EXPLANATORY MEMORANDUM TO

THE SPECIAL IMMIGRATION APPEALS COMMISSION (PROCEDURE) (AMENDMENT) RULES 2023

2023 No. 355

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 Section 10 and Schedule 2 of the Nationality and Borders Act 2022 introduce a requirement for the Secretary of State to make an application to the Special Immigration Appeals Commission in cases where there is a decision to deprive a person of British citizenship, on the grounds it is conducive to the public good, without first giving notice. This requirement is introduced by the insertion of new Schedule 4A into the British Nationality Act 1981.

2.2 Section 19 and Section 22 of the Nationality and Borders Act 2022 introduce a requirement for the Special Immigration Appeals Commission procedure rules to be amended to secure that credibility assessments are carried out by the Special Immigration Appeals Commission in a manner that is consistent with the First-tier Tribunal and Upper Tribunal of the Immigration and Asylum Chamber.

2.3 This instrument makes the required amendments to the Special Immigration Appeals Commission (Procedure) Rules 2003, setting out specific procedure rules which will govern applications under Schedule 4A to the British Nationality Act 1981 and further rules to set out how decisions involving credibility assessments should be carried out by the Special Immigration Appeals Commission in asylum and human rights claims.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister of State for Immigration has made the following statement regarding Human Rights:

"In my view the provisions of the Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends the Special Immigration Appeals Commission (Procedure) Rules 2003 to make rules relating to applications made under Schedule 4A to the British Nationality Act 1981. Schedule 4A is introduced by Section 10(4) of and Schedule 2 to the Nationality and Borders Act 2022 and sets out the process the Secretary of State must follow in cases where she seeks to deprive an individual of their British citizenship without prior notice, subject to certain conditions.

6.2 In such cases, the Secretary of State must apply to the Special Immigration Appeals Commission which is required to determine whether, in respect of each condition on which the Secretary of State relies in order to disapply the notice requirement, the Secretary of State's view is obviously flawed. These conditions will be set out in a new section 40(5A) of the British Nationality Act 1981 as inserted by section 10(2) of the Nationality and Borders Act 2022.

6.3 Once procedure rules are made (subject to the affirmative parliamentary procedure) commencement of section 10(2) to (5) of and Schedule 2 to the Nationality and Borders Act 2022 can follow.

6.4 This instrument further amends the Special Immigration Appeals Commission (Procedure) Rules 2003 by amending Rule 47, as required by sections 19 and 22 of the Nationality and Borders Act 2022 in order to secure that the Special Immigration Appeals Commission provides statements relating to credibility assessments in any decisions that it makes which dispose of proceedings in asylum or human rights claims.

6.5 Once amendments to Rule 47 are made (subject to the affirmative parliamentary procedure) commencement of sections 19 and 22 of the Nationality and Borders Act 2022 can follow.

7. Policy background

What is being done and why?

Judicial oversight of deprivation without notice

7.1 Maintaining our national security and keeping the public safe are the government's top priorities. Removing someone's British citizenship, also known as deprivation of citizenship, is used against those who obtained citizenship by fraud and against the most dangerous people, such as terrorists, extremists and serious organised criminals. The power to remove British citizenship has existed for over a century, since the 1914 British Nationality and Status of Aliens Act. It is currently in section 40 of the British Nationality Act 1981.

7.2 Section 10 of the Nationality and Borders Act 2022 amends section 40 of the British Nationality Act 1981 to allow the Secretary of State to deprive someone of their citizenship without prior notification, but only in the exceptional circumstances set out in the legislation. Although the Home Office will always try to tell an individual that they are to be deprived of British citizenship, it might not be possible. It is vital, including to our national security, that just because the Home Office cannot immediately tell a person they are to be deprived of British citizenship, it does not prevent the deprivation order being made.

7.3 The manner of giving notice of a deprivation decision is set out in the British Nationality (General) Regulations 2003. Regulation 10(4) provides that where a person's whereabouts are not known or no contact details are held, then notice is deemed to have been given by placing a copy of it on the person's Home Office file.

7.4 Section 10 of, and Schedule 2 to, the Nationality and Borders Act 2022, once commenced, will omit regulation 10(4), and provide for alternative grounds on which a deprivation order can be made without notice. The amendments will also require the Secretary of State to make an application to the Special Immigration Appeals Commission when seeking to deprive an individual of their British citizenship on grounds that deprivation is considered conducive to the public good, without giving notice. The Special Immigration Appeals Commission will then be required to determine whether in respect of each condition in section 40(5A) on which the Secretary of State relies to not give notice, the Secretary of State's view is obviously flawed.

7.5 This will provide independent judicial oversight of cases where a notice of deprivation is not given.

7.6 This instrument will set procedure rules for applications made by the Secretary of State. It specifies the information that must be included in applications and provides provision for the Secretary of State to vary or withdraw an application. It also confirms that the Secretary of State is the only party to proceedings and makes provision for the Secretary of State to appeal a determination of the Special Immigration Appeals Commission.

7.7 The instrument also states that the Special Immigration Appeals Commission must give a determination within 14 days after receiving the application or its variation. This reflects the gravity of reasons why a person might be deprived of the British citizenship on grounds that it is conducive to the public good. The Secretary of State needs to act swiftly and decisively when dealing with cases which may have an impact on national security. A determination within 14 days also takes account of the serious consequences deprivation of citizenship can have on a person, especially in cases where notice is not given.

7.8 This establishes a clear framework for the Special Immigration Appeals Commission and the Secretary of State in engaging with applications.

Credibility declaration

7.9 This instrument will also make sure that the way the Special Immigration Appeals Commission assesses credibility in its decisions relating to asylum and human rights claims will be consistent with the First-tier Tribunal and Upper Tribunal of the Immigration and Asylum Chamber, which is the intention created by Section 19 and 22 of the Nationality and Borders Act 2022.

7.10 Section 19 of the Nationality and Borders Act 2022 introduces a requirement for the Special Immigration Appeals Commission (Procedure) Rules 2003 to secure that, where the Special Immigration Appeals Commission is the deciding authority for the purposes of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, it must include in any decision that determines proceedings, a statement explaining how it has assessed a claimant's credibility. The Special Immigration and Appeals Commission will be required to explain in its decision whether the claimant has engaged in behaviour to which Section 8 of the Asylum and Immigration

(Treatment of Claimants, etc.) Act 2004 applies, and, if so, how it is has taken account of such behaviour when making its decision, relating to the claimant's asylum or human rights claim. The purpose of this amendment is so that there is clear and transparent decision making in relation to behaviour to which Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 applies.

7.11 Section 22 of the Nationality and Borders Act 2022 introduces a requirement for the Special Immigration Appeals Commission procedure rules to secure that where the Special Immigration Appeals Commission is determining relevant proceedings, it must include in any decision a statement explaining how it has assessed a claimant's credibility. The Special Immigration and Appeals Commission will be required to include in its statement whether Section 22 of the Nationality and Borders Act 2022 applies, and, if so, how that has been taken into account when making its decision relating to a claimant's asylum or human rights claim.

7.12 This instrument makes the required amendments to the Special Immigration Appeals Commission (Procedure) Rules 2003, setting out that the rules detailed above at paragraphs 7.10 and 7.11 will apply in circumstances where the Special Immigration Appeals Commission is determining asylum and human rights claims, as defined in the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument does not consolidate existing legislation. 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-appealcommission-procedure-rules.

10. Consultation outcome

10.1 No public consultation was undertaken on this instrument but the Home Office has consulted the SIAC Chairperson on the drafting of the amendments to the procedure rules.

11. Guidance

11.1 Guidance will be published on commencement of section 10(2)-(5) and Schedule 2 of the Nationality and Borders Act 2022. Guidance covering section 19 and section 22 of the Nationality and Borders Act 2022 will be published.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 As the Home Secretary decides each case personally and due to the very low number of cases expected to be affected by these provisions, no specific monitoring or review of these measures will be undertaken.

15. Contact

15.1 Veronica Zaki at the Home Office Telephone: 07776808368 or email: Veronica.Zaki@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Matthew Bligh, Deputy Director for Enforcement and Criminality Policy Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Robert Jenrick MP, Minister of State for Immigration at the Home Office can confirm that this Explanatory Memorandum meets the required standard.