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## STATUTORY INSTRUMENTS

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# 2003 No. 1034

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

### PART 7

#### GENERAL PROVISIONS

##### **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.