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

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(**1**).

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(**2**).

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(**3**);
>
> "the 2006 Act" means the Immigration, Asylum and Nationality Act 2006(**4**);";

(**1**) 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.
(**2**) S.I. 2003/1034.
(**3**) 2004 c. 19.
(**4**) 2006 c. 13.

(c) in the definition of "appellant" omit—

"and

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

(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(**5**)".

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);

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

(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 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—