IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
RESPONSE TO
THE LORD CHANCELLOR'S DEPARTMENT'S CONSULTATION ON THE DRAFT SPECIAL IMMIGRATION APPEALS COMMISSION (PROCEDURE) RULES 2003

ILPA has the following comments on the draft Special Immigration Appeals Commission (Procedure) Rules 2003:

Rule 4(1): Under rule 4(1), the Commission is under a duty to secure that no information is disclosed where disclosure is likely to harm the public interest. This reflects rule 3(1) of the current Procedure Rules and entails that security concerns should always prevail over an individual's right to know the nature of the case against him. We recommend that the Commission should have the power to strike a balance between a public interest in non-disclosure and an individual's rights. We draw attention to the Lord Chancellor's rule-making power under section 5(5) of the Special Immigration Appeals Commission Act 1997, whereby he 'shall have regard to' the need to secure that information is not disclosed contrary to the public interest. This rule-making power does not prevent procedure rules that strike a balance between legitimate security concerns and an individual's ability to have access to justice.

Rule 7(1): ILPA supports a change to the Rules whereby notice of appeal is to be filed with the Commission: the perception of the Commission's independence from the Home Office will be aided.

Rule 8(1): We do not believe that a period of 5 days from service of decision is sufficient for detained cases. Giving notice of appeal is a serious matter: any grounds advanced can only be varied with permission (rule 14); in addition, there is a requirement to give reasons in support of those grounds (rule 9). Clear, full and effective communication between representative and appellant is plainly necessary at this stage of proceedings, even in those cases where the appellant has already had a representative assisting with an asylum claim or other immigration application. Many of those affected will need an interpreter. A visit to the removal centre to take instructions on the reasons for refusal will almost certainly be required. These matters take time to arrange. In addition, there are advantages in simplicity and consistency in treating all in country appellants in the same way. Thus, we suggest a 10 day time limit for appealing in detained cases.

Rule 9(1): We are concerned, with respect, about the frankly facile requirement to give clear legible and concise reasons in support of grounds of appeal. As it stands, the requirement goes to whether a valid appeal has been brought. It is unduly draconian that an appeal be ruled invalid on the ground that the grounds/reasons are unduly prolix or because some words are not legible.
In any event, the short time limits for lodging notice of appeal may make it impracticable to give reasons for grounds of appeal in addition to the grounds of appeal themselves. Under rule 12(1)(b), the Secretary of State is required only to give

notice of the grounds on which he opposes the appeal - there is no additional requirement for the Secretary of State to give reasons in support of those grounds. In this way, the Rules are not even handed between the parties. It would be preferable and fairer for the parties to set out the grounds of their case at the outset and then provide further details under rule 33(5)(c)(i), as and when appropriate and necessary.

Rule 12: There is no time limit in rule 12 for filing a reply. We believe that this is a serious lacuna because it may lead to delay on the part of the Secretary of State. A time limit of 5 days in detained cases and 10 days in other cases (from service of the notice of appeal) would reflect the time limits for appealing under rule 8 and would thus assist in achieving an even handed approach.

Rule 13(2): Under rule 13(2), the special advocate must give notice of challenge to the Secretary of State's objection within 7 days. Bearing in mind that the closed material may be complex, this time limit is unrealistically short. The current Procedure Rules do not set down a time limit. We do not see a need for change. It is more pragmatic and flexible for the Commission to set down a time limit in a direction, rather than to have the rigidity of a time limit set down in the Rules.

Rule 13(3): Under rule 13(3), SIAC must fix a hearing to deal with the special advocate's challenge. ILPA strongly welcomes this change to the current Procedure Rules: it assists the impression of fairness.

Rule 13(4): We believe that there is no need for the Rules to require that a schedule of issues be produced when this can be achieved, where appropriate and more flexibly, by a direction from the Commission.

Rule 23(1): ILPA has serious concerns about the presumption that reviews should be conducted without an oral hearing. In so far as the liberty of the individual will hinge on the outcome of the review, the procedure for review ought to be rigorous. It is not in the interests of open, public justice for a review to be determined other than by way of an open hearing. Given the importance of the issue to the individual, there should be a presumption in favour of an oral hearing.

Rule 23(3): In order that the individual's interests be fully represented, the special advocate ought to be able to apply for an oral hearing of the review.

Rule 24(7): It is unacceptable that the Commission should have discretion to uphold the Secretary of State's objection without considering any representations from the special advocate. National security or other public interests cannot plausibly be harmed by representations of the special advocate. In the absence of any plausible risk to national security or other public interests, there is no justification for depriving an individual of access to justice in this way. Moreover, given the importance of the

review to a certified person, we believe that there should be a presumption in favour of an oral hearing about the Secretary of State's objection. Therefore, we believe that rule 24 should set down a presumption in favour of hearing under rule 13. At the very least, rule 24(7) should enable the Commission to consider the Secretary of State's objection without an oral hearing only after the special advocate and the Secretary of State have been given an opportunity to make representations on the issue of an oral hearing.

Rule 30(1): The Rules should provide for special advocates to be appointed at bail hearings where the Secretary of State seeks to rely on closed materials. On a different note, the use of the word "must" in rule 30(1) might be taken as meaning that no proper application has been made if all the information is not provided. This would be wrong. Access to bail applications should not depend on technicalities such as whether a form has been completed fully. The rules should reflect this.

Rule 42(4): As currently drafted, rule 42(4) gives the Commission a discretion whether to serve full reasons on the Secretary of State and the special advocate. There is no reason for this to be discretionary rather than mandatory: the Rules should reflect this.

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