

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

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

*Wednesday 1 March 2023*

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**Sunday 5 March 2023**

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**The Committee consisted of the following Members:**

*Chair:* SIR ROBERT SYMS

Byrne, Liam (*Birmingham, Hodge Hill*) (Lab)  
 † Cruddas, Jon (*Dagenham and Rainham*) (Lab)  
 † Djanogly, Mr Jonathan (*Huntingdon*) (Con)  
 † Duguid, David (*Banff and Buchan*) (Con)  
 † Elmore, Chris (*Ogmore*) (Lab)  
 † Fletcher, Katherine (*South Ribble*) (Con)  
 † Foster, Kevin (*Torbay*) (Con)  
 † Jenrick, Robert (*Minister for Immigration*)  
 † Kinnock, Stephen (*Aberavon*) (Lab)  
 † Mann, Scott (*Lord Commissioner of His Majesty's Treasury*)

† Morton, Wendy (*Aldridge-Brownhills*) (Con)  
 † Sambrook, Gary (*Birmingham, Northfield*) (Con)  
 † Stewart, Bob (*Beckenham*) (Con)  
 † Sunderland, James (*Bracknell*) (Con)  
 † Thewliss, Alison (*Glasgow Central*) (SNP)  
 † Vaz, Valerie (*Walsall South*) (Lab)  
 Winter, Beth (*Cynon Valley*) (Lab)

Guy Mathers, *Committee Clerk*

† **attended the Committee**

## Sixth Delegated Legislation Committee

Wednesday 1 March 2023

[SIR ROBERT SYMS *in the Chair*]

### Draft Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2023

9.25 am

**The Minister for Immigration (Robert Jenrick):** I beg to move,

That the Committee has considered the draft Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2023.

It is a pleasure, as always, to serve under your chairmanship, Sir Robert. The instrument was laid before Parliament on 2 February. It deals with two important issues. First, I will touch on the deprivation provisions. Maintaining our national security and keeping the public safe are of paramount importance to the Government, and that is why deprivation of citizenship when it is conducive to the public good is deployed for those who pose a threat to the UK or whose conduct involves very high harm.

The power to deprive an individual of their British citizenship has existed in law for over a century, since the British Nationality and Status of Aliens Act 1914; it is currently found in section 40 of the British Nationality Act 1981. When passing deprivation measures in the Nationality and Borders Act 2022, the House agreed that in cases when the Secretary of State intends to make a deprivation order without prior notification, on the grounds that it is conducive to the public good, an application must be made to the Special Immigration Appeals Commission, which will consider the Secretary of State's reasons not to give notice.

To implement that process, we first made amendments to the Special Immigration Appeals Commission Act 1997 in November last year. Those amendments gave the Lord Chancellor the power to amend procedure rules in relation to those applications. Using that power, we now intend to make the necessary amendments to the Special Immigration Appeals Commission (Procedure) Rules 2003. That will set clear guidelines for the Secretary of State and the Special Immigration Appeals Commission when dealing with applications under the new process.

The instrument will specify the information that must be included in applications and make 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. The instrument also sets out that the Special Immigration Appeals Commission must give a determination within 14 days of receiving the application or its variation. That reflects the fact that the Secretary of State might have to act very swiftly in the interests of national security.

The instrument is the final stage in implementing the safeguards relating to section 10 of the Nationality and Borders Act, which the House agreed to during the passage of the Act.

**Kevin Foster (Torbay) (Con):** The Minister has given an excellent explanation of the safeguards in the process, which will be enhanced by the instrument. Does he recall some of the scaremongering during the Nationality and Borders Act debates about how there would somehow be no oversight of how the deprivation provisions would be used? Actually, this is about dealing with some of the worst threats to our national security—who may literally be in war zones, where it is impossible to serve a notice on them.

**Robert Jenrick:** I certainly do. I pay tribute to my hon. Friend, who was my predecessor and played a critical role in the passage of the Nationality and Borders Act. He is right to say that the suggestions made during the passage of that Act were spurious and wrong and also that the power will be used in the most judicious way to tackle some of the gravest threats to our national security. Examples might include an individual whose security services have reliable evidence is a secret agent acting against the interests of the United Kingdom, whose passport and citizenship we would want to remove, but who—for obvious reasons—we might struggle to locate. Therefore, we would have to use this special procedure to remove their citizenship at short notice.

As I hope I have made clear in my opening remarks, my hon. Friend is also right to say that the special procedure comes with a very clear safeguard: before the Secretary of State issues any of these notices, it will go before a specialist tribunal judge, who will make a statement on the case saying it is clearly correct and valid.

I turn to credibility statements, the second element covered by the statutory instrument. Sections 19 and 22 of the Nationality and Borders Act 2022 create additional behaviours that should result in an asylum or human rights claimant's credibility being damaged. That includes a requirement for decision makers to consider the late provision of evidence without good reason in response to an evidence notice or a priority removal notice as behaviour that should be damaging to a claimant's credibility.

As part of the suite of measures being introduced to encourage the timely provision of evidence in support of asylum and human rights claims, sections 19 and 22 of the Nationality and Borders Act establish a new requirement in the procedure rules of both the Special Immigration Appeals Commission and the Immigration and Asylum Chamber. When judges dispose of asylum and human rights decisions, and when credibility issues arise, they must include in their decisions a statement of how they have taken into account all the potential credibility-damaging behaviours.

The changes to the procedure rules of the Special Immigration Appeals Commission effectively secure what judges are already required to do according to current case law. However, this instrument and the creation of new procedure rules will make it abundantly clear what judges are required to do, and that will ensure that there is clear and efficient decision making in these important matters. I commend the draft rules to the Committee.

9.31 am

**Stephen Kinnock** (Aberavon) (Lab): It is a pleasure to serve under your chairmanship, Sir Robert. I wish you and all hon. Members present a happy St David's Day.

On 7 November last year, a Delegated Legislation Committee, of which I was a member, considered regulations that marked the first in a series of steps necessary to implement provisions in the Nationality and Borders Act 2022 on deprivation of citizenship. The provisions relevant to today's debate address the area of decisions made by the Secretary of State to deprive a UK national of their citizenship without prior notice. During the passage of the 2022 Act, Parliament added safeguards to ensure that the scope of those powers would be restricted to cases where a deprivation order was strictly necessary on grounds of national security, and that appropriate levels of judicial oversight would apply.

Under the legislation, the Secretary of State is required to apply to the Special Immigration Appeals Commission when making an order to deprive someone of their citizenship. That application must, among other things, provide an explanation as to why it is necessary for the order to be made without providing notice to the individual concerned. It is then up to the SIAC to determine whether the Secretary of State's reasoning is "obviously flawed".

The process set out in the 2022 Act, and in the Nationality and Borders Act 2022 (Consequential Amendments) (No. 2) Regulations 2022, which we approved last November, began with enabling the Lord Chancellor to make rules setting out in detail how that process would work. As the next step in the process, the draft rules under consideration today incorporate that detail, and as such provide a framework for the SIAC to use when considering future cases of that kind.

The Opposition continue to support the implementation of the provisions, subject to the appropriate safeguards being in place and observed. I do not have much to add to the Minister's comments, beyond a couple of questions. Will the Minister elaborate on what further legislative steps, if any, need to be taken before the relevant sections of the Nationality and Borders Act will fully enter into force? If possible, will he give the Committee a sense of when he expects the first applications for deprivation orders to be made? Alternatively, when does he expect the SIAC to be able to begin considering the substance of any applications that the Secretary of State may decide to submit under these rules?

9.34 am

**Alison Thewliss** (Glasgow Central) (SNP): Happy St David's Day to all who are celebrating today.

I thank the Minister for setting out his reasoning. I am mainly concerned about a point in the explanatory memorandum, which says:

"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."

In that context, there has been no wider scrutiny of the statutory instrument. Quite late in the day, I received some information from the Immigration Law Practitioners Association, which believes the rules to be problematic because they do not do anything to secure an extension

of the time to appeal for the pre-commencement deprivation orders; they introduce a non-adversarial fast-track paper process that was not stipulated in the Nationality and Borders Act 2022; and there is no provision for a special advocate to be appointed.

I would also query the part about determinations on paper. Proposed new section 25E states:

"The Commission must determine the application on paper without a hearing before the Commission."

Does that give adequate scrutiny of such decisions on paper? I am not certain how that process will work in detail, so I would be grateful for a fuller explanation from the Minister.

9.35 am

**Robert Jenrick**: Happy St David's Day to you, Sir Robert, and the other Members present.

I will answer some of the questions that hon. Members asked. I am grateful to the Opposition for their support for these important measures. The Government view British citizenship as a privilege that, in the most extreme circumstances, can be revoked where individuals have chosen to take a course of action that poses a grave threat to national security. The hon. Member for Aberavon can be assured that the Home Secretary—and, I suspect, her successors—will take that duty extremely seriously and apply it only in cases that command broad support. It is right that there is appropriate judicial oversight, and that is the purpose of this statutory instrument.

As the hon. Gentleman says, this measure will ensure that a highly experienced judge will hear the case prior to any steps being taken by the Home Secretary; that judge will decide whether it is obviously flawed, to prevent any cases that do not meet the evidential bar from proceeding. It is right that that should happen, because this is a very significant step.

We do not believe that further steps are required before we can move forward and begin the implementation and operationalisation of the process. The first applications will flow in time; I do not have a particular date because that is not the nature of this case load. If he looks back on recent years, the hon. Gentleman will see that the numbers are highly sporadic. They depend on events in international affairs. Particular conflicts have sparked more proposals to the Home Secretary, and there have been periods when there have been fewer applications.

Home Secretaries very rarely bring such matters forward themselves. Most cases come to the Home Secretary from the security services, which have specific intelligence about individuals and ask the Home Secretary to consider it and act as swiftly as possible. This Home Secretary, like others, will of course consider it in due course.

**Valerie Vaz** (Walsall South) (Lab): Is the Minister confident that there are sufficient safeguards to ensure that the security services have the right person?

**Robert Jenrick**: I am confident. It is the duty of the Home Secretary of the day to read the evidence that is presented to him or her by the security services, consider it carefully, ask appropriate questions, probe that work, and then make a decision. The purpose of this instrument is to provide a further check to that important decision. It ensures that an experienced judge hears the evidence, either in public or in private. That is ultimately a decision

*[Robert Jenrick]*

for the judge, depending on the evidence presented. It may be a mixture of the two, given that some evidence clearly cannot be heard in open court. It will ultimately be for the Home Secretary to decide to proceed.

**Valerie Vaz:** Obviously, there is a turnaround time of 14 days. Is the Minister confident that there are sufficient judges? Are more going to be appointed?

**Robert Jenrick:** I have not heard any suggestion that there are insufficient judges. This type of case would be heard by the most experienced judges in SIAC, as the right hon. Lady would expect, given that these are some of the most complex cases that will ever come before them.

**Kevin Foster:** The Minister will obviously be aware that these decisions are taken on the basis of extensive files and evidence. On disapplying the notice requirement, for example, there is still a full appeals process so that if someone feels that the decision is incorrect, they can appeal it. To be clear, there are plenty of opportunities for oversight and ensuring that the decisions are proportionate and fair. As the Minister rightly said, this is done only in the most serious cases.

**Robert Jenrick:** That is absolutely right. Individuals who are subject to one of these orders will be able to appeal. We may well not have been able to serve on that individual, so a degree of flexibility will be applied. If the individual were to attempt to return to the United Kingdom at a later stage, we would offer them an opportunity to appeal at that point, when their whereabouts become known to us—even if that is some time after the order has been made.

On the other questions that the right hon. Member for Walsall South asked, legal aid is available for individuals in this position. There is not a suggestion that those subject to one of these orders will be without legal representation. Clearly, the nature of these cases means that in most instances they will be out of country and unable to make direct representations; otherwise, we would not be serving a notice in this manner. As I said, when they resurface and make their whereabouts known, there will be further opportunities for them to make an appeal if they wish to do so.

I hope that I have answered the majority of Committee members' questions. I commend the instrument to the Committee.

*Question put and agreed to.*

9.41 am

*Committee rose.*



