

**EXPLANATORY MEMORANDUM TO
THE PROSCRIBED ORGANISATIONS APPEAL COMMISSION
(PROCEDURE) RULES 2007**

2007 No.1286

1. This explanatory memorandum has been prepared by the Tribunals Service of the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Proscribed Organisations Appeal Commission (Procedure) Rules 2007 (“the 2007 Rules”) prescribe the procedure to be followed for appeals to the Proscribed Organisations Appeal Commission (POAC) under section 5 of the Terrorism Act 2000 (“the 2000 Act”) against refusals by the Secretary of State for the Home Department (“the SSHD”) to deproscribe organisations concerned in terrorism. They revoke and replace the Proscribed Organisations Appeal Commission (Procedure) Rules 2001 (“the 2001 Rules”), of which the SI number is 2001/443. They also cover related proceedings under section 7(1)(a) of the Human Rights Act 1998 whereby a person who claims a public authority has acted in a way incompatible with the European Convention on Human Rights can bring court proceedings .

- 2.2 Although the number of changes to the 2001 Rules warrants the replacement of those Rules, none of the new provisions makes any substantial change to the Commission’s procedure. They bring the POAC Rules into line with recent legislative developments in counter-terrorism and with the Special Immigration Appeals Commission (Procedure) Rules 2003 (“the SIAC Rules 2003”) and the Special Immigration Appeals Commission (Procedure) (Amendment) Rules 2007 (“the SIAC Rules 2007”) in those areas where the two Commissions’ procedure are similar.

- 2.3 The SIAC Rules 2007 are laid before Parliament on the same day as this statutory instrument.

- 2.4 The 2007 Rules are subject to affirmative resolution, and are intended to come into force by May 2007.

3. **Matters of special interest to the Joint Committee on Statutory Instruments.**

- 3.1 None.

4. **Legislative Background**

- 4.1 Paragraph 5(1) of Schedule 3 to the 2000 Act confers power on the Lord Chancellor to make Procedure Rules to govern appeals before POAC against the Home Secretary's refusal to de-proscribe organisations. Paragraph 5(2) to (4) set out those matters which the Lord Chancellor must have regard to when making Rules, and those provisions which he may or must include in them. Paragraph 5(5) provides that the Rules are to be subject to the affirmative resolution procedure.
- 4.2 Section 22 of the Terrorism Act 2006 amends paragraph 5 of Schedule 3 to the 2000 Act to enable the SSHD to specify alternative names when an organisation listed in Schedule 2 to the 2000 Act is operating wholly or partly under a name that is not specified in that Schedule. This allows for an appeal to POAC where the SSHD refuses to change the order that a name is to be treated as an alternative name for a proscribed organisation.

5. Extent

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention of Human Rights

- 6.1 As the instrument does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The policy objectives of these amendments are to bring the Rules into line with SIAC practices where necessary, and to bring POAC up to date with recent counter-terrorism legislation.
- 7.2 There has been extensive consultation with stakeholders on the two sets of Rules over a twelve-month period. This is a specialised and technical area, so this did not take the form of a formalised public consultation exercise. The DCA worked with stakeholders representing the spectrum of those involved with and interested in SIAC cases and the POAC remit. These were:
- The Home Office
 - Special Advocates (a Special Advocate will be appointed where the case involves 'closed' material; the disclosure of which the SSHD certifies would be contrary to the public interest)
 - The Special Advocates' Support Office
 - The Treasury Solicitor
 - The Foreign and Commonwealth Office
 - The Security Services
 - The Chairman of POAC, The Right Honourable Sir Charles Mantell
- 7.3 There is no statutory obligation to consult the Council on Tribunals ("the CoT") on the POAC Procedure Rules as POAC does not fall within the CoT's remit.

- 7.4 There follows a summary of the main provisions of the 2007 Rules and of the main changes from the 2001 Rules.
- 7.5 Rules 2, 6 and 7 take account of section 22 of the Terrorism Act 2006, as outlined above at 4.2, which empowers the Secretary of State to order that a name is to be treated as another name for a proscribed organisation and allows an appeal to the Commission against a refusal to order that that name cease to be treated as another name for the organisation.
- 7.6 Rule 4 repeats the general duty on POAC, contained in the 2001 Rules, to ensure that information is not disclosed contrary to the public interest, as required by paragraph 5(2)(b) of Schedule 3 to the 2000 Act.
- 7.7 Rule 6 clarifies that the time limit for appealing is to be 42 days from the date on which the appellant was notified of the SSHD's refusal to deproscribe the organisation.
- 7.8 Rule 7 sets out the requirements for the notice of appeal and rule 12 those for the SSHD's reply. Rule 8 requires POAC to designate a person to conduct the proceedings on behalf of the proscribed organisation and rules 9 and 10 contain provisions about Special Advocates.
- 7.9 Rule 11 provides for an early directions hearing at which the parties, their representatives and any Special Advocate may be present. This is reflective of existing practice within SIAC and was suggested for inclusion in both sets of Rules by stakeholders heavily involved in the SIAC process.
- 7.10 Rule 13 is a new provision on the filing and service of further material by the appellant and the SSHD, which also reflects current practice in SIAC.
- 7.11 Rules 14 and 15 amend the procedures for dealing with 'closed' material. Reflective of practice that has recently evolved within SIAC, these Rules require the SSHD to serve on POAC any material served on the Special Advocates which is redacted on grounds other than legal professional privilege (LPP), together with explanations for those redactions. POAC will then give a direction to the SSHD as to the extent of the redactions that may be made. Rule 15 makes clearer the process by which POAC deals with objections by the SSHD to material he wishes to rely on being disclosed to the appellant. Rule 16 sets out procedures for open material served on the appellant that the SSHD has redacted on grounds other than LPP. The SSHD must notify the appellant and POAC that redactions have been made, and must file with POAC an unredacted version. The Rules reflect equivalent provisions within the SIAC Rules 2007.
- 7.12 Rule 18 clarifies the procedure for withdrawal of appeals which was not previously defined in the Rules and rules 19 and 21 deal with striking out appeals and replies. There are equivalent striking out Rules in the SIAC Rules 2007; however, SIAC can strike out the SSHD's reply if it gives no reasonable grounds for defending the appeal. This does not carry across to POAC, since

the original proscription order will have been made or approved by Parliament.

- 7.13 Rule 22 allows POAC to conduct hearings or parts of hearings in private.
- 7.14 Rule 28 permits the Special Advocate to apply to POAC for a direction that parts of the 'closed' material be within the 'open' determination, on the grounds that it would not be contrary to the public interest to disclose it. POAC must determine the application either with or without a hearing. Rule 29 makes clearer the circumstances in which the SSHD can apply to POAC to amend the 'open' determination, and is consistent with Rule 28 which it mirrors. These Rules follow equivalent provisions in the SIAC Rules 2007.
- 7.15 Rule 33 permits appellants to be legally represented, as required by paragraph 5(3) of Schedule 3 to the 2000 Act.
- 7.16 Rules 37 and 38 on errors of procedure and the correction of determinations provide for POAC to remedy clerical errors and omissions, consistently with the SIAC Rules 2003.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on businesses, charities or voluntary bodies.

9. Contact

- 9.1 Jason Latham at the Tribunals Service can be contacted with queries regarding the instrument, on 0161 234 2077 or Jason.Latham@tribunals.gsi.gov.uk.