EXPLANATORY MEMORANDUM TO

THE SPECIAL IMMIGRATION APPEALS COMMISSION (PROCEDURE) (AMENDMENT) RULES 2015

2015 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2015 ("the Amendment Rules") make amendments to the Special Immigration Appeals Commission (Procedure) Rules 2003 ("the 2003 Rules").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 There are no matters of special interest to the Committee.

4. Legislative Context

4.1 The Special Immigration Appeals Commission (SIAC) was established under the Special Immigration Appeals Commission Act 1997 ("the 1997 Act") to deal with appeals against Home Office decisions to deport or exclude someone from the UK on national security grounds, or for other public interest reasons. It also hears appeals against decisions to deprive persons of citizenship status.

4.2 Procedure rules for SIAC are made by the Lord Chancellor under sections 5 and 8 of the 1997 Act. Section 5(2) to (6) sets out those matters which the Lord Chancellor should have regard to when making rules, and the content of those rules.

4.3 The Amendment Rules are subject to affirmative resolution procedure as prescribed in sections 5(9) and 8(4) of the 1997 Act.

5. Territorial Extent and Application

5.1 The instrument extends to the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Justice, Shailesh Vara, has made the following statement regarding Human Rights:

In my view the provisions of the Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2015 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The Amendment Rules make minor and technical amendments to bring the 2003 Rules in line with provisions contained within the Immigration Act 2014. The amendments cover two areas:

- introducing a further power of statutory review to allow individuals to challenge the conduciveness of deportation decisions to SIAC; and
- requiring SIAC to dispose of repeat bail applications which are made within 28 days of a previous bail application without a hearing where there is no material change of circumstances.

Further power of statutory review

7.2 The Immigration Act 2014 limits immigration appeals to circumstances where fundamental rights are claimed. It removes the current right of appeal to SIAC against deportation decisions where there are no human rights grounds, and inserts a new section into the 1997 Act allowing SIAC to deal with such cases by way of a statutory review. The Amendment Rules give effect to this new statutory review and without them the only route of challenge would be by way of a judicial review (JR) to the High Court. JRs are conducted in open court whereas in SIAC, if the Secretary of State for the Home Department wishes to rely on material that she objects to disclosing, the procedure rules allow for a closed material procedure ensuring the evidence is protected. SIAC already deals with two other types of statutory review to which the 1997 Act requires it to apply the principles which would be applied in JR proceedings. This further power of statutory review will follow the same principles.

7.3 Cases where there is a right of appeal remaining (namely those individuals with human rights grounds) will continue to be dealt with by SIAC. Accordingly, the Amendment Rules will enable all national security cases to be dealt with there. This is more appropriate than some having to be dealt with in the High Court; SIAC is the forum with the most judicial and panel member expertise on such matters, and is where closed material proceedings can be used when required.

Repeat bail applications

7.4 The Immigration Act 2014 restricts the ability of immigration detainees to make repeat applications for bail where there is no material change in their circumstances. It will require SIAC to dispose, without the need for an oral hearing, of an application for bail that is made within 28 days of an earlier application that was unsuccessful, unless there has been a material change in the applicant's circumstances.

- ***Consolidation***

7.5 Informally consolidated versions of the rules will be updated onto the Gov.uk website when the instrument comes into force. They will be found at:

https://www.gov.uk/government/publications/special-immigration-appeal-commission-procedure-rules

8. Consultation outcome

8.1 No public consultation was undertaken on these Amendment Rules; however the Home Office and MoJ consulted individually with key stakeholders between the 8 December 2014 and 5 January 2015. The purpose was to consult on the mechanics of how the Amendment Rules should implement the requirements of the primary legislation. Consultees included the Special Advocates' Support Office, the SIAC Chairman (Mr Justice Irwin), the Bar Council, the Law Society, the Treasury Solicitor, and Her Majesty's Courts and Tribunals Service (HMCTS).

8.2 There were five responses. Four made no comments, and one suggested a few minor alterations to the drafting which were accepted and the Amendment Rules revised accordingly.

9. Guidance

9.1 HMCTS produces guidance for SIAC which is updated as required to reflect changes to procedure. It is available on the Gov.uk website at: https://www.gov.uk/appeal-to-the-special-immigration-appeals-commission#legislation-and-rules

9.2 The SIAC guidance will be updated to reflect these Amendment Rules in March 2015.

10. Impact

10.1 The impact on business, charities, voluntary bodies and the public sector is nil.

10.2 A Regulatory Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 This instrument does not impact upon small businesses.

12. Monitoring & review

12.1 The MoJ will keep the 2003 Rules continually under review.

13. Contact

13.1 Julie McCallen, at the Ministry of Justice, can answer any queries about this instrument. Tel: 020 3334 4066 or email: julie.mcallen@justice.gsi.gov.uk.