

Draft Rules laid before Parliament under sections 5(9) and 8(4) of the Special Immigration Appeals Commission Act 1997, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

IMMIGRATION

**The Special Immigration Appeals Commission
(Procedure) (Amendment) Rules 2018**

Made - - - - *****

Coming into force in accordance with rule 1(2)

The Lord Chancellor, in exercise of the powers conferred by sections 5 and 8 of the Special Immigration Appeals Commission Act 1997(1), makes the following Rules.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2018.

(2) These Rules come into force on the twenty-first day after the day on which they are made.

(3) 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(2).

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

2. In rule 2(1)—

(a) insert at the appropriate place—

““the 2016 Act” means the Immigration Act 2016(3);”

-
- (1) Section 5 of the Special Immigration Appeals Commission Act 1997 (c. 68) (“the 1997 Act”) was amended by section 82(2) of, and Schedule 5 to, the Regulation of Investigatory Powers Act 2000 (c. 23), section 9(1) of, and paragraph 28 of Schedule 2 to, the Race Relations (Amendment) Act 2000 (c. 34), sections 4(3), 114(3) and 161 of, and paragraph 23 of Schedule 7 and Schedule 9 to, the Nationality, Immigration and Asylum Act 2002 (c. 41), and article 5(1) of, and paragraphs 14 and 15 of Schedule 1 to, S.I. 2010/21. Section 5 was extended by section 6A of the 1997 Act so that it applies to reviews under sections 2C, 2D, 2E of that Act as it applies to appeals under sections 2 and 2B of that Act and section 5 was also extended by section 97A(2K) of the Nationality, Immigration and Asylum Act 2002 (c. 41) and by section 18 of the Immigration Act 2014 (c. 22). Section 5(5A) was inserted by paragraph 10(2) of Schedule 9 to the Immigration Act 2014. When it comes into force, section 66 of the Criminal Justice and Courts Act 2015 (c. 2) will amend section 8 of the 1997 Act to extend the Lord Chancellor’s power to make rules so that it also includes rules regulating, and prescribing the procedure to be followed on, applications to the Special Immigration Appeals Commission for the grant of a certificate under section 7B of the 1997 Act.
- (2) S.I. 2003/1034, as amended by S.I. 2007/1285, 2007/3370, 2013/2995 and 2015/867.
- (3) 2016 c. 19. Section 56 of the 2016 Act has been repealed.

- ““financial condition” has the meaning given in paragraph 5 of Schedule 10 to the 2016 Act;”;
- (b) in the definition of “appellant”, for “permission to appeal or applications for bail” substitute “bail, permission to appeal or a certificate under section 7B of the 1997 Act”.
3. In rule 3, after paragraph (aa), insert—
- “(ab) applications to the Commission for a certificate under section 7B of the 1997 Act ;”.
4. In the heading of Part 5, insert “etc” after “appeal”.
5. For rule 26 substitute—

“26. Scope of this Part

This Part applies to—

- (a) applications to the Commission for leave to appeal to the Court of Appeal, the Court of Session or the Court of Appeal in Northern Ireland from a final determination by the Commission—
- (i) of an appeal, on a question of law, or
- (ii) of an application for review under section 2C, 2D or 2E of the 1997 Act, and
- (b) applications to the Commission for a certificate under section 7B of the 1997 Act.”
6. In rule 27—
- (a) for paragraph (2), substitute—
- “(2) Subject to paragraph (2B), the applicant must file any application for leave to appeal with the Commission within 14 days of being served with the Commission’s determination under rule 47(3).”.
- (b) for paragraph (2A), substitute—
- “(2A) An applicant who wishes to apply for a certificate under section 7B of the 1997 Act must file an application under rule 27A with the Commission on the same day as filing an application for leave to appeal.”.
- (c) In paragraph (2B), omit “or (2A)”.
7. After rule 27 insert—

“Application for a certificate under section 7B

27A.—(1) An application for a certificate under section 7B of the 1997 Act must be made by filing with the Commission an application in writing.

(2) Subject to paragraph (3), the applicant must file any application for a certificate with the Commission not later than 14 days after being served with the Commission’s determination under rule 47(3).

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

(4) The application must—

- (a) state the grounds on which the applicant believes the conditions in subsection (4) or (5) of section 7B of the 1997 Act are met; and
- (b) be signed by the applicant or their representative, and dated.

(5) The applicant must serve a copy of the application notice on every other party.

(6) When an applicant files the application for a certificate with the Commission, the applicant must on the same day also file with the Commission an application for leave to appeal under rule 27.

(7) On receipt of an application for a certificate the Commission must first decide that application before deciding the application for leave to appeal.

(8) The Commission may decide an application for a certificate without a hearing unless it considers that there are special circumstances which make a hearing necessary or desirable.”

8. For rule 29(2)(e) substitute—

“(e) the amount of the financial condition that the applicant proposes as a condition of bail;”.

9. For rule 29(2)(f) substitute—

“(f) the full names, addresses, occupations and dates of birth of any persons, other than the applicant, who have agreed to propose a financial condition as a condition of the applicant’s bail, and the amount that they propose.”

10. Omit rule 29(2)(fa).

11. For rule 30(5)(b) substitute—

“(b) the amount of any financial condition which the Commission has imposed on the applicant or on any other person as a condition of bail.”

12. For rule 30(6) substitute—

“(6) Details of the financial condition must be in writing and must state—

(a) the sum of money that is required to be paid; and

(b) that the person on whom the Commission has imposed the financial condition has read and understood the bail decision, and that he or she agrees to pay the amount of money stated in it if the applicant fails to comply with the conditions set out in the bail decision.”

13. For rule 30(7) substitute—

“(7) The document referred to in rule 30(6) must be—

(a) signed by the person on whom it has been imposed; and

(b) filed with the Commission.”

14. For rule 30(8)(b) substitute—

“(b) being satisfied that rule 30(7) has been complied with in respect of any financial condition imposed as a condition of bail.”

15. In rule 30A(1), for the words “paragraph 22 or 29 of Schedule 2 to the Immigration Act 1971” substitute “Schedule 10 to the 2016 Act”.

16. After rule 30A insert—

“Power to vary bail conditions

30B.—(1) Subject to paragraph (2), where bail is granted by the Commission, the Commission may direct that the Secretary of State has the power to amend or remove bail conditions or impose new bail conditions.

(2) The Commission may not give a direction under paragraph (1) without first giving the person being granted bail and any other person subject to a financial condition an opportunity to make representations.

(3) Where the Commission has made a direction under paragraph (1), it may not amend or remove bail conditions or impose new bail conditions in relation to the person who has been granted bail.”

17. Rule 31 is revoked.

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

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](#)) (“the 2003 Rules”) as a consequence of the commencement of—

- section 66 of the Criminal Justice and Courts Act [2015 \(c. 2\)](#) which inserts new sections 7B-7D in the Special Immigration Appeals Commission Act 1997 (“the 1997 Act”) which enable ‘leapfrog’ appeals directly from the Special Immigration Appeals Commission (“the Commission”) to the Supreme Court; and
- the immigration bail provisions in Schedule 10 to the Immigration Act [2016 \(c. 19\)](#) (“the 2016 Act”).

Sections 7B-7D of the 1997 Act provide that the Supreme Court’s permission can be sought for an appeal directly to the Supreme Court from a decision of the Commission (bypassing the Court of Appeal) if the Commission grants a certificate on an application by the prospective appellant.

Schedule 10 to the 2016 Act replaces the previous framework of temporary admission, temporary release, release on restrictions, and bail with a single power of immigration bail. The new single power introduces a concept of the financial condition which replaces recognizances (in England, Wales, and Northern Ireland) and bail bonds (in Scotland). The provisions of Schedule 10 are applied to the Commission with some modifications by virtue of Schedule 3 to the 1997 Act (which was substituted by paragraph 25 of Schedule 10).

The amendments set out in these Rules ensure that the 2003 Rules can accommodate applications for a certificate under section 7B of the 1997 Act. The amendments also change the time limit for making an application for permission to appeal. Any party who wishes to apply for a certificate under section 7B and/or permission to appeal must do so within 14 days.

The amendments also ensure that the 2003 Rules reflect and remain consistent with the provisions of Schedule 10 to the 2016 Act.

No impact assessment has been carried out for these amendments as no, or no significant, impact on the private, voluntary or public sectors is foreseen.