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

2015 No.

IMMIGRATION

The Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2015

Made - - - - ***

Coming into force in accordance with rule 1

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

In accordance with sections 5(9) and 8(4) of that Act, a draft of these Rules has been laid before 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 2015 and come into force at the end of the period of 21 days beginning with 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(**b**).

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

2. In rule 2(1)—

(a) in the definition of "appellant"(**c**), for "or section 2D" substitute ", 2D or 2E";

(**a**) 1997 c. 68. Section 5 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 and was extended by section 6A of the Special Immigration Appeals Commission Act 1997, as inserted by section 19 of, and paragraph 9 of Schedule 2 to, the Justice and Security Act 2013 (c.18), and by section 97A(2K) of the Nationality, Immigration and Asylum Act 2002 (c. 41), as inserted by section 54 of the Crime and Courts Act 2013 (c. 22) (section 97A was inserted by section 7(1) of the Immigration, Asylum and Nationality Act 2006 (c. 13)), 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. Paragraph 9 of Schedule 2 to the Justice and Security Act 2013 inserted section 6A of the Special Immigration Appeals Commission Act 1997 ("the 1997 Act"). Section 6A of the 1997 Act extends section 5 of the 1997 Act (procedure in relation to jurisdiction under sections 2 and 3) so that it applies to reviews under section 2C or 2D of the 1997 Act as it applies to appeals under section 2 or 2B of that Act. Paragraph 26(4) of Schedule 9 to the Immigration Act 2014 amends section 6A of the 1997 Act so that it extends section 5 of the 1997 Act to reviews under section 2E of that Act, as well as reviews under section 2C or 2D.

(**b**) S.I. 2003/1034, as amended by S.I. 2007/1285, 2007/3370 and 2013/2995.

(**c**) The definition of 'Appellant' was amended by S.I. 2007/1285 and 2013/2995.

(b) for the definition of "application to the Commission for review under section 2C or under section 2D of the 1997 Act" substitute—

""application to the Commission for review under section 2C, 2D or 2E of the 1997 Act" means, as the case may be, an application to the Commission under subsection (2) of section 2C of the 1997 Act to set aside a direction to which that subsection applies, an application to the Commission under subsection (2) of section 2D of the 1997 Act to set aside a decision to which that subsection applies, or an application to the Commission under subsection (2) of section 2E 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;";

(c) in the definition of "Immigration Acts", for "section 64(2) of the 2006 Act" substitute "section 61(2) of the UK Borders Act 2007"(**a**).

3. In rule 3(aa)(**b**), for "or section 2D" substitute ", 2D or 2E".

4. In rule 6(b)(**c**), for "or 2D" substitute ", 2D or 2E".

5. For rule 9(5), substitute—

"(5) The appellant must attach to the notice of appeal or application for review a copy of the notice of direction or decision against which he is appealing, or in respect of which he is applying for review, and any other document which was served on him containing reasons for that direction or decision.".

6. In rule 10(A1)(**d**), for "or 2D" substitute ", 2D or 2E".

7. In rule 10A(A1)(**e**), for "or 2D" substitute ", 2D or 2E".

8. In rule 12—

(a) in sub-paragraph (a)(i), for "104(4) to (4C)" substitute "104(4A) or (4B)";

(b) omit sub-paragraph (a)(ii).

9. In rule 26(b)(**f**), for "or 2D", substitute ", 2D or 2E".

10. In rule 30(1)(b) after "9A(3)(a)" insert "or it has determined in accordance with rule 30A that there has not been a material change in circumstances".

11. After rule 30, insert—

"**30A. Repeat applications for bail**

(1) Where the Commission has decided not to release a person on bail under paragraph 22 or 29 of Schedule 2 to the Immigration Act 1971, the Commission must dismiss any further application by the person for release on bail that is made during the period of 28 days starting with the date of the Commission's decision, unless the Commission determines that there has been a material change in circumstances.

(2) The Commission may determine whether there has been a material change in circumstances without a hearing.".

Signed by the authority of the Lord Chancellor

Parliamentary Under Secretary of State
Ministry of Justice

Date

(**a**) 2007 c. 30. Section 61(2) was amended by section 73(5) of the Immigration Act 2014 (c. 22).
(**b**) Rule 3(aa) was inserted by S.I. 2013/2995.
(**c**) Rule 6(b) was amended by S.I. 2013/2995.
(**d**) Rule 10(A1) was inserted by S.I. 2013/2995.
(**e**) Rule 10A was inserted by S.I. 2007/1285 and paragraph (A1) was inserted by S.I. 2013/2995.
(**f**) Rule 26 was substituted by S.I. 2013/2995.

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 amendments to the Special Immigration Appeals Commission Act 1997 (c. 68) ("the 1997 Act") made by the Immigration Act 2014 (c. 22) ("the 2014 Act").

Section 18 of the 2014 Act inserted section 2E into the 1997 Act. Under section 2E, a person may apply to the Special Immigration Appeals Commission ("SIAC") to set aside a decision which the Secretary of State has made about the deportation of the person from the United Kingdom, if and to the extent that the decision is not subject to a right of appeal, or the decision (being subject to a right of appeal) gives rise to issues which may not be raised on such an appeal. These Rules ensure that the 2003 Rules provide procedures for applications for review to SIAC under section 2E(2) of the 1997 Act.

Paragraph 10(2) of Schedule 9 to the 2014 Act amended section 5 of the 1997 Act (procedure in relation to SIAC's jurisdiction on appeals and bail) by inserting new subsection (5A). Subsection (5A) provides that rules under section 5 must secure that, where SIAC has decided not to release a person on bail under paragraph 22 or 29 of Schedule 2 to the Immigration Act 1971, SIAC is required to dismiss any further application by the person for release on bail that is made during the period of 28 days starting with the date of SIAC's decision, unless there has been a material change in circumstances. These Rules make provision accordingly, and provide that when considering whether there has been a material change in circumstances, SIAC does not need to hold a hearing.

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