
STATUTORY INSTRUMENTS

2003 No. 1034

The Special Immigration Appeals Commission (Procedure) Rules 2003

PART 7

GENERAL PROVISIONS

Parties

32.—(1) Subject to rule 2(2) and to paragraph (2) of this rule, the parties to proceedings shall be the appellant and the Secretary of State.

(2) The United Kingdom Representative may give written notice to the Commission that he wishes to be treated as a party to proceedings, and where he gives such notice he shall be treated as a party from the date of the notice.

(3) Any restriction imposed by or under these Rules in relation to the appellant as to—

- (a) the disclosure of material;
- (b) attendance at hearings;
- (c) notification of orders, directions or determinations; and
- (d) communication from the special advocate,

shall also apply to the United Kingdom Representative where he is a party.

Representation of parties

33.—(1) The appellant may act in person or be represented by—

- (a) a person having a qualification referred to in section 6(3) of the 1997 Act;
- (b) a person appointed by any voluntary organisation for the time being in receipt of a grant under section 110 of the 2002 Act; or
- (c) with the leave of the Commission, any other person,

provided that the person referred to in sub-paragraphs (a) to (c) is not prohibited from providing immigration services by section 84 of the Immigration and Asylum Act 1999⁽¹⁾.

(2) The Secretary of State and the United Kingdom Representative may be represented by any person authorised by them to act on their behalf.

Appointment of special advocate

34.—(1) Subject to paragraph (2), the Secretary of State must, upon being served with a copy of a notice of appeal or application under these Rules, give notice of the proceedings to the relevant law officer.

(1) 1999 c. 33.

(2) Paragraph (1) applies unless—

(a) the Secretary of State does not intend to—

(i) oppose the appeal or application; or

(ii) object to the disclosure of any material to the appellant; or

(b) a special advocate has already been appointed to represent the interests of the appellant in the proceedings.

(3) Where notice is given to the relevant law officer under paragraph (1), the relevant law officer may appoint a special advocate to represent the interests of the appellant in proceedings before the Commission.

(4) Where any proceedings before the Commission are pending but no special advocate has been appointed, the appellant or the Secretary of State may at any time request the relevant law officer to appoint a special advocate.

Functions of special advocate

35. The functions of a special advocate are to represent the interests of the appellant by—

(a) making submissions to the Commission at any hearings from which the appellant and his representatives are excluded;

(b) cross-examining witnesses at any such hearings; and

(c) making written submissions to the Commission.

Special advocate: communicating about proceedings

36.—(1) The special advocate may communicate with the appellant or his representative at any time before the Secretary of State serves material on him which he objects to being disclosed to the appellant.

(2) After the Secretary of State serves material on the special advocate as mentioned in paragraph (1), the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (3) or a direction of the Commission pursuant to a request under paragraph (4).

(3) The special advocate may, without directions from the Commission, communicate about the proceedings with—

(a) the Commission;

(b) the Secretary of State, or any person acting for him;

(c) the relevant law officer, or any person acting for him;

(d) any other person, except for the appellant or his representative, with whom it is necessary for administrative purposes for him to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from the Commission authorising him to communicate with the appellant or his representative or with any other person.

(5) Where the special advocate makes a request for directions under paragraph (4)—

(a) the Commission must notify the Secretary of State of the request; and

(b) the Secretary of State must, within a period specified by the Commission, file with the Commission and serve on the special advocate notice of any objection which he has to the proposed communication, or to the form in which it is proposed to be made.

(6) Paragraph (2) does not prohibit the appellant from communicating with the special advocate after the Secretary of State has served material on him as mentioned in paragraph (1), but—

- (a) the appellant may only communicate with the special advocate through a legal representative in writing; and
- (b) the special advocate must not reply to the communication other than in accordance with directions of the Commission, except that he may without such directions send a written acknowledgment of receipt to the appellant's legal representative.

Closed material

37.—(1) In this rule, “closed material” means material upon which the Secretary of State wishes to rely in any proceedings before the Commission, but which the Secretary of State objects to disclosing to the appellant or his representative.

(2) The Secretary of State may not rely upon closed material unless a special advocate has been appointed to represent the interests of the appellant.

(3) Where the Secretary of State wishes to rely upon closed material and a special advocate has been appointed, the Secretary of State must file with the Commission and serve on the special advocate—

- (a) a copy of the closed material;
- (b) a statement of his reasons for objecting to its disclosure; and
- (c) if and to the extent that it is possible to do so without disclosing information contrary to the public interest, a statement of the material in a form which can be served on the appellant.

(4) The Secretary of State must, at the same time as filing it, serve on the appellant any statement filed under paragraph (3)(c).

(5) The Secretary of State may, with the leave of the Commission, at any time amend or supplement material filed under this rule.

Consideration of Secretary of State's objection

38.—(1) Where the Secretary of State makes an objection under rule 36(5)(b) or rule 37, the Commission must decide in accordance with this rule whether to uphold the objection.

(2) The Commission must fix a hearing for the Secretary of State and the special advocate to make oral representations, unless—

- (a) the special advocate gives notice to the Commission that he does not challenge the objection;
- (b) the Commission has previously considered an objection by the Secretary of State to the disclosure of the same or substantially the same material, and is satisfied that it would be just to uphold the objection without a hearing; or
- (c) the Secretary of State and the special advocate consent to the Commission deciding the issue without an oral hearing.

(3) If the special advocate does not challenge the objection, he must give notice of that fact to the Commission and the Secretary of State within 14 days after the Secretary of State serves on him a notice under rule 36(5)(b) or material under rule 37(3).

(4) Where the Commission fixes a hearing under this rule, the Secretary of State and the special advocate must before the hearing file with the Commission a schedule identifying the issues which cannot be agreed between them, which must—

- (a) list the items or issues in dispute;

- (b) give brief reasons for their contentions on each; and
- (c) set out any proposals for the Commission to resolve the issues in contention.
- (5) A hearing under this rule shall take place in the absence of the appellant and his representative.
- (6) The Commission may—
 - (a) uphold or overrule the Secretary of State's objection; and
 - (b) where the Secretary of State has made an objection under rule 37(3), direct him to serve on the appellant all or part of the material which he has filed with the Commission but not served on the appellant, either in the form in which it was filed or in a different form.
- (7) Where the Commission overrules the Secretary of State's objection or directs him to serve any material on the appellant, the Secretary of State shall not be required to serve the material if he chooses not to rely upon it in the proceedings.

Directions

- 39.**—(1) The Commission may give directions relating to the conduct of any proceedings.
- (2) The power to give directions is to be exercised subject to—
 - (a) these Rules, including in particular the obligation in rule 4(1) to ensure that information is not disclosed contrary to the public interest; and
 - (b) any decision which the Commission makes under rule 38(6).
 - (3) Directions under this rule may be given orally or in writing.
 - (4) Subject to rule 48, the Commission must serve notice of any written directions on every party.
 - (5) Directions given under this rule may in particular—
 - (a) specify the length of time allowed for anything to be done;
 - (b) vary any time limit;
 - (c) require any party to file and serve—
 - (i) further details of his case, or any other information which appears to be necessary for the determination of the appeal or application;
 - (ii) witness statements;
 - (iii) written submissions;
 - (iv) a statement of any interpretation requirements; or
 - (v) any other document;
 - (d) provide for—
 - (i) a particular matter to be dealt with as a preliminary issue; or
 - (ii) a pre-hearing review to be held;
 - (e) relate to any matter concerning the preparation for a hearing;
 - (f) specify—
 - (i) the manner in which any evidence is to be given; and
 - (ii) the witnesses, if any, to be heard;
 - (g) provide for a hearing to be conducted or evidence given or representations made by video link or by other electronic means; and
 - (h) make provision to secure the anonymity of the appellant or a witness.
 - (6) The power to give directions may be exercised in the absence of the parties.

Failure to comply with directions

40.—(1) Where a party or the special advocate fails to comply with a direction, the Commission may serve on him a notice which states—

- (a) the respect in which he has failed to comply with the direction;
- (b) a time limit for complying with the direction; and
- (c) that the Commission may proceed to determine the appeal on the material available to it if the party or the special advocate fails to comply with the relevant direction within the time specified.

(2) Where a party or special advocate fails to comply with such a notice, the Commission may proceed in accordance with paragraph (1)(c).

Notification of hearing

41. Unless the Commission orders otherwise, it must serve notice of the date, time and place fixed for any hearing on—

- (a) every party, whether or not entitled to attend that hearing; and
- (b) the special advocate, if one has been appointed.

Adjournment of hearing

42. The Commission may adjourn the hearing of any proceedings.

Hearings in private

43.—(1) If the Commission considers it necessary for the appellant and his representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, it must—

- (a) direct accordingly; and
- (b) conduct the hearing, or that part of it from which the appellant and his representative are excluded, in private.

(2) The Commission may conduct a hearing or part of a hearing in private for any other good reason.

Evidence

44.—(1) Subject to these Rules, the evidence of witnesses may be given either—

- (a) orally, before the Commission;
- (b) in writing, in which case it shall be given in such a manner and at such time as the Commission directs.

(2) The Commission may also receive evidence in documentary or any other form.

(3) The Commission may receive evidence that would not be admissible in a court of law.

(4) No person shall be compelled to give evidence or produce a document which he could not be compelled to give or produce on the trial of a civil claim in the part of the United Kingdom in which the proceedings before the Commission are taking place.

(5) Every party shall be entitled to adduce evidence and to cross-examine witnesses during any part of a hearing from which he and his representative are not excluded.

(6) The Commission may require a witness to give evidence on oath.

Summoning of witnesses

45.—(1) Subject to these Rules, the Commission may, by issuing a summons, require any person in the United Kingdom—

- (a) to attend as a witness at the hearing of any proceedings before the Commission; and
- (b) at the hearing, to answer any questions or produce any documents in his custody or under his control which relate to any matter in issue in the proceedings.

(2) No person shall be required to attend a hearing in compliance with a summons issued under paragraph (1) unless—

- (a) the summons is served on him; and
- (b) the necessary expenses of his attendance are paid or tendered to him.

(3) Where a summons is issued at the request of a party, that party must pay or tender the expenses of the witness.

Hearing two or more proceedings together

46.—(1) Where two or more appeals, applications or reviews are pending at the same time, the Commission may direct them to be heard together if—

- (a) some common question of law or fact arises in each of them;
- (b) they relate to decisions or action taken in respect of persons who are members of the same family; or
- (c) for some other reason it is desirable for the proceedings to be heard together.

(2) Except where section 27(7) and (8) of the 2001 Act applies, the Commission must give all the parties who would be entitled to attend the hearing of the proceedings an opportunity to make representations before hearing proceedings together under this rule.

Giving of determination

47.—(1) This rule applies when the Commission determines any proceedings.

(2) The Commission must record its decision and the reasons for it.

(3) The Commission must serve on the parties a written determination containing its decision and, if and to the extent that it is possible to do so without disclosing information contrary to the public interest, the reasons for it.

(4) Where the determination under paragraph (3) does not include the full reasons for its decision, the Commission must serve on the Secretary of State and the special advocate a separate determination including those reasons.

Application by Secretary of State for reconsideration of decision

48.—(1) This rule applies where the Commission proposes to serve notice on the appellant of—

- (a) any order or direction made or given in the absence of the Secretary of State; or
- (b) its determination of the proceedings.

(2) Before the Commission serves any such notice on the appellant, it must first serve notice on the Secretary of State of its intention to do so.

(3) The Secretary of State may, within 5 days of being served with notice under paragraph (2), apply to the Commission to reconsider the order or direction or to review the proposed determination if he considers that—

- (a) his compliance with the order or direction; or

(b) the notification to the appellant of any matter contained in the order, direction or determination,

would cause information to be disclosed contrary to the public interest.

(4) Where the Secretary of State makes an application under paragraph (3), he must at the same time serve a copy of it on the special advocate, if one has been appointed.

(5) Rule 38, except for paragraphs (6)(b) and (7) of that rule, shall, if a special advocate has been appointed, apply with any necessary modifications to the consideration of an application under paragraph (3) of this rule.

(6) The Commission must not serve notice on the appellant as mentioned in paragraph (1) before the time for the Secretary of State to make an application under paragraph (3) has expired.

Filing and service of documents

49.—(1) Any document which is required or permitted by these Rules or by an order of the Commission to be filed with the Commission or served on any person may be—

- (a) delivered or sent by post to an address;
- (b) sent by fax to a fax number; or
- (c) sent by e-mail to an e-mail address,

specified for that purpose by the Commission or the person to which the document is directed.

(2) A document to be served on an individual may be served personally by leaving it with that individual.

(3) Subject to paragraph (4), if any document is served on a person who has notified the Commission that he is acting as the representative of a party, it shall be deemed to have been served on that party.

(4) Paragraph (3) does not apply if the Commission directs that a document is to be served on both a party and his representative.

(5) Any document that is served on a person in accordance with this rule shall, unless the contrary is proved, be deemed to be served—

- (a) where the document is sent by post from and to a place within the United Kingdom, on the second day after it was sent;
- (b) where the document is sent by post from or to a place outside the United Kingdom, on the twenty-eighth day after it was sent; and
- (c) in any other case, on the day on which the document was sent or delivered to, or left with, that person.

(6) Any document which is filed with the Commission shall be treated as being filed on the day on which it is received by the Commission.

Address for service

50.—(1) Every party, and any person representing a party or acting as special advocate, must notify the Commission of a postal address at which documents may be served on him and of any changes to that address.

(2) Until a party, representative or special advocate notifies the Commission of a change of address, any document served on him at the most recent address he has given to the Commission shall be deemed to have been properly served on him.

Calculation of time

51.—(1) Where a period of time for doing any act is specified by these Rules or by a direction of the Commission, that period is to be calculated—

- (a) excluding the day on which the period begins; and
- (b) where the period is 10 days or less, excluding any day which is not a business day.

(2) Where the time specified by these Rules or by a direction of the Commission for doing any act ends on a day which is not a business day, that act is done in time if it is done on the next business day.

(3) In this rule, “business day” means any day other than a Saturday or Sunday, a bank holiday, Christmas Day, 27th to 31st December or Good Friday.

Signature of documents

52. Any requirement in these Rules for a document to be signed shall be satisfied, in the case of a document which is filed or served by e-mail in accordance with these Rules, by the person who is required to sign the document typing his name in it.

Errors of procedure

53. Where in any proceedings, before they have been determined by the Commission, there has been an error of procedure such as a failure to comply with a rule—

- (a) subject to these Rules, the error does not invalidate any step taken in the proceedings unless the Commission so orders; and
- (b) the Commission may make an order or take any other step that it considers appropriate to remedy the error.

Correction of orders and determinations

54.—(1) The Commission may at any time amend an order or determination to correct a clerical error or other accidental slip or omission.

(2) Where an order or determination is amended under this rule—

- (a) the Commission must serve the amended order or determination on every person on whom the original order or determination was served; and
- (b) the time within which a party may apply for permission to appeal against an amended determination runs from the date on which the party is served with the amended determination.