Draft Rules laid before Parliament under sections 5(9), 6B(6) and 8(4) of the Special Immigration Appeals Commission Act 1997, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No.

IMMIGRATION

The Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2023

Made - - - - ***

Coming into force in accordance with rule 2

The Lord Chancellor makes these Rules in exercise of the powers conferred by sections 5, 6B and 8 of the Special Immigration Appeals Commission Act 1997(**a**).

The Lord Chancellor has, in accordance with sections 5(6) and 6B(4) of that Act, had regard to—

(a) the need to secure that decisions which are the subject of applications or appeals are properly reviewed, and

(b) the need to secure that information is not disclosed contrary to the public interest.

A draft of this instrument has, in accordance with sections 5(9), 6B(6) and 8(4) of that Act, been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation and extent

1.—(1) These Rules may be cited as the Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2023.

(2) These Rules extend to England and Wales, Scotland and Northern Ireland.

Commencement

2.—(1) This Part comes into force at the same time as Part 2, 3 or 4, whichever comes into force first.

(2) Part 2 comes into force at the same time as section 10(2) to (5) of the Nationality and Borders Act 2022(**b**).

(**a**) 1997 c. 68. Section 6B was inserted by S.I. 2022/1209.
(**b**) 2022 c. 36.

(3) Part 3 comes into force at the same time as section 19(2) of the Nationality and Borders Act 2022 (so far as that subsection inserts subsection (1B) into section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(**a**)).

(4) Part 4 comes into force at the same time as section 22(6) of the Nationality and Borders Act 2022.

Amendment of the Special Immigration Appeals Commission (Procedure) Rules 2003

3. The Special Immigration Appeals Commission (Procedure) Rules 2003(**b**) are amended in accordance with Parts 2 to 4.

PART 2

Deprivation of citizenship without notice: judicial oversight

Amendment of rule 2

4.—(1) Rule 2 is amended as follows.

(2) In paragraph (1) at the appropriate places insert—

""1981 Act" means the British Nationality Act 1981(**c**);";

""application by the Secretary of State under Schedule 4A to the 1981 Act"(**d**) means an application by the Secretary of State to the Commission under paragraph 1(1), (2) or (6) or 2(5) of Schedule 4A to the 1981 Act to consider a decision of the Secretary of State to make a conducive grounds deprivation order without notice;";

""conducive grounds deprivation order without notice" has the same meaning as in paragraph 3 of Schedule 4A to the 1981 Act;".

Amendment of rule 3

5.—(1) Rule 3 is amended as follows.

(2) After paragraph (ab) insert—

"(ac) applications by the Secretary of State under Schedule 4A to the 1981 Act;".

Amendment of rule 5

6.—(1) Rule 5 is amended as follows.

(2) In paragraph (1), after sub-paragraph (b) insert—

"(ba) Part 4A (applications to the Commission by the Secretary of State under Schedule 4A to the 1981 Act);".

Insertion of new Part 4A

7. After Part 2 insert—

(**a**) 2004 c. 19.
(**b**) S.I. 2003/1034, amended by S.I. 2007/1285, 2007/3370, 2013/2995, 2018/736 and 2022/571; there are other amending instruments but none is relevant.
(**c**) 1981 c. 61.
(**d**) Schedule 4A was inserted by section 10 of, and Schedule 2 to, the Nationality and Borders Act 2022.

“PART 4A

Applications to the Commission by the Secretary of State under Schedule 4A to the 1981 Act

Scope

25A. This Part applies to an application by the Secretary of State under Schedule 4A to the 1981 Act.

Contents of application

25B.—(1) The application must set out the following information.

(2) The following information about the person who is the subject of the relevant conducive grounds deprivation order—

(a) the person’s name,

(b) the person’s date of birth,

(c) the person’s nationality or nationalities, and

(d) the relevant Home Office reference.

(3) If any of the information mentioned in paragraph (2)(a) to (d) is not known to the Secretary of State, the Secretary of State does not have to provide that information.

(4) Whether the application relates to a conducive grounds deprivation order—

(a) which the Secretary of State proposes to make, or

(b) which the Secretary of State has made.

(5) If the application relates to a conducive grounds deprivation order which the Secretary of State has made, the date on which that order was made.

(6) If the application is for fresh consideration of a decision the Secretary of State has made, pursuant to paragraph 1(6) of Schedule 4A to the 1981 Act, the date of the Commission’s previous determination relating to that decision and whether—

(a) in the opinion of the Secretary of State, circumstances have changed materially since that previous determination, or

(b) the Secretary of State wishes to provide further evidence to the Commission.

(7) Whether the application is made pursuant to paragraph 2(5) of Schedule 4A to the 1981 Act (expiry of final review period).

(8) The grounds for the Secretary of State’s decision by reference to—

(a) section 40(5A)(a) (the Secretary of State does not have the information needed to be able to give the notice),

(b) section 40(5A)(b)(i) (national security),

(c) section 40(5A)(b)(ii) (the investigation or prosecution of organised or serious crime),

(d) section 40(5A)(b)(iii) (preventing or reducing a risk to the safety of any person), or

(e) section 40(5A)(b)(iv) (the relationship between the United Kingdom and another country).

Variation of application

25C. The Secretary of State may do any of the following by filing written notice with the Commission—

(a) vary the grounds for the Secretary of State’s decision (see rule 25B(8));

(b) file new documents in support of the Secretary of State’s decision;

(c) amend, add to or withdraw any document filed in support of the Secretary of State's decision.

Withdrawal of application

25D. The Secretary of State may withdraw an application by filing written notice to the Commission.

Determinations on paper

25E.—(1) The Commission must determine the application on paper without a hearing before the Commission.

(2) The Commission must determine the application no later than 14 days after the Commission receives the application.

(3) Where the Secretary of State varies an application under rule 25C, the Commission may fix a new date within which the Commission must determine the application, being no later than 14 days after the Commission receives notice of the variation.

(4) The Commission must notify the Secretary of State in writing of any new date fixed in accordance with paragraph (3).".

Amendment of rule 26

8.—(1) Rule 26 is amended as follows.

(2) In paragraph (a)—

(a) after sub-paragraph (i) omit "or";

(b) at the end omit "and" and insert—

", or

(iii) of an application by the Secretary of State under Schedule 4A to the 1981 Act, and".

Amendment of rule 27

9.—(1) Rule 27 is amended as follows.

(2) In paragraph (2) after "rule 47(3)" insert "or (3A), as the case may be".

Amendment of rule 32

10.—(1) Rule 32 is amended as follows.

(2) At the end insert—

"(4) Paragraphs (1) to (3) do not apply to an application by the Secretary of State under Schedule 4A to the 1981 Act.

(5) For an application by the Secretary of State under Schedule 4A to the 1981 Act, the Secretary of State is the only party to proceedings.".

Amendment of rule 39

11.—(1) Rule 39 is amended as follows.

(2) In paragraph (2), for sub-paragraph (a) substitute—

"(a) these Rules, including in particular—

(i) the obligation in rule 4(1) to ensure that information is not disclosed contrary to the public interest; and

(ii) in the case of an application by the Secretary of State under Schedule 4A to the 1981 Act, the obligations in rule 25E to determine the application on paper without a hearing before the Commission and within a particular time; and".

Amendment of rule 40

12.—(1) Rule 40 is amended as follows.

(2) In paragraph (1), in sub-paragraph (c)—

(a) in paragraph (i) for "or application for review" substitute ", application for review or application by the Secretary of State under Schedule 4A to the 1981 Act";

(b) for paragraph (ii) substitute—

"(ii) in the case of a notice of appeal, notice of application for review or the Secretary of State's reply, strike out that appeal, application for review or reply, as the case may be.".

Amendment of rule 47

13.—(1) Rule 47 is amended as follows.

(2) In paragraph (3) at the end insert ", subject to paragraph (3A)".

(3) After paragraph (3) insert—

"(3A) In the case of an application by the Secretary of State under Schedule 4A to the 1981 Act, the Commission must serve on the Secretary of State a written determination no later than—

(a) 14 days after the Commission receives the application; or

(b) if the Commission determines a new date under rule 25E within which the Commission must determine the application, that date.".

PART 3

Asylum or human rights claim: damage to credibility

Amendment of rule 47

14.—(1) Rule 47 is amended as follows.

(2) After paragraph (2) insert—

"(2A) If the Commission's determination of any proceedings includes the consideration of an asylum claim or a human rights claim, the record of the decision must include a statement explaining—

(a) whether the Commission considers that the claimant has engaged in behaviour to which section 8 of the 2004 Act applies, and

(b) if it considers that the claimant has engaged in such behaviour, how it has taken account of the behaviour in making its decision.

(2B) In paragraph (2A) "asylum claim" and "human rights claim" have the same meanings as in section 8 of the 2004 Act.".

PART 4

Late compliance with priority removal notice: damage to credibility

Amendment of rule 47

15.—(1) Rule 47 is amended as follows.

(2) Before paragraph (3) insert—

"(2C) If the Commission's determination of any proceedings includes a relevant decision, the record of the decision must include a statement explaining—

(a) whether the Commission considers that section 22 of the Nationality and Borders Act 2022 applies, and

(b) if it considers that section 22 of that Act does apply, how, in making its decision, it has taken account of the fact that the priority removal notice recipient provided the material late.

(2D) In paragraph (2B)—

"priority removal notice" has the same meaning as in section 20 of the Nationality and Borders Act 2022;

"relevant decision" has the same meaning as in section 22 of the Nationality and Borders Act 2022.".

Name
Parliamentary Under-Secretary of State
Ministry of Justice

Date

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules—

(a) supplement sections 10(4) (and Schedule 2) of the Nationality and Borders Act 2022 (c. 36), and

(b) implement sections 19(2) (so far as it inserts subsection (1B) into section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)) and 22(6) of the Nationality and Borders Act 2022.

Section 10(4) of, and Schedule 2 to, the Nationality and Borders Act 2022 insert a new Schedule 4A into the British Nationality Act 1981 (c. 61) to provide for a process of judicial oversight by the Special Immigration Appeals Commission in cases where a decision to deprive a person of British citizenship has been made without giving them a notice of the decision.

Part 2 of these Rules supplements the new Schedule 4A by amending the Special Immigration Appeals Commission (Procedure) Rules 2003 to establish the rules of practice and procedure governing the Commission's judicial oversight.

Section 19(2) of the Nationality and Borders Act 2022 inserts new subsection (1B) into section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to provide that rules under section 5 of the Special Immigration Appeals Commission Act 1997 (c. 68) must secure that, where the deciding authority is the Special Immigration Appeals Commission, it must include, as part of its reasons for a decision that determines proceedings, a statement explaining—

(a) whether it considers that the claimant has engaged in behaviour to which section 8 applies, and

(b) if it considers that the claimant has engaged in such behaviour, how it has taken account of the behaviour in making its decision.

Part 3 of these Rules implements new subsection (1B) in section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 by amending rule 47 of the Special Immigration Appeals Commission (Procedure) Rules 2003.

Section 22(6) of the Nationality and Borders Act 2022 provides that rules under section 5 of the Special Immigration Appeals Commission Act 1997 must secure that, where the Special Immigration Appeals Commission is making a decision that determines proceedings, it must include, as part of its reasons for the decision, a statement explaining—

(a) whether it considers that section 22 applies, and

(b) if it considers that section 22 does apply, how, in making its decision, it has taken account of the fact that the priority removal notice recipient provided the material late.

Part 4 of these Rules implements section 22(6) by amending rule 47 of the Special Immigration Appeals Commission (Procedure) Rules 2003.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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