of the special advocate”.

23. In rule 38—

- (a) in paragraph (2), for “to the disclosure of the same or substantially the same material” substitute “relating to the same or substantially the same communication or material”;
- (b) for paragraph (4), substitute—
 - “(4) Where the Commission fixes a hearing under this rule—
 - (a) the special advocate may file with the Commission and serve on the Secretary of State a reply to the Secretary of State’s objection;
 - (b) the Secretary of State may file with the Commission and serve on the special advocate a response to the special advocate’s reply;
 - (c) the Secretary of State and the special advocate must file with the Commission a schedule identifying the issues which cannot be agreed between them, which must—
 - (i) list the items or issues in dispute;
 - (ii) give brief reasons for their contentions on each; and
 - (iii) set out any proposals for the Commission to resolve the issues in dispute.”;
- (c) for paragraphs (6) and (7), substitute—
 - “(6) The Commission may uphold or overrule the Secretary of State’s objection.
 - (7) The Commission must uphold the Secretary of State’s objection under rule 37 where it considers that the disclosure of the material would be contrary to the public interest.
 - (8) Where the Commission upholds the Secretary of State’s objection under rule 37, it must—
 - (a) consider whether to direct the Secretary of State to serve a summary of the closed material on the appellant; and
 - (b) approve any such summary, to secure that it does not contain any information or other material the disclosure of which would be contrary to the public interest.
 - (9) Where the Commission overrules the Secretary of State’s objection under rule 37 or directs him to serve a summary of the closed material on the appellant—
 - (a) the Secretary of State shall not be required to serve that material or summary; but
 - (b) if he does not do so, the Commission may at a hearing at which the Secretary of State and the special advocate may make representations —
 - (i) if it considers that the material or anything that is required to be summarised might adversely affect the Secretary of State’s case or support the appellant’s case, direct that the Secretary of State shall not rely on such points in his case, or shall make such concessions or take such other steps, as the Commission may specify; or
 - (ii) in any other case, direct that the Secretary of State shall not rely in the proceedings on that material or (as the case may be) on that which is required to be summarised.”.

24. After rule 38, insert—

“Other redactions

38A. In any proceedings before the Commission, where the Secretary of State serves on the appellant any statement or material which he has redacted on grounds other than those of legal professional privilege, he must—

- (a) notify the appellant that the statement or material has been redacted and on what grounds it has been redacted; and
- (b) file the statement or material with the Commission in an unredacted form, together with an explanation of the redactions.”.

25. In rule 39(1), after “may” insert “, in addition to its power to give directions under rule 9A(2),”.

26. In rule 40—

(a) for paragraph (1)(c) substitute—

“(c) that the Commission may—

(i) proceed to determine the appeal on the material available to it if the party or special advocate fails to comply with the direction within the time specified;
or

(ii) strike out the notice of appeal or the Secretary of State’s reply, as the case may be.”;

(b) in paragraph (2) for “fails to comply with such a notice” substitute “who has been served with such a notice fails to comply with a direction”.

27. In rule 44, after paragraph (5) insert—

“(5A) The special advocate shall be entitled to adduce evidence and to cross-examine witnesses.”.

28. In rule 46—

(a) in paragraph (1), for “, applications or reviews” substitute “or applications”;

(b) in paragraph (2), for “section 27(7) or (8) of the 2001 Act” substitute “paragraph (3)”;

(c) after paragraph (2), insert—

“(3) Where two or more appeals which relate to decisions or action taken in respect of the same person are pending at the same time, the Commission must so far as is reasonably practicable hear the appeals together, unless to do so would cause unreasonable delay to any of the appeals.”.

29. In rule 47, after paragraph (4) insert—

“(5) Where the Commission serves a separate determination under paragraph (4), the special advocate may apply to the Commission to amend that determination and the determination under paragraph (3) on the grounds that the separate determination contains material the disclosure of which would not be contrary to the public interest.

(6) The special advocate must serve a copy of an application under paragraph (5) on the Secretary of State.

(7) The Commission must give the special advocate and the Secretary of State an opportunity to make representations and may determine the application with or without a hearing.”.

30. In rule 48—

(a) for the heading, substitute “**Application by Secretary of State to amend determination etc.**”;

(b) in paragraph (1), for “notice on the appellant of” substitute “on the appellant”;

(c) at the beginning of paragraph (1)(a), insert “notice of”;

(d) in paragraph (2), for “any such notice” substitute “any such document”;

(e) in paragraph (2), after “Secretary of State” insert “and any special advocate”;

(f) in paragraph (3), for “reconsider the order or direction or to review the proposed determination” substitute “amend the order, direction or proposed determination”;

(g) for paragraph (5), substitute—

“(5) The Commission must give the special advocate and the Secretary of State an opportunity to make representations and may determine the application with or without a hearing.”;

(h) in paragraph (6), for “notice” substitute “any document”;

- (i) in paragraph (6), after “expired” insert “or, where such an application is made, before it has been determined”.

31. In rule 49—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (a), for “an address” substitute “a postal address”;
 - (ii) at the end of sub-paragraph (b), omit “or”;
 - (iii) at the end of sub-paragraph (c), insert—
 - “; or
 - (d) sent through a document exchange to a document exchange number or address,”;
- (b) in paragraph (5) (a), after “post” insert “or through a document exchange”.

32. In rule 50(2), after “recent” insert “postal”.

33. In rule 52, at the end insert “or producing it by computer or other mechanical means”.

34. In rule 54, at the beginning of paragraph (2)(a), insert “subject to rule 48(1)(b) and (2),”.

Transitional provisions

35. Where any appeal under section 25, or application under section 26, of the Anti-terrorism, Crime and Security Act 2001(a) is pending on the date on which these Rules come into force, that appeal or application shall be dealt with as if these Rules had not been made.

Falconer of Thoroton C.

Date

(a) 2001 c.24. Sections 25 and 26 were repealed by section 16(2)(a) of the Prevention of Terrorism Act 2005 (c.2), subject to savings in section 16(4).

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Special Immigration Appeals Commission (Procedure) Rules 2003 (S.I. 2003/1034). They —

make amendments consequential on the repeal of Part 4 of the Anti-terrorism, Crime and Security Act 2001 (c.24) by the Prevention of Terrorism Act 2005 (c.2) (rules 2 to 4, 6, 7, 13 to 16, 28 and 35);

extend the application of the Rules to cover appeals against the issue of certificates under section 97A of the Nationality, Immigration and Asylum Act 2002 (c.41) (inserted by section 7 of the Immigration, Asylum and Nationality Act 2006 (c.13)) (rules 5 to 7);

provide for an early directions hearing to take place (rules 4, 8, 18 and 25);

require the Secretary of State to file and serve exculpatory material (rules 2, 9 and 10);

provide for the filing and service of further material (rule 10);

insert a provision on the withdrawal of appeals (rule 11);

give the Commission power to strike out a notice of appeal or a reply (rules 11 and 26);

amend the provision on abandonment of appeals consequential on an amendment to section 104 of the Nationality, Immigration and Asylum Act 2002 by section 9 of the Immigration, Asylum and Nationality Act 2006 (rule 12);

clarify the provision on time limits for seeking permission to appeal (rule 15);

make provision relating to electronic monitoring as a condition of bail under section 36 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) (rule 17);

amend the provision on the representation of parties consequential on the repeal of section 110 of the Nationality, Immigration and Asylum Act 2002 by section 10 of the Immigration, Asylum and Nationality Act 2006 (rule 19);

permit a special advocate to adduce evidence and cross-examine witnesses (rule 20 and 27);

amend the provisions on communications by special advocates and closed material (rules 21 to 23);

make provision about redacting material (rules 22 and 24);

make provision about hearing related pending appeals together (rule 28);

permit a special advocate to apply to amend determinations and amend the rule on applications by the Secretary of State to amend determinations (rules 29, 30 and 34);

make minor amendments to the rules on filing, service and signature of documents (rules 31 to 33).

A regulatory impact assessment has not been prepared for this instrument as it has no impact on businesses, charities or voluntary bodies.



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