

The Special Immigration Appeals Commission (Procedure) Rules 2003

2003 No. 1034

AS IN FORCE FROM 28TH NOVEMBER 2013

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The Lord Chancellor, in exercise of the powers conferred by sections 5 and 8 of the Special Immigration Appeals Commission Act 1997^(a) and sections 24(3) and 27(5) of the Anti-terrorism, Crime and Security Act 2001^(b), makes the following Rules a draft of which has, in accordance with sections 5(9) and 8(4) of the Special Immigration Appeals Commission Act 1997, been laid before and approved by resolution of each House of Parliament:

PART 1

Introduction

Citation and commencement

1. These Rules may be cited as the Special Immigration Appeals Commission (Procedure) Rules 2003 and shall come into force forthwith.

Interpretation

2.—(1) In these Rules—

“the 1997 Act” means the Special Immigration Appeals Commission Act 1997^(c);

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002^(d);

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

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

“appellant” means a person appealing to the Commission or, as the case may be, making an application to the Commission for review under section 2C or section 2D of the 1997 Act, and in Part 7 is to be interpreted as additionally including—

(i) in relation to applications for permission to appeal or applications for bail, the applicant;

(ii) [];

“application to the Commission for review under section 2C or section 2D of the 1997 Act” means an application to the Commission under subsection 2C(2) of the 1997 Act to set aside a direction to which that subsection applies, or an application to the Commission under subsection 2D(2) of the 1997 Act to set aside a decision to which that subsection applies, and unless the contrary intention appears, “applying for review” and “application for review” are to be read accordingly;

“chairman” means the chairman of the Commission;

“Commission” means the Special Immigration Appeals Commission;

(a) 1997 c.68. Section 5 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) 2001 c.24.

(c) 1997 c.68. The 1997 Act is amended by section 35 of the 2001 Act and by section 4 of and Schedule 7 to the 2002 Act.

(d) 2002 c.41.

(e) 2004 c.19.

(f) 2006 c.13.

“exculpatory material” means material which adversely affects the Secretary of State’s case or supports the appellant’s case;

“Immigration Acts” means the Acts referred to in section 64(2) of the 2006 Act;

“proceedings” means any appeal or application to the Commission;

“relevant law officer” has the meaning given by section 6(2) of the 1997 Act;

“special advocate” means a person appointed under section 6(1) of the 1997 Act to represent the interests of a party to proceedings;

“United Kingdom Representative” means the United Kingdom Representative to the United Nations High Commissioner for Refugees.

(3) In relation to an appeal to the Commission under section 2B of the 1997 Act^(a) against a decision which was made by a person exercising the functions of the Secretary of State pursuant to section 43 of the British Nationality Act 1981^(b), references in these Rules to the Secretary of State are to be read as if they referred to the person who made the decision.

Scope of these Rules

3. These Rules apply to the following proceedings—

- (a) appeals to the Commission;
- (aa) applications to the Commission for review under section 2C or section 2D of the 1997 Act;
- (b) [..]
- (c) 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; and
- (d) applications to the Commission for bail.

General duty of Commission

4.—(1) When exercising its functions, the Commission shall secure that information is not disclosed contrary to the interests of national security, the international relations of the United Kingdom, the detection and prevention of crime, or in any other circumstances where disclosure is likely to harm the public interest.

(2) Where these Rules require information not to be disclosed contrary to the public interest, that requirement is to be interpreted in accordance with paragraph (1).

(3) Subject to paragraphs (1) and (2), the Commission must satisfy itself that the material available to it enables it properly to determine proceedings.

Delegated powers

5.—(1) The powers of the Commission under the following provisions of these Rules may be exercised by the chairman or by any other member of the Commission who falls within paragraph 5(a) or (b) of Schedule 1 to the 1997 Act^(c)—

- (a) rules 8(5) (extensions of time for appealing or applying for review);
- (aa) rule 9A (directions hearing);
- (b) rule 11(1) (applications for leave to vary grounds of appeal or review);
- (c) [];

(a) 1997 c.68. Section 2B is inserted by section 4(2) of the 2002 Act.

(b) 1981 c.61.

(c) 1997 c.68. Paragraph 5 of Schedule 1 is amended by paragraph 25 of Schedule 7 to the 2002 Act.

- (d) Part 5 (applications for leave to appeal to Court of Appeal, Court of Session or Court of Appeal in Northern Ireland);
- (e) Part 6 (bail);
- (f) rule 37(5) (applications for leave to amend or supplement material filed by Secretary of State);
- (g) rule 39 (directions);
- (h) rule 40(1) (orders upon failure to comply with directions);
- (i) rule 45 (issue of witness summons); and
- (j) rule 46 (orders that two or more proceedings be heard together).

(2) Anything of an administrative nature which is required or permitted to be done by the Commission under these Rules may be done by a member of the Commission's staff.

PART 2

Appeals to and Reviews by the Commission under the 1997 Act

Scope of this Part

6. This Part applies to—

- (a) appeals to the Commission under section 2 or 2B of the 1997 Act^(a) and section 97A(3) of the 2002 Act; and
- (b) applications to the Commission for review under section 2C or 2D of the 1997 Act.

Starting an appeal or application for review

7.—(1) An appeal to the Commission under the 1997 Act or section 97A(3) of the 2002 Act must be made by giving notice of appeal in accordance with these Rules.

(1A) An application to the Commission for review under the 1997 Act must be made by giving notice of application in accordance with these Rules.

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

(3) A person who is in detention under the Immigration Acts ... may give notice of appeal or notice of application for review 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 or notice of application for review 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 or notice of application for review 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.

(a) 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.

Time limit for appealing or for applying for review

8.—(1) Subject to the following paragraphs of this rule, a notice of appeal to the Commission under the 1997 Act or section 97A(3) of the 2002 Act or a notice of application for review under the 1997 Act must be given—

- (a) if the appellant is in detention under the Immigration Acts when he is served with notice of the decision against which he wishes to appeal or direction or decision in respect of which he wishes to apply for review, 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 of the decision against which he wishes to appeal or direction or decision in respect of which he wishes to apply for review.

(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^(a),

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

(2) 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.

(3) 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 ... 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.

(4A) Where a person is served with notice of certification under section 2C(1)(a) or section 2D(1)(b) of the 1997 Act, the date from which the time limit for giving a notice of application for review under paragraph (1) begins is the later of the following—

- (a) the date he is served with that notice of certification; or
- (b) the date on which this paragraph came into force.

(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 or notice of application for review

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

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

- (1A) The notice of application for review must—
- (a) specify, by reference to the principles which would be applied in an application for judicial review, the grounds for applying for a review;
 - (b) give reasons in support of those grounds; and
 - (c) specify the order or relief sought.
- (2) The notice of appeal or application for review must state the name and address of—
- (a) the appellant; and
 - (b) any representative of the appellant.
- (3) The notice of appeal or application for review must be signed by the appellant or his representative, and dated.
- (4) If the notice of appeal or application for review is signed by the appellant's representative, the representative must certify in the notice of appeal or application for review that he has completed the notice of appeal or application for review in accordance with the appellant's instructions.
- (5) The appellant must attach to the notice of appeal or application for review 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.

Directions hearing

- 9A.**—(1) The Commission must, unless it orders otherwise, fix a directions hearing as soon as reasonably practicable after notice of appeal or notice of application for review 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;
 - (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 or application for review under rule 12.

Secretary of State's reply to an appeal

- 10.**—(A1) This rule does not apply to an application to the Commission for review under section 2C or 2D of the 1997 Act.

(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.

(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.

(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).

Further material in relation to an appeal

10A.—(A1) This rule does not apply to an application to the Commission for review under section 2C or 2D of the 1997 Act.

(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.

Secretary of State's reply to an application for review

10B.—(1) Where the Secretary of State intends to oppose an application for review, he must file with the Commission—

- (a) a statement of the evidence on which he relies in opposition to the application for review; and
- (b) material relevant to the issues in the application for review.

(2) Unless the Secretary of State objects to the statement and material filed under paragraph (1), or to part thereof, being disclosed to the appellant or his representative, he must serve a copy of the statement and material, or as much of the statement and material as he does not object to disclosing to the appellant or his representative, on the appellant at the same time as filing it.

(3) Where the Secretary of State objects to the statement and material filed under paragraph (1), or to part thereof, being disclosed to the appellant or his representative, rules 37 and 38 shall apply in respect of the statement and material, or the part thereof which the Secretary of State objects to disclosing to the appellant or his representative.

(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).

Variation of grounds of appeal or application for review

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

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

Withdrawal of appeal or application for review

11A.—(1) An appellant may withdraw an appeal or application for review—

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

(a) 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.

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

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

Striking out

11B. The Commission may strike out—

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

Hearing of appeal or application for review

12. Every appeal and every application for review 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^(a) or section 104(4) to (4C) of the 2002 Act^(b);
 - (ii) is treated as finally determined pursuant to section 104(5) of the 2002 Act^(c); or
 - (iii) is withdrawn by the appellant;
- (aa) the application for review is withdrawn by the appellant;
- (b) the Secretary of State consents to—
 - (i) the appeal being allowed; or
 - (ii) the granting of the order or the relief sought in an application for review; 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.

PARTS 3 and 4 revoked by S.I. 2007/1285

PART 5

Applications for Leave to Appeal from Commission

Scope of this Part

26. This Part applies to 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—

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

- (a) of an appeal, on a question of law; or
- (b) of an application for review under section 2C or 2D of the 1997 Act.

Application for leave to appeal

27.—(1) An application for leave to appeal must be made by filing with the Commission an application in writing.

(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 under rule 47(3), 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 not later than 10 days after he is served with the Commission's determination under rule 47(3).

(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.

(3) The application must—

- (a) state the grounds of appeal; and
- (b) be signed by the applicant or his representative, and dated.

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

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

PART 6

Bail

Scope of this Part and interpretation

28. This Part applies to applications to the Commission under—

- (a) the Immigration Acts;
- [(b) ..],

by persons detained under those Acts, to be released on bail.

Applications for bail

29.—(1) An application to be released on bail must be made by filing with the Commission an application in writing.

(2) The application must contain the following details—

- (a) the applicant's—
 - (i) full name;
 - (ii) date of birth; and
 - (iii) date of arrival in the United Kingdom;
- (b) the address of the place where the applicant is detained;
- (c) whether there are pending before the Commission any proceedings to which the applicant is a party;

- (d) the address where the applicant will reside if his application for bail is granted or, if he is unable to give such an address, the reason why an address is not given;
- (e) the amount of the recognizance in which he will agree to be bound;
- (f) the full names, addresses, occupations and dates of birth of any persons who have agreed to act as sureties for the applicant if bail is granted, and the amounts of the recognizances in which they will agree to be bound;
- (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;
- (g) the grounds on which the application is made and, where a previous application has been refused, full details of any change in circumstances which has occurred since the refusal; and
- (h) whether the applicant requires an interpreter at the hearing and, if so, for what language and dialect.

(3) The application must be signed by the applicant or his representative or, in the case of an applicant who is a child or is for any other reason incapable of acting, by a person acting on his behalf.

Bail hearing and decision

30.—(1) Where an application for bail is filed, the Commission must—

- (a) as soon as reasonably practicable, serve a copy of the application on the Secretary of State; and
- (b) fix a hearing, unless a hearing has already been fixed under rule 9A(3)(a).

(2) If the Secretary of State wishes to contest the application, he must file with the Commission a written statement of his reasons for doing so—

- (a) not later than 2.00 pm the day before the hearing; or
- (b) where he received notice of the hearing less than 24 hours before that time, as soon as reasonably practicable.

(3) If the Secretary of State objects to a statement filed under paragraph (2) being disclosed to the applicant or his representative, rules 37 and 38 shall apply.

(4) The Commission must serve written notice of—

- (a) its decision upon an application for bail; and
- (b) if and to the extent that it is possible to do so without disclosing information contrary to the public interest, the reasons for its decision,

on the applicant, the Secretary of State, and the person having custody of the applicant.

(5) Where bail is granted, the notice must include—

- (a) the conditions of bail; and
- (b) the amounts in which the applicant and any sureties are to be bound.

(6) The recognizance of the applicant or of a surety must be in writing and must state—

- (a) the amount in which he agrees to be bound; and
- (b) that he has read and understood the bail decision and that he agrees to pay that amount of money if the applicant fails to comply with the conditions set out in the bail decision.

(7) The recognizance must be—

- (a) signed by the applicant or surety; and
- (b) filed with the Commission.

(8) The person having custody of an applicant must release him upon—

- (a) being served with a copy of the decision to grant bail; and
- (b) being satisfied that any recognizances required as a condition of that decision have been entered into.

Application of this Part to Scotland

31.—(1) Rules 29 and 30 shall apply to Scotland with the following modifications—

- (a) in rule 29, in paragraph (2), for sub-paragraphs (e) and (f) substitute—
 - “(e) the amount, if any, to be deposited if bail is granted;
 - (f) the full names, addresses, occupations and dates of birth of any persons offering to act as cautioners if the application for bail is granted;”
- (b) in rule 30—
 - (i) in paragraph (5), for sub-paragraph (b) substitute—
 - “(b) the amount (if any) to be deposited by the applicant and any cautioners.”;
 - (ii) paragraphs (6) and (7) do not apply; and
 - (iii) in paragraph (8), for sub-paragraph (b) substitute—
 - “(b) being satisfied that the amount to be deposited, if any, has been deposited.”.

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) ...;
- (c) with the leave of the Commission, any other person,

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

(a) 1999 c.33.

(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, application for review or other application under these rules, give notice of the proceedings to the relevant law officer.

(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) adducing evidence and 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 (6)(b) 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 acknowledgement of receipt to the appellant's legal representative.

Closed material

37.—(1) In this rule, “closed material” means material which the Secretary of State would otherwise be required to disclose to the appellant or his representative under rule 10, 10A or 10B, 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 is required by rule 10(2), 10A(8) or 10B(2) to serve on the appellant, or 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, if he has not already done so;
- (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).

(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.

(5) The Secretary of State may, with the leave of the Commission or the agreement of the special advocate, 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 relating to the same or substantially the same communication or 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—
- (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.
- (5) A hearing under this rule shall take place in the absence of the appellant and his representative.
- (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.

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.

Directions

39.—(1) The Commission may, in addition to its power to give directions under rule 9A(2), 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 a 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 of 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—
 - (i) proceed to determine the appeal or application for review 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, notice of application for review or the Secretary of State's reply, as the case may be.

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

(3) Where the Commission has struck out a notice of appeal, notice of application for review or the Secretary of State's reply under paragraph (1)(c)(ii), it may subsequently reinstate the notice or reply if it is satisfied that circumstances outside the control of the appellant or the Secretary of State (as the case may be) made it impracticable for the appellant or the Secretary of State to comply with the direction.

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.

Interpreters

43A. An appellant is entitled to the services of an interpreter for bringing his appeal or application for review—

- (a) when giving evidence; and
- (b) in such other circumstances as the Commission considers necessary.

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.

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

(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 or applications 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 paragraph (3) 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.

(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.

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, within a reasonable time, 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.

(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.

Application by Secretary of State to amend determination etc

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

- (a) notice of 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 document on the appellant, it must first serve notice on the Secretary of State and any special advocate 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 amend the order, direction or 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) 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.

(6) The Commission must not serve any document 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 or, where such an application is made, before it has been determined.

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 a postal address;
- (b) sent by fax to a fax number;
- (c) sent by e-mail to an e-mail address; or
- (d) sent through a document exchange to a document exchange number or 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 or through a document exchange from and to a place within the United Kingdom, on the second day after it was sent;
- (b) where the documents 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 postal 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 or producing it by computer or other mechanical means.

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) subject to rule 48(1)(b) and (2), 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.

PART 8

Revocations and Transitional Provisions

Revocations

55. The following Rules are revoked—

- (a) the Special Immigration Appeals Commission (Procedure) Rules 1998(a) (“the 1998 Rules”); and
- (b) the Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2000(b).

Transitional provisions

56.—(1) These Rules shall apply—

- (a) with appropriate modifications, to any proceedings pending on the date on which they come into force, to which immediately before that date the 1998 Rules applied; and
- (b) to any appeal under section 2B of the 1997 Act(c) pending on the date on which these Rules come into force.

(2) In relation to any proceedings pending on the date on which these Rules come into force, anything done or any direction given before that date under the 1998 Rules or under any other powers of the Commission shall be treated as if done or given under these Rules.

(3) If—

- (a) a notice of appeal is given or an application is made to the Commission within 5 days of the date on which these Rules come into force; and
- (b) the notice of appeal or application would have been given or made in time if these Rules had not come into force,

The notice of appeal or application shall be treated as being given or made in time, notwithstanding any time limit in these Rules.

Irvine of Lairg, C
1st April 2003

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the procedure to be followed in proceedings before the Special Immigration Appeals Commission (“the Commission”).

Part 1 of these Rules contains introductory provisions. In particular, rule 4(1) sets out the general duty of the Commission, when exercising its functions, to secure that information is not disclosed contrary to the public interest.

Part 2 contains rules about appeals to the Commission under section 2 or 2B of the Special Immigration Appeals Commission Act 1997. Section 2 of the 1997 Act, as substituted by Schedule 7 to the Nationality, Immigration and Asylum Act 2002, provides that a person may

(a) S.I. 1998/1881, as amended by S.I. 2000/1849.

(b) S.I. 2000/1849.

(c) 1997 c.68. Section 2B is inserted by section 4(2) of the Nationality, Immigration and Asylum Act 2002.

appeal to the Commission against an immigration decision or a decision to reject an asylum claim, where he is prevented from bringing or continuing an appeal to an adjudicator or the Immigration Appeal Tribunal by reason of a certificate of the Secretary of State that the decision was taken on national security or other public interest grounds. Section 2B of the 1997 Act, as inserted by section 4 of the 2002 Act, provides that a person may appeal against a decision by the Secretary of State to make an order depriving him of a British citizenship status, where he is not entitled to appeal to an adjudicator or the Immigration Appeal Tribunal by reason of such a certificate.

Part 5 contains rules about applications to the Commission for leave to appeal on a question of law to the Court of Appeal, the Court of Session or the Court of Appeal in Northern Ireland.

Part 6 contains rules about applications to the Commission for bail. Such applications may be made under Schedule 2 to the Immigration Act 1971 as applied with modifications by section 3 of and Schedule 3 to the 1997 Act, and under section 24 of the 2001 Act.

Part 7 contains general provisions which apply to proceedings before the Commission. In particular it includes provisions:

- Permitting parties to be legally represented;
- Enabling the Commission to exclude an appellant and his representative from a hearing or part of a hearing, if it considers that it is necessary to do so to secure that information is not disclosed contrary to the public interest;
- Relating to special advocates, whom a law officer may appoint under section 6(1) of the 1997 Act to represent the interests of an appellant in any proceedings before the Commission from which the appellant and his legal representative are excluded; and
- Prescribing the procedure to be followed where the Secretary of state wishes to rely on any material in proceedings before the Commission but objects to it being disclosed to the appellant or his representative.
- Part 8 revokes the Special Immigration Appeals Commission (procedure) Rules 1998 and contains transitional provisions for appeals and applications pending on the date on which these Rules come into force.