

**2002 No. 1845**

**PREVENTION AND SUPPRESSION OF TERRORISM**

**The Pathogens Access Appeal Commission (Procedure)  
Rules 2002**

*Made* - - - - - *16th July 2002*

*Coming into force* *23rd July 2002*

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Whereas a draft of these Regulations has been laid before, and approved by resolution of each House of Parliament,

Now, therefore, the Lord Chancellor, in exercise of the powers conferred on him by paragraph 5 of Schedule 6 to the Anti-terrorism, Crime and Security Act 2001<sup>(a)</sup> (and having had regard to the matters specified in paragraph 5(2)), hereby makes the following Rules:

### PART I

#### GENERAL PROVISIONS

##### **Citation and commencement**

1.—(1) These Rules may be cited as the Pathogens Access Appeal Commission (Procedure) Rules 2002.

(2) These Rules shall come into force on the expiry of one week beginning with the day on which they are made.

##### **Interpretation**

2.—(1) In these Rules—

“2001 Act” means the Anti-terrorism, Crime and Security Act 2001;

“appeal” means—

(a) in Part II of these Rules, an appeal under section 70(2) of the 2001 Act;

(b) in Part III of these Rules, an appeal under section 70(4) of the 2001 Act;

and “appellant” is to be construed accordingly;

“the chairman” means the chairman of the Commission;

“the Commission” means the Pathogens Access Appeal Commission; and

“the special advocate” means a person appointed under paragraph 6 of Schedule 6 to the 2001 Act to represent the interests of the appellant.

##### **General duty of Commission**

3.—(1) When exercising its functions, the Commission shall secure that information is not disclosed contrary to the interests of national security, the detection and prevention of crime, or in any other circumstances where disclosure is contrary to the public interest.

(2) Where the Rules require information not to be disclosed contrary to the public interest, the requirement shall be construed in accordance with paragraph (1).

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<sup>(a)</sup> 2001 c.24.

(3) Subject to paragraphs (1) and (2), the Commission must satisfy itself that the material available to it enables it properly to review decisions.

### **Delegated powers**

4.—(1) The powers of the Commission under the following provisions may be exercised by the chairman or by any other member of the Commission who falls within paragraph 4(3)(b) of Schedule 6 to the 2001 Act—

- (a) rule 11(2) and (4) (amendment and supplementary grounds);
- (b) rule 13 (directions);
- (c) rule 23 (application for permission to appeal);

(2) Instead of exercising a power under paragraph (1), the chairman or member may remit the matter to be dealt with by the Commission.

(3) Where the chairman or member exercises any power of the Commission, references to the Commission in the Rules shall as appropriate include references to him.

### **Notices etc.**

5.—(1) Any notice or other document required or authorised by these Rules to be served on or sent to any party or the Commission may be sent by first class post, or by fax or be delivered by hand, and in the case of—

- (a) the Commission, shall be directed to the Secretary to the Commission; and
- (b) the Secretary of State, shall be directed to the Organised Crime, Drugs and International Group of the Home Office.

(2) The appellant must inform the Commission if an address given under rule 7(3) changes.

## **PART II**

### **APPEALS**

#### **Time limit for appealing**

6.—(1) Subject to paragraph (3) a notice of appeal must be served on the Commission no later than six months from the day on which the Secretary of State gave directions under section 64 of the 2001 Act.

(2) The notice of appeal shall be taken to have been served on the day on which it is received by the Commission at the address or fax number specified in the directions against which the appeal is made.

(3) The Commission may accept a notice of appeal served after the expiry of the period permitted by paragraph (1) if it is of the opinion that, by reason of special circumstances, it is just and right to do so.

#### **Notice of appeal**

7.—(1) An appeal to the Commission is made by serving written notice of appeal on the Commission.

(2) The notice of appeal must be given by the appellant or by his representative.

(3) The notice of appeal must set out the name and address of—

- (a) the appellant, and
- (b) any representative of his,

and be signed by the appellant or his representative.

(4) The notice of appeal must also set out—

- (a) the address of the premises to which the appellant has been denied access, and
- (b) the grounds of the appeal.

- (5) As soon as practicable after it receives a notice of appeal, the Commission shall send—
- (a) an acknowledgement of service of the notice of appeal to the person giving the notice; and
  - (b) a copy of the notice of appeal to the Secretary of State.

### **The special advocate**

**8.**—(1) At any time prior to issuing a reply under rule 9(1), the Secretary of State shall inform the relevant law officer of the proceedings before the Commission, with a view to the law officer, if he thinks fit to do so, appointing a special advocate to represent the interests of the appellant in the proceedings.

- (2) Paragraph (1) applies unless—
- (a) the Secretary of State does not intend to oppose the appeal, or
  - (b) he does not intend to object to the disclosure of material to the appellant.
- (3) If at any stage in proceedings before the Commission, paragraph (2)(b) ceases to apply, the Secretary of State shall immediately notify the relevant law officer as in paragraph (1).
- (4) The function of the special advocate is to represent the interests of the appellant by—
- (a) making submissions to the Commission in any proceedings from which the appellant and his representative are excluded;
  - (b) cross-examining witnesses at any such proceedings;
  - (c) making submissions to the Commission in any part of the proceedings from which the appellant and his representative are not excluded but only where exceptionally invited by the Commission to do so; and
  - (d) making written submissions to the Commission.
- (5) The Commission shall not invite the special advocate to make submissions in any part of the proceedings from which the appellant and his representative are not excluded unless the submission relates to a part of the proceedings from which the appellant and his representative were excluded.
- (6) Except in accordance with paragraphs (7) to (10), the special advocate may not communicate directly or indirectly with the appellant or his representative on, or in relation to, any matter connected with the substance of the appeal before the Commission or the material made available by the Secretary of State in relation to that appeal.
- (7) The special advocate may communicate with the appellant and his representative at any time before the Secretary of State makes material available to him under rule 9(3).
- (8) At any time after the Secretary of State has made material available under rule 9(3), the special advocate may seek directions from the Commission authorising him to seek information in connection with the proceedings from the appellant or his representative.
- (9) The Commission shall notify the Secretary of State of a request for directions under paragraph (8) and the Secretary of State must, within a period specified by the Commission, give the Commission notice of any objection which he has to the request for information being made or to the form in which it is proposed to be made.
- (10) Where the Secretary of State makes an objection under paragraph (9), rule 10 shall apply as appropriate.

### **Secretary of State's reply**

- 9.**—(1) If the Secretary of State intends to oppose the appeal, he must within such time as the Commission may allow—
- (a) provide the Commission with a summary of the facts relating to the decision being appealed and the reasons for that decision;

- (b) inform the Commission of the grounds on which he opposes the appeal; and
- (c) provide the Commission with a statement of the evidence which he relies upon in support of those grounds.

(2) Where the Secretary of State objects to material referred to in paragraph (1) being disclosed to the appellant or his representative, he must also—

- (a) state the reasons for his objection; and
- (b) if and to the extent it is possible to do so without making a disclosure which is contrary to the public interest, provide a statement of that material in a form which can be shown to the appellant.

(3) Where paragraph (2) applies, the Secretary of State must make available to the special advocate, as soon as it is practicable to do so, the material which he has provided to the Commission under paragraphs (1) and (2).

### **Consideration of Secretary of State's objection**

**10.**—(1) Proceedings under this rule shall take place in the absence of the appellant and his representative.

(2) The Commission shall decide whether to uphold the Secretary of State's objection and, where relevant, whether to require him to provide material in a different form from that in which he has provided it under rule 9(2)(b).

(3) Before doing so, it must invite the special advocate to make written representations.

(4) After considering representations made under paragraph (3), the Commission must invite the Secretary of State and the special advocate to make oral representations unless paragraph (5) applies.

(5) This paragraph applies if the Commission decides, after considering representations under paragraph (3), to uphold the Secretary of State's objection and where relevant not to require him to provide material in a different form from that in which he has provided it under rule 9(2)(b).

(6) Where—

- (a) the Commission overrules the Secretary of State's objection or requires him to provide material in a different form from that which he has provided under rule 9(2)(b), and
- (b) the Secretary of State wishes to continue to oppose the appeal,

he shall not be required to disclose any material which was the subject of his unsuccessful objection if he chooses not to rely upon it in further opposing the appeal.

### **Amendment and supplementary grounds**

**11.**—(1) Subject to paragraph (2) the appellant may amend the notice of appeal or deliver supplementary grounds of appeal.

(2) Where the Secretary of State has provided material under rule 9, the appellant shall obtain the permission of the Commission before amending the notice of appeal or delivering supplementary grounds under paragraph (1).

(3) As soon as practicable after it receives an amended notice of appeal or supplementary grounds of appeal, the Commission shall send a copy of it to the Secretary of State.

(4) With the permission of the Commission, the Secretary of State may amend or supplement the material which he has provided under rule 9.

(5) Where the Secretary of State provides further objections under paragraph (4), the Commission shall consider them in accordance with rule 10.

### **Consolidation of appeals**

**12.**—(1) Subject to paragraph (2) below, where in the case of two or more appeals to which these Rules apply it appears to the Commission—

- (a) that some common question of law or fact arises in both or all of them, or
- (b) that for some other reason it is desirable to proceed with the appeals under this rule,

the Commission may order that the appeals be consolidated or heard together.

(2) The Commission shall not make an order under this rule without giving the parties an opportunity to make representations to the effect that such an order should not be made.

### **Directions**

**13.**—(1) Subject to any decision which it makes under rule 10 and the need to secure that there is no disclosure of information which is contrary to the public interest, the Commission may give directions for the conduct of proceedings.

(2) Directions may in particular—

- (a) provide for a particular matter to be dealt with as a preliminary issue and for a pre-hearing review to be held;
- (b) limit the length of oral submissions and the time allowed for the examination and cross-examination of witnesses; and
- (c) require any party to the appeal to give to the Commission—
  - (i) statements of facts and statements of the evidence which will be called at any hearing, including such statements provided in a modified or edited form;
  - (ii) a skeleton argument which summarises the submissions which will be made and cites all the authorities which will be relied upon, identifying any particular passages to be relied upon;
  - (iii) an estimate of the time which will be needed for any hearing;
  - (iv) a list of the witnesses who will be called to give evidence;
  - (v) a chronology of events;
  - (vi) a statement of any interpretation requirements,

and to serve any such material on the other party to the appeal.

(3) The Commission may—

- (a) subject to any specific provision of the Rules, specify time limits for steps to be taken in the proceedings; and
- (b) extend any time limit.

(4) The power to give directions may be exercised in the absence of the parties.

### **Failure to comply with directions**

**14.**—(1) Where a party fails to comply with a direction, the Commission may send that party a notice which states—

- (a) the respect in which he has failed to comply with the relevant direction;
- (b) the time limit for complying with the direction; and
- (c) that the Commission may proceed to determine the appeal on the material available to it if the party fails to comply with the relevant direction within the time specified.

(2) Where the party in default fails to comply with the notice under paragraph (1), the Commission may proceed in accordance with paragraph (1)(c).

### **Applications by Secretary of State**

15.—(1) This rule applies to the notification to the appellant by the Commission of—

- (a) any order or direction made or given in the absence of the Secretary of State,
- (b) any summary prepared under rule 21, and
- (c) its determination under rule 22.

(2) Before the Commission notifies the appellant as mentioned in paragraph (1), it must first notify the Secretary of State.

(3) If the Secretary of State considers that compliance by him with an order or direction or notification to the appellant of any matter under paragraph (1) would result in a disclosure of information which is contrary to the public interest, he may apply to the Commission to reconsider the order or direction or to review the proposed summary of determination.

(4) At the same time as he makes his application, or as soon as practicable afterwards, the Secretary of State must send a copy of it to the special advocate.

(5) An application by the Secretary of State must be made within 14 days of receipt of notification under paragraph (2), and the Commission shall not notify the appellant as mentioned in paragraph (1) before the time for applying has expired.

(6) Rule 10 shall apply as appropriate to the Commission's consideration of the Secretary of State's application.

### **Notification of hearing**

16. The Secretary to the Commission must send notice of the date, time and place fixed for any hearing to the special advocate and every party entitled to attend that hearing.

### **Parties and representation of parties**

17.—(1) The parties to an appeal shall be the appellant and the Secretary of State.

(2) The appellant may act in person or be represented or appear by—

- (a) a person having a qualification referred to in paragraph 6(3) of Schedule 6 to the 2001 Act; or
- (b) with the permission of the Commission, any other person.

(3) The Secretary of State may be represented by any person appointed by him for that purpose.

### **Proceedings in private**

18.—(1) Where the Commission considers it necessary for the appellant and his representative to be excluded from the proceedings or any part of them in order to secure that there is no disclosure of information which is contrary to the public interest, it must—

- (a) order accordingly, and
- (b) hear the proceedings, or that part of it from which the appellant and his representative are excluded, in private.

(2) The Commission may hear the proceedings or part of them in private for any other good reason.

### **Evidence**

**19.**—(1) In any proceedings on an appeal, the evidence of witnesses may be given either—

- (a) orally, before the Commission, or
- (b) in writing, in which case it shall be given in such a manner and at such time as the Commission has directed.

(2) The Commission may also receive evidence in documentary or any other form.

(3) The Commission may receive evidence that 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 on the trial of an action in the part of the United Kingdom in which the proceedings before the Commission are taking place.

(5) Every party shall be entitled to adduce evidence and to cross-examine witnesses during any part of the hearing of the appeal from which he and his representative are not excluded.

(6) The Commission may require a witness to give evidence on oath.

### **Summoning of witnesses**

**20.**—(1) Subject to rules 3 and 19(4) and paragraph (2) of this rule, the Commission may require any person in the United Kingdom to attend as a witness at any proceedings before the Commission and to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal.

(2) No person shall be required to travel more than 16 kilometres from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.

(3) Where a party requests the attendance of a witness, that party must pay or tender those expenses.

### **Notification to appellant before determination**

**21.**—(1) Where the appellant or his representative have been excluded from the hearing of the appeal or any part of it, the Commission must, before it determines the appeal, give the appellant a summary of the submissions and evidence received in his absence if and to the extent it is possible to do so without making a disclosure which is contrary to the public interest.

(2) Where the Commission provides such a summary, it shall afford the special advocate and the parties an opportunity to make representations and adduce evidence or further evidence to the Commission in respect of the material contained in it.

### **Promulgation of determination**

**22.**—(1) The Commission must record its determination and, if and to the extent it is possible to do so without making a disclosure which is contrary to the public interest, the reasons for it.

(2) The Commission shall publish its determination and send written notice of it to the special advocate and the parties.

## **PART III**

### **PERMISSION TO APPEAL FROM COMMISSION**

#### **Application for permission to appeal**

**23.**—(1) Subject to paragraph (3), an application to the Commission for permission to appeal shall be served on the Commission no later than 10 days from (but excluding) the day on which the appellant or, as appropriate, the Secretary of State has received written notice of the determination.



(2) The application shall be taken to have been served on the day on which it is received by the Commission at the address or fax number specified in the notice of the determination.

(3) The Commission may accept an application served after the expiry of the period permitted by paragraph (1) if it is of the opinion that, by reason of special circumstances, it is just and right to do so.

(4) The Commission may decide an application for permission without a hearing unless it considers there are special circumstances which make a hearing necessary or desirable.

16th July 2002

*Irvine of Lairg, C.*

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules prescribe the practice and procedure to be followed on appeal to the Pathogens Access Appeal Commission under section 70 of, and Schedule 6 to, the Anti-terrorism, Crime and Security Act 2001 (“the Act”).

The Secretary of State may, under section 64 of the Act give directions to the occupier of any premises in which dangerous substances (within the meaning of section 58(4) of the Act) are kept requiring him not to give access to the person identified in the directions. Any person aggrieved by such directions may appeal to the Commission. A party to such an appeal may bring a further appeal on a question of law to the Court of Appeal with the permission of the Commission or the Court of Appeal.

In particular, these Rules include provision for—

- (a) appeals to be heard in the absence of the appellant and his representative where necessary;
- (b) the functions of the special advocate appointed to represent the interests of the appellant;
- (c) the right of the appellant to be legally represented; and
- (d) applications for permission to appeal on a point of law from the Commission’s determination.



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The Pathogens Access Appeal Commission (Procedure)  
Rules 2002

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