

Annex J - Additional Legal Background concerning deprivation of citizenship

1. Advising Of the Deprivation Decision

Section 40(5) of the 1981 Act explains that before making a deprivation order under **s.40**, the Home Secretary must give the subject of the proposed order written notice specifying:

- that he has decided to make an order
- 2 the reasons for the order; and
 - the person's right of appeal under **s.40A(1)** of the 1981 Act or under **s.2B** of the **Special Immigration Appeals Commission Act 1997**

Regulation 10 of the **British Nationality (General) Regulations 2003** makes provision about the manner in which the notice under **s.40(5)** of the 1981 Act is to be given and the date on which the notice in any particular case is deemed to have been served.

- If the person's whereabouts are known, the notice may be delivered to him personally or sent by post;
- If the person's whereabouts are not known, the notice may be sent by post in a letter addressed to him at his last known address.
- If a notice is given to the person appearing to represent the person to be deprived, it is deemed to have been given to that person.
- A notice under section 40(5) shall, unless the contrary is proved, be deemed to have been given –
 - (a) where the notice is sent by post from and to a place within the United Kingdom, on the second day after it was sent;
 - (b) where the notice is sent by post from or to a place outside the United Kingdom, on the twenty-eighth day after it was sent, and
 - (c) in any other case on the day on which the notice was delivered.

2. Appeals

Under **s.40A(1)** of the 1981 Act, as amended, where the Secretary of State decides to deprive or to make a deprivation order, the person concerned has a right of appeal to the Asylum and Immigration Tribunal or, where appropriate, to the Special Immigration Appeals Commission. The Tribunal/Commission is able to consider both the legality and the merits of the Secretary of State's decision.

The procedure for appeals under **s.40A** of the 1981 Act is governed by the **Asylum and Immigration Tribunal (Procedure) Rules 2005**. The procedure for appeals under **s.2B** of the **Special Immigration Appeals Commission Act 1997** is governed by the **Special Immigration Appeals Commission (Procedure) Rules 2003**.

Either party may then seek a reconsideration of the appeal by the Tribunal, or appeal against the Tribunal's determination, but only within strict time limits and only on a point of law.

Where the Secretary of State has issued a certificate under **s.40A(2)** that his decision to make a deprivation order was taken wholly or partly in reliance on information which, in his opinion, should not be made public:

- a. in the interests of national security; or
- b. in the interests of the relationship between the United Kingdom and another country; or
- c. otherwise in the public interest,

the person concerned will not be entitled to appeal under **s.40A(1)**. The person may appeal, instead, to the Special Immigration Appeals Commission (SIAC) under **s.2B** of the **Special Immigration Appeals Commission Act 1997**. (SIAC enjoys a similar jurisdiction in respect of deprivation appeals to that enjoyed by the Asylum and Immigration Tribunal under **s.40A** of the 1981 Act, but special procedures ensure that sensitive information is not disclosed inappropriately in the course of the appeal.) Either party may appeal to the higher courts against SIAC's determination, but only with permission and only on a point of law.

3. Issuing the Deprivation Order

A deprivation order may be made under **s.40** even while an appeal under **s.40A** of the 1981 Act or **s.2B** of the **1997 Act** is pending or could still be brought. However, both the Tribunal and SIAC may direct, in the event of a successful appeal, that such an order is to be treated as having had no effect. In other words, the appellate body may *retrospectively* restore British nationality if it finds in the appellant's favour.

Regulations 11 and 12 of the **2003 Regulations** provide for the cancellation of any registration or certificate of naturalisation following the making of a deprivation order.