
DRAFT STATUTORY INSTRUMENTS

2007 No.

**The Proscribed Organisations Appeal
Commission (Procedure) Rules 2007**

PART 2

APPEALS

Parties

5. The parties to appeals to the Commission shall be the appellant and the Secretary of State.

Time limit for appealing

6.—(1) Subject to paragraph (2), the signatory of a notice of appeal mentioned in rule 7(2) must file the notice with the Commission no later than 42 days after the day on which the appellant is informed of the Secretary of State's refusal—

- (a) to deproscribe the organisation, or
- (b) to provide for a name to cease to be treated as a name for the organisation.

(2) The Commission may accept a notice of appeal filed after the expiry of the period in paragraph (1) if it is satisfied that, by reason of special circumstances, it would be unjust not to do so.

Notice of appeal

7.—(1) The notice of appeal must—

- (a) set out the grounds on which the appellant applied to the Secretary of State under section 4 of the 2000 Act for an order under section 3(3) or (8) of that Act⁽¹⁾;
- (b) set out the grounds for the appeal to the Commission;
- (c) give reasons in support of the grounds mentioned in sub-paragraph (b);
- (d) where proceedings are brought under section 7(1)(a) of the 1998 Act, give details of the Convention right which is alleged to have been infringed.

(2) The notice of appeal must be signed—

- (a) where the appellant is the organisation, by a person who claims to be a member of the organisation or by its representative;
- (b) where the appellant is a person affected by the organisation's proscription or by the treatment of a name as a name for the organisation, by that person or by his representative,

and be dated.

(3) The notice of appeal must state—

- (a) the name of the organisation;

⁽¹⁾ Section 3(8) was inserted by section 22(1) and (2) of the Terrorism Act 2006 (c.11).

- (b) the name and address of the signatory of the notice and the category of person mentioned in paragraph (2) into which he falls;
 - (c) the name and address of any representative of the appellant, where the representative is not the signatory.
- (4) Where the signatory of the notice of appeal is the appellant's representative, he must certify in the notice that he has completed the notice in accordance with the appellant's instructions.
- (5) The signatory of the notice of appeal must attach to it a copy of the document which informed the appellant of the decision being appealed against.
- (6) As soon as practicable after it receives a notice of appeal, the Commission must serve—
- (a) an acknowledgement of filing of the notice of appeal on the signatory of the notice; and
 - (b) a copy of the notice of appeal on the Secretary of State.

Designated person

- 8.—**(1) As soon as practicable after it receives a notice of appeal on behalf of an organisation, the Commission must—
- (a) designate a person to conduct the proceedings on behalf of the organisation; and
 - (b) serve on that person a copy of the notice of appeal.
- (2) The Commission must give written notice to the Secretary of State and to the organisation or its representative of the name and address of the designated person.

Special advocate: appointment and functions

- 9.—**(1) Subject to paragraph (2), the Secretary of State must, on being served with a copy of a notice of appeal, give notice of the proceedings to the relevant law officer.
- (2) Paragraph (1) applies unless—
- (a) the Secretary of State does not intend—
 - (i) to oppose the appeal; or
 - (ii) to object to the disclosure of any material to the appellant or his representative; or
 - (b) a special advocate has already been appointed to represent the interests of the appellant in the proceedings.
- (3) Where notice is given to the relevant law officer under paragraph (1), he may appoint a special advocate to represent the interests of the appellant in the proceedings.
- (4) Where proceedings before the Commission are pending but no special advocate has been appointed, the appellant or the Secretary of State may at any time request the relevant law officer to appoint a special advocate.
- (5) The function of the special advocate is to represent the interests of the appellant by—
- (a) making submissions to the Commission at any hearing from which the appellant and his representative have been excluded;
 - (b) adducing evidence and, with the permission of the Commission, cross-examining witnesses at any such hearing;
 - (c) making written submissions to the Commission.

Special advocate: communicating about proceedings

- 10.—**(1) The special advocate may communicate with the appellant or his representative at any time before the Secretary of State serves closed material on him.

(2) After the Secretary of State serves closed material on the special advocate, the special advocate must not communicate with any person about the proceedings, except in accordance with paragraph (3) or (6)(b) or directions of the Commission pursuant to a request under paragraph (4).

(3) The special advocate may, without directions from the Commission, communicate about the proceedings with—

- (a) the Commission;
- (b) the Secretary of State or any person acting for him;
- (c) the relevant law officer or any person acting for him;
- (d) any other person, except for the appellant or his representative, with whom it is necessary for administrative purposes for the special advocate to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from the Commission authorising him to communicate with the appellant or his representative or with any other person.

(5) Where the special advocate makes a request under paragraph (4)—

- (a) the Commission must notify the Secretary of State of the request; and
- (b) the Secretary of State must, within such time as the Commission directs, file with the Commission and serve on the special advocate notice of any objection which he has to the proposed communication, or to the form in which it is proposed to be made.

(6) Paragraph (2) does not prohibit the appellant from communicating with the special advocate after the Secretary of State has served closed material on him, but—

- (a) the appellant may only communicate with the special advocate through a representative in writing; and
- (b) the special advocate must not reply to the communication otherwise than in accordance with directions of the Commission, except that he may without such directions send a written acknowledgment of receipt to the appellant's representative.

Directions hearing

11.—(1) The Commission must, unless it orders otherwise, fix a directions hearing as soon as reasonably practicable after notice of appeal is filed under rule 7, at which the parties and their representatives, and any special advocate, may be present.

(2) At a directions hearing the Commission may give directions as to the order in which, and the time within which, the following documents are to be filed and served—

- (a) the statement to be made by the Secretary of State under rule 12(1);
- (b) any statement to be filed and served by the appellant under rule 13(1);
- (c) any application to be made by the appellant or the special advocate under rule 13(3);
- (d) any statement to be filed and served by the Secretary of State under rule 13(2) or (6);
- (e) closed material, to be served by the Secretary of State on the special advocate under rule 12(3), 13(6)(a) or 14(2);
- (f) any reply by the special advocate under rule 15(4)(a) to an objection or application by the Secretary of State under rule 15(1);
- (g) any response by the Secretary of State under rule 15(4)(b) to the special advocate's reply;
- (h) any skeleton arguments on behalf of the parties and the special advocate.

(3) The Commission may also give directions as to the date of—

- (a) any hearing under rule 15; and

- (b) the hearing of the appeal.

Secretary of State's reply

12.—(1) Where the Secretary of State intends to oppose an appeal, he must file with the Commission a statement of—

- (a) the reasons for the proscription of the organisation;
- (b) a summary of the evidence in support of those reasons;
- (c) the evidence on which he relies in opposition to the appeal.

(2) Unless the Secretary of State objects to the statement being disclosed to the appellant or his representative, he must serve a copy of the statement on the appellant at the same time as filing it.

(3) Where a special advocate is appointed, the Secretary of State must serve on him a copy of the statement filed under paragraph (1).

(4) Where the Secretary of State objects to a statement filed under paragraph (1) being disclosed to the appellant or his representative, rules 14 and 15 apply.

Further material

13.—(1) Where the appellant wishes to rely on evidence in support of his appeal, he must file with the Commission and serve on the Secretary of State and on any special advocate a statement of that evidence.

(2) Where the appellant serves a statement under paragraph (1), the Secretary of State must, if he wishes to rely on further evidence, file with the Commission a statement of that evidence.

(3) Both the appellant and any special advocate may apply to the Commission for a direction requiring the Secretary of State to file further information about his case, or other information.

(4) An applicant under paragraph (3) must indicate why the information sought is necessary for the determination of the appeal.

(5) The Commission may make a direction on an application under paragraph (3) where it considers that the information sought—

- (a) is necessary for the determination of the appeal; and
- (b) may be provided without disproportionate cost, time or effort.

(6) The Secretary of State must serve a copy of any statement filed under paragraph (2) or of information filed pursuant to a direction under paragraph (5), at the same time as filing it, on—

- (a) any special advocate; and
- (b) the appellant, unless he objects to the disclosure of the statement or information to the appellant or his representative.

(7) Where the Secretary of State files with the Commission, and serves on the special advocate, notice that he objects to any such disclosure, rules 14 and 15 apply.

Closed material

14.—(1) The Secretary of State—

- (a) must apply to the Commission for permission to withhold closed material from the appellant or his representative in accordance with this rule; and
- (b) may not rely on closed material at a hearing unless a special advocate has been appointed.

(2) The Secretary of State must file with the Commission and serve, within such time as the Commission directs, on the special advocate—

- (a) the closed material, if he has not already done so;
 - (b) a statement of his reasons for withholding the material from the appellant or his representative; and
 - (c) if he considers it possible to summarise the material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the appellant.
- (3) The Secretary of State must, at the same time as filing it, serve on the appellant any summary filed under paragraph (2)(c).
- (4) Where the Secretary of State serves on the special advocate any closed material which he has redacted on grounds other than those of legal professional privilege—
- (a) he must file the material with the Commission in an unredacted form, together with an explanation of the redactions; and
 - (b) the Commission must give a direction to the Secretary of State as to what he may redact.
- (5) The Secretary of State may, at any time, amend or supplement material filed under this rule, but only with—
- (a) the agreement of the special advocate; or
 - (b) the permission of the Commission.

Consideration of Secretary of State's objection etc.

- 15.**—(1) This rule applies where the Secretary of State has—
- (a) objected under rule 10(5)(b) to a proposed communication by a special advocate; or
 - (b) applied under rule 14(1)(a) for permission to withhold closed material.
- (2) The Commission must fix a hearing for the Secretary of State and the special advocate to make oral representations, unless—
- (a) the special advocate gives notice to the Commission that he does not intend to challenge the objection or application;
 - (b) the Commission has previously considered—
 - (i) an objection under rule 10(5)(b) relating to the same or substantially the same communication, statement or information, as the case may be; or
 - (ii) an application under rule 14(1)(a) relating to the same or substantially the same material;and is satisfied that it would be just to uphold that objection or to give permission without a hearing; or
 - (c) the Secretary of State and the special advocate consent to the Commission deciding the issue without a hearing.
- (3) Where the special advocate does not challenge the objection or the application, he must give notice of that fact to the Commission and the Secretary of State within 14 days or such other time as the Commission may direct after the Secretary of State serves on him a notice under rule 10(5)(b) or 13(7) or material under rule 14(2).
- (4) Where the Commission fixes a hearing under this rule—
- (a) the special advocate may file with the Commission and serve on the Secretary of State a reply to the Secretary of State's application or objection;
 - (b) the Secretary of State may file with the Commission and serve on the special advocate a response to the special advocate's reply;

- (c) the Secretary of State and the special advocate must file with the Commission a schedule identifying the issues which cannot be agreed between them, which must—
 - (i) list the items or issues in dispute;
 - (ii) give brief reasons for their contentions on each;
 - (iii) set out any proposals for the Commission to resolve the issues in dispute.
- (5) A hearing under this rule must take place in the absence of the appellant and his representative.
- (6) The Commission may—
 - (a) uphold or overrule the Secretary of State’s objection;
 - (b) grant or refuse the Secretary of State’s application.
- (7) The Commission must give permission to the Secretary of State to withhold closed material if it considers that the disclosure of the material would be contrary to the public interest.
- (8) Where the Commission gives permission to the Secretary of State to withhold closed material, it must—
 - (a) consider whether to direct the Secretary of State to serve a summary of that material on the appellant; and
 - (b) approve any such summary, to secure that it does not contain any information or other material the disclosure of which would be contrary to the public interest.
- (9) Where the Commission does not give permission to the Secretary of State to withhold closed material from the appellant or his representative, or directs the Secretary of State to serve a summary of the material on the appellant—
 - (a) the Secretary of State shall not be required to serve that material or summary; but
 - (b) if he does not do so, the Commission may at a hearing at which the Secretary of State and the special advocate may make representations—
 - (i) if it considers that the material or anything that is required to be summarised might adversely affect the Secretary of State’s case or support the appellant’s case, direct that the Secretary of State shall not rely on such points in his case, or shall make such concessions or take such other steps, as the Commission may specify; or
 - (ii) in any other case, direct that the Secretary of State shall not rely in the proceedings on that material or (as the case may be) on that which is required to be summarised.

Other redactions

- 16.** Where the Secretary of State serves on the appellant any material which he has redacted on grounds other than those of legal professional privilege, he must—
- (a) notify the appellant that the material has been redacted and on what grounds it has been redacted; and
 - (b) file the material with the Commission in an unredacted form, together with an explanation of the redactions.

Variation of grounds of appeal

- 17.—(1)** The appellant may vary the grounds of appeal only with the permission of the Commission.
- (2) The appellant must file any proposed variation of the grounds of appeal with the Commission and serve a copy on the Secretary of State and on any special advocate.

Withdrawal of appeal

18.—(1) The appellant may withdraw an appeal—

- (a) orally, at a hearing; or
- (b) at any time, by filing written notice with the Commission.

(2) An appeal shall be treated as withdrawn if the Secretary of State notifies the Commission that he has made an order under section 3(3)(b) or (8) of the 2000 Act.

(3) If an appeal is withdrawn or treated as withdrawn, the Commission must serve on the parties and on any special advocate a notice that the appeal has been recorded as having been withdrawn.

Striking out

19. The Commission may strike out a notice of appeal if it appears to the Commission that—

- (a) it discloses no reasonable grounds for bringing the appeal; or
- (b) it is an abuse of the Commission’s process.

Directions: general

20.—(1) In addition to its powers under rule 11, the Commission may, on the application of a party or special advocate or on its own initiative, give directions for the conduct of proceedings.

(2) The power to give directions is to be exercised subject to these Rules, including in particular the obligation in rule 4(1) to secure that information is not disclosed contrary to the public interest.

(3) Directions under this rule may be given orally or in writing.

(4) Subject to rule 29, the Commission must serve notice of any written directions on every party and any special advocate.

(5) Directions under this rule may in particular—

- (a) specify the length of time allowed for anything to be done;
- (b) vary any time limit imposed by these Rules or by a direction of the Commission;
- (c) require any party to file with the Commission and serve on the other parties—
 - (i) further details of his case, or any other information which appears to be necessary for the determination of the appeal;
 - (ii) witness statements;
 - (iii) written submissions;
 - (iv) an estimate of the time which will be needed for any hearing;
 - (v) a list of any witnesses who will be called to give evidence;
 - (vi) a chronology of events;
 - (vii) a statement of any requirements for interpretation;
 - (viii) any other document;
- (d) provide for—
 - (i) a particular matter to be dealt with as a preliminary issue; or
 - (ii) a pre-hearing review to be held;
- (e) relate to any matter concerning the preparation for a hearing;
- (f) specify—
 - (i) the manner in which any evidence is to be given; and

- (ii) the witnesses, if any, to be heard;
 - (g) provide for a hearing to be conducted or evidence given or representations made by video link or other electronic means;
 - (h) make provision to secure the anonymity of the appellant or a witness.
- (6) The power to give directions may be exercised in the absence of the parties or of any special advocate.

Failure to comply with directions

21.—(1) Where a party or a special advocate fails to comply with a direction, the Commission may serve on him a notice which states—

- (a) the respect in which he has failed to comply with the direction;
- (b) a time limit for complying with the direction;
- (c) that the Commission may—
 - (i) proceed to determine the appeal on the material available to it if the party or special advocate fails to comply with the direction within the time specified; or
 - (ii) strike out the notice of appeal or the Secretary of State’s reply, as the case may be.

(2) Where a party or a special advocate who has been served with such a notice fails to comply with the direction, the Commission may proceed in accordance with paragraph (1)(c).

Hearings in private

22.—(1) Where the Commission considers it necessary for the appellant and his representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, it must—

- (a) direct accordingly; and
- (b) conduct the hearing, or that part of it from which the appellant and his representative are excluded, in private.

(2) The Commission may conduct a hearing or part of a hearing in private for any other good reason.

Notification of hearing

23. The Commission must serve notice of the date, time and place fixed for any hearing on every party, whether or not entitled to attend that hearing, and on any special advocate.

Adjournment of hearing

24. The Commission may adjourn or bring forward any hearing.

Evidence

25.—(1) Subject to any direction given by the Commission, the evidence of witnesses may be given in writing, in such a manner and at such time as the Commission directs.

- (2) The Commission may receive evidence in documentary or any other form.
- (3) The Commission may receive evidence which would not be admissible in a court of law.

(4) No person shall be compelled to give evidence or produce a document which he could not be compelled to give or produce at the trial of a civil claim in the part of the United Kingdom in which the proceedings before the Commission are taking place.

(5) Every party may—

- (a) adduce evidence; and
- (b) with the permission of the Commission, cross-examine a witness,

during any part of a hearing from which he and his representative are not excluded.

(6) The special advocate may—

- (a) adduce evidence; and
- (b) with the permission of the Commission, cross-examine a witness.

(7) The Commission must not give permission under paragraph (5)(b) or (6)(b) unless cross-examination would have been permitted if the appeal had been an application for judicial review.

(8) The Commission may require a witness to give evidence on oath or affirmation.

Summoning of witnesses

26.—(1) Subject to rule 25(4) and to paragraph (2) of this rule, the Commission may, on the application of a party or on its own initiative, issue a summons requiring any person in the United Kingdom—

- (a) to attend as a witness at any hearing before the Commission; and
- (b) at the hearing, to answer any questions or produce any document in his custody or under his control which relate to any matter in issue in the proceedings.

(2) No person shall be required to attend a hearing in compliance with a summons issued under paragraph (1) unless—

- (a) the summons is served on him; and
- (b) the necessary expenses of his attendance are paid or tendered to him.

(3) Where a summons is issued at the request of a party, that party must pay or tender the expenses of the witness.

Hearing two or more appeals together

27.—(1) Where two or more appeals are pending at the same time, the Commission may direct them to be heard together if—

- (a) some common question of law or fact arises in each of them; or
- (b) for some other reason it is desirable for the appeals to be heard together.

(2) The Commission must give all the parties who would be entitled to attend the hearings of the appeals an opportunity to make representations before giving a direction under paragraph (1).

Determination

28.—(1) This rule applies when the Commission makes its decision on an appeal.

(2) The Commission must record its decision and the reasons for it.

(3) Subject to rule 29, the Commission must serve on the parties and any special advocate a written determination containing its decision and, if and to the extent that it is possible to do so without disclosing information contrary to the public interest, the reasons for it.

(4) Where the determination does not include the full particulars of the reasons for its decision, the Commission must serve on the Secretary of State and the special advocate a separate determination including those particulars.

(5) Where the Commission serves a separate determination under paragraph (4), the special advocate may apply to the Commission to amend that determination and the determination under paragraph (3) on the grounds that the separate determination contains material the disclosure of which would not be contrary to the public interest.

(6) The special advocate must serve a copy of an application under paragraph (5) on the Secretary of State.

(7) The Commission must give the special advocate and the Secretary of State an opportunity to make representations and may determine the application with or without a hearing.

Application by Secretary of State to amend determination etc

29.—(1) This rule applies where the Commission proposes to serve on the appellant—

- (a) notice of any direction given in the absence of the Secretary of State; or
- (b) a determination containing its decision on the appeal.

(2) Before the Commission serves any such document on the appellant, it must first serve notice on the Secretary of State and on any special advocate of its intention to do so.

(3) The Secretary of State may, within 5 days of being served with notice under paragraph (2), apply to the Commission to amend the direction or the determination if he considers that—

- (a) his compliance with the direction; or
- (b) the notification to the appellant of any matter contained in the direction or determination, would cause information to be disclosed contrary to the public interest.

(4) Where the Secretary of State makes an application under paragraph (3), he must at the same time serve a copy of it on any special advocate.

(5) The Commission must give the special advocate and the Secretary of State an opportunity to make representations and may determine the application with or without a hearing.

(6) The Commission must not serve a document on the appellant as mentioned in paragraph (1) before the time for the Secretary of State to make an application under paragraph (3) has expired or, where such an application is made, before it has been determined.